



The Honorable Patrick Toomey  
Ranking Member, Senate Committee on Banking, Housing, and Urban Affairs  
524 Dirksen Senate Office Building  
Washington, D.C. 20510

Dear Senator Toomey,

Thank you for the opportunity to provide feedback on potential legislative action regarding cryptocurrency. Engine is a non-profit technology policy, research, and advocacy organization that bridges the gap between policymakers and startups. Engine works with government and a community of thousands of high-technology, growth-oriented startups across the nation to support the development of technology entrepreneurship. As such, we write to express interest in efforts to more clearly regulate the cryptocurrency and blockchain ecosystems, as any such efforts could significantly affect the ability of crypto and blockchain startups to launch and grow.

Given the continued rapid growth of the cryptocurrency industry and the variety of startups involved in the ecosystem, it is understandable that regulators and legislators see a need to update rules and regulations to account for the complexity and development of the industry. Engine has been [calling](#) on policymakers for some time to increase regulatory certainty for the burgeoning ecosystem, as federal agencies up enforcement efforts on virtual currency transactions, including through lawsuits and injunctions. This is critical as existing regulations fail to provide answers for startups trying to determine whether their digital assets more closely resemble a traditional security and are therefore subject to regulation, or a more functional item exempt from regulation. In order to build a functioning network, early-stage [startups](#) in the blockchain and crypto sectors must widely distribute their tokens. Because the tokens themselves provide value to users seeking to utilize the underlying network, blockchain startups may pursue the simultaneous objectives of selling tokens to potential users, getting tokens to users to build up network effects, and raising funds to scale their ventures. Unless startups have clearly defined regulations for distributing tokens, they may be forced out of the sector for fear of consequences pertaining to illegal securities offerings.

It is critical to note that there are a number of past and existing legislative proposals legislators should consider moving to provide startups with needed clarity. [Most](#) major federal securities laws were written in the wake of the Great Depression, well before digital computers—much less cryptographically secure digital assets—even existed. Not surprisingly, these laws fail to provide rules that cleanly apply to digital tokens. The resulting uncertainty about how to distribute digital assets to investors and users in a manner consistent with federal securities laws has long plagued the developing blockchain industry. The [Token Taxonomy Act](#) attempts to rectify that problem by exempting digital tokens from the definition of a security, while simultaneously [supporting](#) investor access and capital formation. This is necessary, because though the acquisition of digital tokens “may be an investment of money” and “may even involve an expectation of profits....one would be hard pressed to argue that a cryptocurrency network is a common enterprise when the roles and intentions of its users are so varied. The profits from holding and using cryptocurrencies, moreover, do not accrue from the efforts of others but rather from the cryptocurrencies’

usefulness on the network.” Therefore supporting efforts to regulate digital tokens as securities is generally misguided, since digital tokens fall outside the scope of what securities laws were intended to monitor and are unlikely to cause the kinds of harms that securities laws aim to mitigate. The SEC’s [staff guidance](#) for classifying digital tokens has only further complicated this issue with unclear criteria that determine when a digital token is more likely to be a security and when it is less likely to be a security. Here, legislation like the Token Taxonomy Act would [provide](#) “clear rules supporting an emerging technology without constraining future growth.”

It is important to note, however, that though greater regulatory certainty will help guide startups, policymakers must be mindful that any overly burdensome efforts can similarly quell a startup’s ability to grow. For example, efforts to require [reporting](#) of every crypto transaction as a tax event, regardless of the size of the transaction, would harm the ecosystem. Doing so would undermine the industry’s goal of using cryptocurrency as a fast and easy medium of exchange. Past legislative proposals, including the [Virtual Currency Tax Fairness Act](#), would help solve this problem by implementing a de minimis exemption for transactions under \$200. Regulation that exempts transactions under a certain threshold will help protect everyday users of blockchain networks.

Other efforts, like the Senate-passed bipartisan infrastructure bill, present further examples of unworkable, overly burdensome regulatory efforts. While startups and the industry at large have been calling on Congress and regulators for some time to address regulatory shortcomings, little concrete action has been taken until this bill. And though it is commendable that more attention has been paid to the industry, the text included in the bill highlights exactly the type of overly burdensome efforts to be avoided. The bill, in [attempting](#) to define and expand the definition of a “broker,” to address tax compliance, only served, as some industry professionals and legislators [indicated](#), as “an attempt to apply brick and mortar rules to the Internet and fails to understand how the technology works.” Though the text was modified to include [anyone](#) “responsible for and regularly providing any service effectuating transfers of digital assets” on someone else’s behalf and eliminated language that targeted decentralized exchanges and peer-to-peer marketplaces, the scope of the definition as the bill awaits a vote in the House, remains overly broad and likely to ensnare [non-custodial companies](#). If this happens, groups like software developers and certain crypto startups ([including](#) those that create wallets), and miners—those that do not perform the duties of a broker, nor do they collect or have access to know-your-customer [information](#)—would be subject to onerous reporting requirements that would pose significant privacy concerns for users. As the crypto market continues to grow towards a projected [\\$4.94 trillion](#), it will be imperative for policymakers to write rules that establish clear guidelines for startups and other participants.

Thank you for the opportunity to provide feedback to the committee on needed clarity for the cryptocurrency and blockchain industries. While we are excited to see committee interest in addressing critical gaps in the industry, we implore legislators to be mindful of any affects legislative and regulatory efforts may have on startups in the industry. As always, we are happy to serve as a resource to the committee, including through providing feedback on any proposals through the lens of an American startup, or by facilitating conversations with startups themselves.

Sincerely,  
Engine Advocacy