

May 10, 2022

# California Governor Signs Blockchain Executive Order

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## Order Aims to Foster Innovation, Protect Consumers and Create a Transparent Regulatory and Business Environment

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### SUMMARY

On May 4, California Governor Gavin Newsom signed an executive order that is intended “to foster responsible innovation, bolster California’s innovation economy, and protect consumers” and “create a transparent regulatory and business environment for web3 companies which harmonizes federal and California approaches, balances the benefits and risks to consumers, and incorporates California values such as equity, inclusivity, and environmental protection.”<sup>1</sup> The executive order outlines several priorities to advance these aims. The executive order indicates that supporting blockchain technologies and crypto-related assets, in connection with other policy concerns, such as consumer protection, and aligning with the federal government’s approach to digital asset regulation, is a key focus for California.

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### THE EXECUTIVE ORDER

On May 4, Governor Newsom signed an executive order setting out his priorities with respect to the blockchain industry in California (the “Executive Order”).<sup>2</sup> Noting that crypto assets<sup>3</sup> and blockchain technology<sup>4</sup> represent a “burgeoning industry,” the Executive Order sets out several key principles, and measures to be taken by the State of California, to foster innovation, create a transparent regulatory regime and protect consumers:

1. The Executive Order establishes that it is the goal of the State of California to create a transparent and consistent business environment for companies that use blockchain technology, crypto assets and related financial technologies that harmonizes federal and California financial protection laws, balances the benefits and risks of innovative technology to consumers, and incorporates California values, including equity, inclusivity and environmental protection.

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2. In connection with the federal digital asset strategy set out in President Biden’s Executive Order on Ensuring Responsible Development of Digital Assets (the “Federal Executive Order”),<sup>5</sup> the Executive Order requires state agencies to focus on four workstreams: (a) collecting input from stakeholders, (b) creating a regulatory approach to crypto assets harmonized between federal and state authorities, (c) exploring and establishing public-serving use cases, and (d) developing research and workforce pipelines.
3. The state agencies are required to gather input from stakeholders for potential blockchain uses and ventures, focusing on crypto assets and related financial technologies. The Executive Order emphasizes that feedback should be sought from a broad array of constituencies, including communities that have not historically benefitted from technology-driven economic growth, technical experts, stakeholders interested in using blockchain to address systemic inequities and environmental impact and venture capital firms.
4. The California Department of Financial Protection and Innovation, California’s principal financial regulator, is required to engage in a public process to develop a comprehensive regulatory approach to crypto assets that is consistent with the direction of federal regulations and guidance. The Executive Order enumerates a number of aspects of the public process, including developing guidance and providing regulatory clarity regarding crypto asset-related financial products and services, publishing consumer protection principles that may include model disclosures, error resolution, and other criteria deemed appropriate, enforcing consumer protection laws, and seeking input to publish guidance for California state-chartered banks and licensees by March 31, 2023.
5. The Washington D.C. Office of the California Governor is required to engage with federal agencies and regulators in the processes outlined in the Federal Executive Order.
6. The California Government Operations Agency is required to explore opportunities to use blockchain technologies to address public-serving and developing needs. In doing so, the agency will issue a “Request for Innovative Ideas” to the private sector, academia and others, and enable blockchain technologies to be eligible for state procurement.
7. The Executive Order encourages the Governor’s Council for Post-Secondary Education to identify opportunities to “create a research and workforce environment to power innovation in blockchain technology, including crypto assets.”

The promulgation of the Executive Order reflects that blockchain technologies and crypto-related assets continue to be growing areas of technological innovation and key focus areas for financial institutions, but also of importance to other policy areas, including consumer protection, the procurement of public services and job development. The Executive Order makes plain that California seeks to be “the premiere global location for responsible crypto asset companies to start and grow,” reflecting a fairly welcoming attitude towards these technologies, and a recognition of their growing importance in the technology-related fields for which California is already known. The Executive Order also reflects a desire to develop a framework for digital asset regulation that is consistent with the developing federal framework, rather than an independent, and potentially conflicting, state framework. Consistent with that approach, the Executive Order does not signal the creation of new law, such as a digital asset-specific charter, or guidance without first understanding the proposed federal regulatory approach.

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ENDNOTES

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- 1 Office of Governor Gavin Newsom, *Governor Newsom Signs Blockchain Executive Order to Spur Responsible Web3 Innovation, Grow Jobs, and Protect Consumers* (May 4, 2022), available at <https://www.gov.ca.gov/2022/05/04/governor-newsom-signs-blockchain-executive-order-to-spur-responsible-web3-innovation-grow-jobs-and-protect-consumers/>.
- 2 Executive Order N-9-22, available at <https://www.gov.ca.gov/wp-content/uploads/2022/05/5.4.22-Blockchain-EO-N-9-22-signed.pdf>.
- 3 “Crypto asset” is defined as “a digital asset, which may be a medium of exchange, for which generation or ownership records are supported through a blockchain technology.” *Id.*
- 4 “Blockchain technology” is defined as “a domain of technology, including distributed ledger technologies, used to build decentralized systems that increase the verifiability of data shared among a group of participants that may not necessarily have a pre-existing trust relationship.” *Id.*
- 5 See Sullivan & Cromwell LLP, *Executive Order on Digital Assets* (March 9, 2022), available at <https://www.sullcrom.com/files/upload/sc-publication-executive-order-on-digital-assets.pdf>.

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