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# The Hack of The Racial Wealth Gap: How The “American Families Plan” Will Jeopardize the Anonymity of Cryptocurrency Transactions and Potentially Harm Investors of Color

## I. INTRODUCTION

As technology becomes more entwined with the financial services industry, federal and state governments have increasingly attempted to regulate a type of currency that is shrouded in anonymity.<sup>1</sup> Cryptocurrencies (“cryptos”) are digital currencies that lack a central regulating authority and rely on cryptography to secure transactions.<sup>2</sup> Government officials, academics, and concerned investors have recently called for the regulation of cryptos<sup>3</sup> for a myriad of reasons, including the evasion of government regulations by crypto investors,<sup>4</sup> the volitive and explosive growth of the market value of crypto,<sup>5</sup> and the environmental

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1. See Christina Pazzanese, *Regulators Put Cryptocurrency in Crosshairs*, HARV. GAZETTE (Sep. 29, 2021), <https://news.harvard.edu/gazette/story/2021/09/regulating-the-unregulated-cryptocurrency-market> [<https://perma.cc/6PY6-5C28>] (“The U.S. Treasury said this week it will sanction a cryptocurrency exchange for the first time for facilitating ransomware payments . . . [a]nd the U.S. Securities and Exchange Commission is also pushing for greater enforcement.”).

2. *Cryptocurrency*, Merriam-Webster’s Dictionary, <https://www.merriam-webster.com/dictionary/cryptocurrency> [<https://perma.cc/B8VQ-WSH7>] (last visited Feb. 1, 2022).

3. See Paul Kiernan, *Crypto ‘Wild West’ Needs Stronger Investor Protections*, SEC Chief Says, WALL ST. J. (Aug. 3, 2021, 6:21 p.m.), <https://www.wsj.com/articles/sec-will-police-cryptocurrencies-to-maximum-possible-extent-chair-gary-gensler-says-11628007567> [<https://perma.cc/L678-QR3F>] (noting that the Securities & Exchange Commissioner Chairman, Gary Gensler, has announced that crypto regulation in order to protect investors is a priority for the regulatory agency).

4. See Report of the Attorney General’s Cyber Digital Task Force, DEPT. OF JUST. 1, 1 (Oct. 2020), <https://www.justice.gov/archives/ag/page/file/1326061/download> [<https://perma.cc/SFP9-PLAB>] (explaining that the use of crypto in facilitating illicit drug activity on the Dark Web is steadily increasing and that “while terrorist use of cryptocurrency is still evolving, certain terrorist groups have solicited cryptocurrency donations running into the millions of dollars via online social media campaigns”).

5. See Vildana Bajric & Cecile Gutscher, *Bitcoin’s Biggest Jump Since July Leaves Traders Speculating Why*, BLOOMBERG (Oct. 1, 2021, 7:18 AM), <https://www.bloomberg.com/news/articles/2021-10-01/bitcoin-jumps-amid-renewed-optimism-about-regulatory-pressure> [<https://perma.cc/2BN5-PEGQ>] (noting that the market value of Bitcoin rose by almost 10% and the Bloomberg Galaxy Crypto Index by nearly 8.9% in early October 2021).

impact<sup>6</sup> that accompanies “mining” crypto.<sup>7</sup> Consequently, government agencies from around the world are conceiving innovative ideas on how to regulate a market that was arguably created to avoid such rigid oversight.<sup>8</sup>

In April 2021, the Biden Administration announced extended regulations aimed at creating a more comprehensive legal structure for digital currencies.<sup>9</sup> President Biden’s proposal, the American Families Plan (“The A.F.P.”), is a robust and comprehensive series of reforms meant to ensure a more equitable tax system and enable the upward mobility of children and families.<sup>10</sup> The A.F.P. and the accompanying American Jobs Plan, President Biden’s infrastructure scheme, are purported to be “once-in-a-generation-investments” into the future of the

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6. See Katie Martin & Billy Nauman, *Bitcoin’s Growing Energy Problem: ‘It’s a Dirty Currency’*, FIN. TIMES (May 20, 2021), <https://www.ft.com/content/1aecb2db-8f61-427c-a413-3b929291c8ac> [<https://perma.cc/RME5-PXQW>] (explaining that Cambridge University’s Bitcoin Electricity Consumption index has estimated that Bitcoin mining consumes on average 133.68 terawatts hours of electricity a year, which is more than the country of Sweden’s electricity usage in 2020); see also *Bitcoin network Power Demand*, Cambridge Bitcoin Electricity Consumption Index, UNIV. OF CAMBRIDGE, <https://ccaf.io/cbeci/index> [<https://perma.cc/VD4Y-CEQH>] (last visited Feb 5, 2022) (providing data on the power consumption of the Bitcoin network every 24 hours).

7. See *What to Know About Cryptocurrency and Scams*, FTC, <https://www.consumer.ftc.gov/articles/what-know-about-cryptocurrency-and-scams> [<https://perma.cc/43S4-9SXS>] (last visited Oct. 3, 2021) (providing information that “mining” refers to the process in which users can attain or each cryptocurrency through solving complex mathematical equations through computer processing unit(s)).

8. See Global Future Council on Cryptocurrencies, *Navigating Cryptocurrency Regulation: An Industry Perspective on the Insights and Tools Needed to Shape Balanced Crypto Regulation*, WORLD ECON. F., 1, 7 (Sept. 2021), [https://www3.weforum.org/docs/WEF\\_Navigating\\_Cryptocurrency\\_Regulation\\_2021.pdf](https://www3.weforum.org/docs/WEF_Navigating_Cryptocurrency_Regulation_2021.pdf) [<https://perma.cc/MUT8-TQLW>] (“Regulators and policy-makers around the globe are continuously evaluating how best to address the specific and sometimes novel issues posed by cryptocurrencies . . . The regulatory landscape for cryptocurrencies continues to evolve as there is increased interest in and usage of the asset class.”).

9. See *The American Families Plan Tax Compliance Agenda*, DEPT. OF THE TREASURY 1, 20 (May 2021), <https://home.treasury.gov/system/files/136/The-American-Families-Plan-Tax-Compliance-Agenda.pdf> [<https://perma.cc/YN45-WU5G>] (“President Biden recently proposed the American Families Plan, advancing comprehensive and necessary investments in American children and families . . . the President also proposed a set of tax compliance measures to foster a tax system where Americans pay the taxes they owe.”).

10. See *FACT SHEET: The American Families Plan*, WHITE HOUSE (Apr. 28, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/28/fact-sheet-the-american-families-plan/> [<https://perma.cc/A4HP-8473>] (noting that “[t]he American Jobs Plan and the American Families Plan are once-in-a-generation investments in our nation’s future . . . The American Families Plan is an investment in our children and our families . . .”).

country.<sup>11</sup> President Biden has since consolidated these proposals into “The Build Back Better Framework.”<sup>12</sup>

The A.F.P. includes the “Tax Compliance Agenda” which proposes increased regulatory oversight of digital currencies by subjecting financial transactions, including crypto asset exchanges, to third-party reporting.<sup>13</sup> Specifically, the proposal would require that these asset exchanges provide “comprehensive information reporting on the inflows and outflows of financial accounts” which would also extend the scope of broker information reporting.<sup>14</sup> The proposed reforms in the Tax Compliance Agenda reflect the federal government’s desire to regulate the crypto market in order to assist in achieving some of its broader policy goals and to also subject crypto transactions to the same rules as traditional currency.<sup>15</sup>

Specifically, the Biden Administration stipulates that the proposed changes to tax form reporting would significantly increase the effectiveness of the Internal Revenue Service (“IRS”) by encouraging

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11. *Id.*

12. See *FACT SHEET: President Biden’s Build Back Better Agenda Will Deliver Historic Investments in American Families and Communities*, WHITE HOUSE (Aug. 13, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/08/13/fact-sheet-president-bidens-build-back-better-agenda-will-deliver-historic-investments-in-american-families-and-communities/> [<https://perma.cc/EA87-QTR2>] (noting that “[t]he Build Back Better Agenda includes President Biden’s American Families Plan and key elements of the American Jobs Plan that were not included in the Bipartisan Infrastructure Deal”); see also Build Back Better Act, H.R. 5376, 117th Cong. § 138151 (2021) (referring to the Build Back Better Act sponsored by Rep. Yarmuth (D-KY-3) that outlines new tax reporting schemes for cryptos).

13. See DEPT. OF THE TREASURY, *supra* note 9, at 19 (“The new reporting regime would build from the framework of the Form 1099-INT reports that taxpayers already receive from financial institutions when they earn more than \$10 in interest from a bank, brokerage, or other financial institution . . . The reporting regime would also cover foreign financial institutions and crypto asset exchanges and custodians.”).

14. *Introduce Comprehensive Financial Account Reporting to Improve Tax Compliance*, General Explanations of the Administration’s Fiscal Year 2022 Revenue Proposals, DEPT. OF THE TREASURY 1, 88–94 (May 2021), <https://home.treasury.gov/system/files/131/General-Explanations-FY2022.pdf> [<https://perma.cc/86RJ-76QT>] [hereinafter *Improving Tax Compliance*] (last visited Sept. 19, 2021).

15. See Laura Saunders, *The IRS is Coming for Crypto Investors Who Haven’t Paid Their Taxes*, WALL ST. J. (May 14, 2021, 5:30 AM), <https://www.wsj.com/articles/bitcoin-irs-comes-for-crypto-investors-who-havent-paid-their-taxes-11620937095> [<https://perma.cc/QJ2X-Z3KA>] (“While brokerage firms have to report many stock sales and other information to the IRS so it can check tax compliance, there’s little to no such reporting required of crypto exchanges currently. This lack of reporting can make bitcoin, ether and other cryptocurrencies attractive to criminals and tax evaders, and the IRS is determined to go after them.”).

voluntary compliance.<sup>16</sup> In a June 2021 appearance before the Senate Finance Committee, IRS Commissioner Charles Rettig emphasized the necessity of increased measures, stating that a significant portion of profits from crypto investments are underreported since many cryptos “are designed to stay off the radar screens.”<sup>17</sup> The IRS reporting scheme would work in tandem with or function as an extension of crypto regulations proposed by other government agencies.<sup>18</sup> For example, on page twenty-one of the Tax Compliance Agenda, the Financial Crimes Enforcement Network, (“FinCEN”), has recommended that “unhosted” crypto wallets should be subject to detailed reporting for transactions greater than \$10,000 that involve organizations regulated by the Bank Secrecy Act similar to a “Form 8300 designed to combat Money Laundering.”<sup>19</sup> Gary Gensler, Chairman of the Security and Exchange

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16. See DEPT. OF THE TREASURY, *supra* note 9, at 2 (“The IRS will be able to deploy this new information to better target enforcement activities, increasing scrutiny of wealthy evaders and decreasing the likelihood that fully compliant taxpayers will be subject to costly audits. As a result, voluntary compliance will rise through deterrence as would-be tax evaders realize that the IRS has an additional lens into previously unreported income streams.”).

17. See David Lawder, *U.S. IRS Chief Ask Congress for Authority to Collect Cryptocurrency Transfer Data*, REUTERS (June 8, 2021, 4:28 PM), <https://www.reuters.com/business/us-irs-chief-says-needs-congressional-authority-cryptocurrency-reporting-2021-06-08/> [<https://perma.cc/A9WA-4TUC>] (“The Biden administration has targeted the volatile crypto asset markets for capital gains tax collections, and to crack down on illicit uses of such digital currencies, which have been demanded increasingly by perpetrators of ransomware attacks on corporate computer networks.”).

18. See Claire Ballentine et al., *Crypto Investors Get Ready for More Taxes – But Clearer Rules*, BLOOMBERG (July 31, 2021, 9:30 AM), <https://www.bloomberg.com/news/articles/2021-07-31/taxes-on-bitcoin-congress-pushes-to-make-sure-traders-report-pay-irs> [<https://perma.cc/JEZ4-CBCC>] (noting that “[a] new push by Congress to require crypto brokers to report transactions to the Internal Revenue Service could create some unwelcome tax bills but could clarify rules for traders and users of Bitcoin and other digital tokens, potentially strengthening the system in the long run . . . The measures add to increased scrutiny the IRS has recently applied to traders of Bitcoin, Ethereum and other digital assets”).

19. See Ballard Spahr, *As Treasury Eyes Crypto in Tax Compliance Agenda, Reporting Obligations May Increase -Including a Crypto “Form 8300” for Transactions over \$10K*, JD SUPRA (June 3, 2021), <https://www.jdsupra.com/legalnews/as-treasury-eyes-crypto-in-tax-1170199> [<https://perma.cc/4HMG-YTL6>] (noting that the American Families Plan Tax Compliance Agenda urges the providing of resources to further aid in curbing tax evasion and proposed reforms to “shed light on previously opaque income sources . . .”); see also 31 U.S.C. § 5303 (explaining that The Bank Secrecy Act requires financial institutions, including banks located in the United States, to produce various records and reports on financial transactions to assist in protecting against international terrorism).

Commission (the “SEC”), has also stated that the “Wild West” nature of the crypto market requires government action.<sup>20</sup>

Although the Biden Administration has previously stated that one of primary goals of the A.F.P. is to enable upward economic mobility, scholars and policymakers have expressed concern with the potential privacy implications that accompany the Tax Compliance Agenda.<sup>21</sup> In September 2021, more than 100 U.S. Representatives signed a letter sent to the IRS Commissioner, the U.S. Secretary of Treasury, and congressional leaders to express concern about the tax provision in the A.F.P.<sup>22</sup> Specifically, congressional lawmakers reported that Biden’s proposed reforms for financial institution reporting and other “financial services providers” will not “substantially aid” in closing of the “tax gap”<sup>23</sup> and instead will infringe on the privacy of American citizens.<sup>24</sup> In addition, the Blockchain Association, Coinbase, and several other private

20. Eric Lipton et al., *Regulators Racing Toward First Major Rules on Cryptocurrency*, N.Y. TIMES (Sept. 23, 2021) <https://www.nytimes.com/2021/09/23/us/politics/cryptocurrency-regulators-rules.html> [<https://perma.cc/L5RK-SJKU>]; see also Chair Gary Gensler, *Testimony Before the United States Senate Committee on Banking, Housing, and Urban Affairs*, U.S. SEC. & EXCH. COMM’N (Sept. 14, 2021), <https://www.sec.gov/news/testimony/gensler-2021-09-14> [<https://perma.cc/HH5A-N8TF>] (“Currently, we just don’t have enough investor protection in crypto finance, issuance, trading, or lending. Frankly, at this time, it’s more like the Wild West or the old world of ‘buyer beware’ that existed before the securities laws were enacted. This asset class is rife with fraud, scams, and abuse in certain applications.”).

21. See Chantelle Meyer, *Financial Reporting Component of American Families Plan Causes Concerns*, SIUSLAW NEWS (Sept. 29, 2021), <https://thesiuslawnews.com/article/financial-reporting-component-of-american-families-plan-causes-concerns> [<https://perma.cc/XKP9-VBBE>] (explaining that Ron Green, CEO and President of the Oregon Pacific Bank stated that the “complete plan would grow the IRS 10 percent a year, both in revenue and personnel . . . [this] would exacerbate the IRS’ current employee needs, as it has been one of the many organizations impacted by staffing during the pandemic”).

22. See Letter from Mark Green, U.S. Representative for TN-7 to The Honorable Nancy Pelosi, U.S. Speaker of the House (Sept. 13, 2021), <https://markgreen.house.gov/cache/files/6/e/6e481155-3eed-4a65-a5b3-ea5ef1741182/638C3C604055A2598CC793DDC725E3DF.repmarkgreen-irs-letter.pdf> [<https://perma.cc/KW4F-799H>] [hereinafter Letter from Mark Green] (noting that “[n]ot only would such an overly comprehensive IRS database require significant resources to build, maintain, and protect, but it would make the personal financial data of millions of Americans vulnerable to attack . . . This overreaching proposal, if adopted, would further exacerbate banked/unbanked/underbanked divides”).

23. The “tax gap” refers to the nominal difference in between the taxes paid and the actual amount of taxes owed by all American taxpayers on an annual basis. The U.S. Department of Treasury estimates this number frequently which is subsequently published by the IRS. *Primer: Understanding the Tax Gap*, COMM. FOR A RESPONSIBLE BUDGET (June 17, 2021), <https://www.crfb.org/blogs/primer-understanding-tax-gap> [<https://perma.cc/M9TL-T7HX>].

24. Letter from Mark Green, *supra* note 22.

organizations wrote in a statement that the proposed regulations could cause an increase in “financial surveillance.”<sup>25</sup> Key crypto stakeholders, including private firms and organizations that advocate for the digital rights of individuals, have also expressed concern with the regulations proposed in the A.F.P. and American Jobs Plans, with some positing that Biden’s plans have untenable requirements that will have negative consequences on crypto creators.<sup>26</sup> By focusing on the strengthening of IRS compliance to curtail tax evasion, the government could also harm American crypto investors.<sup>27</sup>

The proposed regulations may also have an adverse effect on minority investors. The novelty and relatively simple learning curve of crypto has attracted an increasingly large number of investors of color.<sup>28</sup> According to a June 2021 poll conducted by the University of Chicago, more than 44% of crypto investors are persons of color, with some viewing virtual currencies as the key to generating wealth for people that have been excluded from traditional wealth-building opportunities (i.e., the stock market).<sup>29</sup> Specifically, some experts believe that crypto investments can assist in closing the racial wealth gap between black and white families which has exponentially increased to a staggering estimated \$154,000 per family since 1992.<sup>30</sup>

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25. Taylor Hatmaker, *Crypto Community Slams ‘Disastrous New Amendment to Biden’s Big Infrastructure Bill*, TECHCRUNCH (Aug. 6, 2021, 4:38 PM), <https://techcrunch.com/2021/08/06/crypto-biden-amendment-infrastructure-bill-proof-of-work/> [<https://perma.cc/YE4T-NYNK>].

26. *See id.* (“In a joint letter about the bill’s text, Square, Coinbase, Ribbit Capital and other stakeholders warned of ‘financial surveillance’ and unintended impacts for cryptocurrency miners and developers.”).

27. *See* Emma Newberry, *Cryptocurrency CEO Sounds a Warning for Investors*, THE ASCENT (July 21, 2021), <https://www.fool.com/the-ascent/buying-stocks/articles/cryptocurrency-ceo-sounds-a-warning-for-investors/> [<https://perma.cc/T54J-GYK6>] (“Jesse Powell, CEO of crypto exchange Kraken, warned the government might tighten its cryptocurrency rules . . . [he] is concerned that increased regulation might hurt cryptocurrencies.”).

28. Nicolas Vega, *Women and Investors of Color Seem to Prefer Cryptocurrency Over Traditional Stocks – Here’s Why*, CNBC (July 23, 2021, 2:48 PM), <https://www.cnbc.com/2021/07/23/why-underrepresented-groups-seem-to-prefer-crypto-over-stocks.html> [<https://perma.cc/3MKK-F4ZG>].

29. *See* Janell Ross, *Inside the World of Black Bitcoin, Where Crypto Is About Making More Than Just Money*, TIME (Oct. 15, 2021), <https://time.com/6106706/bitcoin-black-investors/> (on file with author) (providing data which “indicate[s] that surveys indicate that people of color are investing in cryptocurrency in ways that outpace or equal other groups—something that can’t be said about most financial products”).

30. *See The Economic Impact of Closing the Racial Wealth Gap*, MCKINSEY & CO., <https://www.mckinsey.com/industries/public-and-social-sector/our-insights/the-economic->

This Note is divided into three segments and will explore how the federal government is responding to the rise in cryptos. Specifically, the Note details how the A.F.P.'s Tax Compliance Agenda will increase oversight of anonymous crypto transactions. Part I will focus on the history of digital currencies and their current role in worldwide financial markets.<sup>31</sup> Part II will explore the potential effect that President Biden's American Families Plan will have on cryptos, if enacted.<sup>32</sup> Part III explores how the increased reporting of crypto assets erodes the anonymity principles at the core of digital currency.<sup>33</sup> Part IV introduces a policy argument that the A.F.P. potentially undermines its goal by imposing burdensome regulations that negatively impact crypto investors of color, many of whom already experience significant barriers in traditional forms of investment.<sup>34</sup> Finally, Part V will conclude this Note by summarizing the legal argument and providing an update on current legislation.<sup>35</sup>

## II. THE ORIGIN OF CRYPTOS

### A. *Defining Cryptos*

The IRS defines crypto, which can be considered a subset of virtual currencies, as a “digital representation of value that functions as a medium of exchange, a unit of account, and/or a store of value.”<sup>36</sup> Cryptos rely on blockchain technology, a form of a “shared, immutable

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impact-of-closing-the-racial-wealth-gap [https://perma.cc/DMQ9-KVJZ] (noting that burdensome financial investment laws enacted by the SEC and other federal agencies have also contributed to the furtherance of the racial wealth gap); *see also* Mariah Lichtenstern, *Investors Still Engage in Racist Redlining. Why Haven't We Done Something About It?*, FORTUNE (Jan. 6, 2021, 7:00 PM), https://fortune.com/2021/01/06/redlining-black-latinx-entrepreneurship-investment-sec/ [https://perma.cc/AB3Y-WSZZ] (noting that certain SEC regulations “keep most Black and Latinx people out of opportunities to create generational wealth through entrepreneurship and investing just as effectively as redlining kept them from building wealth in real estate”).

31. *Infra* Part I.

32. *Infra* Part II.

33. *Infra* Part III.

34. *Infra* Part IV.

35. *Infra* Part V.

36. *Virtual Currencies*, INTERNAL REVENUE SERV., https://www.irs.gov/businesses/small-businesses-self-employed/virtual-currencies [https://perma.cc/2RTK-HJDC] (last visited Feb. 2, 2022).

ledger”<sup>37</sup> to assist with the recording of securing transactions and asset tracking.<sup>38</sup> Unlike fiat currency, a form of legal tender that is recognized by government authorities as a “trusted medium[] of exchange,”<sup>39</sup> the majority of cryptos do not have such a centralized authority.<sup>40</sup> The legitimacy of fiat currency is based on the issuing government’s creditworthiness,<sup>41</sup> and its value is determined by its status and faith as legal tender rather than by a set commodity such as gold or silver.<sup>42</sup> Although fiat currencies generally benefit from more stability than other types of currencies, market fluctuation can still render them volatile as witnessed in the 2008 Global Financial Crisis.<sup>43</sup> In the absence of such a legal guarantee, cryptos employ cryptography<sup>44</sup> to ensure the security of their financial transactions,<sup>45</sup> and blockchain technology can assist users with confirming the security of these transactions which assists in the

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37. Immutability refers to the ability of a blockchain to remain “unaltered and unchanged” which is important for confirming and securing transactions. E.C. Council, *What is Blockchain Immutability and How Does It Help*, EC-COUNCIL BLOG, <https://blog.eccouncil.org/what-is-blockchain-immutability-and-how-does-it-help/#:~:text=Immutability%20can%20be%20referred%20to,to%20keep%20the%20data%20unaltered> [<https://perma.cc/5QP9-HPGR>] (last visited Feb. 2, 2022).

38. See *What is Blockchain Technology?*, IBM, <https://www.ibm.com/topics/what-is-blockchain> [<https://perma.cc/7KH8-C6BC>] (“Blockchain is ideal for delivering that information because it provides immediate, shared and completely transparent information stored on an immutable ledger that can be accessed only by permissioned network members. A blockchain network can track orders, payments, accounts, production and much more. And because members share a single view of the truth, you can see all details of a transaction end to end, giving you greater confidence, as well as new efficiencies and opportunities.”).

39. *Fiat v. Virtual Currency*, TEX. STATE SEC. BD., <https://www.ssb.texas.gov/fiat-v-virtual-currency> [<https://perma.cc/A6YN-HAH8>] (last visited Feb. 5, 2022).

40. Merriam-Webster’s Dictionary, *supra* note 2.

41. See *What is Fiat Money?*, CORP. FIN. INST., <https://corporatefinanceinstitute.com/resources/knowledge/economics/fiat-money-currency/> [<https://perma.cc/E23T-M6AN>] (noting that “[t]raditionally, currencies were backed by physical commodities such as silver and gold, but fiat money is based on the creditworthiness of the issuing government”).

42. *Function of Money – The Economic Lowdown Podcast Series*, FED. RES. BANK OF ST. LOUIS, <https://www.stlouisfed.org/education/economic-lowdown-podcast-series/episode-9-functions-of-money> [<https://perma.cc/6F44-RXSJ>].

43. See CORP. FIN. INST., *supra* note 41 (noting that “[a]lthough fiat money is viewed as a more stable currency that can cushion against recessions, the global financial crisis proved otherwise. Even though the Federal Reserve controls the money supply, it was not able to prevent the crisis from happening”).

44. See *Cryptography*, NAT’L INST. OF STANDARDS AND TECH., <https://csrc.nist.gov/glossary/term/cryptography> [<https://perma.cc/K2VK-L3PJ>] (explaining that “cryptography” refers to the method in which data is transformed to “prevent [] unauthorized use, or prevent[] undetected modification”).

45. See IBM, *supra* note 38 (noting that “[c]onsensus on data accuracy is required from all network members, and all validated transactions are immutable because they are recorded permanently. No one, not even a system administrator, can delete a transaction”).

avoidance of the necessity of “a central certifying authority” such as a central bank e.g., a federal treasury system.<sup>46</sup>

*B. History of Cryptographic Currencies*

The modern incantation of cryptos originated with David Chaum, a computer scientist, and pioneer of “digital cash.”<sup>47</sup> In 1982, Chaum theorized the idea of “cryptographic” currency in his research paper, “Blind Signatures for Untraceable Payments.”<sup>48</sup> Cryptography, derived from the Greek word for “hidden,”<sup>49</sup> refers to the study of secure communications methodology which restricts the viewing of a particular message to the sender and its intended recipient.<sup>50</sup> Cryptography is closely linked to encryption, the method of data scrambling via a cryptographic key.<sup>51</sup> This process provides the cryptographic user with the ability to alter data based on a “prescribed mathematical algorithm.”<sup>52</sup> Through his newly founded payment system, Chaum sought to ameliorate the concerns of personal privacy and criminal use by theorizing of one that actualizes a secure and untraceable payments system thereby making anonymous transactions attainable.<sup>53</sup>

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46. David E. Fialkow et al., *Cryptocurrency 2018: When the Law Catches up with Game-Changing Technology*, K&L GATES, 2018 WL 1094976, 1, 1 (“Using blockchain, or ‘distributed ledger’ technology, users can confirm transactions without the need for a central certifying authority, such as a central bank.”).

47. Julie Pitta, *Requiem for a Bright Idea*, FORBES (Nov. 1, 1999, 12:00 AM), <https://www.forbes.com/forbes/1999/1101/6411390a.html?sh=158ccca2715f> [<https://perma.cc/RWF4-5RAA>].

48. See David Chaum, *Blind Signatures for Untraceable Payments* 199, 199 (1982), <http://www.hit.bme.hu/~buttyan/courses/BMEVIHIM219/2009/Chaum.BlindSigForPaymen t.1982.PDF> [<https://perma.cc/43US-B9ZE>].

49. See *Cryptography*, Merriam-Webster’s Dictionary, <https://www.merriam-webster.com/dictionary/cryptography> [<https://perma.cc/UC45-FRX5>] (noting that “‘Kryptos’ - which in turn traces to the Greek verb *kryptein*, meaning ‘to hide’ - is a root shared by several English words, including ‘crypt,’ ‘cryptic,’ and ‘encrypt’”).

50. *Cryptography Definition*, KASPERSKY, <https://www.kaspersky.com/resource-center/definitions/what-is-cryptography> [<https://perma.cc/8SER-HF2Z>] (last visited Feb. 2, 2022).

51. See Randy V. Sabett, *Cryptography, Smart Cards, and Future Banking Technology*, 1 No. 4 Elec. Banking L. & Com. Rep. 8, 2 (1997) (“The terms encryption and decryption refer, respectively, to the processes of scrambling and unscrambling data using a cryptographic key. The encryption process renders the original data unrecognizable, while the decryption process, as the reverse of the encryption process, restores the original data.”).

52. *Id.*

53. See Chaum, *supra* note 48 (writing that “[t]he ultimate structure of the new electronic payments system may have a substantial impact on personal privacy as well as on the nature and extent of criminal use of payments. Ideally[,] a new payments system should address both of these seemingly conflicting sets of concerns”).

Although Chaum's original cryptographic currency, Digicash, failed before the turn of the new millennium,<sup>54</sup> his revolutionary idea of an electronic payment system that could be accepted at various retailers and companies modernized how humans conceptualize cash exchanges.<sup>55</sup> Chaum's theory of cryptography currency further evolved when Satoshi Nakamoto<sup>56</sup> published "Bitcoin: A Peer-to-Peer Electronic Cash System" in 2008, which proposed a new form of digital currency.<sup>57</sup> From Chaum's theory to the present, there are now more than 17,000 different cryptos that are currently traded within the world's financial markets as of January 2022,<sup>58</sup> with Bloomberg estimating the market's capitalization at over \$2 trillion as of August 2021.<sup>59</sup>

### C. *The Structure of Cryptos & Blockchain Technology*

There are two main components of a crypto: the crypto itself and the blockchain that is utilized to record financial transactions.<sup>60</sup> Because

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54. See Pitta, *supra* note 47 (noting that one of the principal challenges with his "electronic cash" was usage and adoption, with Chaum noting that "[i]t was hard to get enough merchants to accept it, so that you could get enough consumers to use it, or vice versa").

55. See Paul Vigna, *Crypto Pioneer David Chaum Says He's Built a Better Bitcoin*, WALL ST. J. (Sep. 19, 2018, 9:00 PM), <https://www.wsj.com/articles/crypto-pioneer-david-chaum-says-hes-built-a-better-bitcoin-1537405201> [<https://perma.cc/H4P2-8FZH>] (referring to Chaum as the "[t]he godfather of the cryptocurrency movement").

56. See Paul Vigna, *Who Is Bitcoin Creator Satoshi Nakamoto? What We Know – and Don't Know*, WALL ST. J. (Dec. 7, 2021, 2:27 PM), <https://www.wsj.com/articles/who-is-bitcoin-creator-satoshi-nakamoto-what-we-know-and-dont-know-11638020231>

[<https://perma.cc/V6KT-G2WN>] ("Thirteen years ago a person or group using the name Satoshi Nakamoto released a paper describing a new software system called bitcoin . . . There is a mystery at the heart of bitcoin, however. Who actually is Satoshi Nakamoto?").

57. See Satoshi Nakamoto, *Bitcoin: A Peer-to-Peer Electronic Cash System* 1 (Nakamoto argued that a new electronic payment system "based on cryptographic proof instead of trust" is necessary to securitize transactions in the absence of a trusted, financial intuition. Beginning with the usual framework of coins that originate from digital signatures, Nakamoto proposed "a peer-to-peer network using proof-of-work" that would publicly record financial transactions whilst maintaining integrity in the system).

58. James Royal & Kevin Voigt, *What Is Cryptocurrency? Here's What You Should Know*, NERDWALLET (Jan. 31, 2022), <https://www.nerdwallet.com/article/investing/cryptocurrency-7-things-to-know> [<https://perma.cc/KY99-QR6V>].

59. Joanna Ossinger, *Crypto Market Retakes \$2 Trillion Market Cap Amid Bitcoin Gains*, BLOOMBERG (Aug. 15, 3:13 AM), <https://www.bloomberg.com/news/articles/2021-08-15/crypto-market-retakes-2-trillion-market-cap-amid-bitcoin-gains> [<https://perma.cc/MC5C-Q5XL>].

60. See *Making Sense of Bitcoin, Cryptocurrency, and Blockchain*, PWC, <https://www.pwc.com/us/en/industries/financial-services/fintech/bitcoin-blockchain-cryptocurrency.html> [<https://perma.cc/4D9B-8UY6>] (noting that "[b]lockchain is the technology that enables the existence of cryptocurrency (among other things)").

crypto lacks a centralized governing body, each currency maintains its own rules and structure.<sup>61</sup> However, scholars have suggested blockchain as a way to organize digital currencies.<sup>62</sup> Cryptos rely on blockchain technology in order to function, with the blockchain being a “perpetual, continuous list that records each individual transaction between users.”<sup>63</sup> Within the blockchain are individual sections called “blocks,” and each time a user of the specific network engages in a transaction—i.e., selling or buying of the digital coin—it is recorded as a “block” that is integrated into a continuous log.<sup>64</sup> As such, “the blockchain contains the payment and transaction history of every single coin in circulation and every user who once possessed a coin.”<sup>65</sup>

Most blockchains have three integral features: distributed ledger technology, immutable records, and smart contracts.<sup>66</sup> For the ledger, all participants of the blockchain network have access to it with transactions only being recorded once to avoid duplication.<sup>67</sup> Once a transaction has been recorded, no participant has the power to edit or change the transaction.<sup>68</sup> For errors, the original transaction will be deleted and the corrected one recorded as a new transaction; both are then made public

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61. See Ryan W. Beall, *Cryptocurrency in The Law: An Analysis of The Treatment of Cryptocurrency In Bankruptcy*, 35 CAL. BANKR. J. 43, 44 (2019) (elaborating that “[e]ach different cryptocurrency has its own rules and system . . . However, there are certain aspects of cryptocurrency that are (nearly) always present such as the fact that cryptocurrency is a digital currency, it is decentralized, and often contains some type of method for creating ‘new’ money”).

62. See Jan Lansky, *Possible State Approaches to Cryptocurrencies*, J. SYS. INTEGRATION, Jan. 2018, at 19 (explaining that Jen Lansky, a researcher at the University of Finance and Administration in Prague, conceived of six conditions that are must be met in order for a cryptocurrency to be deemed legitimate: “(1) The system does not require a central authority, distributed achieve consensus on its state; (2) The system keeps an overview of cryptocurrency units and their ownership; (3) The system defines whether new cryptocurrency units can be created. If new cryptocurrency units can be created, the system defines the circumstances of their origin and how to determine the ownership of these new units; (4) Ownership of cryptocurrency units can be proved exclusively cryptographically. (5) The system allows transactions to be performed in which ownership of the cryptographic units is changed. A transaction statement can only be issued by an entity proving the current ownership of these units; (6) If two different instructions for changing the ownership of the same cryptographic units are simultaneously entered, the system performs at most one of them”).

63. Benjamin Molloy, *Taxing the Blockchain: How Cryptocurrencies Thwart International Tax Policy*, 20 OR. REV. INT’L L. 623, 625 (2019).

64. *Id.*

65. *Id.*

66. IBM, *supra* note 38.

67. *Id.*

68. *Id.*

to all on the blockchain network.<sup>69</sup> Blockchain networks can either be decentralized or centralized, with the former being publicly accessible and transactions are conducted on a “distributed network of computers.”<sup>70</sup>

For centralized blockchain technology, access to the network is restricted among a smaller computer network which permits the processing of transactions at significantly higher speeds.<sup>71</sup> There are several types of blockchain networks: public blockchain networks, private blockchain networks, permissioned blockchain networks, and consortium blockchain networks.<sup>72</sup> For public blockchain networks, anyone theoretically has access to it, and as a result, cybersecurity remains a leading concern.<sup>73</sup> The other forms of blockchain networks vary in accessibility with some requiring a specific password or link in order to access the ledger.<sup>74</sup>

#### D. *Crypto Creation*

Cryptos, such as Bitcoin, can be acquired through three main processes: direct purchase through an exchange of fiat currency,<sup>75</sup> receipt of crypto in exchange for a product or service, or crypto mining.<sup>76</sup> For the latter, users utilize a central processing unit,<sup>77</sup> or computer, in order to solve comprehensive and difficult mathematical issues.<sup>78</sup> The user

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69. *Id.*

70. See Dave Berson & Susan Berson, *Blockchain Law 101: Understanding Blockchain Technology and the Applicable Laws*, 2019 J. KAN. B. ASS'N. 40, 40-41.

71. See *id.* (noting that “[c]entralized blockchains are usually distributed among fewer computer nodes. The advantage of centralized blockchains is that they can currently process records and transactions at a higher speed, and with a lower energy cost, than decentralized blockchains”).

72. IBM, *supra* note 38.

73. *Id.* (explaining that [w]hen building an enterprise blockchain application, it’s important to have a comprehensive security strategy that uses cybersecurity frameworks, assurance services and best practices to reduce risks against attacks and fraud”).

74. *Id.*

75. See *Fiat v. Virtual Currency*, *supra* note 39 (noting that “many virtual currencies, which are called convertible virtual currencies can be redeemed for fiat currency on a number of exchanges”).

76. FTC, *supra* note 7.

77. Corrie E. Clark & Heather L. Greenley, CONG. RSCH. SERV., R45863, Bitcoin, Blockchain and the Energy Sector (Aug. 9, 2019), <https://crsreports.congress.gov/product/pdf/R/R45863> [<https://perma.cc/QF2R-AEU5>].

78. See 16 *La. Civ. L. Treatise*, Matrimonial Regimes § 3:65 (4th ed.) (noting that “[m]ining runs a sophisticated computer program to solve very complex mathematical problems on an equally sophisticated and powerful computer. When the problem is solved, the miner earns a unit of cryptocurrency in full ownership. The value of cryptocurrency is

“solves” these problems in order to maintain the blockchain’s ledger, and they are in turn rewarded with “blocks.”<sup>79</sup> Blocks are comprised of “newly minted” currency and transaction fees which can vary depending on the blockchain’s maintenance.<sup>80</sup> Essentially, mining is how new blocks in a blockchain are created and published to the “distributive ledger.”<sup>81</sup>

The majority of cryptos specifications for how new blocks are added to the chain are derived from either proof-of-work or proof-of-stake.<sup>82</sup> Conceived by Markus Jakobsson and Ari Juels, proof-of-work (“POW”) is a cryptographic protocol in which a “prover” demonstrates that she has conducted the requisite amount of computational effort to an assigned “verifier.”<sup>83</sup> There are numerous benefits with utilizing POW as a protocol, including that it permits users on a crypto network to agree on the blockchain’s recorded information and to also prevent economic attacks.<sup>84</sup> However, crypto users are increasingly adopting proof-of-stake as protocols “which does [not] force miners to compete to add blocks to the blockchain, and instead awards miners new blocks based on how much cryptocurrency they already own.”<sup>85</sup>

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based on transactions in the cryptocurrency in the open market where the parties agree on an exchange rate, generally in dollars or some other well-established currency”).

79. Benjamin Van Adrichem, *Howey Should Be Distributing New Cryptocurrencies: Applying the Howey Test to Mining, Airdropping, Forking, and Initial Coin Offerings*, 20 COLUM. SCI. & TECH. L. REV. 388, 393 (2019).

80. *See id.*

81. Clark & Greenley, *supra* note 77.

82. *See* Irving Wladawsky-Berger, *Blockchain Marks the Next Step in the Internet’s Evolution*, WALL ST. J. (Aug. 2, 2019, 1:04 PM), <https://www.wsj.com/articles/blockchain-marks-the-next-step-in-the-internets-evolution-01564765461> [<https://perma.cc/5E9W-VBZK>] (noting that “[t]he cryptocurrency camp, best characterized by bitcoin, is mostly based on public, permissionless blockchains, which operate anonymously and require some kind of proof-of-work or proof-of-stake systems”).

83. Markus Jakobsson & Ari Juels, *Proofs of Work and Bread Pudding Protocols*, INT’L FED’N FOR INFO. PROCESSING, VOL. 23, 258, 259 (1999), [https://link.springer.com/content/pdf/10.1007%2F978-0-387-35568-9\\_18.pdf](https://link.springer.com/content/pdf/10.1007%2F978-0-387-35568-9_18.pdf) [<https://perma.cc/4DWH-QGEP>].

84. *See Proof-of-Work*, ETHEREUM (Aug. 18, 2021), <https://ethereum.org/en/developers/docs/consensus-mechanisms/pow/> [<https://perma.cc/Y6C7-53TB>] (“Proof-of-work is the mechanism that . . . prevents users from “double spending” their coins and ensures that the Ethereum chain is tremendously difficult to attack or manipulate . . . The objective of proof-of-work is to extend the chain. The longest chain is most believable as the valid one because it’s had the most computational work done.”).

85. Hiroko Tabuchi, *In Coinbase’s Rise, a Reminder: Cryptocurrencies Use Lots of Energy*, N.Y. TIMES (Apr. 14, 2021), <https://www.nytimes.com/2021/04/14/climate/coinbase-cryptocurrency-energy.html> [<https://perma.cc/MFG2-56PB>].

*E. Crypto User Storage*

Crypto users can access their financial information through a storage system commonly known as “wallets” which are accessible through the internet.<sup>86</sup> A myriad of crypto wallets act as a pseudo-interface with the blockchain, and they can store “keys” necessary to conduct crypto transactions.<sup>87</sup> Each crypto wallet is encrypted and is assigned two keys: a unique “public key” that is comprised of thirty-four alphanumeric characters and a private key that is comprised of sixty-four alphanumeric characters.<sup>88</sup> Unhosted or non-custodial wallets permit the end user to have access to the private keys.<sup>89</sup> Other crypto wallets use third parties custodians, such as Robinhood,<sup>90</sup> for each user as the users do not have individual access to their private keys.<sup>91</sup>

Because digital keys are not directly linked to a person’s social security number or other common forms of identification, linking transactions to a specific person is difficult until the crypto money is exchanged for fiat currency i.e., the United States Dollar, etc.<sup>92</sup> Even on crypto exchange and trading platforms, the absence of stringent government regulation has promulgated distrust in the market.<sup>93</sup>

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86. Doug Fredrick, *Cryptocurrency and Blockchain: Here We Go Down the Rabbit Hole*, 74 J. Mo. B. 294, 296 (2018).

87. Alexandra D. Comolli & Michele R. Korver, *Surfing the First Wave of Cryptocurrency Money Laundering*, 69 DOJ J. FED. L. & PRAC. 183, 192 (2021).

88. Fredrick, *supra* note 86, at 296.

89. *See* Comolli & Korver, *supra* note 87, at 198 (“If the end user has sole access to the private keys, the cryptocurrency service wallet is considered non-custodial or unhosted.”).

90. *See Crypto Wallets Are Coming to Robinhood*, ROBINHOOD (Sept. 22, 2021), <https://blog.robinhood.com/news/2021/9/22/crypto-wallets-are-coming-to-robinhood> [<https://perma.cc/TDR3-JLLY>] (announcing that Robinhood is introducing crypto wallets for consumers and are “designing wallets to be intuitive, with security features such as identity verification, multi-factor authentication, and email and phone verification to keep coins safe from hacks and other threats”).

91. Dennis Chu, *Broker-Dealers for Virtual Currency: Regulating Cryptocurrency Wallets and Exchanges*, 118 COLUM. L. REV. 2323, 2340 (2018).

92. *See* Ezra Galston, *Untraceable Bitcoin is a Myth*, WALL ST. J. (June 16, 2021, 12:27 PM), <https://www.wsj.com/articles/untraceable-bitcoin-is-a-myth-11623860828> [<https://perma.cc/V6Z4-DWZ5>] (“What complicates recovery is bitcoin’s anonymity. Senders and recipients are denoted by wallet addresses—a string of numbers and letters—rather than names or Social Security numbers.”).

93. *See* Timothy G. Massad, *It’s Time to Strengthen the Regulation of Crypto-Assets*, BROOKINGS INST. 2 (Mar. 2019), <https://www.brookings.edu/wp-content/uploads/2019/03/Economis-Studies-Timothy-Massad-Cryptocurrency-Paper.pdf> [<https://perma.cc/EBS3-FJW9>] (“Crypto-assets cut across current jurisdictional boundaries and thus fall into gaps between regulatory authorities. While each of the Securities and

However, new regulations currently proposed by the Biden Administration seek to remedy many of these concerns regarding tax evasions and the potential danger of illicit transactions.<sup>94</sup>

*F. Adoption of Cryptos by Investors of Color in the United States*

A recent report has estimated that nearly 50% of Americans are likely to buy crypto within the next year.<sup>95</sup> In a recent survey conducted by the National Opinion Research Council ("NORC"), an independent research organization based at the University of Chicago, 13% of Americans reported either purchasing or trading crypto assets in the past twelve months.<sup>96</sup> The average crypto trader is under the age of forty, and more than 55% report not having a college degree.<sup>97</sup> For nearly one-third of crypto investors, their household income is less than \$60,000 a year.<sup>98</sup> In addition, 41% of crypto traders are women, and 44% self-identify as non-white.<sup>99</sup> Angela Fontes, a Vice President in the Economics, Justice, and Society department at NORC, remarked that cryptos are providing investments endeavors for "more diverse investors."<sup>100</sup>

In comparison, 24% of American reported trading stocks in the same 12-month period,<sup>101</sup> however, there are significantly fewer investors of color that have active investments in the stock market.<sup>102</sup> For example, only 33% of black American households reported owning stocks in 2019

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Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC) has some authority over crypto-assets, neither has sufficient jurisdiction, nor do they together.").

94. Ryan Haar, *U.S. Officials Send Mixed Messages on Crypto Regulation as China Pumps the Brakes. Here's What It All Means for Investors*, TIME (Nov. 2, 2021), <https://time.com/nextadvisor/investing/cryptocurrency/crypto-regulation-talks-heat-up/> [<https://perma.cc/VF6K-BZ2U>].

95. Jack Caporal, *Study: Over 50 Million Americans Likely to Buy Crypto in the Next Year*, THE ASCENT (May 18, 2021), <https://www.fool.com/the-ascent/research/study-americans-cryptocurrency/> [<https://perma.cc/T3X6-G2QS>].

96. *More Than One in Ten Americans Surveyed Invest in Cryptocurrencies*, NORC (July 22, 2021), <https://www.norc.org/NewsEventsPublications/PressReleases/Pages/more-than-one-in-ten-americans-surveyed-invest-in-cryptocurrencies.aspx> [<https://perma.cc/685Z-2GNN>].

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.*

102. Michelle Fox, *As Interest in Investing Grows, People of Color Still Lag Behind, CNBC Survey Finds*, CNBC (Aug. 23, 2021, 7:00 AM), <https://www.cnbc.com/2021/08/23/as-interest-in-investing-grows-people-of-color-still-lag-behind-cnbc-survey-finds.html> [<https://perma.cc/F3EP-2MWN>].

in comparison to white households' ownership rate of approximately 61% according to the Federal Reserve.<sup>103</sup> A 2014 study conducted by Credit Suisse and Brandeis University's Institute on Assets and Social Policy reported that low investment in the stock market by Black Americans further contributes to the racial wealth gap.<sup>104</sup> There is ample evidence that individuals of color, some with low educational backgrounds and income levels, are investing at higher rates in cryptos than in traditional forms of stock investments.<sup>105</sup>

### III. THE CRYPTO TAX IMPLICATIONS OF THE AMERICAN FAMILIES PLAN

#### A. Reasoning Behind the Proposed Regulations

The A.F.P. and the accompanying Tax Compliance Agenda published by the United States Department of Treasury ("Treasury Department") set forth how the Biden Administration is addressing the investment into the "future of the American economy and American workers."<sup>106</sup> The Plan includes tax compliance measures that are to ensure more equity in the financial system by limiting loopholes that can permit tax avoidance and to raise revenue for the Administration's agenda, including new regulations to be imposed on cryptos.<sup>107</sup> Through the Tax Compliance Agenda, the Treasury Department seeks to close the

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103. Stan Choe, *Stocks Are Soaring, and Most Black People of Missing Out*, ABC NEWS (Oct. 12, 2020), <https://apnews.com/article/virus-outbreak-race-and-ethnicity-business-us-news-ap-top-news-69fe836e19a8dfe89d73e8e4be6d480c> [https://perma.cc/9ATK-M94C].

104. Lazetta Rainey Braxton, *More Black Investors Should Look to Stock Market to Grow Their Wealth*, CNBC (Feb. 20, 2019, 11:08 AM), <https://www.cnbc.com/2019/02/20/more-black-investors-should-look-to-stock-market-to-growth-wealth.html> [https://perma.cc/RYSY-WJ9F].

105. See Kori Hale, *Why Black Investors Seemingly Prefer Cryptocurrencies Over Traditional Stocks*, FORBES (Aug. 10, 2021, 6:18 AM), <https://www.forbes.com/sites/korihale/2021/08/10/why-black-investors-seemingly-prefer-cryptocurrencies-over-traditional-stocks/?sh=5aa4b1b68392> [https://perma.cc/6Z7E-GMNG] (noting that "CultureBanx reported that data shows that while fewer Black Americans invest in stocks than White people, they are actually more receptive to holding cryptocurrencies" which may be the result of crypto investors viewing the market as more accessible for investing purposes).

106. *FACT SHEET: The American Families Plan*, *supra* note 10 (The A.F.P. includes several initiatives that the federal government believes will aid in supporting children and families including the following: subsidized childcare, free public education post-secondary school, universal pre-school, and grants for teachers to further improve the education pipeline.).

107. See *id.* (noting that "[t]hese reforms will also rein in the ways that the tax code widens racial disparities in income and wealth").

“tax gap” estimated to total over \$7 trillion by the end of the decade,<sup>108</sup> and this amount equates to roughly 15% of taxes owed.<sup>109</sup> The Treasury Department estimates that approximately 80% of the “tax gap” represents underreported income,<sup>110</sup> as a result of the voluntary compliance structure for federal taxpaying.<sup>111</sup> In the Tax Compliance Agenda, the Treasury Department notes that underreporting of income or investment gains is exacerbated by new opportunities that aid individuals in avoiding taxes,<sup>112</sup> such as the moving of “taxable assets” into the crypto market.<sup>113</sup>

Because the government has “lax” reporting requirements for cryptos, the IRS cannot trace income generated from crypto transactions, especially when unreported by asset exchanges and other third parties.<sup>114</sup> In 2018 alone, early data from Credit Karma indicated that only .04% of Americans that filed taxes reported crypto gains and losses to the IRS.<sup>115</sup> This number conflicted with the estimated 7% of Americans that owned taxes on some form of crypto at the time.<sup>116</sup> The Treasury Department push for crypto regulations stem from the idea that anonymity can facilitate illicit activities, consequently making crypto transactions an “enforcement priority.”<sup>117</sup> Reportedly, tax evaders are expected to favor cryptos over more traditional channels such as offshore bank accounts to

108. Natasha Sarin, *The Case for a Robust Attack on the Tax Gap*, DEPT. OF THE TREASURY (Sept. 7, 2021), <https://home.treasury.gov/news/featured-stories/the-case-for-a-robust-attack-on-the-tax-gap> [<https://perma.cc/6HR4-MP54>].

109. *Treasury Releases Report on the American Families Plan’s Tax Compliance Agenda*, U.S. DEPT. OF TREASURY, 8 (May 20, 2021), <https://home.treasury.gov/news/press-releases/jy0188> [<https://perma.cc/GX6Y-8ZKM>].

110. Greg Iacurci, *Cryptocurrency Poses a Significant Risk of Tax Evasion*, CNBC (May 31, 2021, 8:30 AM), <https://www.cnbc.com/2021/05/31/cryptocurrency-poses-a-significant-risk-of-tax-evasion.html> [<https://perma.cc/XED6-7GK7>].

111. *See The Difference Between Tax Avoidance and Tax Evasion*, IRS, <https://apps.irs.gov/app/understandingTaxes/whys/thm01/les03/media/wsansthm01les03.pdf> [<https://perma.cc/S2ZW-9VMY>] (The U.S. income tax system is based on voluntary compliance i.e., it’s “the taxpayer’s responsibility to report all income.”).

112. *See id.* (There is a notable distinction, between tax avoidance, an action or series of actions undertaken to lessen one’s tax liability, and tax evasion, which is the failure to submit payment of taxes. Although the former is legal whilst the latter is not, both of these non-compliance measures significantly contribute to the “tax gap.”).

113. *See* DEPT. OF THE TREASURY, *supra* note 9, at 7.

114. Iacurci, *supra* note 110.

115. Jen Wiczner, *Bitcoin Investors Aren’t Paying Their Cryptocurrency Taxes*, FORTUNE (Jan. 13, 2018), <https://fortune.com/2018/02/13/bitcoin-cryptocurrency-tax-taxes/> [<https://perma.cc/X94V-7EWZ>].

116. *Id.*

117. *See* DEPT. OF THE TREASURY, *supra* note 9, at 20–21 (explaining that crypto “poses a significant detection problem by facilitating illegal activity broadly including tax evasion”).

hide certain assets.<sup>118</sup> Researchers estimated that approximately 46% of Bitcoin transactions involved illegal activity between January 2009 and April 2017.<sup>119</sup> The freedom of anonymity that accompanies cryptos may permit criminals to utilize digital currencies to conduct illegal activities.<sup>120</sup>

In a 2020 report published by the Attorney General, the Cyber Digital Taskforce stipulated that crypto can be utilized to: “(1) engage in financial transactions associated with the commission of crimes, such as buying and selling drugs or weapons on the dark web . . . (2) engage in money laundering or shield otherwise legitimate activity from tax, reporting, or other legal requirements; or (3) commit crimes directly implicating the cryptocurrency marketplace itself . . .”<sup>121</sup> During a recent policy roundtable, Federal Reserve Chairwoman Janet Yellen stated that drug traffickers utilize cryptos to “launder the profits” and “finance terrorism” noting that Treasury Department regulations “can better stem the flow of dark money.”<sup>122</sup> The U.S. Department of Justice also cited concerns with current crypto enforcement.<sup>123</sup> For example, Deputy Attorney Lisa O. Monaco launched the National Cryptocurrency Enforcement Team to “strengthen our capacity to dismantle the financial entities that enable criminal actors to flourish — and quite frankly to profit — from abusing crypto platforms.”<sup>124</sup> Consequently, the Biden Administration argues for there to be more stringent guidelines related to

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118. *See id.*, at 20 (“To the extent that cryptocurrencies continue to gain momentum; we could reasonably expect tax evaders—who traditionally executed their tax-evasion techniques through the use of offshore bank accounts in tax-heaven jurisdictions—to opt out of traditional tax havens in favor of cryptocurrencies.”).

119. Justin Lahart & Telis Demos, *Why Crime Could Kill Crypto*, WALL ST. J. (June 18, 2021, 8:22 AM), <https://www.wsj.com/articles/why-crime-could-kill-crypto-11624008655> [<https://perma.cc/DMT6-ZNM5>].

120. *See id.* (noting that “[w]hile law enforcement is proving increasingly adept at tracking bitcoin transactions and at times seizing ill-gotten money, the ability to make digital payments without financial intermediaries has facilitated activities such as the selling of illegal goods and services online and money laundering”).

121. DEPT. OF JUST., *supra* note 4.

122. Nikhilesh De, *Crypto Use in Terrorism ‘a Growing Problem,’ Yellen Says*, COINDESK (Feb. 10, 2021, 11:05 p.m.), <https://www.coindesk.com/policy/2021/02/11/crypto-use-in-terrorism-a-growing-problem-yellen-says/> [<https://perma.cc/RFF4-F36V>].

123. *See Deputy Attorney General Lisa O. Monaco Announces National Cryptocurrency Enforcement Team*, DEPT. OF JUST. (Oct. 6, 2021), <https://www.justice.gov/opa/pr/deputy-attorney-general-lisa-o-monaco-announces-national-cryptocurrency-enforcement-team> [<https://perma.cc/HZE9-CT4E>] [hereinafter *Monaco Announcement*] (announcing the establishment of a crypto task force within the Department of Justice).

124. *Id.*

the reporting of crypto transactions because their significance will likely increase over time, including the potential risk for financing crimes.<sup>125</sup>

### 1. Specific Regulations Set Forward in the A.F.P

The Biden Administration proposes that financial institutions report data in an annual return that details transactions with a “gross inflows and outflows with a breakdown for physical cash, transactions with a foreign account, and transfers to and from another account with the same owner” with accounts below the threshold of \$600 or the fair market value of \$600 being exempted.<sup>126</sup> These requirements would extend to crypto asset exchanges and the custodians that host the private keys for users on the specific network.<sup>127</sup> Specifically, the reporting requirements would apply in cases where taxpayers transfer crypto assets between brokers.<sup>128</sup> In addition, “businesses that receive crypto assets in transactions with a fair market value of more than \$10,000 would have to report such transactions” to the IRS.<sup>129</sup> If passed, the proposed regulations would affect tax returns filed after December 31, 2022.<sup>130</sup>

The Tax Compliance Agenda also functions in tandem with FinCEN’s proposal of clarifying the definition of money under the Bank Secrecy Act.<sup>131</sup> These regulations, if enacted, could have a negative effect on the anonymous nature of cryptos as the reporting requirement would be unduly burdensome on individual consumers as well as

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125. See DEPT. OF THE TREASURY, *supra* note 9, at 20–21 (noting that “cryptocurrency transactions” are expected to continue to increase in importance over the next decade).

126. *Improving Tax Compliance*, *supra* note 14, at 88.

127. See *id.* at 95 (noting that the reporting requirement would apply to “brokers, including entities such as U.S. crypto asset exchanges and hosted wallet providers, to report information relation to certain passive entities and their substantial foreign owners when reporting with respect to crypto assets held by those entities in account with the broker”).

128. See *id.* at 88–89 (“Separately, reporting requirement would apply in cases in which taxpayers buy crypto assets from one broken and then transfer the crypto assets to another broker, and businesses that receive crypto assets in transactions with a fair market value of more than \$10,00 would have to report such transactions.”)

129. *Id.* at 89.

130. *Id.*

131. See Evan Weinberger, *Treasury to Wrap Crypto Anti-Money Laundering Rules by Fall*, BLOOMBERG L. (June 22, 2021, 1:28 PM), <https://news.bloomberglaw.com/securities-law/treasury-to-wrap-crypto-anti-money-laundering-rules-by-fall> [<https://perma.cc/EQC2-DA6K>]. (noting that “[t]he rules would clarify that the definition of “money” under the Bank Secrecy Act applies to virtual currencies that can convert into legal tender or act as a substitute for fiat currency. The regulations also would update FinCEN’s so-called “travel rule,” which mandates reporting of transactions involving multiple financial institutions”).

businesses.<sup>132</sup> Essentially, custodians would be required to report which of their network's users are transacting on the open network in amounts greater than \$600.<sup>133</sup>

## 2. The Proposed Regulations Would Have a Negative Effect on the Anonymity of Cryptos.

President Biden's proposed regulations are piercing the central tenet of crypto—anonymity— which could affect usage, and recent statistics provide insight into how crypto users view anonymity.<sup>134</sup> In a 2016 survey, one out of five users thought of abandoning the Bitcoin network because of anonymity concerns.<sup>135</sup> In the same survey, 50% of users reported concerns about the de-anonymization of blockchain.<sup>136</sup> Consequently, Biden's regulations could have “sweeping implications” for the current crypto systems.<sup>137</sup> Key stakeholders have noted that increased government regulation could have potentially negative consequences on user privacy.<sup>138</sup> For example, Sheffield Clark, CEO of Coinsource,<sup>139</sup> has stated that “[i]ncreased scrutiny may make them (cryptocurrencies) a riskier investment for more traditional traders/investors” as some may elect to abandon these forms of

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132. John C. Goodman, *Does The American Families Plan Address Families' Real Economic Challenges*, FORBES (May 8, 2021, 6:52 AM), <https://www.forbes.com/sites/johngoodman/2021/05/08/a-better-plan-for-families-liberation/?sh=48a7bca1309f> [<https://perma.cc/SEP9-4MYV>] (arguing that the government's resources could be better utilized by “liberating” families from overly burdensome federal financial laws).

133. See DEPT. OF THE TREASURY, *supra* note 9, at 20.

134. See Benjamin Fabian et al., *Anonymity in Bitcoin – The Users' Perspective*, at 6-7, (Working Paper, Thirty Seventh Int'l Conf. on Info. Sys., 2016), [https://www.researchgate.net/publication/308648091\\_Anonymity\\_in\\_Bitcoin\\_-\\_The\\_Users%27\\_Perspective](https://www.researchgate.net/publication/308648091_Anonymity_in_Bitcoin_-_The_Users%27_Perspective) [<https://perma.cc/W94Z-TAE2>] (describing the finding of a survey involving crypto users and their attitudes towards anonymity).

135. *Id.*

136. *Id.*

137. *Infrastructure Bill's New Reporting Requirements May Have Sweeping Implications for Cryptocurrency Ecosystem*, GIBSON DUNN (Mar. 2, 2021), <https://www.gibsondunn.com/infrastructure-bills-new-reporting-requirements-may-have-sweeping-implications-for-cryptocurrency-ecosystem/> [<https://perma.cc/WG3R-KH56>].

138. Rakesh Sharma, *What Does Government Regulation Mean for Privacy-Focused Cryptocurrencies?*, INVESTOPEDIA (Apr. 27, 2021), <https://www.investopedia.com/news/what-does-increased-government-regulation-mean-privacy-focused-coins/> [<https://perma.cc/R3G6-SYCS>].

139. See *Coinsource is the World's Leader in Bitcoin ATMs*, COINSOURCE, <https://www.coinsource.net/about-us> [<https://perma.cc/PU4M-NZ5R>] (noting that Coinsource is a Bitcoin ATM company with hundreds of locations across the United States).

investments because of their susceptibility to watchdog reporting and harsher penalties.<sup>140</sup>

Others have voiced concerns that government regulation could cause the already volatile market to crash.<sup>141</sup> Even the critics who are most skeptical of cryptos have noted that the crash of the crypto market would be cataclysmic. The Bank of England's Deputy Governor for Financial Stability has warned that the crash of the crypto market could spark the next global financial crisis.<sup>142</sup> In a June 2019 note, financial analysts at Morgan Stanley suggested that government regulation [not specifically implicating the Biden Administration's plan] could affect the price of Bitcoin, stating "governmental acceptance would be required for this (Bitcoin's price) to further accelerate, the price of which is regulation."<sup>143</sup> However, some do believe that the effect of the government regulations might be minimal, with economist Kenneth Rogoff arguing that that individuals may still prefer Bitcoin over traditional banks due to the latter's higher transactional costs.<sup>144</sup> Regardless, the effect that government regulation will have is yet to be determined because of the novelty of the crypto market. Yet, crypto investors warn that assets could be transferred from countries with more regulation to countries with laissez-fair regulations.<sup>145</sup> One can argue that

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140. Sharma, *supra* note 138.

141. Alyssa Exposito, *U.S. Officials Threaten Crypto Regulation – Will It Cause a Crash*, MARKET REALIST (July 18, 2021), <https://marketrealist.com/p/regulation-crypto-crash/> [<https://perma.cc/8ZTE-GBKB>].

142. Elliot Smith, *Crypto Could Cause 2008-Level Meltdown, Bank of England Official Warns*, CNBC (Oct. 14, 2021, 6:41 AM), <https://marketrealist.com/p/regulation-crypto-crash/> [<https://perma.cc/V7ES-Z6GB>].

143. Rakesh Sharma, *Can Government Regulation Affect Bitcoin Prices*, INVESTOPEDIA (June 25, 2021), <https://www.investopedia.com/news/can-government-regulation-affect-bitcoin-prices/> [<https://perma.cc/GHW3-N922>]; *see also* Ryan Vlastelica, *Bitcoin Needs Government Regulation to Rise Further*, Morgan Stanley says, MARKETWATCH (June 15, 2017, 5:13 PM), <https://www.marketwatch.com/story/bitcoin-needs-government-regulation-to-rise-further-morgan-stanley-says-2017-06-13>, [<https://perma.cc/GAY9-TKLG>] (noting that bitcoin investors may not be able to attain further gains unless its proponents are willing to relinquish some autonomy).

144. *See* Kenneth Rogoff, *Crypto–Fool's Gold?*, PROJECT SYNDICATE (Oct. 9, 2017), <https://www.project-syndicate.org/commentary/bitcoin-long-term-price-collapse-by-kenneth-rogoff-2017-10> [<https://perma.cc/9ZF4-HGJM>] (noting that some crypto platforms, including Ripple, are aiming to reduce interbank transaction costs).

145. *See* Brian F. Feinstein & Kevin Werbach, *Does Regulation Chill Cryptocurrency Trading?*, THE REGUL. REV. (Aug. 31, 2020), <https://www.theregreview.org/2020/08/31/feinstein-werbach-does-regulation-chill-cryptocurrency-trading/> [<https://perma.cc/MSK6-TNZ9>] (noting that "[c]ryptocurrency proponents argue that new regulation is often inappropriate for these novel assets secured by technical mechanisms . . . These crypto fans also warn that capital will move away from countries adopting stringent requirements and toward those with more laissez-faire regulatory regimes").

the best approach is a market-driven solution, with ZenCash stipulating that, “[c]ompetitive pressures and market demand will likely push most crypto projects to adopt strong privacy primitives . . . Just as ‘https’ has slowly replaced ‘http’ across the Internet . . . other high-encryption techniques will likely be pervasive across future money.”<sup>146</sup>

Opponents of government regulations argue that the laws could not only affect anonymity but also the data privacy of its users.<sup>147</sup> Ryan Taylor, CEO of Dash,<sup>148</sup> has stated that “[p]rivacy is important for many practical reasons including user safety, so we believe it is an important aspect to incorporate into our solutions.”<sup>149</sup> One could argue that the regulations are indicative of a surveillance economy.<sup>150</sup> The surveillance economy is intertwined with surveillance capitalism, an idea promulgated by Harvard University’s Shoshana Zuboff to describe a “new form of information capitalism [that] aims to predict and modify human behavior as a means to produce revenue and market control.”<sup>151</sup> In *Big Other: Surveillance Capitalism and the Prospects of Information Civilization*, Zuboff argues that, “[s]urveillance capitalism establishes a new form of power in which contract and the rule of law are supplanted by the rewards and punishments of a new kind of invisible hand.”<sup>152</sup> She further stipulates that surveillance redistributes privacy rights, and that the latter “enables a decision as to where one wants to be on the spectrum between secrecy and transparency in each situation.”<sup>153</sup> Thus, the debate over government regulation of crypto extends to include questions over data privacy and government encroachment on individual privacy.<sup>154</sup>

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146. Sharma, *supra* note 138.

147. *See id.* (explaining that “privacy” remains an important factor for crypto stakeholders when discussing potential regulations).

148. *See What is Dash?*, DASH, <https://www.dash.org/faq/> [<https://perma.cc/MP4Y-RFF7>] (noting that Dash is cryptocurrency that relies on a “decentralized peer-to-peer network” and cryptography to securitize transactions).

149. Sharma, *supra* note 138.

150. *See* Geoff Goodell & Tomaso Aste, *Can Cryptocurrencies Preserve Privacy and Comply With Regulations?*, FRONTIER IN BLOCKCHAIN (May 28, 2019), <https://www.frontiersin.org/articles/10.3389/fbloc.2019.00004/full> [<https://perma.cc/7FAH-BP68>] (noting that “The surveillance economy has arrived . . . Consumers have legitimate reasons to resist such surveillance, particularly in cases wherein monitoring is carried out without their knowledge and judgments based upon such monitoring are used to disincentivize or punish legitimate activities. The risk to consumers increases with the ever-increasing share of financial transactions that are performed electronically”).

151. Shoshana Zuboff, *Big Other: Surveillance Capitalism and The Prospects of An Information Civilization*, 30 J. OF INFO. TECH., 75, 76 (2015).

152. *Id.* at 82.

153. *Id.* at 83.

154. *See* Pritesh Shah & Daniel Forester, *Blockchain Technology: Data Privacy Issues and Potential Mitigation Strategies*, DAVIS POLK (2019), [https://www.davispolk.com/sites/default/files/blockchain\\_technology\\_data\\_privacy\\_issues\\_](https://www.davispolk.com/sites/default/files/blockchain_technology_data_privacy_issues_)

### 3. The A.F.P Would Fail to Aid in Closing the “Tax Gap.”

Furthermore, the Treasury Department’s proposed agenda to close the “tax gap” can be achieved through a variety of other methods,<sup>155</sup> and targeting crypto transactions will have a minimal effect because of the low percentage of Americans that actually invest in digital currencies.<sup>156</sup> First, the proposed tax agenda is overly broad and is not narrowly tailored to achieve the Biden Administration’s goals of reducing tax evasion.<sup>157</sup> The proposed measures would seemingly target a larger swarth of taxpayers than are primarily responsible for the tax gap and could instead cause the reverse.<sup>158</sup> Although it is estimated that all taxpayer groups underreport their taxes by approximately 5%, the number is significantly higher amongst the one percent.<sup>159</sup> The Treasury Department has even reported that the 1% are responsible for more than \$160 billion in lost revenue which accounts for approximately one-third of the estimated tax gap.<sup>160</sup>

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and\_potential\_mitigation\_strategies\_w-021-8235.pdf [https://perma.cc/9EP5-AEHV] (noting that [p]aralleling blockchain technology’s growth over the past decade, data privacy has seen a sharp uptick in global attention as a general policy and regulatory concern”).

155. See Guinevere Moore, *How to Close The Tax Gap? Provide IRS Service, As Well As More Audits of the Reach*, FORBES (May 3, 2021, 12:13 AM), <https://www.forbes.com/sites/irswatch/2021/05/03/to-close-the-tax-gap-dont-just-audit-the-rich-improve-irs-customer-service-for-all-americans/?sh=57ca64d431b5>

[https://perma.cc/G274-KVAX] (proposing that, in addition to increasing IRS audit funds, the funding of IRS customer service funds also be increased in order assist Americans with understanding their tax obligations which will further increase voluntary compliance).

156. See NORC, *supra* note 96 (reporting that 13% of Americans reported either purchasing or trading crypto assets in the past twelve months according to the NORC).

157. See Garrett Watson et. al., *Details and Analysis of Tax Proposals in President Biden’s American Families Plan*, TAX FOUND. (May 6, 2021), <https://taxfoundation.org/american-families-plan/> [https://perma.cc/8Q2M-NDBZ] (noting that “[t]he funding choices in the American Families Plan come at the cost of reduced economic output, fewer jobs, and lower wages. According to the Tax Foundation General Equilibrium Model, the American Families Plan’s tax changes would lead to a 0.4 percent reduction in long-run Gross Domestic Product (GDP)”).

158. See Michael J. Nathanson, *Op-Ed: The Tax Gap Is a Real Problem But So, Too, Is The ‘Reverse Tax Gap’*, CNBC (Sept. 9, 2021) <https://www.cnbc.com/2021/09/09/the-tax-gap-is-a-real-problem-but-so-too-is-the-reverse-tax-gap.html> [https://perma.cc/7D28-UV2G] (noting that the “reverse tax gap” refers to the small percentage of American that overpay their taxes, with some being repeat offenders).

159. Daniel Reck et al., *Tax Evasion at The Top of The U.S. Income Distribution and How to Fight It*, WASH. CTR. FOR EQUITABLE GROWTH (Mar. 22, 2021), <https://equitablegrowth.org/tax-evasion-at-the-top-of-the-u-s-income-distribution-and-how-to-fight-it/> [https://perma.cc/P9LA-JWU2].

160. Sarin, *supra* note 108.

Data suggests that the bottom half in terms of income distribution only accounted for 12% of tax evasion as recently as 2010.<sup>161</sup> In the Washington Center for Equitable Growth's March 2021 report, research revealed that unreported income rises from around 7% for individuals in the bottom half of income distribution to almost 25% for the top 1%.<sup>162</sup> Also, even though there are individuals that underreport their income taxes, researchers have also reported the existence a "reverse tax gap" in which it is estimated that taxpayers overpaid their taxes in the amount of more than \$800 million.<sup>163</sup> Instead of focusing the reporting scheme on high value investors that repeatedly dodge the regulations within the tax system, the proposed measures would extend to include transactions from individuals that have a smaller net worth.<sup>164</sup>

Secondly, having a blanket rule that would apply universally is not feasible because there such a wide variation in the types of crypto. As noted earlier, there are now more than 17,000 different cryptos that are currently traded within the world's financial markets.<sup>165</sup> Bloomberg estimates the market's capitalization at over \$2 trillion as of August 2021.<sup>166</sup> These cryptos generally fall into two main categories: coins and tokens.<sup>167</sup> While coins rely on their own blockchain and are intended as

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161. See William G. Gale & Aaron Krupkin, *How Big Is the Problem of Tax Evasion*, BROOKINGS INST. (Apr. 9, 2019), <https://www.brookings.edu/blog/up-front/2019/04/09/how-big-is-the-problem-of-tax-evasion/> [<https://perma.cc/S7WB-RN27>] (noting that "[d]ata from 2001 – admittedly, some time ago – finds that households in the top income decile accounted for 61 percent of tax evasion, but just 44 percent of earned income, a ratio of about 1.4:1. (The evasion rate was even higher for those at the very top of the income distribution: Those in the top 1 percent accounted for 28 percent of tax evasion but 18 percent of income, a ratio of about 1.55:1)").

162. John Guyton et al., *Tax Evasion at the Top of the Income Distribution: Theory and Evidence*, at 34, WASH. CTR. FOR EQUITABLE GROWTH, at 34 (Mar. 2021) <https://equitablegrowth.org/working-papers/tax-evasion-at-the-top-of-the-income-distribution-theory-and-evidence/> [<https://perma.cc/8QCV-VW2U>].

163. Nathanson, *supra* note 158.

164. See GEMINI, *The State of U.S. Crypto Report (2021)*, <https://www.gemini.com/state-of-us-crypto> [<https://perma.cc/48Z6-W2FQ>] (noting that their data reveals "that the 'average' cryptocurrency owner is a 38-year-old male making approximately \$111k a year . . . next wave of crypto buyers is also likely to be slightly older than current holders — with an average age of 44. They are also likely to have slightly less money to invest than those who are already crypto holders and are more likely to live in a small town or rural area than in an urban area, though it's also worth noting that the crypto-curious audience remains largely white").

165. Royal & Voigt, *supra* note 58.

166. Ossinger, *supra* note 59 (noting that in August, "[c]rypto's market value rose to \$2.06 trillion on Saturday, according to CoinGecko, which tracks more than 8,800 coins").

167. See *Understanding the Different Types of Cryptocurrency*, SoFi (Sept. 17, 2021), <https://www.sofi.com/learn/content/understanding-the-different-types-of-cryptocurrency> [<https://perma.cc/44MV-MSH5>] (noting that "[d]ifferent types of crypto generally fall into one of two categories: [c]oins, which can include Bitcoin and altcoins (non-Bitcoin

a form of digital currency such as Bitcoin, tokens are considered programmable assets that provide users with units of value outside of the blockchain network.<sup>168</sup> The most common forms of cryptos, including Bitcoin, Ethereum, Cardano, Tether, and Binance Coin (“BNB”), each have their own set of regulations and guidelines.<sup>169</sup> However, the Biden Administration’s proposed regulations do not specify how they will be implemented on these various types of cryptos.<sup>170</sup> In fact, the proposed regulations do not provide much detail into how these laws will be adaptable to each crypto’s idiosyncratic guidelines nor how they will be imposed on non-citizens.<sup>171</sup> This is not to suggest that no reporting or regulation is needed but rather that “it’s critical that regulators work with industry to come to sensible positions so that the full benefits of the technology can be realized.”<sup>172</sup>

#### 4. The A.F.P Would Fail to Curtail Crypto Being Used for Illicit Activities.

The second policy argument in curtailing illicit activities also fails because it relies on a false premise.<sup>173</sup> While some “don’t welcome currency that is so useful to kidnappers and extortionists,”<sup>174</sup> crypto

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cryptocurrencies)” and “[t]okens, which are programmable assets that live within the blockchain of a given platform”).

168. *Id.*

169. *See id.* (detailing the ten most common cryptos by market capitalization).

170. *See Improving Tax Compliance*, *supra* note 14, at 94 (explaining that the proposed changes do not explicitly detail how the reforms will apply to different crypto asset types).

171. *See id.* at 92-93 (noting a lack of specifics on how the proposals will be implemented within the article).

172. Kiernan, *supra* note 3.

173. *See* Shalini Nagarajan, *Bitcoin Anonymity Is Just a Big Myth - And Using It To Launder Dirty Money Is Stupid, A Crypto ATM Chief Says*, BUS. INSIDER (June 13, 2021, 7:00 AM), <https://markets.businessinsider.com/news/currencies/bitcoin-anonymous-untraceable-myths-stupid-dirty-money-laundering-crypto-chief-2021-6> [<https://perma.cc/TET6-UQ8Z>] (noting that article quotes Ben Weiss, CEO of CoinFlip, as stating that crypto is “not anonymous. It’s pseudo-anonymous . . . Bitcoin is actually more transparent in many ways than typical things in the financial system”).

174. Suzanne Wooley, *Warren Buffet Wants to Make You Happier, Smarter and Richer*, BLOOMBERG (May 2, 2021, 11:52 AM), <https://www.bloomberg.com/news/articles/2021-05-02/warren-buffett-tech-shares-are-bargain-stock-picking-is-hard-buy-index-funds> [<https://perma.cc/F3TX-FSXP>].

enthusiasts have argued that these fears are exaggerated.<sup>175</sup> A recent Chainalysis<sup>176</sup> report has stipulated that illicit activity transactions have decreased in recent years to only account for .34%—approximately \$10 billion—of crypto transaction volume.<sup>177</sup> However, the report also notes that there has been explosive growth in ransomware attacks<sup>178</sup> which increased by approximately 311% since 2019.<sup>179</sup> Chainalysis does stipulate though that one of the reasons for the decline in illicit activity is that overall crypto activity tripled between 2019 and 2020, i.e., a significantly higher number of transactions diluted the volume of illegal ones.<sup>180</sup> Furthermore, fiat currencies are still the dominant form for financing illicit activities, with the UN estimating that \$1.6 trillion in cash is laundered each year.<sup>181</sup>

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175. See Hailey Lennon, *False Narrative of Bitcoin's Role in Illicit Activity*, FORBES (Jan. 19, 2021, 9:37 PM), <https://www.forbes.com/sites/haileylennon/2021/01/19/the-false-narrative-of-bitcoins-role-in-illicit-activity/?sh=510daadf3432> [<https://perma.cc/G7C6-PC2Z>] (noting that some believe that the idea that cryptocurrency is mostly utilized for criminal activity is a “[f]alse [n]arrative”).

176. See CHAINALYSIS, *Know What Happens on Blockchains*, <https://www.chainalysis.com/company/> [<https://perma.cc/9SNU-MYGC>] (last visited Oct. 19, 2021) [hereinafter CHAINALYSIS] (Chainalysis Inc. is a blockchain data platform that provides data, software services, and research in more than sixty countries).

177. CHAINALYSIS, *Crypto Crime Summarized: Scams and Darknet Markets Dominated 2020 by Revenue, But Ransomware Is the Bigger Story* (Jan. 19, 2021), <https://blog.chainalysis.com/reports/2021-crypto-crime-report-intro-ransomware-scams-darknet-markets> [<https://perma.cc/9V2Y-T69B>].

178. See *Stop Ransomware*, CISA, <https://www.cisa.gov/stopransomware> [<https://perma.cc/XX8R-UCK9>] (last visited Feb. 2, 2022) (explaining that the United States government defines ransomware as “a form of malware designed to encrypt files on a device, rendering any files and the systems that rely on them unusable” which then are ransomed by malicious actor).

179. Kate Rooney, *Overall Bitcoin-Related Crime Fell Last Year, But One Type Of Crypto Hack Is Booming*, CNBC (Jan. 24, 2021, 8:52 AM), <https://www.cnbc.com/2021/01/24/overall-bitcoin-related-crime-fell-last-year-but-one-type-of-crypto-hack-is-booming.html> [<https://perma.cc/E7LY-NZ8Z>].

180. See CHAINALYSIS, *supra* note 176 (“In 2019, criminal activity represented 2.1% of all cryptocurrency transaction volume, or roughly \$21.4 billion worth of transfers. In 2020, the criminal share of all cryptocurrency activity fell to just 0.34%, or \$10.0 billion in transaction volume. One reason the percentage of criminal activity fell is because overall economic activity nearly tripled between 2019 and 2020.”).

181. *FACT CHECK: Crypto Is Increasingly Being Used for Criminal Activity and Is a Haven For Illicit Finance*, COINBASE, <https://blog.coinbase.com/fact-check-crypto-is-increasingly-being-used-for-criminal-activity-and-is-a-haven-for-illicit-856a71dfb399> [<https://perma.cc/UMZ2-H885>]; see also *Tax Abuse, Money Laundering and Corruption Plague Global Finance*, U.N. (Sept. 24, 2020)

<https://www.un.org/development/desa/en/news/financing/facti-interim-report.html> [<https://perma.cc/PYH2-YKTA>] (noting that the United Nations estimates that “\$7 trillion in private wealth [is] hidden in haven countries, with 10% of world GDP held offshore” and that money laundering accounts “around \$1.6 trillion per year, or 2.7% of global GDP”).

Essentially, the Tax Compliance Agenda is attempting to “fix” an issue with the wrong solution. Instead of a reporting tax scheme raising investor confidence or assuaging privacy concerns, it will instead be utilized as a vehicle to generate revenue for the federal government.<sup>182</sup> Also, the Treasury Department does not currently have the complex digital infrastructure that is needed to actually police and monitor crypto transactions.<sup>183</sup> There are other remedial measures the government can consider, such as regulation through the S.E.C. or the Department of Justice to regulate cryptos.<sup>184</sup>

#### IV. POTENTIAL IMPACT ON PEOPLE OF COLOR

President Biden’s A.F.P will also constitute a failure if enacted because the tax policy proposal would ultimately harm the American families it was designed to assist. As mentioned earlier, there are significantly fewer Black American households that report owning stocks in comparison to white households according to the Federal Reserve.<sup>185</sup> People of color already experience significant barriers in investing through traditional channels.<sup>186</sup> This can have devastating effects on the

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182. See Marcy Gordon, *Explainer: How Cryptocurrency Fits Into Infrastructure Bill*, ASSOCIATED PRESS NEWS (Aug. 10, 2021), <https://apnews.com/article/technology-joe-biden-business-bills-cryptocurrency-92628a41124230448f65fdeb89ffad7d> [<https://perma.cc/K6JZ-5LEM>] (explaining that the infrastructure bill that includes tax-reporting requirements is expected to raise approximately \$28 billion over the next decade).

183. See The Editorial Board, *Regardless of Whether Proceeds Fund Infrastructure, The IRS Needs More Funding*, PITTSBURGH POST-GAZETTE (July 30, 2021, 12:00 AM), <https://www.post-gazette.com/opinion/editorials/2021/07/30/Regardless-of-whether-proceeds-fund-infrastructure-the-irs-needs-more-funding/stories/202107280010> [<https://perma.cc/VJ9N-YT95>] (“IRS funding has been cut by 20% in the past decade, and 20,000 people are projected to leave the IRS through attrition in the next several years. Also, the 50-year-old computer system is in need of an upgrade.”).

184. See Monaco Announcement, *supra* note 123 (noting the establishment of the National Cryptocurrency Enforcement Team (NCET) at the U.S. Department of Justice).

185. See Choe, *supra* note 103 (noting that “[e]xperts say chief among them is a longstanding preference by many Black investors for safer places to put their money — the legacy, some say, of decades of discrimination and fear . . . Black people have also often lacked the opportunity to build up wealth, park it in the market and watch it grow over time”).

186. Erin C. Perkins, *Tackling Disparities in Finance for Black and African Americans*, MONEYGEEK (Aug. 4, 2021), <https://www.moneygeek.com/financial-planning/resources/black-african-american/> [<https://perma.cc/79ZW-D4QB>] (explaining that “[t]he TIAA Institute-GFLEC Personal Finance Index (P-Fin Index), a survey that measures financial literacy, revealed African Americans demonstrated a low level of financial literacy

ability to accumulate wealth, with the typical Black family reportedly having less than \$13 in wealth for every \$100 held by the average white family.<sup>187</sup> It can also impact net worth—separate from cumulative wealth—with the average Black householding reporting an average of net worth of \$24,100 versus \$189,000 for the average white, non-Hispanic household according to the Federal Reserve.<sup>188</sup>

Many cite discriminatory practices, including the lack of access to capital, as being the source of the wealth disparity.<sup>189</sup> For example, there are only around 1,200 certified Black financial planners out of more than 87,000 in the United State—representing only 13% of the financial advisor community.<sup>190</sup> A columnist at the Washington Post remarking that, “[t]hose who like to pigeonhole Blacks as financial illiterates argue that the disparity results from the failure of Blacks to comprehend the importance of investing . . . [this] viewpoint ignores the history of slavery and its enduring impact on the descendants of enslaved people.”<sup>191</sup> Although there is not a direct correlation, the Federal Reserve has noted gaps in a myriad of investment channels, with only 44% of Black families reporting having at least one retirement account as opposed to 65% of white families.<sup>192</sup> According to a recent economic paper, the bull market in the 1990s increased white wealth by about \$400,000 per decade whilst Black wealth only rose by less than \$10,000.<sup>193</sup>

John Rogers, founder and co-CEO of Ariel Investments remarked that, “[w]e didn’t have a grandfather or aunt or uncle or mom and dad educating us on the markets because they didn’t benefit from it because of historical discrimination in this country.”<sup>194</sup> He continued “[t]here

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. . . Black people received the highest scores in knowledge on borrowing and managing debt while their lowest score was in comprehending risk and uncertainty, insuring, investing and go-to information source”).

187. Choe, *supra* note 103.

188. *Id.*

189. *See id.* (noting that restricted access to affordable housing via redlining and “lower rates of stock ownership” contribute to the difference in wealth).

190. *Id.*

191. Michelle Singletary, *The Legacy of Slavery Made My Grandmother Fear Investing*, WASH. POST (Oct. 9, 2020), <https://www.washingtonpost.com/business/2020/10/09/black-slavery-investment-stock-market/> [<https://perma.cc/8PSX-Y32>].

192. *Id.*

193. Suzanne Wooley, *The Bull Market in Stocks Has Blown Past Many Black Americans*, BLOOMBERG (Feb. 25, 2021, 8:00 AM), <https://www.bloomberg.com/news/articles/2021-02-25/stock-market-news-bull-market-has-blown-past-many-black-americans> [<https://perma.cc/RU8U-42NS>].

194. Choe, *supra* note 103.

isn't a passing down of knowledge from generation to generation . . . It's the opposite of what I hear from Warren Buffett about the magic of compound interest and how much wealth has been created since he was born . . . Those kinds of stories don't happen in Black communities."<sup>195</sup> The amalgamation of these issues only furthers the widening of the racial wealth gap, with the average white family reportedly having a net worth nearly ten times greater than that of a Black family as of 2016.<sup>196</sup> The Federal Reserve has also reported that African Americans only hold approximately 3.8% of \$116 trillion in wealth in the United States.<sup>197</sup>

As such, some minorities view cryptos as a way to build generational wealth.<sup>198</sup> During the annual Black Blockchain Summit, Tony Perkins, a MIT-trained computer scientist, remarked that “[African Americans] can operate on an even playing field in the digital world.”<sup>199</sup> However, the proposed regulations could negatively affect investors, including those of color, from being able to operate on that even playing field. Notably, the current tax scheme is already burdensome on the middle class and so further regulation would further exacerbate the burden.<sup>200</sup> Although President Biden has announced policies to enable economic opportunity for Black Americans,<sup>201</sup> his administration is proposing legislation that would work directly against

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195. *Id.*

196. See Kriston McIntosh et al., *Examining the Black-White Wealth Gap*, BROOKINGS INST. (Feb. 27, 2020), <https://www.brookings.edu/blog/up-front/2020/02/27/examining-the-black-white-wealth-gap/> [<https://perma.cc/42BE-GCJR>] (noting that “[a]t \$171,000, the net worth of a typical white family is nearly ten times greater than that of a Black family (\$17,150) in 2016”).

197. Hale, *supra* note 105.

198. See Ross, *supra* note 29 (remarking that some attendees at the 2021 Black Blockchain Summit are “rallying around the idea that [crypto] is the boon that Black America needs”).

199. *Id.*

200. See *The Distribution of Household Income, 2016*, CONG. BUDGET OFF. (July 9, 2019), <https://www.cbo.gov/publication/55413> [<https://perma.cc/X3YZ-EZHV>] (explaining that “income inequality was greater in 2016 than it was in 1979” due to the difference in growth rates for average household income before transfers and taxes).

201. See *Executive Order on White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity for Black Americans*, WHITE HOUSE (Oct. 19, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/10/19/executive-order-on-white-house-initiative-on-advancing-educational-equity-excellence-and-economic-opportunity-for-black-americans/> [<https://perma.cc/GP8Z-B837>] (remarking that it is “[i]t is the policy of [the Biden] Administration to advance educational equity, excellence, and economic opportunity for Black Americans and communities from early childhood until their chosen career”); see also Exec. Order No. 14050, 86 Fed. Reg. 58551 (2021) (outlining the Biden Administration’s economic, educational and social plan to increase upward mobility for Black Americans).

this objective. Eliminating systemic barriers that preclude minority investors is not a simple fix, but this does not mean that the Biden Administration should enact legislation that would only further contribute to these barriers.

## V. CONCLUSION

The policy implications of the American Families Plan could have unprecedented effects on the anonymity of cryptos. Although the proposed regulations could increase investor confidence in digital currencies, these regulations could cause a significant decline in network usage as some users would still prefer for their transactions to occur in private. Notably, these regulations could promulgate further reform with blockchain technology as required government reporting could lead to significant infrastructural changes with regards in public and private networks. Lastly, increased regulation would have a negative effect on crypto investors of color, many of whom are already significantly disadvantaged in accumulating wealth.

Presently, the future as to the passage of the proposed legislation is uncertain.<sup>202</sup> As of December 2021, the A.F.P., through its integration into the Build Back Better Act has passed through the United States House of Representatives in November 2021, but is currently in limbo in the United States Senate.<sup>203</sup> A small cohort of Democratic Senators along with a larger swarth of their Republican colleagues, have voiced opposition to the bill, with some arguing that it's overly broad.<sup>204</sup> In a statement released on December 19th, Senator Joe Manchin (D-WV) reasoned that, “[his] Democratic colleagues in Washington are determined to dramatically reshape our society in a way that leaves our country even more vulnerable to the threats we face” and as such is

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202. See Emily Cochrase & Catie Edmondson, *Manchin Pulls Support From Biden's Social Policy Bill, Imperiling Its Passage*, N.Y. TIMES (Dec. 19, 2021), <https://www.nytimes.com/2021/12/19/us/politics/manchin-build-back-better.html> [<https://perma.cc/YV2C-MJ9T>] (explaining that Senator Manchin (D-VA) removed his support from President Biden's social bill in December 2021 due to concerns about the national debt, inflation, etc.); see also Build Back Better Act, H.R. 5376, 117th Cong. § 138151 (2021) (referring to the Build Back Better Act passed by the U.S. House of Representatives on November 19, 2021).

203. *Id.*

204. See *id.* (with Senator Ben Sasse (R-NE) remarking that “President Biden's mega-spending bill is dead, and Joe Manchin put the nail in the coffin . . . With a divided country, a 50-50 Senate and blowout inflation, the American people don't want to upend this country with nakedly partisan legislation”).

declining to support the bill in its current status.<sup>205</sup> Consequently, Goldman Sachs reduced its forecast for the economic growth of the United States, noting that the passage of the Build Back Better Act is likely to fail.<sup>206</sup>

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205. *Id.*

206. See Michael Heath & Linus Chua, *Goldman Cuts U.S. GDP Forecast as Biden Economic Agenda in Doubt*, BLOOMBERG (Dec. 19, 2021), <https://www.bloomberg.com/news/articles/2021-12-20/goldman-cuts-u-s-gdp-forecast-after-manchin-won-t-back-bill> [<https://perma.cc/N5LJ-XSAT>] (Goldman Sachs remarked “that the likely failure of the Build Back Better legislation had prompted it to lower its real gross domestic product forecasts in 2022 to: 2% in the first quarter from 3% previously 3% in the second quarter versus. 3.5% before; and 2.75% in the third quarter from 3% prior.”).

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