Research Report

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Tax code section 6050I and "digital assets":
This overlooked surveillance and reporting mandate should be struck from the infrastructure bill

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Summary

In previous months, the much-discussed provision that would expand the definition of "brokers" who are required to report financial information to the government (tax code section 6045) provoked intense public debate and opposition in the Senate.

But an overlooked provision — an amendment to tax code section 6050I — in the infrastructure bill passed by the Senate and now pending in the House could make receiving digital assets (whether that be cryptocurrency, an NFT, or any other digital asset) a felony if not reported correctly. This provision, which would apply to all Americans who receive any kind of digital asset, has thus far escaped public or congressional scrutiny.

The proposed amendment to Section 6050I states that, in a broad range of scenarios, "any person" who receives over $10,000 in digital assets must verify the sender's personal information, including Social Security number, and sign and submit a report to the government within 15 days. Failure to comply results in mandatory fines and can be a felony (up to five years in prison).

The proposal relies on a 1984 law that was written to discourage in-person cash transfers and to encourage the use of financial institutions for large transactions. The law's relative clarity and limited applicability in the case of old-fashioned cash is difficult to apply to the transfer of digital assets, thus making compliance unduly burdensome (as any "receipt" can trigger the reporting requirement, and "digital asset" is defined broadly as any "digital representation of value" using distributed ledger technology, including NFTs). Miners, stakers, lenders, decentralized application and marketplace users, traders, businesses and individuals are all at risk of being subject to this reporting requirement, even though in most situations the person or entity in receipt is not in the position to report the required information.

A statute creating felony crimes for users of digital assets should be debated openly, not quietly inserted into a spending bill. In the report that follows, Sutherland describes in more detail the elements of the law and calls for others to chronicle its consequences. Opinions expressed in the report are entirely Sutherland's own and do not necessarily reflect those of the Proof of Stake Alliance or its members.

Comparison of two tax reporting provisions in the infrastructure bill

The amendment to section 6045 and the amendment to section 6050I function quite differently but share some similarities: each would impose onerous and even impossible demands on a greatly expanded group that the law requires to report information to the government.

Section 6045 does this through an irresponsible expansion of who counts as a “broker” in the context of digital assets. It demands the impossible because these newly ordained brokers might not have access to the information the law requires them to report. Businesses and innovators that might be swept up by the statute will be pushed out of the United States.

Section 6050I, in contrast, imposes surveillance and reporting duties on all Americans. In a broad range of scenarios it requires any person who “receives” digital assets to report the sender’s Social Security number and other sensitive information to the government. This provision demands the impossible because the digital assets might not be “received” from a person whose personally identifiable information can be verified and reported — including cases where the digital assets are not “received” from a person or entity with a tax ID number, period.

And under section 6050I, the failure to promptly and accurately verify and report the required information — information which might not exist — can be a felony resulting in prison time. This provision can’t push all of its targets out of the United States — it applies to everyone — but it can and will thwart law-abiding use of digital assets. It will require Americans to become the custodians of one another’s most private personal and financial records. And ultimately, it will give a decisive advantage to the existing, heavily-regulated financial intermediaries that are well-practiced in reporting your financial dealings to the government.

In addition to demanding the impossible, each provision would delegate to the Treasury Department considerable power and discretion to refine each statute’s mandate through regulations. No doubt, government officials will attempt to assure the public that certain potential excesses of the revised section 6050I will be reined in through thoughtful regulations.[4] For example, the existing IRS Form 8300 takes an estimated 21 minutes to complete for each transaction requiring reporting. Perhaps the government would not oppose a more efficient

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[2] The amendments appear in section 80603 of the Infrastructure Investment and Jobs Act, H.R. 3684 (2021). For an overview of the amendments to tax code sections 6045 and 6045A, see https://www.fenwick.com/insights/publications/senate-passes-infrastructure-bill-including-language-on-reporting-of-crypto-transactions.

[3] Infrastructure bill section 80603(b)(1)(B) (definition of “digital asset,” to be codified at 26 U.S.C. § 6045(g)(3)(D)) and section 80603(b)(3) (amending 26 U.S.C. § 6050I to include “digital assets” in its definition of “cash”).

[4] With regard to the section 6045 “broker” provision, apparently unnamed Treasury officials are already making such assurances. “Treasury will not target non-brokers like miners even if the crypto tax provision isn’t amended,” CNBC.com, Aug. 24, 2021.

means of tracking taxpayers' receipts. But we must look to what the law commands — and might permit in terms of the government's regulatory and prosecutorial discretion — to understand the consequences of its enforcement. Accordingly, existing Treasury Department regulations are important to understanding how section 6050I will apply to digital assets.[5]

The goal of this analysis of tax code section 6050I

In a recent article, I criticized the section 6050I proposal in terms of the financial surveillance and reporting framework that the government relies on to reduce the under-reporting of taxable income and to fight other crimes.[6]

Here, I describe in more detail the elements of the law as it would apply to digital assets. But this is still just a sketch. The law was written in 1984 to discourage in-person physical currency transfers and to encourage the use of (surveillance-friendly) financial institutions for large transactions. This 1984 law is such a mismatch with still-nascent 21st century digital asset technology that it is difficult to catalog its consequences or even to list the scenarios that might give rise to a duty to report financial information to the government. By presenting the elements of section 6050I, my hope is to encourage others to fill in these important details.

I also leave to others the important task of assessing this surveillance and reporting regime against every American's 4th amendment right "to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures."

Elements of the new reporting requirement

The surveillance and reporting duty in the proposed section 6050I applies to "any person" (which includes both businesses and natural persons), and it kicks in each and every time the following five conditions are met:

1. You receive
2. In the course of your regular gain-seeking activities
3. Digital assets
4. Having a value exceeding the legal threshold; and
5. No exception applies.

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[5] 26 C.F.R. § 1.6050I-1. See also IRS Publication 1544, "Reporting Cash Payments of Over $10,000" and the instructions to IRS Form 8300.
[6] The Proposal to Regulate Digital Asset Transactions Should Be Struck, 172 Tax Notes 1125 (Aug. 16, 2021).

Reporting under tax code section 6050I and IRS Form 8300

Before examining these five conditions, here is a brief look at what happens each time the five conditions are met, triggering the reporting requirement:

You, the recipient of the digital assets, must verify and record the payer's personally identifiable information, including full name, birth date, address, Social Security number, and occupation. This means (1) verifying the driver license or other ID of the human being who hands over the digital assets as well as (2) recording the tax ID and other information of the person or entity on whose behalf that person is acting, if any.

Then, you must fill out IRS Form 8300, including a description of the transaction and the digital assets you received, and sign it under penalty of perjury.[7] Readers are encouraged to peruse the current Form 8300 for a sense of its requirements.[8] Next, you must mail the report to the government (or file it online with the Financial Crimes Enforcement Network) within 15 days.[9] By January 31, you must send a summary of transactions statement to every person you reported during the previous year.[10] Finally, you must keep copies of these forms for five years.[11]

Penalties for violations

Late, incomplete, inaccurate, or missing reports result in fines. Civil penalties for section 6050I violations are "assessable penalties," meaning you don't get your day in court before they're imposed.[12] The minimum fine for intentional or willful violations is $25,000 — for each Form 8300 that should have been filed.[13] As a rule, "willful" violations of reporting requirements under the tax code are misdemeanors with a maximum imprisonment of one year, with one exception.[14] That exception is section 6050I, where violations are felonies and the maximum prison term is five years.[15]

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[7] The Treasury Department might also demand the sender's and recipient's blockchain addresses and all transaction hashes, as indicated by its proposal to collect similar transaction data from financial institutions on newly created "Value Transaction Reports" under pending Bank Secrecy Act regulations. See the discussion of BSA regulations later in this report and FinCEN, "Requirements for Certain Transactions Involving Convertible Virtual Currency or Digital Assets," notice of proposed rulemaking and extension of comment period, 86 F.R. 3897 at 3898-3899 (Jan. 15, 2021) (FinCEN Document ID FINCEN-2020-0020-7391).
[8] IRS Form 8300 is available here: https://www.irs.gov/pub/irs-pdf/f8300.pdf. A more detailed Form 8300 manual, IRS Publication 1544, is available here: https://www.irs.gov/pub/irs-pdf/p1544.pdf.
[9] Reg. sec. 1.6050I-1(e)(1).
[10] Reg. sec. 1.6050I-1(f).
[11] Reg. sec. 1.6050I-1(e)(3)(iii).
[12] See Megan L. Brackney, "When Money Costs Too Much," CPA Journal, July 2020.
[13] See IRS Publication 1554, at page 4.
[14] 26 U.S.C. § 7203 ("Willful failure to file return, supply information, or pay tax").
[15] Id. Filing a Form 8300 with information the filer "does not believe to be true and correct" is also a felony, 26 U.S.C. § 7206(1).

Only recipients are required to file reports, but the law also creates new crimes for any person who sends digital assets to others. Encouraging recipients not to file Form 8300, giving false personal information to the recipient, and "structuring" transactions to avoid the reporting threshold are also felonies.[16] More importantly, of course, the burdens of the statute do fall directly on the sender, who cannot (lawfully) send digital assets without handing over truthful personal information to the recipient.

Triggering the reporting requirement: five elements

So: What constitutes a receipt, in the course of your regular gain-seeking activities, of digital assets exceeding the legal threshold, such that a failure to report it will result in fines or prison?

1. "Receipt."

With bulky, physical cash, a typical "receipt" is relatively clear: it happens when banknotes come into your physical custody. With digital assets, presumably a receipt occurs whenever such assets appear in an account, or at an address, for which you control access, for example by holding the private keys.

Importantly, a "receipt" has nothing to do with taxable income, or revenue, or even whether you have a right to keep the digital asset: any "receipt" can trigger the statute and start the 15-day clock to report the transaction. Reporting requirements under the tax code generally focus on collecting tax information, but section 6050I is different. This statute's concern is simply receipts, without regard to the tax consequences of the transaction being reported.

How long you hold the digital assets is irrelevant. To illustrate, the shopkeeper who accepts $15,000 in physical cash — whether it is a loan, repayment of a loan, or sales revenue is immaterial — might immediately walk it to a bank to deposit it, but still must report the payer's personal information on Form 8300.

Receipts expressly include custodial "arrangements."[17] Receiving assets from A for the account of B triggers the requirement (as might B's eventual receipt from you.) If you receive digital assets and someone else also controls access, presumably both you and the custodian have had a "receipt."

[16] Section 6050I(f)(1) and 26 U.S.C. § 7203.
[17] Reg. sec. 1.6050I-1(c)(7).

2. "Trade or business" requirement.

Typically, of course, money is received in the course of someone's trade or business, but some receipts aren't reached by the statute. "Trade or business" is a term of art that appears throughout the tax code but is not defined in any statute. Entire legal treatises are devoted to parsing how the courts have, and might, apply the term to different factual situations. If you're doing an activity for financial gain, and you do it regularly and continuously, it may be a trade or business.

This is important because, with odd exceptions like dealers in rare banknotes, physical currency is not itself the subject of "trade or business" activity — it's just one (increasingly rare) tool for carrying out large transactions. In contrast, financial activities in general — and therefore many "activities" made possible with digital assets — often are "trade or business" activities.

So, it's a mistake to think the statute applies merely to those who sell things and accept a certain form of value — cash, or digital assets — as payment for those goods or services. That may cover most cases involving physical cash, but doesn't begin to scratch the surface for digital assets.

This means that digital assets will trigger the statute in ways that have no analogy in physical cash, because simply using digital assets can meet the "trade or business" requirement. Trading, lending, and other activity typically connected to digital assets can be "trade or business" activity. Those who help maintain cryptocurrency networks by mining or staking, for example, could qualify. Plus, as we'll see, digital assets aren't limited to "virtual currencies" that substitute for dollars. If your gain-seeking activity involves any such form of digital value, your receipts might trigger the statute.

Once you're engaged in such activity, receipts "in the course of" that activity can trigger the statute even if a similar receipt might not trigger the statute for another person. To use an old-world example, the sale of your used car (assuming it's clear you bought it for personal use, not for financial gain) doesn't meet the "trade or business" test. So, if the buyer pays in cash, you don't need to report him to the government. But if you're a plumber and sell your used work van, you need to file Form 8300.

In many cases, trade or business status is something resisted by the government (and sought after by taxpayers) due to the tax breaks involved. Here, the government's incentives for enforcement run the other way. From here on out, we'll assume that the "received in the course of trade or business" requirement is satisfied. If in doubt, consult with a lawyer — and quickly, before you miss the 15-day reporting deadline.

3. "Digital Asset."

"Digital assets" are defined so broadly that it is difficult to state with certainty what forms of "value" are indisputably beyond the definition's reach:[18]

> Except as otherwise provided by the Secretary, the term 'digital asset' means any digital representation of value which is recorded on a cryptographically secured distributed ledger or any similar technology as specified by the Secretary.

As a starting point, if it's valuable and exists on a distributed ledger, you can be pretty sure your receipt of it can trigger the statute. This includes bitcoins and other familiar cryptocurrency or "virtual currency" tokens defined in large part for their value, but that's the easy part.

Non-fungible tokens are useful for understanding the breadth of the reporting requirement because they are clearly digital assets although they're not typically what people think of as a substitute for currency (i.e., as a medium of exchange). Remember, the trigger for the statute is simply a "receipt," and the surveillance and reporting requirement falls on the recipient. So, simply "receiving" NFTs will trigger the statute. If you buy NFTs, you must verify and report the seller's personal information.

The reporting obligation can fall on both parties. This could happen under the old rules, but with physical cash it is an odd situation. To avoid any doubt, existing regulations provide that "an exchange of cash for other cash" is a reportable transaction.[19] So, if you trade 15,000 one-dollar bills for 150 one hundred-dollar bills, each party to that exchange must report the other on Form 8300 because each party received cash.

What's odd with physical cash is not odd with digital assets. An exchange of fungible digital assets for non-fungible ones — e.g., buying NFTs with cryptocurrency — results in a "receipt" by both parties, requiring each party to report the other. More generally, any exchange of digital assets for other digital assets can qualify.

4. $10,000 reporting threshold.

On its face, the value threshold for triggering the statute seems straightforward: $10,000. But given the potential breadth of the operative legal term, "transaction," the threshold is anything but clear when applied to digital assets. The threshold's relative clarity applied to physical cash arises not from legal precision but from the inherent physical limitations of handing over pieces

[18] H.R. 3684 (2021) section 80603(b)(1)(B), to be codified at 26 U.S.C. § 6045(g)(3).
[19] Reg. sec. 1.6050I-1(c)(7).

of paper to another person. We simply don't make hundreds or thousands of cash payments. It's not convenient, and that inconvenience is one reason why banks and now digital assets exist.

The $10,000 threshold applied to physical cash began fifty years ago with the Bank Secrecy Act's requirement that banks report large currency transactions. As a practical matter, inflation continues to shrink the threshold: $10,000 in 1970 equates to about $65,000 in today's dollars.

Leaving aside how low the limit is and how rapidly it will be eaten away by inflation, the threshold is more complicated than it might seem. And if you want to limit your exposure to the law by keeping your payments and receipts small, you might want to discuss your strategy with a lawyer. As with other reporting statutes, "structuring" transactions — or assisting with structuring, or attempting to structure — is a felony.[20] "Structuring means breaking up a large cash transaction into small cash transactions."[21]

The key term is "transaction," which means "the underlying event precipitating the payer's transfer of cash to the recipient."[22] Even the simplest use of digital asset technology raises difficult questions for compliance. As noted, the statute is triggered by the receipt of digital assets, regardless of the source. But the statute itself mandates that the required report must include "the name, address, and TIN of the person from whom the cash was received."[23]

Physical cash receipts typically require human hands and the exercise of our opposable thumbs; the law assumes that each payer is a natural person whose ID can be inspected. No such limiting factor exists with digital transactions. Digital value can be moved instantly, over any distance, and at great frequency, all without requiring human action, much less a specific human's action that is visible to and verifiable by the recipient. And unlike cash, a receipt of digital assets does not require acceptance, as a recipient address on most public blockchain networks generally cannot reject a transfer of digital assets.

This combination of the statute and technology means that potentially any digital asset receipt, regardless of dollar value, may turn out to be a reportable transaction. The statute itself requires reporting if you "receive[] more than $10,000 in cash in 1 transaction (or 2 or more related transactions)."[24] Regulations provide more detail: all receipts from the same payer in any 24-

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[20] Section 6050I(f)(1)(C) & (2); section 7203.
[21] IRS Publication 1544, at page 4.
[22] Reg. sec. 1.6050I-1(c)(7).
[23] Section 6050I(b)(2)(A).
[24] Section 6050I(a)(2).

hour period qualify automatically as "related transactions." And, receipts will be added up, over as long as one year, if they result from related transactions if the recipient "knows or has reason to know that each transaction is one of a series of connected transactions."[25] Your actual knowledge is not required.

To take a simple example, payments on a loan are related transactions. Suppose you make a loan of digital assets. (Note first that, if the loan is received by "any person," that person is obliged to verify and report your information on a Form 8300.) If the outstanding loan is reduced in periodic payments, each time a payment is received that pushes the total received over $10,000, a new Form 8300 must be filed.[26]

Payments resulting from anything that might be characterized as a single (or multiple but related) "underlying event" must therefore be tracked by the recipient and reported within 15 days of triggering the threshold. High-stakes valuation questions arise. Exactly how much, in U.S. dollars, are your non-fungible tokens worth — or even your bitcoins — on each date they are received?

5. Exceptions.

If you've received digital assets triggering the $10,000 threshold in the course of your gain-seeking activity, you must report it or face fines or prison — unless one of three exceptions applies.

The details of these exceptions are tedious and require some understanding of how this tax code provision interacts with the regulation of financial institutions under the Bank Secrecy Act. But these details are important, in order to understand how the proposed law will discourage the use and development of new technologies and at the same time entrench existing financial intermediaries like banks.

Exception #1: Receipts by financial institutions

First, you are exempt from the section 6050I reporting requirement if you, the recipient of the digital assets, are a bank or other kind of regulated financial institution such as a money transmitter or other type of "money services business."[27] The statute grants this blanket

[25] Reg. sec. 1.6050I-1(c)(7)(ii).
[26] Reg. sec. 1.6050I-1(b)(4).
[27] Section 6050I(c)(1)(B); Reg. sec. 1.6050I-1(d)(1).

exemption because financial institutions already have to report large cash transactions: when a bank receives someone's $10,001 cash deposit, they promptly report the details to the government in a Currency Transaction Report, as required under Bank Secrecy Act regulations.

Notably, however, those BSA regulations do not (yet) include "digital assets" in the definition of "currency" requiring reporting. The bizarre consequence of Congress's rush to revise section 6050I without public debate is that all Americans except financial institutions will be required to report digital asset receipts.

This fact alone is grounds to strike the section 6050I amendment from the infrastructure bill. In December 2020, the Treasury Department proposed new digital asset regulations for financial institutions which included a reporting obligation similar to that created by the section 6050I amendment.[28] Announced over Christmas with a truncated 15-day window for public comment, the proposed regulations were "midnight rulemaking," a term used for rules introduced in the final days of a presidential administration. The proposal nonetheless drew wide public criticism both for its substance and its rushed implementation. After receiving thousands of public comments, the Treasury Department reopened and extended the comment period.[29]

The parallel should be clear: what the Treasury Department was prevented from imposing on financial institutions under a shortened window for public debate should not be imposed by Congress on all Americans without any debate at all.

Exception #2: Receipts already reported under the Bank Secrecy Act

Second, a receipt of digital assets need not be reported if the Treasury Department has published a regulation saying you don't need to report it. The Treasury Department can do this if the transaction must be reported by someone else, so that requiring you to report it would be redundant.[30] However, that "someone else" can only be a financial institution, and the Treasury Department can only waive the requirement if that financial institution is already required to file a similar report under a separate section of the federal statutes. This is the reason why, if you receive $15,000 in cash from a bank, you don't need to file a Form 8300 with the bank teller's Social Security number as well as detailed information about the bank (or whatever entity is the source of that cash). The bank must file a Currency Transaction Report (CTR), so the Treasury

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[28] FinCEN, "Requirements for Certain Transactions Involving Convertible Virtual Currency or Digital Assets," notice of proposed rulemaking, 85 F.R. 83840 (Dec. 23, 2020).
[29] See FinCEN, Document ID FINCEN-2020-0020-7420, explaining extensions of comment period, www.regulations.gov/document/FINCEN-2020-0020-7420.
[30] Section 6050I(c)(1)(A); see 31 CFR § 1010.330(a)(1)(i).

Department published a regulation saying you don't need to file Form 8300.

This second exception carries another bizarre consequence, which again highlights the rush to amend section 6050I without public debate and while logically prior agency regulations are not yet in place. Suppose that the amended section 6050I takes effect without parallel BSA regulations in place. Under this scenario, if you receive $10,001 in digital assets and the sender is a financial institution — say, by purchasing them from a licensed cryptocurrency exchange, or receiving them from a bank — you would need to report that transaction. The Treasury Department lacks the authority to exempt your receipt from the Form 8300 requirement, because the statute only allows the Secretary of the Treasury to announce an exemption if there is a redundant reporting obligation already in place.[31]

Exception #3: Foreign transactions

The third exception to the 6050I reporting requirement is if the entire transaction takes place outside the United States.[32] But the Treasury Department has discretion to limit that exception.[33] This discretion is important to mention, if not fully explore here, in light of issues that are certain to arise due to the fundamental differences between physical cash and digital assets. Section 6050I presumes the payer and the recipient are in the same place. Carrying or shipping physical cash into or out of the United States requires reporting under a separate statute,[34] inviting further questions on how digital assets will be treated under section 6050I and other laws.

Section 6050I entrenches banks and other financial intermediaries

This brief overview of the Bank Secrecy Act exemptions to reporting rules under the tax code should help clarify the secondary consequences of the section 6050I amendment. The primary consequences, of course, arise directly from the intrusive and high-stakes surveillance and reporting regime the statute creates. It directly affects "any person" who triggers the statute, and it also burdens those who simply wish to use (i.e., send) digital assets but must share their personal information as a condition of doing so.[35]

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[31] Section 6050(c)(1)(A).
[32] Section 6050I(c)(2).
[33] Transactions wholly outside the United States are exempt "[e]xcept to the extent provided in regulations prescribed by the Secretary." Id.
[34] 31 U.S.C. § 5316.
[35] This report does not seek to address the myriad issues – such as data security risks – that arise from broadly imposing an obligation on natural persons and small businesses to collect, report and store personally identifiable information.

The secondary consequences flow from the entrenchment of existing financial intermediaries that the statute necessarily encourages. First, the amendment stigmatizes digital assets, just as the original statute stigmatized cash. Let's be honest: these days, paying with bricks of greenbacks surely is a reasonably good indicator of criminal activity. Who else in their right mind would endure the hassle and legal risk of toting the stuff around? With digital assets as with physical cash, why risk fines or worse by assuming onerous reporting obligations or needing to share your Social Security number for the privilege of using it? One option is clear: abandon this new technology like we've already abandoned cash and stick to the traditional banking system.

The second option retains the use of digital assets, but at quite a cost, and this option also entrenches the role of regulated financial intermediaries. Financial institutions keep your personal information on file and legal compliance is a part of their business. And once the patchwork of tax code and Bank Secrecy Act regulations are in place, they'll be happy — or at least obliged — to report financial dealings so that you and I don't have to fill out Form 8300. As a user of digital assets, why do business with any counterparty that isn't a regulated financial institution? Why not route all digital asset transactions through a bank or other financial institution, if only to save time and reduce your risk of fines or prison?

Congress should reject the section 6050I proposal and allow for fair and public debate

Over the centuries, banks have evolved and innovated to serve humans' various interests in trade and commerce. One of banking's remarkable achievements is facilitating payments between persons without face-to-face meetings and bulky physical objects. A mere fifty years ago, the government seized on this feature of banking to serve its own goals of tax collection and other crime fighting. It began relatively unobtrusively, by requiring banks to report very large cash transactions. Since then, both the reporting requirements and the list of "financial institutions" bound by them have steadily increased, while inflation has silently chipped away at the reporting thresholds themselves.

But the quiet insertion of the section 6050I amendment in a trillion-dollar spending bill is more than just another step down an already slippery slope. It aims to freeze the evolution of financial technology around existing institutions that serve the government's interests in surveillance, with no investigation of the law's costs and consequences and virtually no elaboration of its benefits other than the assertion of increased tax revenues — an assertion made to justify the law's inclusion in a spending bill. Those costs and consequences include the direct costs to human dignity, autonomy, and freedom to associate and transact. They also include the harder to quantify effects on innovation and American competitiveness.

Those who understand and value this new technology must do more to explain its attraction and potential, as well as catalog the direct and potential future consequences of extending Form 8300 reporting to digital asset receipts. This survey of section 6050I is intended to encourage that project. But to start, it is enough to note that some people wish to use this technology and that the proposal would make using it more difficult. The initial burden lies with those who would create new criminal prohibitions. This is not just a legalistic point, though it's that too. It's common sense based on the presumption of liberty and the duty of lawmakers to justify new laws.

Rejecting the section 6050I proposal will not end this debate, just force it into the open. The challenges posed by digital assets are real and inevitable. For many, the most salient feature of distributed ledger technology is its disintermediation: neither a bank nor an in-person meeting is required to convey something of value to another person. But the broader technology of digital assets also contains tools that, in combination with law, can centralize authority and control over people and their transactions to an extent previously unimaginable. This concern is not just hypothetical, as shown by China's ongoing experiment with a centralized and permissioned digital currency. The United States must chart its own course to address the promise and perils of this new technology, and that process must be transparent and respectful of Americans' rights and interests. Congress's next step should be to reject the proposed amendment to section 6050I.