

## **What's New in Lummis-Gillibrand 2023**

1. **Leading with Customer Protection**
  - The customer protection title of the bill is nearly double the size of the 2022 version, with added requirements on enforcement, mandatory proof of reserves, advertising, plain language customer agreements and a role for the Federal Trade Commission.
2. **Mandatory Requirements**
  - Lummis-Gillibrand requires all crypto asset exchanges to register with the Commodity Futures Trading Commission (CFTC)—except truly decentralized protocols—and requires all payment stablecoins to be issued by a bank or credit union.
  - Classifies algorithmic stablecoins as hybrid instruments under CFTC jurisdiction.
3. **SEC Feedback**
  - The bill includes Securities and Exchange Commission (SEC) feedback relating to the definition of “crypto asset,” investment contracts and anti-fraud provisions.
4. **Preventing Illicit Finance**
  - New penalties for willfully violating money laundering laws, examination standards, crypto asset ATMs, mixers and tumblers and an interagency working group on crypto asset illicit finance issues are emphasized by this year’s version.
  - Three of the provisions in Lummis-Gillibrand were originally proposed by Senators Warren and Marshall in their *Digital Asset Anti-Money Laundering Act* in 2022.
5. **Decentralized Exchanges**
  - The bill creates a technically sound definition of “decentralized crypto asset exchange” and creates common sense risk management standards for centralized actors, like exchanges and other financial institutions, to interact with these protocols.
6. **Ensuring FTX Never Happens Again**
  - Lummis-Gillibrand is the strongest option to prevent another FTX.
  - The bill imposes mandatory segregation and third-party custody requirements (e.g., a bank, trust company or futures commission merchant).
  - The bill gives the CFTC the legal authority to supervise affiliates, holding companies and other potential conflicts of interest, and requires change of control applications.
  - Lummis-Gillibrand limits crypto asset lending, including by banning rehypothecation.
7. **Customer Protection and Market Integrity Authority**
  - The bill creates a customer protection and market integrity authority which must be jointly chartered by both the CFTC and SEC.
  - The authority will regulate, supervise and discipline crypto asset intermediaries and will be governed by a board of directors comprised by a majority of government officials and non-affiliated members of the public.
8. **Agency Funding and Revenue**
  - Lummis-Gillibrand appropriates \$1.4 billion over five years to Treasury, CFTC, SEC, White House and other agencies to implement sound crypto asset policy.
  - The appropriations are paid for by making crypto assets subject to the wash sale rule, and by requiring intermediaries to mark their assets to market for tax purposes.