

Seven crypto policies the federal banking agencies are likely to revisit

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Changes in leadership at the federal banking agencies are likely to result in significant changes to the regulatory policies regulating crypto.

The new administration is expected to shift to a more accommodating stance toward crypto. We listed our seven Day One suggestions for the next SEC chair in a recent [client update](#). Below we discuss seven crypto policies the federal banking agencies are likely to revisit.

- 1. Risk-based consideration of how banks can interact with public blockchains.** The federal banking agencies have said on multiple occasions (e.g., [here](#), [here](#) and [here](#)) that issuing or holding as principal crypto assets that are issued, stored, or transferred on an open, public and/or decentralized network is highly likely to be inconsistent with safe and sound banking practices. This approach has resulted in a de-facto ban on banks and bank holding companies (BHCs) interacting with public blockchains, such as the Bitcoin, Ethereum and Solana networks, and crypto assets on them. This raises the question, for example, whether a bank may issue a stablecoin on such a network. We expect the agencies to consider how the risks posed by public blockchains may be mitigated and whether the current policy stance should be modified.
- 2. Reassessment of the five activities subject to the interagency policy sprint.** In 2021, the agencies announced an [interagency policy sprint](#) that promised to provide greater clarity on the legal permissibility of five crypto asset-related activities:
 - crypto asset custody;
 - facilitation of customer purchases and sales of crypto assets;
 - loans collateralized by crypto assets;
 - activities involving payments, including stablecoins; and
 - holding crypto assets as principal

But other than crypto asset custody, the subsequent guidance — combined with the agencies' stance on public blockchains, described above — set such a high bar that banks have effectively been barred from engaging in most of these activities. We expect the agencies to reconsider this approach, for example by (i) issuing new guidance on how banks may facilitate customer purchases and sales of crypto assets under finder authority, (ii) evaluating possible authorities for holding crypto assets as principal and (iii) providing more guidance on expectations for crypto asset custody.

- 3. End of “Operation Choke Point 2.0.”** The agencies' approach toward crypto has been dubbed by many as [Operation Choke Point 2.0](#) — in reference to the Obama Administration's reported efforts to target politically-disfavored businesses' access to banking services. Many crypto firms have reported losing access to traditional banking services, and [materials](#) revealed by a recent FOIA request indicate that banks were told to pause or refrain from providing their own crypto-related services. We expect the agencies to revisit these practices, similar to how the first Trump Administration [announced](#) an end to the original Operation Choke Point.

4. **Greater embrace of tokenization of traditional financial assets.** The positions outlined above have combined to result in a very conservative approach toward the tokenization of traditional financial assets. As [explained](#) by the Bank for International Settlements, tokenization refers to the process of storing an asset on a common programmable platform that combines a core layer, which contains information about the tokenized asset and its ownership, with a service layer embedding the platform's rules and governance. While tokenization efforts have been gradually picking up in the United States outside of the banking sector, we expect bank-led tokenization efforts to accelerate — particularly in light of the more favorable [Basel capital treatment](#) they would receive compared to crypto assets.
5. **More crypto-focused bank charters — and potentially new charter types.** The Office of the Comptroller of the Currency (OCC) under the first Trump Administration granted conditional (and in one case, preliminary conditional) approval for three crypto asset firms to form national trust banks. Two of those firms ultimately failed to secure final approval from the OCC under the Biden Administration, and no new crypto asset firm has obtained a national bank charter. Separately, the Federal Reserve under the Biden Administration rejected a Wyoming-based special purpose depository institution's application to become a member of the Federal Reserve System and obtain a master account with a Federal Reserve Bank. We expect the agencies to reconsider the policy stance towards these types of applications in the future. Moreover, particularly in light of [growing calls](#) for a federal payments charter on both sides of the aisle, the agencies may explore new charter types, including for payment stablecoins, similar to the OCC's prior [efforts](#) to establish a fintech charter.
6. **Consideration of whether crypto asset-related activities are “financial in nature.”** BHCs are only permitted to engage in activities specifically authorized by law or regulation (e.g., those deemed “closely related to banking activities”). BHCs that qualify for and elect to become financial holding companies may engage in a broader range of activities (e.g., those deemed “financial in nature”). Despite the view of many financial regulators that various crypto activities are subject to their jurisdiction, the Federal Reserve has not addressed the extent to which the activities deemed “financial in nature” under its regulations include any crypto activities. The Federal Reserve may evaluate whether crypto asset-related activities, such as those subject to the interagency sprint discussed in point 2 above, should be regarded as financial in nature, whether as part of existing permissible financial activities or as newly approved financial activities. Doing so would have important consequences for the sector, for example by enabling crypto firms to acquire or be acquired by financial holding companies and to facilitate market making in crypto assets by affiliates of a financial holding company. It could also have knock-on effects for Federal Reserve supervision under Titles I and VIII of the Dodd-Frank Act.
7. **More investments by banking organizations in crypto companies.** Similar to the activities limits discussed in point 6 above, federal banking law restricts the types and amounts of investments banks and BHCs are permitted to make. The federal banking agencies have not clarified the scope of crypto asset investments BHCs and banks are permitted to make — or, even more generally, whether for purposes of federal banking law a particular crypto asset is a security, commodity, deposit or something else, and the capital and prudential treatment of such assets. We expect the federal banking agencies — and other agencies, such as the SEC and CFTC — to consider how to provide greater clarity on these issues, which in turn would naturally inform the scope of permissible investments by banking organizations in crypto assets and in companies that provide crypto asset services and products.

Resources

Crypto Regulation Hub

Visit our Crypto Regulation Hub for links to congressional proposals related to the regulation of crypto assets and other helpful materials.

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