PATRICK McHENRY, NC
CHAIRMAN

MAXINE WATERS, CA
RANKING MEMBER

United States House of Representatives
One Hundred Eighteenth Congress
Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515

April 25, 2023

The Honorable Martin J. Gruenberg
Chairman
Federal Deposit Insurance Corporation
1700 G Street, NW
Washington, D.C. 20552

Dear Chairman Gruenberg:

In 2012, the Obama Administration began coordinating to curtail areas of commerce it deemed objectionable. The Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), and the Board of Governors of the Federal Reserve System (Fed) worked together to covertly coerce and pressure financial institutions they supervised to cease banking relationships with customers they deemed risky. The scheme relied on the concept of "reputational risk," on which banks would rely on guidance offered by regulators to deny services to customers or even terminate existing relationships. These actions affected gun dealers, pawn shops, tobacco stores, and payday lenders. Generally, most banks provided no explanation when closing the accounts or refusing to open new accounts. Only after Congress intervened did regulators stop targeting politically disfavored industries.

Today, we are seeing the resurgence of coordinated action by the federal prudential regulators to suppress innovation in the United States. There is no clearer example than in the digital asset ecosystem. Since 2021, the federal prudential regulators appear to have taken steps to discourage banks from providing services to digital asset firms and related entities. Soon after taking office, the Biden Administration stopped a rule designed to specifically prevent the improper activity from happening again.[1] On November 18, 2021, the OCC issued guidance encouraging banks to only provide services related to digital assets if they can assure regulators in writing that they can provide the services in a "safe and sound manner" and the regulators provide a written non-objection.[2]

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[1] News Release, Office of the Comptroller of the Currency, *OCC Puts Hold on Fair Access Rule* (Jan. 28, 2021), www.occ.gov/news-issuances/news-releases/2021/nr-occ-2021-14.html.

[2] Interpretive Letter #1179, Office of the Comptroller of the Currency (Nov. 18, 2021), www.occ.gov/topics/charters-and-licensing/interpretations-and-actions/2021/int1179.pdf#:~:text=On%20July%2022%2C%202020%2C%20the%20OCC%20issued%20Interpretive,banks%20are%20authorized%20to%20perform%20via%20electronic%20means.

Later, in April 2022, the FDIC similarly directed all FDIC-supervised institutions to provide the FDIC in writing their intent to engage in or with digital asset-related activities.[3] The FDIC expressed its guidance as necessary to guard against risk. It suggested that "crypto-related activities" could "pose significant safety and soundness risks, as well as financial stability and consumer protection concerns."[4] Finally, in January of this year, the Fed, FDIC, and OCC, issued a joint statement warning against providing banking services to "crypto-asset sector participants."[5] Given these actions by the federal prudential regulators, it is not hard to imagine why a bank would be hesitant to offer banking products and services to digital asset firms.

Digital asset activity is not inherently risky. For example, the collapse of FTX was not caused by the riskiness of digital assets and related activities, but by run-of-the-mill fraud. Similarly, the collapse of Silicon Valley Bank and Signature Bank were not caused by digital asset-related customers. The reaction by the federal prudential regulators to fraud and mismanagement should not lead to de-risking of the digital asset industry. Taken together, the actions of the Fed, FDIC, and OCC do not appear to be in reaction to recent events or the result of a sudden desire to protect financial institutions from risky behavior, but instead suggest a coordinated strategy to de-bank the digital asset ecosystem in the United States. Please provide:

1. All non-public records and communications, between and among the employees of FDIC and supervised financial institutions, related to compliance with Interpretive Letter #1179;

2. All non-public records and communications, between and among the employees of FDIC and supervised financial institutions, related to compliance with *Joint Statement on Crypto-Asset Risks to Banking Organizations* dated January 3, 2023;

3. All non-public records and communications, between and among the employees of FDIC and state regulatory agencies, related to compliance with Interpretive Letter #1179; and

4. All non-public records and communications, between and among the employees of FDIC and state regulatory agencies, related to compliance with *Joint Statement on Crypto-Asset Risks to Banking Organizations* dated January 3, 2023.

Please provide this material as soon as possible, but no later than 5:00 p.m. on May 9, 2023. The Committee on Financial Services has jurisdiction to oversee the activities of the Federal Deposit Insurance Corporation pursuant to Rule X of the Rules of the House of Representatives. If you have any questions, please contact Kyle Smithwick of the Committee on

[3] Financial Institution Letter, Federal Deposit Insurance Corporation, *Notification of Engaging in Crypto-Related Activities* (Apr. 7, 2022), www.fdic.gov/news/financial-institution-letters/2022/fil22016.html#letter.
[4] *Id.*
[5] Joint Statement, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, *Joint Statement on Crypto-Asset Risks to Banking Organizations* (Jan. 3, 2023), www.fdic.gov/news/press-releases/2023/pr23002a.pdf; *see also* Financial Institution Letter, Federal Deposit Insurance Corporation, Joint Statement on Liquidity Risks to Banking Organizations Resulting from Crypto-Asset Market Vulnerabilities (Feb. 23, 2023), www.fdic.gov/news/financial-institution-letters/2023/fil23008.html.

Financial Services Majority staff at kyle.smithwick@mail.house.gov. Thank you for your attention to this important matter.

Sincerely,

Patrick McHenry
Chairman

Bill Huizenga
Chairman
Subcommittee on Oversight and Investigations

French Hill
Chairman
Subcommittee on Digital Assets, Financial Technology & Inclusion

cc: The Honorable Maxine Waters, Ranking Member
The Honorable Al Green, Ranking Member, Subcommittee on Oversight and Investigations
The Honorable Stephen F. Lynch, Ranking Member, Subcommittee on Digital Assets, Financial Technology & Inclusion