



UNITED STATES HOUSE COMMITTEE ON
FINANCIAL SERVICES
CHAIRMAN FRENCH HILL

DECEMBER
2025

OPERATION CHOKE POINT 2.0: BIDEN'S DEBANKING OF DIGITAL ASSETS

Final Staff Report



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EXECUTIVE SUMMARY

During the 118th Congress, the United States House Committee on Financial Services (Committee) Republicans initiated an investigation into ongoing efforts by the Biden Administration to deprive digital asset businesses and associated individuals of access to financial services, a practice known as debanking.¹ Committee Republicans continued their investigation during the 119th Congress.² In total, Committee Republicans have sent more than 20 letters, reviewed thousands of pages of documents, and held two hearings to uncover the depths of the Biden Administration's efforts. Through this work, Committee Republicans identified a pattern of Biden Administration prudential regulators abusing their regulatory, supervisory, and enforcement authorities to push entities involved in the digital asset ecosystem out of the U.S. financial system.

The Biden Administration sought to make it nearly impossible to engage in digital asset-related activities. To do so, it utilized a regulatory regime that provided too little certainty to financial institutions and gave too much discretion to the regulators that oversee them. Regulators used this discretion to exert substantial pressure on financial institutions—often through informal guidance, such as interagency statements or interpretive letters—to discourage these entities from engaging in digital asset-related activities. In addition to informal guidance, regulators weaponized enforcement actions to achieve an anti-digital asset agenda.

Lack of regulatory clarity, uncertain access to financial services, and rampant, ex-statutory enforcement activity against the digital asset ecosystem created a broad chilling effect across the banking industry that resulted in the debanking of at least 30 entities and individuals engaging in digital asset-related activities.³ As a result, the Biden Administration stifled blockchain innovation, strained financial institutions, and denied Americans and American businesses access to the U.S. banking system.⁴ Digital asset founders and entrepreneurs were forced to divert focus from operations and the development of new products and services.⁵

The practice of regulators tamping down on industries disfavored by an administration is sadly not a new occurrence. During the Obama Administration, regulators sought to deprive certain businesses, such as those engaged in firearm and ammunition sales, of access to financial institutions in a program called “Operation Choke Point” (Operation Choke Point 1.0).⁶ While President Trump ended this initiative during his first term, the Biden Administration reinvented

¹ *Coincidence or Coordinated? The Administration's Attack on the Digital Asset Ecosystem: Hearing Before the Subcomm. on Digital Assets, Financial Technology, and Inclusion of the H. Comm. of Financial Serv.*, 118th Cong. (2023) [hereinafter “Mar. 9, 2023 Hearing”].

² *Operation Choke Point 2.0: The Biden Administration's Efforts to Put Crypto in the Crosshairs: Hearing before the Subcomm. on Oversight & Investigations of the H. Comm. on Financial Serv.*, 119th Cong. (2025) [hereinafter “Oversight Hearing”].

³ See generally PowerfulJRE, *Joe Rogan Experience #2234 – Marc Andreessen*, YOUTUBE, Nov. 26, 2024, <https://www.youtube.com/watch?v=ye8MOfxD5nU> [hereinafter “Debanking Podcast”].

⁴ See Oversight Hearing, *supra* note 2.

⁵ See *id.*

⁶ Frank Keating, *Operation Choke Point reveals true injustices of Obama's Justice Department*, THE HILL, Nov. 7, 2018, <https://thehill.com/blogs/congress-blog/politics/415478-operation-choke-point-reveals-true-injustices-of-obamas-justice/> [hereinafter “Keating: Operation Choke Point reveals true injustices”].

the Obama Administration’s playbook to target digital asset businesses—an effort now colloquially called “Operation Choke Point 2.0.”⁷ Since his inauguration in 2025, President Trump has worked to reverse the Biden Administration’s debanking practices and to revive digital asset innovation in the United States. Committee Republicans commend the Trump Administration’s swift actions to end the Biden Administration’s unfair initiatives⁸ and continue to pursue legislative solutions to create a clear, functional framework for digital assets.

While digital assets were the target of Operation Choke Point 2.0, “any legal American industry could be next if regulators continue to use banking services as a political weapon.”⁹ Any business engaging in legitimate, legal business activity should not experience account closure driven by the political preferences of an individual administration or regulator. It is imperative that the patterns of prior administrations are identified and their playbooks understood to help ensure that future administrations cannot choke off businesses and industries simply because the administrations disagree with or do not fully understand them. Committee Republicans aim to prevent an “Operation Choke Point 3.0” and ensure that lawful American businesses are not targeted and denied access to financial services by federal regulators in the future.

KEY FINDINGS

- The Biden Administration failed to establish a clear, functional digital asset regulatory regime, which allowed certain federal financial regulators to stifle digital asset projects and curtail activity by firms. The financial regulators exerted informal pressure and issued guidance documents to discourage financial institutions from providing services to digital asset firms.
- The Biden Administration justified its actions by characterizing the digital asset ecosystem as an industry prone to market volatility and risk.¹⁰ Regulators often highlighted the risks posed by digital assets, specifically violations of anti-money laundering (AML) and countering the financing of terrorism (CFT) standards.¹¹ However, the Biden Administration frequently

⁷ Oversight Hearing, *supra* note 2.

⁸ See, e.g., Press Release, The White House, Fact Sheet: President Donald J. Trump Guarantees Fair Banking for All Americans (Aug. 7, 2025), <https://www.whitehouse.gov/fact-sheets/2025/08/fact-sheet-president-donald-j-trump-guarantees-fair-banking-for-all-americans/>.

⁹ Oversight Hearing, *supra* note 2, at 11 (testimony of Mr. Paul Grewal, Chief Legal Officer, Coinbase).

¹⁰ See FED. DEPOSIT INSURANCE CORP., RISK REVIEW (2023), at 1.

¹¹ Wally Adeyemo, Deputy Secretary, U.S. Dep’t of the Treasury, Testimony before the S. Comm. on Banking, Housing, and Urban Affairs (Aug. 9, 2024) (as prepared for delivery), (“The DPRK, which through numerous complex state-sponsored cyber heists, is able to acquire, launder, and store illicit revenue. It relies on anonymity-enhancing technologies like mixers to hide the sources of its funds. And it leverages over-the-counter digital assets traders to acquire fiat currency. In addition, we’ve seen Russia increasingly turning to alternative payment mechanisms—including the stablecoin tether—to try to circumvent our sanctions and continue to finance its war machine.”); see also U.S. DEP’T OF THE TREASURY, ACTION PLAN TO ADDRESS ILLICIT FINANCING RISKS OF DIGITAL ASSETS, at 4 (2022), <https://home.treasury.gov/system/files/136/Digital-Asset-Action-Plan.pdf> [hereinafter “Treasury Action Plan”] (“Virtual assets can also be sent directly to ISIS supporters located in northern Syria, often to Idlib, or indirectly via Turkey, where ISIS is able to access them through virtual asset trading platforms. Additionally, some al Qaeda facilitators are exploring raising and moving funds in virtual assets. In particular, al Qaeda and affiliated groups have used social media platforms to solicit virtual asset donations as well as virtual asset vouchers to transfer money to members in Syria.”).

undermined its argument by stating that the “use of virtual assets for money laundering remains far below the scale of fiat currency and more traditional assets by volume and value of transactions.”¹² In other words, the Biden Administration itself recognized that the use of digital assets to launder proceeds is less common than traditional money, and the use of digital assets to finance terrorism is “limited in scale.”¹³

- Biden Administration regulators took various actions to dissuade financial institutions from providing services to digital asset firms. Of particular concern, many of these actions were taken at a time when Congress was working to create clear regulatory guidance for digital assets.
- ❖ ***The Board of Governors of the Federal Reserve System (Federal Reserve or the Fed).*** The Fed Vice Chair for Supervision discouraged banks from engaging in digital asset-related activities through policy statements, supervision and regulation letters,¹⁴ and the creation of a Novel Activities Supervision Program.¹⁵ The Novel Activities Supervision Program increased the supervision of “novel activities,” including digital asset-related activities, conducted by supervised banking organizations.¹⁶
- ❖ ***The Federal Deposit Insurance Corporation (FDIC or Corporation).*** The FDIC sent “pause” letters to financial institutions effectively encouraging them to stop efforts to engage in digital asset-related activities.¹⁷ This delay tactic—and the FDIC’s voluminous document requests—made it impracticable for financial institutions to pursue digital asset-related activities.
- ❖ ***The Office of the Comptroller of the Currency (OCC).*** The OCC has historically required regulated institutions to demonstrate they have adequate controls in place when engaging in a variety of activities. However, under the Biden Administration, the OCC layered on additional red tape for digital asset-related activities, for example by requiring each supervised institution to receive a non-objection letter before engaging in digital asset activities.¹⁸

¹² Treasury Action Plan, *supra* note 11; see also *Financial Crimes in Digital Assets and Cryptocurrencies*, KPMG, <https://kpmg.com/us/en/articles/2023/financial-crimes-in-digital-assets.html> (last visited Nov. 25, 2025).

¹³ Treasury Action Plan, *supra* note 11.

¹⁴ BD. OF GOVS. OF THE FED. RESERVE SYSTEM, SR 22-6 (2022), <https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20250424a3.pdf> [hereinafter “SR 22-6”].

¹⁵ BD. OF GOVS. OF THE FED. RESERVE SYSTEM, SR 23-8 (2023), <https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20250424a4.pdf> [hereinafter “SR 23-8”].

¹⁶ *Novel Activities Supervision Program*, BD. OF GOVS. OF THE FED. RESERVE SYSTEM, <https://www.federalreserve.gov/supervisionreg/novel-activities-supervision-program.htm> (last visited Nov. 25, 2025).

¹⁷ Press Release, Fed. Deposit Insurance Corp., FDIC Releases Documents Related to Supervision of Crypto-Related Activities (Feb. 5, 2025), <https://www.fdic.gov/news/press-releases/2025/fdic-releases-documents-related-supervision-crypto-related-activities/> [hereinafter “FDIC Pause Letters Press Release”]; FED. DEPOSIT INSURANCE CORP., FDIC RECORDS—CORRESPONDENCE RELATED TO CRYPTO-RELATED ACTIVITIES (2025) [hereinafter “FDIC Pause Letters”].

¹⁸ OFF. OF THE COMPTROLLER OF THE CURRENCY, INTERPRETIVE LETTER 1179 (2021), <https://www.occ.gov/topics/charters-and-licensing/interpretations-and-actions/2021/int1179.pdf> [hereinafter “IL 1179”].

- ❖ ***The Securities and Exchange Commission (SEC)***. The SEC refused to establish a clear, functional regulatory regime governing digital assets and used regulation by enforcement tactics to target digital asset firms. On several occasions, the SEC exceeded its statutory authority to curtail digital asset activity, which was contrary to the SEC’s mission to protect investors and promote capital formation.¹⁹
- The Trump Administration is charting a new path for digital assets by pursuing straightforward, commonsense regulation and ending debanking. Importantly, Trump Administration financial regulators have rescinded numerous Biden-era guidance, supervision and regulation letters, interpretive letters, and rules that fostered the debanking of the digital asset ecosystem by certain regulators.
- Congress is doing its duty to ensure that federal agencies encourage innovation and ensure lawful businesses can thrive in America by enacting payment stablecoin legislation, working toward comprehensive digital asset market structure reforms, and endeavoring to remove reputational risk from prudential regulators’ supervisory materials.

DEFINING DEBANKING

Debanking occurs when a bank closes an individual or corporate account because the account holder, or their actions, are subjectively determined to pose a financial, legal, or reputational risk to the financial institution.²⁰ The term “debanking” stems from derisking, which involves “terminating or restricting business relationships with clients or categories of clients to avoid, rather than manage, risk.”²¹ According to the Bank Policy Institute, “[w]hile the banking agencies have said ‘no customer type presents a single level of uniform risk,’ there is no safe harbor preventing de-risking.”²²

Importantly, there are instances where a bank may close an individual’s or entity’s account for legitimate reasons, including instances of suspicious activity.²³ The filing of a Suspicious Activity Report (SAR) is one of the primary reasons for account closure.²⁴ The other

¹⁹ *Mission*, SECURITIES & EXCHANGE COMM’N, <https://www.sec.gov/about/mission> (last visited Nov. 25, 2025) [hereinafter “SEC Mission”].

²⁰ See *Debanking*, CAMBRIDGE DICTIONARY, (4th ed. 2013), <https://dictionary.cambridge.org/us/dictionary/english/debanking>; see also Jack Solowey and David Inserra, *It’s Time to End Debanning*, CATO INSTITUTE, Jan. 7, 2025, <https://www.cato.org/commentary/its-time-end-debanning>.

²¹ *Derisking*, U.S. DEP’T OF STATE, <https://www.state.gov/de-risking/> (last visited Nov. 25, 2025).

²² BANK POLICY INSTITUTE, *THE TRUTH ABOUT ACCOUNT CLOSURES 1-2* (2024) [hereinafter “The Truth About Account Closures”].

²³ Heather Trew, *Closing the book on account closures*, ABA BANKING JOURNAL, Jan. 22, 2024, <https://bankingjournal.aba.com/2024/01/closing-the-book-on-account-closures/>.

²⁴ See *The Truth About Account Closures*, *supra* note 22, at 1. There is ongoing debate about the effectiveness of current SAR reporting requirements. According to one study, “[i]n all major financial markets, the number of reports of suspicions of money laundering continues to grow. . . .” Some argue that this increase is because “U.S. financial institutions are feeling increasing pressure to engage in the practice of ‘defensive filing’—that is, the filing of SARs even when the suspicious nature of the conduct is potentially very arguable—simply in order to avoid after-the-fact questions by the institution’s regulator regarding why a SAR was not filed” See Peter D. Hardy, *Suspicious*

is a high-risk designation.²⁵ Debanking can occur “as a result of an anti-money laundering and ‘reputational risk’ regime administered by the federal banking agencies where certain types of customers are designated as ‘high[-]risk.’”²⁶ The over designation of accounts as high-risk can result in “an overly broad and punitive approach,” which “can significantly raise the costs to the [financial institution] and increase the risk of regulatory penalties, leading to reduced services even for law-abiding customers.”²⁷ For example, a high-risk designation creates a significant compliance burden that requires entities to “continually document that the account is not an illegal one,” at the risk of a “draconian enforcement action.”²⁸

Federal law does not require banks to explain why they close an account.²⁹ As a result, financial institutions often do not provide any explanation—or much notice—to customers whose accounts are closed due to being labeled high-risk.³⁰ In cases where a SAR is filed, banks are statutorily prohibited by the *Bank Secrecy Act* from disclosing the reason for account closure because it could indirectly notify the subject of a SAR that a SAR has been filed.³¹

Vague laws and legal terms have long allowed federal regulators to choke certain businesses off from the U.S. banking system. Indeed, regulators “have so much discretion that they have the authority to warn banks about dealing with certain types of customers for almost any reason they choose to justify.”³² While federal regulators have relied on the vagueness of “reputational risk,” they have similarly relied on alternative methods to encourage financial institutions to withhold services. For example, the FDIC can terminate a bank’s deposit insurance if it determines the bank is engaging in “unsafe or unsound practices.”³³ Similarly, the 2010 *Dodd-Frank Wall Street Reform and Consumer Protection Act* (Dodd-Frank) authorized the Fed to create special regulations “to prevent or mitigate risks to the financial stability of the United States that could arise from the material financial distress or failure, or ongoing activities, of large, interconnected financial institutions.”³⁴ Yet, Dodd-Frank failed to define financial stability or distress—leaving that discretion to regulators.³⁵

The wrongful debanking of legitimate businesses engaging in lawful activity has long term consequences for the U.S. banking system. For example, debanking negatively affects a

Activity Reports Rarely Provide “Operational Value” to Law Enforcement Investigations, MONEY LAUNDERING WATCH BALLARD SPAHR L.L.P., Oct. 19, 2017, <https://www.moneylaunderingnews.com/2017/10/suspicious-activity-reports-rarely-provide-operational-value-to-law-enforcement-investigations/>.

²⁵ The Truth About Account Closures, *supra* note 22, at 1.

²⁶ Austin Anton, *BPI Statement on President Trump’s Remarks on ‘Debanking’*, BANK POLICY INSTITUTE, Jan. 23, 2025, <https://bpi.com/bpi-statement-on-president-trumps-remarks-on-debanking/>.

²⁷ See The Truth About Account Closures, *supra* note 22, at 1.

²⁸ *Id.* at 1-2.

²⁹ *The bank closed my checking account and did not notify me. Is this legal?*, OFF. OF THE COMPTROLLER OF THE CURRENCY, Nov. 6, 2025, <https://www.bankcustomerassistance.gov/help-topics/bank-accounts/opening-closing-inactive-bank-accounts/closing-a-bank-account/closing-closed-account.html>.

³⁰ *Id.*; see also Ron Lieber and Tara Siegel Bernard, *Why Banks Are Suddenly Closing Down Customer Accounts*, N.Y. TIMES, Nov. 5, 2023, <https://www.nytimes.com/2023/11/05/business/banks-accounts-close-suddenly.html>.

³¹ 31 U.S.C. § 5318(g)(2).

³² Norbert Michel, *Only Cutting Back Regulatory Discretion Will Stop Debanking*, CATO INSTITUTE, Dec. 4, 2024, <https://www.cato.org/commentary/only-cutting-back-regulatory-discretion-will-stop-debanking>.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

company's capacity to pay basic operating expenses, including wages, payroll taxes, employee benefits, rent, utilities, office supplies, travel costs, and more.³⁶ As Nathan McCauley, the CEO and co-founder of Anchorage Digital, an institutional digital asset platform, testified before the Senate Committee on Banking, Housing, and Urban Affairs:

For over two years, [Anchorage Digital] had been doing business with [their] bank. [They] were a valuable client to them: [they] held a corporate bank account there, and they held [their] client fees from custody and other services, along with general corporate funds used for day-to-day business expenses such as payroll and administrative expenses.³⁷

That was until June 2023, when Anchorage Digital was notified by the bank that their account “would be closed in thirty days because they were not comfortable with [Anchorage Digital’s] crypto clients’ transactions.”³⁸

The debanking of legitimate businesses also risks stifling innovation and pushing innovation overseas. Regulatory uncertainty sows doubt among entrepreneurs. This was evident after the 2023 bank failures when several founders debated moving outside of the United States, opening offices abroad.³⁹

BIDEN ADMINISTRATION REGULATORS REINVENTED THE OBAMA ADMINISTRATION REGULATORS’ OPERATION CHOKE POINT 1.0 PLAYBOOK.

Disturbingly, the Biden Administration was not the first Democratic administration to wrongfully target an industry it disfavored. In early 2013, President Barack Obama’s Financial Fraud Enforcement Task Force, which included the FDIC, the Consumer Financial Protection Bureau (CFPB), the SEC, the OCC, and several other agencies, launched Operation Choke Point 1.0 as a policy initiative.⁴⁰ During Operation Choke Point 1.0, federal regulators “pressured banks to close accounts of businesses solely because they were ideologically opposed to their existence,” including coin, firearms, and ammunition dealers, as well as short-term lenders.⁴¹

³⁶ See generally Oversight Hearing, *supra* note 2, at 9, 30 (testimony of Mr. Austin Campbell, Adjunct Professor, Stern School of Business).

³⁷ *Investigating the Real Impacts of Debanking in America: Hearing Before the Senate Banking Committee*, 119th Cong. (2025) [hereinafter “Senate Banking Hearing”] (testimony of Nathan McCauley, CEO & Co-Founder, Anchorage Digital).

³⁸ *Id.*

³⁹ Jeff Wilser, *US Crypto Firms Eye Overseas Move Amid Regulatory Uncertainty*, COINDESK, Mar. 30, 2023, <https://www.coindesk.com/consensus-magazine/2023/03/27/crypto-leaving-us>. While Biden Administration regulators and certain lawmakers highlighted the causal relationships between the banking failures and digital asset-related activity, this theory has been debunked. In a House Committee on Financial Services, Subcommittee on Digital Assets, Financial Technology and Inclusion hearing, former New York State Department of Financial Services Superintendent Adrienne Harris explained that attributing Signature Bank’s failure to crypto was a “misnomer” and that digital asset withdrawals during the bank run were proportional to the bank’s total digital asset deposits. See *Continued Oversight Over Regional Bank Failures: Hearing before the Subcomm. on Financial Institutions and Monetary Policy and the Subcomm. on Oversight & Investigations*, 118th Cong. (2023).

⁴⁰ Keating: Operation Choke Point reveals true injustices, *supra* note 6.

⁴¹ *Id.*

Although the original intent of Operation Choke Point 1.0 was purportedly to fight fraud,⁴² the program ballooned into overregulation and threats of enforcement actions. Former Oklahoma Governor and former Chief Executive Officer of the American Bankers Association Frank Keating described Operation Choke Point 1.0 as “the Justice Department telling bankers to behave like policemen and judges” by “asking banks to identify customers who may be breaking the law or *simply doing something government officials don’t like*.”⁴³ Officials from the FDIC and the OCC “threaten[ed] banks with regulatory pressure if they did not bend to their will.”⁴⁴ As Governor Keating explained, “[i]f a bank doesn’t shut down a questionable account when directed to do so, Justice slaps the institution with a penalty for wrongdoing that may or may not have happened. *The government is compelling banks to deny service to unpopular but perfectly legal industries by threatening penalties*.”⁴⁵ Accordingly, many legal businesses saw their accounts terminated without explanation.⁴⁶

To achieve their goals during Operation Choke Point 1.0, federal regulators labeled the disfavored industries as high-risk.⁴⁷ Such a designation discouraged banks from providing services to these so-called high-risk industries. Public reporting revealed that FDIC regulators “simply had to inform the banks they were overseeing that the government considered certain types of their customers ‘high[-]risk,’” because “[t]he mere implication of a threat was enough to pressure banks into closing accounts, because no U.S. bank wants anything to do with extra audits or investigations from their regulator, much less additional operating restrictions or civil and criminal charges.”⁴⁸ In part, financial institutions’ reactivity justifiably stemmed from regulators’ “enormous discretion.”⁴⁹

The Trump Administration ended Operation Choke Point 1.0.⁵⁰ On August 16, 2017, the Department of Justice (DOJ) sent a letter to the House Committee on the Judiciary, confirming they had ended Operation Choke Point 1.0.⁵¹ Former Assistant Attorney General, Stephen Boyd, stated that DOJ would no longer “discourage the provision of financial services to lawful industries.”⁵² On May 22, 2019, the FDIC announced that it settled a lawsuit filed against the

⁴² Frank Keating, *Justice Puts Banks in a Choke Hold*, WALL STREET J., Apr. 24, 2014, <https://www.wsj.com/articles/SB10001424052702304810904579511911684102106?msockid=2b25242999fa650235ab31e8985d64c0> (emphasis added) [hereinafter “Keating: Justice Puts Banks in a Choke Hold”].

⁴³ *Id.* (emphasis added).

⁴⁴ Keating: Operation Choke Point reveals true injustices, *supra* note 6.

⁴⁵ Keating: Justice Puts Banks in a Choke Hold, *supra* note 42 (emphasis added).

⁴⁶ Keating: Operation Choke Point reveals true injustices, *supra* note 6.

⁴⁷ Press Release, H. Comm. on Oversight & Government Reform, Report: DOJ’s Operation Choke Point Secretly Pressured Banks to Cut Ties with Legal Business (May 29, 2014), <https://oversight.house.gov/report/report-doj-operation-choke-point-secretly-pressured-banks-cut-ties-legal-business/>.

⁴⁸ Norbert Michel, *Newly Unsealed Documents Show Top FDIC Officials Running Operation Choke Point*, FORBES, Nov. 5, 2018, <https://www.forbes.com/sites/norbertmichel/2018/11/05/newly-unsealed-documents-show-top-fdic-officials-running-operation-choke-point/>.

⁴⁹ *Id.*

⁵⁰ Victoria Guida, *Justice Department to end Obama-era ‘Operation Choke Point,’* POLITICO, Aug. 17, 2017, <https://www.politico.com/story/2017/08/17/trump-reverses-obama-operation-chokepoint-241767>.

⁵¹ *Justice Department Formally Ends “Operation Choke Point,”* ABA BANKING JOURNAL, Aug. 17, 2017, <https://bankingjournal.aba.com/2017/08/justice-department-formally-ends-operation-choke-point/>.

⁵² *Id.* (Assistant Attorney General Stephen Boyd served as the Assistant Attorney General from September 5, 2017, until January 20, 2021).

Corporation and the OCC in 2014 by a trade group and payday lenders relating to Operation Choke Point 1.0 and told Congress they would cease issuing informal, unwritten suggestions on what industries should not be banked, regardless of the company's legal operating status.⁵³

THE BIDEN ADMINISTRATION ENGAGED IN A COORDINATED ATTACK AGAINST THE DIGITAL ASSET ECOSYSTEM.

Committee Republicans' investigation revealed that several agencies within the Committee's jurisdiction—including the Federal Reserve, the FDIC, the OCC, and the SEC—participated in a largescale, coordinated effort to undermine the growth of the digital asset ecosystem by preventing the traditional financial system from serving the ecosystem or engaging in digital asset-related activity. Moreover, Biden Administration regulators not only refused to provide digital asset firms with clear, workable rules, but they also sought to take actions while Congress was working to provide regulatory certainty through legislation.

On March 9, 2022, President Biden signed an executive order (E.O.) entitled “Ensuring Responsible Development of Digital Assets.”⁵⁴ This E.O. concluded that digital asset firms engaging in traditional financial services should be regulated by the same rules as traditional financial institutions.⁵⁵ However, it also stated that the “new and unique uses and functions that digital assets can facilitate may create additional economic and financial risks requiring an evolution to a regulatory approach that adequately addresses those risks.”⁵⁶ Months later, on September 16, 2022, the Biden Administration released the “First-Ever Comprehensive Framework for Responsible Development of Digital Assets,” in which it encouraged regulators “to aggressively pursue investigations and enforcement actions against unlawful practices in the digital assets space . . . [and] redouble their efforts to monitor consumer complaints and to enforce against unfair, deceptive, or abusive practices.”⁵⁷

The Administration targeted digital asset firms on the premise that their innovative technologies and the sector's limited regulatory framework posed heightened risks. For example, the E.O. identified financial stability and illicit finance as significant risks associated with digital assets.⁵⁸ Despite claiming significant risks associated with digital assets and calling for regulatory gaps to be filled,⁵⁹ the Biden Administration refused to right-size the regulatory

⁵³ Alan S. Kaplinsky, *FDIC settles Operation Choke Point lawsuit; entire lawsuit dismissed*, CONSUMER FINANCE MONITOR BY BALLARD SPAHR L.L.P., May 23, 2019, <https://www.consumerfinancemonitor.com/2019/05/23/fdic-settles-operation-choke-point-lawsuit/>.

⁵⁴ Exec. Order No. 14067, 87 Fed. Reg. 14143 (2022) [hereinafter E.O. 14067].

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ Press Release, The White House, Fact Sheet: White House Releases First-Ever Comprehensive Framework for Responsible Development of Digital Assets (Sept. 16, 2022), <https://bidenwhitehouse.archives.gov/briefing-room/statements-releases/2022/09/16/fact-sheet-white-house-releases-first-ever-comprehensive-framework-for-responsible-development-of-digital-assets>.

⁵⁸ E.O. 14067, *supra* note 54.

⁵⁹ Brian Deese et al., *The Administration's Roadmap to Mitigate Cryptocurrencies' Risks*, THE WHITE HOUSE, Jan. 27, 2023, <https://bidenwhitehouse.archives.gov/nec/briefing-room/2023/01/27/the-administrations-roadmap-to-mitigate-cryptocurrencies-risks/> (“But the events of the past year underscore that more is needed. . . . In the coming months, the Administration will also unveil priorities for digital assets research and development, which will help

structure for digital assets to enable firms to operate under clear rules. Instead, the repeated emphasis on risk resulted in heightened scrutiny by federal regulators when examining financial institutions engaging in digital asset-related activities. Paul Grewal, the Chief Legal Officer of Coinbase, the largest U.S. based digital asset trading platform,⁶⁰ testified to the Committee in a February 2025 hearing, entitled *Operation Choke Point 2.0: The Biden Administration's Efforts to Put Crypto in the Crosshairs*, that it was the Biden Administration's "combination of refusing to lay out simple rules that we can all follow and, when they have questions with compliance with those rules, operating under the cloak of secrecy and tactics such as delay and obfuscation to essentially exhaust the firm into submission."⁶¹

Federal regulators followed the White House's lead, collectively making it clear that they intended to exercise increased scrutiny over the digital asset ecosystem. For example, in January 2023, the Fed, the FDIC, and the OCC released a joint statement, entitled "Joint Statement on Crypto-Asset Risks to Banking Organizations" (2023 Crypto-Asset Risks Joint Statement), highlighting the "key risks associated with crypto-assets and crypto-asset sector participants that banking organizations should be aware of[.]"⁶² In the joint statement, the agencies stated they would be taking a careful and cautious approach related to current or proposed digital asset-related activities and exposures at each banking organization. Most importantly, they expressed concern with the "heightened risks associated with open, public, and/or decentralized networks, or similar systems" and "the [s]usceptibility of stablecoins to run risk, creating potential deposit outflows for banking organizations that hold stablecoin reserves."⁶³ While the 2023 Crypto-Asset Risks Joint Statement did state that "[b]anking organizations are neither prohibited nor discouraged from providing banking services to customers of any specific class or type, as permitted by law or regulation," the regulators admitted they were assessing whether current and proposed crypto-asset-related activities by banking organizations can be conducted in a manner that adequately addresses safety and soundness, consumer protection, legal permissibility, and compliance with applicable laws and regulations, including anti-money laundering and illicit finance statutes and rules."⁶⁴ Such ambiguity left financial institutions in limbo and without any

the technologies powering cryptocurrencies protect consumers by default. Congress, too, needs to step up its efforts."); FINANCIAL STABILITY OVERSIGHT COUNCIL, REPORT ON DIGITAL ASSET FINANCIAL STABILITY RISKS AND REGULATION, Executive Summary (2022) ("Crypto-asset activities could pose risks to the stability of the U.S. financial system if their interconnections with the traditional financial system or their overall scale were to grow without adherence to or being paired with appropriate regulation, including enforcement of the existing regulatory structure."); Janet Yellen, Secretary, Dep't of the Treasury, Remarks from Secretary of the Treasury Janet L. Yellen on Digital Assets (Apr. 7, 2022) ("As banks and other traditional financial firms become more involved in digital asset markets, regulatory frameworks will need to appropriately reflect the risks of these new activities. And, new types of intermediaries, such as digital asset exchanges and other digital native intermediaries, should be subject to appropriate forms of oversight.").

⁶⁰ *Top Cryptocurrency Spot Exchanges*, COIN MARKET CAP,

<https://coinmarketcap.com/rankings/exchanges/> (last visited Nov. 25, 2025).

⁶¹ Oversight Hearing, *supra* note 2, at 53 (testimony of Mr. Paul Grewal, Chief Legal Officer, Coinbase).

⁶² BD. OF GOVS. OF THE FED. RESERVE SYSTEM, FED. DEPOSIT INSURANCE CORP., OFF. OF THE COMPTROLLER OF THE CURRENCY, JOINT STATEMENT ON CRYPTO-ASSET RISKS TO BANKING ORGANIZATIONS 1 (2023), <https://www.fdic.gov/news/press-releases/2023/pr23002a.pdf> [hereinafter "2023 Crypto-Asset Risks Joint Statement"].

⁶³ *Id.*

⁶⁴ *Id.*

meaningful guidance; given that institutions have become increasingly risk-averse,⁶⁵ many opted to stay away from digital assets entirely.

Federal regulators largely used non-rulemaking tools to exclude—or remove—the digital asset ecosystem from participating in the banking system. Examples of such agency actions are described in the sections below.

I. The Federal Reserve

The Federal Reserve’s five critical functions include “conduct[ing] the nation’s monetary policy, promot[ing] financial system stability, supervis[ing] and regulat[ing] financial institutions, foster[ing] payment and settlement system safety and efficiency, and promot[ing] consumer protection and community development.”⁶⁶ Therefore, the Federal Reserve’s mandate to promote and ensure financial system stability extends to digital asset-related activity conducted by financial institutions.⁶⁷ As part of its supervisory and regulatory authority, the Fed releases supervision and regulation letters (SR), which “address significant policy and procedural matters related to the Federal Reserve System’s supervisory responsibilities.”⁶⁸

On August 16, 2022, the Federal Reserve released SR 22-6, which highlighted the risks posed by digital asset-related activities to “safety and soundness, consumer protection, and financial stability[.]”⁶⁹ SR 22-6 required that “[p]rior to engaging in new activities of any kind, a supervised banking organization must ensure that such activities are legally permissible.”⁷⁰ This required analyzing the permissibility of activities under state and federal law to determine whether additional filings were necessary.⁷¹ Additionally, Federal Reserve-supervised organizations that sought to engage in digital asset-related activities were instructed to “notify its lead supervisory point of contact at the Federal Reserve.”⁷²

On January 27, 2023, the Federal Reserve announced through a policy statement⁷³ that it would exercise its discretion under Section 9(13) of the Federal Reserve Act⁷⁴ to limit state member banks to engaging as principal in only those activities that were permissible for national banks, overseen by the OCC, subject to the terms, conditions, and limitations placed on national banks with respect to the activity unless those activities are permissible for state banks by federal

⁶⁵ See generally BD. OF GOVS. OF THE FED. RESERVE SYSTEM, SENIOR LOAN OFFICER OPINION SURVEY ON BANK LENDING PRACTICES (2025) (describing how banks are actively tightening underwriting standards, which highlights their reduced tolerance for risk).

⁶⁶ *The Federal Reserve Explained*, BD. OF GOVS. OF THE FED. RESERVE SYSTEM., <https://www.federalreserve.gov/aboutthefed/fedexplained/who-we-are.htm> (last visited Nov. 25, 2025).

⁶⁷ FED. RESERVE BANK OF NEW YORK, ECONOMIC POLICY REVIEW: THE FINANCIAL STABILITY IMPLICATIONS OF DIGITAL ASSETS (2024).

⁶⁸ *Supervision and Regulation Letters*, BD. OF GOVS. OF THE FED. RESERVE SYSTEM, <https://www.federalreserve.gov/supervisionreg/srletters/srletters.htm> (last visited Nov. 25, 2025).

⁶⁹ SR 22-6, *supra* note 14.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ Policy Statement on Section 9(13) of the Federal Reserve Act, 88 Fed. Reg. 7848 (Feb. 7, 2023); 12 CFR 208.112 [hereinafter “Fed Policy Statement”].

⁷⁴ 12 U.S.C. § 330.

law.⁷⁵ The policy statement also concluded that “[t]he Board generally believe[d] that issuing tokens on open, public, and/or decentralized networks, or similar systems [was] highly likely to be inconsistent with safe and sound banking practices.”⁷⁶ The Fed’s posture that banks’ participation was “highly likely” to run afoul of safe and sound banking practices was a sharp pivot from the internal work that the Fed and other prudential regulators were doing around banks’ engagement previously.⁷⁷ In fact, according to documents reviewed by Republican Committee staff, the prudential regulators spent the majority of 2022 working “to establish minimum rules and clear standards to ensure bank participation in a stablecoin arrangement [was] consistent with safety and soundness and existing laws and regulations.”⁷⁸ However, in issuing the policy statement, the Federal Reserve significantly restricted banks from holding digital assets on their balance sheets, and when coupled with other requirements described below, effectively prohibited banks from participating in the emerging digital asset ecosystem.

Several months later, and almost a year after it issued SR 22-6, on August 8, 2023, the Federal Reserve sent two additional supervisory letters to member banks.⁷⁹ The first, SR 23-7, created a Novel Activities Supervision Program focused on “novel activities related to crypto-assets, distributed ledger technology (DLT), and complex, technology-driven partnerships with nonbanks to deliver financial services to customers.”⁸⁰ SR 23-7 defined “crypto-asset related activities” broadly to include “[c]rypto-asset custody, crypto-collateralized lending, facilitating crypto-asset trading, and engaging in stablecoin/dollar token issuance or distribution.”⁸¹ According to the Federal Reserve, the program was “risk-focused” and intended to “complement existing supervisory processes, strengthening the oversight of novel activities conducted by supervised banking organizations.”⁸² In reality, the Novel Activities Supervision Program imposed additional regulatory burdens on banking institutions engaging with digital assets and provided the Fed with additional tools to deny digital asset-related activities.

The second supervisory letter, SR 23-8, provided “a description of the supervisory non-objection process for state member banks seeking to engage in certain activities involving tokens denominated in national currencies [referred to as dollar tokens by the Fed and stablecoins by the OCC] and issued using distributed ledger technology or similar technologies to facilitate payments.”⁸³ Member banks were required to notify the Federal Reserve and receive a non-objection letter from supervisory staff before they were able to engage in digital asset-related activities.⁸⁴ This left firms in regulatory purgatory.

⁷⁵ Fed Policy Statement, *supra* note 73.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ Documents on file with Republican Committee staff.

⁷⁹ BD. OF GOVS. OF THE FED. RESERVE SYSTEM, SR 23-7, (2023), <https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20250815a1.pdf> [hereinafter “SR 23-7”]; SR 23-8, *supra* note 15.

⁸⁰ SR 23-7, *supra* note 79.

⁸¹ *Id.*

⁸² *Id.*

⁸³ SR 23-8, *supra* note 15.

⁸⁴ *Id.*

To receive supervisory non-objection, state member banks were required to demonstrate “appropriate risk management practices for the proposed activities, including having adequate systems in place to identify, measure, monitor, and control the risks of its activities, and the ability to do so on an ongoing basis.”⁸⁵ As part of this process, Federal Reserve supervisory staff could follow up with financial institutions to “seek additional information in order to better understand the proposal and the control framework that the state member bank has put in place.”⁸⁶ Even if state member banks received supervisory non-objection, they continued to be “subject to supervisory review and heightened monitoring of these activities.”⁸⁷ Consequently, when taken in conjunction with previous policy statements and SRs, this approach ultimately led to a de facto prohibition on banks engaging with the digital asset ecosystem.

II. The FDIC

The FDIC is tasked with insuring deposits, “[e]xamining and supervising financial institutions for safety and soundness and consumer protection,” as well as “[m]aking large and complex financial institutions resolvable, and [m]anaging receiverships.”⁸⁸ Much like the Federal Reserve, the FDIC is tasked with “addressing risks in the nation’s financial system,” and consumer protection,⁸⁹ which extends to innovative payments technology, such as digital assets. Notably, the FDIC “is the insurer for all [Insured Depository Institutions] in the United States, and the primary federal supervisor for state-chartered banks and savings institutions that are not members of the Federal Reserve System.”⁹⁰ The FDIC’s supervisory authority includes examinations, reviewing examination reports, off-site monitoring mechanisms, and participating in cross-agency examinations.⁹¹ More broadly, the FDIC publishes guidance and policy, including through documents referred to as financial institution letters (FIL), which are addressed to chief executive officers of financial institutions, generally within the FDIC’s supervised institutions.⁹² FILs “may announce new regulations and policies, new FDIC publications, and a variety of other matters of principal interest to those responsible for operating a bank or savings association.”⁹³

On May 17, 2021, the FDIC, under the leadership of former Chair Jelena McWilliams—a President Trump-appointee—released a “Request for Information on Digital Assets,” which sought “information and comments regarding insured depository institutions’ (IDIs’) current and

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *FDIC Mission, Vision, and Values*, FED. DEPOSIT INSURANCE CORP., <https://www.fdic.gov/strategic-plans/fdic-mission-vision-and-values> (last visited Nov. 25, 2025).

⁸⁹ *Id.*

⁹⁰ *FDIC 2022-2026 Strategic Plan: Supervision Program*, FED. DEPOSIT INSURANCE CORP., <https://www.fdic.gov/strategic-plans/fdic-2022-2026-strategic-plan-supervision-program> (last visited Nov. 25, 2025).

⁹¹ *Id.*

⁹² *Financial Institution Letters*, FED. DEPOSIT INSURANCE CORP., <https://www.fdic.gov/news/financial-institution-letters> (last visited Nov. 25, 2025).

⁹³ *Id.*

potential digital assets activities.”⁹⁴ In the request, the FDIC “recognize[d] that there are novel and unique considerations related to digital assets,” and claimed that it issued the request “to help inform its understanding of the industry’s and consumers’ interests in this area,” given financial institutions’ increasing interest in the “emerging digital asset ecosystem.”⁹⁵ As described below, the FDIC continued to work on interagency efforts to “enhance the collective knowledge of the federal banking agencies regarding crypto-asset activities.”⁹⁶ However, these efforts collapsed following the departure of then-Chair McWilliams in February 2022, with her replacement, Martin Gruenberg, “standing down” on “interagency crypto workstreams” by May 2022.⁹⁷ The FDIC’s decision to stand down on crypto workstreams was especially perplexing given former Chair Gruenberg’s public announcement in February 2022 that digital assets were a priority and that “the agencies will need to provide robust guidance to the banking industry on the management of prudential and consumer protection risks raised by crypto-asset activities.”⁹⁸

Under then-Chair Gruenberg, in April 2022, the FDIC issued FIL 16-2022, entitled “Notification of Engaging in Crypto-Related Activities,” which required all FDIC-supervised institutions involved in or considering being involved in the digital asset ecosystem to notify the FDIC.⁹⁹ According to the FDIC, this request was warranted because digital assets may pose significant safety and soundness risks, as well as financial stability and consumer protection concerns.¹⁰⁰

Armed with this knowledge, the FDIC then used “pause” letters to force banks to stop offering banking services to digital asset firms engaging in legal business activities.¹⁰¹ The FDIC sent “pause” letters to approximately 24 institutions seeking to pursue digital asset-related activities during the Biden Administration.¹⁰² The letters requested banks to delay providing services to firms in the digital asset ecosystem until the FDIC had sufficient opportunity to review.¹⁰³ As justification, the letters pointed to several risks that digital asset-related activities may pose to a financial institution and its customers, including “[c]onfusion about the role of the financial institution in crypto transactions; [l]ack of understanding about the nature and risks associated with crypto-asset products; [i]nability to differentiate between nondeposit products and traditional banking products, such as deposit accounts; and, [m]isunderstanding the applicability of [f]ederal deposit insurance coverage.”¹⁰⁴

⁹⁴ *Request for Information on Digital Assets*, FED. DEPOSIT INSURANCE CORP., <https://www.fdic.gov/news/financial-institution-letters/2021/fil21035.html> (last visited Nov. 25, 2025) (Chairman Jelena McWilliams served as the Chairman of the Federal Deposit Insurance Corporation from June 5, 2028, to February 4, 2022).

⁹⁵ Press Release, Fed. Deposit Insurance Corp., FDIC Issues Request for Information on Digital Assets (May 17, 2021), <https://www.fdic.gov/news/press-releases/2021/pr21046.html>.

⁹⁶ Documents on file with Republican Committee staff.

⁹⁷ Documents on file with Republican Committee staff.

⁹⁸ Press Release, Fed. Deposit Insurance Corp., Acting Chairman Martin J. Gruenberg Announces FDIC Priorities for 2022 (Feb. 7, 2022), <https://www.fdic.gov/news/press-releases/2022/pr22015.html>.

⁹⁹ Institutional Letter FIL-16-2022, FED. DEPOSIT INSURANCE CORP. (Apr. 7, 2022), <https://www.fdic.gov/news/inactive-financial-institution-letters/2022/fil22016.html#letter>.

¹⁰⁰ *Id.*

¹⁰¹ FDIC Pause Letters, *supra* note 17.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.* at 23.

Additionally, these letters requested the institutions to provide written responses to dozens of questions, produce voluminous amounts of documentation, and in some cases, submit to in-person visitations.¹⁰⁵ Regarding the latter, the FDIC claimed the visitations were necessary to “assess the safety and soundness, consumer protection, and financial stability implications” of engaging in digital asset-related activities.¹⁰⁶

According to FDIC Acting Chair Travis Hill, the letters “show that requests from these banks were almost universally met with resistance, ranging from repeated requests for further information, to multi-month periods of silence as institutions waited for responses, to directives from supervisors to pause, suspend, or refrain from expanding all crypto- or blockchain-related activity.”¹⁰⁷ As a result, “these and other actions sent the message to banks that it would be extraordinarily difficult—if not impossible—to move forward,” so “the vast majority of banks simply stopped trying.”¹⁰⁸

III. The OCC

As an independent bureau of the U.S. Department of the Treasury, the OCC’s mission seeks to “ensure that national banks and federal savings associations operate in a safe and sound manner, provide fair access to financial services, treat customers fairly, and comply with applicable laws and regulations.”¹⁰⁹ As part of this, the OCC “issu[es] banking rules and regulations and provid[es] legal interpretations and guidance on banks’ corporate decisions that govern their practices.”¹¹⁰ This includes bank’s decision to engage in digital asset-related activities.¹¹¹

At the beginning of the Biden Administration, the OCC reviewed former Acting Comptroller of the Currency Brian Brooks’s actions.¹¹² This included reviewing national trust bank charter conditional approvals and interpretive letters (IL) issued during the first Trump Administration—specifically IL 1170 (banks may provide digital asset custody services), IL 1172 (banks may hold deposits serving as reserves for stablecoins), and IL 1174 (banks may use distributed ledgers and stablecoins to facilitate and engage in payment activities).¹¹³ Those ILs permitted institutions to “provid[e] cryptocurrency custody services, hold dollar deposits serving

¹⁰⁵ *Id.* at 16-23.

¹⁰⁶ *Id.* at 29.

¹⁰⁷ FDIC Pause Letters Press Release, *supra* note 17.

¹⁰⁸ *Id.*

¹⁰⁹ *About Us*, OFF. OF THE COMPTROLLER OF THE CURRENCY, <https://www.occ.gov/about/index-about.html> (last visited Nov. 25, 2025).

¹¹⁰ *Id.*

¹¹¹ *Financial Technology*, OFF. OF THE COMPTROLLER OF THE CURRENCY, <https://www.occ.gov/topics/supervision-and-examination/financial-technology/index-financial-technology.html> (last visited Nov. 25, 2025).

¹¹² Anna Hrushka, *OCC Will Revisit Crypto Charters, Interpretive Letters, Acting Chief Says*, BANKINGDIVE, June 3, 2021, <https://www.bankingdive.com/news/occ-will-revisit-crypto-charters-interpretive-letters-acting-chief-says/601228/> (Acting Comptroller Brian Brooks served as the Acting Comptroller of the Currency from May 29, 2020 until January 14, 2021).

¹¹³ IL 1179, *supra* note 18; OFF. OF THE COMPTROLLER OF THE CURRENCY, INTERPRETIVE LETTER 1170 (2020); OFF. OF THE COMPTROLLER OF THE CURRENCY, INTERPRETIVE LETTER 1172 (2020); OFF. OF THE COMPTROLLER OF THE CURRENCY, INTERPRETIVE LETTER 1174 (2021).

as reserves for stablecoins, operat[e] nodes on blockchain networks, and engag[e] in certain stablecoin activities to facilitate payments.”¹¹⁴

Following its review, the Biden Administration OCC issued IL 1179, which purportedly “clarified” that banks may provide digital asset custody services, hold deposits serving as reserves for stablecoins, and use distributed ledgers and stablecoins to facilitate and engage in payment activities.¹¹⁵ However, the OCC specified that these activities could only be conducted after a bank notified its supervisory office of its intent to engage in the activities and the bank received written notification of the supervisory office’s non-objection.¹¹⁶ During this time, the Biden Administration’s OCC reiterated that actions taken during the Trump Administration’s first term did not expand the OCC’s chartering authority or otherwise change existing banks’ obligations.¹¹⁷ However, there were several digital asset firms whose conditional approvals to establish a national trust bank languished without a final determination from the OCC.¹¹⁸

IL 1179 was not a clarification; it was a sudden policy reversal. IL 1179 confirmed that national banks could engage in digital asset activities “provided the bank can demonstrate, to the satisfaction of its supervisory office, that it has controls in place to conduct the activity in a safe and sound manner.”¹¹⁹ However, IL 1179 barred supervised institutions from engaging in digital asset-related activities until the institution received a non-objection letter.¹²⁰ Therefore, the OCC’s non-objection was based on the OCC’s “evaluation of a particular bank’s risk controls.”¹²¹ Thus, “[a]n adequate risk management system had to address operational, liquidity, strategic, and compliance risks.”¹²² Notably, the question of “how” a bank engages in banking activities is not a determining factor of the legality of the activity.¹²³

IV. The SEC

The SEC’s mission includes “protecting investors,” as well as “[m]aintain[ing] [f]air, [o]rderly, and [e]fficient [m]arkets,” and “[f]acilitat[ing] [c]apital [f]ormation.”¹²⁴ The SEC has

¹¹⁴ Jenny Kim et al., *OCC Issuances Addressing Crypto-Asset Activities*, BOIES SCHILLER FLEXNER, Mar. 25, 2025, <https://www.bsflp.com/news-events/occ-issuances-addressing-crypto-asset-activities.html> [hereinafter “Boies Schiller Flexner Article”].

¹¹⁵ IL 1179, *supra* note 18.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ Leo Schwartz, *With Crypto Banking on the Brink, Rumors are Flying*, YAHOO!FINANCE, Feb. 8, 2023, <https://finance.yahoo.com/news/crypto-banking-brink-rumors-flying-143748909.html>; Leo Schwartz, *Crypto bank Protego didn’t meet all requirements for national trust charter, OCC says*, YAHOO!FINANCE, Mar. 17, 2023, <https://finance.yahoo.com/news/crypto-bank-protego-didn-t-165413484.html>.

¹¹⁹ IL 1179, *supra* note 18.

¹²⁰ *Id.*

¹²¹ Boies Schiller Flexner Article, *supra* note 114.

¹²² *Id.*

¹²³ *UnSound: OCC IL 1179 and Its Backwards Creation of New Law*, WHITE & CASE, Dec. 1, 2021, <https://www.whitecase.com/insight-alert/unsound-occ-il-1179-and-its-backwards-creation-new-law>.

¹²⁴ SEC Mission, *supra* note 19.

long failed to provide sufficient clarity to digital asset market participants relating to registration, custody, and trading, among other activities.¹²⁵

Under former Chair Gary Gensler, the SEC “claimed essentially limitless jurisdiction over digital assets,” to include “essentially all digital assets except for Bitcoin.”¹²⁶ According to Jennifer Schulp, former Director of Financial Regulation Studies at the Cato Institute’s Center for Monetary and Financial Alternatives, during her September 2024 testimony before the Committee’s Subcommittee on Digital Assets, Financial Technology and Inclusion, “[t]he SEC’s approach ignore[d] the differences between digital assets and traditional securities, and unfairly view[ed] the entire digital assets industry as a monolith, which it decidedly is not.”¹²⁷ As a result, the SEC “subjected U.S. market participants who choose to engage in digital asset-related activities to extreme regulatory and compliance risk,” by causing a “stop to a host of digital asset activities in the United States.”¹²⁸

Like other agencies, the SEC used informal guidance documents to dissuade financial institutions from engaging with digital asset businesses. For example, on March 31, 2022, the SEC issued Staff Accounting Bulletin (SAB) 121 in response to an increasing number of entities safeguarding digital assets.¹²⁹ SAB 121 required these entities to “disclose detailed information about the nature and amount of crypto assets being safeguarded,”¹³⁰ along with “vulnerabilities related to concentrations in crypto asset safeguarding.”¹³¹ SAB 121 also required custodians to recognize a liability and hold a corresponding offset on their balance sheets, measured at the fair value of the customer’s digital assets. This accounting approach deviated from established accounting standards and placed consumers at a greater risk of loss.¹³² While SABs are not legally binding, the practical effect was to incentivize financial institutions to avoid providing custodial services.¹³³ For example, despite the SEC approving spot bitcoin exchange-traded

¹²⁵ See Press Release, The White House, Fact Sheet: The President’s Working Group on Digital Asset Markets Releases Recommendations to Strengthen American Leadership in Digital Financial Technology (July 30, 2025), <https://www.whitehouse.gov/fact-sheets/2025/07/fact-sheet-the-presidents-working-group-on-digital-asset-markets-releases-recommendations-to-strengthen-american-leadership-in-digital-financial-technology/>.

¹²⁶ *Dazed and Confused: Breaking Down the SEC’s Politicized Approach to Digital Assets: Hearing before the Subcomm. on Digital Assets, Financial Technology and Inclusion of the H. Comm. on Financial Serv.*, 118th Cong. (2024) (statement of Ms. Jennifer Schulp, Director of Financial Regulation Studies, Center for Monetary and Financial Alternatives, Cato Institute) [hereinafter “Sept. 18, 2024 Hearing”].

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *SAB 121 and Done: SEC Issues SAB 122 to Rescind Guidance on Safeguarding Crypto Assets*, DELOITTE, Jan. 27, 2025, <https://dart.deloitte.com/USDART/home/publications/deloitte/heads-up/2025/sec-rescinds-sab-121-issues-sab-122-crypto-cryptocurrency> [hereinafter “Deloitte Article”]; see *Staff Accounting Bulletin No. 121*, SECURITIES & EXCHANGE COMM’N, <https://www.sec.gov/rules-regulations/staff-guidance/staff-accounting-bulletins/staff-accounting-bulletin-121> (last visited Nov. 25, 2025) [hereinafter “SAB 121”].

¹³⁰ Deloitte Article, *supra* note 129.

¹³¹ *Id.*

¹³² See Letter from Patrick McHenry et al., Chairman, H. Comm. on Financial Serv., to Gary Gensler, Chair, Securities & Exchange Comm’n (Sept. 23, 2024) [hereinafter “Sept. 2024 Letter to Gensler”].

¹³³ See Letter from American Bankers Ass’n et al., to Nellie Liang, Under Sec’y for Domestic Finance, Dep’t of the Treasury, Harrel Pettway, General Counsel, Fed. Deposit Insurance Corp., Mark Van Der Weide, General Counsel, Bd. of Govs. of the Fed. Reserve System, Benjamin McDonough, Senior Deputy Comptroller and Chief Counsel, Off. Of the Comptroller of the Currency (June 23, 2022) (“SAB 121 would result in prudential knock-on effects that

products (ETP) and allowing investors access to this asset class through a regulated product,¹³⁴ SAB 121 essentially served as an obstacle to banking organizations from serving as the custodian.¹³⁵

Further, in December 2022, the SEC released staff guidance entitled “Sample Letter to Companies Regarding Recent Developments in Crypto Asset Markets,” stating that companies should consider the need to address digital asset market developments in their filings, including in their business descriptions, risk factors, and management’s discussion and analysis.¹³⁶ According to the SEC, “[r]ecent bankruptcies and financial distress among crypto market participants have caused widespread disruption in those markets[,]” and therefore “[c]ompanies may have disclosure obligations under the federal securities laws related to the direct or indirect impact that these events and collateral events have had or may have on their business.”¹³⁷

The SEC engaged in an “enforce first, make rules never” strategy under then-Chair Gensler.¹³⁸ However, the SEC’s existing rules were insufficient to regulate the digital asset ecosystem during then-Chair Gensler’s tenure. For example, the SEC’s registration rules were a poor fit for digital assets projects “that are, fundamentally, distributed recordkeeping systems lacking traditional assets or business lines” and also lacking centralized control over the projects and code.¹³⁹ Additionally, the SEC reportedly failed to provide guidance on relevant disclosures, which risked creating market confusion because existing rules asked “issuers for information not material to the user.”¹⁴⁰ SEC rules and guidance under then-Chair Gensler made it “impossible for digital asset platforms to register and comply with the requirements applicable to securities exchanges.”¹⁴¹

would make it economically impractical for banking organizations to provide crypto-asset safeguarding activities. This result should be avoided because the presence of banking organizations in crypto-asset markets ultimately would benefit investors, financial markets and the broader public.”); see Letter from Patrick McHenry et al., Chairman, H. Comm. on Financial Serv., to Martin Gruenberg, Chairman, Fed. Deposit Insurance Corp., Michael Barr, Vice Chair for Supervision, Bd. of Govs. of the Fed. Reserve System, Michael Hsu, Acting Comptroller of the Currency, Todd Harper, Chairman, Nat’l Credit Union Admin. (Nov. 15, 2023) [hereinafter “Nov. 15 Letter”] (“SAB 121 meets the definition of a rule under the Administrative Procedure Act (APA), and was never submitted to Congress or the [Government Accountability Office (GAO)], nor was it subsequently published in the *Congressional Record* consistent with the requirements of the Congressional Review Act. Given that the SEC failed to meet these obligations, SAB 121 should have no legal effect and the Federal banking agencies and National Credit Union Administration and other financial institutions that provide custody services for digital assets to comply.”).

¹³⁴ Press Release, Securities & Exchange Comm’n, Statement on the Approval of Spot Bitcoin Exchange-Traded Products (Jan. 10, 2024), <https://www.sec.gov/newsroom/speeches-statements/gensler-statement-spot-bitcoin-011023>.

¹³⁵ See generally SAB 121, *supra* note 129.

¹³⁶ *Sample Letter to Companies Regarding Recent Developments in Crypto Asset Markets*, SECURITIES & EXCHANGE COMM’N, <https://www.sec.gov/rules-regulations/staff-guidance/disclosure-guidance/sample-letter-companies-regarding-recent> (last visited Nov. 25, 2025).

¹³⁷ *Id.*

¹³⁸ Sept. 18, 2024 Hearing, *supra* note 126 (statement of Ms. Jennifer Schulp, Director of Financial Regulation Studies, Center for Monetary and Financial Alternatives, Cato Institute).

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

The SEC’s rare attempt at rulemaking threatened further harm to the digital asset ecosystem. For example, the SEC released two proposed rulemakings in 2022, which would have expanded the definition of “exchange” to include “Communications Protocol Systems,”¹⁴² and expanded the definition of when securities trades are considered “as part of a regular business.”¹⁴³ The latter proposed rule, which was commonly referred to as the Dealer Rule, was adopted on February 6, 2024.¹⁴⁴ These changes were interpreted to extend the SEC’s jurisdiction beyond existing authority to regulate digital asset market participants, including in decentralized finance.¹⁴⁵ A federal district court vacated the Dealer Rule on November 21, 2024.¹⁴⁶

In another example, in 2023, the SEC proposed changes to the custody rule with the intention of “protect[ing] investors from theft or misappropriation by imposing substantive requirements on the conduct of investment advisers who have custody of client funds or securities.”¹⁴⁷ The proposal intended to address questions deriving from changes in technology, advisory services, and custodial practices, which would cover digital assets.¹⁴⁸ According to SEC Commissioner Mark Uyeda, the proposal questioned “whether an investment adviser could ever satisfy the proposed requirements for crypto assets.”¹⁴⁹ Commissioner Uyeda described the proposal as taking “great pains to paint a ‘no-win’ scenario for crypto assets.”¹⁵⁰ Additionally, the proposed rule would have made it impossible for an adviser trading crypto assets on a platform to comply with the proposed rule.¹⁵¹ SEC Commissioner Hester Peirce referred to the proposal as “expand[ing] the reach of the custody requirements to crypto assets while likely shrinking the ranks of qualified crypto custodians.”¹⁵² In effect, “[t]his approach to custody

¹⁴² The SEC’s January 26, 2022, proposed rulemaking did not mention digital assets once in its 591 pages. Nevertheless, Congress and the industry expressed concerns that the SEC would sweep decentralized finance (DeFi) protocols into the rule. Thus, they requested the SEC to provide further clarity on how the rulemaking would implicate digital assets, especially DeFi. On April 14, 2023, the SEC confirmed that its proposed rulemaking did include DeFi. *See* Press Release, Securities & Exchange Comm’n, SEC Reopens Comment Period for Proposed Amendments to Exchange Act Rule 3b-16 and Provides Supplemental Information (Apr. 14, 2023), <https://www.sec.gov/newsroom/press-releases/2023-77>.

¹⁴³ Letter from Patrick McHenry, Ranking Member, H. Comm. On Financial Serv., to Gary Gensler, Chair, U.S. Securities & Exchange Comm’n, 1-2 (Apr. 18, 2022) [hereinafter “Apr. 2022 Letter to Gensler”]; *see also* Letter from Patrick McHenry, Chairman, H. Comm. on Financial Serv., to Vanessa Countryman, Secretary, U.S. Securities & Exchange Comm’n (June 13, 2023); Securities & Exchange Comm’n, Further Definition of “As a Part of a Regular Business” in the Definition of Dealer and Government Securities Dealer in Connection With Certain Liquidity Providers, 89 Fed. Reg. 14,938 (Feb. 29, 2024) (final rule).

¹⁴⁴ Press Release, Securities & Exchange Comm’n, SEC Adopts Rules to Include Certain Significant Market Participants as “Dealers” or “Government Securities Dealers” (Feb. 6, 2024), <https://www.sec.gov/newsroom/press-releases/2024-14>.

¹⁴⁵ Apr. 2022 Letter to Gensler, *supra* note 143, at 2.

¹⁴⁶ Ethan L. Silver et al., *Federal District Court Vacates the Security and Exchange Commission’s Expanded Dealer Rule*, LOWENSTEIN SANDLER L.L.P., Nov. 25, 2024, <https://www.lowenstein.com/news-insights/publications/client-alerts/federal-district-court-vacates-the-security-and-exchange-commission-s-expanded-dealer-rule-broker-dealer>.

¹⁴⁷ Mark T. Uyeda, Commissioner, Securities & Exchange Comm’n, Statement on Proposed Rule Regarding the Safeguarding of Advisory Client Assets (Feb. 13, 2023) [hereinafter “Uyeda Statement on Proposed Rule”] (Acting Chair Mark Uyeda served as the Acting Chairman of the SEC from January 20, 2025, until April 21, 2025).

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² Hester M. Peirce, Commissioner, Securities & Exchange Comm’n, Statement on Safeguarding Advisory Client Assets Proposal (Feb. 15, 2023).

appear[ed] to mask a policy decision to block access to crypto as an asset class,” and “deviate[d] from the Commission’s long-standing position of neutrality on the merits of investments.”¹⁵³ Unworkable, anti-digital assets rulemaking only aided Biden Administration regulators’ efforts to halt digital asset innovation in the United States.

Although then-Chair Gensler’s SEC refused to create clear, functional regulation for consumers and investors engaging in the digital asset ecosystem, the SEC was very aware of Congress’s desire to provide statutory direction to the regulators and the Committee’s efforts to do so. Nevertheless, at nearly every step, then-Chair Gensler worked to impede or contradict the Committee’s efforts. This includes:

- ❖ January 12, 2023 – The Committee established the Subcommittee on Digital Assets, Financial Technology and Inclusion.¹⁵⁴ That same day, the SEC announced enforcement actions against two digital assets firms.¹⁵⁵
- ❖ March 9, 2023 – The Committee held its first hearing on the Biden Administration’s approach to digital assets.¹⁵⁶ An hour before the hearing, then-Chair Gensler published an op-ed in *The Hill* entitled “Getting crypto firms to do their work within the bounds of the law.”¹⁵⁷
- ❖ April 27, 2023 – The Committee held a second hearing on digital asset regulation.¹⁵⁸ During the hearing, then-Chair Gensler tweeted an “Office Hours” video claiming that most digital assets are securities.¹⁵⁹
- ❖ May 3, 2023 – The Committee and the House Committee on Agriculture (House Agriculture Committee) announced a joint hearing on digital asset legislation.¹⁶⁰ That

¹⁵³ Uyeda Statement on Proposed Rule, *supra* note 147.

¹⁵⁴ Press Release, H. Comm. on Financial Serv., McHenry Announces Financial Services Subcommittee Chairs and Jurisdiction for 118th Congress (Jan. 12, 2023), <https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=408500>.

¹⁵⁵ Press Release, Securities & Exchange Comm’n, SEC Charges Genesis and Gemini for the Unregistered Offer and Sale of Crypto Asset Securities through the Gemini Earn Lending Program (Jan. 12, 2023), <https://www.sec.gov/newsroom/press-releases/2023-7>.

¹⁵⁶ Mar. 9, 2023 Hearing, *supra* note 1.

¹⁵⁷ Gary Gensler, *Getting crypto firms to do their work within the bounds of the law*, THE HILL, Mar. 9, 2023, <https://thehill.com/opinion/congress-blog/3891970-getting-crypto-firms-to-do-their-work-within-the-bounds-of-the-law/>.

¹⁵⁸ *The Future of Digital Assets: Identifying the Regulatory Gaps in Digital Asset Market Structure: Hearing Before the H. Comm. on Financial Serv.*, 118th Cong. (2023).

¹⁵⁹ SEC Chair Gary Gensler Archive (@GenslerArchive), X, (Apr. 27, 2023, 12:28 PM), <https://x.com/genslerarchive/status/165162424445421591?s=46>.

¹⁶⁰ Press Release, H. Comm. on Financial Serv., HEARING NOTICE: Joint House Financial Services Subcommittee on Digital Assets, Financial Technology and Inclusion & House Agriculture Subcommittee on Commodity Markets, Digital Assets, and Rural Development Hearing (May 3, 2023), <https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=408758>.

same day, the SEC released the transcript for then-Chair Gensler’s May 3, 2023 “Office Hours” video.¹⁶¹

- ❖ June 2, 2023 – The Committee, in conjunction with the House Agriculture Committee, released the first joint committee legislative product that proposed to comprehensively regulate the digital asset markets.¹⁶² Days later, the SEC announced charges against a digital asset trading platform.¹⁶³
- ❖ June 6, 2023 – The House Agriculture Committee hosted a hearing on digital asset regulation.¹⁶⁴ Moments before the hearing, then-Chair Gensler announced another enforcement action against a digital asset trading platform testifying at the hearing.¹⁶⁵
- ❖ May 22, 2024 – The House of Representatives voted on H.R. 4763, the Financial Innovation and Technology (FIT) for the 21st Century Act, which passed by 279-136.¹⁶⁶ The morning of the vote, then-Chair Gensler released a statement expressing concerns with the legislation despite having refused to provide technical assistance as requested by the Committee.¹⁶⁷

The Biden Administration’s SEC inappropriately used enforcement actions against digital asset entities to curtail activity. Public reporting suggests that then-Chair Gensler’s SEC had more than 50 lawyers and staff members dedicated to bringing enforcement actions against digital asset firms.¹⁶⁸ According to SEC Commissioner Peirce, since 2017, the SEC has seen:

[M]any enforcement actions, a number of no-action letters, some exemptive relief, endless talk about crypto in speeches and statements, lots of meetings with crypto entrepreneurs[,] many inter-agency and international crypto working groups, discussion of certain aspects of crypto in rulemaking proposals, consideration of crypto-related issues in reviews of registrations statements and other

¹⁶¹ Press Release, Securities & Exchange Comm’n, Office Hours with Gary Gensler: Crypto Platforms & Securities Laws (May 3, 2023), https://www.sec.gov/newsroom/speeches-statements/office-hours-gary-gensler-crypto-platforms-securities-laws#_ftn1.

¹⁶² Press Release, H. Comm. on Financial Serv., McHenry, Thompson, Hill, Johnson Release Digital Asset Market Structure Proposal (June 2, 2023), <https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=408838>.

¹⁶³ Press Release, Securities & Exchange Comm’n, SEC Files 13 Charges Against Binance Entities and Founder Changpeng Zhao (June 5, 2023), <https://www.sec.gov/newsroom/press-releases/2023-101>.

¹⁶⁴ *The Future of Digital Assets: Providing Clarity for Digital Asset Spot Markets: Hearing Before H. Comm. on Agriculture*, 118th Cong. (2023).

¹⁶⁵ Press Release, Securities & Exchange Comm’n, SEC Charges Coinbase for Operating as an Unregistered Securities Exchange, Broker, and Clearing Agency (June 6, 2023), <https://www.sec.gov/newsroom/press-releases/2023-102> [hereinafter “SEC-Coinbase Press Release”].

¹⁶⁶ H.R. 4763, 118th Cong. (2023).

¹⁶⁷ Press Release, Securities & Exchange Comm’n, Statement on the Financial Innovation and Technology for the 21st Century Act (May 22, 2024), <https://www.sec.gov/newsroom/speeches-statements/gensler-21st-century-act-05222024>.

¹⁶⁸ Matthew Goldstein et al., *S.E.C. Moves to Scale Back Its Crypto Enforcement Efforts*, N.Y. TIMES, Feb. 4, 2025, <https://www.nytimes.com/2025/02/04/business/sec-crypto-task-force.html> [hereinafter “SEC Scales Back Crypto Enforcement”].

filings, and approval of numerous SRO proposed rule changes to list crypto exchange-traded products.¹⁶⁹

During this period, “*the Commission’s handling of crypto [was] marked by legal imprecision and commercial impracticality.*”¹⁷⁰ The SEC accused firms of violating securities laws but failed to provide guidance on how these entities could comply with existing laws. As stated by Ms. Schulp, “[w]hile not all first-of-their-kind cases are inappropriate, the Commission should not [have] champion[ed] leading with enforcement when addressing novel applications of existing rules.”¹⁷¹ Further, SEC Commissioner Uyeda recognized that the regulation by enforcement method “fails to provide a mechanism for the Commission to consider views by market participants, which can result in a myopic approach.”¹⁷² Additionally Commissioner Uyeda contended that regulation by enforcement “fails to provide the nuanced and comprehensive guidance that allows market participants to tailor their practices, and instead requires regulated entities to divine how the facts and circumstances of another case apply to their own business model.”¹⁷³ Most importantly, then-Chair Gensler and the Biden Administration’s approach stood in the way of actual clarity for digital asset firms, discouraging them from innovating or doing business in the United States, and left consumers and investors unprotected when engaging in the digital asset markets.

OPERATION CHOKE POINT 2.0 STIFLED INNOVATION IN THE UNITED STATES.

The Biden Administration’s Operation Choke Point 2.0 had immense harmful consequences for the digital asset ecosystem. An unclear regulatory framework and mounting regulatory pressure led to many financial institutions simply refusing to engage with the digital asset ecosystem to avoid the wrath of the federal regulators. As a result, several financial institutions stopped providing banking services to digital asset entities.

A primary concern highlighted by Operation Choke Point 2.0 was the lack of due process afforded to individuals and entities, which negatively impacted digital asset innovation and company operations. Companies were given very little notice prior to their accounts being closed by a financial institution. For example, Fred Thiel, the Chief Executive Officer of Marathon Digital Holdings (MARA), testified to the Committee:

[W]e banked with Signature and when the FDIC shut them down and Flagstar took over the accounts, none of the crypto accounts were allowed to be part of those assets acquired, and we were forced to immediately seek accounts with other banks. We were able to open an account with another bank, deposited \$70 million after going through all the approval processes, and 6 days later, were told

¹⁶⁹ Press Release, Securities & Exchange Comm’n, Comm’r Hester M. Peirce, The Journey Begins (Feb. 4, 2025), <https://www.sec.gov/newsroom/speeches-statements/peirce-journey-begins-020425>.

¹⁷⁰ *Id.* (emphasis added).

¹⁷¹ Sept. 18, 2024 Hearing, *supra* note 126 (statement of Ms. Jennifer Schulp, Director of Financial Regulation Studies, Center for Monetary and Financial Alternatives, Cato Institute).

¹⁷² *Id.* (citing Mark T. Uyeda, Comm’r, Securities & Exchange Comm’n, Remarks at the “SEC Speaks” Conference 2022 (Sept. 9, 2022) [hereinafter “Commissioner Uyeda Speech”]).

¹⁷³ Commissioner Uyeda Speech, *supra* note 172.

we have to shut down the accounts because our bank no longer will bank crypto companies.

We were basically given a policy decision by the bank that they would no longer service crypto companies, period. And we were asked to withdraw our money in, I think it was, 24 hours or 72 hours.¹⁷⁴

The short notice provided by financial institutions alerting companies of account closure in some instances particularly strained companies' ability to meet payment deadlines. It required moving money to a different financial institution—and many banks were wary of engaging in digital asset-related activities given the Biden Administration's aggressive enforcement-first posture with respect to digital asset firms and its consistent signaling via policy statements, SR letters, FILs, and more, that digital assets ran afoul of prudential regulatory standards.¹⁷⁵ Lawful businesses need access to the banking system to operate, and the Biden Administration's debanking efforts significantly affected entities' capacity to pay basic operating expenses, including wages, payroll taxes, employee benefits, rent, utilities, office supplies, travel costs, and more.¹⁷⁶ After being debanked in 2023, Anchorage Digital was forced to lay off 20 percent of its workforce due to an inability to access essential banking services.¹⁷⁷ Small startups and pre-revenue businesses in the digital asset ecosystem were particularly harmed by the Biden Administration's attempt to choke off digital asset firms because they had fewer financial resources for operations when bank services were abruptly cut off.¹⁷⁸

It was not only businesses that were impacted. Individuals involved in the digital asset ecosystem, including founders and employees of digital asset firms, were personally debanked.¹⁷⁹ In many cases, the personal accounts of digital asset founders, employees, and investors were also targeted. For example, Hayden Adams,¹⁸⁰ the CEO of Uniswap, Brad Garlinghouse,¹⁸¹ the CEO of Ripple Labs, and Tyler Winklevoss,¹⁸² the co-founder of Gemini, were all personally debanked.

¹⁷⁴ Oversight Hearing, *supra* note 2, at 27-28 (testimony of Mr. Fred Thiel, Chief Executive Office, Marathon Digital Holdings).

¹⁷⁵ See generally Senate Banking Hearing, *supra* note 37, (testimony of Nathan McCauley, CEO & Co-Founder, Anchorage Digital).

¹⁷⁶ Editorial Team, *Operating expenses 101 for small businesses*, CLOVER, <https://blog.clover.com/operating-expenses-101-for-small-businesses/> (last visited Nov. 25, 2025).

¹⁷⁷ Senate Banking Hearing, *supra* note 37.

¹⁷⁸ a16z crypto editorial, *Debanking: What you need to know*, A16ZCRYPTO, Dec. 12, 2024, <https://a16zcrypto.com/posts/article/debanking-explained/>.

¹⁷⁹ See generally Debanking Podcast, *supra* note 3.

¹⁸⁰ Hayden Adams (@haydenzadams), X, (Jan. 23, 2022, 11:52 AM), <https://x.com/haydenzadams/status/1485294362657443842?s=46>.

¹⁸¹ Jesse Hamilton, *Citibank Debanked Ripple's Brad Garlinghouse Due to Crypto, Exec Says*, COINDESK, Oct. 23, 2024, <https://www.coindesk.com/policy/2024/10/23/citibank-debarked-ripples-brad-garlinghouse-due-to-crypto-exec-says>.

¹⁸² Tyler Winklevoss (@tyler), X, (Nov. 27, 2024, 3:03 PM), <https://x.com/tyler/status/1861863518301004027>.

Digital asset innovation also suffered as a result of the Biden Administration’s efforts. Coinbase’s Mr. Grewal testified that legislative and regulatory “sclerosis” in the United States “led to a flight from the United States to other jurisdictions.”¹⁸³ In 2023, for example, MARA Holdings announced that it was “going to move 50 percent of [their] revenues offshore because of the regulatory environment [they] were operating in.”¹⁸⁴ Mr. Grewal identified European and Singaporean markets as welcoming of digital asset firms. According to Mr. Grewal, “[t]he Europeans . . . have passed a market and crypto assets form of legislation that, while not perfect, offers a reliable, steady framework within which to operation.”¹⁸⁵ Singapore, he added, is “another global leader in cryptocurrency regulation,” that is “drawing capital, jobs, and, frankly, enthusiasm and creativity that belongs here in the United States.”¹⁸⁶

Although Mr. Grewal acknowledged the global nature of the digital asset ecosystem, he also recognized that “much of the most important innovations actually were developed here in America.”¹⁸⁷ Yet, “through th[e] absence of regulation, this sclerosis, [within the United States] simply pushed entrepreneurs and risk-takers – appropriate risk-takers, the kind of risk-takers we used to be proud of in this country – to other parts of the world.”¹⁸⁸

COMMITTEE REPUBLICANS HAVE WORKED TO SHINE A LIGHT ON OPERATION CHOKE POINT 2.0.

The Committee is responsible for exercising oversight of the “organization and operation of Federal agencies and entities having responsibilities for the administration and execution of laws and programs addressing subjects within [the Committee’s] jurisdiction,” including the Federal Reserve, FDIC, OCC, and SEC.¹⁸⁹ Throughout the 118th and 119th Congresses, Committee Republicans have sent more than 20 letters, reviewed thousands of pages of documents, and held two hearings to uncover the depths of Operation Choke Point 2.0.

I. Hearing I

On March 9, 2023, the Committee’s Subcommittee on Digital Assets, Financial Technology and Inclusion held a hearing entitled, “*Coincidence or Coordinated? The Administration’s Attack on the Digital Asset Ecosystem.*”¹⁹⁰ Prior to this hearing, former Committee Chair Patrick McHenry (R-NC) and Senator Cynthia Lummis (R-WY), sent a bicameral letter to the prudential regulators expressing serious concerns with SAB 121 and the regulator’s approach to regulating digital assets.¹⁹¹ During the hearing, Committee Republicans

¹⁸³ Oversight Hearing, *supra* note 2, at 49 (testimony of Mr. Paul Grewal, Chief Legal Officer, Coinbase).

¹⁸⁴ *Id.* at 54 (testimony of Mr. Fred Thiel, Chief Executive Office, Marathon Digital Holdings).

¹⁸⁵ *Id.* at 49 (testimony of Mr. Paul Grewal, Chief Legal Officer, Coinbase).

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ Rules of the House of Representatives, R. X(2)(b)(1)(B) (Jan. 2025).

¹⁹⁰ Mar. 9, 2023, Hearing, *supra* note 1.

¹⁹¹ Letter from Patrick McHenry et al., Chairman, H. Comm. on Financial Serv., to Michael Barr, Vice Chair for Supervision, Bd. of Govs. of the Fed. Reserve System, Michael Hsu, Acting Comptroller, Off. of the Comptroller of the Currency, Martin J. Gruenberg, Chair, Fed. Deposit Insurance Corp., Todd Harper, Chairman of the Board, National Credit Union Authority (Mar. 2, 2023).

scrutinized the Biden Administration's actions, including statements, guidance, and proposed rulemakings, which collectively negatively impacted the digital asset ecosystem.¹⁹² Committee Republicans also highlighted the failures of the Biden Administration's regulation by enforcement approach and demonstrated the need for a functional, regulatory framework.¹⁹³ Republican Committee members encouraged the Biden Administration regulators to promote innovation through thoughtful and deliberative regulatory action tailored to the actual risks and benefits of digital assets.¹⁹⁴

The witness panel consisted of four experts familiar with the Biden Administration's approach to digital assets. The Minority invited Lee Reiners, Policy Director at the Duke Financial Economics Center at Duke University.

- ❖ **Mr. Mike Belshe**, Chief Executive Officer and Co-founder of BitGo
- ❖ **Dr. Tonya Evans**, then-Professor, Pennsylvania State Dickinson School of Law
- ❖ **Mr. Jonathan Gould**, then-Partner, Jones Day
- ❖ **Mr. Paul Grewal**, Chief Legal Officer, Coinbase

Testimony

The witnesses testified that, during the Biden Administration, federal regulators often used guidance documents to repeatedly emphasize the risks posed by digital assets. While these guidance documents were public, their application was not.¹⁹⁵ Notably, the “confidential nature of this supervisory relationship facilitates the flow of information between bank and regulator, but it can also frustrate accountability and oversight.”¹⁹⁶ Mr. Gould highlighted the seemingly binding element of agency guidance:

[A]lthough agency guidance is technically non-binding, banks rarely challenge or disregard it. The practical consequences of doing so can be significant in light of the supervisory process through which guidance is applied. Given these attributes of bank supervision, generalized and negative statements raising safety and soundness concerns about particular industry sectors must be made carefully lest they be interpreted by the public or bank examiners as an outright prohibition.¹⁹⁷

Further, Mr. Gould testified that guidance should provide a path forward, not simply note the risks associated with a particular activity:

¹⁹² Mar. 9, 2023, Hearing, *supra* note 1.

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ *Id.* at 8-9 (testimony of Jonathan Gould, Partner, Jones Day).

¹⁹⁷ *Id.* at 9.

The way I think about safety and soundness guidance is that it provides a path, one path to get to how to do the activity and perform the activity in a safe and sound manner. I think a lot of the guidance that we are seeing is more negatively-phrased. It is focusing on kind of the risks associated, but it is not necessarily showing any kind of credible path to actually be able to perform whatever the activity is in a safe and sound manner.¹⁹⁸

Witnesses underscored that the Biden Administration’s posture toward digital assets was to discourage banks from offering services to digital asset firms.

Mr. Emmer. First, in your view, is the [Biden] Administration’s regulatory posture towards digital assets encouraging or discouraging financial institutions from offering services to digital asset firms?

Mr. Gould. Discouraging.¹⁹⁹

Post-Hearing Letters

Following this hearing, Committee Republicans sent several letters to federal regulators regarding their posture towards the digital asset ecosystem.

- ❖ On March 27, 2023, then-Committee Chair McHenry led a letter to former Secretary of Treasury Janet Yellen, then-FDIC Chair Gruenberg, Fed Chair Jerome Powell, and former Acting Comptroller Michael Hsu regarding the Financial Stability Oversight Council’s (FSOC) coordination of policy relating to digital assets.²⁰⁰

The letter requested communications referring or related to enforcement activities of digital assets, communications referring or related to joint statements produced regarding digital assets, and communications referring or related to digital asset “policy sprints” in which the FSOC members engaged.²⁰¹

¹⁹⁸ *Id.* at 15.

¹⁹⁹ *Id.* at 22.

²⁰⁰ Letter from Patrick McHenry et al., Chairman, H. Comm. on Financial Serv., to Janet Yellen, Secretary, U.S. Dep’t of the Treasury (Mar. 27, 2023) (Secretary Janet Yellen served as the Secretary of the Treasury from January 26, 2021, until January 20, 2025) [hereinafter “Mar. 2023 Letter to Yellen”]; Letter from Patrick McHenry et al., Chairman, H. Comm. on Financial Serv., to Jerome Powell, Chair, Bd. of Govs. of the Fed. Reserve System (Mar. 27, 2023) [hereinafter “Mar. 2023 Letter to Powell”]; Letter from Patrick McHenry et al., Chairman, H. Comm. on Financial Serv., to Michael Hsu, Acting Comptroller, Off. of the Comptroller of the Currency (Mar. 27, 2023) [hereinafter “Mar. 2023 Letter to Hsu”] (Acting Comptroller Michael Hsu served as the Acting Comptroller of the Currency from May 10, 2021, until February 10, 2025); Letter from Patrick McHenry et al., Chairman, H. Comm. on Financial Serv., to Martin J. Gruenberg, Chair, Fed. Deposit Insurance Corp. (Mar. 27, 2023) [hereinafter “Mar. 2023 Letter to Gruenberg”].

²⁰¹ Mar. 2023 Letter to Yellen, *supra* note 200; Mar. 2023 Letter to Powell, *supra* note 200; Mar. 2023 Letter to Hsu, *supra* note 200; Mar. 2023 Letter to Gruenberg, *supra* note 200.

In response, agencies provided communications between FSOC members related to their digital asset activities and policy sprint initiatives.²⁰² In addition, the FDIC provided its Crypto Asset Strategy along with the FDIC’s operational readiness plan and operational considerations for digital assets.²⁰³ Other documents received included drafts of the Joint Statement on Crypto-Asset Custody Activities, minutes from FSOC meetings, which included discussion on the “policy sprints,” and the 2022 FSOC Report on Digital Asset Financial Stability Risks and Regulation.²⁰⁴

The documents revealed that early in the Biden Administration, regulators at the Federal Reserve, FDIC, and OCC, developed a series of interagency “policy sprints” to “enhance the collective knowledge of the federal banking agencies regarding crypto-asset activities.”²⁰⁵

The first sprint focused on developing a common taxonomy for digital assets and agreed upon definitions to ensure a common language and understanding of the basic terms and concepts for future discussions. The second sprint centered on understanding use cases and risks associated with crypto and digital assets. The third sprint concentrated on potential gaps in regulation and supervision and prioritizing those gaps for additional consideration.²⁰⁶

By early 2022, the policy sprints appeared to have been dissolved—with little progress made. This coincided with the departure of then-FDIC Chair McWilliams.²⁰⁷ According to emails, a few months after then-Chair McWilliams’s departure, FDIC staff emailed OCC staff to explain that “the FDIC [was] standing down on many of the interagency crypto workstreams, including custody,” under then-Acting Chair Gruenberg.²⁰⁸

Documents reviewed by Republican Committee staff also revealed that federal agencies were rushing their work and changing from their initial course—particularly pertaining to the creation of a federal framework for payment stablecoins—after the Committee released legislative text in mid-2022. Prior to the release of the Committee’s legislative text, there was a concerted effort among the relevant agencies to better understand how payment stablecoins work and draft legislative principles and a legislative framework.²⁰⁹ Both the principles and framework produced by the agencies were not aligned with many of the provisions of the Committee’s draft legislation.²¹⁰ For example, a legislative framework that was circulating only allowed payment stablecoins to circulate on permissioned blockchain networks and a “draft principles term sheet” discussed how “payment stablecoins [could be] prohibited from use on secondary markets.”²¹¹

²⁰² Documents on file with Republican Committee staff.

²⁰³ Documents on file with Republican Committee staff.

²⁰⁴ Documents on file with Republican Committee staff.

²⁰⁵ Documents on file with Republican Committee staff.

²⁰⁶ Documents on file with Republican Committee staff.

²⁰⁷ Timothy Nerozzi, *FDIC chair resigns after warning Democrats launching 'hostile takeover'*, FOX NEWS, Jan. 1, 2022, <https://www.foxnews.com/politics/fdic-chair-resigns-democrats-hostile-takeover-agency>.

²⁰⁸ Documents on file with Republican Committee staff.

²⁰⁹ Documents on file with Republican Committee staff.

²¹⁰ Documents on file with Republican Committee staff.

²¹¹ Documents on file with Republican Committee staff.

Consequently, when the agencies received the draft legislation from the Committee, the approach had to change. In one email, a Department of Treasury employee wrote to staffers at the FDIC, Federal Reserve, CFPB, SEC, and the Commodity Futures Trading Commission (CFTC) in advance of a meeting the following day, “I wanted to flag that, in light of the fact that we’ve all recently received text from [House Financial Services Committee] staff, developments in Congress and the [Committee]’s interest will likely be a bigger part of the discussion than previously anticipated.”²¹² The emails suggest that the Biden Administration’s federal regulators ramped up their efforts after Congress began working on a federal framework for payment stablecoins. It took three years of work by Congress and a change in Administration before any payment stablecoin legislation would be enacted.

- ❖ On April 18, 2023, Committee members sent a letter to then-SEC Chair Gensler regarding registration for trading platforms.²¹³ Specifically, the members expressed frustration at then-Chair Gensler for “forc[ing] digital asset market participants into regulatory frameworks that [were] neither compatible with the underlying technology nor applicable because the firms’ activities do not involve an offering of securities.”²¹⁴ The members further stated that “[w]ithout clear rules of the road, [then-Chair Gensler’s] push for firms to ‘come in and register’ [was] a willful misrepresentation of the SEC’s non-existent registration process.”²¹⁵

Despite the numerous concerns raised by Committee members over several years, then-Chair Gensler typically refused to acknowledge the incompatibility of the U.S. securities laws with the digital asset ecosystem and consistently issued enforcement actions against digital asset firms for failing to register or comply with the securities laws. In fact, of the SEC’s 33 enforcement actions in 2024, 19 of them alleged an unregistered securities offering violation.²¹⁶ Additionally, on November 14, 2024, in one of his last speeches as Chair, then-Chair Gensler doubled-down on his assertions that the majority of digital assets are securities and digital asset platforms are simply refusing to come in and register with the SEC.²¹⁷ In some instances, then-Chair Gensler indicated that tailored disclosures and use of exemptive authority could be appropriate.²¹⁸ Dangling this possibility undermined the Chair’s position that the law already was clear or fit for purpose with respect to digital assets. Moreover, the ultimate lack of such reforms demonstrated the failure of the Biden Administration’s SEC to provide a practical legal framework for digital assets.

²¹² Documents on file with Republican Committee staff.

²¹³ Letter from Patrick McHenry et al., Chairman, H. Comm. on Financial Serv., to Gary Gensler, Chair, Securities and Exchange Comm’n (Apr. 26, 2023) [hereinafter “Apr. 2023 Letter to Gensler”].

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ CORNERSTONE RESEARCH, SEC CRYPTOCURRENCY ENFORCEMENT: 2024 UPDATE (Jan. 2025), <https://www.cornerstone.com/wp-content/uploads/2025/01/SEC-Cryptocurrency-Enforcement-2024-Update.pdf>.

²¹⁷ Gary Gensler, Chair, Securities & Exchange Comm’n, Car Keys, Football, and Effective Administration (Nov. 14, 2024).

²¹⁸ Lydia Beyoud & Yueqi Yang, *SEC Weighs Waiving Some Rules to Regulate Crypto, Gensler Says*, BLOOMBERG, July 14, 2022, <https://news.bloombergtax.com/financial-accounting/sec-weighs-waiving-some-rules-to-regulate-crypto-gensler-says>; *SEC Seeing ‘Lots’ of Crypto Non-Compliance, Says Gensler*, BLOOMBERG TV, July 19, 2022, <https://www.bloomberg.com/news/videos/2022-07-19/sec-seeing-lots-of-crypto-non-compliance-says-gensler-video>.

- ❖ On April 25, 2023, then-Committee Chair McHenry wrote to then-FDIC Chair Gruenberg, Fed Chair Powell, and then-Acting Comptroller Hsu regarding steps taken by the prudential regulators “to discourage banks from providing services to digital asset firms and related entities.”²¹⁹

The letter included a request for records and communications between the prudential regulators and supervised financial institutions relating to compliance with IL 1179 and the 2023 Crypto-Asset Risks Joint Statement.²²⁰ Additionally, it requested all non-public records and communications between and among employees of the prudential regulators and employees of state regulatory agencies relating to IL 1179 and the 2023 Crypto-Asset Risks Joint Statement.²²¹

Documents reviewed by Republican Committee staff revealed that prudential regulators’ staff emphasized that “regulators may limit a specific bank’s activities, including digital asset activities, through conditions on charter approvals, enforcement actions, and other means.”²²² The Biden Administration favored this approach over establishing clear rules for the regulation of digital assets as the “preference is to avoid new rules or issuing wholesale new guidance unless absolutely necessary. . . .”²²³

- ❖ On April 26, 2023, Committee Republicans sent a letter to then-Chair Gensler regarding the SEC’s failure to conduct a proper public rulemaking process to determine how digital assets should be evaluated under securities laws.²²⁴ Instead, then-Chair Gensler “spent the SEC’s limited time and resources working with some market participants more than others.”²²⁵

The Committee members requested records and communications regarding the SEC’s engagement with digital asset platforms and entities “seeking to register with the SEC in order to facilitate the trading of digital securities[.]”²²⁶ Specifically, Committee members requested records and communications between former SEC Senior Advisor Corey Frayer and former SEC General Counsel Dan Berkovitz regarding their communications with these entities.²²⁷

²¹⁹ Letter from Patrick McHenry et al., Chairman, H. Comm. on Financial Serv., to Jerome Powell, Chair, Bd. of Govs. of the Fed. Reserve System (Apr. 25, 2023) [hereinafter “Apr. 2023 Letter to Powell”]; Letter from Patrick McHenry et al., Chairman, H. Comm. on Financial Serv., to Michael Hsu, Acting Comptroller, Off. of the Comptroller of the Currency (Apr. 25, 2023) [hereinafter “Apr. 2023 Letter to Hsu”]; Letter from Patrick McHenry et al., Chairman, H. Comm. on Financial Serv., to Martin J. Gruenberg, Chair, Fed. Deposit Insurance Corp. (Apr. 25, 2023) [hereinafter “Apr. 2023 Letter to Gruenberg”].

²²⁰ Apr. 2023 Letter to Powell, *supra* note 219; Apr. 2023 Letter to Hsu, *supra* note 219; Apr. 2023 Letter to Gruenberg, *supra* note 219.

²²¹ Apr. 2023 Letter to Powell, *supra* note 219; Apr. 2023 Letter to Hsu, *supra* note 219; Apr. 2023 Letter to Gruenberg, *supra* note 219.

²²² Documents on file with Republican Committee staff.

²²³ Documents on file with Republican Committee staff.

²²⁴ Apr. 2023 Letter to Gensler, *supra* note 213.

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ *Id.* (Senior Advisor Corey Frayer served as a Senior Advisor to Chairman Gensler from December 2021 until January 2025; General Counsel Dan Berkovitz served as the SEC’s General Counsel from November 2021 until January 2023).

The SEC failed to produce any documents in response to the letter.

- ❖ On August 23, 2023, then-Committee Chair McHenry led a letter to Chair Powell regarding concerns relating to SR 23-7 and SR 23-8.²²⁸

The Fed provided internal communications and documents regarding both letters. As explained above, SR 23-7 focused on changes to supervision at the Federal Reserve. The Fed concluded that a combination of utilizing fintech-specific activities, or being owned by individuals or entities engaged or associated with crypto activities were considered novel banking activities.²²⁹ These “changes [were] designed to increase the intensity of supervision, including changes to the supervisory approach, workforce and System governance.”²³⁰ This change in the Fed’s supervisory approach included “a continuous supervision approach, with supervisory activities including continuous monitoring and targeted examinations culminating in an annual assessment.”²³¹ This served as a barrier to banks engaging in digital asset-related activities.

- ❖ On November 15, 2023, then-Committee Chair McHenry co-led a bicameral, bipartisan letter to then-FDIC Chair Gruenberg, then-OCC Acting Comptroller Hsu, then-Federal Reserve Vice Chair for Supervision Michael Barr, and former National Credit Union Administration Chair Todd Harper, regarding SAB 121.

The letter referenced an October 2023 Government Accountability Office (GAO) report, which stated that “it is reasonable to believe that companies may change their behavior to comply with the staff interpretations found in [SAB 121]” given the SEC’s authority to monitor public disclosures and pursue enforcement actions against noncompliant entities.²³² The signatories stressed that because “SAB 121 [met] the definition of a rule under the Administrative Procedure Act [(APA)],” despite failure to comply with APA rulemaking requirements, “[e]nforcing this noncompliant rule would set a concerning precedent that would facilitate regulatory gamesmanship to circumvent the APA, effectively allowing the SEC to have regulatory authority over institutions which Congress did not authorize.”²³³ As a result, the signatories requested that the SEC “clarify, through guidance or other action, that SAB 121 is not enforceable in light of the recent GAO determination.”²³⁴

²²⁸ Letter from Patrick McHenry et al., Chairman, H. Comm. on Financial Serv., to Jerome Powell, Chair, Bd. of Govs. of the Fed. Reserve System (Aug. 23, 2023).

²²⁹ Documents on file with Republican Committee staff.

²³⁰ Documents on file with Republican Committee staff.

²³¹ Documents on file with Republican Committee staff.

²³² Nov. 15 Letter, *supra* note 133 (citing GOV’T ACCOUNTABILITY OFF., B-334540, SECURITIES AND EXCHANGE COMMISSION—APPLICABILITY OF THE CONGRESSIONAL REVIEW ACT TO STAFF ACCOUNTING BULLETIN NO. 121, at 8 (2023), <https://www.gao.gov/assets/870/862501.pdf>) (Todd Harper was designated as Chairman of the National Credit Union Administration from January 20, 2021 until January 20, 2025; Michael Barr has served as a member of the Federal Reserve Board of Governors since July 18, 2022, and served as the Vice Chair for Supervision from July 19, 2022 until February 28, 2025).

²³³ *Id.*; see also Letter from Patrick McHenry et al., Chairman, H. Comm. on Financial Serv., to Gene Dodaro, Comptroller Gen. of the United States, Gov’t Accountability Off. (Aug. 23, 2023) (“Wherein the Committee requests GAO provide an update into its assessment into whether SAB 121 requires a rulemaking.”).

²³⁴ Nov. 15 Letter, *supra* note 133.

The SEC did not provide any clarity on SAB 121 as requested in this letter.

Although the SEC refused to provide any clarity related to SAB 121, Republican Committee staff received interagency communications in response to other requests outlined above and below that provided additional insight around the staff guidance. The documents revealed that the agencies internally discussed whether SAB 121 was applicable to banks under the jurisdiction of the prudential regulators.²³⁵ Banking regulators' staff were reluctant to determine whether banks were subject to SAB 121. SEC staff, however, stated that their "starting point is that if a bank is carrying out the general activities described in the SAB (i.e., safeguarding customer crypto assets), they would be in scope."²³⁶

- ❖ On May 30, 2024, a bicameral letter was sent to President Biden urging him to sign the Joint Resolution rescinding SAB 121.²³⁷

Despite clear, bipartisan majorities in the House and Senate expressing disapproval of SAB 121, on May 31, 2024, President Biden vetoed the Joint Resolution.²³⁸ Congress was unable to successfully override President Biden's veto of the Joint Resolution.²³⁹ Despite 228 members of the U.S. House of Representatives voting in favor of the measure, the House failed to reach the 290 votes needed to overturn the veto.²⁴⁰ Notably, 183 Democrats voted against the measure.²⁴¹

- ❖ On September 23, 2024, Committee members sent letters to then-FDIC Chair Gruenberg, Fed Chair Powell, then-Acting Comptroller Hsu, and then-SEC Chair Gensler seeking additional information on the Agencies' handling of digital asset-related activity by supervised institutions, specifically the significant change in the FDIC's participation in the "policy sprints" in 2022.²⁴² The Committee members requested non-public records and communications between the prudential regulators and the SEC regarding SAB 121, an Interagency Custody Statement, and the need for additional guidance or regulation related to digital asset custody.²⁴³ On the same day, a bicameral group of Senators and Congressmen, including then-Chair McHenry sent

²³⁵ Documents on file with Republican Committee staff.

²³⁶ Documents on file with Republican Committee staff.

²³⁷ Letter from Patrick McHenry et al., Chairman, H. Comm. on Financial Serv., to Joseph R. Biden, President, The White House (May 20, 2024).

²³⁸ H.R. J.Res.109, 118th Cong.

²³⁹ Sarah Wynn, *US House fails to meet threshold to override Biden's veto of a resolution to overturn SAB 121*, THE BLOCK, July 11, 2024, <https://www.theblock.co/post/304655/us-house-fails-to-meet-threshold-to-override-bidens-veto-of-a-resolution-to-overturn-sab-121>.

²⁴⁰ *Id.*

²⁴¹ *Id.*

²⁴² Letter from Patrick McHenry et al., Chairman, H. Comm. on Financial Serv., to Martin Gruenberg, Chairman, Fed. Deposit Insurance Corp (Sept. 23, 2024) [hereinafter "Sept. 2024 Letter to Gruenberg"]; Sept. 2024 Letter to Gensler, *supra* note 132; Letter from Patrick McHenry et al., Chairman, H. Comm. on Financial Serv., to Jerome Powell, Chairman, Bd. of Govs. of the Fed. Reserve System (Sept. 23, 2024); Letter from Patrick McHenry et al., Chairman, H. Comm. on Financial Serv., to Michael Hsu, Acting Comptroller of the Currency, Off. Of the Comptroller of the Currency (Sept. 23, 2024)

²⁴³ Sept. 2024 Letter to Gruenberg, *supra* note 242, at 2.

a letter to then-Chair Gensler seeking the rescission of SAB 121 based on GAO’s finding that it was a rule, and the harm it would do to the digital assets ecosystem.²⁴⁴

Prior to the SEC issuing SAB 121, the prudential regulators were actively working on a “Joint Statement on Crypto-Asset Custody Services,” to address “key risk management considerations related to providing custody services for crypto-assets.”²⁴⁵ In a draft and pre-decisional “discussion outline and outstanding issues list” prepared by the OCC noted that institutions should “[c]onsider the bank’s risk appetite, including potential strategic risks, operational risks, legal risks, and reputational risks,” prior to engaging in crypto-asset custody activities.²⁴⁶ However, in a comment on the document, OCC staff referenced “wider concerns about the vagueness of reputational risk . . .” and that staff should be careful about the use of the phrase reputational risk.²⁴⁷ The Biden Administration ultimately did not release a final version the “Joint Statement on Crypto-Asset Custody Services,” opting instead to release statements suggesting digital assets were not safe or sound activities for financial institutions to engage in,²⁴⁸ or required notification before engaging in digital asset activities.²⁴⁹

Despite bipartisan and bicameral efforts to mitigate the harm of SAB 121, the Biden Administration and its regulators continued to maintain a hostile posture towards digital assets.

II. Hearing II

On February 6, 2025, the Committee’s Subcommittee on Oversight and Investigations held a hearing entitled, “*Operation Choke Point 2.0: The Biden Administration’s Efforts to Put Crypto in the Crosshairs.*”²⁵⁰ The Majority invited three experts familiar with the history of Operation Choke Point 2.0 and the Biden Administration’s posture towards digital assets. The Minority invited Shayna Olesiuk, Director of Banking Policy at Better Markets.

❖ **Mr. Paul Grewal**, Chief Legal Officer, Coinbase

❖ **Mr. Fred Thiel**, Chief Executive Officer and Chairman of the Board, MARA

❖ **Mr. Austin Campbell**, Adjunct Professor, Stern School of Business, New York University

The witnesses testified regarding the history of Operation Choke Point 1.0, as well as the consequences of the Biden Administration’s actions. In particular, witnesses testified how the Biden Administration’s effort to choke off digital asset firms engaging in legitimate activity curtailed the firms’ ability to pay employees, rent, utilities, and taxes.²⁵¹

²⁴⁴ See generally Sept. 2024 Letter to Gensler, *supra* note 132.

²⁴⁵ Documents on file with Republican Committee staff.

²⁴⁶ Documents on file with Republican Committee staff.

²⁴⁷ Documents on file with Republican Committee staff.

²⁴⁸ 2023 Crypto-Asset Risks Joint Statement, *supra* note 62.

²⁴⁹ IL 1179, *supra* note 18.

²⁵⁰ Oversight Hearing, *supra* note 2.

²⁵¹ *Id.* at 9 (testimony of Mr. Austin Campbell, Adjunct Professor, Stern School of Business).

Testimony

During the hearing, witnesses testified about how bank supervision can be weaponized to allow for abuse within the system.²⁵² Notably, “the fact that supervision is often confidential, hidden, and nobody knows exactly what happened itself is a problem that leads to abuse,” and failure to address it may result in “hearings on Operation Choke Point 3.0 and 4.0 and 5.0 onward to infinity.”²⁵³

The hearing highlighted one tool abused by bank examiners: the “management” aspect of the grading rubric “CAMELS.”²⁵⁴ CAMELS, the supervisory framework first established by the Federal Financial Institutions Examination Council (FFIEC) in 1979, standardized how financial institutions were assessed by regulators for their safety, soundness, and overall health.²⁵⁵ Financial institutions are assessed for each of the six categories under CAMELS and then assigned a composite rating on a scale of 1 (best) to 5 (worst) based on: capital adequacy, asset quality, management, earnings, liquidity, and sensitivity to market risk.²⁵⁶

Having a poor CAMELS rating can negatively impact financial institutions in several ways. This includes limitations on business activities and certain funding sources, increases in insurance premiums, more frequent supervisory examinations, tougher capital requirements, and more. According to the testimony of Professor Austin Campbell, the management portion of CAMELS “is a vehicle for abuse . . . an area where the safety and soundness concerns, which on a standalone basis are legitimate, become warped, and they can be used as a tool to discriminate against industries, against individuals on any basis people want because it is not discoverable.”²⁵⁷ The confidential nature of banking supervision can lead to rogue examiners abusing this system and severing disfavored industries from the financial sector.²⁵⁸

Although Biden-era federal regulators attempted to appear impartial to the digital asset ecosystem, this façade was made apparent following the FDIC’s release of the “pause” letters:

During the same period in which the FDIC was telling banks to halt activity, the FDIC was also publicly denying they were discouraging banks from offering services to lawful businesses, including crypto. For example, in a January 2023 joint statement, the FDIC, along with other banking regulators, explicitly stated that banking organizations are neither prohibited nor discouraged from providing banking services to customers of any specific class or type, as permitted by law or regulation.²⁵⁹

²⁵² *Id.* at 10.

²⁵³ *Id.* at 8.

²⁵⁴ *Id.* at 9.

²⁵⁵ OFF. OF THE COMPTROLLER OF THE CURRENCY, CAMELS RATING AND THEIR INFORMATION CONTENT (2021).

²⁵⁶ *Id.*

²⁵⁷ Oversight Hearing, *supra* note 2, at 9-10 (testimony of Mr. Austin Campbell, Adjunct Professor, Stern School of Business).

²⁵⁸ *See generally id.*

²⁵⁹ *Id.* at 12 (testimony of Mr. Paul Grewal, Chief Legal Officer, Coinbase).

Under the Biden Administration, the federal regulators' treatment of digital assets differed significantly from traditional businesses. According to Mr. Campbell:

There was actually a study recently by the [Alternative Investment Management Association] and John D'Agostino that I reference in my written testimony, where they went and systematically surveyed asset management firms, those who were traditional asset managers, [...], and then those that served crypto.

Among the traditional asset managers, many of whom do engage in highly risky strategies, and I say this as somebody who has worked at a traditional asset manager myself, almost none of them had problems accessing banking service. *But among the crypto segment, even those doing the most vanilla, most boring, long only sort of strategies, roughly two thirds had problems acquiring banking services.*²⁶⁰

Mr. Campbell testified that subjecting all actors to onerous requirements, such as the requirement to receive non-objection letters, because of a few bad actors, is a governance issue, stating, "we are somewhat twisted around here in that the regulators took the stance of, because some actors in a space are bad, we will therefore debank all of the actors in a space."²⁶¹ He further explained that this was "the exact sort of the line of thinking that [was] promulgated to justify the actions of the FDIC with regard to Choke Point, but also, you know, was the rationale behind red lining and the denial of banking services to minorities in the past."²⁶²

According to Mr. Grewal, the non-objection letter requirement was enough to deter banks from engaging with digital asset firms:

Mr. Loudermilk. If banks must ask regulators for explicit permission to bank crypto firms, how does this affect their willingness to bank those firms?

Mr. Grewal. It discourages those banks from even trying in the first place, Congressman. And the reason is that having to submit those requests under a well defined framework with a deadline is one thing, but to simply submit and await an answer whenever and according to whatever standard the regulator deems fit, that is something else entirely, and that is something that ultimately discourages banks from even participating in the first place.²⁶³

The Committee discovered that some digital asset entities fought tirelessly to seek clarity from federal regulators during the Biden Administration. According to Mr. Grewal, for example,

²⁶⁰ *Id.* at 28 (testimony of Mr. Austin Campbell, Adjunct Professor, Stern School of Business) (emphasis added).

²⁶¹ *Id.* at 33.

²⁶² *Id.* at 34.

²⁶³ *Id.* at 34-35 (testimony of Mr. Paul Grewal, Chief Legal Officer, Coinbase).

Coinbase sought clarity from the SEC on dozens of occasions following the Commission’s lawsuit alleging Coinbase was illegally operating a securities exchange, broker, and clearing agency²⁶⁴:

We have attempted to meet with the SEC on dozens and dozens of occasions with our own ideas for how regulation might work, and what standards might apply to the industry as a whole. Over and over again, we were thwarted. We were told, thank you and go away.²⁶⁵

The resulting investigation and other enforcement actions like this made firms and the ecosystem a higher risk for financial institutions. The Biden Administration acknowledged this legal uncertainty in the 2023 Crypto-Asset Risks Joint Statement, which stated, “[l]egal uncertainties related to custody practices, redemptions, and ownership rights, some of which are currently the subject of legal processes and proceedings.”²⁶⁶

Letters

Following the Committee’s February 6, 2025, hearing, Committee Republicans sent a letter to the FDIC regarding the Agency’s regulatory and supervisory work relating to digital asset related-activities by supervised financial institutions, as well as three additional letters requesting the SEC and Federal Reserve to commit to creating straightforward regulation and policies governing the digital asset ecosystem—and ending debanking.

- ❖ On February 20, 2025, Committee Republicans sent a letter to FDIC Acting Chair Hill, requesting consideration of several recommendations that would increase transparency on policies governing digital assets, while also decreasing the risk of debanking practices.²⁶⁷

In his response, FDIC Acting Chair Hill “fully agree[d] that banking regulators should not use ‘reputational risk’ as a basis for supervisory criticisms.”²⁶⁸ The FDIC committed to increasing objectivity in bank examinations by changing policies that were abused by the Biden Administration. According to Acting Chair Hill, the FDIC “conducted a review of all mentions of reputational risk or similar terms in [its] regulations, guidance, examination manuals, and other policy documents, resulting in a lengthy inventory, *with plans to eradicate this concept from [the FDIC’s] regulatory approach.*”²⁶⁹

²⁶⁴ SEC-Coinbase Press Release, *supra* note 165 (The SEC filed a joint stipulation with Coinbase to dismiss the ongoing civil enforcement action against Coinbase Inc. and Coinbase Global Inc.).

²⁶⁵ Oversight Hearing, *supra* note 2, at 29 (testimony of Mr. Paul Grewal, Chief Legal Officer, Coinbase).

²⁶⁶ 2023 Crypto-Asset Risks Joint Statement, *supra* note 62.

²⁶⁷ Letter from French Hill, Chairman, H. Comm. on Financial Serv., to Travis Hill, Acting Chairman, Fed. Deposit Insurance Corp. (Feb. 20, 2025).

²⁶⁸ Letter from Travis Hill, Acting Chair, Fed. Deposit Insurance Corp., to Dan Meuser, Chairman, Subcomm. on Oversight & Investigations, H. Comm. on Financial Serv. (Mar. 24, 2025) [hereinafter “Mar. 2025 Letter to Chair Meuser”].

²⁶⁹ *Id.* (emphasis added).

- ❖ On March 31, 2025, Committee members sent a letter to the FDIC, OCC, and Federal Reserve, requesting a reversal of harmful regulatory actions that “unduly stifled innovation and effectively prevented financial institutions from engaging in digital asset-related activities.”²⁷⁰

Then-Acting Comptroller of the Currency Rodney Hood responded by emphasizing the OCC’s commitment to fostering “responsible innovation.”²⁷¹ OCC’s response referenced the OCC’s approach to regulating novel activities as “rest[ing] on the expectation that banks will have the same strong risk management controls in place as they do for traditional activities.”²⁷² Additionally, the letter referenced action taken by the OCC to address the Biden Administration’s policies.²⁷³

Additionally, Acting Chair Hill sent a response letter to the Committee outlining the FDIC’s shift toward a more open and flexible approach to innovation and technology, including digital assets.²⁷⁴ Further, the letter noted that the Corporation is updating its policies, including withdrawing prior restrictive guidance and clarifying that institutions may engage in permissible crypto-related activities without obtaining advance approval.²⁷⁵

Committee Republicans commend these and other Trump Administration efforts aimed at reversing and rectifying harmful Biden Administration regulations and policies targeting the digital asset ecosystem.

- ❖ On May 16, 2025, Committee members sent a letter to SEC Chair Paul Atkins, requesting a briefing on the Commission’s plans to remedy then-Chair Gary Gensler’s harmful actions toward digital assets and encourage innovation.²⁷⁶

The SEC provided a thorough briefing on the SEC’s Crypto Task Force, described in detail below.

THE TRUMP ADMINISTRATION IS WORKING TO END OPERATION CHOKE POINT 2.0.

As described above, the Trump Administration, during the first term, corrected course after years of unfair debanking actions forced by Obama Administration regulators. In his second term, President Trump once again promised to end unfair debanking actions. During his campaign, President Trump said: “As president, I will immediately shut down Operation Choke

²⁷⁰ Letter from French Hill et al., Chairman, H. Comm. on Financial Serv., to Travis Hill et al., Acting Chair, Fed. Deposit Insurance Corp. (Mar. 31, 2025).

²⁷¹ Documents on file with Republican Committee staff.

²⁷² Documents on file with Republican Committee staff.

²⁷³ Documents on file with Republican Committee staff.

²⁷⁴ Documents on file with Republican Committee staff.

²⁷⁵ Documents on file with Republican Committee staff.

²⁷⁶ Letter from Dan Meuser, Chairman, Subcom. On Oversight and Investigations, H. Comm. on Financial Serv., and Bryan Steil, Chairman, Subcom. On Digital Assets, Fin. Tech., and Artificial Intelligence, H. Comm. on Financial Serv., to Paul Atkins, Chair, Securities and Exchange Commission (May 16, 2025).

Point 2.0. They want to choke you out of business; we’re not going to let that happen.”²⁷⁷ Since taking office, President Trump has remained true to his word. To rectify the Biden Administration’s hostility towards digital assets, the Trump Administration has taken executive actions to encourage digital asset innovation and American competitiveness. President Trump has also carefully selected individuals that understand the need for functional digital asset regulations. Regulators have followed suit, rolling back harmful Biden Administration guidance and policies and working to enact a clear regulatory regime for digital assets. Examples of such actions are listed in the sections below.

I. The White House

- ❖ One of his first official acts as President was signing E.O. 14178, entitled “Strengthening American Leadership in Digital Financial Technology.”²⁷⁸ The E.O. commits to supporting the “responsible growth and use of digital assets, blockchain technology, and related technologies across all sectors of the economy”²⁷⁹ Further, the E.O. establishes the President’s Working Group on Digital Asset Markets (Working Group).²⁸⁰
- ❖ President Trump appointed Mr. David Sacks, a venture capitalist, as “White House A.I. & Crypto Czar.”²⁸¹ Mr. Sacks “guide[s] policy for the Administration in Artificial Intelligence and Cryptocurrency,” which President Trump identified as “two areas critical to the future of American competitiveness.”²⁸² Mr. Sacks’s appointment signaled President Trump’s commitment to creating a functional framework for digital assets.
- ❖ Mr. Sacks also leads the Working Group, as established by E.O. 14178.²⁸³ The Working Group is responsible for “propos[ing] a Federal regulatory framework governing the issuance and operation of digital assets, including stablecoins, in the United States.”²⁸⁴ All agencies within the Working Group have been tasked with identifying “all regulations, guidance documents, orders, or other items that affect the digital asset sector.”²⁸⁵ The Chair of the Working Group is then tasked with deciding whether to rescind, modify, or keep these identified regulations and documents.²⁸⁶

²⁷⁷ Donald J. Trump, Republican Presidential Candidate, Speech at Bitcoin 2024 (July 27, 2024).

²⁷⁸ Exec. Order No. 14178, 90 Fed. Reg. 8647 (2025) [hereinafter “E.O. 14178”].

²⁷⁹ *Id.*

²⁸⁰ *Id.* The Working Group is chaired by the Special Advisor for AI and Crypto. Other members include the Secretary of the Treasury, Attorney General, Secretary of Commerce, Secretary of Homeland Security, Director of the Office of Management and Budget, Assistant to the President for National Security Affairs, Assistant to the President for National Economic Policy, Homeland Security Advisor, Chairman of the Securities and Exchange Commission, and Chairman of the Commodity Futures Trading Commission. *Id.*

²⁸¹ President Donald J. Trump (@realDonaldTrump), Truth Social (Dec. 5, 2024, 7:50 PM), <https://truthsocial.com/@realDonaldTrump/posts/113603133222686186>.

²⁸² *Id.*

²⁸³ E.O. 14178, *supra* note 278.

²⁸⁴ *Id.*

²⁸⁵ *Id.*

²⁸⁶ *Id.*

- ❖ On July 18, 2025, President Trump signed the GENIUS Act into law.²⁸⁷ The GENIUS Act “prioritizes consumer protection, strengthens the U.S. dollar’s reserve currency status, and bolsters our national security.”²⁸⁸ This legislation protects consumers by creating the first federal regulatory system for payment stablecoins and requiring 100 percent reserve backing with liquid assets, as well as public disclosures regarding the composition of reserves.²⁸⁹ Additionally, the GENIUS Act enhances national security by requiring payment stablecoin issuers to create anti-money laundering and sanctions compliance programs, among other obligations.²⁹⁰
- ❖ On July 30, 2025, the Working Group released a report (PWG Report) entitled “Strengthening American Leadership in Digital Financial Technology” that “provides a roadmap” to fulfill President Trump’s promise “to make America the ‘crypto capital of the world.’”²⁹¹ The PWG Report recognizes the “stark” difference in the Trump Administration’s and the Biden Administration’s approach to digital assets. The PWG Report states:

The Biden Administration’s approach to crypto was marked by regulatory overreach[] that countered the American tradition of embracing new technologies. Operation Choke Point 2.0[] saw regulators push banks to cut off lawful crypto businesses, effectively debanking the industry.[] This aggressive strategy of regulation by enforcement created a hostile environment for crypto entrepreneurs[] that at times drove their projects and ventures overseas. Although a great deal of the early innovation in the crypto space occurred in the United States, much of the industry’s corporate infrastructure migrated offshore to avoid the unfavorable regulatory environment. This approach nearly eliminated the opportunity for the United States to lead in this revolutionary technology due to mere political whims.²⁹²

- ❖ On August 7, 2025, President Trump signed an E.O. “to ensure that Federal regulators do not promote policies and practices that allow financial institutions to deny or restrict services based on political beliefs, religious beliefs, or lawful business

²⁸⁷ Press Release, The White House, Fact Sheet: President Donald J. Trump Signs GENIUS Act into Law (July 18, 2025), <https://www.whitehouse.gov/fact-sheets/2025/07/fact-sheet-president-donald-j-trump-signs-genius-act-into-law/>; *See generally* S.1582 (2025).

²⁸⁸ *Id.*

²⁸⁹ *Id.*

²⁹⁰ *Id.*

²⁹¹ Press Release, The White House, Fact Sheet: The President’s Working Group on Digital Asset Markets Releases Recommendations to Strengthen American Leadership in Digital Financial Technology (July 30, 2025), <https://www.whitehouse.gov/fact-sheets/2025/07/fact-sheet-the-presidents-working-group-on-digital-asset-markets-releases-recommendations-to-strengthen-american-leadership-in-digital-financial-technology/>.

²⁹² THE WHITE HOUSE, STRENGTHENING AMERICAN LEADERSHIP IN DIGITAL FINANCIAL TECHNOLOGY 5-6 (2025), available at <https://www.whitehouse.gov/crypto/>.

activities, ensuring fair access to banking for all Americans.”²⁹³ The E.O. directs federal regulators to remove reputational risk and other concepts that enabled Choke Point 2.0; instructs the Small Business Administration to require financial institutions under its jurisdiction “make reasonable efforts to reinstate clients and potential clients” who were unlawfully debanked, in addition to reviewing past policies that allowed debanking to occur; and requires additional effort to develop a comprehensive strategy to combat wrongful debanking.²⁹⁴

II. The Federal Reserve

- ❖ On April 24, 2025, the Fed rescinded the Biden Administration’s 2022 supervisory letter, SR 22-6, requiring state member banks to notify the Fed prior to engaging in digital asset-related activities.²⁹⁵ Instead, the Board announced that it will “monitor banks’ crypto-asset activities through the normal supervisory process.”²⁹⁶ The Fed also rescinded the Biden Administration’s 2023 supervisory letter, SR 23-8, “regarding the supervisory non[-]objection process for state member bank engagement in dollar token activities.”²⁹⁷
- ❖ The Federal Reserve, with the FDIC, also withdrew two of the 2023 Joint Statements, which “addressed crypto-risks and liquidity risks to banking organizations resulting from crypto-asset market vulnerabilities.”²⁹⁸ The action sought “to provide clarity that banking organizations may engage in permissible crypto-asset activities and provide products and services to persons and firms engaged in crypto-asset related activities, consistent with safety and soundness and applicable laws and regulations.”²⁹⁹
- ❖ On June 4, 2025, Federal Reserve Governor Michelle Bowman was confirmed as the Fed’s Vice Chair for Supervision; this confirmation demonstrates the Trump Administration’s focus on reforming the U.S. banking system. Vice Chair Bowman has been clear about the need for bank supervisors to provide direct and uncomplicated guidelines to the institutions they monitor.³⁰⁰ She has also been outspoken about debanking. Prior to her confirmation, Vice Chair Bowman stated that “bank regulatory policy should be used to address the needs of the unbanked and

²⁹³ Press Release, The White House, Fact Sheet: President Donald J. Trump Guarantees Fair Banking for All Americans (Aug. 7, 2025), <https://www.whitehouse.gov/fact-sheets/2025/08/fact-sheet-president-donald-j-trump-guarantees-fair-banking-for-all-americans/>.

²⁹⁴ *Id.*

²⁹⁵ Press Release, Bd. of Govs. of the Fed. Reserve System, Federal Reserve Board announces the withdrawal of guidance for banks related to their crypto-asset and dollar token activities and related changes to its expectations for these activities (Apr. 24, 2025), <https://www.federalreserve.gov/newsevents/pressreleases/bcreg20250424a.htm>.

²⁹⁶ *Id.*

²⁹⁷ *Id.*

²⁹⁸ Press Release, Fed. Deposit Insurance Corp., Agencies Withdraw Joint Statements on Crypto-Assets (Apr. 24, 2025), <https://www.fdic.gov/news/press-releases/2025/agencies-withdraw-joint-statements-crypto-assets>.

²⁹⁹ *Id.*

³⁰⁰ Pete Schroeder, *Fed’s Bowman vows ‘pragmatic’ rulemaking as top bank regulator*, REUTERS, Apr. 10, 2025, <https://www.reuters.com/world/us/feds-bowman-vows-pragmatic-rulemaking-top-bank-regulator-2025-04-10/>.

expand the availability of banking services.”³⁰¹ She expanded, “it should not be used to limit or exclude access to banking services for legitimate customers and businesses in a way that is meant to further unrelated policy goals, sometimes referred to as ‘de-banking’”³⁰²

- ❖ On June 23, 2025, the Federal Reserve Board “announced that reputational risk will no longer be a component of examination programs in its supervision of banks.”³⁰³ As part of this, the Board will review and remove references to reputation and reputational risk from supervisory materials, which include examination manuals.³⁰⁴ The Board will also assess appropriate opportunities to replace references to reputation “with more specific discussions of financial risk.”³⁰⁵ Examiners will also receive training to ensure consistent implementation of the new protocol.³⁰⁶
- ❖ On July 14, 2025, the Federal Reserve, with the FDIC and the OCC, issued a joint statement to provide additional clarity regarding financial institutions’ engagement in digital asset-related activities.³⁰⁷ The statement highlights potential risk-management considerations, existing risk-management principles, and reminds banks to engage in a safe and sound manner and follow existing laws and regulations.³⁰⁸
- ❖ On August 15, 2025, the Federal Reserve Board withdrew SR 23-7, announcing “it [would] sunset its novel activities supervision program and return to monitoring banks’ novel activities through the normal supervisory process.”³⁰⁹

III. The FDIC

- ❖ On January 10, 2025, Acting Chair Hill released his views on key policy issues, which included debanking.³¹⁰ Acting Chair Hill described a “longstanding goal” of the FDIC as seeking to “*decrease* the number of people who are unbanked.”³¹¹ He

³⁰¹ *Fed’s Bowman suggests easing regulatory uncertainty for mutual banks*, ABA BANKING JOURNAL, Jan. 31, 2025, <https://bankingjournal.aba.com/2025/01/feds-bowman-suggests-easing-regulatory-uncertainty-for-mutual-banks/>.

³⁰² *Id.*

³⁰³ Press Release, Bd. of Govs. of the Fed. Reserve System, Federal Reserve Board announces that reputational risk will no longer be a component of examination programs in its supervision of banks (June 23, 2025), <https://www.federalreserve.gov/newsevents/pressreleases/bcreg20250623a.htm>.

³⁰⁴ *Id.*

³⁰⁵ *Id.*

³⁰⁶ *Id.*

³⁰⁷ Press Release, Off. of the Comptroller of the Currency, Agencies Issue Joint Statement on Risk-Management Considerations For Crypto-Asset Safekeeping (July 14, 2025), <https://occ.gov/news-issuances/news-releases/2025/nr-ia-2025-68.html> [hereinafter “July 2025 Joint Statement”].

³⁰⁸ *Id.*

³⁰⁹ Press Release, Bd. of Govs. of the Fed. Reserve System, Federal Reserve Board announces it will sunset its novel activities supervision program and return to monitoring banks’ novel activities through the normal supervisory process (Aug. 15, 2025), <https://www.federalreserve.gov/newsevents/pressreleases/bcreg20250815a.htm>.

³¹⁰ Press Release, Fed. Deposit Insurance Corp., Charting a New Course: Preliminary Thoughts on FDIC Policy Issues (Jan. 10, 2025), <https://www.fdic.gov/news/speeches/2025/charting-new-course-preliminary-thoughts-fdic-policy-issues>.

³¹¹ *Id.* (emphasis added).

explained, “[e]fforts to debank law-abiding customers are unacceptable, regulators must work to end it, and there is no place at the FDIC for anyone who has pushed – explicitly or implicitly – banks to stop serving law-abiding customers.”³¹²

- ❖ As evidence of the Trump Administration’s and Acting Chair Hill’s dedication to ending unfair debanking practices, in February 2025, the FDIC publicly released the Biden Administration’s “pause” letters,³¹³ described above in detail. The release of these letters confirmed the existence of Operation Choke Point 2.0 and demonstrated the Biden Administration’s efforts to stifle digital asset activity among financial institutions in the United States.
- ❖ As referenced above, in response to the Majority’s inquiry, Acting Chair Hill explained that, as of March 2025, the FDIC had reviewed mentions of reputational risk or similar terms in [its] regulations, guidance, examination manuals, and other policy documents, “*with plans to eradicate this concept from [the FDIC’s] regulatory approach.*”³¹⁴
- ❖ On March 28, 2025, the FDIC issued FIL-7-2025, which rescinds FIL-16-2022, and “clarifies that FDIC-supervised institutions may engage in permissible crypto-related activities without receiving prior FDIC approval.”³¹⁵
- ❖ As noted above, on April 24, 2025, the FDIC joined the Fed in withdrawing the 2023 Joint Statements, which served to provide clarity to banking organizations regarding the permissibility of engaging in digital asset-related activities.³¹⁶
- ❖ As noted above, on July 14, 2025, the FDIC, with the Federal Reserve and the OCC, issued a joint statement to provide additional clarity regarding financial institutions’ engagement in digital asset-related activities.³¹⁷
- ❖ On July 18, 2025, the FDIC requested comment on a proposal to amend its Guidelines for Appeals of Material Supervisory Determinations to replace the existing committee with a standalone office to consider supervisory appeals.³¹⁸

³¹² *Id.*

³¹³ Press Release, Fed. Deposit Insurance Corp., FDIC Releases Documents Related to Supervision of Crypto-Related Activities (Feb. 5, 2025), <https://www.fdic.gov/news/press-releases/2025/fdic-releases-documents-related-supervision-crypto-related-activities>.

³¹⁴ Mar. 2025 Letter to Chair Meuser, *supra* note 268 (emphasis added).

³¹⁵ Press Release, Fed. Deposit Insurance Corp., FDIC Clarifies Process for Banks to Engage in Crypto-Related Activities (Mar. 28, 2025), <https://www.fdic.gov/news/press-releases/2025/fdic-clarifies-process-banks-engage-crypto-related-activities>.

³¹⁶ Press Release, Fed. Deposit Insurance Corp., Agencies Withdraw Joint Statements on Crypto-Assets (Apr. 24, 2025), <https://www.fdic.gov/news/press-releases/2025/agencies-withdraw-joint-statements-crypto-assets>.

³¹⁷ July 2025 Joint Statement, *supra* note 307.

³¹⁸ Fed. Deposit Insurance Corp., Guidelines for Appeals of Material Supervisory Determinations, 90 Fed. Reg. 33,942 (July 18, 2025).

- ❖ On October 7, 2025, the FDIC, with the OCC, issued “a notice of proposed rulemaking to codify the elimination of reputation risk from their supervisory programs,” in part by prohibiting agencies from criticizing or taking action against institutions based on reputational risk.³¹⁹ It would also prohibit agencies from:

requiring, instructing, or encouraging an institution to close an account, to refrain from providing an account, product, or service, or to modify or terminate any product or service on the basis of a person’s or entity’s political, social, cultural, or religious views or beliefs, constitutionally protected speech, or solely on the basis of politically disfavored but lawful business activities perceived to present reputation risk.³²⁰

IV. The OCC

- ❖ On March 7, 2025, the OCC published IL 1183, which confirmed “that crypto-asset custody, certain stablecoin activities, and participation in independent node verification networks such as distributed ledger are permissible for national banks and federal savings associations.”³²¹ It also rescinded IL 1179, which required OCC-supervised institutions to receive supervisory non-objection and demonstrate adequate controls prior to engaging in digital asset-related activities.³²² The OCC also withdrew two 2023 interagency statements, the “Joint Statement on Crypto-Asset Risks to Banking Organizations,” and the “Joint Statement on Liquidity Risks to Banking Organizations Resulting from Crypto-Asset Market Vulnerabilities.”³²³
- ❖ On March 20, 2025, the OCC announced that it would no longer “examine its regulated institutions for reputation risk and is removing references to reputation risk from its Comptroller’s Handbook booklets and guidance issuances.”³²⁴
- ❖ On May 7, 2025, the OCC published IL 1184 to “confirm that national banks and federal savings associations may buy and sell assets held in custody at the customer’s direction and are permitted to outsource to third parties bank-permissible crypto-asset

³¹⁹ Press Release, Off. of the Comptroller of the Currency, Prohibition on Use of Reputation Risk by Regulators: Notice of Proposed Rulemaking (Oct. 7, 2025), <https://occ.gov/news-issuances/bulletins/2025/bulletin-2025-30.html>.

³²⁰ *Id.*

³²¹ Press Release, Off. of the Comptroller of the Currency, OCC Clarifies Bank Authority to Engage in Certain Cryptocurrency Activities (Mar. 7, 2025), <https://www.occ.treas.gov/news-issuances/news-releases/2025/nr-occ-2025-16.html?ref=thisweekinfintech.com>.

³²² *Id.*

³²³ Press Release, Off. of the Comptroller of the Currency, Bank Activities: OCC Issuances Addressing Certain Crypto-Asset Activities (Mar. 7, 2025), <https://www.occ.gov/news-issuances/bulletins/2025/bulletin-2025-2.html>.

³²⁴ Press Release, Off. of the Comptroller of the Currency, OCC Ceases Examinations for Reputation Risk (Mar. 20, 2025), <https://www.occ.gov/news-issuances/news-releases/2025/nr-occ-2025-21.html>.

- activities, including custody and execution services, subject to appropriate third-party risk management practices.”³²⁵
- ❖ As noted above, on July 14, 2025, the OCC, with the Federal Reserve and the FDIC, issued a joint statement to provide additional clarity regarding financial institutions’ engagement in digital asset-related activities.³²⁶
 - ❖ On September 8, 2025, the OCC released a bulletin to banks, clarifying “how it considers politicized or unlawful debanking in certain licensing filings and in assessing banks’ records of performance under the Community Reinvestment Act (CRA).”³²⁷ The OCC “considers a bank’s past record and current policies and procedures to avoid engaging in politicized or unlawful debanking when the agency evaluates the applicable statutory and regulatory factors for licensing activities,” and “[d]ebanking considerations are also assessed in determining a bank’s CRA rating.”³²⁸ As part of the OCC’s effort to end politicized or unlawful debanking, the OCC also requested information from its nine largest regulated institutions as it relates to debanking and updated an online customer complaint portal to make it easier to report and identify unlawful debanking by regulated institutions.³²⁹ A separate bulletin “encourage[d] its regulated institutions to ensure their policies and procedures align with E[.]O[.] 14331 to avoid unlawful debanking.”³³⁰
 - ❖ On October 7, 2025, the OCC, with the FDIC, proposed to issue a joint notice of proposed rulemaking that would establish a uniform definition for the phrase “unsafe or unsound practice” to “promote greater clarity and certainty regarding certain enforcement and supervision standards by defining them by regulation.”³³¹

V. The SEC

- ❖ On January 21, 2025, then-SEC Acting Chair Mark Uyeda launched the Crypto Task Force (Task Force), led by SEC Commissioner Hester Peirce, “dedicated to developing a comprehensive and clear regulatory framework for crypto assets.”³³² The Task Force was established to “help the Commission draw clear regulatory lines, provide realistic paths to registration, craft sensible disclosure frameworks, and

³²⁵ Press Release, Off. of the Comptroller of the Currency, OCC Clarifies Bank Authority to Engage in Crypto-Asset Custody and Execution Services (May 7, 2025), <https://www.occ.gov/news-issuances/news-releases/2025/nr-occ-2025-42.html>.

³²⁶ July 2025 Joint Statement, *supra* note 307.

³²⁷ Press Release, Off. of the Comptroller of the Currency, OCC Announces Actions to Depoliticize the Federal Banking System (Sept. 8, 2025), <https://www.occ.gov/news-issuances/news-releases/2025/nr-occ-2025-84.html>.

³²⁸ *Id.*

³²⁹ *Id.*

³³⁰ *Id.*

³³¹ Press Release, Off. of the Comptroller of the Currency, Defining ‘Unsafe or Unsound Practice’ and Revising the Framework for Issuing Matters Requiring Attention and Other Supervisory Communications: Interagency Notice of Proposed Rulemaking (Oct. 7, 2025), <https://occ.gov/news-issuances/bulletins/2025/bulletin-2025-29.html>.

³³² Press Release, Securities & Exchange Comm’n, SEC Crypto 2.0: Acting Chairman Uyeda Announces Formation of new Crypto Task Force (Jan. 21, 2025), <https://www.sec.gov/newsroom/press-releases/2025-30>.

deploy enforcement resources judiciously.”³³³ The Task Force—and the confirmation of Paul Atkins as SEC Chair³³⁴—signal a clear effort by the SEC to return to commonsense regulation and create a straightforward framework for digital assets.

- ❖ On January 23, 2025, the SEC published SAB 122, which rescinded SAB 121.³³⁵ As noted above, SAB 121 had required entities to recognize both a liability and a corresponding asset related to obligations for safeguarding digital assets held for platform users.³³⁶ SAB 122 directs entities to evaluate safeguarding-related obligations under existing accounting standards. As a result, the responsibility now falls on entities to assess and recognize such liabilities based on the nature and extent of their custodial responsibilities.³³⁷
- ❖ The SEC has reportedly sought to reallocate resources by decreasing the size of the 50-person enforcement team targeting digital asset firms.³³⁸ Further, the SEC dismissed with prejudice then-Chair Gensler’s civil enforcement actions against Coinbase and Kraken.³³⁹ The SEC also dismissed cases or closed investigations against ten other digital asset firms: including Consensys, Crypto.com, CyberKongz, Gemini, Helium (Nova Labs), Immutable, OpenSea, Robinhood Crypto, Uniswap Labs, and Yuga Labs.³⁴⁰
- ❖ On July 31, 2025, the SEC announced “‘Project Crypto’—a Commission-wide initiative to modernize the securities rules and regulations to enable America’s financial markets to move on-chain.”³⁴¹ According to SEC Chair Atkins:

Project Crypto will help ensure that the United States remains the best place in the world to start a business, develop-cutting-edge technologies, and participate in capital markets. We will reshore the crypto businesses that fled our country, particularly those that were crippled by the previous administration’s regulation-by-enforcement crusade and ‘Operation [Choke Point] 2.0.’ Whether an

³³³ *Id.*

³³⁴ Press Release, Securities & Exchange Comm’n, Paul S. Atkins Sworn In as SEC Chairman (Apr. 21, 2025), <https://www.sec.gov/newsroom/press-releases/2025-68>.

³³⁵ Securities & Exchange Comm’n, Staff Accounting Bulletin No. 122, 17 CFR Part 211 (Jan. 23, 2025).

³³⁶ *Id.*

³³⁷ Jai Hamid, *SEC officially rescinds anti-crypto SAB 121*, CRYPTOPOLITAN, Jan. 23, 2025, <https://www.msn.com/en-us/money/financial-regulation/sec-officially-rescinds-anti-crypto-sab-121/ar-AA1xKWQm>.

³³⁸ SEC Scales Back Crypto Enforcement, *supra* note 168.

³³⁹ David Yaffe-Bellany & Matthew Goldstein, *Coinbase Says S.E.C. Will Drop Crypto Lawsuit*, N.Y. TIMES, Feb. 21, 2025, <https://www.nytimes.com/2025/02/21/technology/coinbase-sec-lawsuit.html?smid=nytcore-ios-share&referringSource=articleShare>; Clickout, *SEC Agrees in Principle to Drop Lawsuit Against Kraken*, BENZINGA, Mar. 3, 2025, <https://www.benzinga.com/content/44098838/sec-agrees-in-principle-to-drop-lawsuit-against-kraken>.

³⁴⁰ See *SEC’s Regulatory Policy Shift: 12 Crypto Cases Dropped this Year*, COIN EDITION, Apr. 16, 2025, <https://coinedition.com/secs-regulatory-policy-shift-12-crypto-cases-dropped-this-year/>.

³⁴¹ Paul Atkins, Chair, Securities & Exchange Comm’n, American Leadership in the Digital Finance Revolution (July 31, 2025), *remarks available at* <https://www.sec.gov/newsroom/speeches-statements/atkins-digital-finance-revolution-073125>.

incumbent or a new entrant, the SEC welcomes all market participants who are hungry to innovate.³⁴²

- ❖ On August 1, 2025, the SEC announced the Task Force would host several roundtables across the country to hear from additional stakeholders operating in the digital asset ecosystem.³⁴³ Specifically, the Task Force sought insight “from representatives of crypto-related projects that have 10 or fewer employees and are less than two years old.”³⁴⁴
- ❖ On September 2, 2025, the SEC and the CFTC released a joint staff statement stating that the SEC’s Project Crypto and the CFTC’s Crypto Sprint are coordinating “efforts regarding the process for enabling the trading of certain spot crypto asset products.”³⁴⁵ The statement further clarified “that current law does not prohibit SEC- or CFTC-registered exchanges from facilitating trading of these spot crypto asset products.”³⁴⁶

ADDITIONAL EFFORTS ARE NEEDED TO ESTABLISH LONGSTANDING CLARITY IN THE DIGITAL ASSET ECOSYSTEM.

Committee Republicans continue to collaborate with federal agencies within the Committee’s jurisdiction to understand the origin of Operation Choke Point 2.0, coordination among the agencies, the ultimate ramifications on firms in the digital asset ecosystem, and the impact on innovation in our economy. The Trump Administration has worked to repeal and overturn the policies of the Biden Administration’s crusade against the digital ecosystem. These are important steps, but additional work is necessary to establish long lasting clarity in the digital asset markets. Examples of actions that must be taken in this regard include:

Regulatory Clarity

- ❖ ***The SEC, in coordination with Congress, must continue to modernize our securities laws to oversee the digital asset markets where appropriate.*** Under Chair Atkins, the SEC has taken steps to provide, within its existing authorities, the digital asset ecosystem with regulatory clarity. For example, the SEC’s Division of Corporate Finance issued a Statement on Stablecoins in April 2025 asserting that the offer and sale of certain stablecoins are not securities transactions,³⁴⁷ and the Division of Investment Management issued a no-action letter in September 2025, stating that it would not recommend enforcement actions to the Commission with respect to registered advisers and

³⁴² *Id.*

³⁴³ *Crypto Task Force: On the Road*, SECURITIES & EXCHANGE COMM’N, <https://www.sec.gov/about/crypto-task-force/crypto-task-force-road> (last visited Nov. 25, 2025).

³⁴⁴ *Id.*

³⁴⁵ Press Release, Securities & Exchange Comm’n, SEC-CFTC Joint Staff Statement (Project Crypto-Crypto Sprint) (Sept. 2, 2025), <https://www.sec.gov/newsroom/speeches-statements/sec-cftc-project-crypto-090225>.

³⁴⁶ *Id.*

³⁴⁷ Press Release, Securities & Exchange Comm’n, Statement on Stablecoins (Apr. 4, 2025), <https://www.sec.gov/newsroom/speeches-statements/statement-stablecoins-040425>.

regulated funds for holding their digital assets at certain state-chartered financial institutions.³⁴⁸ There is more work to be done, however, as Congress seeks to enact a comprehensive framework for digital asset market structure.

- ❖ ***The Executive Branch must effectively implement the GENIUS Act.*** The Department of Treasury has already put out a Request for Comment on innovative or novel methods, techniques, or strategies that regulated financial institutions use, or could potentially use, to detect illicit activity involving digital assets,³⁴⁹ as well as an Advanced Notice of Proposed Rulemaking on the implementation of GENIUS.³⁵⁰ The outstanding and forthcoming rulemakings will grapple with critical issues that will shape the payment stablecoin ecosystem in the United States and abroad. The primary federal payment stablecoin regulators must work to meet their regulatory responsibilities, consistent with Congress’s instructions in statute.
- ❖ ***In seeking to provide clarity to financial institutions engaging in digital asset-related activities, federal financial regulators should prioritize issuing formal notice and comment rulemaking.*** The APA requires federal agencies to engage in a formal rulemaking process for regulations to have the full effect of the law.³⁵¹ Notice and comment rulemaking provides market participants and consumers with the opportunity to participate in the regulatory process through the submission of opinions, arguments, or data regarding the proposed regulations.³⁵² Most importantly, the rulemaking process clearly informs market participants of their governing regulations, which enhances market stability. Regulating without rules, through guidance and interpretative statements, creates uncertainty and inconsistency in the application of federal law. Without clear rules, financial institutions are susceptible to pressure from radical federal regulators to change lawful business practices or eliminate services to certain industries due to fear of being targeted for regulatory enforcement actions.
- ❖ ***The Federal financial regulators must reform the CAMELS rating system.*** The CAMELS rating system has been criticized for its opaqueness and subjectivity, which not only causes inconsistency between exams but also among multiple regulators for the same institution.³⁵³ Critics argue that the management category is often treated by field examiners as an arbitrary catch-

³⁴⁸ SECURITIES & EXCHANGE COMM’N, NO ACTION AND INTERPRETIVE LETTER – SIMPSON THACHER & BARTLETT LLP (Sept. 30, 2025), <https://www.sec.gov/rules-regulations/no-action-interpretive-exemptive-letters/division-investment-management-staff-no-action-interpretive-letters/simpsonthacherbartlett093025>.

³⁴⁹ Dep’t of the Treasury, Request for Comment on Innovative Methods To Detect Illicit Activity Involving Digital Assets, 90 Fed. Reg. 40,148 (Aug. 18, 2025) (request for comment).

³⁵⁰ Dep’t of the Treasury, GENIUS Act Implementation, 90 Fed. Reg. 45,159 (Sept. 19, 2025) (advanced notice of proposed rulemaking).

³⁵¹ 5 U.S. Code § 553.

³⁵² *Id.*

³⁵³ See Greg Baer & Bill Nelson, *A Better M for CAMELS*, BANK POLICY INSTITUTE, Feb. 13, 2025, <https://bpi.com/a-better-m-for-camels/> [hereinafter “Baer & Nelson”].

all and point to how it can be misused to singlehandedly bring down an institution's overall composite CAMELS rating.³⁵⁴

Due to the confidential and subjective nature of the CAMELS ratings and supervisory examination process, financial institutions have few options to appeal or understand the basis for a low rating.³⁵⁵ Advocates for CAMELS modernization have pushed for the parameters and considerations behind the ratings to be as clear, well-defined, and objective as possible.³⁵⁶ As it relates to the digital asset ecosystem, the CAMELS ratings and supervisory examination process has become a justification to shape industry behavior to accomplish Choke Point 2.0 goals.

Key Legislation:

- ❖ ***Congress must enact digital asset market structure legislation to cement lasting certainty and pro-growth, pro-innovation policies in the United States.*** The digital asset ecosystem operates within a fragmented regulatory environment shaped by regulatory gaps or overlapping, and at times, conflicting approaches from financial regulators. This uncoordinated framework creates uncertainty, stifles innovation, and pushes legitimate projects overseas. Meanwhile, American consumers are increasingly exposed to firms that lack meaningful oversight and investor protections. Modernized rules are essential to foster innovation, safeguard markets, and maintain U.S. leadership in the global financial system. While much of the world has adopted forward-looking policies, U.S. financial regulators under the Biden Administration spent years engaged in regulation by enforcement rather than thoughtful policymaking with respect to the digital asset ecosystem.

To address this issue, the Senate must pass—and the President sign into law—H.R. 3633, *the Digital Asset Market Clarity (CLARITY) Act of 2025*. This bill establishes a regulatory framework for digital assets in the United States, setting clear, functional requirements to protect consumers while fostering innovation. The CLARITY Act provides a clear definition of a digital commodity, enabling market participants to understand the classification of products. It further provides a fit-for-purpose exempt offering pathway for capital raising transactions involving digital commodities. Additionally, it establishes a framework for digital commodity exchanges, digital commodity brokers, and digital commodity dealers to register with the CFTC, including for SEC registrants engaging in the digital commodity spot market to dual register with the CFTC. Overall, the CLARITY Act heads off a future

³⁵⁴ See *id.*; see also Senate Banking Hearing, *supra* note 37 (statement of Mr. Stephen Gannon, Partner, Davis Wright Tremaine LLP).

³⁵⁵ See Baer & Nelson, *supra* note 353; see also Senate Banking Hearing, *supra* note 37 (statement of Mr. Stephen Gannon, Partner, Davis Wright Tremaine LLP).

³⁵⁶ See Baer & Nelson, *supra* note 353; see also Senate Banking Hearing, *supra* note 37 (statement of Mr. Stephen Gannon, Partner, Davis Wright Tremaine LLP).

Operation Choke Point 3.0 by reversing the SEC's regulation by enforcement approach, enabling market participants to lawfully operate in the U.S. under clear rules of the road, and making clear that banks may engage in the digital asset ecosystem. The U.S. House of Representatives passed the CLARITY Act on July 17, 2025, with a vote of 294 – 134.

- ❖ ***Congress should pass H.R. 2702, the Financial Integrity and Regulation Management (FIRM) Act.*** This bipartisan bill prohibits the use of reputational risk as a factor in the supervision of depository institutions and by eliminating this subjective and undefined metric, the bill aims to prevent politicization of bank supervision and ensure regulatory focus remains squarely on material risks related to safety and soundness.
- ❖ ***Congress should pass H.R. 4460, the Stop Agency Fiat Enforcement of (SAFE) Guidance Act.*** This bill requires federal financial regulatory agencies to clearly indicate on all guidance documents that such guidance has no legal force and serves only to clarify existing laws or policies. The bill provides necessary clarity and predictability to regulated entities and encourages agencies to engage in the transparent, formal rulemaking process when altering regulatory expectations.
- ❖ ***Congress should pass H.R. 3379, the Halting Uncertain Methods and Practices in Supervision (HUMPS) Act.*** This bill requires the FFIEC to develop formal recommendations to revise the CAMELS rating system. Federal banking regulators would then be required to implement the recommendations through joint rulemaking. The legislation establishes objective, quantifiable criteria for each CAMELS component, revise the weighting methodology to better reflect actual risk, and either eliminate or narrow the scope of the more subjective Management component. It also mandates that composite ratings be derived from a transparent, criteria-based methodology and requires a public comment period as part of the rulemaking process.
- ❖ ***Congress should work to modernize the supervisory appeals process, including by passing H.R. 940, the Fair Audits and Inspections for Regulators' (FAIR) Exams Act.*** Although each agency has maintained some form of an appeals process for decades, the processes have drawn substantial criticism for being ineffective, lacking true independence, and failing to adequately guard against potential examiner retaliation. As a result, few institutions pursue appeals, and even fewer are successful in overturning supervisory findings. The FAIR Exams Act would create a truly independent review body and ensure timely and transparent examination procedures. The bill requires that bank examiners complete examinations within 60 days of the exit interview and share all materials used to support the supervisory determination with the institution under review. By improving fairness and reducing examiner overreach, this bill strengthens prudential supervision.

CONCLUSION

The Biden Administration's revival of certain Operation Choke Point tactics presents a troubling abuse of regulatory authority. Under the guise of risk management and consumer protection, federal agencies attacked lawful industries and activities that did not align with the Biden Administration's political preferences. By utilizing the banking system to enforce ideological goals, the Administration bypassed Congress, undermined due process, and threatened the principles of a free market economy. These backdoor efforts to debank politically disfavored industries corrode the public's trust in our financial regulators. If left unchecked, this pattern of targeting disfavored industries through informal pressure and opaque regulatory scrutiny sets a dangerous precedent—one where financial access depends less on legality and risk—and more on conforming to political ideologies. This cannot continue.

OPERATION CHOKEPOINT 2.0 TIMELINES

KEY ACTIONS ON DIGITAL ASSET MARKET STRUCTURE

MARCH 9, 2022

President Biden signed Executive Order 14067, entitled “Ensuring Responsible Development of Digital Assets,” which directed multiple agencies to assess digital asset risks.

SEPTEMBER 16, 2022

The Biden Administration issued the “First-Ever Comprehensive Framework for Responsible Development of Digital Assets,” underscoring the risks of digital assets and encouraging regulators to take action.

JANUARY 12, 2023

The Committee established the Subcommittee on Digital Assets, Financial Technology and Inclusion. That same day, the SEC announced enforcement actions against two digital assets firms.

APRIL 14, 2023

The SEC confirmed that Rule 3b-16 under the Securities Exchange Act of 1934 (the “Exchange Act”) would cover Decentralized Finance (DeFi) systems.

APRIL 18, 2023

Committee Republicans sent a letter to then-SEC Chair Gensler regarding how incompatible the registration process is for digital asset trading platforms.

JUNE 2, 2023

The Committee and the House Agriculture Committee released the first joint committee legislative product that proposed to comprehensively regulate the digital asset markets. This bill, FIT21, passed both respective Committees. Days later, the SEC announced charges against a digital asset trading platform.

FEBRUARY 6, 2024

The SEC finalized the Dealer Rule, which effectively prohibited DeFi from operating in the United States despite Congressional legislation permitting DeFi and excluding certain aspects of the ecosystem from registering as a dealer.

MAY 22, 2024

The House of Representatives passed H.R. 4763, the Financial Innovation and Technology (FIT) for the 21st Century Act, by a vote of 279-136. The morning of the vote, then-Chair Gensler released a statement expressing concerns with the legislation despite having refused to provide technical assistance as requested by the Committee.

OPERATION CHOKEPOINT 2.0 TIMELINES

KEY ACTIONS ON PAYMENT STABLECOINS

NOVEMBER 1, 2021

President Biden's Working Group on Financial Markets released a "Report on Stablecoins" galvanizing both Congress and the Administration to take action around payment stablecoins. Committee Republicans began drafting stablecoin legislation in early 2022.

APRIL 7, 2022

The FDIC issued FIL 16-2022, "Notification of Engaging in Crypto-Related Activities," which required all FDIC-supervised institutions involved in, or considering being involved in, the digital asset ecosystem to notify the FDIC.

JANUARY 3, 2023

Joint Statement on Crypto-Asset Risks to Banking Organizations, which highlighted "key risks" for financial institutions engaging in digital asset-related activities and provided information regarding supervision practices.

AUGUST 16, 2022

The Fed released SR 22-6, which required state member banks notify the Fed prior to engaging in digital asset-related activities.

APRIL 2022-JANUARY 2025

The FDIC issued a series of "pause" letters to multiple financial institutions seeking to engage within the digital asset ecosystem, which effectively encouraged these institutions to stop efforts to engage in digital asset-related activities.

JANUARY 27, 2023

The Fed released a policy statement limiting the permissible digital asset-related activities of state member banks.

OPERATION CHOKEPOINT 2.0 TIMELINES

KEY ACTIONS ON SAB 121

