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Crypto Policy Tracker

White House Issues Debanking and 401(k) Asset Executive Orders, SEC Clarifies Liquid Staking and Lawmakers Advance AI Innovation Bill

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This week's developments reflect continued executive branch action and regulatory guidance shaping the digital asset and financial technology landscape. The President signed two executive orders: one aimed at eliminating politically motivated "debanking" by directing regulators to remove reputation risk from supervisory materials, and another instructing agencies to facilitate the inclusion of alternative assets in 401(k) plans.

At the SEC, the Division of Corporation Finance issued a statement clarifying that certain "liquid staking" arrangements may fall outside the definition of a securities offering, prompting both support and dissent among the Commissioners. On Capitol Hill, lawmakers reintroduced bipartisan legislation to create regulatory sandboxes for artificial intelligence innovation in financial services, while also seeking public input on modernizing consumer financial data privacy rules.

EXECUTIVE BRANCH UPDATES

White House

President Issues Executive Orders on Fair Banking and Alternative Assets in Retirement Plans

- Guaranteeing Fair Banking for All Americans. On August 7, the President issued an executive order directing federal banking regulators to remove reputation risk or equivalent concepts from regulatory guidance within 180 days. The order also directs the Small Business Administration to notify previous clients of financial institutions that were debanked of their option to reestablish banking services.
    - On August 7, Comptroller of the Currency Jonathan Gould stated that the OCC has already removed references to reputation risk from its handbooks and guidance and will soon propose a rule to remove such references from its regulations.
    - The FDIC also stated its support and announced plans to review institutions under its supervision for debanking practices inconsistent with the EO.
    - For additional detail on this EO, please read here.

- Democratizing Access to Alternative Assets for 401(k) Investors. On August 7, the President issued an executive order asserting that it is the policy of the United States that every American preparing for retirement should have access to funds that include investments in "alternative assets," which include private investments, real estate, holdings in digital asset investment vehicles, commodities and more. The Secretary of Labor is directed to consult with the Treasury, SEC and other regulators to implement regulatory changes, and the SEC is directed to consider ways to facilitate access to alternative asset investments.

White House Crypto Advisor Stepping Down

- On August 9, Bo Hines, the White House Digital Asset Policy Advisor, announced he will step down from his role and return to the private sector. David Sacks, the White House AI and Crypto Czar, stated that Patrick Witt and Harry Jung are prepared to "step up and implement the Crypto Council's recommendations and help us get the CLARITY Act passed."

Miran Nominated to Federal Reserve Board

- On August 7, the President nominated Stephen Miran, currently serving as Chair of the Council of Economic Advisers, to fill the vacancy on the Federal Reserve Board created by Adriana Kugler's departure. If confirmed by the Senate, Miran would serve the remainder of Kugler's unexpired term, which ends January 2026. The President stated that the Administration is continuing to identify a nominee for the subsequent full term.

Regulatory Agency Updates

SEC Statement on Certain Liquid Staking Activities

- On August 5, the SEC's Division of Corporation Finance staff concluded that certain "liquid staking" activities do not involve an offer or sale of securities under the federal securities laws.
  - Definition. In a liquid staking arrangement, holders of crypto assets deposit those assets with a third-party protocol staking service provider and receive newly minted "receipt tokens" representing ownership of the deposited assets and any associated staking rewards. Receipt tokens allow holders to maintain liquidity without withdrawing the underlying assets from staking.
  - Rights in Deposited Assets. The statement clarifies that receipt tokens do not alter the rights or obligations associated with the deposited assets.
  - Role of Provider. Where the staking service provider acts solely as an agent, without discretion over whether, when or how much of a depositor's assets to stake, this is relevant to the "efforts of others" prong of the investment contract analysis because these activities are administrative or ministerial in nature.
  - Investment Contract Analysis. In these fact patterns, receipt tokens are generally not offered and sold as part of an investment contract because their value is derived from the value of the deposited assets, not from the entrepreneurial or managerial efforts of the staking services provider.
- SEC Chair Paul Atkins welcomed the statement, calling it "a significant step forward in clarifying the staff's view about crypto asset activities that do not fall within the SEC's jurisdiction," and noted its alignment with the agency's Project Crypto initiative to modernize securities regulation for digital assets.
- SEC Commissioner Caroline Crenshaw issued a response statement, asserting that the staff's views lack legal clarity and cautioning that the statement should not be treated as binding SEC guidance.

FinCEN Issues Notice on Crypto ATM Scams

- On August 4, FinCEN issued a notice alerting financial institutions to an increase in scams involving convertible virtual currency (CVC) kiosks, often referred to as "crypto ATMs." The notice warns that illicit actors are using these kiosks to defraud victims and launder illicit proceeds. FinCEN reminded CVC kiosk operators of potential obligations under the Bank Secrecy Act, including registering as money services businesses, maintaining effective anti-money laundering programs and filing Suspicious Activity Reports when appropriate.

CFPB Moves to Rewrite Open Banking Rule

- On July 29, the CFPB was granted a motion to stay proceedings in its ongoing legal effort to revise the Open Banking Rule, which was initially finalized in 2024. The rule would have required banks, credit card issuers and other financial institutions to provide consumers, free of charge, with access to their personal financial data and the ability to transfer it to third parties such as fintech apps, including digital wallets, or competing providers. The CFPB plans to launch an expedited rulemaking to revise the open banking rule from the last Administration.

CONGRESSIONAL UPDATES

Lawmakers Propose Regulatory Sandboxes to Spur AI Innovation in Finance

- On July 29, House Financial Services Committee Chairman French Hill (R-AR) and Congressman Ritchie Torres (D-NY) reintroduced the Unleashing AI Innovation in Financial Services Act (H.R. 4801), a bipartisan and bicameral proposal to promote responsible adoption of artificial intelligence in the financial sector. The bill would direct federal financial regulatory agencies to establish regulatory sandboxes — controlled environments for testing AI-based products and services — to enable safe experimentation and oversight of AI applications in areas such as lending, fraud detection, compliance and customer service.
- The legislation was also sponsored in the House by Josh Gottheimer (D-NJ) and Bryan Steil (R-WI), who chairs the Subcommittee on Digital Assets, Financial Technology and Artificial Intelligence. Senate sponsors include Senators Mike Rounds (R-SD), Andy Kim (D-NJ), Thom Tillis (R-NC) and Martin Heinrich (D-NM).

Lawmakers Seek Public Input on Updating Financial Data Privacy Rules

- On July 31, House Financial Services Committee Chairman French Hill (R-AR) and Financial Institutions Subcommittee Chairman Andy Barr (R-KY) issued a request for public feedback on how to modernize federal laws governing consumer financial data privacy.
- The request for comment focuses on Subtitle A of the Gramm-Leach-Bliley Act (GLBA), which requires financial institutions to protect the privacy and security of consumers' nonpublic personal financial information. Specifically, the committee is seeking views on whether current GLBA provisions remain adequate in an era of rapidly evolving financial technology and data use practices. Members of the public have until August 28 to submit comments.

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