

FDIC Releases Financial Institution Letter on Notification Requirements for Crypto-Related Activities

Related Professionals

Matt K. Walker

Related Industries

Financial Institutions

CLIENT ALERT | 4.11.2022

On April 7, 2022, the Federal Deposit Insurance Corporation (FDIC) released a Financial Institution **Letter** requesting that all FDIC-supervised institutions that intend to engage in, or that are currently engaged in, any activities involving or related to crypto assets provide notice to the FDIC.

Background

The FDIC's letter describes the FDIC's need to engage directly with those institutions undertaking or planning to undertake crypto-related activities to better assess the prudential and consumer risks on the individual basis of each activity. The letter describes specific areas of concern unique to crypto-related activities. Under safety and soundness, the letter points to risk associated with asset ownership, AML/CFT implications, cyber security, credit risk exposure, and market risk surrounding the pricing and valuation of assets. As it pertains to financial stability, the letter describes the FDIC's concern over the possibility of a destabilizing effect or systemic risk posed by certain crypto assets or activities. In the area of consumer protection, the letter points to the potential for heightened consumer confusion as to the role of the bank when offering or marketing crypto assets.

Notification Requirements

The letter requests FDIC-supervised institutions to notify their appropriate FDIC Regional Director prior to engaging in crypto-related activities. For those institutions currently engaged in crypto-related activities, the letter requests "prompt" notification. The initial notification should include a detailed description of the activity and a proposed timeline relevant to that activity. Subsequent to the notification, the FDIC will request on a case-specific basis information from the institution necessary for the agency to assess the aforementioned risk areas. The FDIC will then provide supervisory feedback to the institution, as appropriate. Finally, the letter encourages FDIC-supervised institutions to also notify their state regulator as part of this process.

National Banks and Federal Thrifts

On November 18, 2021, the Office of the Comptroller of the Currency (OCC) issued [Interpretive Letter #1179](#) regarding the authority of a national bank or federal thrift to engage in certain cryptocurrency activities. This letter reaffirmed earlier OCC interpretative letters approving of certain crypto-related 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”. The OCC advises banks to notify their appropriate supervisory office, in writing, of any intention to engage in the crypto-related activities addressed in the OCC’s earlier interpretative letters, and to not engage in such activities until a written non-objection is has been received from that office.

Takeaway

As a general rule of thumb, it’s always a best practice for banking institutions, regardless of charter type, to engage with their regulator early and often before engaging in new activities. This is especially true for novel or largely untested activities such as those related to cryptocurrency or other digital assets. This FDIC and OCC letters discussed above only reinforce this fact, as each strongly highlight the underlying requirement that banks be able to demonstrate their ability to conduct all activities in a safe and sound manner, especially those that are crypto in nature.

For questions or more information, please reach out to the author of this alert or your Vorys attorney.