

REGULATORY INTELLIGENCE

More U.S. movement on fintechs, cryptocurrencies seen as Biden fills regulatory posts

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U.S. financial regulators could be poised to put fintech firms and cryptocurrencies near the top of their agenda should two potential nominees to lead the Commodity Futures Trading Commission and the Office of the Comptroller of the Currency join Gary Gensler, the proposed new chair of the Securities and Exchange Commission.

Gensler, who is yet to be confirmed by the Senate, was most a recently professor of financial technology and cryptocurrencies at the Massachusetts Institute of Technology. He also was one of the most forceful reformers in the Obama administration and a key architect of the Dodd-Frank post-financial crisis wave of regulations.

Gensler has a deep understanding of cryptocurrencies and has strongly supported bitcoin for years, say people familiar with this work. "He has testified on digital currencies policy and regulation before Congress, taught blockchain and digital currencies at MIT Sloan School of Management, and participated in numerous public and private discussions in the U.S. and internationally," said **Jeff Bandman**, a former CFTC official in a recent article on Gensler's appointment. "He will step into the job shovel-ready, as well-informed and engaged with digital assets as one could possibly hope for the chair of a U.S. financial regulator to be."

While there has been significant engagement by the SEC on overseeing the growth of cryptocurrencies such as bitcoin, rulemaking has been minimal. Gensler may accelerate the pace.

"Under Gensler, I think we will see the SEC green-light retail bitcoin exchange-traded funds," **Bandman** added, who now runs **Bandman Advisors**.

For the other two top agencies, the Office of the Comptroller of the Currency (OCC) and the CFTC, the Biden administration has yet to announce their nominees. The two frontrunners at the moment, according to reports, is Michael Barr, public policy professor at the University of Michigan, to lead the OCC, and Chris Brummer, a professor and faculty director of Georgetown University's Institute of International Economic Law, to head the CFTC.

Michael Barr – active adviser to fintech firms

A former assistant Treasury secretary during the Obama administration, Barr worked closely with former Treasury Secretary Timothy Geithner in crafting the Dodd-Frank financial reforms passed in the wake of the financial crisis. Since leaving government he has been active in advising fintech companies. Barr spent two years as an adviser to Ripple Labs, a cryptocurrency company which is now under investigation by the SEC for selling unregistered securities in the form of digital currency to raise money for the company's operations.

Barr also recently served as an adviser to the Alliance for Innovative Regulation, a trade group that tries to influence policymakers and regulators on behalf of fintech companies. He also serves on the Bill & Melinda Gates Foundation FinTech Advisory Council and the Federal Deposit Insurance Corporation Advisory Committee on Economic Inclusion, to name just a few.

Barr has shown a particular interest in how technology can improve the payments system to serve poorer communities. In a 2007 policy paper he proposed a number of reforms including tax incentives for financial institutions to offer low-cost electronic accounts for low-income persons.

Critics on the more progressive side of the Democratic party, however, argue that his close connection to the industry should disqualify him from the top OCC post, since one of the biggest issues Barr would face as comptroller is deciding whether to grant banking charters to fintech firms.

According to the [New York Times](#), progressive groups would prefer Mehrsa Baradaran, a law professor at the University of California, Irvine, who specializes in banking law and has written about how banks treat Black people and the poor.

It is unclear when the Biden administration will announce its choice to lead the OCC.

Chris Brummer – CFTC frontrunner

And then there is the CFTC, the top derivatives regulator. According to some reports, the administration plans to pair the Barr announcement with nominating Chris Brummer, a professor at Georgetown, as chair of the CFTC.

Brummer is also steeped in the fintech world, having founded DC Fintech Week, an annual conference that brings together leading academics, industry professionals and regulators.



He currently serves as a member of the CFTC's subcommittee on virtual currencies, and is also a member of the European Securities and Markets Authority's Consultative Working Group for the Financial Innovation Standing Committee.

Brummer was nominated twice by the Obama administration to serve as a commissioner on the CFTC and received unanimous approval in the vote by the Senate Agriculture Committee prior to the 2016 election. The nomination was withdrawn by President Trump upon taking office in 2017.

Regulation – uniformity in approach

Should Barr and Brummer ultimately lead the OCC and CFTC, together with Gensler at the helm of the SEC, experts say there will be a marked change in approach towards financial innovation.

"If you have three new people in those agencies and they see things roughly the same way, then I think it will be really good for fintechs to get some uniformity in regulation," said Sandy Brown, a partner at the law firm Alston & Bird. "They see things roughly the same way and you could make a lot of progress."

Brown, whose past experience includes the OCC, says it's fairly typical for regulators to play catch-up with financial innovation, and one of the biggest challenges will be the ongoing tussle between the OCC and state regulators over providing fintech firms with a national banking charter.

The effort to provide a "special purpose charter" began under OCC chief Tom Curry in 2016 and continued with successors Joseph Otting and Brian Brooks. The OCC was sued under Otting over the fintech banking charter by the New York Department of Financial Services and the Conference of State Bank Supervisors, arguing the banking regulator did not have authority to issue such a charter.

"I think they have the authority to issue these charters but also think it's the kind of case that ends up in the U.S. Supreme Court," said Brown.

(Henry Engler, Regulatory Intelligence)

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