

OCC clarifies scope of activities permissible for national trust banks

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The OCC finalized a rule clarifying that national trust banks may engage in non-fiduciary activities but left open the question of whether a national trust bank must engage in a minimum amount of fiduciary activities.

Overview of final rule

The text of the [final rule](#) adopted by the OCC was identical to the OCC's January 2026 [proposal](#), which we analyzed in an earlier [client update](#). As a reminder, the final rule amends the OCC's chartering regulations to align language in these regulations to the National Bank Act and clarify that national trust banks are not limited to conducting fiduciary activities.

Key takeaways from adopting release

In addressing the 19 comments that it received on its proposal, the OCC provided clarity on certain issues but left some key questions unanswered.

- The OCC rejected the view that where Section 27(a) of the National Bank Act (i.e., the provision that authorizes the OCC to charter national trust banks) refers to “operations of a trust company,” that exclusively means fiduciary powers. Pointing to examples where the terms “trust” and “fiduciary” are used separately in the National Bank Act and Bank Holding Company Act, the OCC argued that Congress intended for those terms to have distinct meanings and that “operations of a trust company” therefore refers to trust operations, which include, among other things, custody services.
- The OCC made clear that the final rule does not create a new type of charter or expand the authority for national trust banks. The OCC emphasized that the final rule relates solely to the OCC's chartering authority for national trust banks under Section 27(a) of the National Bank Act and that Section 27(a) does not provide a source of authority for fiduciary activities or other trust operations separate from Section 92a of the National Bank Act, which the OCC described as “complementary” to Section 27(a).
- The OCC declined requests from several commenters to use the final rule to define the scope of permissible national trust bank activities. Instead, the OCC explained that permissibility determinations would be made on a case-by-case basis in the licensing process. This approach is consistent with the OCC's recent [conditional approvals](#) of national trust bank charters, in which the OCC identified each applicant's proposed activities and addressed their permissibility for a national trust bank.
- Another question left purposefully unaddressed by the OCC is whether a national trust bank is *required* to engage in some minimum amount of fiduciary activities and, if so, what amount. The OCC stated that this issue was outside the scope of the rulemaking. Thus, we expect this question to be addressed in the licensing context if and when the OCC reviews an application for a national trust bank charter by an applicant that proposes to engage in no fiduciary activities.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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