

OCC proposes to clarify the general scope of activities permissible for national trust banks

January 13, 2026 | Client Update | 5-minute read

The OCC proposed a rule that would eliminate any uncertainty as to whether national trust banks can engage in non-fiduciary activities. If adopted, the proposal would align language in the OCC's chartering regulations to the National Bank Act and clarify that national trust banks are not limited to conducting fiduciary activities. The proposal does not, however, address what specific non-fiduciary activities are permissible or whether some minimum amount of fiduciary activities is required.

The [proposed rule](#) would effectively codify a portion, but not all, of [Interpretive Letter 1176](#), which was issued in January 2021 at the end of Trump 1.0 and authored by Comptroller Gould when he was serving as Chief Counsel of the OCC.

At issue is whether a national trust bank is permitted to engage in non-fiduciary activities under its limited purpose charter from the OCC. In recent months, the OCC has received a number of national trust bank charter applications from non-traditional financial institutions. In particular, the [GENIUS Act](#), which permits uninsured national banks to register with the OCC to issue payment stablecoins, has led to increased interest in national trust bank charters. Together, increased interest in national trust bank charters and the innovative business models of many applicants has led to questions about the scope of activities permissible for national trust banks. The proposed rule would provide some clarity regarding the general scope of permissible national trust bank activities but does not address any specific activities or categories of non-fiduciary activities.

Statutory basis for national trust banks

In 1978, the National Bank Act, which authorizes the OCC to charter national banks, was amended to provide that a national bank “is not illegally constituted solely because its operations are . . . limited to those of a trust company and activities related thereto.”¹ The OCC has relied on this language to charter limited purpose national trust banks. In addition to traditional banking organizations, national trust banks have long been owned by certain non-bank financial and non-financial companies. Because national trust banks are typically not “banks” for purpose of the Bank Holding Company Act of 1956 (BHC Act), controlling such a national trust bank will not cause a parent entity to become subject to the BHC Act. In addition, many national trust banks do not have FDIC insurance because they do not offer non-trust deposits and, consequently, certain laws and regulations that apply to insured depository institutions only do not apply to them.

Existing chartering regulation language

The text of the OCC's current chartering regulation, 12 C.F.R. 5.20, provides that a national bank “may be a special purpose bank that **limits its activities to fiduciary activities** or to any other activities within the business of banking.”² The current regulation further states that a “special purpose bank that conducts activities other than fiduciary activities” must engage in at least one of the enumerated banking functions—i.e., receiving deposits, paying checks or lending money. The preamble explains that the language about limiting activities to “fiduciary activities” could raise questions as

to the OCC's authority to charter national trust banks that engage in non-fiduciary activities that are permissible trust bank activities—e.g., custody, safekeeping—without engaging in one of the enumerated banking functions, which national trust banks typically do not do.

Proposed chartering regulation language

To resolve this potential ambiguity and clarify the general scope of national trust bank activities, the OCC proposed amending its chartering regulation by replacing each of the references to “fiduciary activities” with “the operations of a trust company and activities related thereto” (*i.e.*, the language from the National Bank Act that the OCC relies on to charter national trust banks). This change would preclude a reading of the chartering rule that a national trust bank must either conduct solely fiduciary activities or conduct one of the enumerated banking functions. In the preamble, the OCC explains that the proposed regulation would merely revise a potentially unclear provision and more closely align it to the text of the National Bank Act, and it would not change the OCC's chartering authority.

The proposed rule would not impact the scope of activities of or chartering requirements for other kinds of special purpose banks chartered by the OCC (*e.g.*, credit card banks). Because these other special purpose banks would almost certainly conduct activities other than “the operations of a trust company and activities related thereto,” they would still need to conduct at least one of the enumerated banking functions.

Looking ahead

If adopted, the proposed rule would clarify the general scope of national trust bank activities. Together with the recent preliminary approval of several national trust bank applications, we believe this proposal evidences the OCC's willingness to consider national trust bank applications, including those from applicants with innovative business models, and will contribute to continued interest in this charter. The proposed rule does not, however, address which specific non-fiduciary activities or categories of non-fiduciary activities are permissible for national trust banks or whether some minimum amount of fiduciary activities is required. For example, Interpretive Letter 1176 provides general guidance on this topic, explaining that a national trust bank “may be permitted to engage in any and all activities permitted under state law for a state trust company located in the same state” and “may also engage in activities beyond those authorized under state law for a state trust company provided such activities are permitted for a national bank under other sources of authority.” The scope of specific permissible national trust bank activities has been a topic of increased interest. We will be interested to see if the OCC proposes additional rules or guidance that would address this topic and expect that some commentators may use the proposed rule as a vehicle to make their voices heard on it.

Resources

Crypto Regulation Hub

Visit our Crypto Regulation Hub for links to congressional proposals related to the regulation of crypto assets and other helpful materials.

[Explore our crypto resources](#)

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.

Dana Seesel Bayersdorfer
+1 212 450 3423
dana.bayersdorfer@davispolk.com

Luigi L. De Ghenghi
+1 212 450 4296
luigi.deghenghi@davispolk.com

Justin Levine
+1 212 450 4703
justin.levine@davispolk.com

Suiwen Liang
+1 212 450 3974
suiwen.liang@davispolk.com

Eric McLaughlin
+1 212 450 4897
eric.mclaughlin@davispolk.com

David L. Portilla
+1 212 450 3116
+1 202 962 7155
david.portilla@davispolk.com

Gabriel D. Rosenberg
+1 212 450 4537
gabriel.rosenberg@davispolk.com

Margaret E. Tahyar
+1 212 450 4379
margaret.tahyar@davispolk.com

This communication, which we believe may be of interest to our clients and friends of the firm, is for general information only. It is not a full analysis of the matters presented and should not be relied upon as legal advice. This may be considered attorney advertising in some jurisdictions. Please refer to the firm's privacy notice for further details.

¹ 12 U.S.C. § 27(a).

² 12 C.F.R. § 5.20(e)(1)(i) (emphasis added).