

## The OCC Moves on Digital Banking Activities and Regulatory Modernization

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Acting Comptroller Brian Brooks is moving quickly to make his mark on the digital activities of national banks and to modernize OCC regulations, especially those that intersect with fintech, with two releases that cover a wide range of digital and other topics. The proposals are directly relevant to national banks and federal savings associations (**FSAs**), but should be of interest to a broader range of banking organizations both because OCC regulations on bank powers have implications for many state banks under state wild card statutes<sup>1</sup> and because the proposals may spur other U.S. banking regulators, including the Federal Reserve and the FDIC, to update their own rulebooks.

- **ANPR on digital activities of national banks and FSAs.** The **advanced notice of proposed rulemaking (ANPR)** requests comment on digital activities of national banks and federal savings associations. The ANPR raises 11 questions, soliciting comments on whether its existing regulations should be updated to address new technological developments and the resulting evolution in banking services and products, and the related risks. The questions address several topics, including digital finders' activities,<sup>2</sup> use of distributed ledger technology and activities involving cryptocurrencies, use of artificial intelligence techniques, payments technologies and processes, and issues that the OCC should consider in light of the COVID-19 pandemic. The OCC describes three principles that will guide its approach to its regulatory framework in the context of technology and innovation: regulations should be technology-neutral, they should facilitate appropriate levels of consumer protection and privacy, and they should be principle-based, rather than prescriptive. The OCC explicitly states that it is not seeking comment on its authority to issue a special purpose national bank charter.
- **NPR to streamline and modernize OCC regulations.** The **notice of proposed rulemaking (NPR)** recommends changes to OCC regulations on the powers, governance, and operations of national banks and FSAs. The NPR addresses areas as diverse as non-branch offices, equity and other derivatives activities, and corporate governance. While not as directly focused on digital banking as the ANPR, the NPR includes a number of proposed changes that are designed to encourage digital banking activities, products and services. These include clarifications on remote service units, deposit production offices and loan production offices, the definition of a branch, and the use of electronic finders. The corporate governance provisions appear designed to facilitate a national bank shedding its holding company structure. There are also several proposed amendments designed to better align the treatment of FSAs with those of national banks as well as a number of miscellaneous modernizations.

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<sup>1</sup> Wild card (or parity) statutes generally provide state banks with the authority to engage in the same activities as national banks. In some cases, this authority is self-executing, but in other cases a specific order or other action is required on the part of a state banking regulator before the state bank may engage in such activity.

<sup>2</sup> Digital finders' activities, defined by the OCC as activities that bring together buyers and sellers of financial and nonfinancial products and services, are already permissible under the OCC's regs – see 12 CFR 7.5002 for an illustrative and non-exclusive list – but the OCC requests comments on any such activities that are not currently included or sufficiently addressed in its regulations.

The proposals bolster what the Acting Comptroller has been saying in speeches and podcasts. He has a clear focus on fintech and modernization. It will be interesting to see whether the OCC's initiative to modernize its regulations will prompt the Federal Reserve to revisit some of its interpretations and regulations in these areas, such as the scope of products and services it views as permissible data processing activities and relating to branch offices and drop boxes.

Comments on both proposals are due by August 3, 2020. Given the scope and breadth of topics covered, we expect that stakeholder comments will be many and varied. The NPR generally would result next in final rules, while the ANPR's logical next step is an NPR that would include specific changes to OCC regulations. The OCC has flexibility on when to take these next steps, and the timing for these proposals may be affected by the upcoming federal election cycle, as well as any developments with respect to Brooks' status as Acting Comptroller.

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