

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 5

[Docket ID OCC- 2025-0768]

RIN 1557-AF47

National Bank Chartering

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is proposing to amend its rule related to chartering of national banks to clarify the longstanding authority of national banks limited to the operations of trust companies and activities related thereto to engage in non-fiduciary activities in addition to their fiduciary activities.

DATES: Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: Commenters are encouraged to submit comments through the Federal eRulemaking Portal. Please use the title “National Bank Chartering” to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal – Regulations.gov:*

Go to <https://regulations.gov/>. Enter Docket ID “OCC-2025-0768” in the Search Box and click “Search.” Public comments can be submitted via the “Comment” box below the

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displayed document information or by clicking on the document title and then clicking the “Comment” box on the top-left side of the screen. For help with submitting effective comments, please click on “Commenter’s Checklist.” For assistance with the *Regulations.gov* site, please call 1-866-498-2945 (toll free) Monday-Friday, 9 a.m.-5 p.m. EST, or e-mail regulationshelpdesk@gsa.gov.

- *Mail:* Chief Counsel’s Office, Attention: Comment Processing, Office of the Comptroller of the Currency, 400 7th Street, SW, Suite 3E-218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street, SW, Suite 3E-218, Washington, DC 20219.

Instructions: You must include “OCC” as the agency name and Docket ID “OCC-2025-0768” in your comment. In general, the OCC will enter all comments received into the docket and publish the comments on the *Regulations.gov* website without change, including any business or personal information provided such as name and address information, e-mail addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this action by the following method:

- *Viewing Comments Electronically – Regulations.gov:*

Go to <https://regulations.gov/>. Enter Docket ID “OCC-2025-0768” in the Search Box and click “Search.” Click on the “Dockets” tab and then the document’s title. After clicking the document’s title, click the “Browse All Comments” tab. Comments can be viewed and filtered by clicking on the “Sort By” drop-down on the right side of the screen or

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the “Refine Comments Results” options on the left side of the screen. Supporting materials can be viewed by clicking on the “Browse Documents” tab. Click on the “Sort By” drop-down on the right side of the screen or the “Refine Results” options on the left side of the screen checking the “Supporting & Related Material” checkbox. For assistance with the *Regulations.gov* site, please call 1-866-498-2945 (toll free) Monday-Friday, 9 a.m.-5 p.m. EST, or e-mail regulationshelpdesk@gsa.gov.

The docket may be viewed after the close of the comment period in the same manner as during the comment period.

FOR FURTHER INFORMATION CONTACT: Christopher Crawford, Acting Assistant Director; Marjorie Dieter, Counsel, Chief Counsel’s Office, 202-649-5490, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219. If you are deaf, hard of hearing, or have a speech disability, please dial 7-1-1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION:

I. Description of the Proposed Rule

The OCC charters national banks under the authority of the National Bank Act, 12 U.S.C. 1 *et seq.* The National Bank Act “constitut[es] by itself a complete system for the establishment and government of national banks.”¹ Congress’s grant of authority to the OCC with regard to the establishment of national banks under the National Bank Act culminates in the OCC’s issuance of formal certificates authorizing national banks to conduct business, which are generally referred as charters.² In 1978, Congress amended the National Bank Act to expressly provide: “A National Bank Association, to which the Comptroller of the

¹ *Cook Cnty. Nat’l Bank v. United States*, 107 U.S. 445, 448 (1883).

² *See* 12 U.S.C. 27.

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Currency has heretofore issued or hereafter issues such [charter] certificate, is not illegally constituted solely because its operations are or have been required by the Comptroller of the Currency to be limited to those of a trust company and activities related thereto.”³

The OCC has referenced this express endorsement of its authority for nearly fifty years when chartering national banks whose operations are limited to those of a trust company and activities related thereto, which are commonly referred to as “national trust banks.” The OCC currently supervises approximately 60 national trust banks. The majority of the national trust banks are uninsured, but a few hold deposits and are insured by the Federal Deposit Insurance Corporation.

The OCC is proposing amending its chartering regulation, 12 CFR 5.20, to more closely align with its statutory authorization to charter national banks limited to the operations of a trust company and activities related thereto. Section 5.20 provides for the general procedures for filing an application, the OCC’s review, procedures for organizing the new bank, and other requirements. Since 1996, § 5.20(e)(1)(i) has addressed certain statutory requirements for the OCC’s chartering of a national bank. The regulation states that the OCC charters national banks under the authority of the National Bank Act and includes the requirement that a national bank’s name must include the word “national.”⁴

In 2003, the OCC proposed amendments to § 5.20(e)(1)(i) “to clarify that a limited purpose national bank may exist with respect to activities other than fiduciary activities, provided the activities in question are within the business of banking.”⁵ This proposal

³ Financial Institutions Regulatory and Interest Rate Control Act of 1978, Sec. 1504, Pub. L. 95-630, 92 Stat. 3641, 3713 (1978).

⁴ See 12 U.S.C. 22, 30(a).

⁵ 68 FR 6363, 6370–71 (Feb. 7, 2003).

included only the sentence: “The bank may be a special purpose bank that limits its activities to fiduciary activities or to any other activities within the business of banking.”⁶

Commenters were concerned that the reference to the business of banking in the proposed rule was “too broad.”⁷ In response to this concern, the final rule added another sentence to § 5.20(e)(1)(i): “A special purpose bank that conducts activities other than fiduciary activities must conduct at least one of the following three core banking functions: Receiving deposits; paying checks; or lending money.” The OCC did so “to provide further clarification of the scope of activities permissible for a limited purpose national bank, and . . . amended this provision to require limited purpose national banks to conduct at least one of the following core banking functions: (1) Receiving deposits; (2) paying checks; or (3) lending money. These functions are based on 12 U.S.C. 36, which identifies activities that cause a facility to be considered a bank branch.”⁸ The operations of a national trust bank typically include performing fiduciary activities under the authority of 12 U.S.C. 92a,⁹ a separate source of authority from those activities within the business of banking under 12 U.S.C. 24(Seventh).¹⁰

The OCC’s addition of language to § 5.20(e)(1)(i) was to address special purpose banks engaging in only activities within the business of banking. As noted in the preamble to the 2003 final rule, “The purpose of this proposed change was to clarify that a limited purpose national bank may exist with respect to activities other than fiduciary activities, provided the activities in question are part of the business of banking.”¹¹ In other words, the

⁶ 68 FR at 6373.

⁷ 68 FR 70122, 70126 (Dec. 17, 2003).

⁸ 68 FR at 70126.

⁹ See OCC Interpretive Letter No. 1170 (July 22, 2020); OCC Interpretive Letter No. 1078 (Apr. 19, 2007); OCC Interpretive Letter No. 1176 (Jan. 11, 2021).

¹⁰ Compare 12 U.S.C. 24(Seventh) with 12 U.S.C. 92a.

¹¹ 68 FR at 70126.

language in amended § 5.20(e)(1)(i) referencing a “bank that conducts activities other than fiduciary activities” was intended to clarify that the provision did not address national trust banks; the provision addressed special purpose banks that would engage in activities other than those of a trust company. The language was not intended, and has never been interpreted by the OCC, to circumscribe national trust bank activities, *i.e.*, to prohibit a national trust bank from engaging in non-fiduciary activities. The authority to charter national trust banks under 12 U.S.C. 27(a) is clear on its face.

Nonetheless, the OCC believes that the language added in 2003 has the potential to raise confusion about the scope of the OCC’s chartering authority under 12 U.S.C. 27(a) and the activities of national trust banks. Because the language does not explicitly exclude all national trust bank activities (just fiduciary activities), it could be mistakenly read to also impose limits on the activities of national trust banks that are different than those articulated in the last sentence of section 27(a). Such a reading would conflict with the intent of the regulatory text added in 2003, which did not intend to circumscribe the OCC’s authority to charter national trust banks.

Moreover, reading the regulation to apply to national trust bank charters would run contrary to the OCC’s long-held interpretation and historical practice. The OCC has never interpreted § 5.20(e)(1)(i) in a way that restricts national trust banks. Both before and after the 2003 final rule, the OCC has chartered national trust banks that engage in activities that are not fiduciary. For example, the OCC considers custody and safekeeping activities to be generally non-fiduciary and authorized for national banks as part of the business of banking

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under 12 U.S.C. 24(Seventh).¹² National trust banks also frequently conduct custody activities and currently hold nearly \$2 trillion in assets in custody or safekeeping accounts.¹³

In sum, given a potential lack of clarity in the regulation and the risk that a misreading of the regulation may impair the exercise of the OCC's statutory authorities granted to it by the National Bank Act, the OCC is proposing to amend § 5.20(e)(1)(i) to replace the term "fiduciary activities" with "the operations of a trust company and activities related thereto," as stated in 12 U.S.C. 27(a). The OCC believes that these amendments will eliminate potential confusion as to the intent, and OCC's interpretation, of the existing regulation. The OCC also believes that these revisions will reinforce the OCC's reliance on the statutory terms of its chartering authorities.

The OCC is also proposing to make a conforming amendment to 12 CFR 5.20(*l*) by replacing the term "fiduciary activities" with "the operations of a trust company and activities related thereto" to align paragraph (*l*) with paragraph (e) and reflect consistent language with 12 U.S.C. 27(a).¹⁴ Paragraph (*l*) was added in 1996 as part of the OCC's reorganization of 12 CFR part 5.¹⁵ In adding this paragraph, the OCC did not explain why it used the term "fiduciary activities" rather than referencing "trust powers" or "trust business" as used in the former 12 CFR 5.22.¹⁶ Further, the reference to special purpose banks in paragraph (*l*) is illustrative and not restrictive.

To be clear, by proposing the above noted revisions in 12 CFR 5.20, the OCC intends to neither expand nor contract the OCC's authority to charter a national bank. As discussed

¹² See 84 FR 17969 (Apr. 29, 2019); OCC Interpretive letter No. 1078 at 4 (May 2007). National banks may also provide custody services in a fiduciary capacity when authorized in accordance with 12 U.S.C. 92a.

¹³ This is derived from "custody and safekeeping accounts" information reported on Schedule RC-T of the Consolidated Reports of Condition and income.

¹⁴ Paragraph (*l*) also applies to special purpose Federal savings associations.

¹⁵ See 61 FR at 60346.

¹⁶ See 12 CFR 5.22 (1995).

above, the National Bank Act “constitute[es] by itself a complete system for the establishment and government of national banks”¹⁷ and is “the source of the Comptroller’s powers and duties in the granting of a national bank charter.”¹⁸ Revising a potentially unclear provision of the OCC’s regulations that purports to interpret its statutory authority will not deprive the public of information regarding the OCC’s chartering and supervision authorities. As it always has, the OCC will evaluate all applications to charter a national bank within the confines of and consistent with the authority that Congress has granted to it under the National Bank Act.

II. Request for Comments

The OCC requests feedback on all aspects of the proposed rule. The OCC specifically requests comment on whether there is alternative language that the OCC could use to make the regulation more clear with respect to the OCC’s chartering authority for national banks limited to the operations of a trust company and activities related thereto.

III. Regulatory Analyses

Paperwork Reduction Act

The Paperwork Reduction Act of 1995¹⁹ (PRA) states that no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC has reviewed this proposed rule and determined that it does not create any information collection or revise any existing collection of information. Accordingly, no PRA submissions to OMB will be made with respect to this proposed rule.

¹⁷ *Cook Cnty. Nat’l Bank*, 107 U.S. at 448.

¹⁸ *Webster Groves Tr. Co. v. Saxon*, 370 F.2d 381, 384 (8th Cir. 1996).

¹⁹ 44 U.S.C. 3501–3521.

Regulatory Flexibility Act

The Regulatory Flexibility Act²⁰ (RFA) requires an agency to consider the impact of its proposed rules on small entities. In connection with a proposed rule, the RFA generally requires an agency to prepare an Initial Regulatory Flexibility Analysis (IRFA) describing the impact of the rule on small entities, unless the head of the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities and publishes such certification along with a statement providing the factual basis for such certification in the *Federal Register*. An IRFA must contain: (1) a description of the reasons why action by the agency is being considered; (2) a succinct statement of the objectives of, and legal basis for, the proposed rule; (3) a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply; (4) a description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirements and the type of professional skills necessary for preparation of the report or record; (5) an identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap with, or conflict with the proposed rule; and (6) a description of any significant alternatives to the proposed rule that accomplish its stated objectives.

The OCC currently supervises 1,003 institutions (commercial banks, trust companies, Federal savings associations, and branches or agencies of foreign banks),²¹ of which approximately 609 are small entities under the RFA.²²

²⁰ 5 U.S.C. 601–612.

²¹ Based on data accessed using the OCC’s Financial Institutions Data Retrieval System on December 18, 2025.

²² The OCC bases its estimate of the number of small entities on the Small Business Administration’s size thresholds for commercial banks and savings institutions, and trust companies, which are \$850 million and \$47 million, respectively. Consistent with the General Principles of Affiliation, 13 CFR 121.103(a), the OCC counted the assets of affiliated financial institutions when determining if it should classify an OCC-supervised

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In general, the OCC classifies the economic impact on an individual small entity as significant if the total estimated impact in one year is greater than 5 percent of the small entity's total annual salaries and benefits or greater than 2.5 percent of the small entity's total non-interest expense. Furthermore, the OCC considers 5 percent or more of OCC-supervised small entities to be a substantial number, and at present, 30 OCC-supervised small entities would constitute a substantial number. This proposed rulemaking would impose no new mandates, and thus no direct costs, on affected OCC-supervised institutions.

Unfunded Mandates Reform Act

The OCC has analyzed the proposed rule under the factors in the Unfunded Mandates Reform Act of 1995 (UMRA).²³ Under this analysis, the OCC considered whether the proposed rule includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year (\$187 million as adjusted annually for inflation). Pursuant to section 202 of the UMRA,²⁴ if a proposed rule meets this UMRA threshold, the OCC would need to prepare a written statement that includes, among other things, a cost-benefit analysis of the proposal. The UMRA does not apply to regulations that incorporate requirements specifically set forth in law.

This proposed rulemaking would impose no new mandates, and thus no direct costs, on affected OCC-supervised institutions. The OCC, therefore, concludes that the proposed rule would not result in an expenditure of \$187 million or more annually by state, local, and

institution as a small entity. The OCC used average quarterly assets in December 31, 2024 to determine size because a "financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year." See footnote 8 of the U.S. Small Business Administration's *Table of Size Standards*.

²³ 2 U.S.C. 1531 *et seq.*

²⁴ *Id.* 1532.

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tribal governments, or by the private sector. Accordingly, the OCC has not prepared the written statement described in section 202 of the UMRA.

Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act of 1994, 12 U.S.C. 4802(a), in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, the OCC will consider, consistent with principles of safety and soundness and the public interest: (1) any administrative burdens that the proposed rule would place on depository institutions, including small depository institutions and customers of depository institutions; and (2) the benefits of the proposed rule. The OCC requests comment on any administrative burdens that the proposed rule would place on depository institutions, including small depository institutions, and their customers, and the benefits of the proposed rule that the OCC should consider in determining the effective date and administrative compliance requirements for a final rule.

Providing Accountability Through Transparency Act of 2023

The Providing Accountability Through Transparency Act of 2023, 5 U.S.C. 553(b)(4), requires that a notice of proposed rulemaking include the internet address of a summary of not more than 100 words in length of a proposed rule, in plain language, that shall be posted on the internet website www.regulations.gov.

The Office of the Comptroller of the Currency proposes to amend its rule related to chartering of national banks to clarify the longstanding authority of national banks limited to

the operations of trust companies and activities related thereto to engage in non-fiduciary activities in addition to their fiduciary activities.

The proposal and the required summary can be found at <https://www.regulations.gov> by searching for Docket ID OCC-2025-0768 and <https://occ.gov/topics/laws-and-regulations/occ-regulations/proposed-issuances/index-proposed-issuances.html>.

Executive Order 12866

Executive Order 12866, titled “Regulatory Planning and Review,” as amended, requires the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget to determine whether a proposed rule is a “significant regulatory action” prior to the disclosure of the proposed rule to the public. If OIRA determines the proposed rule to be a “significant regulatory action,” Executive Order 12866 requires the OCC to conduct a cost-benefit analysis of the proposed rule. Executive Order 12866 defines a “significant regulatory action” as a regulatory action that is likely to (1) have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in Executive Order 12866.

OMB has determined that this proposed rule is not a “significant regulatory action” as defined in section 3(f) of Executive Order 12866.

Executive Order 14192

Executive Order 14192, titled “Unleashing Prosperity Through Deregulation,” requires that an agency, unless prohibited by law, identify at least 10 existing regulations to be repealed when the agency publicly proposes for notice and comment or otherwise promulgates a new regulation with total costs greater than zero. Executive Order 14192 further requires that new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least ten prior regulations. This rule is not an Executive Order 14192 regulatory action because this rule is not significant under Executive Order 12866.

List of Subjects in 12 CFR Part 5

Administrative practice and procedure, National banks, Reporting and recordkeeping requirements, Savings associations, Securities.

Authority and Issuance

For the reasons set forth in the preamble, and under the authority of 12 U.S.C. 93a, the OCC proposes to amend chapter I of title 12 of the Code of Federal Regulations as follows:

**PART 5—RULES, POLICIES, AND PROCEDURES FOR CORPORATE
ACTIVITIES**

1. The authority citation for part 5 continues to read as follows:

Authority: 12 U.S.C. 1 et seq., 24a, 35, 93a, 214a, 215, 215a, 215a–1, 215a–2, 215a–3, 215c, 371d, 481, 1462a, 1463, 1464, 1817(j), 1831i, 1831u, 2901 et seq., 3101 et seq., 3907, and 5412(b)(2)(B).

2. Amend § 5.20 by revising and republishing paragraphs (e)(1)(i) and (l) to read as follows:

§ 5.20 Organizing a national bank or Federal savings association

* * * * *

(e) * * *

(1) * * *

(i) The OCC charters a national bank under the authority of the National Bank Act of 1864, as amended, 12 U.S.C. 1 et seq. The bank may be a special purpose bank that limits its activities to the operations of a trust company and activities related thereto or to any other activities within the business of banking. A special purpose bank that conducts activities other than the operations of a trust company and activities related thereto must conduct at least one of the following three core banking functions: Receiving deposits; paying checks; or lending money. The name of a proposed national bank must include the word “national.”

* * * * *

(l) * * *

(1) *In general.* A filer for a national bank or Federal savings association charter that will limit its activities to the operations of a trust company and activities related thereto, credit card operations, or another special purpose must adhere to established charter procedures with modifications appropriate for the circumstances as determined by the OCC. A filer for a national bank or Federal savings association charter that will have a community development focus must also adhere to established charter procedures with modifications appropriate for the circumstances as determined by the OCC. A national bank that seeks to invest in a bank or savings association with a community development focus must comply

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with applicable requirements of 12 CFR part 24. A Federal savings association that seeks to invest in a bank or savings association with a community development focus must comply with § 160.36 or any other applicable requirements.

* * * * *

Jonathan V. Gould,
Comptroller of the Currency