February 11, 2026

Chief Counsel's Office
Office of the Comptroller of the Currency
Attention: Comment Processing
400 7th Street SW
Suite 3E-218
Washington, DC 20219

Re: National Bank Chartering [OCC Docket ID OCC-2025-0768]

The Independent Community Bankers of America (ICBA)[1] appreciates the opportunity to comment on the Office of the Comptroller of the Currency (OCC) notice of proposed rulemaking (NPR) on National Bank Chartering.[2] The NPR would amend current regulations to permit the OCC to charter limited purpose trust banks that engage substantially in non-fiduciary activities.

After careful review, ICBA unfortunately concludes that the proposed amendment is both inconsistent with statutory authority and poses significant public policy concerns. We are particularly concerned that the proposed change will promote the position that the OCC may charter uninsured national trust banks that engage in non-fiduciary cryptocurrency-related activities without being subject to the Bank Holding Company Act and other prudential requirements that apply to FDIC-insured institutions.

Therefore, ICBA urges the OCC to withdraw the NPR or reissue an amended NPR that is consistent with the OCC's statutory authority. At minimum, the agency should also impose a moratorium on pending and new charter applications until a final rule fully aligns with statutory intent and incorporates public comments.

[1] The Independent Community Bankers of America® has one mission: to create and promote an environment where community banks flourish. We power the potential of the nation's community banks through effective advocacy, education, and innovation. As local and trusted sources of credit, America's community banks leverage their relationship-based business model and innovative offerings to channel deposits into the neighborhoods they serve, creating jobs, fostering economic prosperity, and fueling their customers' financial goals and dreams. For more information, visit ICBA's website at https://www.icba.org/.
[2] National Bank Chartering, 91 Fed. Reg. 1098 (Jan. 12, 2026).

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The Proposed Regulatory Change is Flawed.

Current OCC regulations provide that a national bank may be chartered if its activities are limited to "fiduciary activities or to any other activities within the business of banking."[3] The current regulations also provide instructions for applicants that seek a charter for a national bank that is limited to "fiduciary activities."[4]

The NPR would amend these provisions by substituting "the operations of a trust company and activities related thereto" for the current text's "fiduciary activities." The OCC takes the position that "*trust company* activities" include a broad range of non-fiduciary activities, which if finalized, would include all of the activities permissible for a state-chartered trust company. In many states, those activities are essentially the same as the activities permissible for a full-service bank. Thus, the NPR would codify the expansive position taken by the OCC in recent pronouncements[5] and charter approvals that uninsured national trust banks may engage in significant non-fiduciary activities.[6]

The Proposal is Beyond Statutory Authority.

The NPR relies primarily on 12 U.S.C. § 27(a) to support the position that it may charter uninsured trust banks that are not limited to fiduciary and related activities. The last sentence of Section 27(a) states: "A National Bank Association, to which the Comptroller of the Currency has heretofore issued or hereafter issues such 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."

The NPR claims that the regulatory amendment is necessary because the existing rule refers to "fiduciary activities," and therefore has the potential to be read as limiting the activities of national banks supposedly chartered under the last sentence of Section 27(a) to fiduciary activities rather than all the activities of a "trust company," whether fiduciary or not. In short, the OCC's rationale for the NPR is that the last sentence in section 27(a) provides an independent grant of authority to charter a new type of limited purpose national bank. While not stated in the NPR, this interpretation would, in practice, include banks that do not accept deposits and therefore would not be FDIC insured.

However, the canons of statutory construction, legislative history, judicial interpretation, and the OCC's own precedent are inconsistent with the interpretation set forth in the NPR. Rather, the last sentence of Section 27(a) only authorizes the Comptroller to charter a limited purpose national bank that

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[3] 12 C.F.R. § 5.20(e)(1).
[4] 12 C.F.R. § 5.20(l).
[5] *See e.g.* OCC Interpretive Letter #1176 "OCC Chief Counsel's Interpretation on National Trust Banks" (Jan. 11, 2021).
[6] Hereinafter we will used the term "fiduciary activities" to mean fiduciary activities and activities related thereto. Our concern is with an uninsured bank engaging in significant activities unrelated to permissible fiduciary activities. Therefore, this comment letter does not address the authority to engage in incidental non-fiduciary activities, such as holding a trust customers' funds in a custody account while awaiting investment or providing safe deposit boxes as a courtesy to existing fiduciary customers. However, holding funds in a custody account for purposes of issuing cryptocurrencies is *not* an example of providing custody services related to a permissible fiduciary activity.

engages in fiduciary activities of the type authorized under 12 U.S.C. § 92a, as well as activities related thereto.

Section 27(a) and Section 92a can be Reconciled.

Historically, the National Bank Act did not authorize national banks to engage in fiduciary activities. In 1913, Congress amended the Federal Reserve Act to permit the Federal Reserve Board to issue a special permit to a national bank pursuant to which the national bank could act in one or more specified fiduciary capacities.[7] In 1962, Congress transferred this authority to the Comptroller of the Currency, and the provision is now codified at 12 U.S.C. § 92a.[8]

Both the original legislation adopted in 1913 and the 1962 legislation transferring the authority to the OCC included a number of restrictions on national bank fiduciary powers, including a limitation on permissible fiduciary activities, a requirement to segregate trust assets, and a prohibition on holding in trust assets that may be withdrawn by check, among other conditions and limitations. Importantly, the 1962 legislation states: "On and after the date of enactment of this Act the exercise of fiduciary powers by national banks shall be subject to the provisions of this Act and the requirements of regulations issued by the Comptroller of the Currency pursuant to the authority granted by this Act."[9] The term "this Act" refers to the provisions codified at 12 U.S.C. § 92a.

The OCC's proposed position that the last sentence of section 27(a) is an independent authorization for the Comptroller to charter a national trust bank that is engaged in fiduciary activities is in direct conflict with 12 U.S.C. § 92a. The 1962 law couldn't be clearer: the exercise of fiduciary powers by a national bank is required to be subject to the requirements of section 92a.

When two statutes are in conflict, an argument may be made that the later statute implicitly repealed the earlier enactment. However, the Supreme Court has recently and consistently made it clear that there is a *strong* presumption against implied repeal, and courts must first attempt to reconcile the conflicting laws to give effect to both.[10]

The last sentence of Section 27(a), which was added in 1978, can easily be reconciled with the 1962 statute requiring national bank fiduciary activities to be "subject to the provisions of [Section 92a] ..." On its face, the last sentence in Section 27(a) is not a grant of authority to engage in fiduciary activities. Rather, *if* the Comptroller charters a limited purpose trust bank, the last sentence of Section 27(a) simply clarifies that the charter is lawful. But the last sentence of Section 27(a) does not authorize the Comptroller to grant fiduciary powers to a national bank; it only discusses what happens *if* a trust bank is chartered. The sole statutory authority to permit national banks to engage in fiduciary activities was Section 92a when the amendment to Section 27(a) was adopted and remains the sole authority today. Not only is this consistent with statutory language, but it also reconciles the apparent conflict between the two statutes. As instructed by the courts, the preferred reading of the two provisions in apparent conflict is to reconcile them, and the above interpretation achieves that goal. Further, this

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[7] Public Law No. 63-43 (1913).
[8] Public Law No. 87-722 (1962).
[9] *Id*. at § 2.
[10] *Loper Bright Enter. v. Raimondo*, 603 U.S. 369 (2024); *Epic Systems Corp.* v. *Lewis*, 584 U. S. 497 (2018).

interpretation is also supported both by the legislative history of Section 27(a)'s last sentence and the relevant court of appeals decision.

Legislative History Does Not Support the OCC's Proposed Interpretation.

Congress added the last sentence of 12 U.S.C. § 27(a) in 1978. Prior to the adoption of that amendment, the OCC had chartered a handful of national banks that engaged "exclusively in the provision of trust services."[11] One of these banks, City Trust Services, N.A., was given approval by the Comptroller to operate as a trust company with full authority to offer fiduciary services, but without the authority to accept deposits or make loans.[12] Of significant note, although the district court described the bank as being a "trust company," its operations were limited to activities incident to or related to fiduciary activities.[13] In fact, as a condition to approving the City Trust application, the Comptroller specifically required the institutions to renounce the statutorily conferred power to engage in the activities enumerated in the National Bank Act, except as "incident or related to" its fiduciary duties.[14]

On July 29, 1976, the National State Bank of Elizabeth instituted a suit seeking declaratory relief and to enjoin the Comptroller from granting final charter approval to City Trust.[15] The plaintiff argued that a limited purpose trust bank was not a "national bank" under the National Bank Act, and therefore the Comptroller did not have the authority to give it a charter. The U.S. District Court (N.J.). agreed. It held that the Comptroller could only charter an institution engaging in the "business of banking" as described in 12 U.S.C. § 24, and that a limited purpose trust bank was not engaging in the "business of banking" as that term is used in the National Bank Act. [16] In so ruling, the court specifically distinguished the business of banking as described in 12 U.S.C. § 24, and the fiduciary activities authorized by 12 U.S.C. § 92a.

While the District Court's decision was pending on appeal, Comptroller John Heimann asked Congress to clarify the status of previously approved limited purpose national trust banks and the authority of the OCC to continue to issue such charters. At the time of this request, all limited purpose national bank trust company activities were limited to the activities described in Section 92a and activities incidental or related thereto.

The vehicle for this legislative fix was the Financial Institutions Regulatory and Interest Rate Control Act of 1978 ("FIRA"), which amended 12 U.S.C. § 27(a) by adding the last sentence in that subsection.[17] When this amendment was adopted, the only authority to grant fiduciary powers was through Section 92a, and there is no indication anywhere that Congress intended to provide an additional authorization for such action. Certainly, if Congress had intended to grant the OCC new authority to

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[11] Statement of Comptroller Heimann, Hearings Before the House Committee on Banking, Finance, and Urban Affairs, Subcommittee on Financial Institutions, 96th Cong. 1s Sess. (1979).
[12] *National State Bank of Elizabeth v. Smith*, No. 76-1479, 1977 U.S. Dist. LEXIS 18184 (D.N.J. Sep. 16, *rev'd* on other grounds, 591 F.2d 223 (3rd Cir. 1979).
[13] *Id*.
[14] *Id*.
[15] *Id*. The court found that the plaintiff bank had standing based on an affidavit filed by the bank's assistant vice president averring that the new bank "will or may" compete with the plaintiff bank in offering trust services to the public.
[16] *Id*.
[17] Pub. L. No. 95-630 (1978) § 1504.

charter a new type of hybrid national bank, that would have been discussed in Congress and in the financial press. The lack of any discussion is telling.

The following year, Congress began debating H.R. 4986, which was eventually adopted as the Depository Institutions Deregulation and Monetary Control Act.[18] The initial text of H.R. 4986 contained an amendment to 12 U.S.C. §27(a) due to concerns that the sentence adopted the previous year would permit national trust banks to have interstate operations. Senator Adlai Stevenson, who was managing the bill on the Senate floor, offered an amendment to strike the proposed amendment, thereby leaving Section 27(a) unchanged.[19] Senator Stevenson explained that the addition of Section 27(a)'s last sentence did not change the law regarding limited purpose trust charters except to clarify that the OCC could grant such charters under the "old authority," that is, to conduct only the activities authorized under Section 92a. To quote Senator Stevenson:[20]

> [U]nder authority contained in the National Bank Act, the Comptroller has chartered seven trust banks since 1973. Only recently, in litigation challenging the exercise of that authority brought by competitors of a national trust bank in New Jersey, has the Comptroller's authority been challenged. [The amendment to Section 27(a)] ... was enacted … to *affirm the old authority*. It did not confer new authority.

The Congressional Record of the debate also includes a copy of a letter from Comptroller Heimann acknowledging that the last sentence of Section 27(a) did not provide additional or new authority to charter a new type of limited purpose trust bank.[21] The Comptroller's letter states:[22]

> In 1978, the Congress clarified the authority of the Comptroller to charter national banking associations *with powers limited to the offering of trust services*. That clarification … was enacted in response to a judicial challenge regarding the establishment of a limited charter association in New Jersey. ... Only that particular litigation necessitated seeking statutory clarification of our authority to do so.

Additionally, Comptroller Heimann explained the limited nature of Section 27(a)'s last sentence in testimony before the House Banking Committee in 1979. He stated at that hearing that the 1978 amendment to Section 27(a) simply "confirmed that the Comptroller may charter national banks engaged *exclusively* in the provision of trust services."[23]

The positions of the OCC in 1978 and 1979, as the Comptroller made clear in his letter submitted to the legislative record, are especially persuasive because the agency's construction of the legislative language was made nearly contemporaneously with its passage.[24]

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[18] Pub. L. 96-221 (1980).
[19] Senate Amendment No. 557, 126 Cong. Rec. 30304 (Oct. 31, 1979).
[20] 126 Cong. Rec. 30305 (Oct. 31, 1979). Emphasis added.
[21] *Id*.
[22] *Id*. Emphasis added.
[23] Hearings Before the Subcomm. on Financial Institutions, House Comm. on Banking, Finance and Urban Affairs, 976th Cong. 1st Sess. (1979). Emphasis added.
[24] See *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024); *Skidmore v. Swift, & Co*.,323 U.S. 134 (1944); *General Electric v. Gilbert*, 429 U.S.125 (1976). In 2024, an administrative law professor noted in the Yale Journal of Regulation that

This legislative history demonstrates that the one sentence amendment to Section 27(a) was not intended to provide an entirely new grant of authority to charter trust banks. Such a significant change in the law would have been viewed as very controversial at the time, as it is still viewed today. Further, the statements of Comptroller Heimann show that the OCC did not interpret the amendment to provide authority to charter a trust bank outside of the confines of Section 92a, and this earlier pronouncement of agency position should be given great weight.

In summary, the last sentence of Section 27(a) should not be viewed as an independent authority to charter trust banks or to authorize national banks to engage in fiduciary activities It simply provides that it is lawful for the OCC to charter a limited purpose national trust bank engaging in fiduciary activities as permitted under Section 92a.

Judicial Interpretations Do Not Support the NPR.

The Third Circuit is the only appellate court to consider the interaction between Section 27(a)'s last sentence and Section 92a. In *National State Bank of Elizabeth N.J. v. Smith*,[25], the Court of Appeals determined the 1978 statutory amendment legislatively reversed the lower court's opinion finding that limited purpose national banks were illegal. However, the court of appeals explained that in order to reach this result Section 27(a) must be construed as relating only to the activities permissible under Section 92a. Otherwise, the court determined the 1978 amendment was "meaningless." The words used by the court make this clear:[26]

> We assume, of course, that Congress intended its [1978 amendment] ... to have meaningful effect. We must accordingly, if possible, construe it so as to give it such effect. We find no legislative history to assist us in this task. But we do have the background fact that Congress by the Act of September 28, 1962, 12 U.S.C.A. § 92a, had empowered the Comptroller by special permit to authorize a national banking association to exercise certain fiduciary powers in addition to its normal banking functions. *We think that it must have been these specially permitted fiduciary powers to which Congress intended to refer when by its recent enactment it authorized the Comptroller to restrict the operations of a national bank to those of a trust company and activities related thereto*.

Thus, the only Court of Appeals decision to consider this issue found that the last sentence of section 27(a) only authorizes the Comptroller to charter limited purpose national trust banks that engage in activities authorized under Section 92a. In short, the NPR and the OCC's underlying interpretation is flawed because it is inconsistent with legal precedent. As established in *National State Bank of Elizabeth*, Section 27(a) does not authorize the OCC to charter a limited purpose national trust bank that engages in significant activities unrelated to permissible fiduciary activities as described in Section 92a.

"in Loper Bright the Court not only cited Skidmore with seeming approval but repeatedly emphasized the 'respect' traditionally afforded to longstanding, consistent agency interpretations, especially when offered close in time to the statute's passage." Daniel Deacon, Yale J. on Reg., "Loper Bright t, Skidmore and the Gravitational Pull of Past Agency Interpretations" (June 2024).

[25] 591 F.2d 223 (3rd Cir. 1979).

[26] *Id*.

The OCC's Internal Precedent Does Not Support the NPR's Interpretation of Section 27(a).

The NPR refers to the OCC's "long-held interpretations and agency practice to charter national trust banks that engage in non-fiduciary activities."[27] However, the OCC did not charter limited purpose trust banks before the early 1970s and until the early 2000s these banks were, with a few exceptions, limited to fiduciary and related activities consistent with Section 92a.[28]

In support of its position that the OCC has long held that limited purpose national banks may substantially engage in non-fiduciary activities, the OCC references an unpublished letter signed by James Kane, District Counsel, and dated June 20, 1985. In this letter Mr. Kane states that while safekeeping and safe deposit services for customers are fiduciary activities under the applicable state law, they are not considered to be fiduciary activities under Section 92a and therefore cannot be authorized under that section. However, the letter concludes that the safekeeping and safe deposit box activities can be approved under the last sentence of Section 27(a).

Mr. Kane does not provide any analysis for his conclusion, and it is not clear that this internal and unpublished letter should be viewed a significant precedent. In fact, the OCC recently overruled another position taken in Mr. Kane's letter stating that the definition of what is a fiduciary activity is solely a matter of federal law. In reversing this position, the OCC did not provide any legal analysis but simply said that position (as stated in Interpretive Letter No. 265) was "superseded."[29] This raises the question of how much weight the OCC should place on Mr. Kane's unpublished staff letter, or any other unpublished staff letter that can be "superseded" by agency fiat. Simply put, if the OCC has previously concluded that some parts of these of unpublished letters are not binding on the agency, why should other select parts be binding – especially if those parts assume the major question of expanding the OCC's authorities?

In sum, agency precedent closest to the adoption of the 1978 amendment indicates that the agency used Section 92a as the touchstone for permissible activities for limited purpose trust banks. The Supreme Court has stated that these older positions are more probative of legislative intent. We therefore conclude that when reviewed holistically, the OCC's own agency precedents do not support the NPR's conclusion that Section 27(a) is an independent source of authority to charter limited purpose trust banks that engage in significant activities unrelated to the permissible fiduciary activities described in Section 92a.

The OCC's Flawed Interpretation Raises Significant Public Policy Concerns.

If the NPR is adopted, it would vastly expand the OCC's chartering authorities by enabling the OCC to charter national trust banks that can engage in a wide range of non-fiduciary activities while avoiding the requirement to become an insured bank under the Federal Deposit Insurance Act. An uninsured bank is not within the scope of the Bank Holding Company Act (BHC Act) unless it both

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[27] 91 Fed. Reg. 1098, 1099.

[28] See Joint Trade Letter (Jan. 2021), https://www.icba.org/documents/d/asset-library-45247/joint-letter-on-occ-trust-charter-applications.

[29] In Interpretive Letter No. 1176, at note 5, the OCC superseded Interpretive Letter No. 265 that reached the same conclusion as Mr. Kane regarding the definition of "fiduciary." No analysis was provided. However, it is clear that the provisions in Mr. Kane's letter must also be superseded, since they are the same as the conclusions in Interpretive Letter No. 265.

accepts demand deposits and makes commercial loans.[30] Therefore, an uninsured limited purpose trust bank that does not accept demand deposits would be exempt from the prudential requirements of the BHC Act, including provisions in that Act requiring the separation of banking and general commerce. This would create a significant loophole in a foundation principle of bank regulation through administrative fiat.

Further, an uninsured national trust bank engaging in significant activities unrelated to permissible fiduciary activities would not be subject to the various prudential standards that apply to insured banks, including the enhanced prudential standards issued pursuant to the Dodd-Frank Act,31 the statutory prompt corrective action framework,[32] and the statutory restrictions on transactions with hedge funds and other risky investment vehicles ("Volcker Rule").[33]

Uninsured national trust banks engaging in significant activities unrelated to permissible fiduciary activities will undoubtedly result in consumer confusion and, by having "national bank" in its title, could foster an impression that the institution is subject to the full panoply of regulatory safeguards as are other national banks. And while an uninsured bank cannot accept deposits, it could issue debt to the public to support its non-fiduciary activities. Consumer confusion about the uninsured status of a national trust bank, along with the fact that prudential safeguards found in the banking statutes are not applicable to such a bank, could have a negative impact on all national banks, if not the entire banking system, in the event of failure due to mismanagement or fraud.

Finally, we are concerned that neither the Federal Deposit Insurance Act receivership provisions nor the U.S. bankruptcy code are applicable to uninsured national trust banks.[34] The OCC promulgated regulations for the receivership of uninsured national banks, but these regulations rely on 12 U.S.C. §§ 191 et. seq. The statutes and regulations that enable the OCC's receivership and conservatorship authorities are outdated (especially compared to those that apply to the FDIC), and do not give the OCC the flexibility and powers given to the FDIC necessary to resolve the complexity of "novel" institutions.[35]

Furthermore, the OCC lacks experience in the receivership process and has not acted as a receiver since the creation of the FDIC in 1933.[36] This is of particular concern when uninsured national trust banks engage in significant activities unrelated to permissible fiduciary activities, especially if these activities involve complex financial products and financial contracts, such as swaps, forwards, options, repo agreements, and other so-called qualified financial contracts.

The OCC Should Issue a Moratorium on Pending Applications.

The OCC's decision to engage in this rulemaking amidst a recent and pending influx of national trust bank applications will likely cause some applications to be reviewed, approved, or denied under a

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[30] 12 U.S.C. § 184(c)(1).
[31] Codified at 12 U.S.C. § 5365.
[32] 12 U.S.C. § 1831o.
33 12 U.S.C. § 1851.
[34] 11 U.S.C. § 109.
[35] See FDIC, Insured Depository Institution Resolution Handbook (2005).
[36] Receiverships for Uninsured National Banks, 81 Fed. Reg. 62835, 62837 (Sept. 13, 2016).

different framework than others. It is essential from both a policy and legal standpoint that the OCC review public comments to this NPR and finalize its regulatory framework before proceeding with substantive approvals, including conditional approvals.

Conclusion.

ICBA opposes the OCC's proposed changes to national trust bank chartering rules. For the reasons explained above, it is clear that the OCC does not have the statutory authority to charter a limited purpose trust company that engages in significant activities unrelated to permissible fiduciary activities. We therefore request that the NPR be withdrawn or amended consistent with this conclusion. At minimum, the agency should also impose a moratorium on pending and new charter applications until a final rule fully aligns with statutory intent and incorporates public comments.

Sincerely,

/s/

Jenna Burke
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/s/
Mickey Marshall
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