

Banking and Finance Law Daily Wrap Up, BANKING OPERATIONS—OCC proposes rulemaking to clarify national trust bank activity clearance, (Jan. 9, 2026)

Banking and Finance Law Daily Wrap Up

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In amending old language, the proposed rule seeks to clarify that national trust banks are not prohibited from engaging in non-fiduciary activities.

The Office of the Comptroller of the Currency has issued a [notice of proposed rulemaking](#) intended to clarify national trust bank activity clearance. The new language is intended to clarify that national trust banks are not, nor have they been, prohibited from engaging in non-fiduciary activities. The requirement that non-fiduciary activities must involve at least one of three core banking functions: receiving deposits, paying checks, or lending money [will continue](#) to be applied only to special purpose banks. Comments on the notice are due by Feb. 21, 2026.

History. The OCC has the authority to charter banks. In 1978, the National Bank Act allowed national banks whose operations are limited to those of a trust company or are related thereto. About 60 national trust banks are currently supervised by the OCC. In 2003, the OCC amended statutory language to clarify that a special purpose bank could exist with respect to activities other than fiduciary activities, provided that the activities were within the business of banking—more specifically, whether they involved one of the three core banking functions discussed above.

Any limitation inherent in the statute was intended to apply to special purpose banks engaging in activities other than those of a trust company. The authority to charter national trust banks already had been clearly granted. The language is being amended to clarify that it is not applicable to national trust banks. Specifically, the statute will now read, “The bank may be a special purpose bank that limits its activities to the operations of a trust company and activities related thereto.”

Among the reasons for the change are that custody and safekeeping activities are generally considered non-fiduciary and authorized as part of the business of banking. “National trust banks also frequently conduct custody activities and currently hold nearly \$2 trillion in assets in custody or safekeeping accounts,” noted the proposed rulemaking notice.

The proposal is explicitly stated as being written to clarify rather than to expand or contract the OCC’s authority to charter a national bank. The notice requests comments with regard to all aspects of the rule and particularly whether any other language might better clarify the issue.

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