Americans for Financial Reform Education Fund

Mr. Adam Cohen
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Office of the Comptroller of the Currency
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Attention: Comment Processing

February 11, 2026

Re: National Bank Chartering Docket ID No. OCC-2025-0768/RIN-1557-AF47

Dear Chief Counsel Cohen:

Americans for Financial Reform Education Fund (AFREF) strenuously opposes the Office of the Comptroller's (OCC) efforts to expand its power to grant national bank charters in violation of statute.[1] The National Bank Chartering notice of proposed rulemaking misreads the law, congressional intent, and a century of court precedent to impermissibly allow the OCC to grant national trust bank charters to cryptocurrency, financial technology, and Big Tech platforms that do not perform the narrow, prescribed, and enumerated functions of trust companies. The OCC must withdraw this proposed regulation.

AFREF is a nonpartisan and nonprofit organization formed by a coalition of more than 200 civil rights, consumer, labor, business, investor, faith-based, and civic and community groups. dedicated to advocating policies that shape a fair and stable financial sector, including with regard to the chartering of financial institutions. AFREF was established in the wake of the 2008 crisis and continues to work towards a financial system that serves workers, communities and the real economy, and provides a foundation for advancing economic and racial justice.

The OCC is inappropriately attempting to expand and distort the national trust bank charter through regulation to inappropriately bestow bank charters upon crypto, fintech, and Big Tech platform companies in ways that are inconsistent with statutory intent and historical precedent for national trust banks. The OCC's effort to broaden the national trust bank charter to create a loophole from federal banking laws to allow crypto, fintech, and other businesses to effectively become banks is inappropriate and not grounded in federal law or regulation.

Expanding federal bank charters to risky crypto, fintech, and Big Tech platforms would amplify risks to the financial system by embedding these risky business models into the fabric of the financial system. This could easily transmit contagions across the economy in times of economic stress. Bank charters confer tremendous public benefits (including access to federal payments rails, the discount

[1] Office of the Comptroller of the Currency (OCC). National Bank Chartering Notice of Proposed Rulemaking. 91 Fed. Reg. 7. January 12, 2026 at 1098 et seq.

window, and emergency credit facilities) that can encourage moral hazard and excessive risk taking. The creation of these novel bank charters would exacerbate risk to the financial system and the real economy.

The federal statute that authorizes the creation of national trust bank charters grants the federal banking regulators the limited authority to grant charters to institutions that perform specified and enumerated fiduciary activities. The congressional intent, historical record, legal precedent, and longstanding federal regulations identify the national trust bank fiduciary role narrowly as that of an administrator, manager, custodian, or executor of funds for the benefit of the customer.

The OCC is only authorized to grant national trust bank charters to organizations that carry out these statutorily designated activities and only these statutorily designated activities; the OCC has absolutely no statutory authority to expand the approved activities beyond those enumerated in law. President Trump has ordered all agencies to rescind all "regulations that are based on anything other than the best reading of the underlying statutory authority or prohibition."[2] The OCC should withdraw this proposed national trust bank charter regulation.

The OCC's proposed national trust bank chartering rule contravenes congressional intent and statutory authority

The OCC's proposed national trust bank charter regulation greatly exceeds what Congress intended in establishing the national trust bank charters in federal banking law. Congress explicitly authorized federal banking regulators to approve national trust bank charters only to organizations offering bona fide fiduciary services to their customers. The proposed OCC rule would impermissibly grant the OCC authority to bestow national trust bank charters on organizations that do not perform these enumerated activities in contravention of statute and congressional intent.

Trust banks are trustees of their customers' funds and the trustee relationship is the exemplar of fiduciary relationships. Trustees must exercise duties of obedience, care, loyalty, honesty, prudence, good judgment, transparency and be free of conflicts of interest to further their clients' best interests. The courts have long recognized that the standards for a trustee fiduciary relationship are especially rigorous. The New York Court of Appeals highlighted the distinction between many ordinary business activities and those of fiduciaries in Meinhard v. Salmon:

> Many forms of conduct permissible in a workaday world for those acting at arm's length, are forbidden to those bound by fiduciary ties. A trustee is held to something stricter than the morals of the market place. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior. As to this there has developed a tradition that is unbending and inveterate.[3]

Congress intended national trust banks perform fiduciary services for their clients. Congress granted the authority to charter and regulate national trust banks to the Federal Reserve in 1913 and shifted that authority to the Comptroller in 1962. The congressional intent, plain reading of the statute, and

[2] Executive Order No. 14219. "Ensuring Lawful Governance and Implementing the President's 'Department of Government Efficiency' Deregulatory Initiative." 90 Fed. Reg. 36. February 25, 2025 at 10583.
[3] Meinhard v. Salmon, 164 N.E. 545, 546 (N.Y. 1928).

current regulations only grant the authority to grant national trust bank charters to institutions that perform these narrow fiduciary activities and only these narrow fiduciary activities.

Federal law authorizes the Comptroller to charter national trust banks for the specific enumerated activities including "to act as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, or in any other fiduciary capacity."[4] The Bank Holding Company Act identifies trust banks as those where "all or substantially all of the deposits of such institution are in trust funds and are received in a bona fide fiduciary capacity."[5] Bona fide means in good faith, which puts a heightened responsibility on trust banks to act in the best interests of their customers as prudent stewards of their funds

When Congress transferred national trust bank oversight from the Federal Reserve to the Comptroller it merely shifted the jurisdiction but not the statutory language or intent. The House report on the 1962 legislation that transferred trust bank authority to the Comptroller stated that the bill would make no change from "the substantive provisions of section 11(k) other than the transfer of authority, so that there is no alteration of existing law regarding national banks acting in fiduciary capacities."[6] Congress has not even slightly altered or amended the statutory provisions that limit trust banks to narrow fiduciary responsibilities for the past half century.[7]

The OCC's distorted claim of statutory authority to promulgate the national bank charter rule ignores congressional intent and full reading of statutory language

The OCC mistakenly bases its statutory authority to promulgate this national bank chartering regulation on a misinterpretation of a 1978 congressional amendment to the National Bank Act. The clause the OCC relies on is a subset of a longer paragraph of federal statute and must be read in the context of the plain reading of the entire paragraph to require the OCC to adhere to the statutory requirements of national trust banks. The OCC relies upon the following sentence as the basis for its statutory authority:

> A National Bank Association, to which the Comptroller of the 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.[8]

The OCC misinterprets this sentence to mean that it is not prohibited from granting charter certificates to proposed banks merely because the applicants' proposed operations are not limited to those statutorily enumerated authorities of a trust company. This ignores the statutory intent of the 1978 amendment, is a misreading of the full intent of the referenced statutory paragraph, and

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[4] 12 USC 92a(a).
[5] 12 USC 1841 (c)(2)(D)(i).
[6] Congressional Record. September 17, 1962 at 19577.
[7] Pub. L. 87-722. To Place Authority Over Trust Powers of National Banks in the Comptroller of the Currency. September 28, 1962; 12 USC §92a. The congressional changes to the statute since 1962 have not amended or changed the requirements that trust banks may only act in fiduciary capacities. In 1980, the Congress added wind-down procedures to revoke national bank trust charters. Pub. L. 96-221 §704. Monetary Control Act of 1980. March 31, 1980; In 2012, the Congress removed the reference to "committee of estates of lunatics" from the law. Pub. L. 112-231. December 28, 2012.
[8] 12 USC 27(a).

misconstrues the sentence's structure that requires all national trust banks activities to be fiduciary in nature.

The OCC's reliance on the 1978 amendment to the National Bank Act to expand national trust bank powers contravenes the congressional intent and the plain language of the statute. The House Banking Committee's report on the legislation describes this sentence as giving the OCC the power to revoke rather than to grant trust powers.[9] Previously, the statute only gave the OCC the authority to approve trust charters, but the amendment was a "change in the Comptroller's administrative authority [that] would give the Comptroller the authority to revoke a national bank's trust powers. Currently, the Comptroller may grant a national that authority but he does not have the power to revoke these powers if they are unlawfully or unsoundly used."[10] The clear congressional intent of the sentence is that the OCC can and should revoke national trust bank charters of institutions that engage in activities that go beyond the bounds delineated in the statute.

Moreover, the remainder of the paragraph in 12 USC 27(a) should be read in its full context of the statutory fiduciary requirements for national trust banks described above. The remainder of the full paragraph requires the OCC to only grant national trust bank charters "upon a careful examination of the facts" and directs the OCC to withhold a charter certificate from any proposed national trust bank that has been formed "for any other than the legitimate objects contemplated" by the statute.[11] The legitimate objects contemplated by statute are "the right to act as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, or in any other fiduciary capacity" and proscribes national trust banks from accepting deposits, issuing checks, or other unrelated activities.[12]

In 1979, the Third Circuit of the United States Court of Appeals clarified that the 1978 amendment directed the OCC to adhere to the fiduciary activity requirements:

> The statutory phrase 'trust company' may be read as limited in meaning to the trust or fiduciary operations of such a company. Unless we so read the statute, it becomes virtually meaningless. […] 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. In other words, it was the fiduciary operations carried on in the trust department of such a company or of a commercial bank to which reference must have been intended. Only by being so read does the statute have full meaningful effect and we so read it.[13]

Finally, the OCC appears to ignore the sentence requiring that the permitted activities of national trust banks are "to be limited to those of a trust company and activities related thereto."[14] The OCC

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[9] Committee on Banking, Finance, and Urban Affairs. U.S. House of Representatives. Financial Institutions Regulatory Act of 1978. "Report together with Supplemental, Additional, and Minority Views to Accompany H.R. 13471." July 20, 1978 at 6 to 7.

[10] Committee on Banking, Finance, and Urban Affairs. U.S. House of Representatives. Financial Institutions Regulatory Act of 1978. "Report together with Supplemental, Additional, and Minority Views to Accompany H.R. 13471." July 20, 1978 at 29.

[11] 12 USC 27(a).

[12] 12 USC 92a(a) and (d).

[13] National State Bank v. Smith, 591 F.2d 223 (Jan. 15, 1979).

[14] 12 USC 27(a).

seems to be suggesting that it could authorize national trust bank charters to institutions whose activities are related to the activities of national trust banks, but the statutory use of the conjunction "and" and not "or" clearly requires all national trust bank activities to be limited to the statutory limited activities of national trust banks *and* related activities. Every national trust bank must perform these fiduciary activities and may perform additional related activities. The OCC lacks the statutory authority to grant national trust bank charters to those organizations that only perform related activities but do not perform the narrowly enumerated activities authorized by statute.

The OCC's proposed national trust bank chartering rule inappropriately reverses over a century of precedent

The OCC's proposed national bank chartering rule diverges sharply from the longstanding understanding that national trust banks have narrowly prescribed fiduciary activities. Although the proposed rule states that the OCC has "never interpreted [its regulations] in a way that restricts national trust banks" and that it can and has chartered national trust banks "that engage in activities that are not fiduciary,"[15] that is contrary to a century of regulatory thought.

This original regulatory interpretation is in line with the congressional intent and plain language of the statute that national trust banks may only perform narrow fiduciary activities. And the Supreme Court has noted that deference to agency interpretations of statute are "especially warranted when the Executive Branch interpretation was issued roughly contemporaneously with the enactment of the statute and remained consistent over time."[16]

The original Federal Reserve regulations governing national trust banks clearly prevent them from engaging in non-fiduciary activities. The 1937 Regulation F authorized trust banks "for the investment of funds for true fiduciary purposes" but "the operation of Common Trust Funds investment trusts for other than strictly fiduciary purposes is hereby prohibited."[17] A 1956 *Federal Reserve Bulletin* cautioned that "trust fund participation should be preceded by particularly careful determination of the bona fides of their use and purpose to avoid improper use of the common trust fund as a medium attracting individuals primarily seeking investment management of their funds."[18] And the Federal Reserve continued to hold national trust banks to these specific authorities. A 1967 *University of Pennsylvania Law Review* commentary concluded that "The practical effect of these [Federal Reserve] rulings was to prohibit banks from offering participation in the common trust fund as a vehicle for investment."[19]

When Congress shifted the jurisdiction over national trust banks from the Federal Reserve to the OCC in 1962, regulators at both agencies unanimously re-affirmed the narrow scope of national trust banks. In 1962, Federal Reserve Governor William Martin, Jr. testified that the Federal Reserve had "confined participation in common trust funds to situations where the bank was acting as a

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[15] 91 Fed. Reg. 7 at 1099.
[16] Loper Bright Enterprises et al. v. Raimondo. 603 U.S. 369.
[17] Board of Governors of the Federal Reserve System. Regulation F Trust Powers of National Banks. 2 Fed. Reg. 252. December 30, 1937 at 3441.
[18] "Common Trust Funds." *Federal Reserve Bulletin*. Vol. 42, No. 3. March 1956 at 228.
[19] Editorial Comment. "Banks, Trusts and Investment Companies: The Commingled Investment Fund." *University of Pennsylvania Law Review*. Vol. 115, No. 8 June 1967 at 1278.

trustee, executor, administrator, or guardian for 'true fiduciary purposes.'"[20] Comptroller James Saxon testified in 1963 that "There is no more carefully devised or restrictive set of laws or regulations in any field of banking, in my opinion, than that appertaining to the law of trusts, because of the special and traditional significance attached to the fiduciary relationship and existing for centuries both in the common law and the statute law of this country."[21] The 1962 OCC Annual Report noted that all of the trust banks were solely "authorized to act in fiduciary capacities."[22]

Today, federal banking regulations permit national trust banks to engage only in specific enumerated activities and to do so as the fiduciary of their clients. The OCC is authorized to charter a national trust bank as a "special purpose bank that limits its activities to fiduciaries."[23] The regulations spell out that these fiduciary capacities and activities as:

> Trustee, executor, administrator, registrar of stocks and bonds, transfer agent, guardian, assignee, receiver, or custodian under a uniform gifts to minors act; investment adviser, if the bank receives a fee for its investment advice; any capacity in which the bank possesses investment discretion on behalf of another.[24]

This long regulatory history dating to the passage of the laws authorizing national trust charters demonstrates a consistent understanding of the statutory intent and meaning. The OCC's proposed rule revises a century of regulatory history to inappropriately try to approve national trust bank charters to applicants that do not limit their activities to those specified fiduciary activities enumerated in law and longstanding regulatory interpretation.

The OCC's proposed national trust bank charter ignores longstanding court precedent that only allows the approval of national trust banks for narrow enumerated activities

The OCC's proposed expansion of its national trust bank authorities is inconsistent with a statute with robust textual history and longstanding and settled jurisprudence. Courts, including the Supreme Court, have ruled that banking regulators (first the Federal Reserve and now the OCC) only have narrow authority to grant national trust bank charters to organizations that perform a narrow set of fiduciary activities.

Agencies must follow federal law and must exercise their authorities within the confines of statute. The Supreme Court has repeatedly held that agency actions may not exceed statutory authority, most recently in Loper Bright.[25] In *Chevron* the court noted that agencies must not pursue "administrative

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[20] Martin, William McC., Jr. Board of Governors, Federal Reserve System. Letter to Hon. Oren Harris. Hearing before the Subcommittee on Commerce and Finance on H.R. 8499, H.R. 9410. Committee on Interstate and Foreign Commerce. U.S. House of Representatives. 88th Congress, Second Session. June 9, 10, and 11, 1964 at 8.
[21] Hon. Saxon, James J. Comptroller of the Currency. "Common Trust Funds—Overlapping Responsibility and Conflict in Regulation." Hearing before the Subcommittee of Legal and Monetary Affairs of the Committee on Government Operations. U.S. House of Representatives. May 20, 1963 at 44.
[22] Office of the Comptroller of the Currency (OCC). "100th Annual Report of the Comptroller of the Currency 1962." 1963 at 15.
[23] 12 CFR §5.20(e)(1)(i). The regulation specifies that banks either limit their activities to fiduciaries "or to any other activities within the business of banking" and the use of "or" proscribes national trust banks from exercising the core banking functions of taking deposits, paying checks, and lending money.
[24] 12 CFR §9.2(e).
[25] Loper Bright Enterprises et al. v. Raimondo. 603 U.S. 369 (2024).

constructions which are contrary to clear congressional intent."[26] And in *Morton Salt* it cautioned against "administrators whose zeal might otherwise have carried them to excesses not contemplated by legislation."[27]

The general prohibitions against agencies exceeding their statutory authority have been repeatedly upheld in requiring banking regulators to only issue national trust bank charters for specified fiduciary activities. Immediately after the 1913 Federal Reserve Act authorized the Federal Reserve to charter trust banks, states and trust companies challenged the constitutionality of this authority. But in First National Bank of Bay City, the Supreme Court ruled that the "statute authorizes the exertion of the particular functions by national banks" and that "the right to create the bank and the authority to attach to it that which was relevant, in the judgment of Congress, to make the bank successful."[28]

This ruling was re-affirmed in 1924 when the Supreme Court noted that "national banks having the permit of the Federal Reserve Board may act as executors" and that the statute's narrow authorization of enumerated trust bank powers "provides its own safeguards."[29] A 2016 *Columbia Law Review* article highlighted that the agencies did not have latitude to widen the specific enumerated national trust bank fiduciary activities enacted by Congress, noting that the "Court held that the legislative power had been exercised by Congress itself and not delegated, the power exercised by the Reserve Board being merely administrative."[30]

The current OCC effort to wildly expand the authorities and activities of national trust banks beyond its statutory authority is reminiscent of the OCC's attempt to allow national trust banks to effectively issue mutual funds through national trust banks as investments in common trust. The OCC attempted to issue rules that eliminated the fiduciary purpose requirements of national trust banks to allow the investment of commingled funds — an effort that was a highly controversial expansion beyond its statutory authority and widely condemned.[31] But the courts halted the OCC's attempted expansion of the national trust bank charter to include impermissible activities. The Supreme Court recognized the congressional intent of requiring the "'delicate fiduciary nature of an investment advisory relationship'" for trust banks and that fiduciaries have "an affirmative duty of 'utmost good faith, and full and fair disclosure of all material facts'" that requires investment advisors provide unconflicted and disinterested advice.[32]

The proposed national trust bank regulation is overly broad and contravened by statute

The OCC's proposed national trust bank charter regulation violates federal statute by allowing the agency to approve national trust bank charters to organizations that do not narrowly perform fiduciary activities. The proposed new regulatory language would allow the OCC to charter a special

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[26] Chevron U. S. A. Inc. v. Natural Resources Defense Council, Inc. 467 U. S. 837, 843 (1984).
[27] United States v. Morton Salt Co. 338 U. S. 632, 644 (1950).
[28] First National Bank of Bay City v. Grant Fellows. 244 U.S. 416 (1917).
[29] State of Missouri ex rel. Burnes Nat. Bank of St. Joseph v. Duncan. 265 U.S. 17 (1924).
[30] Keasby, Edward Q. "May national banks act as trust companies?" *Columbia Law Review*. Vol. 16, No. 5. May 16, 1916 at 391.
[31] Subcommittee on Interstate and Foreign Commerce Committee on Commerce and Finance. U.S. House of Representatives. "Collective Investment Funds." June 9, 1964.
[32] SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180 (1963).

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*" (emphasis added).[33]

This construction is overly broad in allowing the OCC to grant a charter to an organization that performs "any other activities within the business of banking" as long as the organization performs at least one of three core functions: taking deposits, paying checks, or lending money.[34] The proposed regulatory change would allow the OCC to create a new class of special purpose banks that performed at least one of these three functions. This would enable the OCC to grant bank charters to fintech companies and apps that make payments (including peer-to-peer apps) or loan money (including the so-called earned wage access payday loan apps and buy-now-pay-later apps) as well as the Big Tech platforms with integrated purchasing and account management. It also would allow the OCC to grant bank charters to crypto firms that allow customers to make loans with their crypto holdings for staking or liquid staking as well as payment stablecoin issuers.

But federal statute prohibits national trust banks from engaging in these very activities; it says that "No national bank shall receive in its trust department deposits of current funds subject to check or the deposit of checks, drafts, bills of exchange, or other items for collection or exchange purposes."[35] The proposed OCC regulation would grant a special purpose charted under the auspices of a national trust charter to perform activities that are proscribed by the statute governing national trust banks and bank charters.

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The Office of the Comptroller of the Currency must withdraw the proposed national trust bank chartering regulation. The Comptroller lacks the statutory authority to reinterpret federal banking law to grant broad new powers to novel special purpose banks under the auspices of the national trust bank charter. Congress did not intend for national bank trust charters to be used by any company that desired a special purpose bank charter. The proposal ignores congressional intent, violates federal banking law, and contravenes a century of regulatory history and judicial precedent. The creation of broad new novel bank charters would pose significant risks to the financial system and broader economy.

[33] 91 Fed. Reg. 7 at 1101.
[34] *Ibid.*
[35] 12 USC 92a(d).