

OCC Exceeds Trust Company Chartering Authority Through Recent Interpretive Letter

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The Office of the Comptroller of the Currency (OCC) is once again seeking to expand its chartering authority beyond the limits of its statutory authority as delegated by Congress. With a recent agency legal opinion, the OCC has now opened up a new front in its seemingly endless campaign to expand its chartering jurisdiction. Now, the OCC is not only attempting to improperly inflate its national bank chartering authority to create the so-called fintech charter, but also, as I explain in a recently published article, is determined to unlawfully expand its authority to charter national trust companies as well.

In "[Banking on Trust Companies: A Critique of OCC Interpretive Letter 1176](#)," which appeared in the March issue of the Banking & Financial Services Policy Report, I take aim at the interpretive letter issued by the OCC earlier this year that asserts, without precedent, that national trust companies are not limited to carrying on the trust business but can be chartered to engage in banking and other nonfiduciary activities as well. After assessing the interpretive letter in detail, I conclude that the interpretations put forth by the OCC entirely lack validity as settled law and established precedent dictate that national trust companies are limited to exercising powers which are "fiduciary" within the meaning of federal law.

For context, in addition to empowering the OCC to charter institutions to carry on the business of banking—that is, national banks—Congress has separately expressly authorized the OCC to charter institutions to carry on the business of a trust company—that is, national trust companies. The OCC's expanding its trust company

chartering authority through the interpretive letter is a fairly obvious attempt to do what it has so far failed to accomplish with the national bank charter in the so-called fintech charter effort—namely, to create a national charter option for nonbank financial institutions that provides all the benefits of being a bank without any of the associated burdens.

It should come as no surprise, as I point out in the article, that the interpretive letter and the way it has been applied in recent chartering decisions raise all the same disturbing policy consequences as the fintech charter itself including, for instance, breaking down the separation of banking and commerce and opening up the federal safety net to a vast array of large commercial and technology enterprises.

Fortunately, because the assertion in the interpretive letter that national trust companies can be chartered to carry on banking and other non-fiduciary businesses rests on legal reasoning that is as wanting in validity as the OCC's previous campaign to fundamentally revise what it means to be a national bank, I conclude in the article that this interpretive letter and chartering decisions based thereon should meet the same legal fate as the fintech charter and be set aside.