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OCC Letter Affirms Nat'l Banks' Shield From State Licensing

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National banks that hold deposits insured by the Federal Deposit Insurance Corp. are nearly always explicitly exempt from state licensing requirements related to consumer-facing activities like money transmission.

However, the Office of the Comptroller of the Currency's formal position with respect to state licensing requirements for national banks that operate with only trust and fiduciary powers, rather than full banking powers, had not been elucidated until recently — and the result was one that most banking lawyers had expected.

Background

The OCC published a letter[1] on May 12 supporting the position taken by counsel for Fidelity Digital Assets, National Association,[2] that state money transmitter licensing requirements did not apply to national banks.

The issue arose in connection with the state of Iowa's position that the bank was required to maintain its Iowa money transmission license — obtained before the issuance of its national bank charter — because the national bank exemption in its state law applied only to national banks with FDIC insurance, which the bank does not have because its charter does not permit it to accept deposits.

The OCC disagreed with Iowa. In reaching its overarching conclusion that Iowa's money transmission law did not apply to the bank based upon long-standing federal law related to the preemption of state laws that prevent or significantly interfere with the exercise of a national bank's powers, the letter states that the:

> Bank is not required to comply with state money transmitter licensing requirements. This conclusion is clear and unambiguous under applicable law and longstanding precedent ... Accordingly, the Bank may conduct federally authorized activities in any state without having a

> state money transmitter license, regardless of whether the Bank satisfies a state law exemption from the licensing requirement.

While such a conclusion is important to all national banks, the OCC's analysis breaks down its assessment of the two typical components of state money transmission laws: (1) licensing or registration and (2) visitorial or examination powers.

With respect to licensing and examination, the OCC finds that a "state law that purports to require a national bank to hold a state money transmitter license as a condition precedent to engaging in such activities prevents or significantly interferes with the national bank's exercise of its federally authorized powers and, as such, is preempted."

As it relates to visitorial powers, the letter further states that a state money transmitter law that "purports to vest a state with visitorial authority over a national bank is fundamentally inconsistent with [federal law] and, as such, is impermissible."

As discussed below, this 2026 interpretation of the general inapplicability of state licensing laws to national banks reflects a long-standing interpretive agency position on this issue.

OCC Precedent Related to State Licensing Issues

To those who have a working knowledge of the OCC's legacy interpretations related to state licensing requirements as applied to national banks, the letter's determination is neither surprising nor strange: National banks' ability to operate without regard to certain state laws that are operative in states other than that in which the bank is located has long been recognized by the OCC.

For example, in 1999, the agency considered certain rights and powers of a national trust bank to engage in fiduciary activities in states other than the one in which the national bank was located — in this case, Michigan. In responding to a question as to whether state licensing requirements applied to the national bank's exercise of trust powers in states other than Michigan, the OCC determined that:

> State laws that would require the Bank to obtain a certificate of authority, approval, or other license requirement from the state before soliciting and engaging in the proposed trust arrangements with customers in those states conflict with the Bank's federal authority under section 92a, and so are preempted. If a national bank is authorized under federal law to exercise a granted power, it does not require the additional permission of a state to exercise that power. To conclude otherwise would run counter to the paramount authority of the federal government over national banks, including the OCC's exclusive visitorial power over national banks.[3]

Approximately 10 years after the legacy interpretation's issuance, Congress passed the Dodd-Frank Act[4] and included heavily negotiated statutory language that codified the holding in a 1996 U.S. Supreme Court decision, Barnett Bank of Marion County NA v. Nelson,[5] i.e., the Barnett standard.[6]

The Barnett standard generally holds that any state law that "prevents or significantly interferes" with a national bank's exercise of its federally authorized powers is preempted.[7]

As recently as 2024, the Supreme Court has upheld this standard in connection with the state law requirements related to the payment of interest on residential mortgage escrow accounts — although whether the state law requirement to pay such interest prevents or significantly interferes with a national bank's exercise of its federally authorized powers remains undetermined in light of ongoing litigation in Cantero v. Bank of America.[8]

Visitorial Powers

Intrinsically linked to licensing requirements are rights related to the supervision and examination. Specifically, state banking and consumer credit agencies nearly always impose upon licensees an agreement to be supervised and examined in connection with the rights and powers attendant to the license granted.

However, as the OCC described in the letter, visitorial powers related to the activities of a national bank — which are deemed by the OCC to include the examination of a national bank and inspection of its books and records[9] — are nearly exclusively retained by the agency.[10] Specifically, the relevant statutory provision provides as follows:

> No national bank shall be subject to any visitorial powers except as authorized by Federal law, vested in the courts of justice or such as shall be, or have been exercised or directed by Congress or by either House thereof or by any committee of Congress or of either House duly authorized.[11]

The letter supports the near prohibition on states' rights to examine national banks. It describes various forms of visitation that have been identified by federal courts, including "general supervision and control" and the "right to oversee corporate affairs," and concludes its analysis on this point by stating that "the dual banking system 'has never permitted States to license, inspect, and supervise national banks.'"

Why This Matters

The analysis in the letter provides important protections to national banks that — while operating pursuant to a federal charter — do not possess characteristics that typically exempt national banks from state law licensing exemptions, such as exemptions predicated on the national bank's operation as an FDIC-insured institution, as was the case with the Iowa law.

The letter's reach includes many newly chartered national trust banks that have been able to take advantage of the current administration's posture toward openness and speed in granting such charter requests. Confirmation of this preemptive authority, while limited to state money transmission laws, permits all participants in this market — including national trust banks, their legal advisers, their customers and their investors — to now operate without uncertainty as to the OCC's interpretation of the issue.

Further, the letter lays out an important analytical road map for national banks that find it necessary to challenge other state laws that impose licensing requirements upon national banks.

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1 https://www.occ.gov/topics/charters-and-licensing/interpretations-anddecisions/2026/int1192.pdf.

2 The Bank is an uninsured national bank with operations limited to those of a trust company or activities related thereto. According to the Letter, it provides cryptocurrency custody, trade execution services, and related services.

3 See Letter from Julie L. Williams, First Senior Deputy Comptroller and Chief Counsel, Office of the Comptroller of the Currency, to Julius L. Loeser, Senior Vice President and Deputy General Counsel, Comerica Incorporated, OCC Interpretive Letter # 866, October 8, 1999 (the "Legacy Interpretation").

4 Pub. L. No. 111-203, 124 Stat. 1376 (2010).

5 517 U.S. 25 (1996).

6 See DFA Section 1045, codified at 12 U.S.C. § 25b(b)(1)(B).

7 Id.

8 On May 22, 2026, the consumer parties in Cantero v. Bank of America filed a Petition for a Writ of Certiorari with the U.S. Supreme Court after the case's return to the U.S. Court of Appeals for the Second Circuit as a result of the U.S. Supreme Court's 2024 decision in the case. See Cantero v. Bank of America, N.A., 602 U.S. 205 (2024).

9 12 CFR § 7.400(a)(2)(i)-(ii). Additional visitorial powers are set forth in subsections (iii) and (iv) and include the regulation and supervision of activities authorized or permitted pursuant to federal banking law and enforcing compliance with any applicable federal or state laws concerning those activities, including through investigations.

10 See 12 U.S.C. § 484(a).

11 Id. (although subsection (b) contains a carve-out for state agencies with respect to issues related to escheat and unclaimed property if it is "reasonable" to believe that a national bank has failed to comply with such law).

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