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An Analysis of Bank Charters and Selected Policy Issues

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SUMMARY

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An Analysis of Bank Charters and Selected Policy Issues

A bank charter is effectively a business license that is required for depository institutions and certain financial institutions providing other bank-like services. A financial institution that wants to become a bank, trust, savings institution, or credit union can apply for a charter at the state or federal level from a banking regulator. At the federal level, the Office of the Comptroller of the Currency (OCC) grants charters. A charter allows a financial institution to perform certain financial services, including accepting deposits, making loans, and providing a range of fiduciary services to its customers. While some charters allow banks to do all of these things, others are limited in purpose to allow only a subset of financial services. The type of charter obtained determines the regulatory framework under which a financial depository institution operates.

Charters have long been the subject of congressional interest. For example, as the number of banks and bank branches continues to fall over time due to consolidation and closure, banking regulators and legislators have expressed concerns about the lack of *de novo* (i.e., new) charter applicants. Additionally, Congress has discussed the impacts of certain charters, including limited-purpose charters and the industrial loan company (ILC) charters, on the financial system. In 2016, the OCC announced the availability of a special purpose charter for financial technology (fintech) firms. The OCC's authority to issue such charters met legal challenges, and to date, the special purpose charter option has garnered relatively little interest. In the case of ILCs, Congress imposed a temporary moratorium on the Federal Deposit Insurance Corporation's (FDIC's) granting of deposit insurance to new ILCs after the 2007-2009 financial crisis and continues to scrutinize ILCs' special regulatory treatment. More recently, charters have been a topic of discussion among lawmakers, as cryptocurrency firms are increasingly seeking national trust charters from the OCC and special purpose state charters in states such as Wyoming and New York.

The recent interest among fintech firms in pursuing bank charters raises another point of interest for Congress: Which companies should be considered and regulated as banks? Banking organizations are required to meet a range of specific regulatory standards, and in return they receive special treatment that differentiates the banking sector from other commercial business. For example, only banks are allowed to accept deposits and use those funds to make loans to the public. Additionally, banking organizations enjoy federal backstops, such as deposit insurance from the FDIC and lender-of-last-resort facilities offered by the Federal Reserve. Further, banks chartered at the federal level can also export interest rates from the states in which they are chartered, allowing them to lend nationally at rates higher than some states allow. Conversely, nonbank financial companies, such as payday lenders, may be able to offer loans, but they cannot accept deposits, do not have broad federal financial safety nets, and are constrained by the lending regulation of each state in which they operate.

Interest in certain chartering policy issues has increased as Congress and bank regulators are grappling with some of the potential risks that newer technologies, such as cryptocurrency, pose to the banking system. For example, one of the concerns over increased use of cryptocurrency is the pseudonymous nature of transactions, which make collecting taxes and tracing illicit financial activity more difficult. Recent legislative debate has centered on the extent to which certain parties that facilitate cryptocurrency transactions should be subject to reporting requirements for tax and anti-money-laundering purposes—this was the central debate over a major provision in the Infrastructure Investment and Jobs Act (P.L. 117-58). Policymakers need to decide the extent to which banking institutions are permitted to participate in cryptocurrency and other fintech activities and to what extent special purpose banks will be allowed to participate in a greater range of crypto activities than other banks.

Other risks more directly impact the chartering of banks. For example, in November 2021, the President's Working Group on Financial Markets issued a report that recommended that certain issuers of cryptocurrency be regulated as insured depository institutions. The efficacy of regulating cryptocurrencies such as stablecoins, which peg their value to other assets such as fiat currency (e.g., the U.S. dollar) as insured depository banks raises policy questions relevant to charters. For example, would a new bank charter be needed for stablecoin issuers? Would Congress need to pass legislation to authorize the OCC to issue such a charter and to mandate deposit insurance for all stablecoin issuers? Additionally, is deposit insurance a necessary or desirable mandate for non-fiat currency? The answers to these questions would directly impact the way new types of banks are chartered.

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What Is a Charter?

Financial institutions, like many businesses, need licenses to operate legally. The license for banks, trust companies, and other special purpose depository institutions is called a charter, and it allows financial institutions to perform core banking activities such as deposit taking and lending and to provide fiduciary services to their customers.

Charters are issued by state chartering authorities (usually state bank regulators) or at the federal level by the Office of the Comptroller of the Currency (OCC).[1] Credit unions are also chartered at the state level by state regulators or by the National Credit Union Administration (NCUA) at the federal level. The agencies responsible for issuing charters for banks and depository institutions covered in this report are shown in **Table 1**.

Table 1. Select Financial Institution Charters

Charters by Type and Chartering Agency

Institution Type	Federal Charter (OCC/NCUA)	State Charter (State Agencies)
Banks	National Bank Charter	State bank charters
Credit unions	National Credit Union Charter	State credit union charters
Thrifts	Federal Thrift Charter	State thrift charters for state savings banks and savings associations
Industrial loan companies (ILCs)	n/a (ILCs that accept insured deposits require approval by the Federal Deposit Insurance Corporation)	State charters for ILCs and industrial banks
Limited-purpose charters (e.g., trust banks and trust companies)	National Bank Charter for Trust Companies	State charters for state-chartered trust companies
Special purpose charters	Special Purpose National Bank Charter	State have developed various charters for specific institutions, such as the Wyoming Special Purpose Depository Institution Charter

Sources: Office of the Comptroller of the Currency (OCC), *Comptroller's Licensing Manual: Charters*, December 2021, p. 8, https://www.occ.gov/publications-and-resources/publications/comptrollers-licensing-manual/files/charters.pdf; Bank Policy Institute, "Core Concept #5: Types of Banks and Their Charters," p. 22, https://bpi.com/wp-content/uploads/2021/02/Bank_Regulation_101_2021_Presentation-Concept-5.pdf; OCC, "Exploring Special Purpose National Bank Charters for Fintech Companies," https://www.occ.gov/topics/supervision-and-examination/responsible-innovation/comments/pub-special-purpose-nat-bank-charters-fintech.pdf; and Wyoming Division of Banking, "Special Purpose Depository Institutions," http://wyomingbankingdivision.wyo.gov/home/areas-of-regulation/laws-and-regulation/special-purpose-depository-institution.

Note: Not all states offer all the listed charter types. For example, six states currently offer ILC charters.

Charters have long been the subject of congressional interest. For example, as the number of banks and bank branches continues to fall over time due to consolidation and closure, banking

[1] For example, there are two types of commercial banks: state-chartered banks and national banks. State governments issue charters for state-chartered banks, and the OCC issues charters for national banks. For more on how these banks are regulated, see CRS Report R44918, *Who Regulates Whom? An Overview of the U.S. Financial Regulatory Framework*, by Marc Labonte; and CRS In Focus IF11055, *Introduction to Bank Regulation: Supervision*, by Marc Labonte and David W. Perkins.

regulators and legislators have expressed concerns about lack of *de novo* charter—a charter for a newly created institution—applications and approvals. Furthermore, Congress has long examined the impacts of special purpose charters and industrial loan company (ILC) charters on the financial system. More recently, financial technology (fintech) firms are increasingly seeking national banking and trust charters from the OCC and special purpose state charters in states such as Wyoming. Given that many of these financial institutions seeking special purpose charters are state-regulated nonbank financial companies, this could change the landscape for federal prudential regulation and give Congress and federal policymakers a regulatory framework for a variety of new financial services companies.

While there are several types of institutions that receive charters, this report examines four charters that have been subject to significant congressional interest in recent years:

1. Commercial banks and thrifts
2. ILCs
3. Trust and custody banks
4. The OCC Special Purpose charter for nondepository fintech companies

Each section provides a brief overview of the type of company that can be granted a charter and the regulatory requirements for each charter, followed by any relevant policy issues. In general, there is a policy debate about whether allowing fintech firms into the bank regulatory regime by issuing them these charters would make them and the financial system safer or more risky—potentially putting taxpayers at risk. This policy discussion is detailed where relevant, particularly in the ILC charter and limited purpose charter sections.

Charters and Bank Regulators

Before discussing the features and differences between various bank charters, it is helpful to understand what the chartering options for banks are, because the type of charter an institution is granted has implications for how it is regulated and supervised, including which agency is its primary federal regulator, as shown in **Table 2**.

Table 2. Regulatory Jurisdiction for State- and Federally Chartered Banks

Charter Type	State Regulator	Primary Federal Regulator
State charter, member of Federal Reserve	State banking agency	Federal Reserve
State charter, nonmember	State banking agency	Federal Deposit Insurance Corporation
Federal charter	n/a	Office of the Comptroller of the Currency

Source: CRS analysis.

Note: All national banks are also members of the Federal Reserve.

Banks can be chartered at the state level by a state chartering authority or at the federal level by the OCC. If the bank is state-chartered, it then must decide whether it wants to become a member of the Federal Reserve or not. If it joins the Federal Reserve, then the bank is regulated and supervised by the state banking authority and also by the Federal Reserve. If it does not join the Federal Reserve, the primary federal regulator and supervisor is the Federal Deposit Insurance

Corporation (FDIC) instead of the Federal Reserve.[2] If the bank is chartered at the federal level, it is called a national bank, and it only has a federal regulator, the OCC. (National banks are required to be members of the Federal Reserve System.) In addition, institutions that seek deposit insurance must be approved by the FDIC.

National banks are chartered by the OCC pursuant to the authorities granted under the National Bank Act of 1864.[3] National banks include commercial banks, limited purpose trust banks, and special purpose banks, such as credit card banks.[4] National banks are required to become members of the Federal Reserve System. State agencies charter state banks pursuant to their own constitutional authorities. State banks can choose to become members of the Federal Reserve. Generally, deposit insurance from the FDIC is required for commercial banks chartered at the state or national level.[5]

In some circumstances, a financial institution may seek a particular charter because it prefers a particular regulator over others. As discussed later, this is one of the central debates around the recent use of the OCC's Special Purpose National Bank Charter. The various roles of each federal regulator is generally summarized in **Table 3**.

Table 3. Regulatory Roles and Chartered Depositories

Agency	Main Roles
FDIC	Insures the deposits of all depository institutions approved for federal deposit insurance. Serves as primary federal regulator for and, together with the respective chartering state authority, supervises state-chartered institutions (state-chartered banks and savings associations) that are not members of the Federal Reserve. Maintains backup supervisory responsibility for institutions for which the Federal Reserve and the OCC are the primary federal regulators. Acts as receiver for all failed insured banks and savings associations and may be appointed to resolve nonbank financial companies if their failure would have serious adverse effects on U.S. financial stability and other statutory requirements are met.
Federal Reserve	Serves as primary federal regulator for and, together with the respective chartering state authority, supervises state-chartered banks that are members of the Federal Reserve, as well as bank and financial holding companies (and certain subsidiaries) and savings and loan holding companies. Supervises other firms designated as systemically significant by the Financial Stability Oversight Council and other entities pursuant to the Dodd-Frank Act.
OCC	Charters and serves as primary federal regulator for and supervises national banks and federal savings associations.
State agencies*	Charters state banks and savings associations, regardless of whether the institution is a member of the Federal Reserve. Together with the respective primary federal regulator, supervises state-chartered institutions and certain holding companies.

[2] Most commercial banks are state non-member banks, regulated and supervised by the FDIC.

[3] 12 U.S.C. §21 and 12 C.F.R. §5.20.

[4] Under Title 12, Section 5.20, of the *Code of Federal Regulations*: "The OCC charters a national bank under the authority of the National Bank Act of 1864, as amended, 12 U.S.C. §1 et seq. The bank may be a special purpose bank that limits its activities to fiduciary activities or to any other activities within the business of banking. A special purpose bank that conducts activities other than fiduciary activities must conduct at least one of the following three core banking functions: receiving deposits; paying checks; or lending money. The name of a proposed national bank must include the word 'national.'"

[5] State-chartered banks typically have FDIC deposit insurance even in states where it is not statutorily required.

Source: FDIC, *Applying for Deposit Insurance—A Handbook for Organizers*, December 2019, p. 11, https://www.fdic.gov/regulations/applications/depositinsurance/handbook.pdf.

Note: A list of the state bank supervisors can be found at https://www.csbs.org/state-bank-directory.

The following section details commercial bank charters, a charter type that allows an institution to provide a wide range of bank services and is typically held by institutions that are most commonly recognized as banks by members of the public (i.e., an institution that takes deposits, makes loans, and processes payments). This group of banks will be treated as a baseline for the general charter application process and regulatory requirements applicable to the banking industry. Later sections will examine less commonly familiar types of bank charters that differ from this baseline in certain important ways that raise particular policy questions.

Commercial Banks

Broadly speaking, commercial banks and savings institutions (also known as thrifts) are full-service banks offering many types of checking and savings accounts (including on-demand deposit accounts), many loans types with relatively few restrictions, and payment processing services. They are subject to the general bank regulatory framework, including that they are required to have deposit insurance and any parent company that owns one is considered a bank holding company under the Bank Holding Company Act (BHCA; P.L. 84-511). They and their parent holding companies are generally prohibited from engaging in nonfinancial commercial activities. In addition, they are generally permitted to access the Federal Reserve's payment processing and settlements systems.

As of September 30, 2021, there were 4,914 commercial banks and savings institutions insured by the FDIC. As shown in **Table 4**, 64% of these institutions (3,171) are state-chartered banks that are not members of the Federal Reserve; 15% (724) are state-chartered member banks; and the remaining 21% (1,019) are national banks and thrifts chartered by the OCC.

Table 4. Commercial Banks and Savings Institutions

Organized by Primary Federal Regulator

Primary Regulator	Number of Institutions	Total Assets ($ million)	Domestic Deposits ($ million)
FDIC (state-chartered, nonmember)	3,171	4,206,831	3,499,218
Federal Reserve (state-chartered member)	724	3,962,495	3,044,646
OCC (nationally chartered)	1,019	15,082,333	11,090,022
Total	**4,914**	**23,251,659**	**17,633,886**

Source: FDIC, *Quarterly Banking Profile*, September 30, 2021, p. 25, https://www.fdic.gov/analysis/quarterly-banking-profile/qbp/2021sep/qbp.pdf#page=25.

Note: FDIC-insured institutions.

Most commercial banks are smaller institutions (generally, less than $10 billion in assets), and many smaller banks are located in rural areas. For example, of the nearly 4,000 state-chartered banks and thrifts in the United States, over a quarter are chartered in Illinois, Iowa, Texas, Minnesota, and Missouri, as shown in **Table 5**.

Table 5. 10 States with Greatest Number of State-Chartered Banks

List of State-Chartered Institutions as of January 2022

State	Number of Institutions
Illinois	260
Iowa	242
Texas	214
Minnesota	206
Missouri	205
Kansas	178
Nebraska	141
Oklahoma	137
Wisconsin	132
Georgia	121

Source: FDIC, Institution Directory, data as of January 11, 2022, https://www7.fdic.gov/idasp/content/Institutions2.zip.

Application for Bank Charter[6]

A *de novo* charter is a charter for a newly formed bank. There are a few key decisions a financial institution needs to make before applying for a de novo charter. Generally, a financial institution must decide, among other things

- What type of corporate structure is preferred? There are three main options: a C corporation, an S corporation, or a limited liability company. These structures differ in the number of permissible shareholders, types of capital distributions, and tax treatment.[7]
- What geographic presence is planned? Small banks often serve local geographic areas and easily identifiable customer bases, and larger institutions often serve wider geographic areas and may define market segments in broader terms. De novo institutions must also consider their future obligations under the Community Reinvestment Act (CRA; P.L. 95-128), including the needs of low- and moderate-income geographies and individuals in the areas they serve. The institution's intended geographic presence may influence the desire for a state or federal charter.
- What are the banks regulatory requirements? Before an application for a charter is filed, an institution often engages with the prospective regulators to receive

[6] While each chartering agency has its own rules and standards, the OCC lists things it generally considers in reviewing a charter application in its licensing manual, which fall under these broad categories. See OCC, *Comptroller's Licensing Manual: Charters*, December 2021, p. 8, https://www.occ.gov/publications-and-resources/publications/comptrollers-licensing-manual/files/charters.pdf.

[7] For example, C corporations are allowed an unlimited number of shareholders, while S corporations are restricted by Internal Revenue Service regulations as to the number of shareholders. C corporations pay taxes on their income directly, while their shareholders are taxed on cash dividends. Alternatively, S corporations pass through taxable income or losses directly to shareholders, who report those earnings on individual tax returns. Rules for limited liability companies are provided in state law and FDIC rules and regulations.

guidance regarding access to capital, organizing boards of directors, and other regulatory expectations.[8] Regulators can also provide feedback regarding potential issues related to specific charter proposals. For example, regulators can identify issues with initial capital adequacy or the management's business plan.

Once bank leadership has determined the answers to those questions, the aspiring applicant has a few general steps, laid out below, before approval is obtained.

Federal and state agencies generally use the Interagency Charter and Federal Deposit Insurance Application[9] to collect information for and evaluate a de novo charter and/or deposit insurance application. While there are some differences in what is required and evaluated across different commercial bank charter types, most types of commercial banks can begin their applications with the interagency application, which gives a general sense of what commercial banks are required to consider. For example, an institution must first identify the type of charter it is seeking; the chartering agency it seeks approval from; the insurance fund it is applying for insurance from; any special focus areas (e.g., community development, cash management, trust bank, bankers' bank, credit card bank); and whether it is applying to be a member of the Federal Reserve System. The application's basic structure covers the following areas:

- Overview of institution's business model, activities, public and private offerings, and the articles of association or incorporation and bylaws
- Description of the management, including directors, executives, officers, board members, conflicts of interest, and stock benefit plans
- Details of the institution's capital plans, including capital to be raised, class and amount of stock to be issued, capital adequacy projections, and corporate tax status
- Description of how the institution meets the needs of the community, consistent with its business plan, and a separate plan to meet obligations pursuant to the CRA
- Description of the premises and fixed assets, security plans to protect property, plans to establish branches, and identification of the main office
- Records of the information systems used, including a description of the physical and logical components of security systems used
- Other information, such as functions to be outsourced, fidelity coverage, a plan to comply with the Bank Secrecy Act, and the organization's planned expenses

State Chartering Process

To give a sense of what a state-chartered application looks like, we can look at the process set up by the Illinois Department of Financial and Professional Regulation, the state bank regulator responsible for chartering state banks in Illinois, the state with the most state-chartered banks. To form a state bank in Illinois, a financial institution must complete an application for a permit to organize a state bank. The State of Illinois uses the Interagency Charter and Federal Deposit Insurance Application, discussed above. In addition to the application, any incorporator, proposed directors, senior executive officers, and proposed shareholders that will own or control 10 percent or more of the institution's stock must submit a form for releasing personal information and obtain fingerprint scans.

[8] Partnership for Progress, Minority Depository Institution Program, "De Novo Bank Application Process," https://www.fedpartnership.gov/bank-life-cycle/start-a-bank/de-novo-bank-application-process.

[9] The most up-to-date application can be found at https://www.fdic.gov/formsdocuments/f6200-05.pdf.

As mentioned, national commercial banks are required to have deposit insurance and become Federal Reserve System members. States generally require state commercial banks to have deposit insurance, but they can choose whether or not to be Federal Reserve member banks. Banks seeking deposit insurance need to apply to the FDIC for approval. Further, if an institution seeks to become a member bank, it will need approval from the Federal Reserve. If the institution seeks to organize under a holding company, it will need further approval from the Federal Reserve. These processes are detailed below. In any of these scenarios, the process for applying is effectively the same, and institutions will use the Interagency Charter and Federal Deposit Insurance Application to start and work with the relevant regulators to meet specific criteria.

Deposit Insurance Application Process

Deposit insurance is part of the federal safety net backstopping the banking system. It protects *depositors* if a bank fails (it does not insure *the bank* against failure) and helps prevent bank runs by providing consumers with the confidence that their money will be available during periods of economic or financial stress. All Federal Reserve members and all national banks and thrifts (chartered by the OCC) must have deposit insurance, pursuant to the Federal Deposit Insurance Act (12 U.S.C. §1811 et seq.). In addition, states generally require state-chartered commercial banks to be insured by the FDIC.[10] This gives the FDIC considerable influence over which institutions receive charters.

The FDIC's handbook for de novo institutions seeking to apply for deposit insurance provides a summary of the various requirements an institution should fulfill. This includes pre-filing activities, the application process, and pre-opening activities.

The FDIC encourages de novo institutions to meet with FDIC staff and other regulators before applying for deposit insurance. As a general rule, pre-filing meetings are attended by the FDIC, the chartering authority, and, as appropriate, the Federal Reserve (either as primary federal regulator or as holding company supervisor). FDIC representatives generally include staff from the regional office and field office for the location in which the institution would be headquartered. Staff from the FDIC's Washington office may also attend. During the meeting, the participating agencies discuss regulatory expectations and provide an overview of the application process, including general timelines for processing. Staff may also address special information needs and other matters specific to the application so that the applicant can include appropriate information in the submission. In addition, the FDIC has established a voluntary process for the receipt and review of draft deposit insurance proposals.[11]

Section 5 of the Federal Deposit Insurance Act (12 U.S.C. §1815) requires any depository seeking federal deposit insurance to file an application with the FDIC. The application form used by the FDIC is the Interagency Charter and Federal Deposit Insurance Application referenced above. The statutory factors (12 U.S.C. §1816) to be considered in the application are[12]

- the depository institution's financial history and condition,
- the adequacy of the depository institution's capital structure,

[10] With respect to full-service banking institutions, examples of uninsured banks are rare, but one notable example is the Bank of North Dakota, which is owned, administered, and insured by the State of North Dakota. In addition, some trusts and limited purpose banks may not seek deposit insurance for various reasons explored later in this report.

[11] The review process for draft proposals is covered in 2018 guidance from the FDIC, which can be found at FDIC, "Review Process for Draft Deposit Insurance Proposals," December 6, 2018, https://www.fdic.gov/news/financial-institution-letters/2018/fil18082.html.

[12] FDIC, *Statements of Policy*, https://www.fdic.gov/regulations/laws/rules/5000-3000.html.

- the depository institution's future earnings prospects,
- the general character and fitness of the depository institution's management,
- the risk presented by such depository institution to the Deposit Insurance Fund,
- the convenience and needs of the community to be served by such depository institution, and
- whether the depository institution's corporate powers are consistent with the purposes of the Federal Deposit Insurance Act.

The FDIC's goal is to act on applications within four months after being accepted as substantially complete.[13] Other timelines noted in the FDIC's handbook for organizers include the following:

- "Within three business days of receipt of an application for deposit insurance, the FDIC will provide a written response to the applicant acknowledging receipt and requesting publication of the filing in a local newspaper, if publication has not already occurred."
- "In most cases, within 30 days of receipt of the application, the FDIC will provide a letter to the applicant noting either that the application is substantially complete and accepted for processing, or that additional information is needed."[14]
- "If the application is substantially complete, a field investigation … should be completed within 60 days of the date the application was deemed substantially complete and accepted for processing."
- "Following the field investigation process, the FDIC will complete the review process, notify the applicant in writing of any proposed non-standard conditions, seek the applicant's written concurrence to the non-standard conditions, and finalize the recommendation for action … within 30 days of the FDIC's prior communication."

Under Filings Procedures regulations,[15] the FDIC takes into account an institution's potential compliance with the CRA.[16] Further, certain parts of filings may be subject to public notice, public comment periods, and hearings.[17]

Membership with the Federal Reserve

If a bank chooses to become a national bank, chartered by the OCC, then membership with the Federal Reserve is required pursuant to Section 2 of the Federal Reserve Act (12 U.S.C. §222).

[13] According to the FDIC's handbook for deposit insurance applications, "an application is considered substantially complete when the FDIC has the necessary information to fully consider each of the applicable statutory factors and any other regulatory requirements. In general, an application will be deemed substantially complete if an applicant has provided the information required in [the application], and the submitted information does not raise significant follow-on questions. Significant follow-on questions may arise when, for example, inconsistencies exist between sections of the application, the business plan is lacking in certain respects, concerns are identified with respect to the proposed corporate structure or relationships, potential concerns are raised in the review of required [Interagency Biographical and Financial Report] filings, or other aspects of the proposal require further details in order for the FDIC to assess the risks presented and any mitigating factors."

[14] A letter to the applicant for a nonbank or non-community-bank proposal may take up to 45 days to issue depending on the matters presented.

[15] 12 C.F.R. §303, for example.

[16] 12 C.F.R. §303.1(a).

[17] 12 C.F.R. §§303.7- 303.10.

State-chartered banks may choose to become Federal Reserve members once they meet certain requirements, laid out below. More than one-third of U.S. commercial banks are Federal Reserve members.

A member bank is eligible to vote for and become a director of its regional Reserve Bank, and it must subscribe to capital stock in its Reserve Bank in an amount equal to 6% of its combined capital and surplus (excluding retained earnings).

State banks applying for Federal Reserve System membership have to file their applications in accordance with Title 12, Section 262.3, of the *Code of Federal Regulations*. Upon approval they would join the Reserve Banks in their respective regions. Title 12, Section 208, lays out the Federal Reserve's general membership requirements. The general factors[18] considered in approving applications for membership include

- financial conditions and management,
- capital adequacy,
- convenience and needs of the community, and
- corporate powers consistent with the purposes of the Federal Reserve Act.

Sometimes, the Federal Reserve will require a pre-membership examination. The criteria for waiving this examination is laid out in Federal Reserve guidance.[19]

Organizing Under a Bank Holding Company

As mentioned, a bank may choose to organize under a holding company. Most banks are owned by a specific kind of holding company called a *bank holding company* (BHC). A BHC *y* is defined as "any company which has control over any bank" pursuant to the BHCA.[20] (Similarly, savings associations, or "thrifts," can be owned by savings and loan or thrift holding companies.) According to one commentator, BHCs are formed "primarily to facilitate additional nonbanking activities, issue capital not for banks, and/or greater corporate and operational flexibility."[21] One reason a smaller bank may pursue a BHC is the Federal Reserve's Small Bank Holding Company Policy Statement, which allows small BHCs (under $3 billion in total consolidated assets) to incur various debt in amounts greater than larger BHCs are allowed.[22] This debt can finance acquisitions or stock repurchases or can serve as capital for a bank subsidiary. According to the Federal Reserve, as of year-end 2020, there were over 3,600 BHCs with more than $24 trillion in assets. Some BHCs have subsidiaries that engage in nonbank financial activities, such as underwriting and dealing in certain types of securities, and these BHCs are also categorized for

[18] 12 C.F.R. §208.4(b).

[19] Federal Reserve, "SR 15-11/CA 15-9: Examinations of Insured Depository Institutions Prior to Membership or Merger into a State Member Bank," October 13, 2015, https://www.federalreserve.gov/supervisionreg/srletters/sr1511.htm.

[20] 12 U.S.C. §1841(a)(1). The statute states further: "(2) Any company has control over a bank or over any company if- (A) the company directly or indirectly or acting through one or more other persons owns, controls, or has power to vote 25 per centum or more of any class of voting securities of the bank or company; (B) the company controls in any manner the election of a majority of the directors or trustees of the bank or company; or (C) the Board determines, after notice and opportunity for hearing, that the company directly or indirectly exercises a controlling influence over the management or policies of the bank or company" (12 U.S.C. §1841(a)(2)).

[21] Chip Mac Donald, "Do Banks Need Holding Companies?," Jones Day, July 2017, https://www.jonesday.com/en/insights/2017/07/do-banks-need-holding-companies.

[22] The Federal Reserve Board issued an interim final rule expanding the applicability of the policy to institutions with less than $3 billion in total consolidated assets. The notice of the interim final rule can be found at https://www.federalreserve.gov/newsevents/pressreleases/bcreg20180828a.htm.

regulatory purposes as *financial holding companies*. However, a BHC may generally not operate nonfinancial commercial businesses—companies that produce or sell nonfinancial goods and services—unless allowed under a specific exemption under the BHCA. BHCs are subject to primary regulatory oversight by the Federal Reserve. Any holding company that owns a bank with a commercial bank charter and FDIC deposit insurance is required to be a BHC.

There are also holding companies that own special purpose banks—such as ILCs and trust banks—that are not required to be BHCs (provided they meet certain criteria); thus they are not subject to the same oversight by the Federal Reserve. This is the subject of much policy consideration covered in the "Industrial Loan Companies" and "Tailored Regulation or Regulatory Arbitrage?" sections below.

Pre-Opening Activities

Once conditional approval is received, there are a few final steps to complete before a depository can open. For example, the OCC Licensing Manual provides a checklist of procedures for organizers to complete in order to open the bank:

1. **Capitalize the bank.** The first is for the organizing directors to take action to capitalize the bank and comply with the appropriate securities disclosure rules pursuant to Title 12, Part 16, of the *Code of Federal Regulations*. De novo banks organizing under holding companies face separate capitalization rules from the Federal Reserve.
2. **Organize the bank.** Within 30 days of receiving preliminary conditional approval to operate, the bank organizers must establish a process for maintaining records of official meetings and execute the articles of association and applicable bylaws of the organization.
3. **Establish management and site.** The bank organizers must select the management team and directors and finalize the arrangements for the bank's physical location.
4. **Convene shareholders and directors.** The bank organizers must hold necessary meetings to fix the number directors and elect the chairman, chief executive officer, and other officers.
5. **Pre-opening examination.** OCC bank examiners conduct a pre-opening examination to determine whether all substantive issues, including risk management concerns, have been addressed adequately.
6. **Membership to Federal Reserve application (optional for state chartered banks).** At least four weeks before the projected opening date, a national bank or state member bank must submit an application for Federal Reserve membership.
7. **Chartering and commencing business.** Upon resolving any outstanding matters, confirming receipt of approval for deposit insurance, and (if applicable) Federal Reserve membership, the bank may open for business.

Industrial Loan Companies[23]

Over the past several years, a number of technology firms have sought a less common type of state charter called an industrial loan company (ILC) charter.[24] ILCs are an alternative charter for firms looking to offer a wide range of banking and other financial services. ILCs are permitted to make a wide array of loan types, offer most types of deposit accounts, and open branches across state lines. Except for a federal law that technically restricts their ability to offer certain "on demand" checking and savings accounts (discussed below), they are similar to commercial banks. As is the case with traditional banks, an ILC may be owned by a parent holding company.[25] Unlike the parent company of banks, an ILC parent is not a BHC under the BHCA and therefore can be a nonfinancial company.

Currently, laws in only a handful of states offer ILC charters: California, Hawaii, Indiana, Minnesota, Nevada, and Utah.[26] The current ILCs are listed by state in **Table 6**.

Table 6. Number of ILCs per State, by Asset Volume

Assets Estimated as of September 2021

State	Number of ILCs	Assets
Utah	16	$199.69 billion
Nevada	3	$11.71 billion
California	3	$1.11 billion
Hawaii	1	$0.556 billion
Indiana	1	$0.12 billion
Minnesota	1	$0.25 billion

Source: CRS analysis of regulator data provided from the FDIC, state bank supervisors, and institutional websites.

As of September 2021, there were 25 FDIC-insured ILCs chartered in six states, including 16 in Utah.[27] These ILCs collectively held around $210 billion in assets, less than 1% of the total amount held by all insured depositories.[28] Some of these ILCs are owned by parent companies that are primarily involved in finance, including large organizations such as UBS (a non-U.S. bank) and Sallie Mae (a student loan company). Nonfinancial commercial companies, including Toyota and BMW, own others, largely to provide financing to customers buying their commercial products. Some ILCs are small, niche lenders. For example, Medallion Bank specializes in loans

[23] For more detail on industrial loan companies, see CRS Report R46489, *Industrial Loan Companies (ILCs): Background and Policy Issues*, by David W. Perkins.

[24] These may also be called industrial loan corporation or industrial bank charters.

[25] FDIC, "Parent Companies of Industrial Banks and Industrial Loan Companies," 85 *Federal Register* 17771-17773, March 31, 2020.

[26] These states were permitted to grandfather existing industrial banks and continue to charter new industrial banks under the Competitive Equality Banking Act (P.L. 100-86). Colorado was also grandfathered, but the state has no active industrial banks and has since repealed its industrial bank statute. See FDIC, "Parent Companies of Industrial Banks and Industrial Loan Companies," 85 *Federal Register* 17773, March 31, 2020.

[27] See CRS Report R46489, *Industrial Loan Companies (ILCs): Background and Policy Issues*, by David W. Perkins.

[28] FDIC, *Quarterly Banking Profile*: *First Quarter 2020*, https://www.fdic.gov/bank/analytical/qbp/2020mar/qbp.pdf#page=1; and CRS calculations.

for taxi cab "medallions"—licenses to operate taxis issued by large cities—and EnerBank is owned by a home construction company and makes construction loans.

Title 7, Chapter 8, of Utah's state code is an illustrative example of the chartering process for an ILC. It states that an ILC must organize as a corporation (Title 16, Chapter 10a, Utah Revised Business Corporation Act) or as an LLC (Title 48, Chapter 3a, Uniform Limited Liability Company Act). Further, the institution is authorized to receive and hold deposits and is required to obtain FDIC deposit insurance. Section 16 of Title 7 states that ILCs must register with the Utah Department of Financial Institutions, which sets forth the rules that Utah ILCs are required to follow pertaining to depositors, creditors, and the financial system.[29] One of Utah ILC's requirements is a limitation on loans to a single borrower, which is capped at 15% of the ILC's total capital.[30]

Current ILC Regulation

In general, the regulation of banks and ILCs, where it relates directly to the insured depository, is similar.[31] The Federal Deposit Insurance Act (P.L. 81-797) defines *state bank* to include ILCs.[32] As with any state bank that is not a member of the Federal Reserve, the FDIC is the primary federal regulator of ILCs and supervises them along with the chartering state banking agency for safety and soundness (e.g., capital standards) as well as compliance with federal consumer protection, community reinvestment, and anti-money-laundering laws.[33]

FDIC regulation of ILCs and state nonmember banks is similar in many ways, but there is a key distinction regarding the regulation of the parent holding company. In 1987, Congress passed the Competitive Equality Banking Act (CEBA; P.L. 100-86). CEBA largely shaped the current regulatory framework and resulting policy debates related to ILCs, mainly because it exempted ILCs from the definition of *bank* in the BHCA (P.L. 84-511). As a result, parent companies that control ILCs are not considered BHCs and thus are not subject to the general prohibition against operating commercial enterprise or to Federal Reserve supervision. In short, the CEBA exception from the BHCA definition of *bank* allows a commercial firm to own or control a bank.

To qualify for the BHCA exemption, ILCs cannot offer *demand deposits* (i.e., checking accounts or other deposits that the depository institution must generally make available to the depositor for withdrawal within less than seven days' notice).[34] Instead, ILCs generally offer *negotiable order of withdraw* (NOW) accounts. NOW accounts are not considered demand deposits, because the ILC reserves the right to require seven days' notice or more to transfer the funds.[35] In practice, ILCs may choose to make funds available upon request and not avail themselves of the allowable seven days. Thus, a NOW account may function as a checking account from the perspective of an

[29] The Utah Division of Banking website can be found at https://dfi.utah.gov/.

[30] Utah Code Ann. §7-8-20.

[31] For more information on bank regulation, see CRS Report R44918, *Who Regulates Whom? An Overview of the U.S. Financial Regulatory Framework*, by Marc Labonte.

[32] 12 U.S.C. §1813(a)(2).

[33] FDIC, "Parent Companies of Industrial Banks and Industrial Loan Companies," 85 *Federal Register* 17771-17773, March 31, 2020.

[34] 12 C.F.R. §204.2(b)(1).

[35] 12 C.F.R. §204.2(b)(3).

ILC customer, although it is not technically a demand deposit account.[36] Like other types of deposits, NOW accounts are FDIC insured.

Separation of Banking and Commerce

The United States has historically adopted policies to separate banking and commerce. Generally, this is because a bank owned by a commercial business could act in a way that benefits the commercial parent rather than operating in a safe and sound manner. For example, a bank subsidiary could make risky loans to the parent's customers. To the extent a bank's health was jeopardized by these activities, federal financial safety nets intended for the banking system would effectively be extended to support commercial business.

FDIC Rulemaking on Parent Companies of ILCs

In February 2021, the FDIC issued a final rule that requires certain conditions and commitments for each deposit insurance application approval as well as other approvals that would result in an insured ILC becoming a subsidiary of a company that is not subject to Federal Reserve supervision. This rulemaking effectively codifies the way that the FDIC already approved ILC applications. The rule imposes, among other things, commitments to submit annual reports to the FDIC, restrictions on the ILC's board of directors and senior executives, and a commitment to maintain the ILC's capital and liquidity. The rule became effective April 1, 2021.[37]

Recent Trends in ILC Charters

Over the past few decades, policymakers have expressed concerns over the possibility that certain large retailers were attempting to establish or acquire ILCs. In response, the FDIC imposed an official moratorium on ILC approvals for deposit insurance from July 2006 to January 2008.[38] The industry shrunk following the 2007-2009 financial crisis for numerous reasons, including another moratorium (discussed below), this one imposed by Congress in the Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111-203). Companies such as Goldman Sachs, Morgan Stanley, and General Motors converted their ILCs to commercial banks during the crisis and became BHCs. Other ILCs voluntarily closed, including those owned by GE and Target, and two small ILCs failed.[39] Since the aforementioned moratoria have ended and the financial crisis has passed, there have been recent indications of a resurgence of interest in establishing ILCs, including among technology-focused companies.

Concerns over ILCs led Congress in July 2010 to mandate in Section 603 of the Dodd-Frank Act a moratorium on granting deposit insurance to new ILCs.[40] After this mandatory moratorium

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[36] ICBA, *Industrial Loan Companies: Closing the Loophole to Prevent Consumer and Systemic Harm*, March 2019, pp. 5-6, https://www.icba.org/docs/default-source/icba/advocacy-documents/reports/ilc-white-paper.pdf.

[37] FDIC, "Parent Companies of Industrial Banks and Industrial Loan Companies," 86 *Federal Register* 10703-10714, February 23, 2021.

[38] FDIC, "FDIC Extends Moratorium on Industrial Loan Company (ILC) Applications by Commercial Companies for One Year; Will Move Forward on Applications from Financial Companies," January 31, 2007, https://archive.fdic.gov/view/fdic/2982.

[39] James R. Barth and Yanfei Sun, *A New Look at the Performance of Industrial Loan Corporations*, June 15, 2018, pp. 9-10, https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID3295336_code117609.pdf?abstractid=3197316&mirid=1.

[40] Kobi Kastiel, "Dodd-Frank Moratorium Ends on Bank Charters for Commercial Firms," *Harvard Law School Forum on Corporate Governance*, September 8, 2013, https://corpgov.law.harvard.edu/2013/09/08/dodd-frank-moratorium-ends-on-bank-charters-for-commercial-firms/.

ended in July 2013, the FDIC did not approve any new ILC applications for over six years until March 17, 2020. However, in the past few years, some notable companies have submitted applications for ILC charters and FDIC insurance, including Nelnet, Square, Rakuten, AmeriNat Bank, Interactive Bank, and SoFi.[41] All of these companies have existing nonbank financial enterprises, and several have substantial commercial operations. SoFi—which withdrew its ILC application for deposit insurance in 2017—was granted conditional approval from the OCC to open a full-service commercial bank in 2020,[42] and in January 2022, SoFi received conditional approval to form a bank holding company and acquire Golden Pacific Bank, NA.[43]

The prolonged period without new ILC approvals ended on March 17, 2020, when the FDIC approved two ILCs—Nelnet and Square—for deposit insurance. Nelnet's ILC allows the organization to expand its student lending and take deposits.[44] Square's ILC allows the organization to increase loans to, and accept deposits from, its customers.[45] In Utah, as of August 26, 2021, there were five ILC applications pending approval.[46]

Trust Company and Custody Charters

Trust companies have a different business model than that of commercial banks. Whereas commercial banks focus on taking deposits, paying checks, and making loans, trust companies primarily administer trusts and estates. This means they act on behalf of a person or business (or possibly on the behalf of a third party, such as an heir) that has entrusted them to manage assets. They make money by effectively charging management fees for overseeing the assets that have been assigned to them by clients or by taking a percentage of the assets once a trust is transferred to a third party. Trust companies can offer a range of services in addition to managing a trust, such as wealth and asset management services, brokerage services, and financial and estate planning services. Another important service they provide is custody and safekeeping of assets, and this has created some recent interest among fintech companies, particularly companies involved in cryptocurrency services, as discussed below.

Crypto Custodial Services at Commercial Banks

One of the ways the banking system interacts with financial technology, such as digital assets and cryptocurrency, is through what is called custody services. Banks can provide custody services, which include settlement, safekeeping, and reporting—as opposed to issuing, marketmaking, or trading—of marketable securities and cash. One example of how this works can be found in U.S. Bank, which recently announced that it is offering a cryptocurrency custody service in partnership with the New York Digital Investment Group.[47] In December 2021, WisdomTree, an asset manager, named U.S. Bank as the custodian for shares in its Bitcoin trust.

[41] FDIC, "Bank Application Action Search," https://www.fdic.gov/regulations/applications/actions.html.

[42] OCC, "Office of the Comptroller of the Currency Conditionally Approves SoFi's Application to Establish a National Bank," October 28, 2020, at https://www.occ.gov/news-issuances/news-releases/2020/nr-occ-2020-141.html.

[43] OCC, "OCC Conditionally Approves SoFi Bank, National Association," January 18, 2022, at https://www.occ.gov/news-issuances/news-releases/2022/nr-occ-2022-4.html.

[44] FDIC, "Statement by FDIC Chairman Jelena McWilliams on Nelnet Bank," press release, March 18, 2020, https://www.fdic.gov/news/speeches/spmar1820a.html.

[45] FDIC, "Statement by FDIC Chairman Jelena McWilliams on Square Financial Services," press release, March 18, 2020, https://www.fdic.gov/news/speeches/spmar1820.html.

[46] Utah Department of Financial Institutions, "New Charters," August 26, 2021, https://dfi.utah.gov/general-information/application-status/.

[47] U.S. Bank, "U.S. Bank Announces New Cryptocurrency Custody Services for Institutional Investment Managers," October 5, 2021, https://ir.usbank.com/news-releases/news-release-details/us-bank-announces-new-cryptocurrency-

In July 2020, the OCC updated its guidance on custody services to clarify that national banks and federal savings associations could provide these services to digital currencies such as cryptocurrency. In November 2021, the OCC updated guidance once again to clarify that national banks should first receive permission from the OCC before engaging in cryptocurrency activities in order to ensure that the bank has "appropriate risk management systems and controls in place to conduct them safely."[48] Further, the FDIC, OCC, and Federal Reserve issued a joint statement in November 2021 to provide a "roadmap" for cryptocurrency policy in 2022, including custody services, issuance of cryptocurrency, and other activities.[49]

While commercial banks can offer a limited set of custodial services in addition to their core banking operations, trust banks (or custodial banks) primarily specialize in a range of fiduciary and custodial services.

Similar to banks, trust companies are chartered either at the state level by a state agency or at the federal level by the OCC.[50] These charters require prospective trust companies to establish certain capital requirements, corporate structures, and capacity to comply with relevant laws.

National Trust Banks

The OCC charters trust companies pursuant to its authorities under Title 12, Section 92a, of the *U.S. Code* and Title 12, Section 5.26, of the *Code of Federal Regulations*.[51] The OCC considers trust companies a type of bank with "special purpose operations."[52] Typically, they are chartered as uninsured national banks restricted to the activities of a trust company. As of May 31, 2021, there were 53 active national trust banks.[53]

National trust banks are not subject to the full set of regulations that are generally applicable to commercial banks. For example, according to the OCC's guidance on national trust bank supervision, national trusts are chartered with a condition specifying a minimum dollar amount of capital and, in some cases, a minimum amount of liquidity that must be initially maintained instead of being subject to the generally applicable bank capital and liquidity rules. Further, a national trust bank is typically not a bank for BHCA purposes, and so a company that owns a national trust bank and no other bank is not a BHC.[54] The application for trust bank charters is the

custody-services.

[48] OCC, "OCC Clarifies Bank Authority to Engage in Certain Cryptocurrency Activities and Authority of OCC to Charter National Trust Banks," press release, November 23, 2021, https://www.occ.gov/news-issuances/news-releases/2021/nr-occ-2021-121.html.

[49] Federal Reserve, FDIC, and OCC, "Joint Statement on Crypto-Asset Policy Sprint Initiative and Next Steps," November 23, 2021, https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20211123a1.pdf.

[50] State-chartered trusts can also become members of the Federal Reserve.

[51] For more information on the supervision of national trust banks, see OCC, "OCC Bulletin 2007-21," June 26, 2007, https://www.occ.gov/news-issuances/bulletins/2007/bulletin-2007-21.html.

[52] OCC, *Comptroller's Licensing Manual: Charters*, p. 1.

[53] OCC, "Trust Banks Active As of 5/31/2021," https://www.occ.treas.gov/topics/charters-and-licensing/financial-institution-lists/trust-by-state.pdf.

[54] According to the OCC's licensing manual, there are two ways for a national trust bank not to be a bank under the BHCA. First, a national trust bank does not meet the general definition of *bank* under Title 12, Section 1841(c)(1), of the *U.S. Code* if the trust bank (1) is not insured and (2) does not accept demand deposits and make commercial loans. Second, even if a trust bank is insured and would otherwise meet the definition of *bank*, a trust bank is not considered a bank for purposes of the BHCA if it meets certain conditions (12 USC 1841(c)(2)(D)). These conditions are as follows: (1) The institution must function solely in a trust or fiduciary capacity, (2) all or substantially all of the trust bank deposits are in trust funds and are received in a bona fide fiduciary capacity, (3) no trust bank deposits insured by the FDIC are offered or marketed by or through an affiliate, (4) the trust bank does not make commercial loans or accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others, (5) the trust bank may not obtain payment or payment-related services from any Federal Reserve Bank, and (6)

same as for de novo institutions: Organizers must complete the Interagency Charter and Federal Deposit Insurance Application. In addition, they are supposed to review the Fiduciary Powers Application.[55]

Finally, there are other additional considerations that the OCC may make. For example, based on the OCC's assessment of risk, management's qualifications, the bank's ability to raise capital after commencing operations, proposed relationships with affiliates, and the parent company's ability to be a source of strength for the trust bank, the OCC may impose a number of requirements and conditions enforceable under Title 12, Section 1818, of the *U.S. Code*.

In some cases, particularly when the trust bank is not part of a BHC or is not otherwise affiliated with an insured depository institution, the OCC may require that the requirements and conditions be in the form of written agreements among the OCC, the bank, and the bank's parent, including an operating agreement between the trust bank and OCC; a capital and liquidity support agreement among the OCC, bank, and parent; and a capital assurance and liquidity maintenance agreement between the trust and its parent.

Recent OCC Conditional National Trust Charters

There are currently three cryptocurrency firms that have applied for and received OCC conditional approval for a national trust charter. Each has a slightly different business model, but a look at the OCC approvals depicts how trusts can operate in cryptocurrency markets.[56]

Anchorage Digital Bank received conditional approval January 13, 2021, to provide fiduciary custody of digital assets, custody fiat and cryptocurrency, governance services for certain protocols, staking services, and settlement services "facilitated by its affiliates as well as other third-party brokers … as well as by clients themselves.… Clients or their Brokers may direct Anchorage Trust to receive digital assets into and transfer digital assets out of their vaults and to external accounts."

Protego Trust Bank received conditional approval February 4, 2021, to provide fiduciary custody services for cryptocurrency by holding cryptographic keys for Bitcoin and Ethereum and eventually for other digital assets. Additionally, Protego plans to offer a trading platform for assets under its custody as well as a lending platform.

Paxos National Trust received conditional approval April 23, 2021, to provide "services associated with digital assets permissible for a national bank, including custody services for digital assets; custody and management of USD stablecoin reserves; payment, exchange, and other agent services; other cryptocurrency services, such as trading services and enabling partners to buy and sell cryptocurrency." Currently, Paxos operates as a state-chartered trust company in New York, regulated by the New York State Department of Financial Services (NYDFS), focusing on blockchain investments designed to trade and manage digital assets.

State Custody and Trust Charters

Most states offer charters for trust companies or specialty banks to provide trust services without necessarily offering core commercial bank services, much like the OCC's national trust charter. Each state's charter and regulatory framework may differ across a number of characteristics.

The reason state trust chartering has recently risen in visibility to Congress is that some states have begun to offer charters designed so that the holder could offer certain services for clients active in cryptocurrency trading. This section discusses the two most well-established and

the trust bank may not exercise Federal Reserve Bank discount or borrowing privileges.

[55] The application can be found at https://occ.gov/static/licensing/fiduciary-powers-application.docx.

[56] The OCC conditional approval for Anchorage can be found at https://www.occ.gov/news-issuances/news-releases/2021/nr-occ-2021-6.html. The conditional approval for Protego can be found at https://www.occ.gov/news-issuances/news-releases/2021/nr-occ-2021-19.html. The conditional approval for Paxos can be found at https://www.occ.gov/news-issuances/news-releases/2021/nr-occ-2021-49.html.

prominent such charters: the Wyoming Special Purpose Depository Institution charter and the New York Limited Purpose Trust Company.

Wyoming Special Purpose Depository Institutions

Recently, Wyoming created a new charter for state financial institutions to become "special purpose depository institutions" (SPDIs). These institutions are defined by the Wyoming Division of Banking (WDoB) as "banks that receive deposits and conduct other activity incidental to the business of banking, including custody, asset servicing, fiduciary asset management, and related activities."[57] WDoB suggests that SPDIs will likely focus on providing services custodial services for digital assets, virtual currencies, and digital securities. In this light, they may resemble custody banks or trust companies, as they would be primarily involved in the business of providing custody or safekeeping for these assets.

Notable Wyoming SPDI Charters

Wyoming's SPDI was authorized in 2019 under Wyoming Statute Section 13-12-101 et seq. In September 2020, WDoB approved an application for an SPDI charter from a California-based crypto-exchange called Kraken to open Kraken Bank.[58] Kraken became the first digital asset company in the United States to receive a bank charter, and it provides certain deposit accounts, custody and fiduciary services, and wire transfer and funding services for digital assets. Kraken Bank plans to open in 2022.

In October 2020, Avanti Financial became a newly chartered SPDI, known as Avanti Bank and Trust.[59] The approval allows Avanti to provide digital asset custody services as well as its stablecoin-type product called the Avit, which is a digital asset that is designed to be redeemable at par with the U.S. dollar.[60]

New York Limited Purpose Trust Company

Limited purpose trust companies were originally authorized by the New York Banking Board in 1971. In general, the application process for a limited purpose trust company charter is similar to those of a full-service bank with two notable exceptions: the minimum level of capitalization and the requirement for FDIC insurance. The basic restriction of limited purpose trust companies is the prohibition on receiving deposits and making loans except as incidental to the exercise of fiduciary powers. According to NYDFS[61]

> The initial capitalization must be in an amount deemed satisfactory to the Superintendent of Financial Services but in no event shall such amount be less than $2,000,000 in Tier 1 capital. Tier 1 capital will consist of permanent core capital elements (common stockholders' equity, noncumulative perpetual preferred stock, a limited amount of cumulative preferred stock, and minority interest in the equity of consolidated subsidiaries) less goodwill and other intangible assets that are required to be deducted. The Department requires limited purpose trust companies to at all times maintain their Tier 1 capital at a level no less than 0.25% of discretionary assets under administration.

[57] WDoB, "Special Purpose Depository Institutions," http://wyomingbankingdivision.wyo.gov/home/areas-of-regulation/laws-and-regulation/special-purpose-depository-institution.

[58] Kraken, "Kraken Wins Bank Charter Approval," September 16, 2020, https://blog.kraken.com/post/6241/kraken-wyoming-first-digital-asset-bank/.

[59] Nate DiCamillo, "Avanti Financial Joins Kraken as a Wyoming-Approved Crypto Bank," CoinDesk, October 28, 2020, https://www.coindesk.com/avanti-financial-joins-kraken-as-a-wyoming-approved-crypto-bank.

[60] Avanti, "Avanti Granted Bank Charter and Approval of Business Plan for Digital Asset Custody and Tokenized U.S. Dollar," October 28, 2020, https://avantibank.com/press/bank-charter-granted.

[61] NYDFS, "Organization of a Trust Company for the Limited Purpose of Exercising Fiduciary Powers," https://www.dfs.ny.gov/apps_and_licensing/banks_and_trusts/procedure_certificate_merit_trust_comp.

New York Nonbank Financial Licenses vs. Bank Charters

States issue a range of licenses to offer financial services in addition to banking charters. State-regulated fintech firms can operate with a range of licenses and charters, not all of which subject them to regulation comparable to banks. For example, there are LLC licenses, state-chartered trust companies, and money transmitter licenses that each allow various fintech firms to operate.

For example, in 2013, NYDFS began investigating the possibility of accepting virtual currency applications for its money transmitter license. At the time, any virtual currency businesses were using money transmitter licensing to operate in each state. After issuing a proposal in July 2014 to license and regulate virtual currency businesses operating in New York State, in 2015, NYDFS created BitLicense and requires "a virtual currency business" operating in New York State to obtain a license from NYDFS. This license can take two forms: a BitLicense or a limited purpose trust company charter. Under Title 23, Section 200.3(q), of the *New York Codes, Rules and Regulations*, the term *virtual currency business* includes businesses that receive or transmit virtual currency, store or custody virtual currency, or trade or perform exchange services for virtual currency.

In either charter, crypto firms face consumer protection requirements and Know Your Customer and anti-money-laundering rules. But the charters have differences:

- Companies applying for a Limited Purpose Trust Charter have additional regulatory requirements than those with BitLicenses, including applying to the New York Banking Board rather than just NYDFS.
- Trust charters have fiduciary powers that allow trust companies to manage their clients' assets.
- A recipient of a BitLicense must apply for a New York money transmitter license, whereas a trust company can engage in money transmission with its trust status.

Charter holders can engage in activities, such as listing and custody services, involving only certain approved cryptocurrencies.[62] As of October 2021, there were 29 DNYFS-chartered virtual currency companies, including nine with limited purpose trust company charters.[63] These include some notable companies, such as Coinbase, PayPal, Robinhood Crypto, SoFi Digital Assets, Square, and the aforementioned Paxos Trust Company. In October 2021, NYDFS announced that it granted conditional approval to PayPal for a BitLicense to partner with Paxos and operate a cryptocurrency business line.[64]

Future of Cryptocurrency Charters

While this report focuses on extant charters, there are a few states that have sought to introduce charters that approximate the Wyoming and New York chartering approach for cryptocurrency activities. For example, Nebraska's governor signed into law a bill that would create a state bank charter for digital asset depository institutions. The bill was reportedly co-authored by a cryptocurrency firm, Telcoin. It authorizes state-chartered digital asset depository institutions to provide custody services for cryptocurrency assets, similar to the Wyoming SPDI charter. The law permits such institutions to provide payment services, provide non-lending cryptocurrency services, become a member of the Federal Reserve System, and organize as corporations under the Nebraska Model Business Corporation Act. Such institutions cannot accept demand deposits of U.S. currency or make consumer loans of any fiat currency. The guidelines and authorization of digital asset entities became effective October 1, 2021. Other states are considering similar proposals, and it remains to be seen what the industry interest in state charters for cryptocurrency will be.

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[62] Cryptocurrencies approved for listing include Binance USD (BUSD), Bitcoin (BTC), Bitcoin Cash (BCH), Ethereum (ETH), Gemini Dollar (GUSD), Litecoin (LTC), Pax Gold (PAXG), and Paxos Standard (PAX).

Cryptocurrencies approved for custody include all cryptocurrencies approved for listing (above), Ethereum Classic (ETC), and Ripple (XRP).

[63] NYDFS, "Virtual Currency: Regulated Entities," May 6, 2021, https://www.dfs.ny.gov/apps_and_licensing/virtual_currency_businesses/regulated_entities.

[64] NYDFS, "Superintendent Linda A. Lacewell Announces PayPal to be the First Approved Entity for DFS Conditional BitLicense," press release, October 21, 2020, https://www.dfs.ny.gov/reports_and_publications/press_releases/pr202010211.

OCC Proposed Fintech Bank Charters

In recent years, the OCC has explored the possibility of granting special purpose charters to nondepository fintech companies that may seek to engage in bank-like activities, such as lending, payment processing, and cryptocurrency services.

OCC Special Purpose National Bank Charter

In 2003, the OCC issued a rulemaking authorizing special purpose national banks (SPNBs).[65] The rule states that the OCC charters national banks under its authority pursuant to the National Bank Act of 1864, as amended,[66] and that these banks may take the form of "a special purpose bank that limits its activities to fiduciary activities or to any other activities within the business of banking." SPNBs that conduct activities other than fiduciary activities must provide one of the following three core banking functions: receiving deposits, paying checks, or lending money.

In December 2016, the OCC announced a proposal to extend the SPNB charter to fintech companies.[67] The proposal would make companies—such as marketplace lenders, digital payments processors, and digital currency companies—more clearly eligible to obtain a national bank charter. In July 2018, the OCC announced that it would begin offering the SPNB charter to fintech companies,[68] and it updated its licensing manual with a supplement that considers charter applications from fintechs.[69] The OCC notes that it tailors capital requirements for SPNBs, so this could be perceived as advantageous to certain fintech firms that are currently subject to the capital requirements of each state in which they operate.[70] Specifically, the supplement addresses applications from fintech companies that would engage in either paying checks or lending money but would not take deposits and thus would not be insured by the FDIC.[71] The supplement makes clear that fintechs that plan to take insured deposits should pursue full-service national bank charters.

Over the past few years, the OCC's SPNB charter met a series of legal challenges, notably from state regulators such as NYDFS and the Conference of State Bank Supervisors.[72] In June 2021, a federal appeals court ruled that the OCC could issue SPNB charters to institutions that do not accept deposits, overturning a prior challenge from NYDFS.[73] While a number of fintechs have

[65] 2 C.F.R. §5.23(e), as promulgated in OCC, "Rules, Policies, and Procedures for Corporate Activities; Bank Activities and Operations; Real Estate Lending and Appraisals," 68 *Federal Register* 70122, 70129, December 17, 2003.

[66] 12 U.S.C. §1 et seq.

[67] OCC, "Exploring Special Purpose National Bank Charters for Fintech Companies," December 2016, https://www.occ.gov/publications-and-resources/publications/banker-education/files/exploring-special-purpose-nat-bank-charters-fintech-companies.html.

[68] OCC, "OCC Begins Accepting National Bank Charter Applications from Financial Technology Companies," press release, July 31, 2018, https://www.occ.gov/news-issuances/news-releases/2018/nr-occ-2018-74.html.

[69] OCC, "Comptroller's Licensing Manual Supplement: Considering Charter Applications from Financial Technology Companies," July 2018, https://www.occ.gov/publications-and-resources/publications/comptrollers-licensing-manual/files/considering-charter-apps-from-fin-tech-companies.html.

[70] OCC, "Comptroller's Licensing Manual Supplement," p. 9.

[71] OCC, "Comptroller's Licensing Manual Supplement," p. 2.

[72] The history and more details on these legal challenges can be found at CRS Legal Sidebar LSB10381, *Court Battle for Fintech Bank Charters to Continue*, by M. Maureen Murphy.

[73] Tom Auchterlonie, "Appeal Overturns New York's Suit over OCC Fintech Charter," June 7, 2021, https://www.businessinsider.com/appeals-court-nixes-challenge-to-occ-fintech-charter-2021-6. See also CRS Legal Sidebar LSB10623, *Second Circuit Dismisses New York State Challenge to OCC's Fintech Charter Authority*, by M.

applied for and received various charter approvals from states (e.g., ILC charters and state special purpose charters, discussed above) and from the OCC (e.g., national bank charters, as well as trust charters, discussed above), no institution has applied and been approved for a SPNB fintech charter.

OCC Proposal for a Payments Charter

In June 2020, then-acting head of the OCC, Comptroller Brian Brooks, announced that he planned to create an additional national banking charter for payment companies, which he stated would amount to a "national version of a state money transmitter license."[74] While there is little information available on the OCC's website about this proposal, news reports suggested the OCC said it would be ready in fall 2020 to begin processing applications for money transmitters such as PayPal or MoneyGram and cryptocurrency exchanges such as Coinbase to operate nationally under one charter.[75] (Currently these companies are licensed at the state level, often as money transmitters.[76]) In November 2020, *Forbes* reported that Acting Comptroller Brooks announced that the OCC's Payments Charter is now available.[77] The current acting comptroller, Michael Hsu, has made a number of public comments regarding the general concept of fintech charters, but little public discussion is available on the prospects or contents of a payments charter, and it is seemingly effectively on hold.

Policy Issues for Congress

De Novo Creation

One perennial concern for Congress is the creation of new banks. Over time, the banking system has consolidated from over 18,000 institutions in the 1980s to under 5,000 today. This consolidation is the result of a number of factors, including relaxing inter-state banking restrictions and other regulations to facilitate national bank branching, technological advances that support economies of scale of larger institutions, financial crises that result in bank closures, and mergers and acquisitions. In the wake of this consolidation, there has also been a general slowdown in the creation of new banks in recent years.

De novo banks saw a significant drop after the Great Recession (2007-2009). The number of de novo banks dropped from an average of 149 per year from 1990 to 2008 to only seven per year from 2009 to 2021. This drop is shown in **Figure 1**. One concern over de novo creation is that competition in the banking system is jeopardized by the decreasing number of banks in the

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Maureen Murphy.

[74] Before working at the OCC, Brian Brooks worked as general counsel for Coinbase, a virtual currency exchange. Acting Comptroller Brooks unveiled the plan in a podcast with the American Bankers Association (ABA). See ABA, "Podcast: OCC's Brooks Plans to Unveil 'Payments Charter 1.0' This Fall," June 25, 2020, https://bankingjournal.aba.com/2020/06/podcast-occs-brooks-plans-to-unveil-payments-charter-1-0-this-fall/.

[75] Abdullah Khan, "OCC Moves Ahead with Proposed Payments Charter—Politico," September 1, 2020, https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/occ-moves-ahead-with-proposed-payments-charter-8211-politico-60173603.

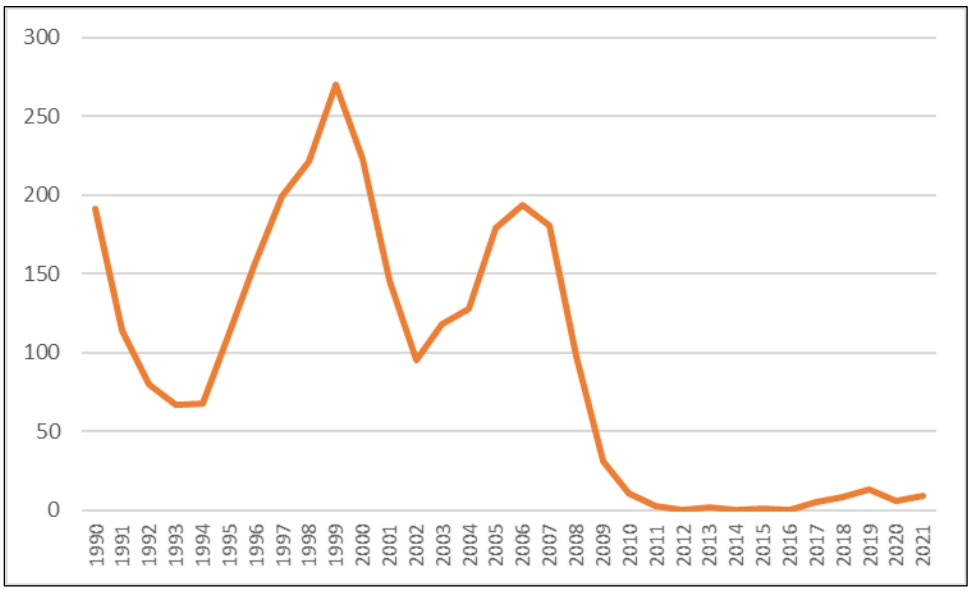
[76] For more on the regulation of money transmitters, see CRS Report R46486, *Telegraphs, Steamships, and Virtual Currency: An Analysis of Money Transmitter Regulation*, by Andrew P. Scott.

[77] Jason Brett, "Exclusive: OCC Chief Brian Brooks Says Payments Charter Is Ready, More Crypto Banks Coming Soon," *Forbes*, November 17, 2020, https://www.forbes.com/sites/jasonbrett/2020/11/17/exclusive-occ-chief-brian-brooks-says-payments-charter-is-ready-more-crypto-banks-coming-soon/.

financial system. While it is not evident that broad competition issues are present generally, as the banking system continues to consolidate, the lack of de novo creation facilitates this trend further.

Figure 1. De Novo Creation

Number of De Novo Banks per Year



Source: FDIC data, figure reproduced from Banking Strategist, https://www.bankingstrategist.com/de-novo-bank-chartering-trends.

Tailored Regulation or Regulatory Arbitrage?

ILCs and trust banks are subject to different requirements than commercial banks are, as is shown in **Table 7**. Whether these different regulatory treatments effectively and efficiently implement safeguards appropriate to each institution's risk profile or are allowing companies providing bank services an opportunity to be more lightly regulated is a matter of debate.

To the extent fintech firms are seeking bank charters to offer services similar to a commercial bank, the different regulatory structures pertaining to ILCs and trust banks may offer certain advantages to a fintech firm. As Acting Comptroller Hsu recently stated, "Increasingly, the three cornerstones of banking—taking deposits, making loans, and facilitating payments—are being reassembled functionally and digitally outside of the bank regulatory perimeter by certain firms…. [T]hese 'synthetic banking providers' (SBPs) operate out of the reach of bank regulators and free of bank rules, such as capital requirements, bank consumer protection laws, and the Community Reinvestment Act."[78]

[78] Acting Comptroller Michael Hsu, remarks before the American Fintech Council, "Leveling Up Banking and Finance," November 3, 2021, https://www.occ.gov/news-issuances/speeches/2021/pub-speech-2021-115.pdf.

Table 7. Regulatory Structure for Banks, ILCs, and Trusts

	Commercial Banks	ILCs	Trusts
Charter	National bank (NB) charter (OCC) or state bank charter.	Specific state bank charter offered in six states.	Limited-purpose national trust bank (NTB) charter (OCC) or state trust charter.
Deposit insurance from Federal Deposit Insurance Corporation (FDIC)	Required for NBs; most states require FDIC insurance for bank charters.	Required.	Typically not required unless the trust bank accepts deposits from the general public. In some cases extra reserves are required in lieu of deposit insurance.
Federal Reserve Membership	Required for NBs; state-chartered banks can join	ILCs are permitted to be members. (None are currently.)	Trusts are permitted to be members.
Primary federal regulator (PFR)	NB: OCC. State members banks: Federal Reserve. State nonmember banks: FDIC.	FDIC.	NTB: OCC. State trusts are typically not required to have deposit insurance and are subject only to state regulation.
Supervisory framework	PFR and state (for state charters) bank examiners provide review for safety and soundness and compliance with various laws. FDIC has backup supervisory role and conducts special examinations for insured depositories. Consumer Financial Protection Bureau (CFPB) has supervisory authority for compliance with consumer laws among banks with assets of $10 billion or more.	FDIC and state examiners supervise the ILC as they would most other state-chartered insured depository institutions (IDIs). The FDIC may generally set certain conditions on the parent holding company to provide certain information on itself and its subsidiaries and may require that it be allowed to examine the parent company. CFPB has supervisory authority for compliance with consumer laws among banks with assets of $10 billion or more.	PFR and state examiners provide review for safety and soundness and compliance with various laws. FDIC has backup supervisory authority for trust banks that have deposit insurance. CFPB has supervisory authority for compliance with consumer laws among trusts with assets of $10 billion or more.
Capital requirements	Generally applicable minimum capital requirements apply; determined by assets and risk-weighted assets.	Generally applicable minimum capital requirements apply to the IDI. FDIC may require extra capital (at IDI or parent) as a condition of approval for deposit insurance.	NTBs are required by statute (12 U.S.C. §§92a and 1464(n)) to have capital no less than that required by state law for companies offering similar services in the state in which the bank will be located. State banking laws apply to state trusts.

	Commercial Banks	ILCs	Trusts
Bank Holding Company Act (BHCA)	Applies to companies that own or control banks. Federal Reserve Board provides additional oversight for bank holding companies.	BHCA does not apply. Exception granted under 12 C.F.R. §204.2(b)(1), conditional upon the institution refraining from accepting demand deposits.	NTBs are typically not considered banks for purposes of the BHCA.
Community Reinvestment Act (CRA)	Applies to banks.	Applies to ILCs.	Exceptions to CRA requirements exist, and obligations to meet CRA requirements are tailored to the institution.
Bank Secrecy Act/ Office of Foreign Assets Control requirements	Applies to banks.	Applies to ILCs.	Applies to trusts.

Source: CRS analysis of OCC and state licensing procedures.

The most obvious difference is that not all trust banks are required to have deposit insurance, and the BHCA requirements do not apply to all of these institutions. Second, while national trust banks are subject to minimum leverage and risk-based capital ratios defined in Title 12, Section 3, of the *Code of Federal Regulations*, these ratios are not considered optimal measures of capital adequacy, particularly due to the risk posed by off-balance-sheet asset management activities that are not captured in capital ratio calculations.

As new types of fintech companies are able to obtain ILC and trust charters, it is possible the existing framework will insufficiently address the risks these new activities pose to the financial system and potentially create an unlevel playing field within the banking and financial system for a range of financial services. For example, commercial banks can offer payment and exchange services to customers, but banks that facilitate cryptocurrency exchanges (as discussed in the next section) through the trust bank model may be able to offer a substantially similar service while facing different regulatory standards. Further, as discussed in more detail below, there is a debate over the extent to which stablecoin issuers need to have deposit insurance to adequately protect against systemic risk.

On the other hand, allowing companies with innovative business models the option to enter into the bank regulatory regime, even with tailored requirements such as those applicable to trust charters, may be a more suitable framework than the patchwork of state nonbank financial requirements that face other financial companies such as money transmitters, particularly when they seek to operate across state borders.

Recent Use of Trust Charters by Cryptocurrency Firms

Cryptocurrencies were invented in 2009, and as such the vast majority of laws and regulations related to the financial system were implemented without consideration of their specific features and potential risks. Regulators have extended existing authorities and regulations to cryptocurrencies and related activities and firms. But how well the existing regulatory framework fosters the benefits while safeguarding against the risks is an open question. This has made cryptocurrency regulation an area of heightened congressional attention. Meanwhile, a number of firms that want to provide cryptocurrency services have applied for and been granted national trust charters or state charters.

As noted in previous sections, there are currently three cryptocurrency firms that have applied for and received conditional approval from the OCC for national trust charters. In addition, there are some notable state-chartered limited purpose banks that are operating in cryptocurrency markets, primarily in Wyoming and New York. Each of these institutions has a slightly different business model, but **Table 8** depicts some of the activities banks are permitted to undertake with respect to cryptocurrency.

Table 8. Select Bank Cryptocurrency Activities

Examples of Recent Banking Activities in Cryptocurrency

Type of Banking Institution	Permitted Cryptocurrency Activities
Full-service national banks (i.e., commercial banks)	Issue stablecoins for payment purposes; participate in blockchain networks; hold cryptocurrency and cryptographic keys in custody.[79]
Limited purpose national banks (i.e., trust banks)	Offer trading and lending platforms (or facilitating such activities through partnerships); custody and management of stablecoin reserves; payment, exchange, and other agent services for digital assets.
Limited purpose state banks (e.g., Wyoming Special Depository Institution, New York BitLicense)	Issue stablecoins and tokenized dollars; offer deposit accounts for digital currencies/stablecoins 100% backed by dollar reserves (in lieu of deposit insurance); offer wire transfer and funding services; potentially act as Federal Reserve clearing bank (upon receiving FDIC insurance); partner with businesses to facilitate cryptocurrency transactions.

Sources: OCC conditional charter approvals for Anchorage, Protego, and Paxos; Wyoming Division of Banking, New York Division of Financial Services; Kraken and Avanti websites.

Stablecoin Issuers as Insured Depository Institutions

A certain type of cryptocurrency, commonly called stablecoins, aim to maintain a stable value (in contrast with most cryptocurrencies that have highly volatile values). They are also subject to policymaker scrutiny for many of the same reasons cryptocurrencies are, as discussed in the previous section. In December 2021, the President's Working Group on Financial Services released a report recommending that certain cryptocurrency issuers of stablecoins be regulated as insured depository institutions.[80] This may have implications for charters down the road.

Banking institutions can provide fiduciary and non-fiduciary custody services for cryptocurrency products much the same way they do for dollar-denominated accounts. Without an FDIC insurance requirement, trust banks can back holdings with reserves, offering some deposit protection to customers without jeopardizing the government backstop of deposit insurance. However, there are persistent concerns about the entry of fintechs into the banking system, and the use of trust charters for these firms may draw concern over regulatory arbitrage, blending commerce with banking, and the potential for systemic risk. These risks were highlighted in the President's Working Group on Financial Markets report on stablecoins.[81] One proposal from the report was to regulate stablecoin issuers as insured depository institutions. The requirement of deposit insurance poses potential implications for bank charters.

[79] See OCC, "Federally Chartered Banks and Thrifts May Participate in Independent Node Verification Networks and Use Stablecoins for Payment Activities," press release, January 4, 2021, https://www.occ.gov/news-issuances/news-releases/2021/nr-occ-2021-2.html.

[80] President's Working Group on Financial Markets, *Report on Stablecoins*, November 1, 2021, https://home.treasury.gov/system/files/136/StableCoinReport_Nov1_508.pdf.

[81] President's Working Group on Financial Markets, *Report on Stablecoins*.

Deposit insurance is a government safety net designed to prevent "runs" at banks and protect ordinary citizens seeking to keep their money safe from losses. The recent findings in the November 2021 President's Working Group on Financial Markets report (issued along with the federal banking regulators) on stablecoins suggest that the Administration may favor regulating issuers of such digital assets as insured depository institutions. To do so, the OCC may need to either require deposit insurance for certain trust banks that issue stablecoins, charter all issuers as full-service national banks (which are required to have deposit insurance), or create a separate regime for chartering these issuers. Many trust institutions are limited in their deposit-taking capacity, and so the effectiveness of deposit insurance on stemming the likelihood of runs is debated. Extending deposit insurance to stablecoin issuers extends the federal safety net and inherent moral hazard issues to a product that does not have many of the features that have justified federal insurance for traditional deposits. Further, reserve requirements could offset the risk of consumer losses without the need for a government safety net. However, it is worth noting that money market mutual funds—nondepository investment funds that issue shares that have similar characteristics to stablecoins—are also backed by high-quality liquid reserves and have nevertheless suffered from bank-like runs in recent years.

The working group report called for legislative action to facilitate regulating stablecoin issuers as insured depository institutions: "[L]egislation should limit stablecoin issuance, and related activities of redemption and maintenance of reserve assets, to entities that are insured depository institutions. The legislation would prohibit other entities from issuing payment stablecoins. Legislation should also ensure that supervisors have authority to implement standards to promote interoperability among stablecoins."[82] While most states require commercial banks to have FDIC insurance, states do not necessarily require it for limited purpose banks. For example, Wyoming does not require FDIC insurance for SPDIs; rather, it requires 100% reserves against the value of cryptocurrency held in SPDIs.

One potential policy approach, at least in the short run, could be to address the concern over reserves through enhanced disclosures among stablecoin issuers and the institutions that provide custody services for digital assets. The reserves backing stablecoins can vary. For example, in October 2020, the OCC issued interpretive guidance clarifying that national banks were allowed to receive dollar-denominated deposits, which may serve as reserves for stablecoins issuers.[83] At the state level, Wyoming requires custody banks that issue stablecoins to hold at all times "unencumbered level 1 high-quality liquid assets valued at 100% or more of their depository liabilities."[84]

Reserves backing stablecoins could be vulnerable to runs if the stablecoin holders seek to redeem their holdings for cash simultaneously. However, unlike securities regulation, which requires a disclosure of reserves to investors, no such disclosure to the public is required from banking regulators for trust banks that issue stablecoins or for national banks that hold stablecoin reserves. (There are data sources made public by regulators, such as call reports, which provides information on the condition of banking institutions on a quarterly basis, but this differs from

[82] President's Working Group on Financial Markets, *Report on Stablecoins*, p. 15.

[83] OCC, "OCC Chief Counsel's Interpretation on National Bank and Federal Savings Association Authority to Hold Stablecoin Reserves," September 21, 2020, https://www.occ.gov/topics/charters-and-licensing/interpretations-and-actions/2020/int1172.pdf. As mentioned earlier in this report, the OCC issued updated guidance clarifying that national banks should obtain permission before engaging in cryptocurrency activities. This update is a culmination of a review of prior interpretive guidance, including Interpretive Letter 1172, cited here.

[84] WDoB, "Special Purpose Depository Institutions," https://wyomingbankingdivision.wyo.gov/banks-and-trust-companies/special-purpose-depository-institutions.

disclosure requirements that make clear what reserves are backing specific instruments.) Thus, it is unclear whether stablecoin market participants can appropriately discern whether they are holding assets backed by the claimed reserves.

While disclosures and reserve requirements will not prevent runs, as is evidenced by the fact that money market mutual funds have experienced runs while being subject to disclosures and reserve requirements, it may facilitate a better understanding of the underlying risks associated with holding a crypto-asset such as a stablecoin. Legislation could require reserve disclosures for stablecoins, either through anti-money-laundering reporting requirements for issuers that hold reserves in U.S. banks[85] or through banking laws for trusts and insured depository institutions that issue stablecoins or hold their reserves. Alternatively, legislation could require financial institution regulators to impose contractual terms specifying disclosure responsibilities for firms depositing reserves for stablecoins.

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[85] The Financial Crimes Enforcement Network (FinCEN) currently requires money transmitters, including exchangers of virtual currency, to report and register in compliance with Bank Secrecy Act (BSA, P.L. 91-508) provisions promulgated by FinCEN. For more information, see FinCEN, "Application of FinCEN's Regulations to Persons Administering, Exchanging, or Using Virtual Currencies," March 18, 2013, https://www.fincen.gov/sites/default/files/shared/FIN-2013-G001.pdf. For more information on general money transmitter regulation, including reporting requirements for cryptocurrency and BSA compliance, see CRS Report R46486, *Telegraphs, Steamships, and Virtual Currency: An Analysis of Money Transmitter Regulation*, by Andrew P. Scott.