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FDIC PROPOSES APPLICATION PROCESS FOR GENIUS ACT COMPLIANCE

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The FDIC released a proposed rule[1] that would establish an application process for FDIC-supervised banks to issue "payment stablecoins" through a subsidiary pursuant to the GENIUS Act. The federal banking agencies and the NCUA must develop implementing regulations under the GENIUS Act, which becomes effective on January 18, 2027, or 120 days after primary regulators issue final implementing rules, whichever comes first. The FDIC's proposed rule is the first out of the gate.

The proposed rule would create a more expedited federal process for subsidiaries of FDIC-supervised banks to become "permitted payment stablecoin issuers" ("PPSIs") under the GENIUS Act. The proposed rule would apply to insured state-chartered non-member banks, including industrial loan companies, and state-chartered savings associations. While these institutions do not make up the largest assets in the U.S. financial system, the FDIC explained that there are 2,772 insured state nonmember banks and insured state savings associations (generally, "banks").

The proposal reflects other aspects consistent with the GENIUS Act and this administration's policies: a streamlined, tailored, letter-based application process with clearly defined content and timing expectations—and an appeals process. FDIC Acting Chairman Hill explained[2] that separate proposed rules addressing statutorily mandated capital, liquidity, and risk manage-

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ment requirements for PPSIs are forthcoming. The speed of the proposed rule's development is notable too: it comes more than a year before the GENIUS Act becomes effective.

KEY TAKEAWAYS

- **Streamlined applications.** FDIC-supervised banks that want to establish PPSI subsidiaries and issue payment stablecoins under the GENIUS Act would be able to do so through a streamlined application process that seeks to avoid duplication and irrelevant data.
- **Avoiding application delays.** Applications would be deemed substantially complete on the date of receipt if the FDIC doesn't notify applicants otherwise within 30 days after receiving the application. Under the proposed rule, the FDIC must approve or deny an application not later than 120 days after receiving a *substantially* complete application. Applications would be deemed approved if the FDIC doesn't render a decision within 120 days of receiving a substantially complete application.
- **Denial.** Applications may only be denied if the activities would be "unsafe or unsound" based on the evaluation criteria set out in the GENIUS Act. Issuance on an open, public, or decentralized network would not be a valid basis for denial. This consideration will work in tandem with the proposed rule[3] on redefining safety and soundness.
- **Appeals**. Denied applicants may appeal, including by requesting hearing under the FDIC's process for appealing material supervisory determinations with a final determination due within 60 days after the hearing.
- **Interagency consistency**. We expect there will be substantial interagency consistency for applications. But regulators such as the FDIC and Federal Reserve, which do not charter institutions, generally have different approaches and procedures, than federal agencies that charter institutions, such as the OCC and the NCUA. For instance, we hope expedited processing will be available in a future OCC proposed rule for eligible banks, as in other cases. The FDIC's proposal could be strengthened by making certain banks eligible for expedited approval or allowing

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them to file after-the-fact notice in certain circumstances.

SCOPE AND KEY CONTENT REQUIREMENTS

New section 303.252 would govern applications by FDIC-supervised banks that seek to issue payment stablecoins through a subsidiary that would become a PPSI. Banks, as applicants, would file a letter with the appropriate FDIC regional office. The letter must include, to the extent applicable:

1. a description of the proposed payment stablecoin and all related activities—at the subsidiary, bank, and any third parties—including how stability will be maintained and any intercompany agreements, applicant guarantees, or applicant-provided sources of strength. Note: Any proposed activities *incidental* to payment stablecoin activities or digital asset service provider activities must be detailed too to assess the PPSI's financial condition and safety and soundness.

2. relevant financial information such as planned capital and liquidity, reserve asset composition and management (including whether any reserves will be tokenized), and three years of financial projections.

3. ownership and control structure, organizing documents, and proposed directors/officers/principal shareholders.

4. core policies, procedures, and customer agreements for custody/safekeeping, segregation of customer and reserve assets, recordkeeping and reconciliation (on and off-chain), transaction processing, redemption, and BSA/AML/CFT and sanctions compliance.

5. an engagement letter with a public accounting firm to support monthly reserve attestations.

The FDIC would be able to request additional information as necessary to evaluate statutory factors, but, whenever possible, would be required to rely on information already available to it, such as supervisory and examination information, rather than request that duplicative information be submitted as part of an application.

WHAT THE FDIC WILL EVALUATE UNDER THE GENIUS ACT

The FDIC must consider the factors listed in section 5(c) of the GENIUS Act in evaluating applications for PPSIs:

- Whether, based on the subsidiary's financial condition and resources, it can meet the GENIUS Act's requirements for issuing payment stablecoins, including one-for-one identifiable reserves in specified categories, monthly public reserve disclosures, and certified monthly reports examined by a public accounting firm.

- The subsidiary's ability to comply with forthcoming FDIC regulations on capital, liquidity, reserve diversification, and principles-based operational, compliance, and IT risk management, including BSA/AML/CFT and sanctions.

- Management-related factors such as competence, experience, integrity, compliance history, among others.

- The redemption policy's ability to meet

statutory standards, including clear, conspicuous, and timely redemption procedures and transparent fees with at least seven days' advance notice for changes.

Though permitted to add factors for consideration under the GENIUS Act, the FDIC is not proposing to add "other factors" beyond those in the statute.

PROCESSING TIMELINES

The processing timelines in the NPRM mirror the timelines in the GENIUS Act:

- Within 30 days of receipt, the FDIC must notify the applicant whether the filing is "substantially complete." If the FDIC doesn't notify the applicant, the application is deemed substantially complete as of the FDIC's receipt.
- Once substantially complete, the FDIC must approve or deny within 120 days. If the FDIC doesn't act, the application is deemed approved.

DEEMED APPROVALS

Approvals may include conditions (including standard 12 CFR § 303.2(bb)[4] conditions such as closing within a certain period and obtaining all required approvals from state and federal agencies) but may not impose requirements beyond section 4 of the GENIUS Act. If the FDIC denies an application, the FDIC must provide a written explanation within 30 days that includes all findings made with respect to identified material shortcomings in the application and recommendations to address such shortcomings. While not exactly a "service guaranty," the processing timelines are friendly toward applicants.

APPEALS

Within 30 days of a denial, an applicant would be able to request a hearing. If an applicant does not make a timely request for a hearing, the FDIC would be required to provide, within 10 days after the date by which the applicant could have requested a hearing, notice that the denial of the application is a final determination. If a hearing is timely requested, a hearing would have to be held within 30 days of the request, and the FDIC would have to issue its findings within 60 days after the date of the hearing.

The FDIC proposes to apply the same appeal process as it has for the appeal of a material supervisory determination. Once a final rule is issued, appeals would include a review by an independent, standalone Office of Supervisory Appeals,[5] staffed by reviewing officials with relevant government or industry experience. By treating a denial of a PPSI application like a material supervisory determination for appeal purposes, the proposal would demonstrate the FDIC's commitment to consistency and would inspire confidence in the fair handling of PPSI applications. Additionally, the appeals process—with easy-to-understand timelines and written explanations—demonstrates a focus on open and accessible regulators.

OUR TAKE

The proposed rules are a positive sign for the FDIC and the market. The FDIC—not always the leader in financial innovation or modernization—nevertheless is proceeding earnestly to implement the GENIUS Act. The way it would do so is largely tailored and seeks to avoid burdens on applicants, duplication, and speculative or extraneous materials. The included safeguards (like the appeals process) have further helped its cred-

ibility, especially against the backdrop of legacy supervision issues at the FDIC—both alleged examiner (mis)conduct and substantive issues, which the FDIC leadership has acknowledged.

The FDIC could consider more expedited procedures for well-capitalized and well-managed banks and similar applicants that seek to comply with the GENIUS Act. This would reflect financial holding company election and related procedures and certain OCC approaches for permissible activities. Another approach could include codified triggers that, if met, would help applicants and the FDIC expedite the processing of applications. Regardless of the final rule's approach, we would urge the FDIC to act expeditiously on safe and sound, healthy banks' applications—even well ahead of any mandatory timing triggers under the regulation and the GENIUS Act.

Pulling the camera back, one can see a larger lesson embedded in this proposed rule. It stands in stark contrast to most rulemaking exercises post-Dodd-Frank, which were burdensome, slow, opaque, and geared to serve the interests of the regulators, not those being regulated. In short, this appears to be a useful example of how the Trump administration's regulatory reforms can work in practice. While the proposed rule is designed to allow the regulators to gather enough information to make a fully informed decision, it is different from the "regulatory black holes" which existed in previous administrations, where information went in and what came out was unclear, unrecognizable, or both. Once the financial services industry becomes used to this kind of reasonability (which is still surprising to see in action) it will be difficult to go back to the former ways of doing business.

ENDNOTES:

[1] https://www.dwt.com/-/media/files/blogs/financial-services-law-advisor/federal-register-notice-approval-required.pdf.

[2] https://www.fdic.gov/news/speeches/2025/proposed-rule-regarding-approval-requirements-issuance-payment-stablecoins.

[3] https://www.dwt.com/blogs/financial-services-law-advisor/2025/11/summary-of-bank-supervisory-changes-in-2025.

[4] https://www.ecfr.gov/current/title-12/chapter-III/subchapter-A/part-303/subpart-A/section-303.2.

[5] https://www.dwt.com/blogs/financial-services-law-advisor/2025/08/fdic-office-of-supervisory-appeals-may-return.

PREPARE TO NAVIGATE THE NEW FEDERAL AI POLICY

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The Trump administration has issued an executive order titled "Ensuring a National Policy Framework for Artificial Intelligence,"[1] ("EO") which seeks to establish a "minimally burdensome national standard" for artificial intelligence ("AI") and to address what the administration characterizes as a patchwork of state AI laws it considers excessive. Issued on December 11, the order directs multiple federal actions, including the creation of a Department of Justice ("DOJ") AI Liti-

gation Task Force to litigate against state AI measures that are inconsistent with the EO's policy; conditioning certain federal funds on state regulatory posture; and initiating the development of federal standards through the Federal Communications Commission ("FCC") and Federal Trade Commission ("FTC"). Several things are clear from the EO: expect robust discussion on the federal and state levels and legal challenges from stakeholders, including regulators. Additionally, the implications for the regulatory landscape for AI developers, deployers, and users across sectors remain volatile, and all stakeholders must not only focus on compliance with the law but also compliance with the likely evolution of the legal landscape.

This article provides companies and state-regulated entities with the legal context necessary to prepare for the EO's potential impact(s).

WHAT THE ORDER DOES

The EO articulates a federal policy to "sustain and enhance" U.S. AI leadership through a unified framework and identifies certain state laws as creating compliance burdens that the administration believes risk impeding innovation and affecting interstate commerce. It cites state prohibitions on "algorithmic discrimination" and disclosure mandates as examples of measures that could require model alterations or implicate constitutional protections, including the First Amendment. The EO states an objective to move toward a national standard that would supersede conflicting state requirements while expressly preserving certain categories of state laws, including those addressing child safety and state procurement.

Operationally, the EO directs:

- Creation of an AI Litigation Task Force by the U.S. Attorney General within 30 days to challenge state AI laws that the Attorney General deems unconstitutional, preempted, or otherwise unlawful, with an express focus on laws that affect interstate commerce or conflict with federal AI policy.
- A Commerce Department evaluation of state AI laws within 90 days, identifying measures the administration considers onerous and that conflict with federal AI policy and, at a minimum, flagging any state laws that the order characterizes as compelling "alterations to truthful outputs" or requiring disclosures that could violate constitutional protections. The evaluation may also identify state laws that are consistent with the EO's policy of promoting AI innovation.
- Funding conditions directing Commerce to specify eligibility limits for certain Broadband Equity, Access, and Deployment ("BEAD") funds and instructing agencies to assess discretionary grants that could be conditioned on states refraining from, or not enforcing, laws identified as conflicting with the federal AI policy during the funding period, "to the maximum extent allowed by federal law."
- Regulatory preemption mechanisms directing the FCC to initiate a proceeding on a federal AI reporting and disclosure standard that preempts conflicting state requirements, and directing the FTC to issue a policy statement explaining how state laws that require changes to truthful AI outputs may be preempted by the FTC Act's prohibition on deceptive practices.
- Preparation of legislative recommendations

for a uniform federal policy framework that would preempt state laws conflicting with the EO's policy, while expressly preserving certain categories of state laws from preemption proposals (*e.g.*, child safety, state procurement).

IMMEDIATE CONTEXT AND STAKEHOLDER REACTIONS

The EO states an intent to displace conflicting state regimes and to consolidate governance at the federal level, including litigation to challenge state measures and potential federal agency steps to establish preemptive standards. Brendan Carr, the FCC Chairman, said his agency welcomed the EO's direction that his agency "initiate proceedings to determine whether to adopt a Federal reporting and disclosure standard for AI models that preempts conflicting State laws." Some technology industry stakeholders have also expressed support for a unified federal framework, citing concerns about operational challenges from divergent state requirements. Advocacy organizations and several state officials have criticized the order as overreaching and have signaled potential constitutional challenges. Congress recently declined to adopt similar nationwide preemption and funding-conditionality proposals, which may be relevant to assessing the EO's legal foundation.

In response to the EO, on December 19, Senator Marsha Blackburn released her proposal for a national legislative framework. This framework, entitled *The Republic Unifying Meritocratic Performance Advancing Machine Intelligence by Eliminating Regulatory Interstate Chaos Across American Industry* ("TRUMP AMERICA AI Act") provides a comprehensive outline for the main concerns articulated by Senator Blackburn. This legislative framework "would codify President Trump's executive order[2] to create one rulebook for artificial intelligence ("AI") that protects children, creators, conservatives, and communities from harm while ensuring the United States wins the global race for AI supremacy." This proposal has not been formally introduced as a Senate bill at this time. Conversely, Senator Edward Markey and 10 other senators introduced the "State's Right to Regulate AI Act" as a stand-alone bill and as an amendment to the upcoming appropriations bill. It is unclear whether the stand-alone bill will make it out of committee or whether the amendment will be included in a final appropriations package.

Several states, including California, have characterized the order as an attempt to displace state AI regulations and have emphasized ongoing state initiatives around innovation, public safety, content authenticity, and protections for vulnerable populations. California's response highlights the state's AI ecosystem and asserts that state measures on issues such as deepfakes, watermarking, performer likeness protection, and AI-related child safety could be affected by federal preemption as contemplated in the order. Florida also recently released a comprehensive citizen Bill of Rights for AI,[3] which could be handicapped by the EO.

LEGAL CONSIDERATIONS AND LIKELY AREAS OF CHALLENGE

The EO raises several threshold legal questions that may be subject to judicial review. The following topics are central to assessing the EO's legal durability and practical impact:

Federal preemption and executive authority: Under established preemption doctrine, preemp-

tion of state law is generally grounded in federal statute, regulation, or constitutional structure, and an executive order alone may not be sufficient to displace state legislation absent underlying congressional authorization. Analysis of the EO has therefore focused on whether and to what extent the executive branch may effectuate nationwide preemption via agency action or litigation strategy without new legislation. The EO directs a legislative proposal to establish a uniform federal approach that would expressly preempt conflicting state measures, implicitly recognizing Congress's central role. These dynamics suggest that preemption arguments advanced under the EO will likely rely on existing federal statutes, agency authorities, and classic conflict preemption theories, to be tested case-by-case.

Conditional spending and grant eligibility: The EO directs the Department of Commerce and other agencies to condition certain federal funds on state posture toward identified AI laws "to the maximum extent allowed by federal law." Legal questions exist regarding whether modifying the terms of federal funding or imposing retroactive conditions raises constitutional concerns under the Spending Clause of the U.S. Constitution and may exceed statutory authority if the conditions are not sufficiently related, clear, or authorized under applicable grant statutes. Whether BEAD-related and other discretionary grant conditions can be implemented as outlined will depend on program-specific statutes, timing, clarity of conditions, and the interplay with administrative law doctrines, which may be subject to legal challenge.

Agency action and potential preemptive standards: The EO's directives to the FCC and FTC contemplate federal standards or policy statements that could preempt conflicting state requirements or explain when state mandates may be preempted by the FTC Act. The legality and scope of any such preemption will likely turn on clear statutory authority, the substance of the rules or guidance issued, the nature of the conflict with state law, and associated administrative procedures. These proceedings, if initiated, would be subject to notice-and-comment procedures and may be subject to judicial review on both statutory and constitutional grounds.

Litigation posture and Commerce Clause themes: The AI Litigation Task Force is being established to challenge state AI laws alleged to burden interstate commerce or conflict with federal priorities. Courts will apply established Commerce Clause and preemption analysis to evaluate each challenged state law for extraterritorial effects, discriminatory or undue burdens on interstate commerce, and conflicts with federal statutes or programs. Given the diversity of state AI measures, outcomes may be highly context-specific, with potential for circuit splits and possible Supreme Court review if core federalism questions are squarely presented.

First Amendment and compelled outputs: The EO targets state laws that purportedly require "alterations to truthful outputs" or compel disclosures in ways that may trigger constitutional scrutiny. Future cases may examine whether specific state provisions constitute compelled speech, interfere with truthful commercial speech, or otherwise regulate model behavior in a manner that collides with federal consumer protection frameworks. The FTC policy statement called for by the EO would seek to clarify when state requirements may be preempted by the FTC Act in this context, which could become a focal point of subsequent litigation.

WHAT THIS MEANS FOR INDUSTRY AND STATE-REGULATED ENTITIES

For companies building or deploying AI systems nationwide, the EO signals a concerted federal effort to challenge certain state AI mandates, to condition select federal funds, and to explore agency-led preemptive standards. In the near term, this increases regulatory volatility, as state measures may be swiftly challenged, while federal agencies consider actions that could later unify or displace overlapping regimes.

Regardless of this uncertainty, entities should continue to implement robust AI governance programs—AI governance is crucial not only for compliance with existing and forthcoming legal and regulatory frameworks, but also for alignment with national frameworks and global laws like the EU AI Act. Furthermore, companies deploying AI solutions should remain mindful of established common law duties, especially in light of litigation against AI developers relating to chatbots involved in self-harm incidents. Proactive governance helps mitigate legal risks from multiple sources while monitoring action taken by federal agencies, state legislatures, and other stakeholders following the EO.

For states, the EO invites immediate choices about defense of existing frameworks, potential adjustments to maintain eligibility for certain federal programs, and participation in federal rulemakings that could affect preemption scope. Public statements by state officials and advocacy groups suggest robust opposition on federalism and statutory authority grounds, indicating that litigation timelines could be rapid and outcomes uncertain across jurisdictions.

At the same time, however, several states that were early AI regulators—particularly Utah and Colorado—have already begun softening or narrowing their regimes, signaling a shift from broad governance mandates to more targeted, risk-based obligations. In Texas, a comprehensive AI governance bill advanced against the backdrop of federal proposals to impose a moratorium on state AI regulation, underscoring the political and legal tension between state experimentation and a uniform national approach. The new EO adds to this tension by signaling that federal agencies may actively contest certain state AI laws, even as large states continue exploring robust consumer protection and anti-bias frameworks. This emerging dynamic creates both an opening and a moving target for companies operating nationwide AI programs.

KEY TAKEAWAYS

- The EO advances a unified federal AI framework and seeks to curb "onerous" state laws via DOJ litigation, funding conditions, and potential FCC/FTC regulatory activity, while preparing preemptive federal legislation for congressional consideration.
- Legal challenges are likely to focus on the limits of executive authority to preempt state law absent congressional action, the lawfulness and timing of conditional spending directives, and the statutory foundations and procedures for any agency rules or policy statements aimed at preemption.
- In the short term, expect heightened uncertainty as state laws are evaluated by the Department of Commerce, DOJ initiates challenges, and agencies consider federal

standards. We expect states to continue regulatory activity in this area.

- Companies should continue to build AI governance programs within their organizations. AI governance should continue to track developments closely and prepare for overlapping compliance considerations pending judicial resolution.

- Industry participants may want to engage with both federal and state policymakers on harmonization, while preparing for overlapping investigations under traditional consumer protection, data privacy, and civil rights laws that will continue to apply regardless of how AI-specific statutes are curtailed.

ENDNOTES:

[1] http://www.whitehouse.gov/presidential-actions/2025/12/eliminating-state-law-obstruction-of-national-artificial-intelligence-policy/.

[2] https://www.whitehouse.gov/presidential-actions/2025/12/eliminating-state-law-obstruction-of-national-artificial-intelligence-policy/.

[3] https://www.flgov.com/eog/news/press/2025/governor-ron-desantis-announces-proposal-citizen-bill-rights-artificial.

FinCEN PUBLISHES FIRST SET OF COMPLIANCE CONSIDERATIONS IN PARALLEL CIVIL AND DOJ ENFORCEMENT ACTIONS AGAINST CRYPTO COMPANY PAXFUL

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KEY POINTS

- On December 9, 2025, the U.S. Department of the Treasury's Financial Crimes Enforcement Network ("FinCEN") and the U.S. Department of Justice ("DOJ") took parallel enforcement actions against Paxful, Inc., Paxful USA, Inc., and/or Paxful Holdings Inc. (together, "Paxful" or the "Company"), a cryptocurrency peer-to-peer trading platform, relating to the Company's willful violations of multiple requirements of the Bank Secrecy Act ("BSA") and its implementing regulations over an extended period.

- FinCEN's consent order ("Order") assessed a $3.5 million civil monetary penalty based on Paxful's failures relating to: (i) maintaining its registration as a money services business ("MSB"); (ii) implementation of an effective, risk-based anti-money laundering ("AML") program; and (iii) submission of timely and complete suspicious activity reports ("SARs").

- FinCEN's action reinforces the agency's view that cryptocurrency peer-to-peer virtual asset platforms fall squarely within the BSA's regulatory perimeter. Additionally, FinCEN's press release[1] announcing the Order highlights FinCEN's core AML compliance considerations applicable to cryptocurrency and other virtual assets companies.

Notably, this is the first time FinCEN has included specific "Compliance Considerations" alongside an enforcement action, mirroring an approach long taken by OFAC in its sanctions enforcement releases.

- As with OFAC's Compliance Considerations, FinCEN's observations related to key areas of risk and compliance failures provide broader guidance to the crypto industry, rather than being limited to the particular facts of the Paxful case.

- This action also underscores that, notwithstanding the Trump Administration's generally favorable polices towards the crypto industry, FinCEN will continue to enforce BSA obligations applicable to crypto exchanges and other actors in the industry.

- In a related development in the Eastern District of California, Paxful agreed to plead guilty to conspiring to violate the Travel Act, conspiring to operate an unlicensed money transmitting business, and conspiring to violate the BSA's AML program requirement. The Company agreed to pay a criminal penalty of $4 million.

BACKGROUND

- FinCEN's Order[2] outlined the agency's determination that Paxful willfully violated multiple requirements of the BSA and its implementing regulations over an extended period. According to the Order, Paxful facilitated more than $500 million in suspicious activity involving various illicit actors and countries subject to comprehensive or significant U.S. sanctions restrictions, including Iran, North Korea, and Venezuela.

- In addition, Paxful qualified as an MSB, and although it registered with FinCEN in July 2015, it failed to re-register as required pursuant to FinCEN regulations. Indeed, Paxful did not re-register as an MSB until September 3, 2019, more than four years after its initial registration. FinCEN also found that Paxful failed to develop and implement an effective AML program reasonably designed to prevent the platform from being used to facilitate money laundering and other illicit activity. These deficiencies included weaknesses in customer risk assessment, transaction monitoring, and internal controls.

- With respect to SAR reporting, FinCEN identified significant failures, including delayed and incomplete filings despite the presence of clear indicators of potentially illicit conduct. According to FinCEN, these failures impaired law enforcement's ability to detect and investigate criminal activity conducted through the platform.

- In assessing this $3.5 million civil penalty, FinCEN cited factors commonly referenced in other BSA enforcement actions, including the nature and seriousness of the violations, their duration and the risks posed to the U.S. financial system. In determining the final penalty amount, the agency also credited certain remedial measures undertaken by Paxful, including steps taken to wind down U.S. operations and enhance compliance controls.

FinCEN'S COMPLIANCE CONSIDERATIONS AND KEY TAKEAWAYS

For the first time, FinCEN's press release announcing an enforcement action includes a section describing key "Compliance Considerations" arising from the case. This section mirrors an identically titled section that has for years appeared in the Office of Foreign Assets Control's ("OFAC") enforcement releases. With respect to the Paxful Order, key compliance considerations highlighted by FinCEN include:

- **MSB registration**. Cryptocurrency platforms and other virtual asset businesses must carefully assess whether their activities trigger MSB or other registration requirements and ensure timely registration and re-registration with FinCEN. Failure to register and re-register in accordance with regulatory requirements carries significant enforcement risk.
- **Risk-based AML programs tailored to crypto activity**. FinCEN emphasized that AML programs must be commensurate with the specific risks posed by a platform's products, services, customer base, and transaction flows, including peer-to-peer and cross-border virtual currency transactions. For example, firms should consider the nature of their customers' businesses when assessing the risk of potential illicit activities.
- **Effective transaction monitoring and SAR processes**. Firms must maintain systems capable of identifying suspicious activity and filing SARs that are timely, accurate, and sufficiently detailed. SAR obligations apply fully to cryptocurrency transactions.
- **Use of geolocation and related controls**. FinCEN highlighted the importance of Internet Protocol ("IP") address and geolocation data to identify transactions involving high-risk jurisdictions and prohibited parties, prevent misuse of virtual private networks ("VPNs") or location masking, and support AML and sanctions compliance. OFAC has long included similar guidance alongside its enforcement actions against companies in the cryptocurrency industry, including in its Sanctions Compliance Guidance for the Virtual Currency Industry.[3]
- **Integration of AML and sanctions compliance**. The compliance considerations reflect an expectation that firms align AML monitoring with sanctions screening and geographic risk assessments, recognizing overlapping risks and shared control frameworks.
- **Documentation and independent testing**. Firms should document their risk assessments, design of internal controls and efforts to remediate compliance gaps, and subject their AML programs to independent testing to ensure ongoing effectiveness.

BOTTOM LINE

The Order underscores FinCEN's continued focus on ensuring that cryptocurrency platforms comply with applicable BSA requirements and, through the Compliance Considerations, signals a more explicit use of the agency's enforcement actions to drive broader compliance. FinCEN's publication of specific compliance considerations related to the action—long a hallmark of OFAC enforcement—also suggests increased convergence with respect to how component agencies

within the U.S. Department of the Treasury communicate regulatory expectations to industry. Crypto and fintech businesses should view this action as a reminder that MSB registration, robust AML programs, geolocation controls and integrated sanctions compliance are among FinCEN's core regulatory expectations.

ENDNOTES:

[1]*See* https://www.fincen.gov/news/news-releases/fincen-assesses-35-million-penalty-against-paxful-facilitating-suspicious.

[2]*See* https://www.fincen.gov/system/files/2025-12/PaxfulConsentOrder.pdf.

[3]*See* https://ofac.treasury.gov/media/913571/download?inline.

MORE BANK CHARTERS, MORE CLARITY

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The OCC has granted conditional approval[1] for five national trust bank ("NTB") charters for institutions that will focus on innovative digital asset products and services. The approvals came at the end of the first year of the second Trump administration, as a wave of applicants seek the NTB charter for its federal preemption benefits and broad powers, and in anticipation of future GENIUS Act[2] compliance. We expect OCC approvals for NTBs to continue and more applicants to pursue the strategy.

Before the approvals were granted, the OCC also clarified[3] that various riskless principal transactions involving digital assets are permissible. National banks and federal branches of foreign banks may immediately rely on the clarification. Banks chartered by states that have wildcard statutes might also be able to leverage the interpretation.

KEY TAKEAWAYS

The OCC has demonstrated its credibility. In approving a handful of NTB applications, the OCC has shown the digital asset market that it is serious, and will charter new entities or convert existing institutions—despite staff reductions and an ambitious agenda on other fronts (*e.g.*, capital reform, supervisory reforms).

Structural choices suggest nuanced approaches. The approvals demonstrate various paths forward. For instance, some entities are converting state-chartered trust companies to NTBs, while others are chartering new NTBs to provide services to their state-chartered trust companies, which they will retain. This dual-structure option revisits some of the regulatory structures more common in the early 2000s when OCC regulated-entities were commonly affiliated with state-regulated entities. Regulator choices, at least for some, may not focus on streamlining in favor of flexibility over product and services offerings. For other applicants, a very basic and clean structure may be ideal.

Timing considerations still matter. The OCC aims to have a decision on these conditional approvals 120 days from the date the application is

formally "accepted"—not necessarily merely submitted. Some of these applications took longer. But the fact that the OCC did this ahead of the close of the calendar year is refreshing. If the OCC had slipped into 2026, it may have raised questions about whether the OCC could keep pace and limit additional applicants.

Capital clarity and future possibilities. The conditional approvals detail the capital and liquidity requirements. A key insight is that tier 1 capital ranges from $6 million to $25 million. The higher end was for a particularly established and larger institution.

- Given the size of the institutions involved (including their parent companies), the tier 1 capital range does not strike us as unreasonable when compared to national bank capital requirements, even those for community banks.
- In addition, the OCC has specified that essentially 50% of the tier 1 capital must be held in "Eligible Liquid Assets"—these are unencumbered cash, insured deposits with a maturity of 90 days or less, U.S. government obligations maturing within 90 days or less, ***and other assets for which the OCC provides its written nonobjection***.
- It will be particularly interesting to monitor whether the door has been opened for digital/tokenized assets to be deemed "eligible."
- Existing OCC guidance expects NTB applicants to possess 180 days of liquidity This is reaffirmed in the conditional approvals.

OCC approach is still measured. The issuance of five conditional approvals is notable because of the relative dearth that preceded them. That said, there are other pending applicants and many prospective ones. The OCC is a sophisticated regulator and is proceeding in an orderly and principled fashion.

- The OCC is still moderating its approach and not merely rubberstamping submissions. Applicants should note that even for credible applications and existing institutions, some remediation and additional guardrails may be required upon conversion to a NTB charter.

More approvals to come. Assuming the OCC continues in this way, we expect the next wave of approvals to follow in early 2026.

GENIUS Act rules implementation. The FDIC has announced its proposed rules; the OCC, Federal Reserve, and NCUA proposed rules are expected to follow soon. We currently expect that barring any serious regulatory or supervisory scrutiny at an individual institution, insured depository institutions and federal credit unions that want to set up GENIUS Act compliant subsidiaries will have their applications processed expeditiously.

IL 1188 clarifies national bank powers for riskless principal activities. The OCC also clarified in a new interpretive letter that various riskless principal activities are permissible for national banks, including NTBs, either as a bank power or as incidental to it. The clarification is helpful but not surprising, given that the OCC has reiterated in recent interpretations[4] that many other incidental powers should or do apply to digital asset activities and that the OCC takes a tech-neutral approach.

In these cases, the OCC is focused on economic substance, not labels. The intermediary in a risk-

less principal transaction conducts itself as the legal and economic equivalent of a broker acting as agent. At a very high level, the NTB offsets buy/sell orders, there is immediate resale, and no inventory held beyond settlement mechanics:

- Intermediary purchases an asset from one counterparty for immediate resale to a second counterparty, the ultimate purchaser of the asset.
- The intermediary's purchase of the asset from the initial counterparty is conditioned on an offsetting order from the second counterparty to purchase the same asset from the intermediary.
- Execution of the offsetting purchase and sale occurs effectively simultaneously.
- The intermediary does not hold any assets in inventory in connection with a riskless principal.

National banks have long acted as principal in relation to their customers' derivatives transactions.

For NTBs, like other national banks, that want to avoid proprietary dealing or balance-sheet risk inconsistent with a limited-purpose charter, riskless principal activity:

- Intermediates customer transactions without market risk
- Avoids inventory and directional exposure
- Looks economically like agency brokerage, which the OCC has long treated as within the business of banking
- Aligns with custody-centric and fiduciary narratives common to NTB charters.

OUR TAKE

The OCC's actions on digital assets and chartering continue to signal to the market, that now is a good time to enter the U.S. banking market via federal bank charter options. These latest developments are particularly helpful for *de novo* applicants and those seeking conversion of existing institutions.

ENDNOTES:

[1] https://www.occ.gov/news-issuances/news-releases/2025/nr-occ-2025-125.html.

[2] https://www.dwt.com/-/media/files/insights/2025/us-federal-crypto-and-digital-assets-legislation-w.pdf.

[3] https://www.dwt.com/-/media/files/2025/12/int1188.pdf.

[4] https://www.dwt.com/blogs/financial-services-law-advisor/2025/11/occ-crypto-assets-for-network-gas-fees.

STABLECOINS AND M&A

FinTech Law Report *spoke in early January to Pryor Cashman's* ***Jeffrey Alberts*** *on the topic of stablecoins and their potential impact on mergers and acquisition activity in the financial services sector. Alberts is the co-chair of the firm's Financial Institutions and FinTech Practice Groups, having previously spent time as a federal prosecutor in the U.S. Attorney's Office for the Southern District of New York.*

***FinTech*: How will the growth of stablecoins affect financial services consolidation in the medium term? Will there be greater pressure on banks, for example, to make acquisitions of fintechs or firms that specialize in crypto, in order to broaden their market exposure and offer a greater variety of crypto products to their clients?**

Jeffrey Alberts: In the medium term, stablecoins are likely to shift value in financial services away from the traditional deposit-and-payment rails and toward whoever controls the customer interface, wallets, on/off-ramps, and compliant liquidity management at scale.

Recent stablecoin legislation is important because it doesn't just "bring crypto into banking," it creates a clearer path for stablecoin companies to operate under a defined regulatory framework and compete more directly with traditional financial services firms by expanding products and services around stablecoin users. That competitive expansion is what will drive the most meaningful industry restructuring, including possible consolidation among stablecoin and crypto-infrastructure providers as compliance and governance costs rise. Banks will feel pressure to respond, and some will pursue acquisitions of fintechs or crypto specialists to accelerate capabilities, protect distribution, and avoid being relegated to a commoditized on/off-ramp role. But those deals are best understood as defensive efforts to minimize disruption and preserve customer relationships, not classic "financial services consolidation" aimed at scale through incumbent combinations.

FinTech: **Along with M&A opportunities, are there more opportunities for new fintech startup activity? Are there particular sectors or products that could use a broader universe of participants?**

Alberts: There are likely to be more opportunities for new fintech startup activity focused on AI. AI lowers the cost and time required to build, personalize, and iterate on regulated financial products while consumers and businesses increasingly expect "always-on" service. Fintech startups are especially well situated to develop products that make use of AI agents, including wealth management, trading, and financial advisory offerings that can deliver continuous monitoring, scenario testing, tax-aware actions, and tailored guidance at a fraction of the legacy cost structure.

FinTech: **Given the more pro-crypto stance taken by the current administration and Congress, and recent moves by the SEC that indicate a much wider acceptance of crypto than in the past, is it fair to say that regulatory uncertainty has greatly diminished? Are more traditional players feeling assured about making a move into alternative payment systems than they were, say, a year or two ago?**

Alberts: It's probably not fair to say regulatory uncertainty has "greatly diminished" so much as that the uncertainty is now operating in a more favorable direction for crypto companies and products, with regulators signaling an intent to draw clearer lines but still needing time to show how those lines will be applied in practice. For example, the SEC's creation of a Crypto Task Force with a stated goal[1] of seeking "to provide clarity on the application of the federal securities laws to the crypto asset market and to recommend practical policy measures that aim to foster innovation and protect investors" appears to reflect a genuine attempt to move from regulation-by-enforcement toward more predictable policy. Similarly, senior SEC messaging has acknowledged that the prior approach did not deliver workable clarity.

And at the same time, Congress is actively advancing market-structure and related digital-asset bills, which may ultimately be helpful, but for now are just competing proposals that may never become law. Participants will not view these positive developments in the areas of legislation

and enforcement as enhancing "certainty" because administrations change and enforcement philosophies and legislative priorities can swing over a few-year horizon. Traditional players do seem more assured about moving into alternative payment systems than they were during the Biden era, however, in large part because the tone has shifted from maximalist interpretations and surprise enforcement toward more open engagement and iterative guidance—even if the industry won't have true confidence until there's a longer track record of consistent application.

ENDNOTES:

[1] https://www.sec.gov/about/crypto-task-force.

THE FUTURE OF MONEY: A CENTRAL BANK PERSPECTIVE

By Piero Cipollone

Piero Cipollone is a member of the Executive Board of the European Central Bank. The following is edited from remarks he gave at a roundtable at Aspen Institute Italia in Rome, on December 19, 2025.

Money is at the heart of what central banks do.[1] Ever since central banks have existed, their core role has been to issue money and protect its value. That mandate will not change—but the technological environment in which we deliver it is changing, and it is changing radically.

Digital payments are now the norm, and new technologies are disrupting financial services. Financial institutions have become technological entities, and tech firms have entered the spheres of payments and finance.

Central banks are no exception. If they want money to remain stable, trusted and usable in a digital world, they must help shape that world and modernize central bank money. If they fail to do so, central banks may no longer be able to provide an anchor of stability to the financial system.

In the euro area context, there are good reasons for the central bank to not just follow but take the lead in the transformation of money. As a monetary union, we share a single currency and a single monetary policy. For that to work, we must ensure the singleness of money across the euro area: one euro must always be worth one euro, no matter its form and no matter where in the euro area.

The Eurosystem—that is, the ECB and the national central banks of euro area countries—has played a key role in this respect. In just 25 years the euro has become the currency of 20 countries (soon to be 21) and the world's second most important currency. The Eurosystem issues euro banknotes, which have become the tangible symbol of Europe's economic unity. And we have built robust infrastructures—T2 for large-value payments, T2S for securities, TIPS for instant payments and ECMS for collateral—which allow money and assets to move safely and efficiently across the euro area.

We now need to take the next steps. I will discuss the challenges we face, how public and private money can complement each other and what this means for retail, wholesale and cross-border payments. Our strategy is three-fold. First, we are getting ready for the potential issuance of a digital equivalent of cash: the digital euro. Second, starting [in 2026], we will make it possible to settle transactions based on distributed ledger technology ("DLT") in central bank money. And third, we are working on interlinking our fast pay-

ment system with those of other countries to enhance cross-border payments.

THREE PROBLEMS IN SEARCH OF A SOLUTION

Let me start with the challenge we face.

It has sometimes been suggested that digital central bank money is a solution in search of a problem. But it is increasingly acknowledged, even by those that dispute the solution, that we face a real issue in the euro area context. To paraphrase the title of Pirandello's famous play,[2] I see three problems in search of a solution.

First, retail payments in Europe are still fragmented. The Single Euro Payments Area ("SEPA") has integrated credit transfers and direct debits, but we still lack a European solution for everyday payments at the point of sale and in ecommerce that works throughout the euro area.[3] As a result, we rely heavily on a few non-European card and wallet providers. This dependence puts our strategic autonomy at risk.

Second, the nature of money and payments is changing. Tokenization and DLT promise more efficient capital markets.[4] Yet without tokenized central bank money at their core, these new ecosystems would rely on fragmented pools of private settlement assets, reintroducing credit risk and fragmentation. We would be more exposed to the expansion of settlement assets denominated in foreign currencies or issued elsewhere, which would undermine our monetary sovereignty. And public money would no longer provide the anchor of stability into which all private assets can be converted.

Third, cross-border payments remain too slow, too costly and too opaque. Stablecoins offer an alternative. But stablecoins come with a number of risks for domestic currencies and financial systems.[5] And if dollar-based stablecoins were to expand and continue dominating the market, they could erode the international role of the euro.

In this context, doing nothing is not a sound option. If central bank money were to become marginal in a digital world, we would risk having a less resilient payment system, a less stable financial system, weaker monetary sovereignty and reduced strategic autonomy. European financial institutions and infrastructures would be at a competitive disadvantage, and the euro's role could diminish.

BUILDING ON THE COMPLEMENTARITY OF PUBLIC AND PRIVATE MONEY

Our mandate does not allow us to ignore these risks. When the foundations of money and payments are shifting, the central bank must evolve as well. Our goal is not to crowd out private innovation, but to provide a solid public foundation on which innovation can flourish safely and at scale.

This requires a renewed public-private partnership across all payment dimensions - retail, wholesale and cross-border. Our strategy rests on three pillars: the complementarity of public and private money, a collaborative approach with market participants and strict technology neutrality.

Central bank money and private money are not rivals, they complement each other. Central bank money provides the ultimate settlement asset, free of credit and liquidity risk, and the reference that makes one euro equal to one euro across banks, instruments and technologies. The convertibility

of private money into central bank money gives people confidence that a euro is a euro, whatever form it takes.

This gives private intermediaries a solid basis on which to provide trusted and innovative services. Moreover, our infrastructures and standards provide common rails that the private sector can use across Europe. This reduces fragmentation, ensures interoperability and lowers costs in a network industry where scale and common standards matter.

We already offer digital central bank money and the associated rails for wholesale payments. And the digital euro would extend the same approach to retail payments, complementing cash with its digital equivalent and offering pan-European rails that private European providers can use to innovate and scale up their solutions. But we cannot stand still in wholesale payments either as the market explores the opportunities associated with tokenized securities, DLT-based trading and settlement, and smart contract automation.[6] For these innovations to be scaled up safely in Europe, central bank money has clear advantages in terms of safety, scalability and liquidity management compared with private settlement assets constrained by the reserves backing them and market risk. In fact, the private sector has been clear: the absence of central bank money as a settlement asset is a major obstacle to the growth of the digital asset ecosystem.

Our approach is explicitly collaborative. We engage with all stakeholders. We test solutions with the market rather than designing them in isolation. This is what we did in 2024 when we conducted the most extensive exploratory work on wholesale DLT settlement in central bank money in the world to date.[7] And we are following the same approach in preparing for the possible issuance of the digital euro. For instance, we collaborated with market participants to explore the digital euro's innovative potential.[8] And we will launch a pilot exercise that will offer banks an opportunity to gain first-hand experience in a simulated digital euro ecosystem.[9]

In supporting this digital transformation, we remain technology neutral. While being open to new technologies, we do not pick winners. Instead, we focus on setting the conditions for a safe, integrated system that is fit for the digital age and supports innovation.

SHAPING THE FUTURE OF MONEY

So, in practice, what are we doing to help shape the future of money?

The Digital Euro

In the retail space, we are working on the potential issuance of a digital euro. Assuming that European co-legislators adopt the Regulation on the establishment of the digital euro in the course of next year, a pilot exercise and initial transactions could take place as of mid-2027, and the digital euro could be ready for first issuance in 2029.

The digital euro would be a digital form of cash. It would offer a public solution that is legal tender and can thus be used to pay wherever merchants accept digital payments, throughout the euro area, in both physical and online shops.

The digital euro would extend the benefits of physical cash to the digital sphere. At a time when the role of cash in day-to-day payments is declining, it would ensure that consumers always have a

European option to pay digitally. This would increase consumers' freedom of choice and Europe's strategic autonomy. The digital euro would be available both online and offline, supporting resilience and privacy. And by avoiding excessive reliance on a few dominant players, it would reduce costs for merchants and ultimately prices for consumers.

The digital euro is also being designed to preserve the role of banks in financing the economy. Banks will distribute the digital euro, maintain customer relationships and manage digital euro accounts or wallets. They will be remunerated for these services. Moreover, we have included safeguards to preserve banks' role in credit intermediation and monetary transmission:[10] the digital euro will not bear interest, holding limits will prevent destabilizing outflows and links to existing bank accounts will allow consumers to seamlessly pay amounts that exceed their digital euro holdings.

For payment service providers, including banks, the digital euro is an opportunity. A single European standard, backed by legal tender status and an unparalleled acceptance network, will make it easier to scale up European cards, wallets and value-added services. Co-badging existing solutions with the digital euro[11] and building on common standards will lower the cost of expanding acceptance and make it easier for European initiatives to expand across the euro area.

Tokenized Central Bank Money

In wholesale payments and capital markets, we aim to make tokenized central bank money available to support an integrated European market for digital assets.

Tokenization can reduce reconciliation, shorten settlement chains, enable atomic delivery-versus-payment and allow near-continuous trading and settlement.[12] But without a common, risk-free settlement asset, liquidity can splinter, assets may not be traded across platforms and the landscape could fragment along national or private lines.

Tokenization also offers us the opportunity to design an integrated European market for digital assets—in other words, a digital capital markets union—from the outset. Providing tokenized central bank money is essential for this digital asset ecosystem to grow in Europe and not elsewhere. This will also ensure it is built on European infrastructures, euro settlement and EU-wide rules.

To this end, the ECB is pursuing a dual-track approach.[13]

Project Pontes will connect market DLT platforms to our existing TARGET services, so that tokenized asset transactions can be settled in central bank money.[14]

Project Appia will explore two possible approaches for an integrated digital asset ecosystem, which could potentially be combined.[15] First, a European shared ledger that brings together central bank money, commercial bank money and other assets on a single platform where market stakeholders provide services. Second, a European network of interoperable platforms that reduces current frictions in the market.

Interlinking Fast Payment Systems

In cross-border payments, our objective is openness with autonomy.

Today, many cross-border transactions still pass through long correspondent banking chains, making them slow, costly and opaque. One possible future would see global, dollar-based stablecoins

and their platforms dominate cross-border payments, creating risks of new dependencies and currency substitution.

We want a different path.

Within Europe, TIPS already provides instant settlement in central bank money and is being extended across currencies. In the near future, TIPS could evolve into a global hub for instant cross-border payments. By interlinking TIPS with the fast payment systems of other countries, starting with India and other partners worldwide, we can cut intermediaries, shorten transaction chains and lower costs.

The digital euro, too, is being designed with potential international use in mind, in a way that respects other countries' sovereignty and avoids unwanted currency substitution. It could in time act as a connector, adding another safe option for cross-border payments. Moreover, like TIPS, the digital euro's design includes multi-currency enabling features that would allow non-euro area countries to use the digital euro infrastructure to offer their own digital currencies and facilitate transactions across these currencies.

CONCLUSION

Technological disruption is transforming money and finance. For Europe, this is both a risk and an opportunity. If we simply rely on foreign private solutions, we will import technologies, standards and dependencies and risk fragmentation and instability. If we act together, we can build an innovative, integrated and resilient digital financial system that has the euro at its core but remains open and respectful of the sovereignty of our partners.

Our strategy is clear. Central bank money must remain available and usable, also in digital form, as the anchor of trust. Public and private sectors must work together. The Eurosystem provides settlement in central bank money and common standards, thereby giving private intermediaries a sound basis for competing and innovating. And markets, not the central bank, will decide which technologies and business models succeed, within a framework that keeps money and payment systems safe and integrated.

In retail payments, the digital euro will complement cash and support a truly European market for everyday digital payments.

In wholesale markets, tokenized central bank money through projects such as Pontes and Appia will make it possible to settle digital asset transactions safely in central bank money.

In cross-border payments, interlinking fast payment systems and exploring tokenized settlement will make payments cheaper, faster and more transparent while preserving our monetary sovereignty.

The choice before us is simple: watch the future of money being shaped elsewhere, or help design it ourselves. By acting now, in partnership with the private sector, Europe can lead in the transformation of money, support its competitiveness and resilience, and deliver tangible benefits for citizens and businesses.

ENDNOTES:

[1]This contribution is an abridged version of Cipollone, P., "The transformation of money: technological disruption and the future of financial services," guest lecture at the Frankfurt School of Finance & Management, December 8, 2025. (*See* https://www.ecb.europa.eu/press/key/date/2025/h

tml/ecb.sp251208~4c07c78304.en.html).

[2]Pirandello, L. (1921), Six Characters in Search of an Author.

[3]Cipollone, P., "Innovation, integration and independence: taking the Single Euro Payments Area to the next level," speech at the ECB conference on "An innovative and integrated European retail payments market," April 24, 2024 (https://www.ecb.europa.eu/press/key/date/2024/html/ecb.sp240424~12ecb60e1b.en.html).

[4]Decentralized ledger technology allows information to be shared and kept synchronized across a network. Tokenization is the process of converting or issuing assets as programmable tokens. Tokenization allows programmable tokens to carry two sets of information at the same time: information about the asset itself (what it is, who issued it, who holds it, etc.) and the rules about how this token can be used (who can hold it, how it can change ownership, as well as more complex rules compiled into smart contracts).

[5]*See* Cipollone, P., "Stablecoins and monetary sovereignty," presentation at the Euro50 Group Meeting, 18 October 2025 (https://www.ecb.europa.eu/euro/digital_euro/timeline/profuse/shared/pdf/ecb.deprep251030_digital_euro_fit_payment_ecosystem_report.en.pdf).

[6]Cipollone, P., "Tokenisation and the future of finance: the role of central bank money," presentation at the Central Bank of Ireland's Financial System Conference 2025, November 2025. (https://www.ecb.europa.eu/press/key/date/2025/html/ecb.sp251125~754585ec10.en.pdf)

[7]"ECB, Bridging innovation and stability: the Eurosystem's exploratory work on new technologies for wholesale central bank money settlement, June 2025 (https://www.ecb.europa.eu/press/pubbydate/2025/html/ecb.exploratoryworknewtechnologies202506.en.html).

[8]*See* ECB, Digital euro innovation platform -Outcome report: pioneers and visionaries workstreams, Sept. 2025 (https://www.ecb.europa.eu/euro/digital_euro/timeline/profuse/shared/pdf/ecb.deprep250926_innovationplatform.en.pdf) and Cipollone, P., "Preparing the future of payments and money: the role of research and innovation," keynote speech at the conference "The future of payments: CBDC, digital assets and digital capital markets," hosted by Bocconi University, the Centre for Economic Policy Research and the European Central Bank, September 26, 2025 (https://www.ecb.europa.eu/press/key/date/2025/html/ecb.sp250926~e856d2e386.en.html).

[9]ECB, "Eurosystem to invite payment service providers to participate in digital euro pilot," MIP News, November 28, 2025 (*See* https://www.ecb.europa.eu/press/intro/news/html/ecb.mipnews251128.en.html).

[10]*See* ECB (2025), Technical data on the financial stability impact of the digital euro, October 2025 (See https://www.ecb.europa.eu/euro/digital_euro/timeline/profuse/shared/pdf/ecb.deprep251010_technical_annex_financial_stability_impact_digital_euro.en.pdf?f55d1581c257d73d86ad560edce18c17).

[11]Co-badging domestic private schemes and the digital euro would mean that domestic schemes would be the preferred brand wherever they were accepted, and the digital euro would be the fall-back solution wherever they were not accepted. *See* ECB, Fit of the digital euro in the payment ecosystem-Report on the dedicated Euro Retail Payments Board technical workstream, October 2025.

[12]Vlassopoulos, T., "Making wholesale central bank money fit for the digital age - Delivering innovation, integration and independence to Europe's wholesale financial markets," speech at the House of the euro, November 7, 2025. https://www.ecb.europa.eu/press/intro/events/shared/pdf/fs25/keynote-address-house-of-the-euro-event.pdf.

[13]ECB, "ECB commits to distributed ledger technology settlement plans with dual-track strategy," press release, July 1, 2025. https://www.ecb.europa.eu/press/pr/date/2025/html/ecb.pr250701~f4a98dd9dc.en.html.

[14]*See* the ECB's webpage on Project Pontes. https://www.ecb.europa.eu/paym/target/pontes/html/index.en.html.

[15]*See* the ECB's webpage on Project Appia. https://www.ecb.europa.eu/paym/dlt/appia/html/index.en.html.

FINTECH LAW REPORT: DECEMBER 2025 REGULATION AND LITIGATION UPDATE

By Duncan Douglass, Jennifer Aguilar and CJ Blaney

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LEGISLATIVE AND REGULATORY DEVELOPMENTS

OCC Issues Interpretative Letter Regarding Riskless Principal Crypto-Asset Transactions

On December 9, 2025, the Office of the Comptroller of the Currency ("OCC") issued Interpretative Letter 1188 confirming that national banks may engage in riskless principal crypto-asset transactions with and on behalf of their customers because such transactions are part of the business of banking ("Crypto Interpretive Letter").[1]

The Crypto Interpretive Letter describes a riskless principal transaction as one in which an intermediary purchases an asset from one counterparty for immediate resale to a second counterparty. The intermediary's purchase of the asset from the initial counterparty is conditioned on an offsetting order from the second counterparty to purchase the same asset from the intermediary. Execution of the offsetting purchase and sale occurs effectively simultaneously.

Riskless principal securities transactions are expressly permissible under 12 U.S.C.A. § 24(Seventh) and, thus, the Crypto Interpretive Letter finds that riskless principal transactions with crypto-assets that are securities are clearly permissible.

The Crypto Interpretive Letter goes on to analyze riskless principal transactions in crypto-assets that are not securities under the factors[2] the OCC considers when determining whether an activity is part of the business of banking. It finds that:

- such transactions are the functional equivalent to recognized bank brokerage activities and a logical outgrowth of crypto-asset custody activities, which have previously been determined to be permissible[3];
- offering such transactions benefits bank customers by providing customers with more options and the ability to receive a service provided by a highly regulated bank[4]; and
- that the main risk related to the transactions is settlement risk, which banks are experienced in managing.

Based on this analysis, the Crypto Interpretive Letter concludes that riskless principal crypto-asset transactions are permissible under 12 U.S.C.A. § 24(Seventh).

You can access the Crypto Interpretive Letter here: https://www.occ.gov/topics/charters-and-licensing/interpretations-and-actions/2025/int1188.pdf.

OCC Conditionally Approves National Trust Bank Charter Applications Despite Industry Concerns

On December 12, 2025, the OCC announced the conditional approval of five national trust bank charter applications.[5] In evaluating the applications, the OCC explained that it "applied the same

rigorous review and standards it applies to all charter applications" and that its review was "consistent with applicable statutory and regulatory factors."[6] The OCC also explained that custody and safekeeping activities are fiduciary activities and that management of reserves is related to such fiduciary activities.[7] Conditions for final approval include limiting operations to trust company activities; ensuring the company does not meet the definition of a "bank" under the Bank Holding Company Act; meeting capital and liquidity requirements; providing information about any "senior executive officer"; and maintaining policies and procedures to ensure compliance with OCC regulations and safety and soundness standards.[8]

The OCC's conditional approvals were granted notwithstanding comment letters[9] submitted by the Bank Policy Institute ("BPI") urging the OCC to reject limited-purpose national trust company charter applications from various digital asset companies ("Charter Application Letters").[10] BPI claims that the applicants do not plan to operate "genuine trust companies" and approving the applications would allow nonbank financial companies to select a "lighter regulatory touch while offering bank-like products."[11] BPI contends that limited-purpose national trust companies engaging bank-like activities raises systemic risk concerns and that companies seeking to engage in banking activities should obtain banking charters.[12]

In the Charter Application Letters, BPI argues that approving these applications would (i) exceed the scope of the OCC's authority by providing national trust bank charters to institutions predominately engaging in activities other than trust and fiduciary activities; (ii) put the U.S. financial system at risk by allowing national trust bank charters to be used in new and untested manners; and (iii) create an unlevel playing field that harms traditional federal- and state-chartered banks.[13] BPI asserts that, to obtain a national bank charter, a company must engage in fiduciary activities, such as acting as a trustee, exercising investment discretion, or providing fee-based investment advice. BPI claims that the companies' applications do not identify any fiduciary activities and instead describe the companies' intention to operate digital asset trading platforms, offer digital asset custody services, or manage reserves. As such, BPI contends the companies are not eligible for trust charters. BPI further argues that these companies present additional risk given the volatility of the digital asset industry. BPI also expresses concern that each of the applications contains very little public information as the applications were heavily redacted, which inhibits the public's ability to provide meaningful comments.

You can access the OCC announcement here: https://www.occ.treas.gov/news-issuances/news-releases/2025/nr-occ-2025-125.html.

You can access the Charter Application Letters here: https://bpi.com/bpi-urges-occ-to-preserve-the-integrity-of-national-trust-charters//

Federal Reserve Seeks Input on Check Services

On December 8, 2025, the Board of Governors of the Federal Reserve System ("Board") issued a request for information regarding the future of the Federal Reserve Banks' ("Reserve Bank") check services ("Fed Check RFI").[14] While recognizing the Reserve Banks' important historical role in check collection and their ongoing processing of millions of checks each day, the Board identifies the steady decline in check use and the Reserve

Banks' aging check infrastructure as challenges to the long term viability of their check services. As the Reserve Banks have already significantly reduced the operational footprint of their check services, fixed infrastructure costs are now the primary costs of running the services, making it difficult for the check services to be offered at their current prices while still meeting the cost recovery requirements of the Monetary Control Act.

The Board suggests four possible strategies to address these challenges: (1) continue the Reserve Banks' check services largely as they exist today without investment in new infrastructure and with the expectation of significant degradation of the services' reliability over time; (2) significantly simplify the services, including by discontinuing certain offerings, to minimize necessary infrastructure investments; (3) wind-down the services; or (4) lean into check services by making significant investments in infrastructure and potentially supporting enhancements to the security of checks.

Public input from the Fed Check RFI will enable the Board to analyze possible strategies for the Reserve Banks' check services in light of, among other factors, the public's view of the future of checks in the nation's payments system. The Board notes that if its analysis supports a strategy for the Reserve Banks' check services that may have significant longer-run effects on the nation's payments system, it will seek comment again on any specific proposal prior to adoption.

Comments on the Fed Check RFI are due March 9, 2026.

You can access the Fed Check RFI here: https://www.federalregister.gov/documents/2025/12/09/2025-22272/request-for-information-and-comment-on-the-future-of-the-federal-reserve-banks-check-services.

Nacha Issues Request for Comment on Same Day ACH Transaction Limit

On November 10, 2025, Nacha issued a request for comment on increasing the transaction limit for Same Day ACH from $1 million to $10 million ("Same Day ACH Proposal").[15] The increased transaction limit would apply to all Same Day ACH payments. Nacha expects the increase to create additional use cases for Same Day ACH and to enhance adoption and also notes that the increase would bring Same Day ACH in line with RTP and FedNow, which both have a $10 million transaction limit. Nacha is seeking input from the industry on the increase, the risks and impacts involved, and the potential use cases. The Same Day ACH Proposal would become effective on March 19, 2027.

You can access the Same Day ACH Proposal here: https://www.nacha.org/rules/request-comment-increasing-same-day-ach-dollar-limit-10-million.

Senators and State AGs Seek Information from BNPL Providers

On November 18, 2025, Senators Elizabeth Warren (D-MA), Richard Blumenthal (D-CT), Cory Booker (D-NJ), Tammy Duckworth (D-IL), and Mazie Hirono (D-HI) issued letters to several companies that provide buy now, pay later ("BNPL") products ("Senate BNPL Letters").[16] The Senate BNPL Letters request information from the BNPL providers to better understand the products and their impacts on consumers. The Senate BNPL Letters follow the Trump Administration's withdrawal of the Consumer Financial Protection Bureau's ("CFPB") interpretive rule

regulating BNPL products under the Truth in Lending Act and the CFPB's announcement that "it would no longer prioritize enforcement actions against BNPL providers."[17]

In the Senate BNPL Letters, the Senators request that the BNPL providers give descriptions of each product; average loan amounts; payment methods, including data on returned payments and late fees; processes for assessing consumer eligibility and creditworthiness; returns and disputes; and collections. The Senators also ask for copies of disclosures, agreements, checkout screens, and state licenses. Responses to the Senate BNPL Letters were due by December 9, 2025.

On December 1, 2025, the attorneys general of California, Connecticut, Colorado, Illinois, Minnesota, North Carolina, and Wisconsin also issued letters to several BNPL providers ("AG BNPL Letters").[18] The AG BNPL Letters also cite to concerns resulting from withdrawal of the CFPB's interpretive rule and consumer protection impacts as the impetus for the letters.[19] The AG BNPL Letters request information including loan product pricing and repayment; procedures for purchase and billing disputes; ability to pay assessments; credit reporting; and delinquencies and defaults, and also request copies of disclosures, agreements, and checkout screenshots.

You can access the Senate BNPL Letters here: https://www.banking.senate.gov/newsroom/minority/warren-blumenthal-booker-duckworth-hirono-press-buy-now-pay-later-companies-for-data-on-rapidly-growing-industry-as-trumps-attack-on-cfpb-leaves-consumers-vulnerable.

You can access the AG BNPL Letters here: https://oag.ca.gov/news/press-releases/borrow-now-pay-later-attorney-general-bonta-has-questions.

LITIGATION AND ENFORCEMENT DEVELOPMENTS

CFPB Funding Battle Continues in Court

On November 10, 2025, the Department of Justice ("DOJ") filed a notice, on behalf of the CFPB, with the United States District Court for the District of Columbia in the ongoing litigation regarding the CFPB's operations ("CFPB Funding Litigation") informing the court that the CFPB expects to deplete its funding by early 2026 and that it is up to Congress to determine whether to provide additional funding.[20] In connection with the notice, the DOJ submitted a legal memorandum analyzing the CFPB's funding structure to support its position ("CFPB Funding Memo"). Without such funding, the CFPB will be unable to comply with the court's injunction mandating the continuation of certain operations.

Under the Dodd-Frank Act, the CFPB is funded from the "combined earnings of the Federal Reserve System," subject to a statutory cap, and, if such amounts are insufficient, the CFPB may issue a report to the President and Congress and additional funds may be provided through the appropriations process.[21] The DOJ explains that, by statute, the Federal Reserve System ("FRS") must generally disburse funds from its revenue in a specific order: (1) interest expenses (which are amounts owed to depositors), (2) operating expenses, (3) dividends to the Reserve Banks' stockholders, and (4) amounts allocated to a surplus fund ("Disbursement Statute").[22] After such disbursements, any remaining amount is transferred to the Department of the Treasury's ("Treasury") general fund.[23] In recent litigation implicating the CFPB's funding structure, opponents argued that "combined earnings" was the amount remaining

after all disbursements, and the CFPB, under previous administrations, argued that it means the amount of revenue before any disbursements.[24] While the courts have considered the parties' arguments, they have not reached a conclusion regarding the definition of "combined earnings."[25]

In its assessment, the DOJ reviewed the Congressional record, standard accounting principles, and the FRS's financial records. The DOJ rejected the argument that "combined earnings" means revenue, explaining that Congress used the term "revenue" in other parts of the Dodd-Frank Act and that, under accounting principles, earnings generally refers to profit or net income rather than revenue.[26] The DOJ also rejected the argument that "combined earnings" means the amount after all disbursements are made.[27] Rather, the DOJ concluded that "combined earnings" refers to the profits of the FRS, which is the amount after interest expenses are deducted from revenue.[28] The DOJ explained that such interpretation is consistent with Congress' intent to provide a stable funding source for the CFPB as, at the time the Dodd-Frank Act was enacted, the FRS always maintained a profit and to ensure the FRS did not have to take on additional expenses in the event it became unprofitable.[29] Further, the DOJ noted that the FRS's financial records list payment to the CFPB as an "operating expense."[30] As the FRS does not currently have any "combined earnings," the appropriate recourse is for the CFPB to make a report to the President and Congress for additional funds.[31]

On November 20, 2025, acting director Russell Vought submitted a report to the President and Congress regarding the CFPB's funding ("CFPB Funding Report").[32] Relying on the analysis in the CFPB Funding Memo, Vought explained that the FRS has no "combined earnings" on which the CFPB may draw and noted that the CFPB's funding need for 2026 is approximately $280 million. Vought stated that the "figure is provided solely to make the statutorily required report setting out the 'funding needs' of the [CFBP]" and did not specifically request any funding.

On November 23, 2025, the plaintiffs in the CFPB Funding Litigation filed a motion asking the court to clarify that a refusal to fund the agency is not a permissible reason for violating the injunction ("CFPB Injunction Motion").[33] The plaintiffs argue that "combined earnings" means all the money the FRS earns before any disbursements and that the FRS has sufficient earnings to fund the CFPB.[34] The plaintiffs explain that earnings generally refers to income or revenue and that Congress sought to insulate the CFPB from the appropriations process by funding the agency directly from the FRS.[35] The plaintiffs also cite to testimony from Federal Reserve Chairman Jerome Powell stating that the Dodd-Frank Act requires the payments to the CFPB even when the FRS is operating at a loss.[36]

As to the CFPB Funding Memo, the plaintiffs contend that standard accounting principles are not persuasive because the FRS is not a corporation and the purpose of the FRS is not to generate profit but to set monetary policy.[37] The plaintiffs argue that the Disbursement Statute refers to "net earnings" to describe the amount of earnings after "all necessary expenses" so "earnings" must refer to all money earned.[38] The plaintiffs also point out that the DOJ's interpretation fails to describe how the CFPB would determine whether interest expenses exceed revenue as such determination is dependent on a particular time period, which is not provided for in the Dodd-Frank Act, and

would result in the FRS having to choose between monetary policy and funding the CFPB.[39]

On December 10, 2025, a group of former FRS officials filed an amicus brief in support of the CFPB Injunction Motion ("FRS Brief").[40] The FRS Brief explains that the CFPB Funding Memo fails to consider the FRS's interpretation of its "combined earnings" and operations and that, even under the DOJ's interpretation, the FRS is profitable.[41] The FRS Brief describes the accounting principles used by the FRS and how such principles are different from standard accounting principles because the FRS is a central bank and notes that it does not track the amount of "profits" described in the CFPB Funding Memo and failure to generate such profits does not impact the FRS's operations or ability to pay its expenses.[42] The FRS Brief also cites to recent FRS financial statements to demonstrate that its revenues exceed interest expenses such that the FRS has "combined earnings" as defined by the CFPB Funding Memo.[43] On December 16, 2025, the DOJ submitted a letter to the FRS requesting the FRS's opinion on whether it has "combined earnings" as defined by the CFPB Funding Memo and whether it anticipates having "combined earnings" in the coming weeks.[44]

The case before the United States District Court for the District of Columbia is *National Treasury Employees Union, et al. v. Vought*, No. 1:25-cv-00381-ABJ. You can access the docket here: https://www.courtlistener.com/docket/69624423/national-treasury-employees-union-v-vought/.

District Court Prevents CFPB From Enforcing 1033 Final Rule; Congress Responds to 1033 ANPR

On October 29, 2025, the District Court for the Eastern District of Kentucky granted a motion brought by Forcht Bank, N.A., the Bank Policy Institute, and the Kentucky Bankers Association (collectively, the "1033 Plaintiffs") asking the court to stay the compliance deadline of the CFPB's final rule on personal financial data rights under Section 1033 of the Consumer Financial Protection Act ("1033 Final Rule") and to enjoin its enforcement for one year following the conclusion of the lawsuit ("1033 Enforcement Motion").[45] On July 29, 2025, the CFPB informed the court of its intent to reconsider the 1033 Final Rule and the litigation was stayed as result.[46] The 1033 Plaintiffs then filed the 1033 Enforcement Motion to prevent the 1033 Final Rule from taking effect on April 1, 2026, while the CFPB engaged in the rulemaking process to revise the rule.[47] The Financial Technology Association ("FTA"), as intervenor defendant, opposed the motion. On August 22, 2025, the CFPB issued an advance notice of proposed rulemaking requesting comment on certain aspects of the 1033 Final Rule ("1033 ANPR").[48]

The court granted the 1033 Enforcement Motion as it determined that the 1033 Plaintiffs were likely to succeed on the merits and would suffer irreparable harm if the injunction was not granted. As to the merits, the court considered the parties' arguments related to the definition of "consumer," data security, fees, and compliance deadlines. The 1033 Plaintiffs argued that "consumer," which is defined to include an "agent, trustee, or representative," should only include third parties who hold a fiduciary relationship with the consumer rather than any authorized third party.[49] FTA contended the definition's plain language does not require a fiduciary relationship such that any authorized third party should be considered a representative.[50] The court explained that "agent" and "trustee" both describe fiduciary relationships, and the term

"representative . . . should be read in harmony with its companion terms."[51] As such, the court concluded that the 1033 Plaintiffs' narrower definition was likely the appropriate interpretation.[52]

The 1033 Plaintiffs also argued that the 1033 Final Rule puts sensitive consumer data at risk, unlawfully prohibits banks from charging data access fees, and sets unreasonable compliance deadlines based on "future 'consensus standards' to be developed by private standard-setting organizations" which have yet to be developed.[53] The FTA claimed that the 1033 Final Rule appropriately addressed the data security concerns, the fee prohibition is consistent with the statute, and the compliance deadlines are based on the data providers' size and revenue.[54] The court generally sided with the 1033 Plaintiffs noting that the CFPB did not address the cumulative data security impacts or explain how data providers could comply with standards that may not exist by the stated compliance deadlines.[55]

Finally, the 1033 Plaintiffs explained they would be irreparably harmed by the costs incurred to comply with the 1033 Final Rule.[56] The FTA argued that such costs were speculative and that similar compliance costs are likely to be incurred under a future rule.[57] The court explained that compliance costs incurred in anticipation of a rule constitute irreparable harm and that it is "unreasonable" to require the 1033 Plaintiffs to incur costs for complying with a rule that is under reconsideration.[58] As the court determined the 1033 Plaintiffs were likely to succeed on the merits of their claim and would suffer irreparable harm, the court granted the 1033 Enforcement Motion enjoining the CFPB from enforcing the 1033 Final Rule until it has completed its reconsideration process.[59]

On November 14 and 19, 2025, the House Committee on Financial Services and Senators Elizabeth Warren (D-MA), Richard Blumenthal (D-CT), and Ron Wyden (D-OR) wrote letters to the CFPB on the 1033 ANPR ("1033 ANPR Letters").[60] The 1033 ANPR Letters urge the CFPB to adopt a broad definition of "consumer" that covers any authorized third party because the term "representative" is not limited to those with fiduciary duties. The House 1033 ANPR Letter also urges the CFPB to incorporate data privacy and security requirements imposed under the Gramm-Leach-Bliley Act ("GLBA") into the 1033 Final Rule and to allow data access through application programming interfaces and screen scraping as the latter provides flexibility necessary for smaller financial institutions. The Senate 1033 ANPR Letter encourages the CFPB to prohibit data access fees as such fees would allow large banks to stifle competition and innovation by requiring competitors to pay "exorbitant fees" to provide consumers with access to their data. In support of their argument, the Senators cite to recent reports that JPMorgan attempted to impose a "massive fee" on Plaid for data access.

The case before the United States District Court for the Eastern District of Kentucky is *Forcht Bank, NA et al v. Consumer Financial Protection Bureau et al*, No. 5:24-cv-00304-DCR. You can access the docket here: https://www.courtlistener.com/docket/69302685/forcht-bank-na-v-consumer-financial-protection-bureau/.

You can access the 1033 ANPR Letters here: https://www.banking.senate.gov/imo/media/doc/2025.11.19%20Letter%20to%20Vought%20re%20Rule%201033.pdf *and:* https://files.constantcontact.com/9f2b5e3d701/6359425a-6ec8-4aca-80ae-4ac1b7b3ed3d.pdf.

Tenth Circuit Rules that Federal Reserve Banks Have Discretion to Deny Master Accounts

On October 31, 2025, the U.S. Court of Appeals for the Tenth Circuit (the "Tenth Circuit") affirmed a district court ruling that the Reserve Banks have the discretion to deny applications for a Federal Reserve master account ("Master Account").[61] Custodia Bank, Inc. ("Custodia"), a Wyoming-chartered special purpose depository institution that provides banking and custody services specifically for digital assets, applied for a Master Account with the Federal Reserve Bank of Kansas City ("FRBKC") in October 2020.[62] While the application was pending, the Board published guidelines in August 2022 regarding Master Account application reviews that created three tiers, which generally consider risks to the FRS based on the applicant's business activities and regulatory oversight.[63] Custodia fell into the highest risk tier, which is subject to the strictest level of review, because it focused on digital assets, was not regulated by a federal banking agency, and was not federally insured.[64] Based on review in accordance with the new rule, the FRBKC informed the Board that it intended to deny Custodia's application, the Board responded that it had "no concerns" with such decision, and the FRBKC formally denied Custodia's application in January 2023.[65] Custodia sued the Board and FRBKC in June 2022 and amended its complaint in January 2023 after its application was denied, claiming that it was statutorily entitled to a Master Account.[66] The district court dismissed Custodia's complaint, holding that the Reserve Banks have discretion whether to approve applications for a Master Account, and Custodia appealed.[67]

First, the Tenth Circuit analyzed section 342 of the Federal Reserve Act, which states that "[a]ny Federal reserve bank may receive . . . deposits of current funds in lawful money, national-bank notes, Federal reserve notes, or checks."[68] The court concluded that the phrase "may receive" in the statute provides discretion to not receive deposits, thus impliedly granting discretion to deny applications for a Master Account since a Master Account's purpose is to accept deposits.[69]

Next, the court analyzed section 248a of the Monetary Control Act, which lays out principles for fees that Reserve Banks may charge and states that "[a]ll Federal Reserve bank services covered by the fee schedule shall be available to nonmember depository institutions."[70] Custodia argued that this requires the Reserve Banks to provide a Master Account to all eligible institutions.[71] The court highlighted that section 248a is solely concerned with pricing services for member and nonmember institutions in a nondiscriminatory manner rather than access to a Master Account.[72] Additionally, section 248a is directed at the Board, which does not make determinations regarding access to a Master Account.[73] The court also noted that section 248a does not say that the services must be available to "all" nonmember depository institutions and that the general obligation for the Board to make services available does not entitle nonmember institutions to a Master Account.[74]

Finally, the court analyzed section 248c of the Monetary Control Act, which requires the Board to maintain a public database listing every entity that applies for a Master Account, including whether the application was approved, rejected, pending, or withdrawn and the type of eligible entity that made the application.[75] As the statute addresses rejected applications and eligible entities, the court reasoned that Congress contemplated that the Reserve Banks may reject applica-

tions from eligible entities.[76] Based on the language in these statutes, the court concluded that the Reserve Banks have discretion to approve or deny applications for a Master Account from eligible entities.[77]

The court also rejected Custodia's arguments under the Administrative Procedure Act ("APA") and the Due Process Clause of the U.S. Constitution. The court dismissed the APA argument, explaining that judicial review under the APA is only available for "final agency action" and that there was no final agency action because the decision to deny Custodia's application rested with FRBKC rather than the Board and the Board's "no concerns" email was simply an "intermediate advisory step."[78] Custodia also argued that, if FRBKC has discretion to deny applications, then FRBKC's board of directors, "which is largely chosen by and partially composed of self-interested executives from competitor banks," has regulatory authority over Custodia in violation of the Due Process Clause.[79] The court rejected this argument, explaining that application decisions are made by the Reserve Bank's president, not the board of directors, and the presidents are elected by those directors who are prohibited from being representatives of competing institutions.[80]

The case before the Tenth Circuit Court of Appeals is *Custodia Bank, Inc. v. Federal Reserve Board of Governors*, 157 F.4th 1235 (10th Cir. 2025). You can access the docket here: https://www.courtlistener.com/docket/68486662/custodia-bank-v-federal-reserve-board-of-governors/?page=2.

ENDNOTES:

[1]OCC, Interpretive Letter 1188 (Dec. 9, 2025).

[2]12 C.F.R. § 7.1000(c)(1).

[3]OCC, Interpretive Letter 1170 (Jul. 20, 2020).

[4]On this point the Crypto Interpretative Letter notes that by interposing itself between a customer and counterparties with whom the customer may have no relationship, a bank can help customers manage their exposure to unregulated crypto-asset exchanges and pseudonymous counterparties on such exchanges, as well as provide the operational capacity needed to undertake such transactions.

[5]OCC, *OCC Announces Conditional Approvals for Five National Trust Bank Charter Applications*, https://www.occ.treas.gov/news-issuances/news-releases/2025/nr-occ-2025-125.html. Conditional approval was awarded to First National Digital Currency Bank, N.A.; Ripple National Trust Bank; BitGo Bank and Trust, N.A.; Fidelity Digital Assets, N.A.; and Paxos Trust Company, LLC.

[6]*Id.*

[7]*See e.g.*, OCC, *Application to Charter First National Digital Currency Bank, National Association, New York, New York (Proposed) and Request to Waive Residency Requirements* at 2-3, https://www.occ.treas.gov/news-issuances/news-releases/2025/nr-occ-2025-125a.pdf.

[8]*Id.* at 6-9.

[9]BPI, *BPI Urges OCC to Preserve the Integrity of National Trust Charters*, https://bpi.com/bpi-urges-occ-to-preserve-the-integrity-of-national-trust-charters/.

[10]The digital asset companies include Paxos Trust Company, LLC; Circle Internet Financial (applying as First National Digital Currency Bank, N.A.); National Digital Trust Company, N.A.; Ripple National Trust Bank, N.A.; Wise National Trust, N.A.; Bridge National Trust Bank, N.A.; Coinbase National Trust Company; Connectia Trust, NA.; and BitGo Trust Company, Inc.

[11]Charter Application Letters, *supra* note 9.

[12]*Id.*

[13]*See e.g.*, BPI, *Comment Letter on First National Digital Currency Bank, N.A.'s Charter Application* at 1, https://bpi.com/wp-content/uploads/2025/10/BPI-comment-letter-re-OCC-NTB-a

pplication-re-First-National-Digital-Currency-Bank-Circle-10-14-25.pdf.

[14]Board, *Request for Information and Comment on the Future of the Federal Reserve Banks' Check Services*, 90 Fed. Reg. 57,062 (Dec. 9, 2025).

[15]Nacha, *Request for Comment-Increasing the Same Day ACH Dollar Limit to $10 Million*, https://www.nacha.org/rules/request-comment-increasing-same-day-ach-dollar-limit-10-million.

[16]Senate Committee on Banking, Housing, and Urban Affairs, *Warren, Blumenthal, Booker, Duckworth, Hirono Press Buy Now, Pay Later Companies for Data on Rapidly Growing Industry as Trump's Attack on CFPB Leaves Consumers Vulnerable*, https://www.banking.senate.gov/newsroom/minority/warren-blumenthal-booker-duckworth-hirono-press-buy-now-pay-later-companies-for-data-on-rapidly-growing-industry-as-trumps-attack-on-cfpb-leaves-consumers-vulnerable. The BNPL providers include Affirm, Afterpay, Klarna, PayPal, Sezzle, Zip, and Splitit.

[17]*See e.g.*, Senate, *Letter to Levchin, CEO of Affirm* at 2-3, https://www.banking.senate.gov/imo/media/doc/20251118lettertoaffirmrebnpl.pdf.

[18]CA Attorney General, *Borrow Now, Pay Later? Attorney General Bonta Has Questions*, https://oag.ca.gov/news/press-releases/borrow-now-pay-later-attorney-general-bonta-has-questions. The BNPL providers include Affirm, Afterpay, Klarna, PayPal, Sezzle, and Zip.

[19]*See e.g.*, *Letter to Levchin, CEO of Affirm* at 1-2, https://oag.ca.gov/system/files/attachments/press-docs/BNPL%20Letter%20-%20Affirm.pdf.

[20]*National Treasury Employees Union, et al. v. Vought*, No. 1:25-cv-00381-ABJ, Doc. 145 (Nov. 10, 2025).

[21]*National Treasury Employees Union, et al. v. Vought*, No. 1:25-cv-00381-ABJ, Doc. 145, Exhibit A at 1 (Nov. 10, 2025).

[22]*Id.* at 2-3.

[23]*Id.*

[24]*Id.* at 3.

[25]*Id.* at 6.

[26]*Id.* at 9-10.

[27]*Id.* at 15.

[28]*Id.* at 11, 13.

[29]*Id.* at 14.

[30]*Id.* at 13.

[31]*Id.* at 21-22.

[32]*National Treasury Employees Union, et al. v. Vought*, No. 1:25-cv-00381-ABJ, Doc. 147, Exhibit A (Nov. 21, 2025).

[33]*National Treasury Employees Union, et al. v. Vought*, No. 1:25-cv-00381-ABJ, Doc. 148 (Nov. 23, 2025).

[34]*Id.* at 3.

[35]*Id.* at 10, 13-14.

[36]*Id.* at 6-7, 11.

[37]*Id.* at 15.

[38]*Id.* at 17-18.

[39]*Id.* at 19, 21-22.

[40]*National Treasury Employees Union, et al. v. Vought*, No. 1:25-cv-00381-ABJ, Doc. 162 (Dec. 10, 2025). The officials include Donald Kohn, Thomas C. Baxter, Jr., Sandra Braunstein, William English, and Donald Hammond.

[41]*Id.* at 4.

[42]*Id.* at 6-9.

[43]*Id.* at 5-6.

[44]*National Treasury Employees Union, et al. v. Vought*, No. 1:25-cv-00381-ABJ, Doc. 164 (Dec. 16, 2025).

[45]*Forcht Bank, N.A. et al v. Consumer Financial Protection Bureau et al*, No. 5:24-cv-00304-DCR, Doc. 90 (Oct. 29, 2025).

[46]*Forcht Bank, N.A. et al v. Consumer Financial Protection Bureau et al*, No. 5:24-cv-00304-DCR, Doc. 83 (Jul. 29, 2025).

[47]*Forcht Bank, N.A. et al v. Consumer Financial Protection Bureau et al*, No. 5:24-cv-00304-DCR, Doc. 84 at 9 (Aug. 13, 2025).

[48]Consumer Financial Protection Bureau, *Personal Financial Data Rights Reconsideration*, 90 Fed. Reg. 40,986 (Aug. 22, 2025).

[49]*Forcht Bank, N.A. et al v. Consumer Finan-*

cial Protection Bureau et al, No. 5:24-cv-00304-DCR, Doc. 90 at 7 (Oct. 29, 2025).

[50]*Id*. at 7-8.

[51]*Id*. at 8.

[52]*Id*. at 8-9.

[53]*Id*. at 9, 11, 12.

[54]*Id*. at 10, 11, 13.

[55]*Id*. at 10, 13.

[56]*Id*. at 14-15.

[57]*Id*.

[58]*Id*.

[59]*Id*. at 15, 18.

[60]House Committee on Financial Services, *Comments on the Advanced Notice of Proposed Rulemaking on Personal Financial Data Rights Reconsideration*, https://files.constantcontact.com/9f2b5e3d701/6359425a-6ec8-4aca-80ae-4ac1b7b3ed3d.pdf; Senate, *Letter to Acting Director Vought*, https://www.banking.senate.gov/imo/media/doc/2025.11.19%20Letter%20to%20Vought%20re%20Rule%201033.pdf.

[61]*Custodia Bank, Inc. v. Federal Reserve Board of Governors*, 157 F.4th 1235 (10th Cir. 2025).

[62]*Id*. at 1245.

[63]*Id*.

[64]*Id*.

[65]*Id*. at 1246.

[66]*Id*.

[67]*Id*.

[68]*Id*. at 1251.

[69]*Id*.

[70]*Id*. at 1251-1252

[71]*Id*. at 1252.

[72]*Id*. at 1253.

[73]*Id*. at 1253-1254.

[74]*Id*. at 1254.

[75]*Id*. at 1256.

[76]*Id*. at 1256-1257.

[77]*Id*.

[78]*Id*. at 1249.

[79]*Id*. at 1260.

[80]*Id*.