

Converting to a National Bank Charter

We have observed a recent increase in the number of state-chartered banks seeking to become national banks. This notable development is likely in part due to changes in the banking regulatory landscape in the United States. Some of the benefits of becoming a national bank include gaining uniform supervision, greater regulatory clarity on a number of requirements and business practices, as well as established federal preemption, each of which can be particularly important for institutions aiming to build a national presence or engage in more novel activities. This Memorandum outlines those benefits as well as the charter conversion application process and certain related considerations.

BENEFITS

State-chartered banks are supervised by the relevant state banking department and either (i) the Federal Deposit Insurance Corporation (“FDIC”) if the bank is not a member of the Federal Reserve System (*i.e.*, a state nonmember bank) or (ii) the Federal Reserve if the bank is a member of the Federal Reserve System (*i.e.*, a state member bank). National banks are supervised and regulated by the Office of the Comptroller of the Currency (“OCC”).

Accordingly, national banks benefit from the uniform supervision of a single regulator, which facilitates their ability to operate consistently across all states. By contrast, state-chartered banks, subject to layers of supervision, must navigate the regulatory regimes of each state in which they do business.

National banks also have flexibility from a corporate governance standpoint that state-chartered banks do not. They may elect to follow the corporate governance provisions of (i) the law of any state in which the main office or any branch of the bank is located, (ii) the law of any state in which a holding company of the bank is incorporated, (iii) the Delaware General Corporation law or (iv) the Model Business Corporation Act.¹

National banks are also able to rely on the significant body of regulatory guidance developed and issued by the OCC. In particular, the OCC offers clearer guidance than many other banking regulators for banks seeking to engage in digital asset, fintech and other more novel activities.² For such institutions, becoming a national bank can result in meaningful operational efficiencies as state laws on these topics may be unclear and/or discordant with national regulatory trends.³

Further, national banks benefit from an established preemption doctrine. For example, while the Federal Deposit Insurance Act (“FDI Act”) authorizes state-chartered banks to make loans charging interest at the maximum rate permitted by the state in which the bank is located and generally preempts state laws to the contrary, section 525 of the Depository Institutions Deregulation and Monetary Control Act of 1980 (“DIDMCA”) allows individual states to opt-out of the FDI Act preemption for loans “made in” that state.⁴ Several states have taken the position that by opting out of DIDMCA, loans from state-chartered banks cannot be made to borrowers located in those states at rates above those allowed under the borrower’s state law. By contrast, national banks are able to rely on the National Bank Act’s clear preemption of such state laws.

APPLICATION PROCESS

The process for a state-chartered bank to convert to a national bank entails four main steps:

Prefiling

A state-chartered bank seeking to become a national bank should contact OCC licensing staff to schedule a prefiling meeting. A prefiling meeting provides an opportunity for the bank to obtain preliminary feedback on areas of its charter conversion application that may raise supervisory questions or concerns.

Application

The bank should then finalize and submit to the OCC its charter conversion application.⁵ A public notice is not typically required unless the OCC determines that the application presents a significant or novel policy, supervisory or legal issue for which a public notice is necessary.⁶

Among other things, the application requires:

(i) information about each branch the bank expects to operate post-conversion; (ii) the bank's most recent audited financial statements; (iii) the bank's most recent report of condition and report of income; (iv) a legal opinion on the legality of the conversion under applicable state law; (v) a statement regarding whether the bank seeks to exercise fiduciary powers post-conversion; (vi) identification of all subsidiaries, bank service company investments and other equity investments; (vii) identification of any nonconforming assets and activities; (viii) a business plan; (ix) a list of all outstanding conditions or other requirements imposed by the bank's current federal and state banking regulators or state attorney general; (x) a list of directors and senior executive officers; and (xi) a list of individuals, directors and shareholders who, directly or indirectly, own or control the bank.⁷

Review

As set forth in the OCC's Comptroller's Licensing Manual, once a charter conversion application has been submitted, the OCC begins its review and typically sends the bank any additional requests for information within a few weeks of submission. The OCC conducts a pre-conversion examination approximately 45 days after submission, with part of that examination occurring on-site.

The OCC considers the following factors when reviewing an application: (i) the bank's financial condition, management and regulatory capital requirements; (ii) whether the conversion would contravene the bank's conformance with applicable state or federal law; (iii) the bank's conformance with statutory and regulatory criteria, including many of the standards applicable to chartering a *de novo* federal bank⁸; (iv) whether the bank has obtained all necessary regulatory and shareholder or member approvals; and (v) the bank's Community Reinvestment Act performance record.⁹

Approval

The OCC typically issues its decision on a charter conversion application within 90–120 days of submission. If the OCC approves an application, the bank must complete the conversion within six months from the date of approval (unless the OCC grants an extension).¹⁰ The OCC may impose conditions on the conversion approval based on the following reasons: (i) to protect the safety and soundness of the bank; (ii) to prevent conflicts of interest; (iii) to provide customer protections; (iv) to ensure approval is consistent with statutes and regulations; or (v) to provide for other supervisory or policy considerations. Once the bank has satisfied all statutory and regulatory requirements, as well as any other conditions imposed by the OCC, the OCC issues a charter certificate and the bank is authorized to conduct business as a national bank.

SELECT CONSIDERATIONS REGARDING OCC CONVERSIONS

Resources

Although the charter conversion process is relatively streamlined, a state-chartered bank seeking to become a national bank must nonetheless dedicate ample time and resources to ensure that its application materials meet OCC requirements.¹¹ The bank's management and board of directors must be involved in the process. The OCC does not assess an application fee.¹²

Federal Reserve Membership

While state-chartered banks may choose to be members of the Federal Reserve System, national banks are required to be members. Therefore, a state nonmember bank seeking to become a national bank must weigh the costs of becoming a member bank.

To become a member bank, the bank must, among other things, subscribe to capital stock from the regional Federal Reserve Bank. The subscription amount required is 6% of combined capital and surplus, excluding retained earnings (with 3% paid in and 3% callable).¹³ Although national banks are required to be members of the Federal Reserve System, they are not subject to Federal Reserve supervision.

Outstanding Enforcement Orders by Other Banking Supervisors

Section 612 of the Dodd-Frank Act generally prohibits a state-chartered bank from converting to a national bank while the bank is subject to an enforcement order issued by, or a memorandum of understanding entered into with, its current federal banking agency or state banking supervisor with respect to a significant supervisory matter.¹⁴

If a proposed conversion would be subject to the section 612 prohibition, the OCC will determine whether to consider an exception. If the OCC

determines that the conversion is acceptable, it will develop and submit a proposed plan to the bank's current regulators that addresses the significant supervisory matter at issue. The regulator that issued the enforcement order or entered into the memorandum of understanding then has 30 days to object to the conversion or the plan. If the regulator objects, the conversion remains prohibited under section 612. If the regulator does not object, the conversion may proceed (provided certain other requirements are satisfied).

CONCLUSION

The benefits of a national bank charter include uniform supervision, regulatory clarity and established preemption. These benefits can be particularly important for institutions seeking to build a national presence or engage in more novel activities. State-chartered banks seeking to become national banks may wish to explore the charter conversion process in the near term given the current regulatory environment.

1 12 CFR 7.2000(b).

2 See, e.g., OCC, *Interpretive Letter No. 1170* (July 22, 2020) (addressing the authority of a national bank to provide cryptocurrency custody services for customers); OCC, *Interpretive Letter No. 1172* (Sep. 21, 2020) (addressing the authority of a national bank to hold deposits that serve as reserves for certain stablecoins); OCC, *Interpretive Letter No. 1174* (Jan. 4, 2021) (addressing the authority of a national bank to use new technologies, including independent node verification networks and related stablecoins, to perform bank-permissible functions, such as payment activities).

3 As a result, there is a perception that the OCC is better equipped than other banking regulators to supervise institutions engaging in nationwide activity.

4 Pub. L. No. 96-221, § 525, 94 Stat. 132, 167 (1980).

5 A copy of the application is available on the OCC's website along with other documents that are required to be submitted with the application. See OCC, *Licensing Filings*, available at <https://www.occ.gov/publications-and-resources/publications/comptrollers-licensing-manual/files/licensing-filing-forms.html>.

6 OCC, *Comptroller's Licensing Manual: Conversions to Federal Charter* (Dec. 2021), available at <https://www.occ.gov/publications-and-resources/publications/comptrollers-licensing-manual/files/conversi.pdf>.

7 See 12 CFR 5.24(e)(2).

8 See 12 CFR 5.20(f).

9 OCC, *Comptroller's Licensing Manual: Conversions to Federal Charter* (Dec. 2021), available at <https://www.occ.gov/publications-and-resources/publications/comptrollers-licensing-manual/files/conversi.pdf>.

10 12 CFR 5.24(e)(5).

11 For example, a converting bank must ensure that its organizational documents satisfy OCC requirements.

12 The OCC funds its operations by assessing examination fees. In general, however, converting to a national charter should not significantly increase costs for a bank because the federal banking agencies do rulemakings on a joint basis and seek to harmonize examination processes through the Federal Financial Institutions Examination Council ("FFIEC"). See FFIEC, *Mission* (Mar. 17, 2025) (stating that the FFIEC "prescrib[es] uniform principles, standards, and report forms for the federal examination of financial institutions and mak[es] recommendations to promote uniformity in the supervision of financial institutions"), available at <https://www.ffiec.gov/about/mission>.

13 12 CFR 209.4.

14 12 U.S.C. § 214d. See OCC, *Comptroller's Licensing Manual: Conversions to Federal Charter* (Dec. 2021), available at <https://www.occ.gov/publications-and-resources/publications/comptrollers-licensing-manual/files/conversi.pdf>; Federal Reserve, FDIC and OCC, *Interagency Statement on Section 612 of the Dodd-Frank Act Restrictions on Conversions of Troubled Banks* (Nov. 26, 2012), available at <https://www.occ.gov/news-issuances/bulletins/2012/bulletin-2012-39a.pdf>.

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