

# Insights

## OCC Issues Advance Notice of Proposed Rulemaking Regarding Digital Banking Activities

June 8, 2020

By: Brett J. Ashton and Kyle P. Chambers

On June 3, 2020 the Office of the Comptroller of the Currency (the "Agency") issued an Advance Notice of Proposed Rulemaking ("ANPR") soliciting public comments regarding 12 CFR 7, subpart E and 12 CFR 155 (the "Regulatory Framework") which govern digital banking activities carried out by national bank and federal savings associations ("banks").

The ANPR is an attempt by the Agency to "ensure the federal banking system continues to serve consumers, businesses, and communities effectively."<sup>[1]</sup> Additionally, the Agency desires to provide banks with a regulatory framework that adapts to the rapidly changing technological developments in the financial marketplace to assure banks operate in a safe and sound manner.<sup>[2]</sup>

As part of the Agency's efforts to provide flexible regulation regarding digital banking, the ANPR solicits feedback from the public and various stakeholders involved in digital bank activities regarding: 1) banking issues related to digital activities, 2) the use of technology, or 3) innovation. These requests are focused on how new technological developments fit within the regulatory framework described above.

Specifically, the Agency invites comments and feedback from within the industry regarding the following questions:

- Whether the existing Regulatory Framework creates unnecessary hurdles or burdens on the use of technological services and is sufficiently flexible and clear;
- Whether the existing Regulatory Framework fails to address issues related to digital banking services and, if so, how the Agency should address those issues;
- What activities related to cryptocurrencies or crypto assets are financial services participating in and to what extent do these activities impact the banking industry?
- What barriers exist that may prevent banks from participating in the crypto-related activities? Of these barriers, what activities should the Agency address in regulatory guidance?
- How are banks using distributed ledger technology? Do specific matters related to distributed ledger technology need to be clarified in regulatory guidance, including regulations?<sup>[3]</sup>
- How are AI technologies utilized in banking activities and how might the industry better use these technologies? Are there specific ways the Agency can address these issues?<sup>[4]</sup>
- What new payment processes should the Agency be aware of and whether these processes are hindered by unnecessary regulations?<sup>[5]</sup>
- What innovative tools do financial institutions use to comply with regulations and other supervisory expectations (e.g. "regtech") and how does existing Agency regulation enhance or hinder potential advancement in this area?<sup>[6]</sup>
- What other changes to the banking industry stemming from technological advancement should the Agency address?



- How has the COVID-19 pandemic affected the banking industry and how should the Agency respond?

The comment period to respond to these inquiries ends August 3, 2020. Your Krieg DeVault LLP Financial Institutions team has a depth of experience drafting regulatory correspondence on behalf of banks across the industry stands ready to assist any financial institution in their response to the Agency's request for comment.

[1] OCC, *Advance Notice of Proposed Rulemaking: National Bank and Federal Savings Association Digital Activities* (June 8, 2020), 1, available at <https://www.occ.gov/news-issuances/news-releases/2020/nr-occ-2020-76a.pdf>.

[2] *Id.*

[3] *Id.*

[4] *Id.*

[5] *Id.*

[6] *Id.*