



February 11, 2021

Blake Paulson  
Acting Comptroller  
Office of the Comptroller of the Currency  
400 7<sup>th</sup> Street SW  
Washington, DC 20219

Dear Mr. Paulson:

The undersigned trade associations (the "Associations") are writing to request that Interpretive Letter 1176 and the conditional approvals for two recent trust charters be withdrawn and reconsidered under the [January 20, 2021 memo](#) (the Memo) from White House Chief of Staff Ron Klain establishing a process for a "Regulatory Freeze Pending Review."

The OCC made significant policy changes regarding the eligibility requirements to receive a trust charter through an Interpretive Letter without public input during the final days of the previous administration. That change has already, and will continue to facilitate, charter approvals that we believe are ill considered. Our organizations oppose the circumstances under which these applications are being submitted, evaluated, and even conditionally approved. Further we believe these legal interpretations, which were undertaken without notice and comment, are covered by the spirit of the Memo and therefore the policies and these charter applications should be held for additional scrutiny consistent with the Biden administration's policy.

Beginning last summer, Former Acting Comptroller Brooks made clear his belief that payments companies that neither take deposits nor make loans are eligible for a national bank charter. Shortly thereafter, a number of firms, particularly cryptocurrency-related firms, began applying for national bank and trust charters.

On Friday, January 8<sup>th</sup>, 2021, a group of trade associations outlined our concerns in a [comment letter](#) on two pending applications for an OCC trust charter. The letter noted that the applicants' business models do not involve the types of fiduciary activities performed by national trust charter banks. In short, the Associations believe that providing custodial services for digital assets is not a fiduciary activity and that granting charters where traditional fiduciary activity is absent would represent a significant change in OCC policy that should be made only with proper public notice and comment period.

On Monday, January 11<sup>th</sup>, 2021, the OCC published [Interpretive Letter 1176](#), OCC Chief Counsel's Interpretation on National Trust Banks that expanded the scope of entities eligible to apply for a

national trust charter. The new interpretation effectively eliminated the longstanding requirement that applicants for national bank trust charters engage in fiduciary activities. This significant change in OCC policy was made with no public comment and review.

On Wednesday, January 13<sup>th</sup>, 2021, the OCC granted conditional approval to Anchorage Digital Bank (Anchorage) on the basis that its activities, primarily providing custodial services for digital assets, meets the requirements to receive a South Dakota state trust charter and under the new Interpretive Letter 1176, is eligible for a national trust charter.

A second state trust charter conversion to an OCC trust charter was granted on February 4<sup>th</sup> to Protego Trust Bank (Protego) based in Washington state. In its press release, Protego stated its core business lines are custody of digital assets, a digital asset trading platform for client use, facilitating digital asset lending and borrowing amongst bank clients, and issuing new digital assets. Because this was a conversion to an OCC charter there was no public comment period and information regarding its business model is limited. Like Anchorage, it appears Protego would not have been eligible for an OCC trust charter without Interpretive Letter 1176.

On January 20<sup>th</sup>, 2021 all Executive Agencies received the Memo calling for a review of all pending rules and regulatory interpretations. The Interpretive Letter, as an “agency statement of general applicability and future effect that sets forth a policy on a statutory, regulatory, or technical issue or an interpretation of a statutory or regulatory issue” is precisely the type of agency action that the memo was intended to address. In the spirit of the memo’s intent, we ask that Interpretive Letter 1176 be withdrawn and that any changes in the OCC’s eligibility requirements for a national trust or national bank charter be subject to a conventional rulemaking process, with public notice and comment. This significant policy change deserves thorough and transparent analysis by all interested stakeholders.

Thank you for your consideration of this matter. Please contact Stephen Kenneally at the ABA at [skenneally@aba.com](mailto:skenneally@aba.com) or 202-663-5147 regarding this letter.

Thank you,

American Bankers Association  
Credit Union National Association  
Independent Community Bankers of America

cc: Janet Yellen  
Secretary  
Department of the Treasury