Written Statement of
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Future of Payments: Promoting Innovation and Fair Markets

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I am a partner in the law firm of Davis Polk & Wardwell LLP. As co-head of the firm's financial institutions group, I advise banking organizations and non-bank financial institutions on a range of M&A, regulation, policy, enforcement and governance matters—including the full gamut of the prudential regulatory framework. My practice includes a focus on the intersection of financial services laws with innovation and the future of banking and payments.

I served as a senior policy advisor to the Treasury Department's Financial Stability Oversight Council office at its launch following the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act. I graduated with a degree in literature from Rutgers College and received my law degree from Rutgers Law School.

Today I am presenting my own views, and not those of my firm or any client of the firm.

Chairman Hill, Ranking Member Waters and members of the committee, thank you for the privilege to speak before you today. I previously had the privilege of testifying before the Subcommittee on Digital Assets, Financial Technology and Inclusion on payment stablecoin legislation, and I am grateful for the opportunity to return to discuss a related and, I believe, foundational set of questions: how firms obtain authority to conduct banking and payments activities in the United States and where the agencies and Congress have opportunities to provide greater certainty around the relevant standards.[1] This question is of acute importance at this time because, increasingly, the future of banking is the future of payments.

In thinking about how the regulatory landscape should evolve, two groups of questions merit consideration. First, authorizations: how do entities become legally permitted to participate in banking and payments activities? What activities are permitted and for whom? Second, access to core banking and payments infrastructure: how do entities obtain access to the Federal Reserve's services, such as master accounts, and on what terms is access granted? I follow my observations here by highlighting areas for further policy exploration by the federal banking agencies around the relevant rules and regulations that apply to both authorizations and access.

I. Authorizations: Charters and Licenses

It is useful to begin with a basic question: What is a bank?

In the legal sense, a bank is a chartered entity that is authorized to engage in "the business of banking."[2] That business has historically comprised three core functions: taking deposits, extending credit and providing payments.[3] A defining feature of our market today is that these once-bundled functions have, to a considerable degree, been unbundled, with the component parts regulated primarily at the state level.[4]

- First, deposit-taking. The taking of deposits is generally reserved to chartered banks.[5] Even so, payments firms routinely hold customer funds in deposit-like form in connection with the provision of payment services.
- Second, payments. The transmission of money by a non-bank is licensed primarily at the state level, through state money-transmitter licenses.[6]

[1] *See Hearing on Putting the 'Stable' in 'Stablecoins': How Legislation Will Help Stablecoins Achieve Their Promise Before the H. Subcomm. on Digital Assets, Fin. Tech. & Inclusion*, 118th Cong. 59-66 (2023) (statement of David L. Portilla) [hereinafter *Stablecoin Testimony*]. Several themes from that testimony—in particular, that privileges from the government should be matched with commensurate oversight, and that the federal–state question need not be binary—carry over to the questions before the Committee today.

[2] *See, e.g.*, 12 U.S.C. § 24 (Seventh) ("[A] national banking organization . . . shall have power . . . [t]o exercise . . . all such incidental powers as shall be necessary to carry on the business of banking.").

[3] *See* DAN AWREY, BEYOND BANKS: TECHNOLOGY, REGULATION, AND THE FUTURE OF MONEY 54 (2024); Adam J. Levitin, *Safe Banking: Finance and Democracy*, 83 UNIV. OF CHI. L. REV. 357, 366 (2016); Dan Awrey & Kristin van Zwieten, *The Shadow Payment System*, 43 J. OF CORP. L. 775, 776 (2018); Michael J. Hsu, Acting Comptroller of the Currency, "Modernizing the Financial Regulatory Perimeter": Remarks before the Federal Reserve Bank of Philadelphia Fifth Annual Fintech Conference (Nov. 16, 2021).

[4] AWREY *supra* note 3, at 3, 136.

[5] *See* 12 U.S.C. § 378(a)(2) ("[I]t shall be unlawful . . . [f]or any person, firm, corporation, association, business trust, or other similar organization to engage, to any extent whatever with others than his or its officers, agents or employees, in the business of receiving deposits" unless authorized and subjected to regulation and examination.).

[6] Though the Conference of State Bank Supervisors has adopted a Money Transmission Modernization Act to harmonize those licenses, not all states have adopted the amendments. Model Money Transmission Modernization Act § 1.02 (Conf. of State Bank Supervisors 2021); *2022-2026 Money Transmission Modernization Act Proposed and Enacted Legislation*, CONF. OF STATE BANK SUPERVISORS (Apr. 2026) https://www.csbs.org/sites/default/files/external-link-files/MTMA%20Legislative%20Update_4.23.2026.pdf.

- Third, lending. The extension of credit by a non-bank also is licensed primarily at the state level, under state lending and consumer-finance licensing laws.[7] State-level regulation typically focuses on consumer lending. There is no federal non-bank lending license or regulatory framework. Private credit has operated within this context.

Each component of the business of banking can thus be conducted separately (with deposit-taking being limited to banks), under a distinct legal authority with distinct regulatory authorization.[8] Perhaps as importantly, each component of the business of banking can be conducted separately due to technological developments enabling the rapid movement of money.[9] But despite the ability to unbundle such activities, the federal chartering framework historically has been oriented principally around the bundled whole in the national bank charter. This view has become an anachronism relative to how the market and consumer preferences and behaviors have evolved.

A bank charter in the United States nevertheless is a powerful tool.[10] But not all charters are created equal and there are a number of charter options available.[11] A bank may be chartered and supervised either by a state or by the federal government.[12] This dual banking system has been a feature of our financial system since the National Bank Act of 1863, and it allows an institution to choose the chartering authority best suited to its business.[13] The choice is consequential, because the charter an institution selects determines a great deal about what it may do and how it is regulated and supervised.

Within that dual system, the menu of charters is varied. At the state level, an institution may choose among a range of charters: the full-service state bank; the full-service savings bank, the industrial bank (or industrial loan company); and a growing set of limited- or special-purpose charters with more or less clearly defined permitted activities. Examples of the last category include Wyoming's special purpose depository institution (SPDI) charter, Georgia's merchant acquirer limited purpose bank (MALPB) charter, and Connecticut's uninsured innovation bank charter.[14] Of course, there are 50 states and thus 50 state laws and regulators

[7] *See 50-State Survey of Consumer Finance Laws*, CONF. OF STATE BANK SUPERVISORS (Mar. 16, 2026), https://www.csbs.org/50-state-survey-consumer-finance-laws.

[8] AWREY *supra* note 3, at 3-4.

[9] AWREY *supra* note 3, at 2-3.

[10] And, as a result, valuable.

[11] *See* BANK POL'Y INST., WHAT'S IN A CHARTER? (Nov. 7, 2025), https://bpi.com/wp-content/uploads/2025/11/Whats-in-a-Charter.pdf.

[12] *See What Is the Structure of U.S. Bank Regulation?*, Bank Pol'y Inst., https://bpi.com/education_modules/what-is-the-structure-of-u-s-bank-regulation/ (last visited June 18, 2026).

[13] Regulation of banking has involved "dual control" since the first National Bank Act of 1863. *Nat'l State Bank, Elizabeth, N.J. v. Long*, 630 F.2d 981, 985 (3rd Cir. 1980) ("Whatever may be the history of federal-state relations in other fields, regulation of banking has been one of dual control since the passage of the first National Bank Act in 1863."); *Lusnak v. Bank of Am., N.A.*, 883 F.3d 1185, 1188-89 (9th Cir. 2018) ("The NBA . . . ushered in a 'dual banking system,' wherein banks could be chartered either by the OCC or by a State authority and be subject to different legal requirements and oversight from different regulatory bodies."); *Cantero v. Bank of Am.*, 602 U.S. 205, 209-10 (2024) ("The United States maintains a dual system of banking, made up of parallel federal and state banking systems. The dual system allows privately owned banks to choose whether to obtain a charter from the Federal Government or from a state government."); *Wachovia Bank, N.A. v. Burke*, 414 F.3d 305, 314 (2nd Cir. 2005) ("[I]t is often said that we have a 'dual banking system' of federal and state regulation.").

[14] *See* WYO. STAT. ANN. § 13-12-101 et seq. (2026) (fully reserved; receives deposits but does not lend; no FDIC insurance); GA. CODE ANN. § 7-9-1 et seq. (2026) (direct access to payment card networks); CONN. GEN. STAT. § 36a-70(t) (2026) (uninsured; may not accept retail deposits). The industrial bank, or industrial loan company, is another state charter with a federal-insurance overlay. Utah, for example, has industrial banks, Utah Code Ann. § 7-8-3 et seq. (2026) (eligible for membership in card networks; can receive deposits; FDIC insured; subject to FDIC capital requirements; holding company is not required to become a bank holding company unless accepting demand deposits and total assets are greater than $100 million). The FDIC is reviewing rules related to industrial loan companies. In 2025, the FDIC issued a request for information and comment regarding its approach to evaluating the statutory factors applicable to certain filings submitted by

from which to choose even among the ordinary full-service state bank. At the federal level, by contrast, there are essentially two charters, both administered by the OCC: the national bank charter and the federal savings association charter.[15] Within the national bank charter, the OCC has long recognized a range of business models, including business models focused on specific activities or markets.[16] This asymmetry between a proliferation of defined, limited-purpose charters at the state level alongside a comparatively undifferentiated federal framework, along with intense competition from non-banks without any of these charters, is the backdrop for much of what follows.

The Consequences of a Charter

The choice of charter (or none at all) matters because different charters carry materially different consequences. I will highlight three.

First, different charters confer different *authorities*—that is, different permitted activities, such as whether the institution may take insured retail deposits, lend, or confine itself to some limited set of activities.[17] Here, the distinction between any type of national charter and any type of state charter is crucial. A national bank charter provides the benefit of federal preemption of certain state laws, even if the scope of that preemption is a dynamic legal question, as the Supreme Court's recent decision in *Cantero v. Bank of America* and subsequent lower court decisions make clear.[18] On the other hand, state charters may provide the *benefits of state innovation*: state agencies have repeatedly served as regulatory experimenters and innovators, developing tailored charters for new business models before any federal analogue exists.[19]

industrial banks and industrial loan companies. Request for Information on Industrial Banks and Industrial Loan Companies and Their Parent Companies, 90 Fed. Reg. 34271 (July 21, 2025).

[15] At the federal level, the two principal charters, both administered by the OCC, are the national bank charter under the National Bank Act, 12 U.S.C. § 21 et seq., and the federal savings association charter under the Home Owners' Loan Act, 12 U.S.C. § 1464. The national bank charter itself accommodates limited-purpose variants, including national trust banks.

[16] *See* OFF. COMPTROLLER CURRENCY, Comptroller's Licensing Manual (Charters booklet) at 53 ("A national bank or FSA is generally authorized by its articles of association or charter to exercise all express and implied powers of the respective charter. Special purpose banks, however, will generally offer only a small number of products, target a limited customer base, incorporate nontraditional elements, or have narrowly targeted business plans. Depending on the type of business, the OCC will request a bank to specify the nature of its business in its articles of association or charter, and not to deviate from that business without OCC approval … Special purpose bank proposals to date include those banks whose operations are limited to certain activities, such as credit card operations, fiduciary activities, community development, or cash management activities. Proposals for bankers' banks also fall into this category. The OCC will consider other special purpose bank proposals, provided the application meets the evaluative decision factors common to all bank charter applications.").

[17] *E.g.*, GA. DEPT. OF BANKING AND FINANCE, MERCHANT ACQUIRER LIMITED PURPOSE BANKS (n.d.) (allowing merchants who hold the MALPB charter to have direct relationships with card networks without federal approval, but not to conduct banking business); OFF. COMPTROLLER CURRENCY, OCC CHIEF COUNSEL'S INTERPRETATION ON NATIONAL TRUST BANKS (Jan. 11, 2021) (chartering firms to offer custodial services without approval of the FDIC or Federal Reserve, but not to accept demand deposits or grant loans).

[18] *See Cantero v. Bank of America, N.A.*, 602 U.S. 205 (2024) (rejecting categorical preemption tests and requiring a "nuanced comparative analysis" of whether a state law "prevents or significantly interferes with" a national bank's exercise of its powers (citing *Barnett Bank of Marion Cnty., N.A. v. Nelson*, 517 U.S. 25 (1996), as codified in the Dodd-Frank Act, 12 U.S.C. § 25b)). For conflicting circuit court rulings interpreting *Cantero*, *see Conti v. Citizens Bank, N.A.*, 154 F.4th 10, 28 (1st Cir. 2025), *cert. denied*, *Citizens Bank, N.A. v. Conti*, No. 25-1004 (U.S. Apr. 20, 2026), *cf. Cantero v. Bank of America, N.A.*, No. 21-403, Dkt. 223 (2d Cir. May 5, 2026). Congress has addressed preemption directly in the Dodd-Frank Act and the GENIUS Act, though questions remain regarding the scope of preemption even in the recently enacted GENIUS Act. The scope of preemption is another area Congress could provide further clarity on. *See also* Eugene Ludwig & John Dugan, The national bank charter is under assault across the country, AMERICAN BANKER (June 15, 2026), https://www.americanbanker.com/opinion/the-national-bank-charter-is-under-assault-across-the-country.

[19] On the value of state-level chartering as an engine of innovation, *see* Brandon Milhorn, CSBS President and CEO, Remarks at the 2025 Community Banking Research Conference (Oct. 7, 2025) (observing that institutions "can choose their chartering or licensing authority and develop business models that fit the needs of the markets they serve," and that the dual banking system "continues to foster … dynamic, innovative markets"). In my Stablecoin Testimony, I noted that, at the time, some of the most detailed publicly available prudential guidance on a novel product had come from a state regulator. *Stablecoin Testimony*, *supra* note 1.

Second, different charters carry different *regulation and supervision*, with different primary regulators and supervisory regimes.[20]

Third, different charters provide different levels of *access* to different services supported by the federal government—specifically Federal Reserve master accounts and the underlying payment rails, a point I describe in more detail below.

Given these differences, how should a firm choose a charter?

The answer is that selecting a charter is a question of which available charter is most appropriate for a given business plan. A firm whose model is to take insured retail and commercial deposits and make loans needs a full-service charter; a firm whose model is custody, or merchant settlement, or the issuance of a payment instrument, may find a different type of charter tailored to the particular activities more appealing.[21]

Within this paradigm, it can be difficult for a prospective national bank to determine ex-ante the precise scope of activities that may be performed in a limited purpose national bank, given that it is not a true standalone charter type.[22] The permitted activities of a limited-purpose national bank are not collected in any single, comprehensive legal source. Indeed, the limitations on a national bank's activities are a function of the business plan it submits to the OCC as a part of its charter application and the subsequent approval issued by the OCC. The legal foundation for this approach results from a statutory and regulatory mosaic: a National Bank Act provision recognizing that a national bank limited to trust activities is not, by reason of that limitation, illegally constituted; OCC regulations, most recently a March 2026 rule confirming that national trust banks may conduct the operations of a trust company and related activities without taking deposits or making loans; OCC interpretive letters and chartering decisions; the OCC's licensing manual; and a very limited body of case law.[23] In fact, the OCC's approach has changed over time. For instance, the OCC previously proposed to charter

[20] The OCC for national banks and federal savings associations; the relevant state regulator (with the Federal Reserve or FDIC as the federal supervisor) for state banks. In addition, the Federal Reserve regulates the holding companies for some, but not all, banks. National Bank Act, 12 U.S.C. § 38; Home Owners Loan Act, 12 U.S.C. § 1461; BD. GOVERNORS FED. RSRV. SYS., STATE MEMBER BANKS SUPERVISED BY THE FEDERAL RESERVE (2025); Bank Holding Company Act, 12 U.S.C. § 1841.

[21] The OCC describes this business-model inquiry in its Comptroller's Licensing Manual (Charters booklet), which, together with the agency's regulations and individual chartering decisions, are the principal sources of the standards governing what a given charter permits. Of course, a bank may apply to convert its charter from one type to another should its business needs change. OFF. COMPTROLLER CURRENCY, Comptroller's Licensing Manual (Charters booklet) at 53 ("Special purpose banks, however, will generally offer only a small number of products, target a limited customer base, incorporate nontraditional elements, or have narrowly targeted business plans. Depending on the type of business, the OCC will request a bank to specify the nature of its business in its articles of association or charter, and not to deviate from that business without OCC approval."); *see also* OFF. COMPTROLLER CURRENCY, COMPTROLLER'S LICENSING MANUAL (Conversions to Federal Charter booklet) at 20 ("Filers should tailor the contents of the conversion application consistent with the nature of the depository institution's special purpose line of business. The OCC's review of a special purpose proposal may exceed traditional processing time frames because of the time needed to evaluate the supervisory risks associated with these proposals.").

[22] Congress had, prior to the GENIUS Act, acknowledged limited-purpose banks only indirectly, through the carve-outs in the Bank Holding Company Act's definition of "bank." *See* 12 U.S.C. § 1841(c)(2). Those provisions address holding-company status, not chartering authority.

[23] The permitted activities of limited-purpose national banks are delineated across multiple sources rather than a single comprehensive statute: the National Bank Act provision recognizing that a national bank limited to trust activities is not, by reason of that limitation, illegally constituted. 12 U.S.C. § 27(a); National Bank Chartering, 91 Fed. Reg. 9977 (Mar. 2, 2026) (amending 12 C.F.R. § 5.20 to confirm that national trust banks may conduct the operations of a trust company and activities related thereto without taking deposits or making loans); Jonathan Gould, OCC Interpretive Letter No. 1176 (Jan. 11, 2021); chartering guidance; and limited case law, principally *National State Bank of Elizabeth, N.J. v. Smith*, 591 F.2d 223 (3rd Cir. 1979) (sustaining a national bank limited to fiduciary activities). The contested scope of the OCC's March 2026 rule illustrates the uncertainty; this is an area in which the OCC or Congress could articulate the permitted activities comprehensively in a single legal source. With respect to chartering specifically, the OCC noted that it "has not proposed a new limited purpose national bank charter untethered from the trust bank authorization in section 27(a)." National Bank Chartering, 91 Fed. Reg. 9979.

non-depository fintech companies as special-purpose national banks.[24] This effort was challenged in numerous lawsuits over several years.[25] The central question in those cases as to whether the OCC may charter a national bank that does not take deposits was never decided on the merits and so the exact scope of the OCC's authority has never been fully addressed by an authoritative federal court.[26]

Accordingly, Congress could explore updating the federal statutory framework to better suit today's markets with more precise defined federal licensing options.

II. Payments and Access: Authorization Is Necessary, but Not Sufficient

These themes come to a head in payments.

On one hand, the use of a federal charter for a limited, payments-related activity is now expressly permitted: under the GENIUS Act, an uninsured national bank chartered by the OCC may, once approved, serve as a permitted payment stablecoin issuer.[27] But even the GENIUS Act leaves open a number of questions with which federal banking regulators are beginning to grapple regarding the scope of such entities' broader authorities.[28] On the other hand, the GENIUS Act is the exception. The United States otherwise has no general federal payments legislation and no federal payments license.[29]

[24] *See, e.g.,* OFF. COMPTROLLER CURRENCY, EXPLORING SPECIAL PURPOSE NATIONAL BANK CHARTERS FOR FINTECH COMPANIES (Dec. 2016); OFF. COMPTROLLER CURRENCY, POLICY STATEMENT ON FINANCIAL TECHNOLOGY COMPANIES' ELIGIBILITY TO APPLY FOR NATIONAL BANK CHARTERS (Jul. 31, 2018).

[25] CONG. RSCH. SERV., *SECOND CIRCUIT DISMISSES NEW YORK STATE CHALLENGE TO OCC'S FINTECH CHARTER AUTHORITY* (July 16, 2021).

[26] The challenges were dismissed on justiciability grounds. *See Lacewell v. Off. of the Comptroller of the Currency*, 999 F.3d 130 (2d Cir. 2021) (lack of Article III standing and ripeness); *Conf. of State Bank Supervisors v. Off. of the Comptroller of the Currency*, No. 18-cv-2449 (D. D.C 2019) (same).

[27] 12 U.S.C. §§ 5901(23) (defining the term "permitted payment stablecoin issuer" to include a person formed in the United States that is a "Federal qualified payment stablecoin issuer"), 5901(11) (defining the term "Federal qualified payment stablecoin issuer" to include "an uninsured national bank that is chartered by the Comptroller, pursuant to title LXII of the Revised Statutes; and that is approved by the Comptroller, pursuant to section 5904 of this title, to issue payment stablecoins") (internal formatting omitted). *See also* Implementing the Guiding and Establishing National Innovation for U.S. Stablecoins Act for the Issuance of Stablecoins by Entities Subject to the Jurisdiction of the Office of the Comptroller of the Currency, 91 Fed. Reg. 10202 (proposed Mar. 2, 2026) (to be codified at 12 C.F.R. pt. 3, 6, 8, 15, and 19) [hereinafter, *OCC GENIUS Act NPRM*].

[28] *See, e.g.*, *OCC GENIUS Act NPRM*, *supra* note 27. The OCC notice of proposed rulemaking (NPRM) notes that there may be a lack of clarity in the types of activities stablecoin issuers can engage in to "directly support[]" their permitted stablecoin services. *Id*. at 10210. Furthermore, the NPRM sought comment on questions such as, "Are there activities not contemplated in proposed §15.10 that permitted payment stablecoin issuers must be able to engage in for purposes of the GENIUS Act?" (question 25) and "Are there other limits or conditions the OCC should consider with respect to payment stablecoin issuers acting as principal or agent with respect to any payment stablecoin?" (question 27). *Id.* at 10252. One comment also noted the ambiguity of a digital asset service provider's authorities: "The OCC should clarify how the payment stablecoin regime interacts with the OCC's existing interpretive framework governing federal supervised entities' authority to engage in digital asset activities, including those captured by the GENIUS Act's DASP definition. Considering the OCC's existing cryptoactivity interpretive framework, it is important to clarify whether further individualized approvals would be required for federally supervised entities to engage in the activities contemplated by the GENIUS Act's DASP definition, or are already consistent with existing supervisory expectations, and how the authorities applicable to digital asset service providers interact with those applicable to PPSIs and FPSIs. The GENIUS Act defines a DASP broadly to encompass entities that exchange digital assets for monetary value or other digital assets, transfer digital assets to third parties, act as digital asset custodians, or participate in financial services relating to digital asset issuance. The DASP definition does not confer activity authority on any particular entity. Rather, for federally chartered entities, including national banks and federal savings associations, the authority to engage in digital asset custody, execution, and related activities derives principally from the OCC's pre-GENIUS interpretive framework, including Interpretive Letter 1184 and related guidance, under which crypto-related activities have been authorized incrementally through individual interpretive letters. There is an open question as to how engaging in the activities captured by the GENIUS Act's DASP definition interacts with this existing framework, and whether federally chartered entities conducting such activities need to rely on their pre-GENIUS authority, on the payment stablecoin regime, or on some combination of the two." SIFMA, Letter: OCC Proposed Rule on Stablecoin Issuance (GENIUS Act) (May 1, 2026), https://www.sifma.org/wp-content/uploads/2026/05/SIFMA-OCC-GENIUS-Act.pdf.

[29] The absence of a general federal payments license has been identified as a gap in the regulatory framework. The Treasury Department recommended in 2022 that Congress consider this issue. *See infra* note 40 and accompanying text.

Two consequences follow directly.

- First, because there is no federal payments charter, there is no federal preemption for payments activity conducted outside a bank charter;[30] a non-bank payments firm must instead navigate a patchwork of state money-transmitter licenses and, potentially, virtual-currency-specific licensing requirements.[31] As a result, entities that wish to benefit from federal preemption need a national bank charter. To date, prior to the GENIUS Act becoming effective, the OCC appears to require applicants for bank charters with payment stablecoin-related businesses to perform at least one other traditional bank activity alongside their payment stablecoin-related activities, even if it is to be performed in the context of payment stablecoins.[32] The OCC has not publicly stated whether the agency will maintain the same approach after the GENIUS Act is effective or, alternatively, whether the GENIUS Act provides a distinct legal foundation for chartering and licensing an uninsured national bank as a permitted payment stablecoin issuer that is not otherwise required to engage in fiduciary activities.
- Second, such a firm's access to Federal Reserve master accounts and, thus, to the underlying payment rails remains uncertain because this matter is determined primarily by, and at the discretion of, the Federal Reserve, which is not an agency with chartering powers. In other words, the full power of a bank charter does not reside with the chartering agency; the current statutory framework effectively splits between the Federal Reserve and the OCC the legal authority to determine how a single legal entity may operate.

That second problem is not confined to payments firms; master account access is uncertain more generally, even for those with bank charters. The governing statutory framework dates back to the Monetary Control Act of 1980, and the resulting uncertainty has produced a

[30] The Supremacy Clause of the U.S. Constitution provides that "the Laws of the United States … shall be the supreme Law of the Land … any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const., art. VI, cl. 2. If a court determines that Congress intended to displace state law, whether explicitly or implicitly, a state will be barred from contradicting the relevant federal statute and possibly from taking action in an entire area of regulation. *Barnett Bank of Marion Cnty., N.A. v. Nelson*, 517 U.S. 25, 30-1 (1996). If federal and state law do not conflict and state law does not impermissibly burden the objectives of federal law, states are not preempted and are permitted to legislate and regulate to the extent their powers otherwise allow.

[31] *See* Dan Awrey, *Bad Money*, 106 CORNELL L. REV. 1, 71-90 (2020) (collecting key provisions of money transmitter laws across states at Appendix A). *See, e.g.*, *Stripe Payments Company Licenses*, https://stripe.com/legal/spc/licenses (last visited June 17, 2026); *PayPal, Inc. & PayPal Digital, Inc. Money Transmission and Virtual Currency Licenses*, https://www.paypal.com/us/webapps/mpp/licenses (last visited June 17, 2026).

[32] Even though the OCC has stated that a national trust bank need only perform "trust" but not "fiduciary" activities, all conditionally approved national trust bank applications with business plans that relate to payment stablecoins appear to include some element of fiduciary activities. National Bank Chartering, 91 Fed. Reg. 9978. *See, e.g.*, OCC Decision to Conditionally Approve First National Digital Currency Bank, National Association, OCC Control Number 2025-Charter-342299 (Dec. 12, 2025) ("The Bank proposes to perform collateral trustee and digital asset custody services, both in a fiduciary capacity, and provide separate reserve management services related to its trust or fiduciary activities that are permissible for a national bank."); OCC Decision to Conditionally Approve Ripple National Trust Bank, OCC Control Number 2025-Charter-342347 (Dec. 12, 2025) ("The Bank proposes to perform collateral trustee and cryptocurrency custody services, both in a fiduciary capacity, and provide separate reserve management services related to its trust or fiduciary activities that are permissible for a national bank."); OCC Decision to Conditionally Approve BitGo Bank & Trust, National Association, OCC Control Number 2025-Conversion-342474 (Dec. 12, 2025) ("[T]he Bank will generally provide custody services and escrow services in a fiduciary capacity …The Bank will provide other services that are part of or related to the provision of custody services. These activities include trading services, clearing and settlement services, key management services, and the wallet platform. The Bank's proposed issuance of a U.S. dollar-backed stablecoin is also permissible under 12 USC 27(a) as an activity of a trust company or related thereto."); OCC Decision to Conditionally Approve Paxos Trust Company, National Association, OCC Control Number 2025-Conversion-342828 (Dec. 12, 2025) ("The Bank will act in a fiduciary capacity by providing custodial services, including custody of cash, securities, and cryptocurrencies. Trust company activities include providing such custody services in a fiduciary manner. Therefore, the Bank's proposed fiduciary custody services are permissible under 12 U.S.C. § 27(a) since they are activities of a trust company. The Bank's proposed issuance of U.S. dollar-backed stablecoins is also permissible under 12 U.S.C. § 27(a) as operations of a trust company or activities related thereto.").

substantial and unsettled body of litigation.[33] The most prominent recent decision held on closely divided grounds that the Federal Reserve Banks possess discretion to deny applications.[34]

In administering the authority granted to it by Congress under the Monetary Control Act, the Federal Reserve in 2022 established a tiered, risk-based framework for evaluating requests for master accounts and services.[35] Under that framework, the Federal Reserve categorized applicants into three tiers based on risk profile: Tier 1 encompasses federally insured institutions subject to prudential supervision by a federal banking agency; Tier 2 covers institutions that are not federally insured but are subject to prudential supervision by a federal banking agency; and Tier 3 encompasses institutions that are not federally insured and not subject to prudential supervision by a federal banking agency, including novel charter types.[36] Each successive tier receives a more stringent and comprehensive review. Because many payments-focused firms including those with limited-purpose or special-purpose charters—they fall into Tier 2 or 3.

Further clarity may be coming. In May 2026, a presidential executive order directed the Federal Reserve to evaluate access for uninsured depository institutions and non-bank financial companies,[37] and the Federal Reserve contemporaneously proposed to establish a special-purpose "Payment Account" for legally eligible institutions that would provide a more defined pathway to settlement access.[38] Proposed legislation referred to this Committee would also authorize non-chartered entities to access a master account.[39]

III. Areas for Further Policy Exploration

Each of these problems surrounding authorities and access is amenable to a legislative solution, and in each case the solution need not be binary.

First, Congress could consider establishing a new type of charter, such as a federal payments charter, within or outside the context of the national bank framework. The Treasury Department

[33] The governing statute, the Monetary Control Act of 1980, provides that Federal Reserve services covered by the fee schedule "shall be available" to nonmember depository institutions. 12 U.S.C. § 248a(c)(2); see also 12 U.S.C. § 342.

[34] *See, e.g.*, *Custodia Bank, Inc. v. Fed. Reserve Bd. of Governors*, 157 F.4th 1235, 1250-55 (10th Cir. 2025) (holding on a 2-1 panel that Federal Reserve Banks have discretion to deny applications from legally eligible institutions), ***reh'g en banc denied*** (denied 7-3 over dissents), 169 F.4th 1188, *petition for cert. forthcoming*; *Fourth Corner Credit Union v. Fed. Reserve Bank of Kansas City*, 861 F.3d 1052, 1053, 1058, 1064 (10th Cir. 2017) (*per curiam*) (dismissing without prejudice a credit union's request for an injunction granting master account access on multiple grounds, including that the credit union served cannabis businesses, which remained illegal under federal law, and that the case was not "ripe" given the lack of a formal denial); *TNB USA Inc. v. Fed. Rsrv. Bank of New York*, No. 1:18-CV-7978 (ALC), 2020 WL 1445806, at *1, *4 (S.D.N.Y. Mar. 25, 2020) (dismissing TNB USA's request for an injunction granting a master account on the grounds that TNB had not sustained an injury sufficient to provide standing and, additionally, that the case was not "ripe" for judicial review, notwithstanding, on both counts, the Reserve Bank's atypically delayed decision); *PayServices Bank v. Fed. Rsrv. Bank of San Francisco*, No. 1:23-CV-00305-REP, 2024 WL 1347094, at *1, *6-11 (D. Idaho Mar. 30, 2024) (dismissing a bank's request for an injunction granting a master account on multiple substantive and procedural grounds, including, as one alternative, that Reserve Banks are not government agencies and therefore are not subject to judicial review under the Administrative Procedure Act).

[35] Guidelines for Evaluating Account and Services Requests, 87 Fed. Reg. 51099 (Aug. 19, 2022).

[36] *Id*.

[37] Exec. Order No. 14405, Integrating Financial Technology Innovation Into Regulatory Frameworks, 91 Fed. Reg. 30475 (May 19, 2026) (requesting that the Federal Reserve evaluate access by uninsured depository institutions and non-bank financial companies).

[38] Proposed Revisions to the Federal Reserve Policy on Payment System Risk and the Guidelines for Account and Services Requests, 91 Fed. Reg. 30627 (May 26, 2026) (seeking comment on a proposal to establish a special-purpose "Payment Account" for legally eligible institutions).

[39] H.R.8395 - 119th Cong. (2025-2026): PACE Act of 2026, H.R.8395, 119th Cong. (2026), https://www.congress.gov/bill/119th-congress/house-bill/8395/text.

recommended in 2022 that Congress consider this issue.[40] And the question is not all-or-nothing. Congress could take any number of approaches to balance the interests presented by dual state and federal regimes. For example, federal regulation could serve as a backstop to state regulation. Another approach could provide a toggle between state and federal regulation based on the scale of a firm. These types of options were debated thoroughly during the development of, and ultimately utilized by, the GENIUS Act.[41]

Second, Congress could address the issues raised by the current framework for access to Federal Reserve services. For example, Congress could revisit which firms are eligible and on what terms and pursuant to what procedures access is granted. This issue also need not be binary. As the Federal Reserve is currently considering, access can be limited or graduated based on a firm's activities or risk profile, as is the case in other countries, where certain non-bank payment firms may obtain forms of settlement access short of the full privileges afforded to full-service banks.[42] In addition, Congress could consider the procedural aspects of account access, including defined timelines and decisional standards. Importantly, any legislation about charters or licensing would benefit from corresponding certainty about master account access, because a new charter or license is inherently of limited value if the question of payment-system access is left unresolved.

IV. Conclusion

The recurring difficulty across chartering, payments licensing, and access to Federal Reserve services is the same: a framework organized around a bundled conception of banking has not fully adapted to a world in which the core banking functions have become increasingly unbundled. The remedy is not to force new business models into ill-fitting categories. Rather, responsible innovation is best fostered by clear legal standards about which charters and licenses are available, what activities they permit, and on what terms institutions may access Federal Reserve services. Having clear standards for these issues could spur a further wave of investment into the future of financial services. Both the agencies and Congress have constructive roles to play in supplying that clarity and bringing about that result.

[40] *See* U.S. DEP'T OF THE TREASURY, THE FUTURE OF MONEY AND PAYMENTS (2022) (Recommendation 3); U.S. DEP'T OF THE TREASURY, FACT SHEET: TREASURY REPORT ON THE FUTURE OF MONEY AND PAYMENTS (2022). *See also* Nellie Liang, Under Sec'y for Domestic Fin., U.S. Dep't of the Treasury, "Modernizing the Regulatory Framework for Domestic Payments" at the Chicago Payments Symposium (Oct. 9, 2024) (outlining a plan for a federal payments regulatory framework); Dan Awrey, *Unbundling Money, Banking, and Payments*, 110 GEORGETOWN L.J. 715, 722-23 (2022) (proposing payment system reforms, including via non-bank access to master accounts). *See also* Dan Awrey, *Money and Federalism*, 75 DUKE L.J. 171, 237-45 (2025) (outlining two paths for monetary reform with differing levels of federal or state authority).

[41] *Stablecoin Testimony*, *supra* note 1; 12 U.S.C. § 5903(c) (establishing the option for a state-level payment stablecoin regulatory regime for state-qualified payment stablecoin issuers with a consolidated total outstanding issuance of not more than $10 billion, provided that the state-level regulatory regime is "substantially similar" to the federal regulatory framework under the GENIUS Act).

[42] *See supra* note 38 and accompanying text. By way of comparison, the United States has been described as the only G-7 country that has not enabled non-bank access to the central bank's payment systems. *See also* Davis Polk & Wardwell LLP, White House and Federal Reserve Propose Payment System Access Changes (2026) (slide 10). By comparison, the Bank of England became the first G-7 central bank to offer settlement-account access to non-bank payment service providers, beginning in 2017. The recent U.S. grants of access to a Connecticut innovation bank (Numisma) and a Wyoming SPDI (Kraken) involved uninsured *depository institutions*, not non-depository non-banks, and even this approach was done on a trial basis. *Bowman: Kraken Master Account Approval Was 'Pilot' for Nonbank Access to Fed System*, ABA Banking Journal, Mar. 11, 2026. *See* also THOMAS LAMMER, FANNI LEPPANEN & FEDERICO SEMORILE, BANK FOR INT'L SETTLEMENTS, ENHANCING CROSS-BORDER PAYMENTS STEP BY STEP: INSIGHTS FROM THE 2025 MONITORING SURVEY 9-12 (2026) (especially at Box 2, describing payment system access for non-bank payment service providers in India, the United Kingdom, and the Eurosystem). *See, e.g.*, Decision (EU) 2025/222 of the European Central Bank on Access by Non-Bank Payment Service Providers to Eurosystem Central Bank Operated Payment Systems and Central Bank Accounts, OJ L, 2025/222, 6.2.2025 (providing that Eurosystem central banks can and should allow payment system access to non-bank payment service providers, but limiting these accounts to settlement uses and prohibiting safeguarding of client funds by non-banks).

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Thank you again for the opportunity to participate today. I look forward to answering the Committee's questions.