Global Financial Services Regulatory Guide - United States of America

1. Who regulates banking and financial services in your jurisdiction?

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Banks

The United States has a dual banking system comprising both federally chartered and state-chartered banks. In addition, the United States permits banks to have a corporate structure, including bank holding companies and financial holding companies, some of which may now be designated “systemically important financial institutions.”

All banks engaging in banking activities, including the acceptance of deposits, must obtain a bank charter before conducting business in the United States. There are many different charters available to banks in the United States, each with different financial powers as prescribed by state and federal laws. The principal categories of banks in the United States include national banks, state member banks and state non-member banks. Foreign banks may also establish a presence in the United States by obtaining authorization to operate various types of offices depending on the types of activities to be conducted. Other types of banks that are included within the US banking system, but which are smaller in number, include private banks, uninsured state banks, bankers’ banks, trust companies, industrial banks and savings banks.1

Almost all banks are subject to the regulatory authority of more than one bank regulatory agency. All banks fall under the supervision and regulation of their chartering authority at either the state or federal level. If deposit insurance is obtained (which almost always is), a bank is subject to certain statutes of the Federal Deposit Insurance Act, and in the case of a state non-member bank, to direct supervision by the Federal Deposit Insurance Company (FDIC). If a state bank becomes a member of the Federal Reserve System, the Federal Reserve is its primary federal supervisor. Bank holding company and financial holding company structures subject their bank and other subsidiaries to an additional layer of regulation and supervision at the parent company level.

The regulatory agencies primarily responsible for supervising commercial banks and administering state and federal banking laws include the Federal Reserve System, the Office of the Comptroller of the Currency (OCC), the FDIC and the state banking agencies.

**The Federal Reserve System**. The Federal Reserve directly supervises state-chartered banks that choose to become members as well as foreign banking offices and Edge Act corporations.2 The Federal Reserve is also the primary supervisor of bank holding companies and financial holding companies. The Federal Reserve has broad enforcement powers, including authority to issue cease-and-desist orders, remove bank and holding company officers and other affiliated parties, levy fines, revoke membership, and order divestiture or termination of financial holding company activities.

**The Office of the Comptroller of the Currency**. The OCC is the primary supervisory agency for national banks, savings associations and federal branches of foreign banks. The OCC is a bureau of the US Department of Treasury and is responsible for chartering national banks, reviewing national bank branch and merger applications, implementing regulations, and examining and supervising all national banks. The OCC also has broad enforcement powers.

**The Federal Deposit Insurance Corporation**. The FDIC provides federal insurance of deposits at commercial banks. Deposit insurance is mandatory for Federal Reserve member banks and may be extended to non-member banks with the approval of the FDIC. Nearly all non-member banks are FDIC-insured. The FDIC is empowered to examine all banks with FDIC insurance; however, to prevent regulatory duplication, the FDIC only directly supervises and examines state-chartered banks that are not members of the Federal Reserve System.

As part of its insurance responsibilities, the FDIC also acts as a receiver for failed banks and administers the deposit insurance funds. The FDIC may make special examinations of banks to determine the condition of the bank for insurance purposes. The FDIC also holds broad enforcement powers, and it may also appoint itself a conservator or receiver of an insured depository institution.

**State banking agencies**. Every state has its own regulatory agency responsible for chartering and supervising state banks and foreign banks located within the state. Banks chartered by the state must follow all applicable state laws and regulations. In addition, if a state bank takes out deposit insurance or becomes a member of the Federal Reserve, it must also comply with the appropriate federal regulations. State regulatory agencies issue bank charters, conduct bank examinations, construct and enforce bank regulations, and decide on proposed branch and merger applications. All state regulatory agencies can impose sanctions such as revoking a state bank’s charter, issuing cease-and-desist orders, removing bank officials and levying fines.

**Other regulators.** Other state and federal regulatory agencies are also responsible for various supervisory and other matters over US banks, with some agencies more active and more powerful than others.  Generally, these state regulators are principally responsible for non-bank lending institutions. Some of the more important agencies are the Consumer Financial Protection Bureau (CFPB), the Financial Crimes Enforcement Network, the Federal Financial Institutions Examination Council, the Department of Justice, the Securities and Exchange Commission, and the Federal Trade Commission.

**Securities and investments**

The US Securities and Exchange Commission (SEC) is the primary federal regulator of persons engaged in securities business activities.  The SEC regulates brokers, dealers, investment advisers, investment companies (e.g., mutual funds, ETFs, private funds) and other securities market participants, such as exchanges and other self-regulatory organizations (SROs), clearing agencies and transfer agents.  Brokers, dealers and investment advisers may also be subject to state securities regulatory authorities for securities business occurring in those states. In addition, brokers and dealers generally must become members of the Financial Industry Regulatory Authority, Inc. (FINRA) and are subject to FINRA rules.

**Derivatives**

The US Commodity Futures Trading Commission (CFTC), which is an independent federal agency of the US government, has exclusive jurisdiction over transactions in “Commodity Interests” that are executed or booked in the United States. The term “**Commodity Interests**” collectively refers to the following instruments: (i) futures contracts, (ii) options on futures contracts, (iii) swaps, (iv) leveraged retail foreign exchange and commodity contracts, and (v) certain other leveraged products. The CFTC therefore also regulates investment advisers and investment funds investing in Commodity Interests and brokers and platforms facilitating Commodity Interest transactions.

**Insurance**

Individual states and their insurance commissioners or departments have general authority to regulate insurance activities. Companies that desire to engage in insurance activities must comply with state licensing laws and other state insurance laws and regulations.

**Money transmission**

Money transmission services are regulated at the federal and state level.  The Financial Crimes Enforcement Network (FinCEN), a bureau of the US Department of the Treasury, is the primary federal regulator responsible for the registration and supervision for compliance with anti-money laundering (AML) regulations for money services businesses (MSBs).  In addition, state regulatory authorities regulate money transmission services occurring within their state.  A money transmitter is a type of MSB, which also includes entities such as issuers of stored value products, check cashers or dealers in foreign exchange.

1 Although not covered in this chapter, credit unions are another type of financial institution in the United States that are similar to banks, but operate as cooperative, non-profit entities. Credit unions are regulated by the National Credit Union Administration, and are subject to independent statutes, rules and regulations under the Nation Credit Union Act.

2 An Edge Act corporation is a subsidiary of a US or foreign bank that engages in foreign banking operations; these entities were first created in 1919 by an amendment to the Federal Reserve Act of 1913.

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