

Public Banking: More Ideas to Advance an Equitable Economic Recovery

January 5, 2021

Last year, as the 116th Congress was near the end of its term, Congresswomen Rashida Tlaib (D-Michigan) and Alexandria Ocasio-Cortez (D-New York) introduced a bill in the House of Representatives that would promote the chartering of public banks in the United States (the “Public Banking Act”).¹ The Public Banking Act would provide for a federally funded grant program and uniform regulatory scheme for public banks in the United States that would complement other progressive banking policies like postal banking and free digital wallets maintained by the Federal Reserve.²

Although the passage of this particular piece of legislation does not appear imminent by any means and this or similar legislation raises a number of policy questions that would need to be resolved, the Public Banking Act and similar proposals reflect the types of initiatives and policies that Democrats may continue to pursue to advance the goal of an equitable economic recovery and access to the financial system for historically underserved communities. To that end, below we provide a brief summary of the Public Banking Act to show how at least some policymakers are thinking about the types of actions that should be taken as the Biden administration begins to design economic recovery measures.

Chartering of Public Banks. The Public Banking Act would permit the Federal Reserve Board (the “Federal Reserve”) to charter two types of public banks: a “public lending bank” and a “public payment bank.” These public banks would be owned and controlled by a state or local government or designated nonprofit instrumentality and would not be affiliated with for-profit entities. According to Representative Tlaib’s [press release](#), “Public banks can offer lower debt costs to city and state governments, fund public infrastructure projects, and encourage entrepreneurship by providing loans to small businesses at lower interest rates and with lower fees.” Public banks also may become members of the Federal Reserve System to gain access to certain privileges, including the ability to provide accounts with interest set by the Federal Reserve, services for digital-dollar wallets that may be provided in the future by the Federal Reserve and the

¹ See Public Banking Act of 2020, H.R. 8721, 116th Cong. (2020) available [here](#).

² For more information on the Banking Act for All and the Postal Banking Act, please see our Debevoise Update available [here](#).

United States Department of the Treasury (the “Treasury”) and access to postal banking if offered through the United States Postal Service (the “Postal Service”). Unlike private-sector banks, the public banks would not be permitted to purchase stock in a Federal Reserve bank or otherwise maintain paid-in capital in the Federal Reserve System.

In terms of the scope of permitted activities, a public lending bank would be eligible to provide all of the following services: (i) fiscal agent services; (ii) money transmitter services; (iii) digital-dollar services as a pass-through intermediary for the Federal government; (iv) depository services; (v) postal banking services; (vi) securities-related services; and (vii) any lending product approved by the Federal Reserve. By contrast, a public payment bank would be eligible to provide any of the services of a public lending bank except for any securities-related or lending services.

The Public Banking Act also would permit a state-chartered bank or a non-depository institution that is wholly owned and controlled by an entity permitted to control a public bank to apply to gain Federal recognition or convert to a public bank (such banks, together with public lending banks and public payment banks, are referred to as “covered banks”).

Regulation of Public Banks. The Public Banking Act would require the Federal Reserve, the Consumer Financial Protection Bureau (the “CFPB”) and the Federal Deposit Insurance Corporation (the “FDIC”) to establish jointly a separate regulatory scheme for covered banks. The legislation also provides that an entity that controls a covered bank would not be regulated as a bank holding company. The FDIC would be required to establish a registration and regulatory scheme for providing deposit insurance to covered banks (referred to as “public deposit insurance”) without regard to the total deposit amount.

The legislation would require the Federal Reserve to issue regulations to ensure that the services provided by public banks are universal and comprehensively include historically excluded and marginalized groups (“universal access regulations”) and, together with the FDIC, develop an annual assessment to determine if a covered bank has appropriately provided services to all customers within its jurisdiction of service.

Separately, the Securities and Exchange Commission (the “SEC”) would be required under the bill to establish a registration and regulatory scheme for licensing and regulating all covered banks that engage in securities-related activities.

Finally, the bill would require the Postal Service to partner with covered banks to make retail account and payment services available at post offices and via any established postal banking platforms.

Federal Grant Program and Liquidity and Credit Support. A cornerstone of the Public Banking Act is a public grant program administered by the Federal Reserve and the Treasury that provides for the formation, chartering and capitalization of public banks. Notably, the Federal Reserve and the Treasury may not consider the budgetary or financial health of the entity that wholly owns or controls the bank in considering eligibility for grants under the program. On the other hand, the Federal Reserve and the Treasury would be required to consider the extent to which an applicant has established an appropriate degree of community involvement and oversight, including dedicated community representation on the governing board, and evidence of support or commitment from community representative organizations.

Funds disbursed under the program may be used (i) for activities related to bank formation, chartering and regulatory compliance; (ii) for capitalization; (iii) to make payments and develop financial infrastructure; (iv) to carry out activities related to information and communications technology; (v) to support operations; (vi) to cover unexpected losses; and (vii) to carry out other activities determined appropriate by the Federal Reserve. The Federal Reserve and the Treasury also would be required to award grants to covered banks, community development financial institutions, minority depository institutions and credit unions to facilitate coordination among those entities to ensure that community-oriented financial services are universal and comprehensively include historically excluded and marginalized groups. Further, the Public Banking Act would establish an incubator program to provide technical and technological assistance to persons seeking to be a covered bank.

The bill would also establish Federal Reserve liquidity facilities to support member covered banks by buying or lending against federally recognized public loans and securities and other assets, a credit facility to provide for unsecured loans for covered member banks and a repo facility for loans and other lending products issued by member covered banks.

The legislation further provides that the Federal Reserve will cover certain administrative, operating and maintenance costs associated with the accounts, services and facilities the Federal Reserve provides public banks.

Consumer Protection and Community Development. Thus, the bill includes a number of provisions aimed at ensuring consumer protection and encouraging community development. Under the legislation, covered banks would be prohibited from providing retail account services, including payment accounts and depository account services, with fees or minimum or maximum balances. The bill also seeks to limit interest and related charges on retail loans, with interest rates capped at the lesser of 15 percent and the maximum amount permitted by state law. Penalties would be imposed on banks for charging higher credit rates.

The bill also would not permit the Federal Reserve to issue any universal access regulation that would supersede or supplant any “stronger regulations or standards” promulgated by any Federal or State regulatory entity, including the CFPB, or that would result in any less robust or stringent protections to consumers, including under the Community Reinvestment Act (the “CRA”).

Ecological Sustainability and Fossil Fuels. Because governments may seek to use the public banks to fund state and local infrastructure projects, the bill would also require the Federal Reserve, the FDIC and the SEC to jointly develop and promulgate rules to ensure that all activities are consistent with federal standards, goals and targets for ecological sustainability, climate crisis-mitigation and decarbonization. The bill would also require the agencies to prohibit covered banks from facilitating fossil fuel production or infrastructure, including through loans or investments, taking compensation for arranging a transaction, securitizing assets or entering into derivatives transactions.

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