

OCC Proposes New Rule on Fair Access to Banking Services

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On November 20, the Office of the Comptroller of Currency (OCC) proposed a rule aimed at ensuring fair access to bank services, capital, and credit. Citing pushes from across the political spectrum to “de-bank” industries that, while legal, are politically controversial, the proposed rule endeavors to eliminate “broad-based decisions” that affect whole categories and classes of customers and instead push banks to decide whether to service customers based on individual risk assessments. Indeed, in its notice of proposed rulemaking, the OCC stated that “[i]n order to ensure that banks provide customers with fair access to financial services, and consistent with longstanding OCC policy, a bank’s decision not to serve a particular customer must be based on an individual risk management decision about that individual customer, not on the fact that the customer operates in an industry subject to a broad categorical exclusion created by the bank.” Importantly, while the proposed rule prohibits covered banks from denying services on the basis of the above-described “broad based decisions,” a bank may still fairly deny access to its services based on “quantitative, impartial, risk-based decisions,” such as creditworthiness.

The proposed rule carries a relatively short comment period, which closes on January 4, 2021, and could be finalized as soon as January 2021. Should the proposal become a final rule, it would generally apply to the largest federally chartered banks in the country (those with at least \$100 billion in assets). Given this, banks in this category should be prepared to make any necessary adjustments to their decision-making processes in the near term.

Notably, this November 20 proposal coincides with President Trump’s November 17 nomination of Brian Brooks, the current acting director of the OCC, to a full five-year term as the comptroller of the currency. With a [potential battle](#) on removing a comptroller nominated during a lame-duck period looming, the lifespan of this rule, which could be finalized before President-elect Biden’s inauguration, in the next administration remains to be seen.

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