BANK POLICY INSTITUTE

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OCC Fair Access Proposal Issue Summary

The Acting Comptroller of the Currency wants to force every large bank to lend to every industry in every geographic region of the country, regardless of whether the bank has any knowledge of the industry or the local area, and regardless of any qualitative factors the bank may want to take into account. The OCC claims it is protecting politically disfavored customers, but really it is just telling senior management and bank boards that they cannot be trusted to make good decisions.

This policy lacks logic and legal basis, ignores basic facts about how banking works in the U.S. and undermines safety and soundness.

1. **The OCC's proposed rule rests entirely on Section 1(a) of the National Bank Act, which was added by Dodd-Frank in 2010 and which says that the OCC should among other things assure "fair access to financial services." Section 1(a) is a mission statement for the agency and not a grant of regulatory or enforcement authority upon which to base such a prescriptive rulemaking, and it's a contortion of both a plain reading of the statute and congressional intent to think otherwise.**
    - The legislative language underpinning the proposal summarizes the OCC's mission, rather than giving it specific authority to force banks to lend to certain businesses. Congress rightly has avoided micromanaging how banks lend, just as it has also declined to guarantee access to bank loans for every U.S. company and industry.
    - The Acting Comptroller's misreading of the mission statement as a grant of open-ended regulatory authority effectively moots innumerable statutes by which Congress has spoken much more specifically to the topic at hand, including UDAAP authority, the Equal Credit Opportunity Act and similar consumer protection statutes. Moreover, this proposal could undermine the CFPB's authority to enforce consumer protections.
2. **The proposal is completely unworkable as a practical matter and reflects a shocking ignorance of how banking is prudently conducted in the United States.**
    - Banks typically target certain industries (such as airlines or shipping) or geographic areas (such as the Southeast or Pacific Northwest) of which they have developed a knowledge and expertise. This proposal upends that practice.
        i. By its terms, the proposal would:
            1. prohibit a California bank from refusing to offer a mortgage to a Maine resident on the grounds that it does not lend in Maine; rather, the California bank would have to construct an "objective, quantifiable risk-based analysis" for which the Maine resident does not qualify for credit.
            2. prohibit a regional bank in Georgia that offers floorplan leasing from refusing to offer an aircraft lease to a Montana company unless and until it created the same such analysis.
    - The proposal will force banks into lines of business they may not understand and, perhaps for that reason, they don't undertake. It would make every bank a generalist, eliminating current practice by which banks use their expertise to make sound, targeted business and lending decisions.
        i. For example, under this proposal, no bank could deny a customer an interest-rate swap, repo trade or a safety deposit box on the grounds that the bank is not in those businesses; rather, it would have to construct an "objective, quantifiable risk-based analysis" under which it offers such products and presumably be prepared to enter those businesses if a customer qualified.
    - In the overwhelming majority of cases, banks decide against lending to a given sector or industry because they do not believe that the investment of resources and capital would generate sufficient returns; in short, they make business decisions, which is what businesses in a capitalist economy do. The proposal completely ignores this fact.
3. **The proposal undermines rather than promotes safety and soundness.**
    - The proposal seems to suggest that a bank failing to offer a product or service to a customer could threaten the bank's safety and soundness, which is at complete odds with conventional approaches to safety and soundness standards. On the contrary, banks are meticulous risk managers that approach customer and product segments in a careful and managed way. The proposal could constrain a bank's ability to exercise judgment and make prudent business decisions based on a range of quantitative as well as qualitative factors. It could thus undermine a bank's safety and soundness and, accordingly, is imprudent and unwise.