



January 4, 2021

Submitted via www.regulations.gov

Office of the Comptroller of the Currency
Chief Counsel's Office
Attention: Comment Processing
400 7th Street SW, Suite 3E-218
Washington, DC 20219.

Re: *Fair Access to Financial Services (Docket ID OCC-2020-0042)*

The American Exploration and Production Council (AXPC) appreciates the opportunity to comment on the Office of the Comptroller of the Currency's (OCC) proposed rulemaking, "Fair Access to Financial Services," 85 Fed. Reg. 75,261 (Nov. 25, 2020). AXPC supports the proposal.

AXPC is a national trade association representing the largest independent oil and natural gas exploration and production companies in the United States. Dedicated to safety, science, and technological advancement, AXPC members strive to deliver affordable, reliable energy to consumers while positively impacting the economy and the communities in which we live and operate. As part of this mission, AXPC members understand the importance of ensuring that all companies have fair access to financial services.

OCC's proposal is an appropriate exercise of its general rulemaking authority, *see* 12 U.S.C. § 93a, as well as its authorities to interpret and clarify Congressional language and to make policy choices where Congress has delegated to it the authority to do so. *Cf.* 12 U.S.C. § 1 (general charge to OCC to ensure "fair access to financial services, and fair treatment of customers by, the institutions and other persons subject to its jurisdiction"). The risk that banks may depart from the sound principle of assessing a person or company's individual characteristics when deciding whether to provide access to financial services poses a threat to this principle of fair access.

AXPC appreciates that OCC has in the past reminded institutions subject to its jurisdiction of this principle via guidance, *see discussion*, 85 Fed. Reg. at 75,263/1-2. However, AXPC believes that a rulemaking such as this one is a more appropriate means for OCC to ensure that banks do not employ improper category-based risk evaluations. This will give legal force and effect to the fair-access principle, place all covered banks on notice of their obligations, and inform all persons and companies seeking financial services of their rights. *See id.* at 2-3.

AXPC agrees that neither OCC nor banks "are well-equipped to balance risks unrelated to financial exposures and the operations required to deliver financial services." 85 Fed. Reg. at 75,264/2. Integrating concerns about climate change with economic and foreign-policy considerations is, as OCC rightly notes, the role of Congress and of regulatory bodies specifically tasked with, for instance, environmental and energy oversight. A bank's decision whether to provide financial services to a particular company should be based on due consideration of that company's creditworthiness, with

**Office of the Comptroller
Chief Counsel's Office
AXPC Comments
Docket ID OCC-2020-0042
Page Two**

reference to objective, quantitative, and impartial standards. For banks to instead base their decisions on general policy preferences, or on crude, sector-wide perception of risk, distorts the proper nature of the lending process and undermines the core principle of fair access.

In response to OCC's specific solicitation of comment on this issue (85 Fed. Reg. at 75,265/1-2), AXPC urges OCC to include in its final regulation, in addition to the \$100-billion-total-assets threshold in proposed 12 CFR 55.1(a)(1)(iii), an alternative threshold under which a bank would be covered by the regulation if it accounts for at least 10 percent of the national market share of any financial service. AXPC agrees that some banks may, by virtue of market share, be able to raise the price of, or functionally deny financial services even if they fall below the threshold of \$100 billion in total assets. The final regulation should codify both thresholds in the alternative—*i.e.*, a bank should be covered by this rule if it *either* has \$100 billion in total assets *or* accounts for 10 percent of the national market share of any financial service. This dual-threshold approach will more appropriately reflect the diverse reality of the financial-services industry, in which the importance of a given lending institution may be due not only to that institution's sheer size, but also to its particular position in the market for financial services.

AXPC believes that any additional administrative burden placed by the proposed regulation on banks would be minimal and amply justified by the important values of fair access that the proposal will further. (See solicitation of comment, 85 Fed. Reg. at 75,266/2). As such, AXPC urges OCC to set the effective date of the final regulation to be as early as legally and logistically possible. Specifically, it would be appropriate for OCC to adhere to the generally applicable 30-day period between publication and effectiveness proscribed at 5 U.S.C. § 553(d), rather than waiting until the first day of the calendar quarter following publication of the final rule.

AXPC also believes that due to the importance of maintaining broad access to capital markets and that the \$100 billion in total assets thresholds is a presumptive level, that a \$50-billion-total-asset threshold would be more appropriate as that threshold would capture some regional banks.

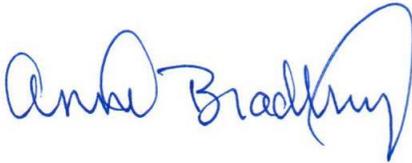
AXPC also believes that OCC should clarify that foreign banks that provide financial services to U.S. corporations would be covered by this rule within the definition of "covered bank". As currently written, the rule is unclear to stakeholders whether foreign banks that provide financial services to U.S. corporations would be included.

Finally, the regulation at 12 CFR 55.1(a)(1)(iii) allows banks to submit "written materials that, in the agency's judgment, demonstrate the bank does not meet the definition of covered bank." This language appears to be broad and creates uncertainty with what information OCC would deem appropriate to overcome the presumption. Therefore, AXPC believes that OCC revise the language within (a)(1)(iii) to provide more specific language on what information is required. If that is not possible, AXPC recommends OCC commits to developing guidance as soon as possible that provides additional clarity.

**Office of the Comptroller
Chief Counsel's Office
AXPC Comments
Docket ID OCC-2020-0042
Page Three**

AXPC supports the proposal with the inclusion the recommended modifications above. OCC should expeditiously finalize this rulemaking. Thank you for the opportunity to comment, and please do not hesitate to contact us with any questions.

Sincerely,

A handwritten signature in blue ink that reads "Anne Bradbury". The signature is fluid and cursive, with a large loop at the end of the last name.

Anne Bradbury
CEO
American Exploration & Production Council