



Attorneys At Law

8584 Katy Freeway, Suite 420

Houston, TX 77024

Phone: 713-871-0005

Fax: 713-871-1358

Partners

Thomas E. Black, Jr.¹

Gregory S. Graham²

Shawn P. Black³

Managing Attorney Houston

Ryan Black⁴

Senior Lawyers

David F. Dulock

Diane M. Gleason

Daniel S. Engle⁵

Margaret Noles

Associates

Nick Stevens

Syndy Davis

Brandon Pieratt

Ambria Wilmore

Of Counsel

David M. Tritter

Calvin C. Mann, Jr.

Retired Partner(s)

Calvin C. Mann, Jr.

¹ Also Licensed in Iowa, New York, and Washington

² Also Licensed in Georgia

³ Also Licensed in Kentucky and New York

⁴ Also Licensed in Washington D.C.

⁵ Also Licensed in New York

December 2, 2020

To: Clients and Friends

From: David F. Dulock

Subject: OCC Proposed Regulation for Fair Access to Financial Services

In the November 25, 2020, issue of the *Federal Register* (85 FR 75261, [click here](#)), the Office of the Comptroller of the Currency (OCC) is proposing a regulation, with a request for public comment, to ensure that national banks and Federal savings associations (herein individually “bank” and collectively “banks”) offer and provide fair access to financial services.

Comments may be submitted through the Federal eRulemaking Portal, by mail, or by hand delivery. The instructions for submitting comments are on page 75262 of the above described *Federal Register*. Comments must be received on or before January 4, 2021.

The proposed regulation would be in a new part 55 (12 CFR part 55) consisting of §§55.1 and 55.2. It would clarify (1) the obligation of large banks to provide fair access to financial services, consistent with the Dodd-Frank Act’s mandate and (2) the parameters of this requirement. The text of new part 55 is reprinted below:

PART 55—FAIR ACCESS TO FINANCIAL SERVICES

§ 55.1 Fair access to financial services.

(a) For purposes of this section:

(1)(i) Covered bank means an entity for which the Office of the Comptroller of the Currency is the appropriate Federal banking agency as defined in 12 U.S.C. 1813(q)(1) that has the ability to:

(A) Raise the price a person has to pay to obtain an offered financial service from the bank or from a competitor; or

(B) Significantly impede a person, or a person’s business activities, in favor of or to the advantage of another person.

(ii) A bank is presumed not to meet the definition of covered bank in paragraph (a)(1)(i) of this section if it has less than \$100 billion in total assets.

(iii) A bank is presumed to meet the definition of covered bank in paragraph (a)(1)(i) of this section if it has \$100 billion or more in total assets. A bank that meets the criteria in this paragraph (a)(1)(iii) can seek to rebut this presumption by submitting to the Office of the Comptroller of the Currency written materials that, in the agency’s judgment, demonstrate the bank does not meet the definition of covered bank in paragraph (a)(1)(i) of this section.

(2) *Financial service* means a financial product or service.

(3) *Person* means:

(i) Any natural person; or

(ii) Any partnership, corporation, or other business or legal entity.

(b) To provide fair access to financial services, a covered bank shall:

(1) Make each financial service it offers available to all persons in the geographic market served by the covered bank on proportionally equal terms;

(2 pages)

(2) Not deny any person a financial service the bank offers except to the extent justified by such person's quantified and documented failure to meet quantitative, impartial risk-based standards established in advance by the covered bank;

(3) Not deny any person a financial service the bank offers when the effect of the denial is to prevent, limit, or otherwise disadvantage the person:

(i) From entering or competing in a market or business segment; or
(ii) In such a way that benefits another person or business activity in which the covered bank has a financial interest; and

(4) Not deny, in coordination with others, any person a financial service the bank offers.

§ 55.2 [Reserved]

This Memorandum is provided as general information in regard to the subject matter covered, but no representations or warranty of the accuracy or reliability of the content of this information are made or implied. Opinions expressed in this memorandum are those of the author alone. In publishing this information, neither the author nor the law firm of Black, Mann & Graham L.L.P. is engaged in rendering legal services. While this information concerns legal and regulatory matters, it is not legal advice and its use creates no attorney-client relationship or any other basis for reliance on the information. Readers should not place reliance on this information alone but should seek independent legal advice regarding the law applicable to matters of interest or concern to them. The law firm of Black, Mann & Graham L.L.P. expressly disclaims any obligation to keep the content of this information current or free of errors.