

United States House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

December 30, 2020

Mr. Brian Brooks
Acting Comptroller of the Currency
Office of the Comptroller of the Currency
400 7th Street S.W.
Washington, D.C. 20219

Acting Comptroller Brooks:

We write to express our opposition to the Office of the Comptroller of the Currency's (OCC) recent Notice of Proposed Rulemaking (NPRM) regarding "fair access to financial services."¹ Instead of implementing the OCC's statutory mission to ensure all consumers have fair access to financial services,² this rulemaking appears designed to force banks to ignore material risks posed by fossil energy companies, gun manufacturers, and other large corporations while providing them access to any banking product or service they want. We urge the OCC to promptly withdraw this misguided NPRM that would increase systemic risks to the financial system, discourage corporate social responsibility, and do nothing to ensure communities of color are better served by the banking system.

As the NPRM notes, the OCC has an obligation to protect the "safety and soundness" of the financial system. The proposed rule cites this obligation as justification for placing special emphasis on compliance among banks with \$100 billion or more in assets, due to their "dominant market position" and "systemic importance." Far from addressing systemic risks among larger banks, however, this proposal would undermine, not protect, the safety and soundness of the banking system in crucial ways. Firstly, the proposed rule would prohibit banks from depriving certain services to entire sectors, requiring banks to provide the fossil fuel industry with access even to risky and complicated products.³ Secondly, by guaranteeing access to any large bank product or service for the fossil fuel industry, the NPRM would undercut regulatory efforts to address the physical and transition risks of climate change, which the Federal Reserve recently highlighted in its latest financial stability report.⁴ Relatedly, an advisory subcommittee to the U.S. Commodity Futures Trading Commission (CFTC) noted in a major report on climate risks, "A central finding of this report is that climate change could pose systemic risks to the U.S. financial system."⁵ Contrary to the NPRM, an extensive staff report of the U.S. House Select Committee on the Climate Crisis urged financial regulators to identify and take steps to mitigate climate-related risks in the financial sector,

¹ OCC, [Proposed Rule Would Ensure Fair Access to Bank Services, Capital, and Credit](#) (Nov. 20, 2020).

² 12 USC §1, as modified by Section 314 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, states, "There is established in the Department of the Treasury a bureau to be known as the 'Office of the Comptroller of the Currency' which is charged with assuring the safety and soundness of, and compliance with laws and regulations, fair access to financial services, and fair treatment of customers by, the institutions and other persons subject to its jurisdiction."

³ The banking industry itself has noted that "the proposal undermines rather than promotes safety and soundness." See, for example, Bank Policy Institute, [OCC Fair Access Proposal Issue Summary](#) (Dec. 2, 2020).

⁴ Federal Reserve, [Financial Stability Report](#) (Nov. 2020).

⁵ CFTC, [CFTC's Climate-Related Market Risk Subcommittee Releases Report](#) (Sep. 9, 2020).

endorsing policies included in H.R. 5194, the Climate Change Financial Risk Act drafted by Rep. Sean Casten (D-IL), among other proposals.⁶

Moreover, the quantitative-only risk analysis that would be required by the NPRM discounts other material risks, including public safety, to the extent financial institutions voluntarily chose to adopt a decision-making framework intended to reduce gun violence when determining who and how they serve potential customers. Similarly, we are concerned the NPRM could chill efforts by financial institutions to make use of Environmental, Social, and Governance (ESG) and similar ratings that include qualitative considerations.⁷

Additionally, the OCC's NPRM states that the Dodd-Frank Act amendments to 12 U.S.C. 1 recognized a "longstanding anti-discrimination principle that individuals are entitled to be treated fairly by national banks and Federal savings associations (banks)." While the proposed rule attempts to draw a distinction between this anti-discrimination principle embodied in the Equal Credit Opportunity Act, Community Reinvestment Act, and other statutes, and the concept of "fair access to financial services," we believe those concepts are interrelated. A consumer cannot have fair access to financial services if they are being discriminated against by banks. However, rather than protect individuals from discrimination by banks to ensure they have fair access to financial services, the NPRM would force banks to serve major fossil energy companies despite the risks they may pose to the bank and the financial system. The well-documented pattern of systemic discrimination in depriving communities of color of equal access to credit bears no resemblance to financial institutions taking actions to reduce their exposure to climate risk, as well as other financial stability risks identified by prudential regulators, and we find it offensive to make any comparison in that manner. After Energy Secretary Dan Brouillette likened fossil fuel divestment to redlining earlier this year, Chairwoman Maxine Waters (D-CA) sent a letter rejecting a similarly inappropriate comparison.⁸

If the OCC was truly serious about providing "fair access to financial services," it would halt efforts to undermine the Community Reinvestment Act (CRA). In an April 2020 letter to your predecessor, we asked the OCC to delay rulemakings unrelated to the pandemic response, including the OCC's NPRM with respect to the CRA, during this unprecedented crisis.⁹ We urged the OCC to work with the Federal Reserve to develop a new, joint proposal that would be consistent with the purpose of the CRA. Instead, the OCC pushed out a final rule that was so harmful to the CRA that the U.S. House of Representatives repudiated it by passing H.J. Res 90, a resolution of disapproval to nullify the rule.¹⁰ Troublingly, the

⁶ U.S. House Select Committee on the Climate Crisis, [Solving the Climate Crisis – The Congressional Action Plan for a Clean Energy Economy and a Healthy, Resilient, and Just America](#) (June 2020). Also see Gregg Gelzinis and Graham Steele, [Climate Change Threatens the Stability of the Financial System](#), Center for American Progress (Nov. 21, 2019); and Graham Steele, [A Regulatory Green Light: How Dodd-Frank Can Address Wall Street's Role in the Climate Crisis](#), The Great Democracy Initiative (Jan. 2020).

⁷ National Law Review, [OCC Proposes 'Fair Access' Rule – Potential Implications for ESG Analysis](#) (Nov. 23, 2020).

⁸ Committee Press Release, [Waters Sends Letter to Energy Secretary Condemning Redlining Comments, Pushing Back Against Preferential Treatment for Oil and Gas Sector](#) (Jun. 23, 2020).

⁹ Committee Press Release, [Committee Democrats Call on Regulators to Suspend CRA and Other Rulemakings Unrelated to COVID-19](#) (Apr. 8, 2020).

¹⁰ Committee Press Release, [Waters' and Meeks' Resolution to Reverse the OCC's Harmful Rule Undermining the Community Reinvestment Act Passes the House](#) (Jun. 29, 2020).

OCC recently decided to release yet another NPRM with the purpose of gathering data that should have been collected beforehand to serve as the basis of any major rule on CRA before it was finalized.¹¹

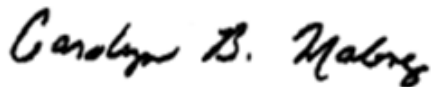
While we oppose the NPRM, other stakeholders should have more time to provide any comments they may have to the OCC after reviewing the proposed rule. Since the onset of the COVID-19 pandemic, the House Financial Services Committee has stressed that a severe economic recession is the wrong time to press forward with rulemakings unrelated to the ongoing public health and economic crisis. With public attention rightly focused on a surging virus and economic fallout, we believe the comment period should be extended.

In conclusion, we urge you to withdraw this harmful NPRM and instead use your authority to combat systemic climate risks, promote corporate social responsibility, and take steps to ensure that all consumers – particularly minority consumers, minority-owned businesses, and communities of color who have been continuously discriminated against – are, in fact, receiving fair access to banking services during and after this pandemic.

Sincerely,



MAXINE WATERS
Chairwoman



The Honorable Carolyn B. Maloney
Member of Congress



The Honorable Nydia M. Velázquez
Member of Congress



The Honorable Brad Sherman
Member of Congress



The Honorable Gregory W. Meeks
Member of Congress



The Honorable Wm. Lacy Clay
Member of Congress



The Honorable Al Green
Member of Congress

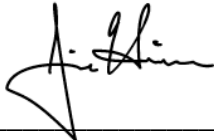
¹¹ OCC, [OCC Proposes Rule Regarding the CRA General Performance Standards](#) (Nov. 24, 2020).



The Honorable Emanuel Cleaver
Member of Congress



The Honorable Ed Perlmutter
Member of Congress



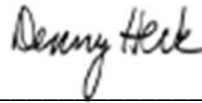
The Honorable Jim Himes
Member of Congress



The Honorable Bill Foster
Member of Congress



The Honorable Joyce Beatty
Member of Congress



The Honorable Denny Heck
Member of Congress



The Honorable Al Lawson
Member of Congress



The Honorable Michael San Nicolas
Member of Congress



The Honorable Rashida Tlaib
Member of Congress



The Honorable Cindy Axne
Member of Congress



The Honorable Sean Casten
Member of Congress



The Honorable Ayanna Pressley
Member of Congress



The Honorable Jennifer Wexton
Member of Congress



The Honorable Stephen F. Lynch
Member of Congress

Mr. Brian Brooks
December 30, 2020
Page 5 of 5



The Honorable Madeleine Dean
Member of Congress



The Honorable Jesús "Chuy" García
Member of Congress

cc: The Honorable Patrick McHenry, Ranking Member