United States Internet Preservation Society

Internet Preservation Society
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Comment in response to *Prohibition on Use of Reputation Risk by Regulators*
OCC-2025-0142 / OCC-2025-0174

I write representing myself and my decade-long struggle with payment processors, and on behalf of our members who are interested in protecting the rights of small online businesses.

The Office's written preamble is powerful and encouraging. However, the proposal lacks the teeth to enforce its intentions. The Office is moving in the right direction in towards "*Guaranteeing Fair Banking for All Americans*", but it must **boldly target the culprits of political debanking**: the financial institutions and technology companies.

OCC-2020-0042, finalized at the end of the President's first term,[1] offered much stronger language. Within two weeks of Biden taking office, this rule was formally put on hold, and has remained on hold since.[2]

We urge the OCC to reinstate OCC-2020-0042's strong mandates or adopt equivalent language in the final version of this current rule, focusing on these critical shortcomings.

I. Proposed Regulation Imposes Self-Limitations on Agency but not Financial Institutions

The current proposed rule is **fundamentally a self-limitation on agency supervision**, not a mandate on bank behavior. The proposal explicitly states it "would not impose any obligations on supervised IDIs" and that the agencies would be the "only entity directly affected".[3] While this is projected to result in significant cost savings for institutions, it **still permits institutions the flexibility to unilaterally impose discriminatory policies** based on political or social concerns.

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1 https://www.occ.gov/news-issuances/news-releases/2021/nr-occ-2021-8.html
2 https://www.occ.gov/news-issuances/news-releases/2021/nr-occ-2021-14.html
3 https://www.federalregister.gov/d/2025-19711/p-151

Thus, the proposal fails to achieve the core objective of President Trump's "*Guaranteeing Fair Banking for All Americans*": if banks remain empowered to "choose winners and losers"[4] among lawful market participants based on subjective criteria such as political affiliation, religious beliefs, and constitutionally protected speech.

This proposal's soft, hopeful approach stands in stark contrast to the direct, prescriptive mandates of OCC-2020-0042. That prior rule required a covered bank to "make each financial service it offers available to all persons in the geographic market served by the covered bank on proportionally equal terms".[5]

The prior mandate would have ensured that services were provided based on antitrust principles and fairness, preventing the categorical denial of financial services to entire industries, which can "significantly impede a person, or a person's business activities, in favor of or to the advantage of another person".[6] Without this affirmative mandate, the proposed rule only restricts the agency's choice of words, not the ultimate outcome of denying access to lawful commerce.

II. Proposed Regulation's use of 'solely' de facto permits this agency to give discriminatory direction.

The critical weakness of the current prohibition lies in the repeated use of the term "**solely**", appearing 17 times in total. The rule prohibits the agency from taking adverse action against an institution based "solely on the basis of the person's or entity's involvement in politically disfavored but lawful business activities perceived to present reputation risk".[7]

This insertion of "solely" creates a massive loophole in allowing the agency to continue using reputation risk, or pretextual concerns like BSA/AML, so long as it is not the "sole" factor behind the decision. This **effectively legitimizes discriminatory banking**, enabling the regulator to pressure banks on subjective grounds by simply ensuring one minor, quantifiable factor is coupled with the subjective, political, or reputational concern.

This loophole totally compromises the foundation of the proposal, considering its only stated ambition is to deregulate and defang *itself* in its ability to direct financial institutions into harming politically unpopular businesses. If it cannot soundly accomplish that, it achieves nothing at all.

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4 https://www.federalregister.gov/d/2025-19715/p-33
5 https://www.federalregister.gov/d/2020-26067/p-57
6 https://www.federalregister.gov/d/2020-26067/p-52
7 https://www.federalregister.gov/d/2025-19715/p-151

III. Proposed Regulation does not require internal documentation on decision-making.

The lack of mandatory internal standards in the proposed rule undermines the goal of objective, risk-based lending. The agencies have chosen not to propose precise quantitative measures for key terms like "material harm" or "likely" risk for Unsafe or Unsound Practices.

As this proposed regulation is deregulatory in nature, it is expected to result in no new recordkeeping requirements for institutions. Conversely, OCC-2020-0042 contained the essential teeth for achieving the purpose set out by the Office in its preamble: a covered bank could not deny a service unless the denial was "justified by such person's quantified and documented failure to meet quantitative, impartial risk-based standards established in advance by the covered bank".[8]

The previous regulation required banks to "do their homework and be able to show their work",[9] ensuring decisions are based on measurable financial risk, not political prejudice. To ensure fair access, the OCC must demand that banks adhere to this rigorous standard of quantifiable, impartial decision-making.

We urge the OCC to move beyond simply restraining its own examiners and instead adopt the mandatory standards contained within OCC-2020-0042, which place the burden of proof for denial squarely and quantifiably on the financial institution.

Sincerely,

Joshua Moon
President and Treasurer
United States Internet Preservation Society

8 https://www.federalregister.gov/d/2020-26067/p-57
9 https://www.occ.gov/news-issuances/news-releases/2021/nr-occ-2021-8a.pdf