The Daily Dish

The Fair Access to Banking Rule

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Eakinomics: The Fair Access to Banking Rule

Consistent with the Trump Administration's general rush of midnight regulation, the Acting Comptroller of the Currency Brian Brooks on his last day on the job finalized a rule preventing big banks from denying loans and other services to entire industries. The poster child for such behavior would be, for example, denying bank services to all private prisons or to all fossil fuel energy companies.

Specifically, the rule applies to banks with assets of $100 billion or more and, according to Brooks, "banks should not terminate services to entire categories of customers without conducting individual risk assessments. It is inconsistent with basic principles of prudent risk management to make decisions based solely on conclusory or categorical assertions of risk without actual analysis. Moreover, elected officials should determine what is legal and illegal in our country."

It is safe to say that the big banks were unamused. The Bank Policy Institute released a statement saying, "We are disappointed the Acting Comptroller chose to fast-track the final approval of this hastily conceived and poorly constructed rule on his last day in office. The rule lacks both logic and legal basis, it ignores basic facts about how banking works, and it will undermine the safety and soundness of the banks to which it applies. Its substantive problems are outweighed only by the egregious procedural failings of the rulemaking process, and for these reasons it is unlikely to withstand scrutiny."

How should one think about the Fair Access Rule? One warning flag is that the rule applies only to the largest banks. Why should small banks be able to choose their customers and not large? Isn't the goal to get fair access to banking services, not fair access to large banks' services?

A second concern is that the rule is pointless. It would not be possible for a large bank to simply say "We are not lending to coal companies anymore." But it would be possible to undertake an "individual risk assessment" of every coal company and conclude that the market risk posed by natural gas production and the policy risk posed by the new administration's climate objectives makes the riskiness of a loan dangerously high.

Taken together these suggest that the rule is poorly focused and unlikely to change any actual pattern in the provision of services. Instead, all of the consequences are likely to be unanticipated, and that is never a good thing.