EXAMINING DE-RISKING AND ITS EFFECT ON ACCESS TO FINANCIAL SERVICES

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CONTENTS

EXAMINING DE-RISKING AND ITS EFFECT ON ACCESS TO FINANCIAL SERVICES

Thursday, February 15, 2018

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON FINANCIAL
INSTITUTIONS AND CONSUMER CREDIT,
COMMITTEE ON FINANCIAL SERVICES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:32 a.m., in room 2128, Rayburn House Office Building, Hon. Blaine Luetkemeyer [chairman of the subcommittee] presiding.

Present: Representatives Luetkemeyer, Rothfus, Posey, Ross, Pittenger, Barr, Tipton, Williams, Trott, Loudermilk, Kustoff, Tenney, Clay, Maloney, Scott, Green, Ellison, and Crist.

Also present: Representative Hensarling.

Chairman LUETKEMEYER. The committee will come to order. Without objection, the Chair is authorized to declare a recess of the committee at any time. This hearing is entitled, "Examining De-risking and its Effect on Access to Financial Services."

Before we begin today, I would like to thank the witnesses for appearing. We appreciate your participation and look forward to the discussion.

I know that this is the second hearing in 2 days for this committee, which is a little unusual, but appreciate all the participation, and we will get a few more members here shortly. It is a little early. Lot of other activities going on this morning, so bear with us and thank the committee members for their participation.

I now recognize myself for 5 minutes for the purpose of delivering an opening statement.

In 2012, a group of industry leaders came to me to tell me that they had lost access to financial services overnight. Their longstanding bank accounts were closed. These men and women didn't bank within the same institution. They weren't from the same part of the country. And there was no evidence they were participating in an illegal activity.

However, they were all part of the same business, a business that was unsavory to Washington bureaucrats. This was the beginning of Operation Chokepoint, the joint initiative between the Department of Justice (DOJ) and the FDIC (Federal Deposit Insurance Corporation) to choke off certain businesses from the financial services they needed to survive, not based on wrongdoing but on political motivation.

Operation Chokepoint has a chilling effect on financial institutions and their customers. What started as an effort to push nondeposit lenders out of the banking system has metastasized. This larger, more aggressive trend of de-risking has spread to other regulatory agencies, banks, institutions, and industries.

Like many of my colleagues, I have heard too many people who have lost access to financial services. Accounts have been terminated for a money servicing business in Cincinnati. It was a payday lender from St. Louis; an ATM operator from the suburbs of Phoenix; amusement and gaming operators in Oregon and California.

The trend has hit pawnbrokers in Dallas, San Diego, Oklahoma City, from Rhode Island to Colorado and nearly every State in between.

Across the financial spectrum this dangerous trend of de-risking is alive and well. Most likely it is a result of increased exam pressure and compliance costs. The banks and credit unions are continuing to close accounts of long standing customers, in some cases even disclosing in writing that the regulatory pressure was simply too intense and the hurdles too insurmountable.

These issues beg some very serious questions. Where do these businesses go when pushed out of the U.S. financial system? What are the implications for law enforcement? Does this attempt to de-risk actually create more significant risks for law enforcement, financial stability, and consumer protection?

The reality is that removing risk from the system actually creates a problematic environment where entire industries that were once part of a highly regulated system are pushed into the shadows.

This is a conversation we have had in the BSA/AML (Bank Secrecy Act/anti-money laundering) space. We need to ensure that there are processes and procedures in place so that we can guard against fraud and criminal activity in a meaningful way without imposing unnecessary and unproductive burdens on institutions.

This is not a partisan issue and one that should sound alarms for all of my colleagues. Working together, this committee secured passage of H.R. 2706, my Financial Institutions Consumer Protection Act, which will help curb de-risking by requiring Federal banking agencies to establish a transparent process by which account termination requests and orders must be made.

However, we must continue to shine light on this issue so that we understand why de-risking is continuing and implications it has on our accounting, both at home and abroad.

We have an excellent slate of witnesses today. We thank you for appearing. I look forward to your testimony.

The Chair now recognizes the gentleman from Georgia for the purpose of delivering an opening statement. Mr. Scott?

Mr. SCOTT. Thank you. Yes, thank you very much, Mr. Chairman. This is indeed, as you have said, a very important hearing. And a part of what we must do is what I refer to as we have to shine a light out of the darkness here.

You can overregulate and when you overregulate there is a trickle-down effect and unintended consequences, and you wind up hurting the very people you are trying to help.

And nowhere is that more significant in what you are trying to do with our chokepoint legislation, H.R. 2706, which I commend you on working with. I am proud to work with you on that so that we can.

And then you have the other, the Bank Secrecy Act which affects our financial system is very intricate. It is complex. It is complicated, and it is that way because we have a very diverse clientele out there. You have people on the up end of the income scale making millions of dollars that we have to work with on Wall Street investment.

But then you have that other person. You have 50 million, 60 million unbanked and underbanked people who if they have an emergency surgery they need help. All they have as a lifeline is that pawnbroker.

And now we have as a result of overregulation many traditional banks that have had a long working, good history with pawnbrokers, all of a sudden we have our great banks closing their accounts because of this overregulation.

Mr. Chairman, I think this is a great hearing. I look forward to it. Welcome all of the distinguished panelists we have, and thank you very much.

Chairman LUETKEMEYER. Thank the gentleman from Georgia for his comments and his hard work on our issues to this point as well.

Today we welcome the testimony of our witnesses, Secretary Bryan Schneider, Illinois Department of Financial and Professional Regulation on behalf of the Conference of State Bank Supervisors; Mr. Tim Baxter, President, SwypCo ATM Solutions on behalf of the National ATM Council; Dr.—or Mr. Jason Oxman—I almost gave you a promotion there, Jason—Chief Executive Officer, Electronic Transactions Association. You looked like a doctor with your bow tie this morning, so—Dr. Manuel Orozco, I hope I got that right—Director, Migration, Remittances, and Development, Inter-American Dialogue.

Thankfully you all have easier names to pronounce than the group we had yesterday, because I think every single one of them was like Luetkemeyer. It was different to pronounce. But hopefully we will be able to be respectful with your names today.

I thank each of you for being here. You will be recognized for 5 minutes to give an oral presentation of your testimony. Without objection, each of your written statements will be made part of the record.

For those of you who haven't been here before, the lighting system is green go. When the light turns yellow it is you have about a minute to wrap up. And turns red, why, I will gavel you out here.

Also, if you would pull—those microphones do come forward. A lot of times—I see Mr. Orozco there is pretty far from him. You can string it out or you can pull that box to you if it makes it more comfortable to you.

Our sound system here is not that great. The acoustics are not the greatest, so we want to make sure everybody has a chance to be heard. And our folks who are taking the testimony today need to be able to hear you clearly. We thank you for that indulgence.

And with that, Mr. Schneider, you are recognized for 5 minutes.

STATEMENT OF BRYAN SCHNEIDER

Mr. SCHNEIDER. Good morning, Chairman Luetkemeyer, Ranking Member Clay and members of the subcommittee. My name is Bryan Schneider. I am the Secretary of the Illinois Department of Financial and Professional Regulation. It is my pleasure to testify today on behalf of the Conference of State Bank Supervisors.

I want to thank Chairman Luetkemeyer and the subcommittee for its work over many years on this important issue. State regulators are locally focused and locally accountable.

We have seen the consequences of de-risking for our banks, their customers, and the communities they serve.

State regulators charter and supervise 78 percent of the Nation's banks. We also are the primary regulators of more than 23,000 non-depository financial services providers, including money service businesses, commonly known as MSBs.

Data collected through our nationwide multistate licensing system, NMLS, shows that MSBs are on pace to handle over $1 trillion in transactions during 2017. As a banking regulator, I expect State-chartered banks in Illinois to understand the risks of their customers and to effectively manage those risks.

I do not expect nor require my supervised banks to reject entire categories of legally operating businesses. As a regulator of a broad range of MSBs, I see firsthand the challenges these companies can face in getting and maintaining banking relationships.

Indiscriminate de-risking, a practice that eliminates MSB bank accounts, not only weakens access to financial services, but actually makes enforcing the Bank Secrecy Act more difficult. It also becomes a public safety issue.

I am aware of de-risking both in Illinois and across the Nation. I hear stories about how legitimate MSBs physically carry large amounts of cash because they have no other means of money transmission, a dangerous practice.

Just last year, an MSB in Seattle was robbed of nearly $130,000 in cash that it was keeping in an in-store safe instead of a bank account. Two years ago my own agency identified an MSB whose agent transported $686,000 in cash to Jordan after its credit union accounts were closed.

Today I want to emphasize the commitments State regulators have to responsible and efficient MSB oversight. I will also share some of the solutions we have developed to give regulators, industry, and consumers greater visibility into the existing, emerging, and evolving risks for MSBs.

Virtually all States have a comprehensive and rigorous licensing, reporting, and examination process for MSBs. If an MSB is found to be out of compliance or in violation of these requirements, it is subject to enforcement action. And in extreme cases, this can include revoking its license.

Enforcement actions, as well as licensing information, are available to the public on our consumer-facing website. And indeed, there were nearly 3 million visitors to the site last year.

This week, CSBS (Conference of State Bank Supervisors) released a self-assessment tool for MSBs intended to reduce uncertainty surrounding BSA/AML compliance, increase transparency, and address de-risking. CSBS launched a similar tool for banks early last year.

In October, the CSBS task force that I chair created a FinTech industry advisory panel made up of companies from the payments and money transmission, lending, and community banking sectors. The panel solicits industry input to help States modernize regulatory regimes, identify friction points in licensing and multi-State regulation, and discuss solutions.

Right now, CSBS is building a new technology platform designed to transform State examinations, helping States respond to increasingly borderless financial markets. State regulators also are working together to find more efficient ways to regulate MSBs.

Just last week, several States, including my own of Illinois, announced a multi-State agreement that standardizes the licensing process for MSBs. Under this agreement, if one State reviews key elements of State licensing for a money transmitter, including BSA compliance, then other participating States will accept that work.

This effort to streamline the MSB licensing process is a great example of State-driven initiative, innovation, and experimentation.

Thank you for the opportunity to testify today, and I look forward to answering your questions.

[The prepared statement of Mr. Schneider can be found on page 85 of the Appendix]

Chairman LUETKEMEYER. Thank you, Mr. Schneider. He yields back his time.

Mr. Baxter, you are recognized for 5 minutes.

STATEMENT OF TIM BAXTER

Mr. BAXTER. Well, Chairman Luetkemeyer and Ranking Member Clay and members of the subcommittee, thank you for the opportunity to be here to testify before you today.

My name is Tim Baxter. I am President and Co-owner of SwypCo, LLC, an ATM solutions company that operates ATMs, as well as provides ATM services to other operators and owners. I am also a former U.S. Marine who enlisted in 1970.

I am testifying before you today on behalf of the National ATM Council, an association of individuals of businesses engaged in the ownership, operation of servicing independent ATMs in the United States. Of the approximately 470 ATMs located throughout the United States, 60 percent of them are independently owned.

Since the launch of Federal law enforcement regulatory agencies of Operation Chokepoint in 2013, Chokepoint continues to be a growing threat to the continued existence of America's independent industry, an industry that began in 1996.

An alarming number of banks in the name of de-risking their institutions because of Chokepoint have closed the bank accounts of independent ATM operators throughout the United States. Hundreds of small businesses have been told by their banks without any prior notice or any explanation that their accounts are closed.

These account closures began to occur when Operation Chokepoint was announced and continued through 2016. In 2017, the accelerator of Operation Chokepoint was placed to the floor and we saw more bank account closures than any other prior years before.

There are two things that are essential that I believe this subcommittee should understand. First, there is no logical reason given any way that our industry is structured that we operate for banks, with banks, and we are heavily regulated through our sponsoring banks.

Second, no independent ATM provider can remain in business without a bank account. Every ISO (independent sales organization), an independent ATM provider, must be sponsored by a sponsoring bank before getting into business.

Anyone who wanted to become an owner is heavily vetted through our due diligence process, and if they survive that process then thereafter the ISOs are required to submit quarterly reports to the sponsoring bank for each terminal, as well as undergo annual reviews and audits by the sponsoring bank.

All ATM providers must operate in accordance with the detailed network rules associated with our industry. When it became clear, despite detailed safeguards, that treating ATM operators as high risk was considered appropriate by banks and regulators, NAC (National ATM Council) set out to develop a set of operational guidelines for independent operators in the best interest of our industry.

NAC modeled our guidelines based upon the provisions of the FFIEC's (Federal Financial Institutions Examination Council's) BSA/AML examination manual published by the FFIEC on their website.

An independent ATM industry plays a vital role in the Nation's economy, for many of our terminals are located in underbanked, low-income neighborhoods in very rural areas where there are few banks and fewer bank-owned ATMs.

Continued account closures will force even more independent operators out of business and would choke out convenience to cash for millions of Americans.

The consequences of disappearance of independent ATMs to our Nation, especially to those in the underbanked areas, are severe, they are supplied primarily by independent operators, includes Americans that receive benefits monthly through the EBT cards. Many of these Americans depend upon our ATM machines to be able to access cash each month.

NAC, and including myself just last July, met with the acting comptroller and his senior staff at the OCC (Office of the Comptroller of the Currency). We have offered to work with the OCC toward finding resolutions that would further the common interest of NAC, the OCC, and other banking agencies to achieve varied and effective enforcement of statutes, regulations, while assuring availability of financial services to law-abiding legitimate businesses without imposing undue and unfair treatment.

With respect to the subcommittee, we would appreciate it if you would join us, and urge the Comptroller's Office and other Federal agencies to work with NAC and the men and women of NAC to make this industry a safe industry and an operational industry that everyone can work with.

[The prepared statement of Mr. Baxter can be found on page 40 of the Appendix]

Chairman LUETKEMEYER. The gentleman yields back.

With that, Mr. Oxman, you are recognized for 5 minutes.

STATEMENT OF JASON D. OXMAN

Mr. OXMAN. Thank you, Mr. Chairman and thank you to—thank you Mr. Chairman. And thank you to you and Ranking Member Clay and the subcommittee for having us here today.

The Electronic Transactions Association (ETA) appreciates the opportunity to speak to the payments technology industry's efforts to fight fraud and ensure that all consumers have access to safe and convenient financial services.

ETA is the leading trade association for the payments industry. We represent more than 500 companies that offer electronic transaction processing products and service. In short, ETA members power commerce in this country.

It is an exciting time in the payments industry. Consumers and merchants benefit from a robust payment system that provides nearly universal access and strong consumer protections against fraud.

Consumers can pay for goods and services using a wide variety of new payments technologies, ranging from EMB chip cards to mobile wallets to contactless cards. All of these are secured by advanced technology including encryption and tokenization, and consumers are protected against any liability for fraud.

Now, notwithstanding this progress in technology there have been challenges, particularly from Operation Chokepoint. It has contributed to the de-risking and ultimately limited consumer access to financial services while also making it more difficult for legitimate businesses to access the payment system.

Today I would like to, in particular, thank Chairman Luetkemeyer for his efforts in fighting Operation Chokepoint and for H.R. 2706, which we look forward to seeing enacted into law.

I would also like to highlight the way that ETA members and the payments industry combat fraud and explain why a collaborative approach between Government and private sector, as opposed to an approach like Operation Chokepoint, is the best way to protect consumer interests and expand financial inclusion.

As payments companies are generally responsible in most cases for fraud in the first instance under both Federal law and payment network rules, our industry has a strong interest in making sure that fraudulent actors do not gain access to payment systems. And we found considerable success.

In 2016, nearly $6 trillion in credit, debit, and prepaid card transactions were processed in the U.S., of which only $9 billion was fraudulent. That is a fraction of a tenth of a percent.

In addition, a recent survey of ETA member companies found that more than 10,000 merchants were discharged from the payment systems for fraud last year. For both back-end systems as well as consumer payment products, payment technology firms have heavily invested time and resources into ensuring data security.

For example, ETA members have deployed effective due diligence programs to prevent fraudulent actors from accessing payment systems and terminating actors who are fraudulent from the systems.

Those programs have helped to keep the rate of fraud on payments at remarkably low levels.

ETA also works closely with industry leaders and Federal regulators like the FTC (Federal Trade Commission) to establish guidelines that prioritize security and risk mitigation. In 2014, ETA first published our guidelines on merchant and ISO underwriting and risk monitoring.

In 2016, we published the Payment Facilitator Guidelines and today we are pleased to announce the 2018 update to the ETA guidelines. These new guidelines published today contain updated industry best practices, including updates with the Financial Crimes Enforcement Network's (FinCEN) new beneficial ownership rule.

These guidelines provide a basis for payments companies to work cooperatively with Federal regulators and law enforcement toward our shared goal of stopping fraud. Unfortunately, such cooperation has not always been the case.

For example, Operation Chokepoint employed the wrong tools. It was unnecessarily confrontational, and it created serious risks to law-abiding processors without producing any benefits to consumers. It was based on the flawed assumption that increasing liability on lawful payment companies for the actions of legal merchants would somehow reduce fraud.

In practice, such new liability standards on payments companies resulted in serious adverse consequences for both merchants and payments companies as well, the blunt force discouraged banks and other processors from working with legal merchants that were branded as politically unfavored.

Although Operation Chokepoint thankfully has been halted, it is important to recognize there is nothing to stop the Department of Justice or the CFPB (Consumer Financial Protection Bureau) or the FTC or even a State attorney general from bringing a case today that looks very much like Operation Chokepoint.

We are one of the most innovative industries in the world in payments. Our job is to provide unbanked and underbanked consumers and merchants access to financial systems. And we look forward to an opportunity to work collaboratively with Government and with law enforcement to fight fraud in ways that are more productive than Operation Chokepoint.

Thank you for the opportunity to be here today.

[The prepared statement of Mr. Oxman can be found on page 74 of the Appendix]

Chairman LUETKEMEYER. Thank you, Mr. Oxman.

Dr. Orozco, you are recognized for 5 minutes.

STATEMENT OF MANUEL OROZCO

Dr. OROZCO. Thank you very much, Mr. Chairman. Members of Congress thank you for allowing me to testify upon this subject of de-risking, particularly providing solutions to this problem.

The ecosystem of financial services today is far more complex than at any other point in time. There is an amazing accessibility of financial services, financial vehicles, and financial institutions providing services to people and to businesses to operate. That has created a very complex web of interrelationships that has enabled a much more robust system of financial services to people.

However, in many cases we have noticed we have seen that banks have deemed and perceived the handling of third-party funds from these MSBs a financial risk. My colleagues have explained some of the reasons and the problems they face with this problem. And overall, what we find is at least three major patterns.

The first one is that decisions to terminate bank accounts occur and permanently add discretionary scope with limited accountability. There is a problem of transparency and accountability in explaining why a bank account is terminated against a money service business.

Second, and this is a troublesome issue, is that the relationship between the trade and the account closing do not occur clearly in correspondence to what risk is happening.

For example, we see money transfers taking place from parts of the United States through other parts of the world and there is no correspondence between the risk perceived and the real threat taking place.

Another problem is that the increasing financial services is mostly coinciding with the increase in determining account closures. There are at least five issues where this problem can be solved.

The first one is it is important to deal with more transparency and accountability among permanently bank and financial institutions.

Second, it is really important to look into better industry trade and also country risk assessment. Many of the assessments of receivers are not evaluated properly in terms of where the threat is happening.

Data sharing through risk-based data clearinghouses is also an important area of attention. For example, many of these companies, the money services businesses, are the first line of defense against financial crimes.

And they have significant knowledge and information about where perceived threats can happen and how to stop them. Sharing that information will be important to really address the threats.

Another important aspect is that it may be important to consider to include bank MSB services in the review of the Community Reinvestment Act. The Reinvestment Act tried to look into how banking institutions are providing financial services to underserved communities. And when it comes to the account closures, this is really an important matter.

There are differing experiences in countries where the requirement is to expect banks to really provide documentation as to the reasons of account closures can really improve the support of MSBs.

In Spain, for example, in Europe, in the European Union, the Payment Service Directive requires that if a bank is going to close an account it needs to justify why they are doing it and document it. Giving the right also of rebuttal to an MSB is also an important procedure.

When it comes to risk assessment, I think we need to work a little bit more on that. The existing data on country and industry risk is not systematic and oftentimes is not shared.

The assessment of risk does not always coincide with the account closures, although for example when we look at remittance cross-border payment companies, they are able to manage risk. There is a recognition that they do significant work along those lines.

But when we look at the correlation between risk and money transfer to different regions in the world the correspondence doesn't exist, yet those companies are actually affected along those lines.

Thank you very much.

[The prepared statement of Mr. Orozco can be found on page 68 of the Appendix]

Chairman LUETKEMEYER. Thank you, Dr. Orozco and thank all the witnesses for their testimony today.

With that, I recognize myself to begin the questioning for 5 minutes.

Mr. Schneider, it would seem to me after listening to all the testimony this morning that the regulators seem to be putting pressure on the financial institutions to the point where they are making decisions to no longer be able to continue making relationships with different entities.

And whether there is any fire to the smoke that is being blown at them, is hard to assess, but it would seem to me that your job as a financial regulator is more to watchdog, to watch over the banks, the financial institutions, to see that they are doing things according to the law versus micromanaging. Would you agree with that statement?

Mr. SCHNEIDER. Fundamentally. We don't run banks. Banks run banks. We are here to make sure that they operate in a safe and sound manner and by no means—if they make a business decision that certain types of business are not consistent with their mission, that is fine.

But they shouldn't feel untoward regulatory pressure to disqualify certain categories of legitimate businesses from their portfolio because of regulatory pressure. And we make that clear when we talk to banks, quite candidly.

Chairman LUETKEMEYER. Well, every bank has a different business model. A credit union has a different model.

Mr. SCHNEIDER. Exactly.

Chairman LUETKEMEYER. And they are all located in different communities. They have different needs.

Mr. SCHNEIDER. Right.

Chairman LUETKEMEYER. And they are different sized, different sorts of makeups. By the way, their economies are all diversified. It is important, I think, that you have the discretion to be able to go in and allow the bank to do what it needs to do to grow the local economy and make it all happen. It is frustrating to see this happening.

When you see—I had people, with regards to the BSA/AML stuff, and a couple of you guys are caught in this, especially the southern tier States.

Banks are doing banking business with individuals and companies in Central and South America are being chokepointed out by the bigger banks here in this country saying we are not going to do business with you because you do business down there.

Mr. SCHNEIDER. Right.

Chairman LUETKEMEYER. How can these banks micromanage these other banks? They're just customers of them—

Mr. SCHNEIDER. In some cases I think this is perhaps fundamentally because of a lack of understanding of the significant oversight that money service businesses have at the State level. They are licensed by State regulators across the country and examined in depth.

We in the State system have the capacity to examine every multi-State operating money service business on a pace of once every 18 months. These are heavily regulated businesses, and if banks understood that better I think they may be less reluctant to bank them.

Chairman LUETKEMEYER. Mr. Baxter, thank you for your service. You mentioned you were a Marine, and I appreciate that. You are one of the industries that has just in recent times been targeted. You weren't on the initial list of the FDIC high-risk businesses, but you have become a target for them.

Can you tell me what you believe why that has happened and the response that you are getting? And how you are going to try and approach all this and any other comments you would like to make? Because I know you are in the crosshairs right now.

Mr. BAXTER. I believe that with the inception of Operation Chokepoint, it particularly reached a stage in which regulators were going into banks and asking specifically do you have ATM accounts?

That is a specific question of targeting one specific industry where they are almost requiring—and I can't say they are requiring because I am not standing in their offices. And I am not involved in these conversations.

But when you start receiving letters in the mail from your bank, such as I did and many of my clients did and many of my colleagues did throughout the industry, that have simply zero explanation as to why your account is being closed, doesn't even mention that you are high risk, but it has zero explanation, and you call to ask for an explanation because you now feel like a criminal, you get no explanation.

I would ask the committee to consider why is it that the banks and the regulators apparently, from what I see and what we see in our industry, do not want us to be in business?

Why do we want to remove what has been an excellent system in managing ourselves through our system that we have with sponsoring banks, network rules, applying everything that we can through the industry standards to operate an ATM machine exactly as a bank operates an ATM machine?

Yet all of a sudden we are deemed unacceptable citizens in society. How are we going to go about replacing 60 percent of all the ATM machines in the United States?

Chairman LUETKEMEYER. My time has expired. Thank you very much for your comments.

With that, we go to the Ranking Member of the committee, Mr. Clay, the gentleman from Missouri, recognized for 5 minutes.

Mr. CLAY. Thank you, Mr. Chairman and let me go back to Mr. Baxter. Some industry actors have stated that the types of extreme fluctuations in cash turnovers that are a normal part of the ATM business are actually triggering regulatory acting that results in banks closing accounts for ATM owners and operators.

Can you discuss what is pushing financial institutions to de-risk in these situations in spite of knowing the needs of this type of small business?

Mr. BAXTER. Well, let me address the fluctuation of cash that you brought up. That occurs throughout various times of every month in every city and State. The first of the month is heavier usage so you see a higher fluctuation of cash out and cash back in.

There are other instances that will create that. We are also asked on a regular basis by NASCAR, by carnivals, by fairs in every city, State that you can think of to supply ATM machines so that vendors have cash available to sell hot dogs and corn dogs and Cokes to men, women, and children.

So we do that. That is what we do. That is how we make a living.

Mr. CLAY. Yes.

Mr. BAXTER. That is how our cash can influx and change.

Mr. CLAY. Mr. Baxter, why do you think there are more independent ATMs located in areas with higher concentrations of underbanked and unbanked citizens as opposed to the big banks, Chase Manhattan, Bank of America, locating their ATMs in those areas?

Mr. BAXTER. Because we are hungry. We are willing to do that. We are willing to go into those areas. We are willing to service those communities. The banks are not. They are not willing to do that.

Mr. CLAY. The banks just turn their back on people who they don't think they can make enough money off of, is what you are saying?

Mr. BAXTER. That and potentially risk of robbery, which we take that risk.

Mr. CLAY. The risk of ATM robberies?

Mr. BAXTER. Yes, sir, of the ATM machines being broken into.

Mr. CLAY. OK. Is that—

Mr. BAXTER. Our ATM machines, sir, are located inside convenience stores, for example—

Mr. CLAY. Sure.

Mr. BAXTER. —and most convenience stores throughout the country. Those businesses are not open 24 hours a day and sometimes those businesses get broken into—

Mr. CLAY. I see.

Mr. BAXTER. —and our cash gets stolen.

Mr. CLAY. I see. All right, thank you for that—

Mr. BAXTER. You are welcome.

Mr. CLAY. —response.

And Mr. Schneider, what actions have your department taken to assess the impact that de-risking may be having on access to financial services for vulnerable populations?

Mr. SCHNEIDER. Well, it is certainly a concern to us that all of the citizens in all of our States receive a wide variety of financial services. In my State we have very large banks, we have very, very small banks, and we have all sorts of non-depository institutions.

We talk with our banks to make sure they understand the risks that certain types of clients present to them so they don't make a misinformed decision to disqualify a certain type of actor from getting banking services.

And we work closely with innovators who are trying to bring new financial services to traditionally underserved communities so that they are able to deploy them quickly.

And our role is to be nimble, to foster innovation, and fundamentally to make sure everyone understands that if you are dealing with a non-depository money service business they are appropriately and thoroughly regulated, including for BSA/AML compliance.

Think about that level of scrutiny that they are receiving when you are making your risk decision as to whether or not to bank that particular company.

Mr. CLAY. And have you found that independent owners of ATMs' fees are higher than regular banks or how does that work?

Mr. SCHNEIDER. I don't want to misreport anything. We don't have studies in Illinois that I am aware of that look at those fees.

We have actually tried to reduce regulatory burden on non-bank ATMs, eliminating unnecessary registration requirements, so hopefully that can help drive lower fees for everyone.

Mr. CLAY. It is possible that the regular banks charge higher fees or just don't want to be in those communities at all?

Mr. SCHNEIDER. It is entirely possible and that could be something that we should get to studying at some point.

Mr. CLAY. Thank you so much and my time is up.

Chairman LUETKEMEYER. The gentleman's time has expired.

With that, we go to the Vice Chair of the committee, the gentleman from Pennsylvania, Mr. Rothfus, is recognized for 5 minutes.

Mr. ROTHFUS. Thank you, Mr. Chairman.

Mr. Oxman, during the Obama Administration the Federal Deposit Insurance Corporation released a list of supposedly high-risk businesses that should be targeted for possible de-risking. This list included payday lenders, tobacco vendors, and pawnbrokers. Do you know how this list was populated?

Mr. OXMAN. Thank you for the question, Mr. Vice Chairman. That list I think is one of the most stark examples of what Operation Chokepoint was really about. It was effectively a concession that this was a list of politically motivated, targeted merchant categories as far as we could tell, that were otherwise offering legal services.

But it was a signal to the payments industry that providing lawful payment services to those merchant categories would result in heightened scrutiny by Federal regulators.

That was the entire purpose behind Operation Chokepoint. Seeking to effectively deputize payments companies in a, what we considered a politically motivated, by the prior Administration, effort to target disfavored merchant categories.

Mr. ROTHFUS. Well, was there a basis that the FDIC could decide that these industries were high risk?

Mr. OXMAN. As far as we could tell, looking at the list published by the prior FDIC, the basis was not one of any substance based on anything that we could determine other than a signal—

Mr. ROTHFUS. What signal—

Mr. OXMAN. —to our industry to stay away from those disfavored merchant categories.

Mr. ROTHFUS. What about risk in the sense of high risk? Was there a definition for, quote, "high risk"?

Mr. OXMAN. The prior FDIC did not provide us the kind of guidance that would have been a tie between the delineation of those merchant categories that you mentioned and the very sophisticated risk analysis that our industry has been using effectively for decades—

Mr. ROTHFUS. Well, that is—

Mr. OXMAN. —to prevent fraud.

Mr. ROTHFUS. Risk in the sense of a risk to the financial system? Risk in the sense of, look, there are actors out there that we suspect might be engaged in some activity? Again, I am trying to get my arms around what was, quote, "high risk//?

Mr. OXMAN. Our industry, the payments industry, has been working in conjunction with Federal regulators literally for decades on management of risk issues, does have very sophisticated, very effective means of determining high-risk merchants. And it is not done necessarily by the type of categories that you mentioned.

That type of listing of merchant categories without any further analysis—

Mr. ROTHFUS. Well, what is a high—what would be a high-risk merchant?

Mr. OXMAN. A high risk merchant would include an analysis, for example, of what we call chargebacks. Chargebacks are effectively returns initiated by consumers using their credit card or debit card at a merchant. If chargebacks reach a particular level, that suggests that there might be something going on and that the merchant should be examined more closely.

Again, has nothing to do with the category that the merchant happens to be in or the particular products the merchant has to sell.

Mr. ROTHFUS. So there was a prejudice going in where that analysis wasn't done?

Mr. OXMAN. It appeared to us in examining the list provided by the prior FDIC that it was based on the types of products sold and not on actual analysis of the relative risk to the payment system of those products.

Mr. ROTHFUS. Mr. Schneider, in your testimony you said that virtually all States have a rigorous licensing and reporting and examination processes in place for money service businesses. You also described some of the enforcement actions that State regulators have taken against the bad actors.

When you consider the strong role that State regulators play in ensuring that money service businesses are not conduits for illicit finance, it is interesting that Federal regulators still targeted these businesses for de-risking. Do you believe that State-level regulators are doing enough to counter the abuse of our financial system by illicit actors?

Mr. SCHNEIDER. I certainly do. Again, we conduct numerous, hundreds of exams each year of money service businesses, including for BSA/AML compliance. And we are on the frontline with those companies to help them understand what their own risks are.

We just today issued a self-assessment tool that money service businesses can use on their own to better understand their risks so that they mitigate their risks so when we come in to examine we can give them a clean bill of health.

I think State regulators are really on the frontline in making sure these non-depository institutions follow the law. And that should give great comfort to our Federal counterparts, as well as to banks. And my—

Mr. ROTHFUS. Well, on the Federal counterparts, are Federal regulators consulting with the State regulators?

Mr. SCHNEIDER. We work very closely with Federal regulators, FinCEN, the OCC, the FDIC across the board. Mr. Williams has a bill, H.R. 3626 that would help us cooperate even greater with our Federal counterparts.

Mr. ROTHFUS. My time is expired. Thank you.

Chairman LUETKEMEYER. The gentleman's time has expired.

With that, we go to the gentlelady from New York, Mrs. Maloney, recognized for 5 minutes.

Mrs. MALONEY. Thank you. I want to thank you and the Ranking Member for holding this hearing. And I think it is on a tremendously important issue, and I am very sympathetic to neighborhoods in our country having access to ATM machines. It is in some cases the only banking access they have.

When I was on the city council I represented a very economically challenged neighborhood, East Harlem. And the banks redlined it, meaning they all left. They just closed their doors and left without any banking services.

I remember I appealed to them to pool their resources and leave one ATM machine so there would be some banking in this underserved neighborhood. And they wouldn't do it. And then one bank opened up an ATM machine and left it in the community and I am very grateful to this day to that bank.

When people close up all these ATM machines they are really closing up access to capital and to banking in communities. And I feel that we have a responsibility to make sure that all neighborhoods are served and if banks don't want to be any part of helping low-income neighborhoods, then maybe we have to look at doing something through the Federal Government. We have to figure out some way to help them.

I first want to ask Mr. Baxter, as you know, there is a lot of evidence that some banks are terminating the accounts of independent ATM operators. And they say that they are doing it because of regulatory risk and the pressure from the regulators.

But there are sometimes allegations that they are doing it for competitive reasons, that they don't want the independent ATM operators competing with the bank's own ATMs. But sometimes when the banks do this, they claim that they are doing this totally for regulatory reasons.

And how can we ensure that they aren't using the concept of regulatory risk as an excuse to undermine their competitors?

Mr. BAXTER. Thank you for asking that question, and I do agree with your statement in that there is a competitiveness to this theory of closing down companies that have been in operation for 10, 15 years—in my case, in my company for 4 years.

I can't really answer why they have taken this position all of a sudden other than it does cause you to think that maybe there is a competitive edge here that the bank is interested in as well. But our industry has been in existence, as I said before, and approved to be in existence since 1996.

My question that I would love to ask the banks and the regulators and even the administrations of our country that have made decisions to close our bank accounts is what happened overnight where we all of a sudden became a high-risk business that exists in this country that hadn't existed for 14 years that I have been in the industry in total?

It is overwhelming and shocking to have businessmen that have invested in small business their life savings, that are school bus drivers in Tennessee, that have various other occupations that they do besides their small ATM business to bring cash to America.

And that is the way I look at it. We bring cash to America. We are not a money service business. We are a business that delivers cash to America.

I really don't know how we can overcome what is currently taking place without your help, without your insight, without your leadership to hear our cry and to hear that this industry is suffering and it will ultimately go away if something isn't done by the great country that we live in and the people that lead this country.

Mrs. MALONEY. Where are there more independent ATMs but no bank ATMs?

Mr. BAXTER. Where are there more? In rural areas.

Mrs. MALONEY. In rural areas?

Mr. BAXTER. And underserved banked areas.

Mrs. MALONEY. So in low-income areas and rural areas?

Mr. BAXTER. Correct.

Mrs. MALONEY. And—

Mr. BAXTER. But you will find us also in malls, cities all over the country.

Mrs. MALONEY. And if banks just cutoff all independent ATM operators, who would be harmed the most?

Mr. BAXTER. America in general will be harmed the most. The people that are underserved and underbanked will be hurt the most. That is who will be hurt the most, in addition to the hundreds of ATM operators that will be placed out of business.

And I will have to look over to this beautiful lady in blonde hair sitting to my left over here, who I made a commitment to 4 years ago when I joined in with my partners to start this business and tell her I have failed when I promised her I wouldn't.

Mrs. MALONEY. Oh, my time has expired. Thank you.

Chairman LUETKEMEYER. The gentlelady's time has expired.

With that, we go to the gentleman from North Carolina. Mr. Pittenger is recognized for 5 minutes.

Mr. PITTENGER. Thank you, Mr. Chairman.

I do thank each of you, our distinguished panelists, for being with us today and your perspective is well-received and important for all of us.

Mr. Oxman, I would like to go to you first. I would like you to speak additionally to the tools and technologies the payments industry has developed to protect consumer financial information?

Mr. OXMAN. Thank you, Congressman, and as you well know, having the second largest banking hub in the country in your district—

Mr. PITTENGER. Sure, thank you.

Mr. OXMAN. —financial institutions are working with technology companies to deploy technologies that protect consumers. They have consumer-facing components to them. As the FinTech industry we are deploying mobile payment services and chip card services and even contactless card services.

Anybody who has been watching the Olympics has seen that tap-to-pay technology—much more secure than any technology we have ever deployed in the history of our industry.

And on the back office side, if you will, on the network side, we are deploying encrypting and tokenization services that protect consumers' information and guarantee them 100 percent liability protection against any fraud.

Mr. PITTENGER. All right. Good, thank you. Speak as well then to the incentives that the payment industry has, and businesses have to prevent fraud?

Mr. OXMAN. Yes. I think that is a very important question because in the payment systems, our industry in the first instance has liability for fraud as any consumer who has seen a fraudulent charge on their credit card statement knows, they need only contact their card issuer, their financial institution, and report that fraud and they don't have to pay for it.

Well, guess who has to pay for it? We do in the payments industry. The incentives could not be more powerful for the payments industry to protect against fraud. We have done a good job with about $7 trillion in payments processed in the U.S. last year. Only about $9 billion of those were fraud so it is a fraction of a tenth of a percent.

But the criminals, they are smart. They are active. And every time we deploy a new solution they move on to the next criminal activity so we have to remain vigilant. But the incentive on us is very powerful as you noted, because we have liability for fraud if we don't stamp it out.

Mr. PITTENGER. Yes, sir, thank you.

I would like to ask each of you since the financial crisis many institutions are terminating relationships, as we all understand, with consumers or companies deemed high risk, complex, or not profitable. Why do you believe we are seeing financial institutions terminate these longstanding accounts held by certain industries?

And I would just like you to elaborate further on that, Mr. Schneider?

Mr. SCHNEIDER. Well, again, I go back to I think there can be just a misunderstanding as to the degree to which regulators supervise non-depository money service businesses. Maybe there is some notion that they are not looked after, that they are this big gaping BSA/AML risk because they are not supervised, and that is just not the case.

And I think our data shows that and if banks begin to better understand that, they won't view these companies as inherently risky because they know that they are being supervised.

Mr. PITTENGER. Well, to that end, what specific actions can Congress take to combat the trend in de-risking?

Mr. SCHNEIDER. Well, one thing would be collaboration among regulators. Our Federal system is a beautiful one. It provides some regulators like State regulators very close to entities and Federal oversight at a national level.

Our ability to work with our Federal partners effectively is a great value. Then everyone gets the same message being delivered as opposed to mixed messages. So again, I mentioned H.R. 3626. We can't communicate as freely as we should with our Federal counterparts concerning money service business supervision.

If that avenue was opened up for us I think there would be more consistent messaging.

Mr. PITTENGER. Thank you.

Mr. Baxter, as you discussed your difficulties and challenges, have any of the banks that have been closing accounts, have they been willing to sit down and discuss with you the accounts and why they are being closed?

Mr. BAXTER. Absolutely not. You are sent a letter, two pages, approximately two pages with an 800 number on it if you have any questions.

When you call the 800 number the voice on the other end of the phone tells you that you received the letter. You reply, "Yes, I did." They said your account will be closed in the timespan in which it stated on the letter.

When you ask why your account is being closed there is no discussion. They have nothing to say other than the enforcement of the letter will take place.

Mr. PITTENGER. Mr. Schneider, do you have any more response to that?

Mr. SCHNEIDER. Well, at the end of the day, banks do make decisions. We would like to encourage our banks to be as open and forthright with their customers as they possibly can be, and again, to not make broad generalizations about industries but to look at individual risks and how they are appropriately mitigated.

Mr. OXMAN. And Congressman, if I may, this is why H.R. 2706 is so important because it sends a very strong legal signal to banks that they don't have to shut off what regulators have deemed risky industries just because they are on a list of risky industries.

The banks want to serve customers. They want to serve merchants. And we need to make sure that they don't cut people off just because regulators are putting pressure on them to do so.

Mr. PITTENGER. Thank you, very good. My time is expired.

Chairman LUETKEMEYER. The gentleman's time has expired.

With that, we go to the gentleman from Georgia, the distinguished Mr. Scott, who is recognized for 5 minutes.

Mr. SCOTT. Thank you, Mr. Chairman. As I am sitting here listening to this hearing, I am reminded of my favorite playwright, William Shakespeare. And he wrote my favorite play, Julius Caesar.

And if you all recall, familiar with Shakespeare, when Julius Caesar's walking through the Roman gardens with Brutus and Marc Antony, there is this woman that wails, "Beware the Ides of March."

Well, I am here to tell you we need to beware of the ides of our banking regulators and nowhere—nowhere is this more poignant than with our pawnbrokers. Let me give you an example.

Here are our pawnbrokers who are the main, almost final lifeline to the unbanked and underbanked. And because of this overregulation, because of this extension through the Bank Secrecy Act and money laundering, all of a sudden to de-risk they are closing the bank accounts of the very people who are there to give lifeline to the most underbanked and unbanked by making the institutions in our financial system unbanked and underbanked themselves.

Now, why is this? Can you all tell me why these banks are taking away and closing down the banking accounts of businesses that have been loyal customers and have had great relationships, no problems. Why? And what must we do to stop it?

Mr. SCHNEIDER. Speaking as a regulator—

Mr. SCOTT. I really want to hear from all of you on this because—

Mr. SCHNEIDER. —we—

Mr. SCOTT. My Shakespearean moment would be meaningless if we do not get to the bottom of this because March is rapidly approaching.

Mr. SCHNEIDER. It is very close. Well, we regulate pawn dealers in my department, so I have great familiarity with the services that they provide. And I just keep coming back to I think it is misunderstanding.

Data will ultimately be our friend. Risk can be—I think we as regulators have to make sure we are talking to the institutions that we regulate. And when we talk about risk we talk about risk as something that you mitigate, something that you understand and that you process and that you mitigate.

And as State regulators, we are trying to give our institutions the tools to do that through our BSA/AML self-assessment tool.

Mr. SCOTT. Yes, but the issue—

Mr. SCHNEIDER. That they will understand that and then make better decisions.

Mr. SCOTT. Yes, the issue is here we are in Congress and deal with the power of the people to do something about this sort of thing. And we need you all to tell us do we need to pass a law to prohibit these banks from just arbitrarily closing down an account of a pawnbroker who has been servicing these low-income people who have no other choice until they do something?

We have to do something here.

Mr. OXMAN. Yes, Congressman—

Mr. SCOTT. What must we do here?

Mr. OXMAN. Yes, I think, Congressman, it is H.R. 2706 really that needs to continue the march toward the President's desk because these banks that you are referring to they don't want to shut off customers either.

But they are being pressured to do so by overzealous regulators or they have been historically. Our hope is that the regulatory environment will continue, but as you well know, having the hub of the payments industry in Georgia—

Mr. SCOTT. Right.

Mr. OXMAN. —our industry is desperate to serve those merchants that want us as service providers. We don't want to shut anybody off, but in many cases regulators are forcing that to happen. And that is what we need to have come to an end.

Mr. SCOTT. Yes, and as Democratic chairman of the FinTech Caucus, you know how vitally I am concerned. And we need to prohibit this. We need to send a very loud message to the banking community.

And you all who are banking regulators or State regulators need to stop this, put something in place and stop cutting off, because then we cut off the banking account, you got nothing.

Even with me, can you imagine if the bank cut me off as a citizen or you? You are out there in no man's land.

Yes, sir, Mr. Orozco, yes. I think you were next.

Dr. OROZCO. Thank you. I think there is a moral hazard between banks and regulators about how to tackle risk. It is you can put—they play—they put the blame on banks. The banks put the blame on regulators.

The fact of the matter is that there is a problem, a serious problem of transparency and accountability on both sides, and that is what needs to be tackled at this point. And the instrument exists.

Mr. SCOTT. Mr. Baxter, could you—

Chairman LUETKEMEYER. Real quick.

Mr. SCOTT. —because the pawn—just real quick, thank you, Mr. Chairman, because the pawn shops are not in this by themselves. Your money machines are in this same vise, am I right?

Mr. BAXTER. Yes, sir.

Mr. SCOTT. And what do you think we need to do?

Mr. BAXTER. Well, I do think that there are overzealous regulators out there. I do think that there was a misconception in business in general as to what businesses need to be targeted.

In our industry, as I said, that we are vetting that is done with each and every one that wants to enter into this business to own and operate ATM machines. Individual vetting—

Mr. SCOTT. Well, thank you.

Mr. BAXTER. —includes background checks, which we do a U.S. criminal report, an OFAC report, a Patriot Act search, watchlist, driver's license search, bankruptcies, liens, and judgments, secretary of State filings, U.S. sex offenders, personal credit report, business report. All of this is done before—

Mr. SCOTT. Thank you.

Mr. BAXTER. —the corporation MicroBilt in my situation and my sponsoring bank highly recommended that our corporation use. We have—

Mr. SCOTT. Thank you.

Mr. BAXTER. —followed that to the tee.

Mr. SCOTT. Thank you so much.

And thank you, Mr. Chairman, for giving that little extra minute. And I would like to submit this record from the National Pawnbrokers Association to the record.

Chairman LUETKEMEYER. Without objection, and we appreciate the gentleman's passion on this issue as well.

Mr. SCOTT. Thank you, sir.

Chairman LUETKEMEYER. With that, we go to the gentleman from Tennessee, Mr. Kustoff, recognized for 5 minutes.

Mr. KUSTOFF. Thank you, Mr. Chairman.

And I do thank the witnesses for appearing this morning.

Mr. Oxman, I also appreciate the comments regarding Operation Chokepoint as well as the dissertation in your written testimony. If I can, as it relates to Operation Chokepoint, there is no doubt and you stated that that accelerated, if you will, the de-risking of financial institutions and forced some consumers out of the financial system entirely.

That could, as it relates to the regulators. Can you state was there overreach by Federal regulators as a result of Operation Chokepoint? And if the answer is yes, can you give examples of that overreach?

Mr. OXMAN. The answer is most definitely yes, Congressman, and thank you for the opportunity to highlight that overreach. I would give rather than my assessment, I would give the assessment of the court system. For example, in Georgia, which found that the prior CFPB, prior to the current Administration, had overreached so badly under Operation Chokepoint that they were sanctioned.

The CFPB was actually sanctioned for their overreach against one of our member companies. The entire case was dismissed with sanctions against the CFPB.

That is but one of many examples of overreach by Federal regulatory agencies that made Operation Chokepoint such a danger to, frankly, our economy because it does, as you have heard so much about today, cause financial institutions to effectively shut off their own customers because of concern of that regulator overreach.

We hope to never see that again, but sadly there are numerous examples across many agencies from the prior Administration.

Mr. KUSTOFF. Thank you, Mr. Oxman.

Mr. Schneider, from your vantage point in your State, can you testify as to whether there was overreach by Federal regulators as a result of Operation Chokepoint and the impact that that had in your State?

Mr. SCHNEIDER. Yes, I think there was. The fact is Federal regulators see largely the perspective from just the banking side of it is different than ours at the State level where we see banks and non-depositories, and we get insights into all of them.

And we did see people doing legitimate businesses losing their accounts in Illinois. And then that is pushing business into the cash economy, which seems to us to be one of the most unsafe ways to conduct business, having people haul bags and boxes of cash around.

I do think there was some overreach. It led to bad business decisions who were making decisions based on what they perceived as regulatory requirements rather than good, sound business practices and risk mitigation strategies. And arresting the attention of the Federal regulators through 2706 and other efforts on your behalf could help the situation.

Mr. KUSTOFF. And when these customers no longer have access to the financial products, to the institutions, where do they ultimately go and what do they ultimately do?

Mr. SCHNEIDER. Well, to some extent, it is a question you hate to even think about because they won't have choices. There are areas in my State that critically rely on non-depository financial services providers. They need accounts to operate.

And we would be talking about people going into areas we don't want them to go into such as loan sharks and things like that. We don't want that happening. We want people to have access to a variety of financial services.

Mr. KUSTOFF. Thank you.

Thank you, Mr. Chairman. I yield back the balance of my time.

Chairman LUETKEMEYER. The gentleman yields back.

Now we go to the gentleman from Minnesota. Mr. Ellison is recognized for 5 minutes.

Mr. ELLISON. I thank the Chairman and the Ranking Member for the time.

Let me just make an editorial comment. Operation Chokepoint started in 2013. It has now been officially ended. That is important for the record.

Also, too, I do resist the idea that there was some nefarious political motive. I think that you had people who were trying to stop fraud and they did it, in my opinion, the wrong way.

And just like putting an extra burden on all the businesses that you all represent I think in many ways had the opposite effect that was intended.

I think Mr. Schneider you might have hit the nail on the head where it is, look, if you shut down all these businesses this way, it is not like people will not do business, they will do it. But maybe you will go into a cash economy.

It is actually legal to get a suitcase full of cash and carry it from Minnesota to Mogadishu. It is not illegal. You have to declare it and there are other protocols, but it is among the most dangerous ways to transmit that money. And you for sure don't know who is going to end up getting that money then.

The fact that we have said we are going to do all these things to cut off access, it has had the opposite effect, which is why I think we ought to have hearings on how to properly de-risk. Get people like you to tell us how we should write the legislation rather than just somebody over at DOJ write up something that they think would be good and then we end up where we are now.

With that, I seek unanimous consent to introduce letters from the Charity & Security Network regarding their problems with the way we are doing business here. The Global Center on Cooperative Security, they have a statement to this committee on examining de-risking and its effect on access to financial services.

And then also Mr. John Byrne, he submitted something on examining de-risking and its effect on services. And I do ask that these documents be allowed to be entered into the record. These groups are on the front line of the effort to combat de-risking, and I am pleased that they have taken time to share their view with the committee.

Chairman LUETKEMEYER. Without objection.

Mr. ELLISON. So question, sudden and unexplained account closures are creating serious problems for international charities and the people that they serve.

For example, on January 29th of this year, Western Union sent a U.S.-based international humanitarian organization a letter closing its account immediately without any explanation for the reasons for this drastic action or given the charity an opportunity to even address the concerns. Going to your point, Mr. Baxter, where is the due process?

When this happens, charities often have extreme difficulties continuing their lifesaving work and those that they need. And research shows that nearly 18 percent of U.S. charities operating internationally are having problems opening or maintaining bank accounts. I think this is a bad thing, and I want to know what you think we should do about it?

Mr. OXMAN. Well, Congressman, I think this is an example of why, as you stated eloquently, the philosophy behind Operation Chokepoint was wrong. The target of Operation Chokepoint was us as payments providers, financial institutions. It is akin to a bank robbery being planned over a cellphone call and law enforcement going after AT&T for that.

What we would like to see, as you noted, is law enforcement regulators pursue the actual fraudsters instead of seeing the service providers that provide millions of Americans, merchants, consumers, charities, nonprofits, access to payment systems. They shouldn't be targeted. The actual fraudsters should be targeted.

What you have seen as a result of the regulatory overreach of recent years is, and you have heard a lot about it today, financial institutions say you know what?

It is not worth the risk of regulators coming after me for serving a disfavored industry, a charity that operates overseas. I will just shut them all off then I don't have to worry about anybody coming to see me and causing any problems. And that is exactly the wrong approach, as you noted.

What we think is better and we think H.R. 2706 does this right, is tell regulators, tell law enforcement at the Federal level in particular pursue the fraudsters directly. Don't pursue the service providers and tell them to shut off entire categories. That is the wrong approach.

Mr. ELLISON. Quick question with my limited remaining time, do we ever get all these agencies together to just talk about the effect of them being—they are trying to de-risk. It seems to me the agencies are trying to say if any bad money gets through we don't want to be blamed for it, so we are just going to shut it all down.

Is there a need for greater coordination? What do you all think in my time that I don't have anymore?

Mr. SCHNEIDER. Well, I would just say briefly, sir, your piece of legislation, the Remittance Improvement Act is a helpful step.

Mr. ELLISON. Thanks.

Mr. SCHNEIDER. Again, we are there as State regulators doing this. We will talk to our Federal counterparts any day of the week for them to better understand what we are doing so that they better understand the real risk and can focus their exams.

Mr. ELLISON. Let me thank everybody and the Ranking Member. Sorry for going—and the Chair for going over.

Chairman LUETKEMEYER. The gentleman's time has expired.

With that, we go to the gentleman from Georgia, Mr. Loudermilk is recognized for 5 minutes.

Mr. LOUDERMILK. Thank you, Mr. Chairman, and thank you for this hearing. It is no secret I have been a long critic of overregulation by the Government to try to fix every problem that exists in the world, and quite often that causes more problems than it fixes. And I think that is one of the things we are looking at here today.

I perceive our responsibility in Congress here is to represent the people, the interests of the people. And I also understand that it is the businesses out there that employ those people and provide the services that people need.

And as spending 20 years as a small business owner, I have lived through what some regulations, such as Operation Chokepoint has done in the community. In fact, I have an advisory council that is made up of businesses from small businesses, mom-and-pop shops up to the executive managers of large businesses in our district.

And I recently asked them at one of our meetings, and there was probably about 100 in attendance, said if we could do one thing for business and this was about 2 years ago, one thing for business would you rather us cut taxes or work on reducing regulation? Almost every one of them said reduce regulation.

And when I followed up I was a little surprised by it and they said, yes, lowering taxes helps us as a business, our bottom line, but the regulation hurts our ability to serve the customer. And I guess that is what we are looking at.

And in fact, Mr. Baxter, my youngest son worked in the ATM industry as security. He was in the Army as Airborne and so they brought him on. He was also a private investigator. He was brought on to be additional security for the business because of exactly what you are talking about. They were forced to carry around a lot of cash.

And so that was his initial job. He has moved on to do more technical things at this point, but Mr. Baxter, the sheer volume of regulations, is that the main cause of the de-risking? Or is it a particular area of compliance like the BSA or anti-money laundering?

Mr. BAXTER. I was asked about money laundering just yesterday as a matter of fact, Congressman. And I was asked can it be done with an ATM? And I said I don't know. I am not a money launderer. I am not a thief. I don't think like that. I have never considered it.

I don't know anyone in business that I have worked with in this industry that does. It is just not discussed. I would not know how to do that.

Mr. LOUDERMILK. Yes.

Mr. BAXTER. Yes, overregulation of our industry is what has brought us to where we are today with bank closures. And I agree with the gentleman that spoke earlier who said that, are any of these departments talking with one another?

And I am not absolutely certain they are because I think if they were there would be a lot more understanding of this business, my business, and various other businesses that provide cash and services to people throughout the country.

And so I think that is where the disconnect is at is that a certain group of people have gotten together and decided that they know what is best for everyone, but the reality of that is just the opposite in terms of small business and what is created by overregulating.

Mr. LOUDERMILK. Yes. I am afraid that often or at least in the case of Operation Chokepoint what we see is somebody not liking what is a legal business and taking it is our job to determine what is legal and not legal in this Nation. And somebody using regulation to make a moral decision to hurt an industry. And we have to avoid that.

Mr. Oxman, I appreciate all of ETA's engagement and as well as the American transaction processors. You and organizations like both of yours engaging in this because you are the boots on the ground working with those individual business owners who really don't have the time to come up here and testify.

While we have you, when the fear of overregulation causes a financial institution, like we have been talking about here, to terminate a relationship with a FinTech company, isn't it harder for the Government to go after the bad actors because the business is now using cash?

Mr. OXMAN. Yes, that is the irony of this, Congressman, and as you know, the great payment processors headquartered in and around Atlanta—

Mr. LOUDERMILK. Right.

Mr. OXMAN. —in the suburbs struggle with this issue every day to prevent fraud from happening. But they are able to prevent fraud from happening because they are on the payment systems. Once you kick them off the payment systems, and as we have talked about, they find alternative ways, that we may not be able to see, to provide service, it is a lot harder to prevent that fraud from happening.

That is the ultimate irony of Operation Chokepoint. You are kicking people off of the very systems that are designed to prevent that fraud from happening.

Mr. LOUDERMILK. In my last 1 second, we basically, under the guise of trying to protect the consumer, are harming the consumer.

Mr. OXMAN. That is right.

Mr. LOUDERMILK. I yield back, Mr. Chairman.

Chairman LUETKEMEYER. The gentleman's time has expired.

With that, we will go to the gentleman from Texas, Mr. Green is recognized for 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman. Thank the Ranking Member as well and the witnesses for appearing.

I would like to talk for just a moment about some of the issues associated with the international charities and the difficulties they are having. Some of them are difficulties opening accounts and a good many others are having difficulties with their remittances.

I have some intelligence before me that indicates that two-thirds of the U.S.-based international NPOs, NPOs are non-profit organizations, that they are reporting experiencing difficulties with the banking system, such as refusal to open accounts, 10 percent, and account closures, 6 percent.

Indicates also that 37 percent of U.S.-based international NPOs reported delays in international wire transfers. Can someone give me some intelligence on why this is occurring?

Dr. OROZCO. Maybe I can. There has been a presumption of risk in cross-border money transfers by the nature of the transaction itself, but not by the fact that a cross-border money transfer represents a financial risk.

Even prior to Chokepoint, the many money transfer operators or money service businesses have suffered account closures at differing instances. As their accounts are closed they face more difficulty in providing services to customers.

But the pattern is that there is no correlation between money transfers, remittances, family remittances, and financial risk, whether it is from money laundering related to drug trafficking or financial terrorist activities or even other forms of money laundering. However, the practice, the systematic practice has existed and has prevailed.

There are money transfer companies that sometimes are currently operating only on two bank accounts, for example, to send more than 200,000 transactions a month from customers through other customers. And they do have a real challenge on how to provide the services.

The main effect, in fact, is that it limits innovation. Currently, the extent of competition is being set back in the money transfer business because the regulatory environment is not allowing them to innovate investor resources in innovation because they have to put their money into complying to different regulatory contexts and the pressure from banks to keep their accounts open.

Mr. GREEN. Would someone else care to comment?

Mr. OXMAN. Congressman, I think this is a terrible example of how Operation Chokepoint harms the very people that we are trying to help. Charitable giving is at the heart of who we are as a people in this country.

We are lucky that great international charitable organizations choose to set up business here in the United States. But if we deny them access to the payment systems, and the ability to send charitable dollars overseas, they are going to leave the country.

Or, as we talked about earlier, they are going to find other ways to operate that take them outside of our payment systems and outside of the purview of regulators that are ensuring that they are doing good by doing good.

I think you have highlighted something that is an untoward and unfortunate consequence of Operation Chokepoint, the kind of derisking that we really need to prevent from happening in order to allow charitable organizations and really all legitimate operators in business in this country to access financial services to be able to do good work and benefit our economy.

Mr. GREEN. I had at least one constituent, and I will come to you. I just want to make this comment if I may? One constituent who believes that religious affiliation has something to do with the reception you will receive when you attempt to move into banking.

Does anybody have a comment on that as you are making your additional comments? Religious affiliation? Yes, sir?

Mr. SCHNEIDER. I have not heard directly that expressed, but that certainly would be troubling if that were becoming a category of concern in and of itself, for someone to not provide banking services on that basis.

I was just going to note, I think sometimes our one pathway forward is data. How do we understand what is going on in this industry? And there is a lot of conjecture, a lot of supposition, but, we have data at the Conference of State Bank Supervisors, our Money Service Business Call Report tracks exactly how much money is being transmitted domestic to foreign countries.

In fact, when filing is ended at the end of today we will be able to tell you the country of destination for all of that money. It doesn't in and of itself solve the problem that your constituents are experiencing on a day-to-day basis, but it provides a basis for being thoughtful about this rather than just operating from conjecture and speculation.

Mr. GREEN. Mr. Chairman, would you allow one additional question?

Chairman LUETKEMEYER. Yes, sir.

Mr. GREEN. Thank you. Can someone give me an indication as to how these limitations that are being imposed will impact the cryptocurrency in terms of persons concluding that maybe there is a better way to do this, an easier way to do it? If you would, please?

Mr. OXMAN. Yes, Congressman, that is certainly a question for those who are de-risked and removed from access to traditional financial services. Cryptocurrency is certainly an option for them.

That is not necessarily a bad thing. There are some markets for whom cryptocurrency is highly appropriate and there are plenty of legitimate and legal uses for cryptocurrency out there.

However, what I would suggest is that if the goal of regulators and law enforcement is to be able to look out for fraud and look out for bad actors, we are all better off if they are in the traditional financial system and not de-risked out of it.

Chairman LUETKEMEYER. The gentleman's time has expired.

With that we go to another gentleman from Texas, Mr. Williams, recognized for 5 minutes.

Mr. WILLIAMS. Thank you, Mr. Chairman. And I would like to say risk management is a critical function for any business or financial institution in this country. And assessing risk can become even more challenging if financial regulators institute practices that are unpredictable and carry compliance measures that are costly or misguided.

The practice of de-risking has damaging effects on Main Street America and causes financial institutions to terminate long-lasting business relationships if they might be deemed high risk.

Operation Chokepoint is one of the many examples of Executive overreach from the previous Administration. And while this Administration is taking deliberate action to curb efforts like the Operation Chokepoint, we must remain vigilant for similar efforts in the future.

And in full disclosure I am a car dealer and I have been on the receiving end of Operation Chokepoint. I know what it does.

Mr. Secretary, I know you and I consider Mr. Cooper a dear friend, so tell him hi. Thank you for being here. I would like to ask a question to you.

I introduced, as you know, H.R. 3626, the Bank Service Company Examination Coordination Act, and this bill will enhance State and Federal regulators' ability to coordinate examinations and share information on banks' technology vendors in an effective and efficient manner.

My question would be can you explain how authorizing State regulators to examine third-party technology service providers is beneficial and how that could avoid duplicate examinations and reduce regulatory burden?

Mr. SCHNEIDER. Yes, thank you very much, sir. I will give Mr. Cooper your best the next time I see him, which will be in a couple of weeks. Your bill, we applaud you for introducing it. It is critically important to making the financial services regulation system more efficient.

As I mentioned throughout one of my themes is we are out there every day as State regulators doing this work, examining these third party services providers, many of which are money service businesses and new FinTech innovators.

And for us not to be able to communicate freely with our Federal counterparts for them to know what we are doing and for us to know what they are doing, just results in more examinations, more work, more regulatory burden that seems unnecessary because it is just duplicative at that point in time.

The simple change that your bill, the simple, commonsense change that your bill would provide could greatly impact a reduction in regulatory burden.

Mr. WILLIAMS. OK. And I have another question for you, Mr. Secretary. Your testimony references Vision 2020, a series of initiatives to modernize State regulation on banks. I would ask you, can you briefly describe this initiative and how it will address re- or derisking and what components of Vision 2020 might be applied to make Federal supervision even more efficient?

Mr. SCHNEIDER. Well, one of our pillars is coordinating better with our Federal counterparts. We are listening to our non-bank FinTech companies that we regulate more closely through an advisory panel that will tell us what their pressure points are so we can better respond.

One of our pillars is to harmonize State laws as much as possible so that FinTech innovators know the rules of the road, know what to expect from a State regulator, know what to expect from a State exam.

How we work together as State examiners is another focus of our Vision 2020 initiative. And quite frankly, making sure that the banking system is available to all of these new companies is another pillar of our Vision 2020.

And to that extent, we have to start having honest conversations with our bank, with the banks that we supervise. Again, we touch 78 percent of every bank in America. Making sure that they understand what they need to do, they have an obligation to mitigate their risk. We have given them tools to better understand that.

And to understand that at least from the perspective of State regulators there are no taboo categories. You are entitled to bank any lawful business that you want to bank. Understand the risk of doing that, use the tools that we have given you, and hopefully that is a pathway that the State regulators can use to attack this derisking phenomenon.

Mr. WILLIAMS. Thank you for that testimony. My last question will be to you, Mr. Oxman. Operation Chokepoint may be one of the most abusive Government overreaches in our Nation's history. As a business owner myself for almost 50 years, it is unconscionable that a Federal agency could so recklessly affect the livelihoods of so many law-abiding citizens and businesses.

How do we prevent future overreach from the Executive Branch? And should the roles of the agency and of Congress be in that prevention?

Mr. OXMAN. I think, Congressman, you are absolutely right in characterizing this overreach as harmful to our economy. It is harmful to American business. And our concern going forward is we saw Operation Chokepoint come up during the prior Administration, but as you noted, there is a risk going forward next year, 5 years from now, 10 years from now, that agencies will start this back up again.

I think the proper role of Congress is to pass legislation like we have talked about today, H.R. 2706. Make sure Federal agencies, Federal law enforcement understand that Operation Chokepoint is not the law of the land and they are not to act as policymakers.

It is Congress' decision which merchant activities are legal and which aren't. And regulators and law enforcement should not be using Operation Chokepoint as a policymaking activity. It is wrong, and Congress needs to stop it.

Mr. WILLIAMS. Thank you for your testimony.

Chairman LUETKEMEYER. The gentleman's time has expired.

With that, we go to the gentleman from Florida. Mr. Ross is recognized for 5 minutes.

Mr. ROSS. Thank you, Chairman, and I appreciate this hearing. I think the Operation Chokepoint has to be one of the most self-serving, corrupt abuses of power that this country has ever exercised. And unfortunately the small businesses, the mom-and-pops have been impacted by it. It sets a very bad precedent.

Mr. Oxman, I am hopeful that we don't see it again and that we do pass legislation to make sure it never happens again.

Mr. Baxter, your particular industry is unique. As the rest of the world seems to want to go cashless, you supply a much-needed basis, cash, to markets where it is hard to find cash. You have your ATMs throughout rural areas.

Could you describe what has been your experience in dealing with banks in areas where you have consumer bases that desperately need your services?

Mr. BAXTER. It is of recent, of the past year, it has not been good at all, as—

Mr. ROSS. You have had technological advances that you have had to keep pace with, which you have been able to do. And yet you serve a market need that nobody else will service.

Mr. BAXTER. Correct.

Mr. ROSS. And for some reason you have banks that now won't allow you, a legitimate ATM provider, to be able to have bank accounts. It—what—why?

Mr. BAXTER. I wish I could answer the why because we have received the letters and we have asked why, but we have received no response. What it has done to us is this. It has forced us to go to other alternative banks, which has created greater risk, a greater risk for us.

And here is the greater risk. The greater risk is what used to be, for example, with Wells Fargo, as one example. Many branches throughout the country, even some closer to some of the rural areas that we service, so rather than having to go pick up 2-days' worth of cash and haul it around in a vehicle and the danger in doing that—

Mr. ROSS. Right.

Mr. BAXTER. —we could pick up a half-a-day's worth of cash and then go to another branch and pick up another half-day's worth of cash to get that cash out but yet keep ourselves safe and everyone else around us safe.

Those are the problems that we now face. We are now having to pick up cash in larger amounts and carry larger amounts.

Mr. ROSS. And they are all hiding. I guess they are hiding their reasons. The regulators are hiding their reasons on the basis of anti-money laundering statutes. Now, you have been in this business for quite some time.

Mr. BAXTER. Yes, sir.

Mr. ROSS. You have made a career off of it. You have employed a lot of people off of it, and more importantly you have catered to a market that desperately needs your services out there that most banks and other financial institutions just won't service for cost purposes alone.

Are you aware of any instances of violations of the anti-money laundering laws dealing with the independent ATM owners?

Mr. BAXTER. I absolutely am not.

Mr. ROSS. And so that excuse in and of itself it just doesn't shed light. What else could it be? Do you have protocols in place to make sure that you don't have money laundering operations going on?

Mr. BAXTER. Correct.

Mr. ROSS. And have you shared these with bank regulators?

Mr. BAXTER. We have not had the opportunity.

Mr. ROSS. Because they won't allow it, will they?

Mr. BAXTER. That is exactly why the National ATM Council would like to ask the OCC and banks and regulators to join with us in a group conversation. Let us share with you what we do and you share with us what are your concerns.

Our books are open. You can examine us and we are auditable from top to bottom.

Mr. ROSS. Yes, clearly. But more importantly, you are more than willing to work with the regulators to make sure that you are not only in compliance with the laws, but that you also have access to bank services so that your consumers, your customers that desperately need your services, can do so at an affordable price and an accessible opportunity.

Mr. BAXTER. Correct.

Mr. ROSS. Mr. Schneider, I am one of the strongest proponents of State regulations. I am a strong proponent of our insurance regulation system and of course our State banking system.

You have developed a tool called the Bank Secrecy Act Self-Assessment Tool for money services businesses. Can you describe real briefly how it is helping with de-risking?

Mr. SCHNEIDER. Well, our thought is that—and again, it is a tool not just a rule.

Mr. ROSS. Right.

Mr. SCHNEIDER. It is a tool that banks and non-banks can use to understand their own individual BSA/AML risk. And once you understand your own risk profile then you can take the appropriate steps to mitigate it. And that is how we think businesses should handle their risk—

Mr. ROSS. And I think you—

Mr. SCHNEIDER. —and not rely on broad categories.

Mr. ROSS. Our Federal regulators aren't subscribing to that particular model, are they?

Mr. SCHNEIDER. This is something that we take pride in developing at the State level. And hopefully our Federal regulators will recognize it for its value.

Mr. ROSS. And have a chance to replicate it?

Mr. SCHNEIDER. Yes.

Mr. ROSS. Thank you.

I yield back.

Chairman LUETKEMEYER. The gentleman yields back.

Now we go to the gentleman from Colorado, Mr. Tipton. He is recognized for 5 minutes.

Mr. TIPTON. Thank you, Mr. Chairman. Thank the panel for taking the time to be able to be here. We have had some conversation in terms of access actually to banking, access to capital issues.

And Mr. Oxman, I come from a rural part of Colorado, the area that I represent. And a number of our folks now are starting to participate in the electronic payments industry and rural people. They have sometimes been seen as underserved and because of the physical distance basically, that they have from a natural brick-and-mortar institution.

Can you briefly touch upon how de-risking will threaten access to choices for rural customers and whether or not de-risking has been detrimental to their financial opportunities?

Mr. OXMAN. Thank you, Congressman. It is an exciting time in our industry, and FinTech products and services are really opening up access opportunities for those, particularly in rural areas like Colorado.

These are people, as you noted, who don't necessarily have access to a bank branch. They don't necessarily have access to as many retail options as they might like, but they all have smartphones. And they can use those devices which are safe, secure, and reliable and other FinTech products and services to access electronic payment systems.

E-commerce is a great opportunity for them, for example. It doesn't matter if you are in a rural area or in an urban area. With e-commerce you can reach the whole world and sell your products and services that way.

And those are the type of FinTech innovations that ETA members are deploying every day. And the problem with de-risking is it says regulators are going to be paying close attention to FinTech products and services.

You might want to consider not deploying them or not offering them because, well, maybe Operation Chokepoint-type regulatory environment prevents that type of innovation from happening. That is what we don't want to see.

What we want to see is these new FinTech products and services bringing more merchants, bringing more consumers onto electronic payments rather than fewer. And that creates exactly the kind of opportunity that you are talking about, and that is what is most exciting about the opportunity of FinTech and regulation law enforcement activities like Operation Chokepoint prevent that from happening.

Mr. TIPTON. Great, thank you. I appreciate that.

Mr. Schneider, I want to be able to visit with you a little bit and follow up on some of the comments that you had made in your testimony. About what happens to the demand for money service businesses if these businesses are denied access to capital and the banking services.

Where do these customers actually turn to if they are denied that access to the financial system because of the effects of de-risking?

Mr. SCHNEIDER. I think that is one that has been touched on before. It is one of the ironies. We will lose visibility into where they are going because they are going to be going into this pure, unregulated cash system where we have no oversight into what they are doing.

In some cases, of course, they are going to be deprived of any service because everyone has been run out of the communities in which they are living. And we just view that as the worst possible outcome, particularly if it is the product of non-thoughtful risk mitigation strategies.

If it is just you think you can't bank these customers because they are inherently risky, we are going to lose track of what they are doing, and in many cases they just won't be served.

Mr. TIPTON. That is an interesting paradox, isn't it, that we are saying we want to be able to have the regulatory ability to be able to track dollars, to be able to make sure that things are safe. But at the same time we are driving people into those gray market areas. What is the safety level of the people who do move into that?

Mr. SCHNEIDER. Yes, that is a great risk. Again, when you are moving vast quantities of cash around just the physical safety of the people that are doing that and the customers that are receiving that service is of great concern to us as State regulators.

Mr. TIPTON. If you have some ideas maybe you would like to be able to share them, what further things can Congress do to be able to address de-risking?

Mr. SCHNEIDER. Well, I do think again, getting the attention of our Federal counterparts that they need to be more individual.

They need to make sure that institutions evaluate their risk, their reputation risk, their BSA/AML risk. That they pay close attention to individual risk and not these broad categories of risk.

And that, quite frankly, they learn to better understand what us as State regulators are doing with respect to making sure these businesses, these non-depository institutions are meeting their BSA/AML obligations. And perhaps that can give them some comfort to not be quite so reactionary to certain types of business categories.

Mr. TIPTON. Great, and appreciate your—did anyone else want to weigh on that?

Dr. OROZCO. I think to answer your question, they need to tell Mr. Baxter why they are closing his account, not just give you an 800 number and leave it there.

The problem is that there is no transparency and accountability in the process. And as long as you don't have that process in place, simply giving the right rebuttal to a money service business to provide evidence that they are doing actually right, they are actually preventing risk, the problem will continue.

And there is a serious problem. There are consequences happening across not just in the United States but it is a global pattern where businesses are actually suffering dramatically and people are being affected by it.

Mr. TIPTON. Right. And unfortunately part of the problem has been caused by the regulators. With that, Mr. Chairman, I yield back.

Chairman LUETKEMEYER. The gentleman yields back.

With that, we go to the gentleman from Kentucky, Mr. Barr, recognized for 5 minutes.

Mr. BARR. Well, thank you, Mr. Chairman. And first and foremost, let me just applaud you and commend you for your consistent focus and attention to the issue of de-risking and Operation Chokepoint. As long as I have been on this committee you have been laser-focused on addressing this problem.

And it is a problem and it affects Kentucky. Legitimate businesses losing access to financial services and banking services and that is a real problem.

I would like to start with Mr. Schneider. I appreciate your commonsense, measured, thoughtful approach to this issue. We have a regulator in Kentucky, Charles Vice, Commissioner Vice, who has a similar thoughtful approach to this issue.

And for both of you and other State regulators, my question is, how effectively are you coordinating or not coordinating, as the case may be, with Federal regulators? How significant is the gap in the approach to this issue?

Mr. SCHNEIDER. Well, thank you very much. I will also see Mr. Vice in a couple of weeks, so I will give him your best. I think we as State regulators are doing an increasingly better job of working together. For the big MSBs last year alone we did 63 joint exams. That is reducing the regulatory burden for them.

The more we as States work together and come in and do something once as opposed to doing it 50 times, the less burdensome it is for the companies that we regulate.

Generally speaking we do have good relationships. We work as cooperatively as we can with our Federal partners. But there are some gaps.

And again, I don't mean to keep harping on H.R. 3626, but that small change that would allow us on these new types of innovative companies to be able to share exam findings, participate in joint exams with Federal regulators, as seemingly simple as that is, would not only reduce regulatory burden, but I think make our Federal counterparts more aware of what we are doing so that they don't have to think they need to do it again because they don't know what we are doing in the first place.

Mr. BARR. Well, speaking of these innovative companies and FinTech from a regulator's point of view and also Mr. Oxman from your industry's point of view, can you all give us some concrete examples of some FinTech companies, some innovative entrepreneurial companies that are helping combat fraud?

And without identifying particular companies just what are some of the ways in which FinTech companies are helping combat fraud or money laundering or other kinds of nefarious activities?

Mr. SCHNEIDER. Well, I can just start by saying as part of the licensing process for our money service business companies, having a good BSA/AML compliance plan is required. That is a required checkpoint to even get licensed by one of our States.

We see them being very thoughtful. They don't just approach this—I don't think any of them necessarily contend they have a magic bullet or a secret sauce. It is just a good understanding of the regulations, working with their State regulator to make sure we agree that their plan works and then going forward and providing services.

Mr. OXMAN. And I think in the FinTech space, Congressman, one of the most interesting areas is this so-called peer-to-peer services where consumers are sending money back and forth to each other electronically.

Some of the biggest names in technology are deploying peer-to-peer services. And they are deploying them with those built-in BSA/AML-type protections that you as the committee of jurisdiction want to see them deploying.

They are new-fangled services. They use smartphones instead of the checks that we used to write to each other. But they are offering those protections.

And as we have been talking about today, we should look for more opportunities to bring consumers, bring merchants onto these electronic payment systems because it is a lot easier to provide those fraud protections in the electronic world than it is in the offline world.

Mr. BARR. And for regulators that don't have this open mind about innovation and get a little bit overzealous with respect to derisking, there is an opportunity to actually undermine the safety of the financial system. Is that fair to say?

Mr. OXMAN. That is absolutely true. That is the worst part of Operation Chokepoint is it has that perverse effect of kicking people off of the very systems that are deploying these kind of fraud prevention tools and preventing that fraud analysis from taking place.

We are seeing some good signs, for example, the OCC has this FinTech charter idea that we support that will help, again, bring these new FinTech players onto the financial system so we can deploy these fraud algorithms and prevent fraud from taking place.

Illinois and seven other State commissions have joined together on a joint effort to streamline the money transmitter evaluation process for licensing. That is a great move by some very forward-thinking regulators, again, designed to help bring these FinTech companies into the financial system onto electronic payment systems so we can prevent the kind of fraud that we want.

Mr. SCHNEIDER. Sir, there is a lot of talk about the FinTech charter I know, and probably subject of many more hearings, separate hearings. The only thing I would like to caution there is, help people keep in mind, is creating another big Federal bureaucracy as a chartering authority the direction we want to go here?

States are already doing this work. We have a proven track record of keeping consumers safe, proven track record of supporting innovation. And I am not sure it makes a lot of sense to create a new Federal bureaucracy which could cause the problems that the current one seems to have created.

Mr. BARR. Thank you. My time has expired.

Chairman LUETKEMEYER. The gentleman's time has expired and we are out of witnesses. But I do have a couple of follow-up comments and questions here for the record.

In a question Mr. Rothfus indicated that pawnbrokers were included on the FDIC high-risk list. Let the hearing record reflect that the pawnbrokers were not included on that list.

With regards to a comment Mr. Ellison made, I would like to clarify that he said something to the effect that he didn't see any coordination or any personal inclinations of the DOJ and FDIC folks with regards to Operation Chokepoint.

And I would just point out that there are oversight committee reports on both the FDIC and DOJ showing personal motives with documented emails between the individuals in those agencies that there were personal motives and there were personal actions taken as a result of that.

Mr. Oxman, I really enjoyed your one comment where you said, "The risk is based on the industry or business and not the products sold." I thought that was spot on, and I appreciate that.

I am going to use that. I am going to swipe that from you to use in front of some of my other discussions sometimes. Mr. Barr hit on a little bit of it here and I wanted to follow up a little bit.

And you made the comment a minute ago that there are the FinTech folks and the EFT folks, electronic transfer folks, are working on different products and better ways to protect information and money transfers.

These technologies are going to have—they are going to be implemented, and they are going to ask the retailers to participate, whether it is biometrics or whatever else is out there, so whenever a credit card, debit card, or whatever type of payment is used.

And in order to do this they are going to have to change the way they do business as well. Is that right?

Mr. OXMAN. That is absolutely right, Mr. Chairman.

Chairman LUETKEMEYER. My question I guess is because we had another hearing yesterday with regards to the liability situation with regards to how this is all taking place between the retailers, third parties, banks, what have you.

And seems to fit right in there with regards to as you technologically continue to advance and these things are basically forced onto the businesses, they are going to have to change the way they do business as well. Is that correct?

Mr. OXMAN. That is absolutely right, Mr. Chairman, and it does go back to that principle that our industry is in the first instance under both Federal law and card network rules. We are responsible financially for fraud.

Consumers have a 100 percent liability protection against fraudulent activity on their credit cards. We have a powerful incentive to deploy exactly the type of new technology tools that you are talking about, whether it is biometrics like the fingerprint or face ID. We are moving away from old types of validation, authentication like the signature, which we are getting out of the system.

These new technology tools are exactly what the private sector should be deploying. We want to deploy them and we are well-positioned to protect against fraud with them.

Chairman LUETKEMEYER. Mr. Schneider, you made a couple of great comments with regards to the environment and how it needs to be changed. You, as someone who is a head of a regulatory agency I entered this discussion, quite frankly, with the top regulators. And I have told them they have a culture within their agency that has to be changed.

Here we have Operation Chokepoint that has been discussed, and it has morphed into something more than just the list of what was on the FDIC.

Now, it takes into account ATM machines, electronic transfer folks, and it is ironic because here we are talking about shutting down systems that provide cash, the ability of people to get cash from their accounts, as well as being able to transfer money electronically out of their accounts, now how are they supposed to access their accounts?

How are they supposed to access their accounts if they can't get cash or they can't get their money transferred? What is left? I am at a loss.

Mr. SCHNEIDER. I think that just highlights this great irony that an overzealous regulation can actually have the exact opposite effect as pushing people into areas where we have no visibility into what they are doing and less compliance.

Chairman LUETKEMEYER. How do you change the culture at the agency? We have a bill to stop Operation Chokepoint. We have had hearings here to try and expose this. We are trying to work with the different regulators.

And I don't want to put words in your mouth here, but it would seem to me they wouldn't need to just continue to have meetings with not only ourselves but with your groups with the regulators and say, hey look, we have to coordinate. This is still going on. They are still at the bottom.

And quite frankly, I have actually told some regulators, I said this culture is all the way down to the bottom and you are going to have to go all the way down to the bottom to reach this.

Mr. SCHNEIDER. Oh, I absolutely think so. We certainly learn a lot from our Federal counterparts on certain issues. I think they have a lot that they could learn from us. And the more we collaborate and the more we cooperate is a way that is starting to change that culture.

Chairman LUETKEMEYER. Well, actually we are at the end of our hearing here and we have a couple of minutes because I know we are going back into session here shortly. But I would be willing to let each one of you have a couple minutes just to close if you would like to answer a question that didn't get enough time to or just make it brief. We don't want 5 minutes.

Mr. SCHNEIDER. Oh yes, absolutely. I would just like to thank the committee for listening to us, for getting a better understanding of what State regulators do, the information that we are providing on this topic through our call report, the degree to which we are trying to make regulation more efficient and more effective.

I appreciate you listening to us, and for helping us where the law needs to be changed a little bit to work better with our Federal counterparts.

Chairman LUETKEMEYER. Mr. Baxter, you have a couple comments?

Mr. BAXTER. I would like to thank the committee for holding these hearings today and for giving us an opportunity to express what it is that the National ATM Council and the ATM industry private sector as a whole would like to move forward with in regards to working with the OCC, the regulators and anyone else that the Government thinks is necessary for our industry to be able to survive, thrive, and move forward supplying cash to America.

Chairman LUETKEMEYER. Very good.

Mr. Oxman, any final comments?

Mr. OXMAN. Thank you, Mr. Chairman, and thank you for the opportunity on behalf of the Electronic Transactions Association to be here today. Our members are actively deploying FinTech products and services to prevent fraud and more importantly to enable commerce in this country, to enable merchants and consumers to continue to drive our economy with retail purchases.

And we appreciate the opportunity to explore how a regulatory environment can be better conducive to the deployment of the type of FinTech products and services that prevent fraud and enable commerce in this country. Thank you.

Chairman LUETKEMEYER. Dr. Orozco?

Dr. OROZCO. Thank you very much, too. I think the main issue is to redirect the attention from de-risking into risk prevention. And the instruments exist to do that. And in that line, there are differing methods to continue enforcing the law without sacrificing financial access for businesses or individuals. Thank you.

Chairman LUETKEMEYER. Well, I would like to thank the witnesses for your testimony today. You have been great, a lot of great comments and appreciate your frankness.

Without objection, all members will have 5 legislative days within which to submit additional written question for the witnesses to the Chair, which will be forwarded to the witness for their response. I ask each witness to please promptly respond if you are able.

Without objection, all members will have 5 legislative days within which to submit extraneous materials to the Chair for inclusion in the record.

With that, this hearing is adjourned.

[Whereupon, at 11:24 a.m., the subcommittee was adjourned.]

A P P E N D I X

February 15, 2018

Prepared Testimony of
Timothy W. Baxter,
President, SwypCo, LLC
On behalf of
The National ATM Council, Inc.
before the
Subcommittee on Financial Institutions and Consumer Credit
of the
Committee on Financial Services
of the
United States House of Representatives
February 15, 2018

Chairman Luetkemeyer, Ranking Member Clay, and Members of the Subcommittee, thank you for this opportunity to testify before you today. My name is Tim Baxter. I live in The Colony, Texas, a Dallas suburb, and am President of SwypCo, LLC, a full-service ATM placement company and a provider of ATM processing services. We own 48 ATM terminals and provide processing services to our clients, accounting for 1,385 ATM terminals in total, located in Texas and 17 other states, ranging from Arizona to New York. I am married, with two children and three grandchildren, and am a proud veteran of the United States Marine Corps.

I first entered the ATM industry in 2004, after spending 25 years with one company in the commercial coffee industry. My career in ATMs began with a VISA-registered independent service organization (ISO), where I learned the industry and all aspects of its service and equipment, network rules, and sponsoring bank rules of operation.

I am testifying today on behalf of The National ATM Council, Inc. ("NAC"), a nonprofit association of individuals and businesses that are engaged in the ownership, operation, or servicing of independent automated teller machines—ATMs that are not owned or operated by banks or other financial institutions. I am a member of NAC and, in addition, was a founding member of its Board of Directors, on which I continue to serve.

NAC and its members wish to thank the Subcommittee for holding this hearing. We believe it is an opportunity to expose the widespread and severe consequences that in recent years have resulted from financial institutions' practice of "de-risking." We also applaud the determination of the Subcommittee, according to a letter to me from the Chairman dated February 1, 2018, to explore "methods to eradicate prejudicial treatment of industries by federal financial regulators." That prejudicial treatment has flowed directly from federal regulators' implementation of Operation Choke Point, in 2013, which, as the Chairman's letter states, has been directed at what regulators termed "high risk" customers of financial institutions, whose transactions and accounts with and through such institutions were, according to the regulators, "deserving of heightened regulatory scrutiny."

At the outset, we want the Subcommittee to know that NAC supports enactment of H.R. 2706, the Financial Institution Customer Protection Act, introduced by Chairman Luetkemeyer, which would impose appropriate and necessary limitations and conditions on the ability of any federal bank regulatory agency to direct or order any depository institution to terminate a specific customer account, or group of customer accounts, or otherwise to restrict or discourage any such institution from entering into or maintaining any banking relationship with a specific customer or group of customers. We believe that enactment would provide material relief to our industry and to the businesses and consumers throughout the nation whom we have the honor to serve.

"De-risking" by financial institutions—taking steps to reduce or eliminate the supposed risks of doing business with so-called "high risk" customers—can involve any number of measures.

Unfortunately for the independent ATM industry, it has become all too clear, especially over about the past 18 to 24 months, that a growing number of the banks that historically have served our industry by holding the deposit accounts that provide ATM operators access to the national payments system, through which virtually all ATM transactions must be conducted, have sought to "de-risk" their institutions by ordering closure of the deposit accounts of any customer engaged in the ATM industry, and refusing to open any new accounts for any person or firm in the industry.

Closing any such account has immediate and drastic consequences for the accountholder. Quite simply, it is impossible for an ATM operator to do business without having a bank account. When a cardholder withdraws cash from his or her account at any ATM that is not owned or operated by the cardholder's own bank, that withdrawal necessarily can be accomplished only by transmissions made through one or more of the nation's electronic funds transfer networks, which are accessible only through a bank account.

In recent years, increasing numbers of businesses and individuals in the independent ATM industry have been notified by their banks, without explanation, that their deposit accounts are to be closed, or, in some cases, already have been closed. These accountholders often have been customers who had enjoyed years, or even decades, of successful, trouble-free relationships with their banks. They were and are businesspeople who operated their businesses in full compliance with applicable laws and regulations. In many instances, the accountholder's own banker—the bank's "relationship manager" for the account—has been an advocate for the accountholder, seeking, without success, to convince senior management of the bank that the account relationship should be maintained.

I have been a victim of such "de-risking" in my own ATM businesses. In addition, as a member and a director of NAC, I have learned about the experiences of numerous other NAC members—and of others in the independent ATM industry who weren't NAC members but who contacted our organization to seek help or advice after they had learned that their bank accounts were being or had been closed.

I do not want to dwell here on my own experiences—it is the widespread negative impact of "de-risking" on individuals and businesses, throughout our industry, that we want to make clear to the Subcommittee—but I would be pleased to describe and discuss my experiences in some detail if the Subcommittee would like me to do so.

A few illustrative examples may help the Subcommittee understand why this is such an urgent issue for our industry. A NAC member who is an ATM operator in Houston, after having been told that his customer relationship with Wells Fargo was being terminated by the bank, contacted NAC and told us he had found another bank, to whom he'd described his business and his need for a new bank, and that the institution had responded that it would be happy to have his business. This individual had a considerable history in the ATM business and had maintained his bank accounts at Wells Fargo for approximately 20 years.

At the time that Wells closed his accounts, the bank was charging and receiving from him approximately $2,000 in monthly operating charges for servicing his accounts. For whatever reason, when Wells decided that it was dissatisfied with the relationship, the bank didn't request more information from him about his business, his accounts, or the transactions in or through those accounts. It didn't offer to maintain the account by means of an increase in the operating charges imposed on his accounts. Instead, it simply notified him that the bank was closing all of those accounts.

After he'd found another bank and moved his business's account there, he proceeded to make arrangements to operate his business, and service his ATMs, from his new bank. While he had banked at Wells Fargo, he'd had a contract with an armored-car service to make cash deliveries for his terminals from Wells Fargo. When his new bank told him that it was necessary that he switch to a different armored-car service that the bank used, he canceled his existing contract and arranged for cash deliveries to be made by the service that was used by that bank.

He then scheduled a delivery of $200,000 in cash from his new bank, to be used to replenish his ATMs. On the evening before that delivery was to be made, the bank notified him that it was closing his account and that no delivery of cash would be made the next day. He was told that the bank would remit $200,000 to him by check or wire transfer but would not provide him cash. When he asked why the bank closed his account, he was told that it was closing the accounts of all its customers who were in the ATM industry.

In some instances, financial institutions have given customers prior notice—sometimes 10 days, sometimes 30 days, sometimes even 60 days or longer, prior to the effective date of account closure. In other instances, there was no prior notice.

One of our members learned that his business's accounts had been closed only when he logged on to his bank's website at about 9:30 one evening and found that there was no indication on the site that any of his accounts ever had existed. Believing that there had been some serious failure impairing the website's operation, he then telephoned the bank's support line and, after having gone through security protocols, was told only that all of his accounts had been closed and that he would have to call or visit the bank the next day to obtain further information. When he called the bank on the following day, it refused to provide him any information except that a check would be mailed to him for the balance in his accounts.

Another NAC member, in southern California, was notified by his bank last April that it was closing his account. When he asked the reason for the bank's action, it refused to provide any. He sent to NAC a list of more than two dozen banks and credit unions that he then had called or visited, in May and June, in unsuccessful efforts to find another institution that would accept his account. NAC even has heard from firms—such as those that buy and sell ATM businesses, or that broker such transactions—that have never owned or operated a single ATM, and never have loaded cash into one, but that nevertheless have had their bank accounts closed, apparently because of their association with the ATM industry.

Yet another NAC member, in Tennessee, found out—only when he learned that one of the ATMs owned by his business would not accept his own debit card—that his bank had closed his business and personal accounts. This gentleman, 64 years old, had been a public school bus driver for more than 20 years, and invested his life's savings in the small ATM business that he built up over a decade.

Some banks have attributed their closure of accounts to factors that they describe in vague terms such as "regulatory burdens," and even some that, in written notifications, have told depositors that they were under no obligation to provide any reason and that they therefore would not do so, also have indicated in conversations that the closures resulted from pressure from their regulators. A few banks have sought to justify account closures by stating that, as a matter of policy, they do not serve "money services businesses," even though, in 2007, the federal Financial Crimes Enforcement Network ("FinCEN") published interpretive guidance clarifying that, under federal law, a nonbank owner or operator of a typical ATM—one that offers cardholders access to their bank accounts only for purposes of making balance inquiries or cash withdrawals—is not considered a "money services business."

One thing has become clear to us, as the incidence of these closures has grown exponentially over about the past two years: Wells Fargo and several other large banks have been the most systematic, uniform, and rigorous in cutting off and denying bank accounts to the independent ATM industry. It is perhaps no coincidence that these institutions have by far the nation's largest branch networks and largest ATM networks. Moreover, during this same period these institutions have been actively rolling out and vigorously promoting and advertising various proprietary offerings to their customers, including the capabilities of their "touchless/NFC (near-field communication)" mobile apps, which are designed to function only with each bank's own ATMs, and not with any others.

These large, nationwide institutions accordingly stand to realize significant competitive advantages by the shrinking presence of independently owned ATMs, which is an inevitable and continuing consequence of the banks' unjustified refusal to offer or provide banking services to independent ATM owners and operators. Because these banks' own branch and ATM networks are among the most extensive in the nation, their collective blacklisting of accounts of the independent ATM industry, as a matter of corporate policy, has particularly devastating effects.

Banks' treatment of ATM providers as "high risk" businesses is wholly unjustified. Every independent ATM operator must be sponsored by a sponsoring bank, which conducts thorough, detailed due diligence on any person or firm that seeks to become an ATM owner or operator. Those that survive this initial vetting—which must be successfully completed before anyone can enter into the business—thereafter are required to submit detailed monthly reports to their sponsoring banks. Each owner or operator also must undergo an annual review and audit by its sponsoring bank. In addition, all of them are required to operate their businesses in strict accordance with detailed and extensive network rules that are issued and enforced by Visa, MasterCard, and other networks.

Although the underlying "product" of every ATM business is cash, it should be readily apparent that the detailed regular audits, reviews, and reporting that are required of those businesses, under network rules and by their sponsoring banks, should suffice to establish that there is no rational basis for banks to treat them as sources of undue risk of being involved in unlawful activity.

The account closures afflicting the independent ATM industry do not, in our view, accomplish any legitimate regulatory or law-enforcement objective, but they unquestionably cause grave and continuing harm: first, to the legitimate, law-abiding ATM businesses that are deprived of the bank accounts that are essential to their continued operation; and, second, to the innumerable members of the banking public that benefit every day from the services provided by the independent ATM industry. If the increasing incidence of blanket account closures by banks is permitted to continue unabated at its current pace, the resulting constriction on the availability of cash will have severe and growing adverse effects on the most vulnerable geographic and economic sectors of the nation, and ultimately on all Americans who rely on widespread, convenient access to cash.

In addition, the refusal by banks to offer deposit accounts to businesses in the independent ATM industry directly contravenes the affirmative obligation of every insured depository institution, under the Community Reinvestment Act, to demonstrate that the deposit services offered by the institution serve the convenience and needs of the communities in which it does business. Submitted with my prepared testimony is a copy of a letter dated September 20, 2017, from the Executive Director of NAC to Rep. Carolyn B. Maloney, which sets forth the bases of NAC's position that the refusal of banks to provide deposit services to independent ATM owners and operators is contrary to the lawful obligations of those institutions under the Community Reinvestment Act.

The independent ATM industry fulfills a critical role in the American economy. According to the most recent available data, the total number of ATMs deployed throughout the nation is approximately 470,000, which provides U.S. residents the highest per-capita availability, of any nation in the world, of ready access to cash from the funds held in their bank accounts. This widespread availability of sources of cash provides enormous benefits to our nation's economy. A substantial majority—nearly 60 percent—of the nation's ATMs are independently owned, and a great many of those independent ATMs are located in underbanked low-income urban neighborhoods, and in sparsely populated rural areas, where few bank offices, and few bank-owned ATMs, can be found.

To better understand this key issue, NAC contracted with an independent group of researchers, with experience in geographic and economic analysis, to conduct a study of certain aspects of the ATM marketplace. This team consisted of PhD and research professors from The Center for Economics and Geographic Information Systems (GIS) Research, of the Department of Economics and Geography at the University of North Florida, in Jacksonville. In their study, they compared the demographic characteristics of the areas in which independently owned ATMs are located with those of the areas where bank-owned ATMs are located. A copy of the study is submitted with my testimony.

After identifying the geographic locations of bank-owned and independent ATMs, the study compared a range of demographic and socioeconomic characteristics of those areas, in an effort to identify the characteristics that distinguish the areas served by independently owned ATMs from those of the areas served by bank-owned ATMs. The characteristics selected for comparison were: total population; population density; labor force participation rate; median age; unemployment rate; education (measured by number of residents, and proportion of population, with college degrees); median and average household income and disposable income, and median and average home values.

The authors of the study state their general conclusions as follows:

> In this study we find clear statistical evidence that independent ATMs in the U.S. tend to be located in areas that are disadvantaged in demographic and socioeconomic status, when compared to bank-owned ATMs. The locations of independent ATMs tend to have less population, lower population density, lower labor force participation rate, less college-educated population, higher unemployment rate, lower median and average income (household and disposable), and lower home values.

The study also cites a report in the February 5, 2018, editions of The Wall Street Journal about branch closures in the U.S. banking industry in recent years, which begins: "Banks are closing branches at the fastest pace in decades, as they leave less profitable regions . . . ." The study says that, according to the Journal's report, between July 2016 and June 2017 more than 1,700 bank branches were closed in the U.S., and further observed that while shutting down branch offices has boosted banks' profits, "it has put their rural customers in trouble, forcing some to travel long distances for access to cash. . . . In this context independent ATMs play an even more important and growing role in giving certain sections of the population (i.e. rural, inner city) access to financial services that could have been otherwise limited."

In all too many areas, if independently owned ATMs are shut down, the only available alternative for local residents will be to travel—in urban areas several miles or more, and in rural areas perhaps 20 miles, 30 miles, or even 50 miles—to get to the nearest bank branch or bank-owned ATM, or perhaps an independent ATM. *Widespread, reliable access to cash is one of the principal drivers that sustains the strength and growth of America's consumer-driven economy, and independent providers of ATM services are a principal and indispensable source of that access.*

Residents in the areas served by independently owned ATMs, and the local retail and service businesses that also serve those residents, regularly count on the availability, day in and day out, of the cash that consumers can reliably access only through ATMs. It also is important to recognize that such access is of special importance to those segments of the populace who rely upon nonbank ATMs as the only convenient, low-cost, and readily available way for them to access the growing range of benefits that are provided by government agencies solely through electronic benefit transfer (EBT) cards.

We in the independent ATM industry want to assure the Subcommittee that we recognize the value and importance of fair and vigorous enforcement of federal and state laws and regulatory requirements adopted to prohibit illicit financial transactions, including money-laundering and financing of criminal activities such as terrorism and trafficking in illegal narcotics. We understand that financial intermediaries such as banks are at risk of being misused or exploited by those engaged in furthering or promoting such illicit activities, and that appropriate monitoring, documenting, and recordkeeping of transfers of high volumes of currency unfortunately are necessary elements of appropriate enforcement regimes.

We therefore do not suggest that fair and sensible enforcement of the Bank Secrecy Act and related laws be curtailed or reduced in any respect. On the contrary, such enforcement protects us all. At the same time, we urge that the Subcommittee recognize that for federal regulators to encourage or permit financial institutions to cut off financial services, and deny bank accounts, to legitimate businesses that are operating in accordance with the law, and that accept and cooperate with financial institutions' conduct of due diligence on those businesses and on their transactions and activities, unavoidably will cause severe injury to those businesses, to their customers—the banking public who want and need the access to their funds that ATMs provide—and to the other businesses, throughout the nation, with whom those customers in turn do business.

Because of its recognition of the importance and necessity of appropriate BSA/AML enforcement, several years ago NAC began working to formulate a set of operating principles and procedures for use by ATM owners and operators, in order to facilitate BSA/AML compliance by the banks that serve the ATM industry. The result of these efforts was NAC's "Recommended Settlement/Vault Cash Account Guidelines for U.S. ATM Operators," which is posted on NAC's website, and a copy of which is submitted with my testimony. The Guidelines are intended to ensure that the banks that serve our industry will be provided, by their customers in the industry, the data and information that federal financial regulators expect every bank—in the conduct of its due diligence and for purposes of its account monitoring and related compliance duties—to obtain from any of its depositors that are independent providers of ATM services.

Based on guidance published by the Federal Financial Institutions Examination Council ("FFIEC") in its BSA/AML Examination Manual, available on the FFIEC's website, the Guidelines identify certain data, information, and records that ATM businesses that subscribe to and operate under the Guidelines agree to compile and provide to their banks on a regular basis.

These materials, according to the examination manual, include the data and information that bank examiners, in evaluating banks' BSA/AML compliance, are expected to review in the course of the examination process. The Guidelines incorporate many of the detailed requirements set forth in the examination manual, and thus are intended to serve as an educational tool, for ATM operators and for their bankers, as to what information needs to be documented by ATM businesses, provided by them to their banks for review by auditors and compliance staff, and made available by the banks for review by examiners in accordance with the provisions of the manual.

In an ATM business that operates under the Guidelines, the currency that is loaded into the business's ATMs is provided from one or more bank accounts, commonly known as a Settlement Account, which, as set forth in the Guidelines, is structured to operate as a "closed loop." The sole use of the funds that are held in any such account is to provide the currency that is loaded into ATMs owned or operated by the accountholder.

There are two, and only two, sources of the funds that are deposited into any Settlement Account: first, deposits made by the accountholder, and subject to customary due diligence by the Settlement Bank on such matters as the source(s) of the deposited funds, and the reasons that the deposit is needed; and, second, deposits received through automated clearing house (ACH) transfers that originate in the respective depository banks of cardholders who have made withdrawals from the business's ATM, and that are made in settlement of those withdrawal transactions. Surcharge or interchange revenue of the accountholder's ATM business, and any other revenue or income that it may receive, is deposited solely into other bank accounts wholly separate and apart from its Settlement Account(s). These operating procedures, and the reporting and recordkeeping that are provided for in the Guidelines, are intended to eliminate the possibility that any of the funds that flow through the Settlement Account could in any way be misused or diverted to illicit purposes, without such misuse being readily detected by the Settlement Bank.

During the course of developing the Guidelines, NAC had multiple meetings with officials and staff of FinCEN to review and discuss drafts of the Guidelines, and to solicit the agency's views about the effectiveness and utility of the Guidelines in describing, facilitating, and promoting appropriate documentation and recordkeeping, on the part of providers of ATM services, to enable the banks with which they do business to comply with their obligations under BSA/AML requirements. We understand that FinCEN views the Guidelines favorably, and NAC has urged, and continues to urge, its members to subscribe to the Guidelines and operate in accordance with them, and to review and discuss them, and their use and purposes, with their bankers.

We have met with the Acting Comptroller of the Currency and his senior staff and have requested that Comptroller Otting and the OCC work with NAC in addressing this situation and the serious issues that it presents. NAC and the banking agencies all share the same interests: implementing regulatory and enforcement procedures that provide for fair and effective enforcement of BSA/AML statutes and regulations, while assuring reliable provision of financial services, including deposit accounts, to law-abiding, legitimate businesses and individuals, on terms and conditions that do not impose undue or unreasonable burdens upon them or their business activities. **We are hopeful that the Subcommittee will join with us and urge the Comptroller's Office, and the other federal financial regulatory agencies, to work with NAC, and with the men and women of our industry, to relieve the existential threat that the current growing wave of unnecessary account closures presents for law-abiding independent ATM providers. We would also ask that the Subcommittee be open to an appropriate additional specific legislative resolution, should this prove necessary.**

Thank you again for the opportunity to appear before the Subcommittee and to present to you the views and concerns of NAC and its members on the important issues that are affecting, and indeed threaten the very survival of, our business.

Executive Director: Bruce Renard | Chair: George Sarantopoulos | Vice Chair: Patrick Conner | Secretary: Mike Powell | Treasurer: Chris Waters

NATIONAL ATM COUNCIL

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September 20, 2017

The Honorable Carolyn B. Maloney
United States House of Representatives
2308 Rayburn House Office Building
Washington, D.C. 20515-0001

Dear Congresswoman Maloney:

On behalf of the National ATM Council (NAC), which represents the nation's independent providers of ATM services, I am writing in regard to a growing crisis affecting our industry which has resulted from the actions of the increasing number of banks—many of them national banks—that, without explanation, have ordered the closure of the deposit accounts of independent businesses that own or operate ATMs, effectively forcing them, in many cases, to cease operations entirely.

For the reasons discussed below, we believe that the actions of these banks are in direct contravention of their obligations under the Community Reinvestment Act of 1977, 12 U.S.C. §§ 2901 *et seq.*

The magnitude and potential impact of this crisis is illustrated by the essential role that independently owned ATMs fulfill in our national economic system. Of the approximately 430,000 ATMs deployed throughout the nation, approximately two-thirds are owned and operated by independent, nonbank businesses. Many of these ATMs are located in low-income urban neighborhoods, and in sparsely populated rural areas, where few bank offices or bank-owned ATMs can be found.

Many among the under banked populations who live in these areas rely on nonbank ATMs as the only convenient and readily available way to access a variety of benefits that are provided by government agencies solely through electronic benefit transfer (EBT) cards. It also is relevant that any bank that provides banking services to independent ATM businesses, and that regularly carries out its obligations of BSA/AML compliance by, among other things, conducting due diligence on its customers, thereby would have actual knowledge of the activities of the ATM businesses that it serves, including where the ATMs that they operate are located, and the communities and neighborhoods that they serve. Moreover, ATM providers are thoroughly reviewed/examined/vetted by their sponsoring bank(s), ATM processors and ATM ISOs, both prior to being authorized to own/operate/place an ATM, and thereafter on an ongoing basis in order to remain in operation.

Over the past 12 to 18 months, numerous independent ATM owners and operators, many of whom have had trouble-free banking relationships for years, or even decades—and all of whom have been engaged in the lawful operation of their businesses—have been told by their banks that, usually for reasons not specified, their deposit accounts are to be closed, sometimes within 50 days or 60 days, sometimes within 30 days, and sometimes sooner. Even more troubling, the pace of these account closures has accelerated markedly since around the beginning of this year. In addition, a great many of these business people, when they then have tried to move their accounts to a new bank, have been told by numerous other financial institutions, repeatedly, that new accounts cannot be opened for ATM owners or operators.

The Honorable Carolyn B. Maloney
September 20, 2017
Page - 2 -

According to reports that NAC has received from its members, in a number of cases these banks have indicated that their actions were prompted by pressure from regulatory authorities. While we have no direct knowledge as to whether regulators in fact have exerted such pressure, such reports are pervasive and consistent enough to be extremely disturbing. Given the important role of the services provided by independent ATM businesses in communities often not otherwise served by the banks where those ATM companies do their banking, even the possibility of any such pressure is concerning.

The unwarranted blanket closings of the accounts of independent ATM operators should be assessed in terms of the requirements of the CRA, as enumerated in the provisions of the Act and, more particularly, in regulations promulgated there under by the federal banking agencies, such as sections 25.24(a) and 25.24(d)(3) of the regulations of the Office of the Comptroller of the Currency, codified in Title 12 of the Code of Federal Regulations. While much of the discussion and commentary respecting CRA requirements has been directed at the obligations that the Act imposes on banks' lending activities, it also should be recognized that, in section 2901(a)(1), the CRA declares that banks "are required by law to demonstrate that their deposit facilities serve the convenience and needs of the communities in which they are chartered to do business."

The sections of the OCC's regulations cited above provide that the agency's assessment of banks' CRA performance is to include analysis of "both the availability and effectiveness of a bank's systems for delivering retail banking services," 12 C.F.R. § 25.24(a), and that among the criteria for evaluating such availability and effectiveness are "[t]he availability and effectiveness of alternative systems for delivering" such services. Moreover, those alternative systems, the regulation expressly states, include "ATMs not owned or operated by or exclusively for the bank," § 25.24(d)(3).

Thus, when any bank orders closure of the accounts of a business that is lawfully engaged in providing retail ATM services, and thereby deprives that business of, among other things, access to the national payments systems and a reliable source of currency for its ATMs, one inevitable consequence is that the bank thereby will have eliminated from the communities that it serves an important segment of the alternative systems available for delivering retail banking services to those communities. Any such action by a bank thus will have the effect of curtailing the availability of retail banking services in the communities whose convenience and needs the bank is obligated to serve, and will directly contravene the express obligations of such institutions under the CRA.

We respectfully suggest that there is an urgent need for the OCC, and the other federal bank regulatory agencies, first, to consider the entire range of retail banking services that the CRA obligates financial institutions to assure are available in the communities that they serve, and, second, to take prompt and effective action to bring a halt to wholly unjustified bank actions that serve only to restrict the availability to the public of needed retail banking services, the availability of which the CRA directs insured financial institutions to encourage and promote. We would greatly appreciate any aid that you may be able to provide to us. We have provided extensive supporting information to your office and we stand ready to work with you in any way in which we might be helpful to your efforts.

Sincerely,

Bruce W. Renard

Bruce Wayne Renard
Executive Director

Locational Study of ATMs in the U.S. by Ownership 2018

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The Locational Study of ATMs in the U.S. by Ownership

Executive Summary:

Analysis based on national data shows that, compared to ATMs owned by banks or financial institutions, the independent ATMs tend to be located in areas with less population, lower population density, lower median and average income (household and disposable), lower labor force participation rate, less college-educated population, higher unemployment rate, and lower home values.

1. INTRODUCTION

The United States is one of the world's largest Automatic Teller Machine (ATM) markets, with 17 ATM networks operating in the nation. The U.S. enjoys the highest per capita ATM deployment of any country in the world. The ownership structure of ATMs has evolved over time, with a growing share of independent ATM networks. Today few bank-owned networks remain, while non-bank owned networks range from those provided by payment processors such as First Data and Fidelity National Information Services (FIS), to card programs and other independent ATM networks. Many of the non-bank ATM deployers began positioning themselves in the U.S. in the 1990s, following Visa and MasterCard's relaxation of rules on directly imposing end user surcharges upon cardholder customers and non-customers for using ATMs. Currently, there are approximately 470,135 ATMs in the U.S., with 191,741 bank-owned and 278,394 independent. The top 10 banks in the U.S. in 2016 with the largest ATM fleets are as follows.[1]

BANK	Number of ATMs	Percentage
JPMorgan Chase & Co.	18,623	17.50%
Bank of America Corp.	16,062	15.10%
Wells Fargo & Co.	12,800	12.10%
PNC Bank	8,996	8.50%
U.S. Bancorp	5,001	4.70%
BMO Harris Bank	4,775	4.50%
BB&T	3,361	3.20%
Citizens Bank	3,200	3%
Citigroup Inc.	3,200	3%
Fifth Third Bank	2,650	2.50%

The largest non-bank ATM provider in the U.S. is Cardtronics, with in excess of 100,000 ATMs deployed in America, and the second largest U.S. independent ATM provider is Payment Alliance International, with over 70,000 ATMs in service. These companies own/operate many of their own ATMs and also support numerous other ATM providers. Beyond these two large independent providers, there are thousands of other independent ATM providers across the U.S., some operating as ISOs (Independent Service Organizations) and some independent ATM deployers who operate as affiliates of those ISOs. These companies range from very large ATM ISOs with thousands of ATMs under their aegis, to small affiliates with only one ATM owned/operated.

More than two thirds of ATMs in the U.S. are deployed in various retail locations. This is primarily due to the high proportion of terminals in the market that have been deployed by non-banks. Convenience stores and drugstores are the most popular locations for deployers, though a

[1] Information is collected from https://www.bankrate.com/.

wide range of retail, leisure, travel and workplace locations are also common choices by both banks and independent ATM owners.

The aim of this project is to carry out a locational study of ATMs by ownership type in the U.S. and determine whether independent ATMs tend to be located in areas that significantly differ from bank-owned ATMs, in terms of demographics and socioeconomic status of their locations at the census block level. By utilizing statistical and GIS analysis, this study has the following findings:

> **Based on the national data, the locations of independent ATMs, compared to those of bank-owned ATMs, tend to have less population, lower population density, lower labor force participation rate, less college-educated population, higher unemployment rate, lower median and average income (household and disposable), and lower home values. All mean differences are statistically significant at 1% level.**

The report is structured as follows: Section 2 describes data and methodology, Section 3 reports the results, while the conclusion appears in Section 4.

2. DATA AND METHODOLOGY

The location data used in our study are retrieved from ESRI's ArcGIS Business Analyst (2016) for the U.S.. According to ESRI, the original sources of the data are the following:

- Business (e.g. ATMs) locations – *Infogroup*
- Demographics and socioeconomic status – U.S. Census Bureau and *American Community Survey*

To determine the ownership of over 470,000 ATM machines in the U.S., the research team conducted a detailed review of every reported name and location of businesses (ATMs) to determine whether each ATM is owned by a bank or a financial institution (bank-owned ATM). In the case an ATM is not owned by a bank or a financial institution, it is considered independently owned (independent ATM). Among the 470,135 ATMs across the nation, we identified 278,394 independent ATMs, accounting for 59.2 percent of all ATMs.

The main objective of the study is to determine whether independent ATMs tend to be located in areas that significantly differ from bank-owned ATMs in terms of demographics and socioeconomic status of their locations at the census block level. The demographic and socioeconomic characteristics we selected include:

a. total population
b. population density

c. labor force participation rate[2]
d. median age
e. unemployment rate
f. number of people with bachelor's degrees
g. proportion of population with bachelor's degrees
h. median and average household income
i. median and average disposable income
j. median and average home values.

We compare bank-owned and independent ATM locations based upon the differences in the values of socioeconomic status ("Independent" – "bank-owned"). As uncontrolled state-level differences can distort or sometimes reverse the estimates, we have implemented a control for baseline differences in the socioeconomic status between states by using multiple regression analysis when analyzing the national data.

3. RESULTS

First, we compare the means of the socioeconomic characteristic between locations of bank-owned ATM and independent ATMs locations in the US. As shown in Table 1 column (1)-(4), the locations of independent ATMs, compared to those of bank-owned ATMs, tend to have less population, lower population density, lower labor force participation rate, less college-educated population, higher unemployment rate, lower median and average income (household and disposable), and lower home values. All mean differences (column (5)), are statistically significant at the 1% level (column (6)) based on t-tests that account for sampling error in bivariate analysis.

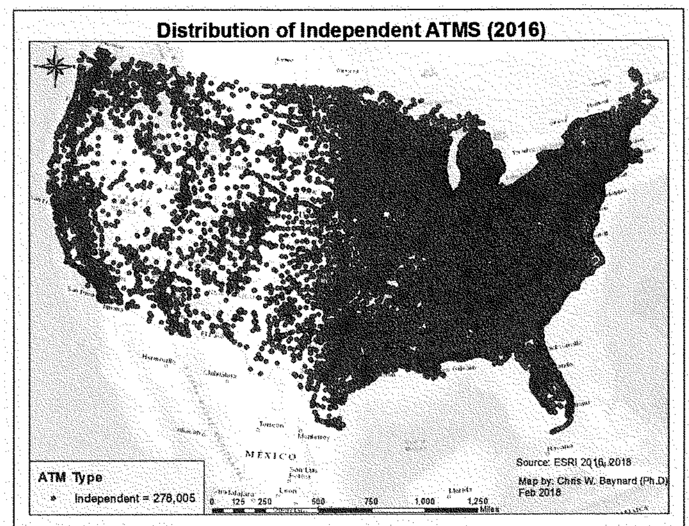
[2] Researcher self-created variable. It is calculated as the sum of employment and unemployment populations divided by total population.

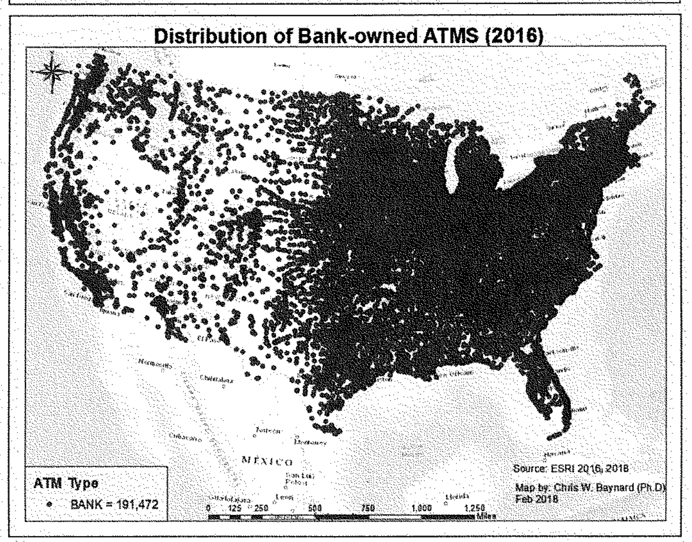
Table 1: Comparison of Socioeconomic Status and Demographics between Locations of Bank-Owned ATMs and Independent ATMs

	Bank-Owned		Independent		Independent - Bank-Owned (w/o control of state-level differences)		Independent - Bank-Owned (w/ control of state-level differences)	
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Variable	Mean	Std. Dev.	Mean	Std. Dev.	Difference	P-value	Difference	P-value*
Total Population	1,755.58	1,432.10	1,674.36	1,275.05	-81.22	< 0.01	-61.25	< 0.01
Population Density	4,980.15	11,824.92	4,426.26	11,631.53	-553.89	< 0.01	-328.60	< 0.01
LF Participation Rate	0.51	0.12	0.50	0.11	-0.01	< 0.01	-0.01	<0.01
Median Age	40.00	8.63	39.52	8.30	-0.48	< 0.01	-0.51	< 0.01
Unemployment Rate	5.98	5.32	6.57	5.80	0.59	< 0.01	0.65	< 0.01
Bachelor's Degree	264.87	324.84	209.63	268.88	-55.23	< 0.01	-50.55	< 0.01
Density of Bachelor's Degree	0.14	0.09	0.12	0.08	-0.03	< 0.01	-0.02	< 0.01
Median Household Income	57,497.25	30,754.36	51,353.56	25,925.02	-6,143.69	< 0.01	-5,093.60	< 0.01
Average Household Income	75,641.47	40,727.35	66,853.44	33,352.96	-8,788.03	< 0.01	-7,451.80	< 0.01
Median Disposable Income	45,683.84	21,305.18	41,378.74	18,123.01	-4,305.10	< 0.01	-3,553.40	< 0.01
Average Disposable Income	56,941.66	25,276.42	51,428.38	21,291.45	-5,513.28	< 0.01	-4,627.50	< 0.01
Median Home Value	250,485.90	201,280.90	206,912.60	169,875.50	-43,573.30	< 0.01	-32,679.20	< 0.01
Average Home Value	279,421.90	211,748.80	235,254.40	178,975.40	-44,167.50	< 0.01	-33,060.30	< 0.01
Number of Observations	**191,741**		**278,394**					

* p-value based on robust standard error with correction for zip code level covariance.

Due to concerns that baseline differences in socioeconomic status between states can bias the results of comparison that is based on raw means calculated across all states, we implement additional controls in our comparison. As shown in column (7), the differences in socioeconomic status between locations of independent and bank-owned ATMs are noticeably reduced when the state-level baseline differences are controlled. But these differences remain sizeable and statistically significant at 1% level (column (8)).





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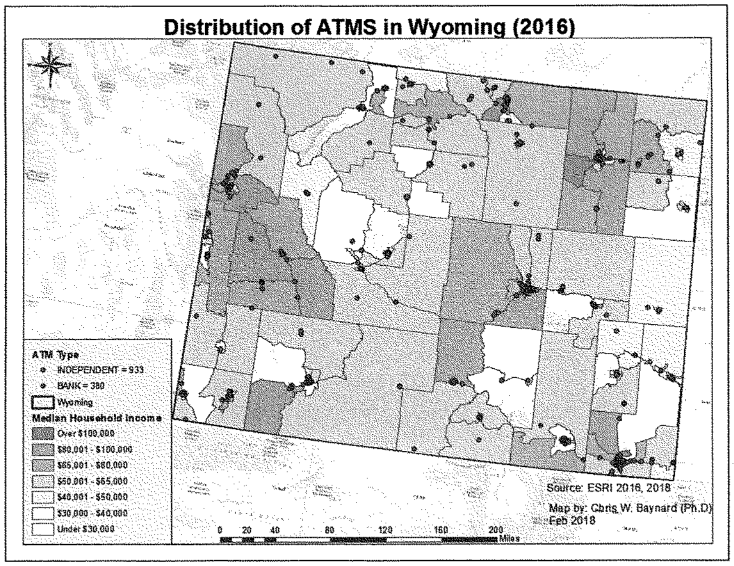
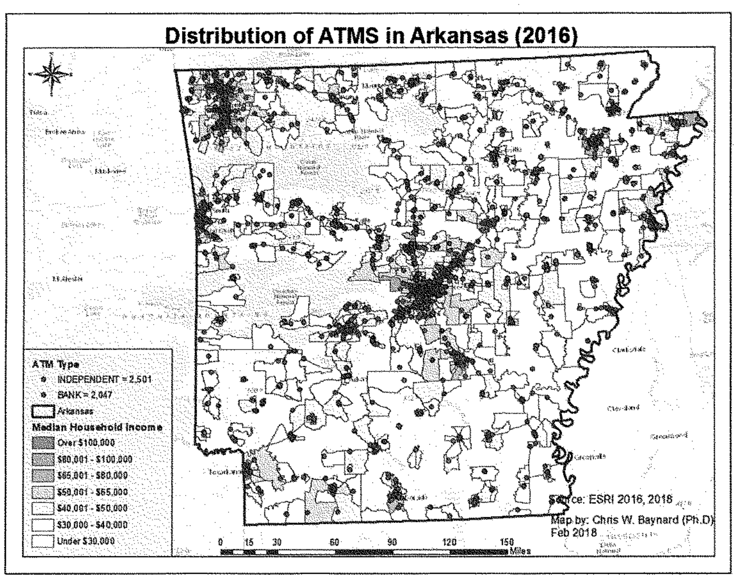


NOTE: only census block groups containing ATMs (Independent or Bank-owned) are shown.



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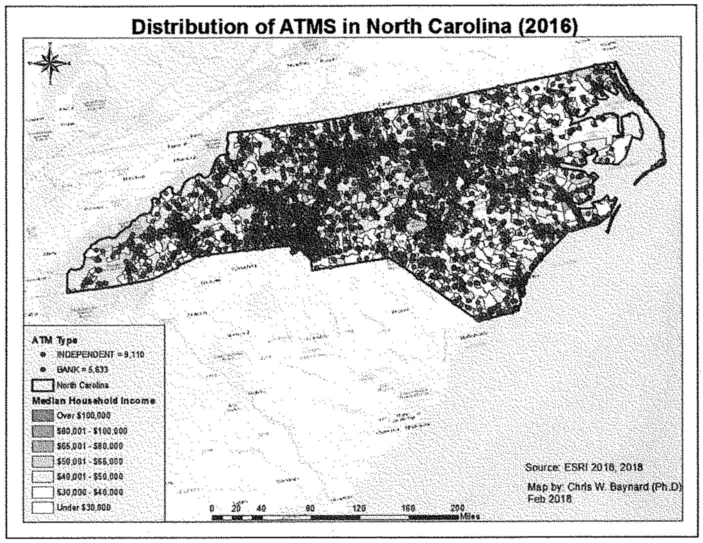

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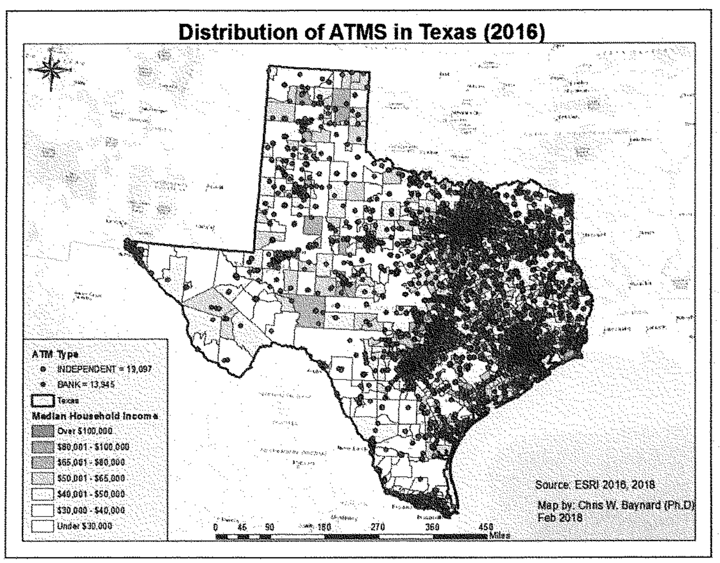


NOTE: only census block groups containing ATMs (Independent or Bank-owned) are shown.

4. CONCLUSION

It is important to mention that the relative number and percentage of independent ATM terminals may have been underreported due to the growing industry trend of "bank branding." Under "bank branding," ATMs are branded as certain bank-owned machines, but are in fact terminals owned by independent ATM providers. However, given the fact that bank branded ATMs would be an insignificant percentage of bank-owned ATMs, we believe there would be no major change in the results.

In this study we find clear statistical evidence that independent ATMs in the U.S. tend to be located in areas that are disadvantaged in demographic and socioeconomic status, when compared to bank-owned ATMs. The locations of independent ATMs tend to have less population, lower population density, lower labor force participation rate, less college-educated population, higher unemployment rate, lower median and average income (household and disposable), and lower home values.

Based on our findings, it is expected that independent ATMs serve areas with higher concentrations of unbanked/underbanked citizens who rely on cash and therefore have a greater need for convenient access to cash. According to a recent report by the Wall Street Journal[3], banks have closed branches as they leave less profitable regions, where fewer customers use tellers for routine transactions. According to the report, between July 2016 and June 2017 more than 1,700 branched have closed. The closing decisions are taken examining deposit levels at each branch and commute time to the nearest location. While the strategy has helped banks to reach profit records, it has put their rural customers in trouble, forcing some to travel long distances to have access to cash. Although banks are opening new offices, their major expansions are into big cities or affluent areas where they previously didn't have branches. In this context independent ATMs play an important role in giving certain sections of the population (i.e. rural, inner city) access to financial services that could have been otherwise limited.

According to Wenzel (2014), the entry of Independent Service Operators into ATM markets increases the size of the total ATM network. Although, it is often argued that the surcharge fees by the independent ATMs decrease consumer surplus, this has been proven incorrect by several researchers. For example, Donze and Dubec (2009) have proposed that surcharges improve ATM deployment and make consumers better off if travel costs to reach cash are high. It can also be argued that given the fact that most independent ATMs are located in lower median and average income (household and disposable) neighborhoods, they serve areas with higher populations of Electronic Benefit Transfer (EBT) cardholders, and are required by state laws to provide discounted or no ATM surcharges for these transactions.

It is also expected that independent ATMs serve areas that tend to be associated with higher rates of crime. Although we are unable to address this relation in our current research due to data

[3] Details available at https://www.wsj.com/articles/banks-double-down-on-branch-cutbacks-1517826601.

limitations, based on the report of Bureau of Justice Statistics for the period of 2008 and 2012, persons in poor households at or below the Federal Poverty Level had more than double the rate of violent victimization as compared to persons in high-income households.[4] Given the relation of independent ATMs and relatively low average-income neighborhoods, we can therefore expect that independent ATMs are also serving these high crime localities.

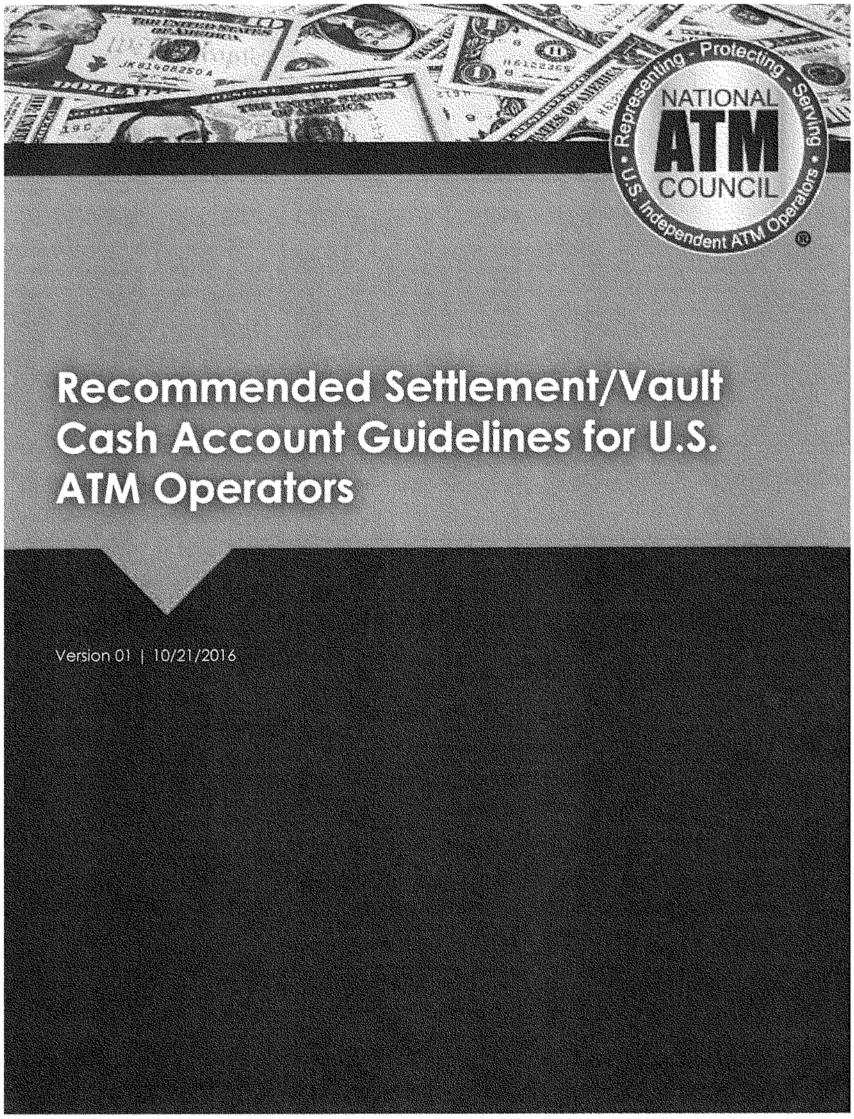
In short, key findings of our analysis support the notion that independent ATMs serve a majority of the disadvantaged and rural populations in the U.S., based on their socio-economic characteristics. In other words, in the absence of independent ATMs, the minority population would be underserved by the banks and other financial institutions, and they would face much more limited access to cash or money withdrawal stations.

References:

Donze, Jocelyn, and Isabelle Dubec. "Paying for ATM usage: good for consumers, bad for banks?" *The Journal of Industrial Economics* 57, no. 3 (2009): 583-612.

Wenzel, Tobias. "Independent service operators in ATM markets." *Scottish Journal of Political Economy* 61, no. 1 (2014): 26-47

[4] Please visit https://www.bjs.gov/index.cfm?ty=pbdetail&iid=5137 for details.



Recommended Settlement/Vault Cash Account Guidelines for U.S. ATM Operators

Version 01 | 10/21/2016

Introduction & Summary

"Cash-intensive businesses" – as that term has been defined by financial regulators – include independent owners and operators of automated teller machines (ATMs), and businesses (such as ATM Vault Cash Providers, or AVCPs) that often supply the cash that is loaded into, and dispensed from, such ATMs.

To provide the services that such ATMs offer to the public, providers must have bank accounts from which they supply vault cash for the ATMs, and into which they can direct the deposit of the electronic funds transfers used to effect the settlement of virtually all ATM transactions. Because of the large volumes of cash used in their businesses, independent ATM owners and operators are subject to heightened scrutiny in their dealings with the insured banks and other financial institutions at which they maintain deposit accounts. The accounts of all cash-intensive businesses are subject to detailed requirements imposed by the federal Bank Secrecy Act (BSA), including scrutiny under Anti-Money Laundering (AML) programs that the BSA requires all depository institutions to adopt and enforce.

Such scrutiny includes requirements that those institutions: verify the identities and backgrounds of the holders of all such accounts; understand those depositors' businesses, including their respective source(s) of funding and the anticipated volumes of currency to be used in their business operations; and thoroughly understand the uses and purposes of their deposit accounts.

The new industry Guidelines have been developed to ensure that the accounts of independent ATM businesses are maintained and operated in a manner that will provide a level of enhanced transparency and trackability for ATM vault cash/settlement accounts that will eliminate any legitimate concerns that otherwise might arise from providing banking services to such businesses

Recommended Settlement/Vault Cash Guidelines for U.S. ATM Operators (Guidelines)

The Board of Directors of NAC, in consultation with NAC members and its counsel, developed the following Guidelines, which provide a set of reporting and operating procedures for ATM businesses, as bank depositors, to follow in the management and operation of deposit accounts that are used to provide the cash that is loaded into ATMs and dispensed from those machines. The practices and procedures incorporated in the Guidelines are intended to facilitate the proper conduct of due diligence by the financial institutions where the deposit accounts used to fund ATMs are maintained.

By specifically enumerating the data and information that the holders of such accounts – whether ATM owners/operators or AVCPs – are regularly required to compile and provide to their depository banks, the Guidelines are intended to ensure that those banks will have the information they need in order to comply with their obligations under BSA/AML statutes, regulations, and guidance; and, then, appropriately document such compliance for their examiners and regulators.

Definitions

1. Definitions

A. ATM Cash Balance – the amount calculated in accordance with Paragraph 4 hereof.

B. ATM Operator – a natural person or an entity engaged primarily in the business of owning, leasing, managing, or otherwise controlling access to the interior of, an ATM, including its internal cash vault. The term ATM Operator does not include, and is not intended to refer to, persons or entities that are engaged primarily in the business of owning or operating retail establishments and that also may own, lease, control access to the interior of, or load cash into, one or more ATMs on the premises of such establishments.

C. Automated Teller Machine ("ATM") – an unmanned device deployed within the continental U.S. and U.S. territories, to offer consumers access to cash, respond to bank account balance inquiries, and in some cases provide other banking services.

D. Independent Sales Organization ("ISO") – a natural person or an entity that is (i) approved by, and under contract with, a Sponsor Bank to deploy and service ATMs, and (ii) under contract with an approved acquiring processor to route ATM transactions to those networks for which the ISO has been registered by the Sponsor Bank.

E. Settlement Account – the deposit account established pursuant to Paragraph 3 hereof.

F. Settlement Bank – the financial institution at which any Settlement Account is established

G. ATM Vault Cash Provider ("AVCP") – a natural person or an entity, which may include an ATM Operator, that owns the cash that is loaded into and dispensed from an ATM. The term ATM Vault Cash Provider does not, and is not intended to, refer to persons or entities that are engaged primarily in the business of owning or operating retail establishments and that also may own, lease, control access to the interior of, or load cash into, one or more ATMs on the premises of such establishments.

H. Sponsor Bank – a financial institution that is a principal member of one or more electronic funds transfer networks having a program to allow registration of ISOs for authorized access by ATMs to such networks.

Current Practices

2. To comply with these Guidelines, ISOs, ATM Operators, and AVCPs shall, as applicable:

   A. Subject themselves to and comply with such underwriting as is performed by Sponsor Banks on ATM Operators and AVCPs, in accordance with each such Sponsor Bank's policies and procedures.

   B. Deploy their ATMs in accordance with the terms of a customary agreement with their Sponsor Banks or their sponsored ISOs, and conduct their operations in compliance with all applicable requirements imposed upon the operation and ownership of ATMs by (i) their Sponsor Bank(s); (ii) ISO(s), if any, with which they contract; (iii) the electronic funds transfer networks through which their transactions are conducted; (iv) their acquiring processor(s); and (v) federal, state, and local law.

   C. Subject themselves, and their respective principals, to such background checks (e.g., criminal/credit/OFAC reviews, etc.) as are customarily required by Sponsor Banks of their ISOs, under the applicable Sponsor Bank's policies and procedures related to (i) the Bank Secrecy Act and (ii) such Sponsor Bank's Anti-Money Laundering programs.

   D. Inform their Sponsor Bank(s) in writing and on a timely basis of any material changes to their due diligence information as may be customarily required by their Sponsor Bank(s), for each of the ATMs operated by or through them.

Settlement Bank Guidelines - Dedicated ATM Vault Cash/Settlement Account

3. ATM Operators that are also AVCPs, and other AVCPs utilized by ATM Operators, shall:

   A. Establish and maintain one or more bank accounts ("Settlement Accounts"), to be used solely for the maintenance of any and all ATM vault cash, and which shall be (i) the exclusive source(s) of the cash to be loaded into each ATM Operator's respective ATMs; and (ii) the sole account(s) for receipt of the corresponding settlement funds returned in repayment for the cash dispensed by such ATMs.

   B. Deposit any and all surcharge and interchange revenue of or from ATM transactions into a bank account or account(s) separate and apart from the Settlement Accounts established in Paragraph 3.A. immediately preceding, and shall not at any time commingle such revenue with any Settlement Account or any vault cash funds therein. Each of the Settlement Accounts established hereunder shall be funded initially by a deposit into such account by the applicable party (i.e., ATM Operator that is also an AVCP or any other AVCP), and the balance in such account shall be increased and decreased only through deposits made into and withdrawals from such Settlement Accounts, as described, and for the purposes specified, in this Paragraph 3.

4. Each ATM Operator that is an AVCP, and each other AVCP, shall submit to its Settlement Bank(s), and, for AVCPs that are not also ATM Operators, to each ATM Operator for which it provides funds, the information set forth below, or such alternative information as may be reasonably required by such Settlement Bank(s):

   A. A written report, to be submitted within 30 days following the establishment of any Settlement Account or the initial certification of an existing Settlement Account under Paragraph 8 hereof, that accounts for the amount and source(s) of all funds initially deposited into such Settlement Account and, for a preexisting Settlement Account, the current balance of funds in such Settlement Account as of the report date. In addition, this report shall also describe and account for the amount of any funds then present in the ATM(s) serviced by such Settlement Account, and any pending amounts due to settle into the Settlement Account (the aggregate of the Settlement Account balance, the balance in the ATM(s) serviced by the Settlement Account, and the amount due to settle into the Settlement Account shall be referred to herein as the "ATM Cash Balance"); and

B. A written report, dated as of each calendar quarter-end, and to be submitted within 30 days following each such calendar quarter-end, which shall be subject to audit by the relevant Settlement Bank(s) and, if applicable, by such ATM Operator, and which shall account for any and all changes in the ATM Cash Balance between the date of such report and the date of the most recent previous initial or quarterly report submitted pursuant to this Paragraph 4.

5. Each ATM Operator that is an AVCP, and each other AVCP, shall maintain current records of the following due diligence information for each ATM operated by or through it, or serviced by it, shall provide this information to its Settlement Bank(s), and shall promptly inform such Settlement Bank(s) in writing of any material changes to such information:

   A. Terminal ID
   B. Name, address, city, state, and ZIP code of terminal location
   C. ATM owner's name and complete physical address
   D. Monthly cash withdrawal dollar volume
   E. Monthly number of cash withdrawal transactions
   F. Source of cash loads
   G. Frequency of cash loads
   H. Name(s) and address(es) of AVCP(s), if any

6. Notwithstanding the requirements of Paragraph 5 hereof, the dollar amounts, transaction volumes, and other proprietary business information provided by ATM Operators or AVCPs to Settlement Banks hereunder shall be afforded confidential and privileged treatment by the recipient Settlement Banks. Such information shall be used solely for purposes of fulfilling each such Settlement Bank's applicable BSA/AML responsibilities and shall be disclosed internally only on a need-to-know basis to bank personnel engaged in BSA/AML monitoring and compliance activities.

7. ATM Operators, in order to be in compliance with these Guidelines, shall utilize the services only of AVCPs that also agree in writing to comply with and be bound by all of the terms of these Guidelines.

8. At such time as an ATM Operator that is also an AVCP, or any other AVCP, shall bring its operations into compliance with these Guidelines, such party shall provide to its Settlement Bank(s) a written and notarized certification, signed by such party (if a natural person), or a principal of such party (if an entity), attesting that such party is operating in accordance with these Guidelines, and confirming such party's intent to provide the initial and ongoing reports, and other access to relevant information, as provided for in these Guidelines.

For more information, questions and/or comments...

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Manuel Orozco
Testimony for House Financial Services Committee
"Examining De-risking and its Effect on Access to Financial Services"
February 15, 2018

My testimony today discusses the ongoing effects of de-risking and addresses regulatory opportunities for Congress and the Administration to ensure the United States provides equal access to financial services to all legitimate businesses. This testimony is submitted before the Subcommittee on Financial Institutions and Consumer Credit at the hearing entitled "Examining De-risking and its Effect on Access to Financial Services" on Thursday, February 15, 2018.

The systematic termination of bank accounts for non-banking financial institutions is affecting small businesses and financial services worldwide. This problem has existed in some form over the past 20 years but has grown more pronounced following the global 2009 recession. This testimony provides input on a current problem affecting access to financial services. It analyzes the trends, provides information on the causes, and presents some of the impacts as identified in my research. I will conclude by discussing solutions and recommendations.

Understanding the Causes of De-Risking

This systematic pattern of account termination is not directly related with increased financial crimes or with an increased level of risk. Financial crimes typically include fraud and money laundering related to organized crime.[1] In 2012, the Basel AML risk index reported that on a scale of 1-10, only five countries scored 8 or more, indicating high risk levels. In 2017, there were only 6 countries on the high-risk list.[2] Other reports have shown similar trends, where risk levels remain unchanged or have even decreased in recent years.

Account closures are not directly linked with increases in financial risk. Rather, the pattern of account closures coincides with the exponential growth in consumer use of nonbanking financial services (NBFIs),[3] which occurred in the early 2000s. For example, between 2004 and 2011 deposit accounts per 1,000 adults increased 15% and 7.6% for low and low-middle income countries, respectively.[4] In places like Mexico or Guatemala, for example, there is an increase in access to financial institutions from 20% to 40% over that period.

Similarly, CGAP reported that between 2004 and 2011 there has been an increase in the presence of non-banking financial institutions providing financial services to people, while at the same time banking institutions decline. In fact, looking at Latin America and the Caribbean, financial payment points for remittances increased between 2000 and 2017. Using Mexico and Guatemala as examples, in 2009 the number of payment points (including bank branches, non-banking financial institutions branches/agents, and retail stores) amounted to 25,000 and 3,000 for these two countries. In 2016, the number had dramatically grown to 240,000 and 130,000, respectively. Meanwhile, the bank share of these payment points relative to all locations dropped from 70% to 50%. Further analysis shows that this

[1] See "Adjusting the Lens on Economic Crime: Preparation Brings Opportunity Back Into Focus," Global Economic Crime Survey, 2016. Available at: https://www.pwc.com/gx/en/economic-crime-survey/pdf/GlobalEconomicCrimeSurvey2016.pdf
[2] See https://index.baselgovernance.org/ranking
[3] Non-Banking Financial Institutions (NBFIs) are businesses that comply with rules and regulations for financial services but cannot hold deposits.
[4] Oya Pinar Ardic, Kathryn Imboden, and Alexia Latortue, "Financial Access 2012: Getting to a More Comprehensive Picture," Access to Finance Forum, CGAP, June 2013. Available at https://www.cgap.org/sites/default/files/cgap_forum_FAS2012.pdf

is due to an increase in nonbanking financial institutions (NBFIs) performing financial transactions and a decline in bank branches.[5]

The consequences of closing bank accounts, after the surge in financial services handled by non-banks, are significant. Important examples can be found in the remittance industry, and in the termination of corresponding banking relationships in the Caribbean.

Impacts of De-Risking on the Remittance Industry

Remittance companies, also known as money service businesses, have experienced systematic account closures that have accelerated in the past few years. An Inter-American Dialogue survey of the major remittance companies in the industry shows that in the early 2000s these companies experienced one or two account closures each year. However, from 2010 on, businesses experienced at least four account closures per year. In turn, these companies have been operating with only three bank accounts on average to perform businesses in at least 30 states. The following table illustrates some of the impacts of de-risking on remittances, taking into consideration impacts on consumers, on businesses, and on the market.

Table 1: Impacts of Bank Account Closures for the Remittance Industry

Impacts on the Consumer	Impacts on Money Transfer Businesses	Impacts on the market
• Limits on the amount of money you can send, based on your geographic location. For example, Mexico has a $500 limit for specific payers or geographies. This means that US-based consumers sending money to Mexico may need to send in two transactions, paying double the fees, if they need to send a larger amount of money. • Limited choice of companies to use, especially if sending money from/to places outside of major cities. • Increases in costs. • Limited availability of services, including access to bill payments, bank deposits, and use of technology. • Interruptions in service, during which periods it is not possible to either send or receive money.	• Increased operational costs that limit growth and constrain innovation. • Increased complexity of compliance process, which may increase costs and result in errors. • Constraints on growth; Increasing agent base is difficult. • Use of cash-based operations increase. • Less efficiency, including losing customers.	• Limits competition between small and large businesses. • Oversight becomes expensive and complex. • Less transparency due to prevalence of cash-based operations.

Source: Orozco, Porras and Yansura, "Bank Account Closures: Current Trends and Implications for Family Remittances," Inter-American Dialogue, December 2015.

[5] Manuel Orozco, "Remittances Scorecard 2016," Inter-American Dialogue, December 2016. Available at https://www.thedialogue.org/resources/remittance-transfers-scorecard-2016-test/

As banking institutions, and global banks in particular, increasingly handle money *indirectly* through non-banking financial institutions or the corresponding banking entities servicing these NBFIs, many banks deemed and perceived the handling of third party funds from these institutions a financial risk. The reasons given have not been entirely clear.

Impacts of De-Risking in the Caribbean

Though de-risking is a global issue, the Caribbean has been particularly hard hit. In the Caribbean, de-risking has manifested itself in several ways: first, by damage to correspondent banking relationships, and second, by disruptions in remittance flows occurring as a result of bank account closures or correspondent banking interruptions.

Many commercial banks in the Caribbean saw longstanding banking relationships terminated due to the perception that financial activity with the Caribbean is by definition high-risk. Rather than manage risk or assess banking partners on an individual basis, a blanket assessment is made and banking relationships are terminated. The International Monetary Fund notes that while correspondent banking issues are occurring in many financial corridors, "the Caribbean is identified as the most severely affected."[6] A survey conducted by the Caribbean Association of Banks shows banks in 12 Caribbean countries have experienced a loss of correspondent banking, including the Bahamas, Belize, Guyana, Jamaica, Suriname, Trinidad and Tobago and countries in the Eastern Caribbean Currency Union.[7]

Moreover, bank account closures also disrupted the flow of remittances at a regional level. "The sudden closure of money-transfer services in the Cayman Islands threatens to render thousands of people here, and thousands more of their family members across the world, in immediate and intractable financial straits," a local newspaper reported in July of 2015.[8] In addition to its very significant human impact, the disruptions may have caused reputational damage to a country whose "status as an international financial center is predicated upon the mobility and fungibility of currency."[9]

The impacts have been harmful because it is a region that is economically dependent on external trade, tourism, remittances, and offshore banking. All of these economic areas require the rapid, efficient, and secure movement of funds as well as the conversion of currencies. When the ability to move funds is hindered, there are two possible outcomes: first, business is interrupted with negative economic impacts, or second, business goes on but through informal channels that do not meet international AML/CFT standards. Both options are unacceptable, and action is needed to address the de-risking issue at its core.

Some Possible Solutions

[6] "Recent Trends in Correspondent Banking Relationships – Further Considerations," The International Monetary Fund, March 16, 2017. Available at http://www.imf.org/en/Publications/Policy-Papers/Issues/2017/04/21/recent-trends-in-correspondent-banking-relationships-further-considerations

7 Vangie Bhagoo-Ramrattan, Head of Research at First Citizens Investment Services in Port of-Spain, Trinidad and Tobago, interviewed by the Latin America Financial Services Advisor on December 12, 2017 in "Will Caribbean Banks See More De-Risking in 2018?" Available at: https://www.thedialogue.org/financial-advisor/

[8] "Cayman's Remit: End of Money Transfers Impacts Thousands," Cayman Compass, July 23, 2015. Available at http://goo.gl/rSSGbA

[9] "Cayman's Remit: End of Money Transfers Impacts Thousands," Cayman Compass, July 23, 2015. Available at http://goo.gl/rSSGbA

Whatever the causes, is important that financial institutions shift their approach from de-risking to financial risk prevention. Solutions should include improving confidence among institutions about measures on due diligence, as well as improving knowledge and clarity regarding the source of financial threats. Specifically, there are three main issues that merit attention:

a) There is a lack of accountability when it comes to discretionary decisions to terminate bank accounts. Decisions are neither justified nor are they backed with evidence.
b) The relationship between the regions where systematic account closures are occurring do not clearly align with regions of AML/CFT risk
c) Increases in financial services coincide with increases in accounts closed, which in turn may discourage financial access.

Because the problem continues to affect many countries (especially those that are more dependent on external financial systems) is essential to address short-term solutions. These include:

a) The United States Congress and Treasury should rule on increased transparency between banks and MSBs, and between banks and corresponding banks. This should include internal oversight within banks about their procedures to manage MSB accounts, documenting reasons for account closures and allowing for a right to appeal the decision. The Spanish experience may offer an insight on how to address transparency.

   Account closures are significantly discretionary actions. It is not a healthy process because it lacks transparency and accountability. Changes need to be made so that the process includes an exchange of information, supporting documentation, and communication between the bank and MSBs. For example, it is important that banks notify the MSB of suspected irregularity, identify the perceived or suspected activity or transaction, and request explanations within specific compliance standards. MSBs should also be able to exercise the right of rebuttal, as a last recourse. The recent experience in Spain is an important reference for this recommendation.

b) Improve and share country and industry risk assessment evaluations to narrow any error relating to assumptions of third party liability.

   The existing data on country and industry risk is not systematic, nor shared among all players. Moreover, the assessment of risk does not always coincide with the account closures. Although remittance companies are considered able to manage risk with their existing prevention mechanisms and are in line with US government regulations, they are still presumed to be high risk.[10] In fact, while there is a strong correlation between AML risk[11] and fragile states,[12] the same is not the case with AML risk and remittance recipient countries where these companies operate. Better data collection is needed to corroborate patterns of perceived risk.

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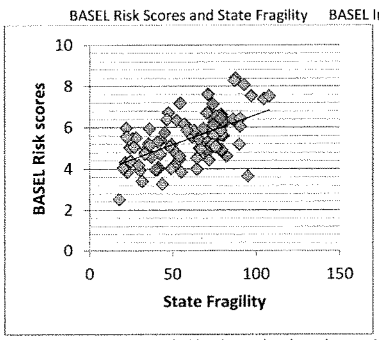
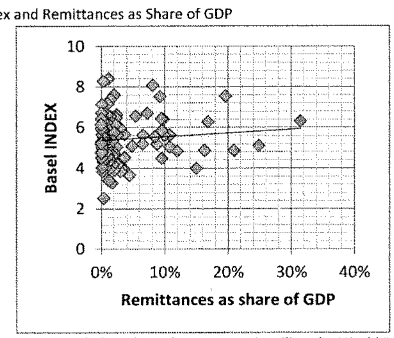
[10] See for example, p.53, *National Terrorist Financing Risk Assessment 2015*. US Department of Treasury.
[11] As measured through the Basel AML Index, an annual ranking assessing country risk regarding money laundering/terrorism financing. It focuses on anti-money laundering and counter terrorist financing (AML/CTF) frameworks and other related factors such as financial/public transparency and judicial strength. For more, see https://index.baselgovernance.org/
[12] As measured by the Fragile States Index of the Fund for Peace. For more, see http://library.fundforpeace.org/fsi





Source: Data compiled by the author based on various sources, including the Index on State Fragility, the World Bank data on remittances and the Basel AML risk index.

c) Establish a risk-based clearing house among banks, MSBs, and governments that observes trends and identifies red flags.

The wealth of knowledge and expertise accumulated by MSBs is not negligible when it comes to preventing financial crimes. Companies' screening systems can detect a suspicious activity and prevent crime. As they reach out further down the marketplace to consumers, they can be important first line of defense against financial crimes. Their knowledge could be shared through systematized data along clearing houses that disseminate and share the data, provide assessments and flag suspicious consumers, agents and locations.

d) Expand the scope of permitted reliance under the Money Transfer Improvements Act of 2014 (H.R. 4386; Pub.L. 113–156) to allow financial institutions to rely on state reports that are provided to them (the states would have to agree to release the reports on a case by case basis).The Act currently authorizes the US Treasury to rely on examinations conducted by state supervisory agencies. Allowing banking institutions to study and use those examinations will serve as a confidence building mechanism, and a reference to work with a money service business.

e) Include bank MSB services in bank examiners review of Community Reinvestment Act (CRA)'s rating relating to the "Way in which services are provided throughout the assessment area for the convenience and needs of customers."[13] The CRA is an important instrument that can serve as a criteria to determine whether banks are fully serving communities. One important contribution of

[13] https://www.frbatlanta.org/banking-and-payments/publications/community-reinvestment-act/your-banks-overall-cra-rating.aspx

the CRA was the inclusion of international remittance services[14] as well as providing financial services to customers. It is important for bank examiners to review the extent to which account terminations may lead to a loss of financial services in the community.

[14] https://www.newyorkfed.org/medialibrary/media/outreach-and-education/cra/reports/CRS-The-Effectiveness-of-the-Community-Reinvestment-Act.pdf

Written Testimony of

Jason Oxman, CEO,
The Electronic Transactions Association

Before the
House Committee on Financial Services
Subcommittee on Financial Institutions and Consumer Credit
Hearing on
"Examining De-risking and its Effect on Access to Financial Services"

February 15, 2018

Chairman Luetkemeyer, Ranking Member Clay, and members of the Subcommittee, the Electronic Transactions Association ("ETA") appreciates the opportunity to submit this statement for the Subcommittee on Financial Institutions and Consumer Credit hearing on "Examining De-risking and its Effect on Access to Financial Services."

ETA is the leading trade association for the payments industry, representing over 500 companies that offer electronic transaction processing products and services. ETA's members include financial institutions, all parts of the payments ecosystem, mobile payment service providers, mobile wallet providers, and non-bank online lenders that make commercial loans, primarily to small businesses, either directly or in partnership with other lenders.

The focus of this hearing – de-risking and financial inclusion – is closely tied to our industry's ongoing efforts to fight fraud and ensure all consumers have access to safe, convenient, and affordable payment options and other financial services. Today is, without a doubt, an exciting time in the payments industry. Consumers continue to benefit from a robust credit card payment system that provides nearly universal payment access and strong consumer fraud protections. Consumers can also pay for goods and services using their mobile devices, which may incorporate various payment options through "apps," including payment by credit card, debit card, automated clearing house ("ACH"), virtual currencies, and various closed loop payment systems. And, for small businesses, ETA's members are using technology-based credit solutions to increase the number and types of small businesses able to access credit, especially those unserved or underserved by traditional lenders

Notwithstanding this progress, there have been challenges along the way. Operation Choke Point, in particular, and other similar government enforcement initiatives, have contributed to bank de-risking that ultimately limits consumer access to financial services while also making it more difficult for legitimate businesses to access payment systems. For the remainder of this statement, I would like to highlight the efforts of ETA members and the payments industry to combat fraud and explain why a collaborative approach between government and industry – as opposed to an enforcement approach – is the best way to protect consumer interests and expand financial inclusiveness.

Industry's Active Role in Keeping Fraud Off Payment Systems

ETA strongly supports the vigorous enforcement of existing laws and regulations to prevent fraud. Consumers in the United States choose electronic payments over cash and checks because they have zero liability for fraud, making electronic payments the safest and most reliable way to pay. As a result, payment companies are generally responsible for paying for fraud involving payment systems under federal law and payment network rules, and thus our members have a strong interest in making sure fraudulent actors do not gain access to payment systems. In 2016, there was nearly $6 trillion in debit, credit, and prepaid card transactions in the United States, but there was only $9 billion in credit card fraud. In addition, a recent survey of ETA members indicates that more than 10,000 merchants were discharged last year for fraud. actions demonstrate the commitment of ETA members to keeping fraudulent actors off payment systems.

Despite this strong record, however, payment processors can never take the place of regulators and law enforcement in protecting consumers. Because regulators and law enforcement can issue subpoenas, conduct investigations, and have far greater resources, personnel, and legal authorities, they will always be in a better position to combat fraud. Yet, payments companies are committed to doing their part.

With the benefit of decades of payment system expertise, ETA members have developed effective due diligence programs to prevent fraudulent actors from accessing payment systems and to terminate access for network participants that engage in fraud. These programs have helped to keep the rate of fraud on payment systems at remarkably low levels.

In an effort to further strengthen payment systems, ETA published in 2014 its "Guidelines on Merchant and ISO Underwriting and Risk Monitoring" ("ETA Guidelines"). This document provides more than 100 pages of methods and suggested best practices to detect and halt fraudulent actors. Similarly, in 2016, ETA published "Payment Facilitator Guidelines," which provide payment facilitators with guidance on settlement, registration, funding delays, fraud, security, and related issues. These two documents were developed by ETA's member companies and other industry stakeholders through months of collaborative discussions and sharing of techniques to prevent fraud. Throughout this process, ETA has shared preliminary draft guidelines with, and sought comments from, the Federal Trade Commission ("FTC"), which had strongly encouraged the industry to strengthen its anti-fraud efforts.

The ETA Guidelines, in particular, provide a practical and targeted approach to combating fraud on payment systems. ETA members already have a strong commitment to, and financial interest in, keeping fraudulent actors off payment systems, and the targeted nature of the ETA Guidelines gives members enhanced tools to improve the effectiveness of their practices and help ensure that law-abiding merchants do not unfairly lose access to payment systems due to overly broad anti-fraud protections. ETA continues to actively encourage its members and companies across the payments ecosystem to make use of the Guidelines, especially smaller companies that may not have the resources to develop such advanced practices on their own.

ETA reviews its guidelines regularly, and, in connection with this hearing, ETA is announcing the publishing of a 2018 update to the ETA Guidelines. The updated ETA Guidelines contain updated sections that reflect the current best practices in the industry. In addition, the ETA

Guidelines were updated to the Financial Crimes Enforcement Network's new beneficial ownership rule, which becomes mandatory in May 2018.

A final benefit of the ETA Guidelines is that they provide a basis for payments companies to work cooperatively with federal regulators and law enforcement toward the common goal of stopping fraud. ETA strongly believes that such a collaborative approach is good public policy - it encourages companies to cooperate with law enforcement by fostering an environment of open communications between government agencies and payments companies. Unfortunately, such cooperation has not always been the case. Operation Choke Point, for example, employed the wrong legal tools, was unnecessarily confrontational, and created serious risks to law abiding processors and merchants without producing any benefits to consumers beyond those which could be obtained with a more industry-focused and collaborative approach.

Operation Choke Point Was the Wrong Approach

In an August 16, 2017 letter to Congress the Department of Justice ("DOJ") stated that Operation Choke Point "is no longer in effect, and it will not be undertaken again." Operation Choke Point was a DOJ initiative that aimed to limit the ability of fraudsters to access the banking system. The DOJ sought to implement Operation Choke Point by initiating investigations and civil suits under the Financial Institutions Reform, Recovery, and Enforcement Act, 12 U.S.C. § 1833a ("FIRREA").

Operation Choke Point was premised on the flawed assumption that increasing liability on lawful payments companies for the actions of fraudulent merchants would yield only benefits to consumers. In practice, however, imposing new liability standards on such institutions had serious adverse consequences for not only law-abiding merchants (de-risking), but also consumers generally. In particular, the blunt force of Operation Choke Point discouraged banks and other financial service providers from forming relationships with merchants or other businesses deemed high-risk, leading to the "de-risking" of entire industries. De-risking can undermine financial inclusion, financial transparency, and financial activity.

ETA testified before this Subcommittee on these and other challenges presented by Operation Choke Point. Examples of the risks presented include:

- From a public policy perspective, the federal government should not restrict the access of law-abiding merchants to the payment systems. Enforcement actions against payment systems are an inappropriate tool for regulators to use to limit the ability of consumers to access legal but currently disfavored industries.
- Operation Choke Point and other similar initiatives put banks, payment processors, and other financial institutions in the difficult position of having to increase the prices of payment services for merchants and/or restrict access to payment systems to manage their expanded liability exposure. Invariably, the brunt of these burdens fall on small, new, and innovative businesses because they pose the highest potential risks.
- Consumers ultimately pay for the higher costs arising from increased liability, and are also harmed by the inconvenience of not being able to use their preferred methods of payment (credit, debit, and prepaid cards) with some merchants due to more restrictive access to payment systems. Similarly, consumers would be harmed if new liability on processors impedes continued innovation in electronic payments.

We know from our many opportunities to participate in hearings such as this that Congress shares many of these concerns. While the announced end of Operation Choke Point may be an important moment for the payments industry, it is equally important to recognize that there is nothing to stop the Department of Justice – or, for that matter, the Consumer Financial Protection Bureau ("CFPB"), the Federal Trade Commission ("FTC"), or a state attorney general – from bringing a case that looks very much like those that arose under Operation Choke Point.

Currently, the FTC can assert jurisdiction over payment processors that engage in unfair or deceptive acts or practices in violation of Section 5 of the Federal Trade Commission Act, and violations of the Telemarketing Sales Rule.[1] The FTC also can bring cases against payment processors for "assisting and facilitating" a merchant's violations of the Telemarketing Sales Rule, but such liability only applies if a payment processor "knows or consciously avoids knowing" that the merchant violated the rule.[2] The FTC has expressed virtually a zero tolerance policy for credit card processors and independent sales organizations ("ISOs") that allow any such merchant to access the payments system when the processor or ISO knew or should have known that the merchant was engaged in such conduct.

The CFPB has been equally aggressive in pursuing actions against payment processors – which has lead in several cases to the CFPB's actions being dismissed in court. For example, in June 2016, the CFPB attempted a broad-scale lawsuit against payment processor Intercept Corporation and two of its executives for enabling withdrawals from consumer accounts on behalf of Intercept's payday lenders, auto-title lenders, debt collectors, sales financing, and other clients. In March 2017, a federal judge in North Dakota dismissed the CFPB's lawsuit because the CFPB did not include specific factual allegations about how Intercept violated industry standards or what Intercept had done wrong to cause injury to consumers.

Later that year, a federal Judge in Northern District of Georgia dismissed a CFPB case that had been filed against Global Payments and several other payments companies. In that case, the CFPB alleged that the payment processors had failed to conduct sufficient due diligence before providing certain merchants with accounts and ignored red flags once the merchants had been boarded. The judge ultimately dismissed the CFPB's case after the CFPB failed to comply with reasonable demands by defendants and orders by the court to play fair in the litigation.

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[1] 15 U.S.C. § 45; 16 C.F.R. § 310.
[2] 16 C.F.R. § 310.3.

While ETA members share a commitment to protecting consumers from harm, ETA is concerned that these Operation Choke Point-type enforcement actions will continue to put pressure on its members to shun entire lines of business out of a fear that the members could be called upon to financially insure the total volume of a merchant's sales transactions. A more sensible policy recognizes the strong interest the payments industry has in preventing fraud and other illegal activities, and allows industry to focus on enhancing its underwriting and risk management tools to safeguard the payments system from unscrupulous merchants.

The Role of the Payments Industry in Promoting Financial Inclusion

Where Operation Choke Point caused de-risking, ETA members have been working diligently to expand consumer access to payment options, credit, and other financial services. One of the goals of our financial system is to provide high quality, affordable financial services for the broadest possible set of consumers. An inclusive financial system is one that provides consumers and businesses with access to a variety of financial products and services.

Over the past decade, financial institutions, payments companies, and financial technology companies have transformed the financial landscape through the introduction of new technologies that expand financial offerings for consumers, lower costs, improve financial management, and increase transaction security. These products and services – often referred to as "fintech" – have also expanded, and are continuing to expand, financial opportunities for underserved consumers. Examples of these include:

- Prepaid Products – Provide cost-effective, convenient, and innovative payment options for millions of consumers, including those that may not have access to traditional financial accounts.
- Mobile Banking Services – Provide financial independence and security for those demographic groups that lack easy access to physical FI branches, such as consumers in rural areas, the elderly, or persons with disabilities.

- Mobile Payments – Provide an exciting alternative to cash and checks that allow consumers to pay for goods and services in an efficient, cost-effective, and secure manner.

- Peer-2-Peer Payments – Enable consumers to send money to each other via mobile applications.

- Expanded Internet Access – Expands affordable access to the internet in underserved communities domestically and abroad by improving infrastructure and reducing costs so that more people can connect to the web-based world.

- Interactive, Automated Tellers – Transform traditional FI branches by making them economically sustainable in previously underserved communities.

- Online Small Business Lending – Expands access to credit for small businesses seeking capital to grow their businesses.

- Financial Literacy & Readiness Programs – Empower consumers to take control of their finances and prepare for the future.

As the leading trade association for the payments industry, ETA and its members encourage policymakers to support these efforts through policies that encourage innovation and the use of technology to improve financial inclusion for all consumers. ETA advocates that policymakers remain thoughtful and forward-thinking in how to best support the industry's on-going efforts to provide opportunities for all consumers and small businesses to access and benefit from innovative financial products and services. Efforts by policymakers to regulate financial products and services should be done collaboratively and with careful consideration. We encourage the government to be sensitive to the risk that applying a uniform or overly-restrictive regulatory framework to fintech products and services, without any appreciation of differences in products and services and consumer needs, will likely stifle creativity and innovation in the market (and potentially contribute to de-risking of these new and growing industries). Such an outcome would harm consumers, particularly at a time when new technologies, products, and services are providing the underserved with unprecedented access to FI and fintech company financial products and services.

Examples of Other Policy Recommendations to Encourage Growth and Inclusiveness

As discussed throughout this statement, ETA members are at the forefront of economic development by fighting fraud and expanding access to financial services for both consumers and small businesses. From a policy perspective, however, there is much that can be done to further encourage such activity. ETA supports a positive regulatory environment for financial innovation and has outlined several proposals below to achieve that goal.

Support the OCC Fintech Charter - ETA supports the Office of the Comptroller of the Currency's ("OCC") proposal to offer a limited-purpose national bank charter to financial technology, or "fintech," companies. Such a charter will provide numerous public policy benefits, including a regular and consistent regulatory framework for chartered fintech companies and increased competition to develop cost-efficient, inclusive products and services. ETA supports the OCC's chartering initiative and encourages the OCC to work collaboratively with the fintech community to develop a process that takes full advantage of the potential benefits offered by the proposed fintech charter.

National Cybersecurity Requirements – ETA supports a national cybersecurity approach. State-specific attempts to regulate cybersecurity undermine the progress that federal and self-regulatory efforts have made in combatting cybersecurity threats in the financial industry. The introduction of overlapping and potentially conflicting state regulations causes confusion and compliance challenges for the financial industry. ETA believes that a flexible national framework is the most effective approach for addressing cybersecurity risks and would encourage efforts to preempt a patchwork of state-specific requirements in this area.

National Data Breach Requirements – ETA supports a national data breach approach. Almost every state has its own data breach law which can leave consumers with inconsistent protection and companies in the difficult position of dealing with conflicting requirements. One national standard will provide certainty and predictability to consumers and industry.

Conclusion

ETA's members have made great progress in expanding access to affordable, safe, and convenient payment methods and other financial services. To maintain this progress, there needs to be a careful balancing between the need to limit access to payment systems to prevent fraud and the need to ensure that all law-abiding businesses can access payment systems. A cooperative approach to combating fraud is far more likely to strike the right balance than blunt enforcement actions. Accordingly, ETA encourages Congress, federal regulators, and industry to work cooperatively toward our common goal of preventing fraud and expanding financial inclusion.

On behalf of ETA, thank you for the opportunity to provide this testimony before the Subcommittee.

For more info, please visit. www.electran.org

TESTIMONY OF

BRYAN A. SCHNEIDER

SECRETARY

ILLINOIS DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION
DIVISION OF BANKING

On behalf of the

CONFERENCE OF STATE BANK SUPERVISORS

On

EXAMINING DE-RISKING AND ITS EFFECT ON ACCESS TO FINANCIAL SERVICES

Before the

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND CONSUMER CREDIT

HOUSE COMMITTEE ON FINANCIAL SERVICES

U.S. HOUSE OF REPRESENTATIVES

Thursday, February 15, 2018

9:30 AM

Room 2128 Rayburn House Office Building

INTRODUCTION

Thank you Chairman Luetkemeyer, Ranking Member Clay, and distinguished members of the Subcommittee. My name is Bryan Schneider. I am the Secretary of the Illinois Department of Financial Services and Professional Regulation. My department is responsible for the supervision, regulation and examination of Illinois' more than 4,000 state-chartered banks, credit unions and non-bank financial institutions, including 156 money transmitters and 380 check cashers. Our mission is to utilize responsive, innovative, transparent and efficient governance to create an ideal regulatory environment that allows economic growth to flourish and effectively optimizes consumer choice.

Today, I represent my colleagues on behalf of the Conference of State Bank Supervisors (CSBS), the nationwide organization of banking regulators from all 50 states, American Samoa, the District of Columbia, Guam, Puerto Rico and the U.S. Virgin Islands. State regulators supervise roughly three-quarters of all U.S. banks and a variety of non-bank financial services. CSBS supports state regulators by serving as a forum for policy and supervisory process development and facilitating effective and efficient state regulation through training, educational programs, examiner tools and job aids. CSBS, on behalf of state regulators, also operates the Nationwide Multistate Licensing System (NMLS) to license and register non-bank financial service providers in the money services businesses (MSBs), mortgage, consumer finance and debt industries.

I currently serve as chair of the CSBS Emerging Payments and Innovation Task Force, which addresses fintech issues, as well as the chair of the State Coordinating Committee, which is responsible for coordinating supervision between the states and the Consumer Financial Protection Bureau (CFPB).

Thank you for holding this hearing on de-risking and its effects on access to financial services. Banks and other financial services companies should know and understand their individual risk profiles. My testimony today will discuss state regulators' perspectives on de-risking and our efforts to give regulators, industry and consumers greater visibility into existing, emerging and evolving MSB risks.

STATE REGULATORS HAVE A UNIQUE VANTAGE POINT OF MSB ACTIVITY

Unlike any single federal prudential regulator, most state banking departments – including my agency – regulate multiple participants in the U.S. payments system, which includes banks, credit unions and MSBs. As such, state financial regulators are well-positioned to recognize the intersection of Bank Secrecy Act (BSA) and Anti-Money Laundering (AML) risks at financial institutions and the best way to supervise for these risks at both depository and non-depository institutions.

State regulators' perspectives on de-risking are informed by our supervision of a diverse field of financial firms. States are the chartering authority and primary regulator for 78 percent of the nation's banks. These banks vary in asset size, from large and complex institutions that have been labeled as global systemically important banks, to mid-sized and regional banks, to small institutions that offer products tailored to community needs.

Additionally, and unlike federal regulators, states are the primary regulators of more than 23,000 non-depository financial services providers. These providers include MSBs, residential mortgage lenders and servicers, debt collectors and consumer and small dollar loan lenders. The states regulate small local businesses, large international companies, established companies and emerging start-ups across these industries.

State financial regulators operate to ensure safety and soundness and stability within the marketplace, while also protecting consumers and supporting law enforcement. State regulators have a responsibility to ensure value can be transmitted in a manner that does not put consumers, businesses, the payments system or national security at risk. Through state licensure, regulation and supervision, state financial regulators balance market efficiency and risk to ensure that consumers and businesses can access money services in a manner that limits the potential for illegal activity perpetrated through the payment system.

State financial supervisors license and regulate five types of MSBs: 1) currency dealers or exchangers; 2) check cashers; 3) issuers of traveler's checks, money orders, prepaid access and/or stored value; 4) sellers or redeemers of traveler's checks, money orders, prepaid access and/or stored value; and 5) money transmitters. Some of these MSB categories include mobile wallets on our phones and taking, holding or sending virtual currencies on behalf of a consumer.

State regulators are keenly aware that MSBs play a vital role in providing financial services to consumers and small businesses across the country. Countless Americans use MSBs every day to pay bills, purchase items online or send funds to family members and friends domestically and abroad. MSBs are especially integral to those less likely to use traditional banking services.

However, MSBs are losing access to traditional banking services, a phenomenon that our licensees complain about and that state regulators have noticed in their examinations and through industry outreach. We and our colleagues at the Financial Crimes Enforcement Network (FinCEN) have acknowledged that banks are indiscriminately terminating the accounts of MSBs or refusing to open accounts for any MSBs. Further, there is evidence that the people the licensee designates to provide money services on its behalf, known as MSB agents or authorized delegates, are unable to acquire or maintain bank accounts, which eliminates many of their business capabilities.

De-risking is a real problem for three key reasons. First, demand for money transfer services still exists. If MSBs are denied access to banking services, money transfer will occur through other informal means. This heightens the risk for illicit activity. Second, money transmission plays a vital role for reaching underserved populations in the United States and around the world. At-risk communities rely on these funds. If distribution channels serving these communities are severed, it could hurt populations that rely heavily on these funds. Third, as banking regulators, we are concerned about a regulatory environment that provides banks an incentive to cut off relationships with entire classes of legally operating business.

In recent years, federal officials have exerted heightened scrutiny on banks that may have led many of them to shut off certain classes of business customers, such as money transmitters and check cashers. These banks felt pressure to stop adding new business customers in these classes and to sever relationships with similar existing customers.

Despite a loss of banking relationships for these companies, demand for their services continue. As a result, transparent, legitimate transactions are at times undoubtedly converted into opaque, illegitimate transactions, attracting bad actors. However, we also are aware of MSBs, with no other means of money transmission, physically carrying large amounts of cash, often legitimately, to foreign countries. In a 2016 case filed by my agency, investigators identified a Chicago-based MSB whose agent transported $686,000 in cash to Jordan after its credit union accounts were closed. According to other state regulators, reports of these types of physical transportation or holdings of cash by MSBs without bank accounts are not uncommon. Just last year, an MSB in Seattle was robbed of nearly $130,000 in cash that it was maintaining onsite in an in-store safe instead of a bank account.[1]

De-risking is the result of concerns about regulatory scrutiny, the perceived risks presented by MSB accounts, and/or the costs and burdens associated with maintaining such accounts. Such wholesale rejections of MSBs run counter to our expectation as bank regulators that banks can and should assess the risks of customers on a case-by-case basis.

The lack of access to banking services for MSBs may also be partially rooted in a misunderstanding of the degree to which MSBs are licensed, regulated and supervised by state and federal regulatory agencies.

STATES EMPOWER THE INDUSTRY WITH TOOLS TO HELP COMPLIANCE

State regulators are keenly aware of the money laundering, fraud and terrorist financing risks facing our nation. States also understand that many in the payments and technology industries want greater clarity of both state and federal regulatory requirements on how to mitigate these risks. CSBS, on behalf of state regulators, and the states themselves are taking steps to strengthen supervision of MSBs by creating new tools and updating NMLS to meet current market needs.

This week, CSBS released a BSA/AML Self-Assessment Tool for MSBs.[2] This tool provides a template for MSBs to identify risks and is available in an easily accessible format that allows them to get an initial understanding of their own particular risk. It is intended to reduce uncertainty surrounding BSA/AML compliance, support more transparency and address de-risking. CSBS launched a similar self-assessment tool for banks in January 2017.[3]

State regulators firmly believe that tools for industry, not just new rules, are the best way to help operationalize complex areas like BSA/AML compliance. The BSA/AML Self-

[1] http://komonews.com/news/local/man-posing-as-fbi-agent-steals-130000-from-seattle-business
[2] https://www.csbs.org/money-services-business-bsaaml-self-assessment-tool
[3] https://www.csbs.org/bsa-aml-self-assessment-tool

Assessment Tools for banks and for MSBs illustrate our commitment to addressing compliance by empowering both banks and MSBs with tools that are easy to use.

STATES HAVE A COMPREHENSIVE REGIME FOR OVERSEEING MSBS

Virtually all states have a rigorous licensing, reporting and examination process in place for companies and individuals that hold or transmit other people's funds. Licensing and oversight ensures compliance with state and federal regulatory requirements, which helps prevent and identify illicit activities while providing protections for customers. Many states have used the Uniform Money Services Act, which outlines licensing standards and requirements for self-insurance and bonding to protect consumer funds, as the foundation for their laws.

As part of the state licensing process, applicants typically must submit credit reports, a business plan, financial statements with evidence of liquid assets, and a surety bond. In many states, the applicant must provide evidence of policies, procedures and internal controls that ensures compliance with state and federal regulations, including required FinCEN registration and documentation of a sufficient BSA/AML compliance program.

In addition to reviewing the applicant's business plan, the state regulator evaluates the company's financial condition to ensure it has the financial capacity to protect customer funds. Additionally, the application process typically includes a background check on all owners and executive officers. Most states conduct background checks through NMLS, which has channeling authority with the FBI. These requirements are common in the MSB, banking, mortgage, securities and other financial industries to ensure persons in a position of trust meet established standards to protect consumers and businesses alike.

This credentialing has been a key aspect of regulating emerging payment business models, including virtual currencies. For the past several years, many states have been working with these emerging businesses to determine whether their activity would require an MSB license. To date, 45 states have issued MSB licenses to companies that utilize virtual currency in their business model. Once licensed, emerging payments companies – like all state-regulated MSBs – are subject to regular reporting, supervision and enforcement.

Once a license is granted, companies must maintain requisite permissible investments and surety bonds, as well as submit periodic reports that often include financial statements, permissible investments calculations, branch and agent information and transmission volume activity. This reporting is used to assess BSA/AML compliance risk during examinations, as well as ensure policies, procedures and internal controls continue to detect and deter money laundering and other illegal activity.

MSBs are regularly examined by multi-state teams or individual states to validate licensees operate in a safe and sound manner and adhere to BSA and other state and federal laws. Between exams, state regulators monitor their licensees on an ongoing basis. Consumer complaints provide another input into the supervisory process.

BSA/AML compliance is a substantial portion of money transmitter exams. During an exam, state examiners cover a broad range of policies and practices, including:

- Programs for BSA/AML Compliance
- Information Systems Adequacy and Protections for Personal Information
- Agent Monitoring
- Procedures for Mitigating Money Laundering and Terrorist Financing from Foreign Agent or Counterparty Relationships
- Currency Transaction and Suspicious Activity Reporting
- Foreign Bank and Financial Accounts Reporting
- Transaction Record Keeping
- Office of Foreign Assets Control Requirements

A licensee that is found operating in an unsafe manner or out of compliance with state and federal requirements may face state enforcement actions. State enforcement actions vary, depending on the entity, substantiated behavior and type and nature of violation, and can range from a letter of understanding or consent order, temporary or permanent cease and desist order, or civil money penalties and consumer restitution. Additionally, a regulator could revoke an entity's license and refer the violation to state and/or federal law enforcement, which may carry significant criminal penalties.

STATE AGENCIES COORDINATE

MULTI-STATE SUPERVISION

Many state MSBs hold licenses in more than one state. As a result, state regulators have worked for several years to proactively build a foundation for multi-state examination coordination. The Money Transmitter Regulators Association (MTRA) set the groundwork for multi-state exams with a 2002 cooperative agreement that established the initial framework for states to coordinate MSB examinations and share information. Since this early agreement, state agencies have conducted hundreds of multi-state MSB examinations. Through coordination, regulatory oversight is applied in a uniform manner, a benefit that has been publicly noted by industry.

To foster consistency, coordination and communication, the states, through CSBS, established the Multi-State MSB Examination Taskforce (MMET) to oversee joint examinations. The MMET advances a supervisory program tailored to multi-state licensees that fosters consistency and coordination among state agencies.

In 2017, the states completed 264 state examinations of multi-state MSBs. Of those, 63 were joint exams consisting of examiners from 28 states.

ENFORCEMENT

As a result of established processes and lines of communication, state agencies promptly communicate with one another to reduce risk of consumer harm. Since January 2017, the states of Florida, Texas and California collectively have undertaken over 200 enforcement actions against MSBs, with a single order in California resulting in $500,000 in monetary penalties.

State regulators also have demonstrated they are prepared and capable of promptly acting on a national and international basis. In 2013, thirty-seven states, led by Massachusetts, worked with federal authorities from the United States and Brazil, as well as the Brazilian Central Bank and two Brazilian private banks, to take action against one money transmitter they identified as having illicit transactions. The money transmitter's activity came to light when regulators saw it primarily remitted funds to Brazil, with transfers of more than $122 million originating from Massachusetts in 2012 alone.

STATE AND FEDERAL COORDINATION SERVES BOTH CONSUMERS AND REGULATORS

Meaningful coordination with federal regulatory agencies is just as important as coordinated state action for consumer protection, and particularly national security. In many areas of bank and non-bank regulation and supervision, the states have found that a more coordinated approach better serves both consumers and regulated entities.

In addition to coordination with FinCEN, state regulator membership in the Federal Financial Institutions Examination Council (FFIEC) has proved a valuable venue for coordination between state and federal banking regulators across a wide range of bank supervisory issues and processes related to BSA compliance. State banking regulators have brought our experience to efforts including development of the FFIEC BSA/AML Examination Manual and the ongoing work of the FFIEC's BSA/AML Working Group, an interagency effort to enhance coordination of BSA/AML training, guidance and policy.

Congress has repeatedly recognized the importance of coordination between state and federal authorities. In August 2014, the Money Remittances Improvement Act of 2014 was signed into law to allow the U.S. Treasury Secretary to rely on state BSA/AML examinations for depository and non-depository financial institutions.[4] This law recognizes the importance of state exams to federal BSA/AML reviews and sets a foundation for further coordination between states and FinCEN.

The states have entered memorandums of understanding (MOU) with FinCEN and the Internal Revenue Service (IRS) to coordinate BSA/AML supervision in the non-bank sector.[5] State agencies provide information to FinCEN and the IRS on a quarterly and annual basis that includes the number of BSA examinations conducted, referrals of BSA violations and state

[4] Money Remittances Improvement Act of 2014, 113 P.L. 156, 128 Stat. 1829, 2014 Enacted H.R. 4386, 113 Enacted H.R. 4386. *Available at* https://www.congress.gov/bill/113th-congress/house-bill/4386/text/pl.

[5] Memorandum of Understanding between the Internal Revenue Service and the States concerning Money Services Businesses and Certain Other Non-Bank Financial Institutions. *Available at* http://www.csbs.org/regulatory/Cooperative-Agreements/Documents/IRS-StatesBSA_MOU_4-22-2005.pdf.

enforcement actions. Additionally, state agencies worked collaboratively with FinCEN and the IRS on the FinCEN/IRS BSA/AML Examination Manual for MSBs that was issued in 2008.[6]

In 2016, state regulators and the IRS began sharing proposed principal and agent examination schedules. In February 2016, the states began holding annual meetings with FinCEN to discuss coordinating supervisory efforts through data collection and examination efforts. Just last week, the states met for the third annual meeting with FinCEN in New Orleans and discussed collaboration on identification of risk, as well as the current state of de-risking.

State agencies also have provided resources to develop and conduct training for state and IRS examiners nationwide on BSA compliance for MSBs. CSBS regularly offers a BSA/AML Examiner School. The week-long school provides an intensive overview of BSA/AML requirements, including currency transaction reporting, customer identification programs, suspicious activity reporting and the exam procedures to test these requirements.

In addition to existing state/federal cooperative frameworks, the Dodd-Frank Wall Street Reform and Consumer Protection Act established new expectations for coordination, collaboration and information sharing between the states and federal regulators, including with the CFPB.[7] In 2011, the states entered an Information Sharing MOU with the CFPB[8] that lays the foundation for information-sharing, supervision and enforcement between the CFPB and state regulators.

Beginning in 2015, the states and the CFPB joined efforts to simultaneously supervise large money transmitters through coordinated supervision, improved communication and leveraged resources. Both sides annually agree to schedule and examine together certain money transmitters and to exchange independent reports of examination on other money transmitters.

A STATE FOCUS ON CYBERSECURITY

Cybersecurity risk cuts across the full range of state licensed, chartered and regulated institutions. Through industry outreach and coordination, as well as the development of supervisory tools, state regulators – collectively and individually – have been focused on this priority for several years. Several years ago, CSBS launched an initiative to educate bank executives on cybersecurity through face-to-face dialogue between state regulators and industry, issuance of a resource guide and other information and tools for industry.[9] Through the states' role on the FFIEC, we participated in the development and deployment of the FFIEC Cybersecurity Assessment Tool for banks. Beyond these collective efforts, many state agencies

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[6] *Available at* https://www.fincen.gov/news_room/rp/msb_exam_materials.html.
[7] "The Bureau shall coordinate with...State regulators, as appropriate, to promote consistent regulatory treatment of consumer financial and investment products and services." Dodd-Frank Act § 1015, *codified at* 12 U.S.C. 5495. *Available at* https://www.gpo.gov/fdsys/pkg/USCODE-2010-title12/html/USCODE-2010-title12-chap53-subchapV-partA-sec5495.htm.
[8] Memorandum of Understanding Between the Consumer Financial Protection Bureau, the Conference of State Bank Supervisors, and the Other Signatories Hereto on the Sharing of Information for Consumer Protection and Other Purposes. *Available at* http://www.csbs.org/regulatory/CooperativeAgreements/Documents/CFPB%20CSBS%20MOU.pdf.
[9] https://www.csbs.org/cybersecurity-101

have pursued individual efforts at enhancing cybersecurity. On March 1, 2017, the New York State Department of Financial Services adopted a comprehensive cyber security regulation requiring New York State chartered or licensed financial institutions to assess and manage their cyber security risks and, on an annual basis, to certify to the Department their compliance with the requirements of the regulation."

Most recently, state regulators have devoted significant resources to addressing the massive data breach Equifax experienced in 2017. A multi-state examination including the states of California, Georgia, Maine, New York, North Carolina, Texas and others is underway at Equifax. The exam is looking at Equifax's cybersecurity programs, what breakdowns led to the breach, and what corrective actions the company is taking to ensure consumers are not harmed in the future.

States Innovative Technology to Coordinate Licensing and Supervision

State regulators have long understood that regulation needs to adapt alongside marketplace changes to capture the benefits and mitigate the risks of innovation. We also understand that, in the modern economy, businesses and markets grow irrespective of geographic boundaries. Accordingly, the states recognized a need to effectively and efficiently license financial services companies, track bad actors and provide responsible ones with greater efficiency and consistency. To achieve these goals, the states collectively developed and currently operate NMLS,[10] which serves as the licensing system of record for non-banks, through CSBS.

Originally developed as a voluntary system for state licensing and then codified in the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act),[11] NMLS is a web-based system that allows state-licensed, non-depository companies in a variety of industries to apply for, amend, update or renew a license online for all participating state agencies using a single set of uniform applications in one system.

NMLS celebrated its tenth anniversary in January. In its decade of existence, it has grown and adapted to better reflect the market. Today, 62 state agencies have licensed or registered almost 23,000 non-bank companies and 9,500 depository institutions with NMLS. Currently, 41 state agencies use NMLS for MSB licensure, and each year more agencies adopt NMLS. Approximately 2,121 MSBs are licensed through NMLS. Concerning money transmitters specifically, 382 companies are licensed through NMLS. While many firms are licensed only in one state, NMLS also includes all large money transmission firms licensed nationwide.

NMLS is a system of record for state regulatory authorities and a central point of access for licensing. Through NMLS, licensees can manage their licenses in one location for multiple states. Moreover, states can track the number of unique companies and individuals, as well as the number of licenses they hold in each state. This allows greater efficiency, uniformity and

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[10] *See* http://mortgage.nationwidelicensingsystem.org/Pages/Default.aspx.
[11] P.L. 110-289. *Codified at* 12 U.S.C. 5101 et seq. More information on the SAFE Act may be found at http://mortgage.nationwidelicensingsystem.org/SAFE/Pages/default.aspx.

transparency to these non-depository financial services industries while maintaining and strengthening the ability of state regulators to monitor these industries.

Additionally, NMLS has streamlined the criminal background check process, which often is required by state law. NMLS allows company owners and directors to submit a single set of fingerprints to the system for a single FBI criminal background check available to all relevant state agencies, saving significant expense for the individual and driving greater consistency by regulators. Congress has recognized this value and, in 2015, enacted legislation enhancing NMLS's ability to process background checks for all financial services, including MSBs.

CSBS has begun work on the next generation of NMLS harmonization. Our goal is a one-stop, streamlined platform for state financial regulators that supports licensing as well as supervision. The new version will transform the licensing process through data and analytics, enabling states to focus on higher-risk cases. It adds a coordinated examination system for the states that encourages standardized state exam processes, coordinates exam sharing data between states and safeguards company and consumer information.

Data Point to MSBs Moving $1 Trillion in 2017

In 2017, NMLS began collecting information from MSBs through a reporting system called the MSB Call Report. It is the only nationwide database of MSB transaction activity. The quarterly MSB Call Report helps regulators better assess risk and identify trends, complementing the information received concerning authorized agents. The MSB Call Report collects national and state specific MSB activity – including financial condition data, transactional activity and permissible investment amounts[12] – covering the six major MSB sectors: money transmission, stored value, payment instruments, virtual currency, currency exchange and check cashers. When aggregated, this data gives a macro view into the money services industry.

MSB Call Report filings in the first half of 2017 show:

- More than half a trillion dollars of funds were transferred by MSBs, putting the industry on pace for more than $1 trillion in 2017.
- Of this amount, MSB firms without brick and mortar presence accounted for $189 billion, or more than one-third of the total.
- In a further breakdown of the MSB Call Report, a total of 151 companies filed international remittance reports totaling over 263 million transactions valued at more than $75 billion.

When the 2017 filing deadline closes today, the states and CSBS also will be able to match this information to the countries of destination, a powerful tool for monitoring the remittance market.

[12] *See, e.g.* California Money Transmitter Call Report Forms, *available at* http://www.dbo.ca.gov/forms/tma/callreport.asp.

CSBS also provides regulatory information from NMLS to FinCEN, as well as log in capability that allows regulator-level access to company, agent or individual information, under a 2015 information-sharing MOU.

State-licensed money transmitters have been able to report their authorized agents using the NMLS Uniform Authorized Agent Reporting function since 2014. NMLS tracks these agent locations and their history, including who and how many companies use the same agents and whether the agent is also a licensee. While the incumbent money transmitter business model relies on these agents, we are seeing that most of the new companies entering the industry are not using agent locations, indicating a reliance on the internet to reach customers.

CSBS provides transparency for consumers on state-regulated companies and individuals through NMLS Consumer Access[13]. This fully searchable public website allows consumers to view information about companies, branches and individuals, including public state regulatory actions. Consumers can also connect directly to state agencies to submit a complaint against a state-licensed company. In 2017, there were 2.9 million visitors to NMLS Consumer Access to check on companies.

State Regulators are Harmonizing the Multi-State Experience

State regulators are hard at work developing new risk analysis tools and supervision processes for state MSB examiners. Call Report and NMLS licensing information, coupled with actual examination findings, will be the source material for technology-based tools designed to identify and report risk more effectively and efficiently. In early 2019, CSBS will launch the State Examination System (SES), designed to facilitate work flows for both single state and multi-state examinations and support information sharing among states and between state and federal regulators.

The NMLS update is one of several initiatives CSBS is undertaking through our Vision 2020 initiative, designed to modernize state regulation of non-banks, including financial technology firms. By 2020, state regulators will adopt an integrated, 50-state licensing and supervisory system, leveraging technology and smart regulatory policy to transform the interaction between industry, regulators and consumers. Achieving this vision will result in a regulatory system that makes state supervision more efficient. These actions will benefit start-ups and enable national scale while protecting consumers and the financial system.

The CSBS Emerging Payments and Innovation Task Force that I chair created a Fintech Industry Advisory Panel in October 2017 as a part of Vision 2020. It is composed of companies from the payments and money transmission, lending and community banking sectors. The panel solicits industry input to help states modernize regulatory regimes, identify friction points in licensing and multi-state regulation and discuss solutions.

Consistent with Vision 2020, several states last week announced a multi-state agreement that standardizes key elements of the licensing process for MSBs. The agreement asserts that if one state reviews key elements of state licensing for a money transmitter – including compliance

[13] http://www.nmlsconsumeraccess.org/

with the federal BSA – then other participating states agree to accept the findings. This effort to streamline the MSB licensing process is a great example of state-driven initiative and experimentation. I am pleased that Illinois is one of the states participating in this agreement, along with Georgia, Kansas, Massachusetts, Tennessee, Texas and Washington. I expect that other states will join the agreement.

CONCLUSION

State regulators are working together and with our federal counterparts to further develop structures, processes and systems to bring greater clarity and consistency to MSB supervision. We continue to work collaboratively to identify gaps in supervision and better coordinate consumer protection, safety and soundness, and national security goals.

The states are concerned that indiscriminate de-risking resulting in the elimination of MSB bank accounts will not only weaken access to financial services, but may very well unintentionally increase BSA/AML risks. Banks and customers should know and understand the MSBs with which they transact, including the supervisory structures designed to authorize and regulate the industry and make decisions based on the individual risk profile of each MSB.

We appreciate this Committee's ongoing work to examine de-risking and seek constructive regulatory and legislative solutions. To support this effort, we offer the following recommendations:

1) **Continue a focus on tailored supervision.** Regulation and supervision should be tied to risk and to an institution's business model. As Congress carries out its oversight responsibilities over the federal financial regulatory system, I urge you to continue to hold regulators accountable for tailoring regulation and supervision and for avoiding a one-size-fits-all approach to managing risk in the financial system. Non-banks have completely different risk profiles, and state laws have worked for decades to protect consumers in an environment without deposit insurance or federal backstop.
2) **Regulatory coordination and collaboration.** As my testimony notes, state regulators – unlike federal banking regulators – bring the perspective of bank regulators and of licensing and supervisory authorities for a broad range of non-depository financial services providers. Furthermore, state regulators are integrated into a variety of regulatory structures and processes. And, through bills that this Committee has previously supported, Congress has promoted state regulators and the use of NMLS as key elements of our regulatory fabric. I urge this Committee to maintain this approach of cooperative federalism as it explores legislative proposals affecting de-risking and innovation.
3) **Update the Bank Service Company Act:** CSBS encourages members of Congress to support H.R 3626, the Bank Service Company Examination Coordination Act. The bill, introduced by Rep. Roger Williams, would enhance state and federal regulators' ability to coordinate examinations of and share information on banks' technology vendors and partners in an effective and efficient manner by making updates to the Bank Service Company Act (BSCA). Amending the BSCA to appropriately reflect states' authority to examine technology service providers (TSPs) would improve state-federal coordination

and information sharing, reduce duplication and promote more efficient supervision of TSPs that provide critical services to a broad range of banks. In addition, the 2017 Annual Report of the Financial Stability Oversight Council (FSOC) recommends legislation for coordinated TSP examinations. This legislation would enhance state regulators' ability to support and oversee banks in their business relationships with third party service providers and encourage banks to do business with their customers, including MSBs.

State regulators focus on tailored supervision. Consistent with this approach, my view is that banks should be responsible for managing the risks of their business relationships, and my role as a bank regulator is to ensure that each of our supervised banks understands and can manage these risks.

Local understanding, coordination between regulators and collaboration with policy makers have provided the states a unique ability to actively regulate a broad range of financial products and services in an effective and timely manner. We look forward to working with Congress, the industry and our federal regulatory partners to develop an integrated and collaborative approach to all innovative financial products and services, ensuring individuals and economies are well served.

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February 12, 2018

Rep. Blaine Luetkemeyer, Chairman
Rep. Wm. Lacy Clay, Ranking Member
Financial Institutions and Consumer Credit Subcommittee
Financial Services Committee
U.S. House of Representatives
4340 Thomas P. O'Neill, Jr. Federal Office Building
Washington, DC 20024

RE: Financial Institutions and Consumer Credit Subcommittee Hearing on Bank Derisking, February 15, 2018

Dear Chairman Luetkemeyer, Ranking Member Clay, Chairman Hensarling and Ranking Member Waters,

I am writing on behalf of the Charity & Security Network to submit comments for the record for the February 15, 2018 hearing "Examining De-risking and its Effect on Access to Financial Services." We appreciate your attention to the important issue of bank derisking, a problem that has had significant, well-documented and widespread effects on a variety of stakeholders, including nonprofit organizations (NPOs) that operate international programs.

Nonprofits share the U.S. government's goal of protecting the financial system, and they depend on banking services in order to operate their programs. The Charity & Security Network, a resource center for diverse nonprofits supporting legal frameworks that protect their ability to provide essential services around the world, sees this mission as complementary to anti-money laundering and counterterrorist financing (AML/CFT) goals. But a combination of factors, including lack of clarity on regulatory expectations for banks and enforcement action under the current system, has contributed to the global trend of "derisking," the practice of financial institutions limiting or ending their relationships with customers due to perceived risk of AML/CFT sanctions.

In recent years, "derisking" has made access to financial services increasingly difficult for NPOs that must conduct international financial transactions in order to operate overseas, often in places where their work is needed most. Financial institutions may delay, or refuse to make, transfers between organizations. Sometimes, NPOs are turned away as customers or have their accounts closed. A Charity & Security Network (C&SN) report, published in February 2017, established that these financial access problems are systemic, global and require urgent action by government, financial institutions and NPOs.[1] The need to address this issue is pressing, as it is resulting in significant delays and cancellations of vital humanitarian and other programming abroad.

Past statements from regulatory authorities have classified NPOs as being "particularly vulnerable" to terrorist abuse, although such abuse is extremely rare. Although the Financial Action Task Force (FATF), a global standard setting body for AML/CFT laws, eliminated such language from its recommended anti-terrorist financing policy for NPOs in June 2016, this outdated view persists in the U.S. Bank Examination Manual. Because most NPOs requiring international banking services are small and do not represent a significant source of income for banks, the risk-benefit calculation is heavily weighted in favor of dropping these clients or requesting additional documentation that causes significant delays in transactions.

Customers that lose accounts or are unable to move money through the regulated financial system are forced to use less transparent, safe and regulated channels, undermining AML/CFT goals. There is widespread recognition that this problem needs to be addressed, with the Financial Action Task Force (FATF) making inappropriate derisking a priority.[2] Given the central role of the U.S. financial system and its impact on the global financial system, the U.S. is in a unique position to take action that will reverse the derisking trend globally, and Congress is the only body that can comprehensively address the drivers of this trend. We urge the Financial Services committee to broaden its present discussion of BSA modernization and take a thorough approach -- including consideration of the sanctions regime and the bank examination process -- in order to address the derisking problem in a way that will provide relief to both banks and their customers.

The negative impact of derisking

U.S. NPOs that operate internationally have been hard hit by derisking, to the detriment of their programs, especially those that provide life-saving assistance to civilians affected by conflict and

[1] Sue Eckert, Kay Guinane and Andrea Hall, "Financial Access for U.S. Nonprofits," Charity & Security Network February 2017 Available online at https://www.charityandsecurity.org/FinAccessReport. Previous reports on the problem include World Bank/ACAMS "Stakeholder Dialogue on De-risking: Findings and Recommendations" 2016 Available online at http://files.acams.org/pdfs/2016/Derisking-Final.pdf; Center for Global Development, "Unintended Consequences of Anti-Money Laundering Policies for Poor Countries" 2015 Available online at https://www.cgdev.org/sites/default/files/CGD-WG-Report-Unintended-Consequences-AML-Policies-2015.pdf; Global Center for Cooperative Security and Oxfam America, "Understanding Bank De-risking at Its Effects on Financial Inclusion" 2015 Available online at http://www.globalcenter.org/wp-content/uploads/2015/11/rr-bank-derisking-181115-en.pdf.

[2] "De-risking has been a priority for the FATF since 2014 and it has completed substantive work on the topic, such as guidance to clarify the risk-based approach, including for the money and value transfer services. The FATF will look at the use being made of its guidance by national supervisors and the financial sector. Delegates discussed recent developments in de-risking, including access to banking services by the remittances sector. The FATF is working closely with the Financial Stability Board, IMF and other relevant organisations to tackle this issue." FATF Plenary Outcomes June 2017 http://www.fatf-gafi.org/publications/fatfgeneral/documents/outcomes-plenary-june-2017.html#dr.

disaster. Our 2017 report is the first empirical study[3] of the financial access problems U.S. nonprofits are experiencing, using IRS data and responses to a statistical scientific sample survey. The results, accurate within a 5.4% margin of error, show that:

- 2/3 of all U.S. nonprofits that work abroad are having financial access difficulties

- Delays in wire transfers, which can last up to several months, are the most common problem, affecting 37% of nonprofits

- 15% of nonprofits report having these problems constantly or regularly

- Transfers to all parts of the globe are impacted; the problem is not limited to conflict zones or fragile and failing states

- When money cannot be transmitted in a timely manner, 42% of nonprofits report that they carry cash.

- One-third of NPOs have experienced fee increases, and 26% have faced additional, unusual documentation requests that can significantly delay program delivery.

Since the report was published one year ago, NPOs have provided new examples of derisking difficulties, indicating that within the last several months, the problem has gotten significantly worse. Examples include:

- In April 2017, a wire transfer via Turkey, intended for an Aleppo hospital, was delayed six months. The deadly siege of Aleppo was over by the time the transfer was processed.
- In 2017, a transfer was delayed because additional, confidential information was requested from partner donors. As a result, a health sector program partially funded by the U.S. government was delayed 1 ½ months, and funding gaps had to be plugged by alternative sources, within the NPO, to provide medical supplies to Syria.
- Last year, a large NPO had its U.S. bank account closed after a 23-year relationship. No reason was given, and the NPO was given 30 days to find an alternative bank. The account held huge sums of money used in vital programming.
- In October 2017, a major U.S. credit card company refused to process donations within the U.S. There was no indication from the company, at the point of donation, that these transactions would not be processed.

Additional examples have been documented in published news accounts in the spring and summer of 2017, including stories in The Washington Post and The Economist.[4]

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[3] Sue Eckert, Kay Guinane and Andrea Hall, "Financial Access for U.S. Nonprofits," Charity & Security Network February 2017 Available online at https://www.charityandsecurity.org/FinAccessReport.

Contradictory standards: strict liability v. the risk-based approach

Since the 2001 amendments to the BSA, the global regulatory framework for AML/CFT has evolved away from strict liability, check-the-box compliance standards to a risk-based approach. The FATF has been a leader in this change, aiming for greater effectiveness in AML/CFT programs. However, while the BSA incorporates the risk-based approach, sanctions laws use a strict liability standard that, as a practical matter, is at odds with the risk-based approach. In its December 2016 evaluation report on the U.S., FATF has noted that:

> "Measures applied to NPOs are risk-based, and focused on targeted outreach and engagement with NPOs most at risk for abuse by terrorists. Striking the right balance and avoiding the disruption of legitimate NPO activities can be challenging, particularly in higher-risk conflict zones. As violations of TF-related TFS[5] are strict liability offenses, the authorities should continue to work with the NPO community to understand and mitigate the real TF risks that exist, while engaging stakeholders on banking challenges that some NPOs may face when working in conflict zones. The U.S. authorities are aware of the continuing challenges in this difficult area and are encouraged to continue their efforts, including work with the private sector." [paragraph 234][6]

To truly modernize the financial system to address derisking, Congress should clearly incorporate the proportionate, risk-based approach FATF calls for and eliminate strict liability standards. This would not create a loophole or allow intentional or negligent violations of the law. Instead, it would reward good-faith, reasonable due diligence efforts by banks and give greater clarity that would increase their willingness to serve NPO customers.

Solutions in development

Responding to the multiple stakeholders with financial access problems and the frustrations of banks dealing with regulatory uncertainty and often inconsistent messages from bank examiners and policymakers, the World Bank and Association of Certified Anti-Money Laundering Specialists launched a multi-stakeholder dialogue in early 2017 to tackle financial access barriers to NPOs. The effort involves regulators, banks and NPOs and is moving forward. We encourage

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[4] Washington Post, April 19, 2017, "Scrutiny over terrorism funding hampers charitable work in ravaged countries" Available at www.washingtonpost.com/national/scrutiny-over-terrorism-funding-hampers-charitable-work-in-ravaged-countries/2017/04/18/146a585a-1305-11e7-9e4f-09aa75d3ec57_story.html?utm_term=.16b30975a813; The Economist, July 8, 2017, "A crackdown on financial crime means global banks are derisking" Available at www.economist.com/news/international/21724803-charities-and-poor-migrants-are-among-hardest-hit-crackdown-financial-crime-means; The Economist, August 3, 2017, "The unintended effects of rules aimed at stopping financial crimes" Available at www.economist.com/blogs/economist-explains/2017/08/economist-explains-2.

[5] Terrorist financing and Terrorist financing sanctions

[6] Financial Action Task Force, "Mutual Evaluation of the United States" December 2016 Available online at http://www.fatf-gafi.org/publications/mutualevaluations/documents/mer-united-states-2016.html.

the committee members to engage with these stakeholders on the causes of derisking and explore how Congress can be part of the solution.

Conclusion

The empirical data and examples of derisking of NPOs clearly point out the need to address bank derisking in a way that benefits all stakeholders. We encourage the committee to take a comprehensive approach that establishes a proportionate, risk-based legal framework that facilitates use of transparent and regulated financial channels. We stand ready to engage with the committee to provide additional information, answer questions and work cooperatively toward a constructive outcome.

Yours truly,

Kay Guinane

Kay Guinane, Director

GLOBAL CENTER ON COOPERATIVE SECURITY

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Statement to the U.S. House of Representatives Financial Services Committee
Subcommittee on Financial Institutions and Consumer Credit
Hearing entitled "Examining De-risking and its Effect on Access to Financial Services"

Studies have shown that de-risking is negatively impacting financial inclusion.[1] In addition to account closures or the denial of new bank accounts, non-profit organizations are also reporting delays in transactions and/or requests for increased information that present significant challenges to the timeliness and effectiveness of their work.[2] The term de-risking itself is problematic, suggesting that the financial institutions are acting solely on the basis of risk when the drivers are actually more varied and complex. Perceived client risk and concern over rising anti-money laundering and countering the financing of terrorism (AML/CFT) fines and enforcement actions are an element of de-risking decisions, but other factors include low profitability of clients in the face of rising compliance costs, higher capital requirements and liquidity thresholds following the 2008 financial crisis, and reputational and liability concerns, among others.

At its core, de-risking is an instance of market failure:[3] all actors are behaving rationally, but the outcome is detrimental to society as a whole. The critical work of non-profit organizations and money service businesses (MSBs) has been constrained, especially those operating in conflict or humanitarian crisis zones. Entire economies are becoming increasingly isolated as correspondent banking relationships become scarce. These "unintended consequences" are especially impactful for socioeconomic and politically marginalized communities, especially women and women-led organizations.[4] While many have raised their voices to challenge de-risking practices, humanitarian and social-good based arguments have done little to influence the private sector to whom liability and profitability remain of utmost concern.

In instances of market failure, it is often the responsibility of the public sector to take actions that re-align market factors. While the public sector cannot dictate business practices of financial institutions, they do share a degree of responsibility in creating an operating environment that produces desirable results (or at least protects against negative impacts). This has historically come in the form of incentives for desired behaviors, legislation to oblige practices, and/or establishment of penalties or disincentives. Preventing and combatting the abuse of the financial system is a social good, which the public sector has promoted by issuing legislation and punitive actions for failures in AML/CFT practices. A growing body of evidence highlights the importance of financial inclusion on development indicators,[5] and international bodies such as the United Nations, G20, and

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[1] For example: "Report on the G20 Survey on De-Risking Activities in the Remittance Market," The World Bank Group, October 2015; "Withdrawal from Correspondent Banking: Where, Why, and What to Do About it," The World Bank Group, November 2015;
[2] Sue E. Eckert, "Financial Access for U.S. Nonprofits," Charity & Security Network, February 2017.
[3] Tracey Durner and Liat Shetret, "Understanding Bank De-Risking and its Impact on Financial Inclusion," Global Center on Cooperative Security, 2015.
[4] "Tightening the Purse Strings: What Countering Terrorism Financing Costs Gender Equality and Security," International Human Rights Clinic at Duke University School of Law and Women's Peacemakers Program, March 2017.
[5] Robert Cull, Tilman Ehrbeck, and Nina Holle, "Financial Inclusion and Development: Recent Impact Evidence," The Consultative Group to Assist the Poor, Focus Note No. 92, April 2014.

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the World Bank have identified expanded financial inclusion as a policy goal. Those who are seeking solutions to de-risking challenges view the importance of financial inclusion, alongside humanitarian and development objectives, as justification for public sector engagement to address de-risking challenges.

Many actors, including the U.S., have heeded this call by organizing stakeholder dialogues, evaluating policy, and issuing statements designed to advance risk-based approaches to AML/CFT. The Global Center on Cooperative Security applauds the U.S. for its ongoing commitment to address de-risking challenges. Numerous high-level officials and institutions haven identified de-risking as a core priority, and hearings such as this one continue to elevate the analytical discourse and bring critical attention to the issue. De-risking considerations and stakeholder consultations have informed revisions of the Bank Examiner's Manual, and in select instances bi-lateral and multi-lateral initiatives have been launched.[6]

While this represents positive progress, there is need for comprehensive responses that sustainably re-align market factors to alleviate de-risking tensions and promote expanded financial services. Based on our analysis and over ten years of work on financial inclusion issues, the Global Center on Cooperative Security offers the following recommendations to the U.S. House of Representatives on how it can influence and contribute to the re-adjustment of market factors to address de-risking challenges.

1. **Encourage Inter-Disciplinary Learning:** Disaster relief organizations have a wealth of experience in finding creative solutions to rapidly transfer funds to places where formal financial structures are inoperable. International refugee organizations have also developed innovative solutions to addressing customer identification challenges, which are a critical element of client AML/CFT risk assessments. Many such programs are supported by government development assistance, and thus come with requisite financial accountability and monitoring requirements from the implementing organizations –including U.S AML/CFT and sanctions obligations. While not without their own challenges, the experiences of these programs and organizations can provide insight on how financial services could be provided to sectors and communities experiencing de-risking challenges. Further research is needed to explore avenues of success and potential barriers to applying these interdisciplinary measures to de-risking environments.

2. **Provide Space for Exploratory Pilot Programs:** In select instances, the U.K. has offered "safer corridor" pilot programs and initiatives to facilitate remittance channels.[7] The U.K. Financial Conduct Authority has also created a regulatory "sandbox" initiative, which focuses on new technologies for better financial inclusion while mitigating risks, allowing firms to test innovative products, services, and business models in a live market environment, ensuring that appropriate regulatory safeguards are in place for all.[8] Such programs involve heavy engagement and dialogue between governments, financial service providers,

[6] For example, the U.S. and Mexico worked together to amend Mexico's legal framework to facilitate necessary cross-border information sharing about clients' risks and established a domestic US dollar payment system that uses the Central Bank's corresponding banking relationship to facilitate transfers. (see: https://www.treasury.gov/press-center/press-releases/Pages/jl0608.aspx)

[7] Programs have been launched in Somalia and Pakistan. See: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/471064/UK-Somalia_Safer_Corridor_Initiative.pdf; and https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/471064/UK-Somalia_Safer_Corridor_Initiative.pdf

[88] See: https://www.fca.org.uk/publication/research-and-data/regulatory-sandbox-lessons-learned-report.pdf

technical experts, and regulatory authorities to both identify short-term solutions and work toward longer-term capacity and policy development that enables sustained financial channels. Given the reach of US financial regulation under the PATRIOT Act and the centrality of the US dollar to international financial transactions, similar programs from the U.S. would have far-reaching impact. While "safe harbor" programs are not viable or sustainable solutions, short-term and targeted pilot projects that incorporate learning and analysis components can help to identify evidence-based solutions, policies, and reforms that could help re-calibrate the de-risking landscape.

3. **Incentivize Niche Banking Services:** Assessing risk is a nuanced and context-specific endeavor, especially for clients operating in rapidly changing security or humanitarian crisis environments. Understanding and effectively managing risk for these clients requires a deep understanding of business practices and operating contexts, as well as consistent and responsive client management. Such practices are not always viable for larger-scale financial institutions, who tend to group clients into broad risk categories based on a set of pre-defined indicators and are unwilling or unable to incur additional compliance staffing costs for comparatively low-profit clients. Small and medium-scale financial institutions may be better positioned to develop niche banking services that cater specifically to sectors, geographies, or other categories of clients that are experiencing financial access challenges. The scale of business from these clients is more likely to be profitable to a smaller institution, but at present many are wary to engage over fears they will lose their correspondent banking relationships with large institutions or due to 'reputational dominos' where the client's loss of an account results in stigmatization. Incentivizing and fostering the development of niche banking services, paired with technical assistance to ensure banks can adequately manage AML/CFT risk, would allow smaller financial institutions to develop necessary expertise to handle these clients – including through fostering strong client-compliance officer relationships and necessary two-way dialogue on compliance obligations.

4. **Foster Enabling Environments for Technology Solutions:** Regulatory technology (RegTech) has rapidly become a burgeoning market that many financial institutions are looking toward to alleviate compliance challenges. Technological approaches vary, but examples include automated customer onboarding and monitoring, utilizing artificial intelligence and machine learning to identify suspicious transactions, big data analytics to support risk assessments and transaction monitoring, and centralized registries for customer due diligence (CDD) and know your customer (KYC) including through the use of blockchain technology, among others. Similar approaches to standardizing, streamlining, or centralizing compliance requirements have been undertaken in other sectors – including through the establishment of the Nationwide Mortgage Licensing System under the Housing and Economic Recovery Act of 2008. Regulators should foster ongoing and sustained dialogue with regulatory and financial technology companies and work to create enabling regulatory environments for the growth of these sectors.

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Statement

For the Record

of

John J. Byrne, Esq., CAMS

President

Condor Consulting, LLC

To the

House Financial Institutions and Consumer Credit Subcommittee

on

"Examining De-risking and its Effect on Access to Financial Services"

February 15, 2018

Chairmen Luetkemeyer and Ranking Member Clay, I am John Byrne, President of Condor Consulting LLC and the previous Executive Vice President of ACAMS (Association of Certified Anti-Money Specialists). I was pleased to have an opportunity to present my views on AML oversight last November before this subcommittee and strongly support this review of the many challenges with financial inclusion. As co-chair of a project with the World Bank and ACAMS addressing the collateral damage to many members of the global economy from so-called "de-risking",[i] I want to note the work being done to add transparency and hopefully clarity regarding getting essential financial services to areas of need.

AML Impact on Financial Access

While there is a myriad of reasons why financial access is unavailable or limited, my focus today is on how risk management in the AML or financial crime prevention areas impacts compliance or business decision-making.

As I indicated in November, when the financial sector receives limited or conflicting advice and counsel regarding how best to manage risk, the logical response by some financial institutions is to exit or not onboard certain classes of customers. The result is that victims such as non-profit organizations (NPOs) in conflict zones and other troubled areas do not receive funding for water, utilities and other life-saving resources that are so desperately needed for survival. Again, make no mistake-- banks and other financial institutions should be free to decide if they can ultimately manage risk, but they shouldn't be forced to exit account relationships because of confusing and conflicting oversight or due to the sometimes-uninformed opinions of some examiners that a financial institution should not bank a type of customer or a specific customer. Sadly, this confusion is both not new and continues today.

For example, as far back as 2005, the money services businesses (MSB) community faced the same barriers to account relationships as charities and humanitarian groups do today. I have included, for the record, testimony I gave that year while with the American Bankers Association (ABA) that covered the confusion regarding banking MSBs and comments that still ring true on risk such as this one from Florida banks:

> *Financial institutions are closing legitimate accounts. Particularly in the area of [MSBs], financial institutions feel compelled to close their accounts. Most of these are the accounts of perfectly legitimate businesses. Many of them in Florida are businesses run by small entrepreneurs. They are gas stations, convenience stores, and grocery stores. They serve as a place where paychecks can be cashed. Some of them serve as agents of regulated money transmitters. These accounts are closed not because there is any evidence that they are engaged in improper activity, but because they fit into a regulatory profile.*

The regulators did respond to these issues with a guidance document designed to assist both MSBs and banks in their risk decisioning.[ii] Unfortunately though, even with added regulatory clarity, some MSBs still struggle with financial access in 2018, due in part to how banks perceive supervisory oversight regarding risk mitigation. This article from ACAMS Today encapsulates the continuing problem. https://www.acamstoday.org/de-risking-fact-or-fiction/

I would suggest that examiner, and overall government inconsistency, regarding expectations are still the main causes of today's challenging compliance environment and what MSBs are grappling with is also harming the NPO community.

For example, even when the federal agencies collaborate to attempt to create consistency in published guidance, confusion may still occur. In August 2016, a "joint fact sheet"[iii] designed to assist those dealing with correspondent banking sent mixed messages to the financial sector. Here is one paragraph that is emblematic of there being themes at cross purposes:

"The goal of BSA compliance programs and OFAC sanctions programs is to ensure a well functioning, transparent, resilient, and safe and sound financial system. While the Treasury and the FBAs [federal banking agencies] do not utilize a zero tolerance philosophy that mandates the strict imposition of formal enforcement action regardless of the facts and circumstances of the situation, Treasury and the FBAs take the threats posed by criminals, money-launderers, and terrorist financers very seriously, and continue to use their authorities—in a proportionate and appropriate manner—to safeguard our financial system against abuse. "The vast majority of BSA/AML compliance deficiencies identified by the FBAs—approximately 95%—are resolved through the supervisory process without the need for an enforcement action."

Remember that this was part of guidance that was supposed to make clear that the agencies favored a "risk-based approach" to correspondent banking, but the comments above certainly give pause to that notion and reinforce that there are risks associated with correspondent banking. I wrote more extensively about this guidance at the time [iv] and while government guidance in many cases is certainly useful, it is only so if the communication is clear and not unnecessarily nuanced.

The World Bank, ACAMS and the Impacted NPO community

The current regulatory environment is certainly challenging, but this subcommittee can take some solace in the fact that impacted stakeholders have been working diligently to create opportunities for improvement in some segments of those needing enhanced financial access.

After bringing together regulators, law enforcement, financial sector representatives and those harmed by limited access in the non-profit community, ACAMS and the World Bank published a report on that dialogue and continue with several "workstreams" that I believe, when completed, will improve this environment.

Upon release of the report, we (the stakeholders) agreed to these recommendations:

Regulatory and Policy landscape

- Develop positive incentives ("carrots") for financial institutions to keep banking humanitarian organizations;
- Repackage regulatory information for NPOs to provide them with clear guidance on financial institution expectations;
- Enhance NPO specific language within existing examiners manual or other regulatory tools to better articulate nuances of risk for NPOs;
- Multi-stakeholder developed training/communication training for examiners;
- Risk-sharing arrangement between financial institutions and governmental organizations, especially where an NPO is executing a government program. (E.g. partnering with financial institutions to disburse humanitarian aid funds, alternative corridors);
- Engage with authorities and correspondent banks beyond the US.

Since then, in one of the workstreams, we have submitted recommended language to the FFIEC on coverage of NPO's in the next edition of the BSA/AML Examination Manual (attached to this statement). We are also currently working with financial institutions and NPO's on creating training for both sides on how to successfully handle account relationships and to develop a document that would outline the information banks need to process NPO accounts.[v]

All these efforts point to the strong support of the NPO and banking communities to address the confusion on compliance that today harms so many that are **not** in the risk categories that examiners indicate or that is implied by their actions.

Conclusion

As you can see, the challenges with balancing risk and business decisions on certain customers and classes of customers in this environment of increased financial crime is both complicated and in dire need of regulatory clarity. Congress can have a positive impact on this situation by requiring a detailed study with ALL affected stakeholders (law enforcement, NPO's, regulators and the financial sector), taking appropriate steps to implement or encourage the recommendations listed above and to call on the regulators to enforce consistency in AML oversight.

With this hearing on this important issue, we are at a turning point. If nothing changes, those in the most need for funds and resources will continue to suffer. Fortunately, the work of the World Bank and ACAMS is a useful model for how to address financial access and does give us hope that there can be success.

This subcommittee deserves credit for identifying the need to exam the collateral damage caused by AML confusion and we urge continued oversight on this important problem.

Thank you for the opportunity to present the views of those working toward a solution and I am happy to offer additional information as you proceed.

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[i] http://documents.worldbank.org/curated/en/538271487141265874/pdf/112804-WP-SupportingFinancialAccessforHumanitarianOrganizationsandCharities-PUBLIC-ABSTRACT-SENT.pdf
Among many themes and points made throughout the dialogue the key point was "All participants agreed that it is vital that humanitarian organizations and charities (hereafter: NPOs) maintain timely access to financial services in order to provide much needed humanitarian services, particularly in crisis situations."

[ii] https://www.fincen.gov/resources/statutes-regulations/guidance/interagency-interpretive-guidance-providing-banking

[iii] **https://www.treasury.gov/press-center/press-releases/Documents/Foreign%20Correspondent%20Banking%20Fact%20Sheet.pdf,**

[iv] http://www.bankingexchange.com/blogs-3/aml-fraud/item/6448-will-it-go-round-in-circle
Another survey on de-risking and correspondent banking by the IFC is also worth noting.
https://www.ifc.org/wps/wcm/connect/3d215edb-55da-4097-982c-e90409d6621a/IFC+2017+Survey+on+Correspondent+Banking+in+EMs+final.pdf?MOD=AJPERES

[v] There is also an International Stakeholder Dialogue occurring on 2/15 in the Netherlands that is building on other projects and is "is an initiative bringing together public and private sector stakeholders – banks, humanitarian organizations, government policymakers, regulators, and international organizations - to examine what each can do to reverse this phenomenon. The objective is to identify causes, and, more importantly,

share experiences, actions and strategies to ensure that access to financial services is safeguarded for NPOs. Multi-stakeholder dialogues addressing financial access challenges have been underway in the United Kingdom, the Netherlands and the United States in the past year to discuss potential solutions. This event seeks to amplify these efforts, foster greater understanding and collaborative relationships between stakeholders, and, hopefully, ensure that work toward concrete solutions continues." We would offer to submit the outcomes to this subcommittee upon publication.

National Pawnbrokers Association

February 15, 2018

The Honorable Jeb Hensarling
Chair, Financial Services Committee
U.S. House of Representatives
2129 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Blaine Luetkemeyer
Chair, Subcommittee on Financial Institutions and Consumer Credit
Financial Services Committee
U.S. House of Representatives
2129 Rayburn House Office Building
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Re: Hearing – "Examining De-risking and its Effect on Access to Financial Services"

Dear Chairmen Hensarling and Luetkemeyer:

The National Pawnbrokers Association ("NPA") respectfully requests that you accept this statement for the record of the Examining De-risking and its Effect on Access to Financial Services hearing to be held on February 15, 2018. The NPA, the only nationwide pawn industry trade association, represents approximately 1500 independently operated pawn stores across the nation. Pawnbrokers are licensed and supervised by the same state regulators that charter banks and credit unions and pawn transactions are subject to 15 federal laws and regulations, including the same federal consumer protection laws and regulations that apply to commercial banks and credit unions. A great many of our members own one or two store family businesses that qualify as "small businesses" under applicable Small Business Administration definitions. Our members proudly serve the communities in which they, their employees and customers work and live by providing safety-net credit.

The NPA appreciates the focus of today's hearing on de-risking and its effects on consumers' access to financial services. We will address two types of concerns we have with de-risking – one that relates to our members' relationships with banks and the other to our members' ability to serve average, hard-working Americans who need access to well-regulated providers of financial services, including state-licensed non-depository providers such as pawnbrokers.

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I. <u>De-risking of Main Street Businesses that Offer Financial Services to Local Consumers</u>

In 2005 we started receiving reports from pawnbrokers that they were losing their deposit accounts and other services from major national banks. Most of these small business owners were given no reason by bank personnel for the closing of their accounts. At that time, the NPA communicated with federal bank regulators about these losses of long-time banking relationships. We ultimately realized that some of the banks discontinuing pawnbrokers were engaged in mergers or acquisitions and, apparently, in order to improve their chances of regulatory approval they were terminating pawnbroker accounts regardless of the customer's actual record.

For a number of years following, there were few terminations of pawnbrokers by major national banks. But in 2014, a surge of pawnbroker bank account closures occurred. Many of these banking relationships had been in place for years and, the banks gave members no specific reasons for being terminated. However, the NPA determined that some banks were terminating pawnbrokers because of a misguided understanding that pawnbrokers were included on the Federal Deposit Insurance Corporation's ("FDIC") list of merchant businesses that engage in "high-risk activities" covered in Financial Institution Letter ("FIL") No. FIL-43-2013 (September 27, 2013). This FIL entitled "FDIC Supervisory Approach to Payment Processing Relationships with Merchant Customers That Engage in Higher-Risk Activities" focused on banks' facilitation of "payment processing services" directly or through third-party providers. It should not have prompted commercial banks to terminate checking or savings accounts, payroll accounts, or lines of credit to Main Street businesses, but that is precisely what happened.

During this same period of time, investigations colloquially referred to as "Operation Choke Point" were taking place. This initiative was announced in March 2013 by the Department of Justice and other federal agencies.

The FDIC ultimately issued a revised FIL-43-2013 in July 2014, after we contacted it and other federal bank regulatory agencies with our concerns and documentation. Although we were pleased to see the revision, much damage had already been caused to Main Street businesses' relationships with major national banks and some larger state-chartered banks the FDIC insured. From July 2014 and following additional communications from the FDIC and the Office of the Comptroller of the Currency to banks they respectively supervise, we saw a decline in the number of terminations.

Regrettably, the cycle of discontinuance continues.

Since last summer, banks once again terminated relationships with pawnbrokers. Some of the account closures are similar to those we have seen in the past – a loss of basic deposit accounts and loan availability. Additionally, for the first time, some pawnbrokers are losing their business credit card relationships. The renewed instances of checking, savings, loans, and the new credit card account terminations are of great concern. Like the past, our members were not given much time to apply for new business credit cards and received little or no explanation of why they were being terminated.

We occasionally hear speculation of the reasons for banks' decisions to de-risk industries such as ours. The most common – but not helpful – reason is that having pawnbroker customers "does not fit current strategic priorities" or words to that effect. Last summer, pawnbrokers in Oregon were told that a major regional bank was terminating their accounts because the bank's compliance department lacked the capacity to determine whether the pawnbrokers were complying with Oregon's pawn laws. We submit that this is the responsibility of the federal, state, and local agencies that enforce the laws that apply to pawn transactions – not of the banks with which Oregon pawnbrokers do business. A pawnbroker in South Carolina lost a long-term banking relationship that covered checking, lines of credit, and CRE loans, and experienced much difficulty in finding replacement services. Some pawnbrokers in Ohio and Indiana were told they could keep their accounts if they took the word "pawn" out of their corporate names, a suggestion that would have entailed additional work and extra expense for pawnbrokers to refile their corporate registrations with states.

Banks have told our members that they are discontinuing categories of businesses because of banks' questions about the way regulators view pawnbrokers' compliance with anti-money-laundering and beneficial ownership regulations promulgated by the Treasury Department's Financial Crimes Enforcement Network ("FinCEN"), the latter of which is not yet in effect. Pawnbrokers' primary reporting responsibilities are to file Cash Transaction Reports on Internal Revenue Service Form 8300, not on FinCEN's Form 104.

Additionally, some pawnbrokers who recently lost credit card accounts were told that bank compliance people treat pawnbrokers as "money service businesses" and so their accounts could not be maintained because they did not generate sufficient profits to cover the compliance costs for banks whose customers are money services businesses. Pawnbrokers are not "money services businesses" under FinCEN's definition or under state laws. Thus, the reason given is either untrue or it reflects serious misunderstanding by banks or their examiners of pawn loan businesses – either of which is troubling.

Pawn transactions are not risky from the perspectives of anti-money-laundering or counter-terrorism initiatives because pawn transactions are covered by strict customer identification requirements and also due to customary transaction reporting to local law enforcement authorities pursuant to state laws or local ordinances, as well as Form 8300 reporting to the Internal Revenue Service.

II. Loss of Banking Relationships Threatens the Ability of Main Street Businesses to Offer Services to Consumers

Pawnbrokers provide safety-net credit to approximately 30 million Americans annually. Pawn loans range in size, but many are for amounts under $100 with the average loan being around $150. State laws in most all cases regulate the duration of pawn loans, the terms on which pawnbrokers can offer them, and how and where pawnbrokers must maintain possession of the consumer's collateral throughout the duration of the loan.

Pawnbrokers conduct a large percentage of their pawn transactions in cash. Like all businesses that handle cash, they need basic deposit services in their local communities – as well as other banking services that Main Street small businesses require.

Pawnbrokers do not take repayment for pawn loans on credit cards or checks. Some accept payments using debit cards, but like cash this requires having deposit accounts with banks. Pawnbrokers also sell new and used merchandise to the general public, as well as to their pawn customers. Used merchandise offers good values and includes musical instruments, tools, sports equipment, jewelry and other items that local consumers may seek.

III. Conclusion

We have shared our concerns about de-risking generally and specific "outbreaks" of terminations to your staffs, to others on the Financial Services Committee on many occasions, and to your counterparts in the Senate. We have communicated with federal bank regulators on repeated occasions – and our members are still being terminated by their banks without much notice or explanation.

We hope this hearing will assist the Financial Services Committee in getting to the bottom of why federally chartered or insured banks are discontinuing banking services to pawnbrokers. We are optimistic that your work can help us continue to enjoy the banking services our members have or may need to continue to provide services to average Americans from our Main Street locations.

Thank you for the opportunity to submit this statement for the record.

Sincerely,

Tim Collier

Tim Collier
President

cc: The Honorable Maxine Waters
Ranking Member, U.S. House Committee on Financial Services
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Washington, DC 20024

The Honorable Wm. Lacy Clay
Ranking Member, Subcommittee on Financial Institutions and Consumer Credit
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