

S. HRG. 119-364

INVESTIGATING THE REAL IMPACTS OF DEBANKING IN AMERICA

HEARING BEFORE THE COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS UNITED STATES SENATE ONE HUNDRED NINETEENTH CONGRESS FIRST SESSION ON EXAMINING ACCESS TO FINANCIAL SERVICES --- FEBRUARY 5, 2025 ---

Printed for the use of the Committee on Banking, Housing, and Urban Affairs



Available at: <https://www.govinfo.gov/>

U.S. GOVERNMENT PUBLISHING OFFICE

63-425 PDF

WASHINGTON : 2026

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WEDNESDAY, FEBRUARY 5, 2025

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 10 a.m., via Webex and in room 538, Dirksen Senate Office Building, Hon. Tim Scott, Chairman of the Committee, presiding.

Present: Senators Scott, Rounds, Tillis, Kennedy, Hagerty, Lummis, Britt, Ricketts, Banks, Cramer, Moreno, McCormick, Warren, Reed, Warner, Van Hollen, Cortez Masto, Smith, Warnock, Kim, Gallego, Blunt Rochester, and Alsobrooks.

OPENING STATEMENT OF CHAIRMAN TIM SCOTT

Chairman SCOTT. I'd like to invite the witnesses to come sit at the table. Thank you.

Good morning, and thank you all for being with us today.

We're here to address an issue that strikes at the core of what it means to live in a free and fair society: access to financial services.

Every federally legal business and law-abiding citizen deserves to be treated equally, regardless of political views or ideological leanings.

This is an issue that is deeply personal to me.

When my grandfather was growing up in the Jim Crow South, banks did business with people they felt looked the right way—based on the color of their skin.

One's ability to get a loan to finance their home or start a business was based primarily on the color of their skin. And in the 1940s, my mother experienced the same redlining that has been persistent, pervasive, and unfortunate for decades.

Thankfully, our Nation continues to evolve in the right direction.

And in the 1990s, when I was starting my small business, I went to a bank and looked for an opportunity to get a loan. I'll say, without any question, at that time as a kid growing up in poverty in a single parent household, my best asset—Mr. Ricketts—was a 1990, 10-year-old car with 253,000 miles. One would not consider that an asset, perhaps a liability. But it was my only means of transportation. And I will tell you, without a doubt, for me, it was an asset.

The bank, however, completely helped me understand it was not. However, in those days someone could get a character loan, because of your time in a community, because of your relationships

with local and community banks. Because of that, not only was my financial life changed, not only did my American Dream become a reality, but more importantly, my mother's American Dream became a reality. We saw the strengthening of confidence in our banking system because things had changed in the right direction. With that loan, everything seemed to get better.

Had I not gotten that line of credit, I may not be here chairing this Committee today. You see, my story is so consistent with so many other stories that really reflects positively on the American Dream.

In this country, access to credit is one of the cornerstones of building your American Dream.

Owning a home and starting a business are challenging journeys filled with complexities, and achieving success is never a guarantee, nor should it be. That's why access to financial services is so important.

The United States is home to a vast competitive network of banks and payment providers, creating one of the most robust, diverse financial services ecosystems on the planet.

It is this incredible landscape that offers countless opportunities for homeowners and entrepreneurs to build a healthy foundation and make strides toward achieving their version of the American Dream.

However, it is incredibly alarming and disheartening to hear stories about financial institutions cutting off services to digital asset firms, political figures, and conservative-aligned businesses and individuals.

Under the Biden administration, we've seen the rise of what many are calling Operation Choke Point 2.0, where Federal regulators exploited their power, pressuring banks to cutoff services to individuals and businesses with conservative dispositions, or folks aligned with industries they just didn't like—like the color of one's skin in my family's history.

I wholeheartedly believe that debanking someone over their political ideology is un-American and goes against the core values that our Nation was founded upon.

Today we'll have an opportunity to hear from Anchorage Digital's CEO, whose OCC-chartered bank was debanked, Old Glory Bank's CEO, who started a bank to serve those who had been debanked, and from a legal expert with extensive experience navigating these regulatory abuses, and from a policy expert at the Brookings Institution.

This hearing will also examine how practices similar to the original Operation Choke Point have persisted, despite assurances that they would end.

We'll investigate the role both regulators and financial institutions have played in these harmful practices which hurt not just businesses but also consumers and our entire economy.

This issue should concern every single American, regardless of political affiliation and that's why I'm committed to a bipartisan solution to stop this form of discrimination.

This hearing is just the beginning.

We are here to shine a bright light on these unacceptable practices and to hold those responsible accountable. The message is

crystal clear: no regulator and no bank is above the principles of fairness and market access.

Speaking of shining a light, I was so glad to see that just a couple of hours ago, the FDIC under President Trump's leadership released a fresh set of never-before-seen supervisory documents, which further prove that Choke Point 2.0 was real.

I will be going through the documents in greater detail, but rest assured for those in this room and those watching at home, they paint a disgusting and disheartening picture of abuse.

As Acting Chair Hill characterized them, these and other actions sent the message to banks that it would be extraordinarily difficult—if not impossible—to move forward with crypto-related activities.

I commend the new FDIC leadership for its commitment to transparency, but it is a shame that it took an election—an election—for the agency to be following the laws of our country.

Thank you. I look forward to hearing from our witnesses and working with colleagues on both sides of the aisle to stop debanking and protect every American's right to participate fully in the economy.

Ranking Member Warren.

OPENING STATEMENT OF RANKING MEMBER ELIZABETH WARREN

Senator WARREN. Thank you, Mr. Chairman. And thank you for holding today's hearing on debanking. It's a real problem, and it's something that I hope we can work on together.

People need access to a banking account in order to thrive in today's economy. And the same goes for businesses. Without a banking account, you just really can't get along.

"Debanking" happens when a bank shuts down a customer's bank account because they think that account poses a financial, a legal, or a reputational risk to the bank. Once the bank shuts someone out, the bank may share that information with companies that get paid to maintain a Do Not Bank list—with the result that the customer is blacklisted everywhere.

For me, this is straightforward. It doesn't matter who you voted for, what you believe in, or the origin of your last name—people shouldn't be arbitrarily denied access to their banks, locked out of their accounts, or stripped of their banking privileges.

To help identify what's going on, my staff reviewed the Consumer Financial Protection Bureau's complaint database, looking for cases where consumers reported that they were unable to open accounts or that their accounts were wrongly closed—classic debanking. Mr. Chairman, we put together a supplemental memo on this data, and I'd like to make that part of the Committee record.

Chairman SCOTT. Without objection.

Senator WARREN. My staff identified 11,955 complaints—and that is only the people who took the time to file complaints and only during the past 3 years.

All of these complaints reported common themes: no warning, no explanation, and no chance to dispute or appeal.

These people described how one day, all of a sudden, they lost their place in the banking system.

We know from the consumer complaint hotline that millions of Americans—of all political stripes—have had the same experience.

Tens of millions of customers have been blacklisted by the banking industry because they overdrafted their account a few times.

Formerly incarcerated Americans have been debanked because of their criminal history.

Some people have even been debanked merely for having the same name as someone who has a criminal history.

Muslim Americans and Armenian Americans have faced debanking on account of their last names.

Nonprofits and charities operating internationally have been debanked through no fault of their own.

Lawful cannabis businesses have been unable to open accounts, and employees of those businesses have been debanked.

This shouldn't be happening. And we need to figure out why, and who is responsible. My staff did some more work here as well. They found that just four big banks—Bank of America, JPMorgan, Wells Fargo, and Citibank—accounted for half of all the complaints filed at the CFPB.

Donald Trump was onto a real problem when he criticized Bank of America for its debanking practices.

Banks may be taking shortcuts when it comes to assessing risks. Rather than investing the time and the resources to identify true criminal risks and shutting down those accounts, big banks are relying on black box algorithms and middlemen companies and shutting down accounts without doing careful due diligence.

We can prevent these abuses. I know that the Consumer Financial Protection Bureau is a favorite whipping boy of the Republicans on this Committee, but the CFPB is the main agency in our Government that is actively working to stop unfair debanking.

Let me say that again. The CFPB is the one agency that is actively working to stop unfair debanking. Right now, the agency has five different rules either in place or in progress that would help prevent debanking by addressing some of the root causes, from overdraft fee practices to religious discrimination. And the CFPB is working to hold banks accountable when they close law-abiding citizens and businesses' accounts for no good reason.

I sent a letter to President Trump today that walks through the CFPB's work. And I'd like to make that part of the Committee record.

Chairman SCOTT. Without objection.

Senator WARREN. I said that the CFPB is the one agency fighting back against debanking, but that may be at risk. Earlier this week, Treasury Secretary and Acting CFPB Director Scott Bessent halted all CFPB rulemaking, enforcement investigations, and litigation against financial institutions that are breaking the law—including the banks that are wrongfully debanking their customers. The freeze Secretary Bessent put on the CFPB means more Americans across this country will be unfairly debanked, and they will be the one agency that is working to help them.

There is additional work to be done by the Treasury Department, the Federal Reserve, the FDIC, and other regulators to issue clear

Anti-Money Laundering rules and guidance for banks to follow, which would reduce the incentive to use debanking as a form of risk management.

Mr. Chairman, I'll say again: I appreciate your holding this hearing. Debanking is a real problem. I'm eager to work with you and President Trump to support the CFPB's efforts to make sure that everyone is treated fairly and that we put an end to this debanking.

Chairman SCOTT. Thank you, ma'am.

I now recognize our first witness, Mr. Nathan McCauley, CEO and Cofounder of Anchorage Digital. You may begin your testimony. Thank you for being here.

**OPENING STATEMENT OF NATHAN MCCAULEY, COFOUNDER
AND CEO, ANCHORAGE DIGITAL**

Mr. MCCAULEY. Thank you, Chairman, Ranking Member, and distinguished Members of this Committee for having me as a witness today on the important issue of debanking.

My name is Nathan McCauley. I'm the CEO and Cofounder of Anchorage Digital, an institutional crypto platform that is home to the Nation's only federally chartered crypto bank. I grew up in Economy, Indiana, a population of about 150. Though I came from what many call flyover country, and one of my first jobs was grilling burgers at McDonalds—I had big dreams. I wanted to be a computer engineer and entrepreneur. Early in my career, I worked on cryptography as a security engineer. In 2017, after being asked for years by friends to help them manage the private keys to their crypto wallets, my cofounder and I decided to start a company to offer a safe way for institutions to custody their crypto at scale.

That company is Anchorage Digital, with about 400 employees around the globe, including 282 employees across 37 different U.S. States and offices in South Dakota, New York, Portugal, and Singapore. While we started out as a State trust company, I believe that our company clients and the industry would benefit from the highest regulatory standards. So we chose to pursue a national bank charter under the OCC that would allow us to offer crypto custody, staking, settlement, and other services to our institutional clients.

We received the charter in January of 2021, the first and still only of its kind. Today, we're privileged to safeguard billions of dollars worth of crypto for institutions ranging from crypto protocols to asset managers to sovereign wealth funds.

I'm here today to talk about something I could not have imagined when I started this company, not in America. That is a story of how we were virtually shut out of the Federal banking system despite being a Federal bank ourselves. Since January of 2021, we held a corporate bank account with a partner bank which held client fees from custody and other services along with general corporate funds for day-to-day expenses like payroll and administrative expenses.

One day in June of 2023, we received an urgent email from the bank saying they need to speak with us that day. On the call, they told us they were closing our account in 30 days because they were not comfortable with our crypto clients and their transactions. They

refused to provide any further explanation or allow us to speak with a risk management team.

Needless to say, I was shocked. We had a positive relationship with our bank for nearly 2½ years. Not once had they raised any issues with our account. In fact, at the time we were told our account would be closed, we were in active talks to expand our relationship and new partnerships.

Separately, following the closure of the banks where we held our capital reserve and fiat subcustody accounts for our clients, we had extreme difficulty finding new bank partners. We spoke to about 40 banks across the country and were rejected by all of them, many telling us they had a blanket policy against serving crypto clients.

So why did this happen? I believe that regulators pressured banks to shut an entire industry out of the Federal banking system. Why do I think this? Two things: a series of crypto regulatory actions spanning from 2021 to 2023 and my own lived experience.

First, in my written testimony, I go into great detail about the long list of anti-crypto regulatory actions that led to mass debanking of our industry. But in my view, the nail in the coffin was the joint statement from the Fed, FDIC, and OCC in January of 2023, warning national banks from serving crypto clients or engaging in crypto activities of their own.

Second, I want to talk about my lived experience. Outside of what happened to our company, I'm an investor in four crypto companies that struggle to obtain and keep their bank accounts. During this time, some of them actually had to shut down. Further, I have at least two employees that have debanked because what they believe is associated with the crypto industry, including one as recently of December of last year.

Finally, I have spoken to dozens of crypto leaders that have been debanked personally or had their crypto companies debanked.

While Anchorage Digital was eventually able to find banks willing to partner with us, the impact of nearly being shut out of the banking system was devastating. It was extremely disruptive to our business and our clients and contributed to the very difficult decision to lay off 70 employees here in the United States, about 20 percent of our staff.

To this day, our clients lack the ability to send wire transfers to third parties, a basic banking service we previously had access to. Furthermore, it abruptly ended opportunities to provide subcustody to other national banks who are actively exploring partnerships with us.

The irony of having trouble accessing the Federal banking system despite the fact that we ourselves are a federally chartered bank cannot be overstated. Congress is right to investigate what happened to us and our peers across the industry, to protect and promote fair and open access to banking services for all law-abiding citizens and companies.

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

Chairman SCOTT. Thank you, sir.

Mr. Stephen Gannon, Partner at Davis Wright Tremaine, you are now recognized.

**OPENING STATEMENT OF STEPHEN T. GANNON, PARTNER,
DAVIS WRIGHT TREMAINE LLP**

Mr. GANNON. Good morning, Chairman Scott. I thank you and the other Members of the Committee.

Chairman SCOTT. Hit your button.

Mr. GANNON. Thank you, Mr. Chairman.

Chairman SCOTT. Yes, sir.

Mr. GANNON. And good morning. And I thank you and the other Members of the Committee for the opportunity to address you on the matter of the underlying policies, processes, and norms that have allowed debanking to continue.

I'm a partner at the law firm of Davis Wright Tremaine, and for 20 years prior to that, I was a senior legal executive at several large banks and bank owned broker-dealers.

Debanking has come to my attention, both in my in-house roles and in private practice as a lawyer who represents both banks and digital asset firms. Debanking, of course, is not new. This Committee is familiar with the unfortunate history of Operation Choke Point 1.0 in which former FDIC Chair Bill Isaac described it as one of the most dangerous programs he had experienced in his 45 years of service in the Government and the private sector.

The Committee also has seen examples of debanking, both this morning and on the record. One more may illustrate the challenge posed directly to banks by virtually unbound supervisory discretion. A small bank had been making tax refund anticipation loans.

Those loans were legal then, and they're legal now. The FDIC, however, instructed it to stop that business. The bank refused. And according to a report by the FDIC's OIG, the bank and its tax preparers then became the subject of a special horizontal review staffed by 400 FDIC examiners.

I'll now address the building blocks used by regulators to engage in debanking activity. They depend on broad, vague, and malleable terms, always subject to reinterpretation by supervisors. You could call it strategic ambiguity.

For example, reputation risk does not relate to the financial condition of a bank but rather on how an examiner perceives the reputation of the bank. And because reputation risk can impact any aspect of bank management and bank risk, it is literally everywhere and subject to unlimited discretionary judgment of bank examiners. And in the same vein are terms such as safety and soundness and risk of future harm.

Finally, there's the term management, the M element of the well-known CAMELS rating system. Unfortunately, management has come to mean almost anything the supervisors find to be unacceptable, regardless of whether there is an impact on the financial health of the bank. And a poor management rating can have disastrous consequences for a bank's business going forward.

Compounding the problem, this kind of arbitrary discretion is not subject to meaningful challenge. Supervisory examinations are shrouded in secrecy and are not available for any effective review by the very banks whose information is being analyzed. Bank regulators contend that everything done within the envelope of an examination is confidential supervisory information and that CSI is

the property of the regulator itself, even though that argument rests on weak legal and constitutional grounds.

The digital asset industry has felt this impact with great intensity. For example, in 2021 and 2022, using interpretative letters, each banking agency promulgated an unusual prior restraint requirement called a supervisory nonobjection before any bank could engage in permissible crypto activities. Notably, these letters met the definition of a rule under the Congressional Review Act.

But they were never submitted to this body for review under that law, and no bank has dared to disobey their mandates. This exercise of nearly limitless regulatory discretion suffers from a fundamental problem. It distorts the relationship between a regulatory agency and Congress. Under Article 1, the entirety of an agency's power is delegated to it by Congress. Not some of it, all of it.

If an agency wishes to make a legal business illegal, it must ask Congress for that power. Debanking of legal businesses ignores that fundamental concept and also contravenes this Administration's recent Executive order stating that regulatory agencies are to, quote, protect and promote fair access to banking services. The good news is that there are a series of remedies that can be implemented, some starting even today, as we discuss in our written statement.

But while those remedies look forward, it cannot be stated strongly enough that the challenge remains to provide full and complete remedies for those already harmed by banking. Commentators wrote after Operation Choke Point 1.0 that we have to demand that accountability and those remedies or we risk setting a terrible precedent, that ideology can control our regulatory agenda at the expense of banks and small businesses alike. But despite the best efforts of Congress, the spirit of Operation Choke Point 1.0 did not end in 2017. It simply morphed into Operation Choke Point 2.0.

Mr. Chairman, history teaches us that if this time there is no real accountability and no genuine remedies for the actual damage done, one thing is certain. There will be an Operation Choke Point 3.0. Thank you.

Chairman SCOTT. Thank you, Mr. Gannon.

I will turn to Mr. Mike Ring, President, CEO and Cofounder of Old Glory Bank. You are now recognized. Thank you.

OPENING STATEMENT OF MIKE RING, PRESIDENT, CEO, AND COFOUNDER, OLD GLORY BANK

Mr. RING. Thank you, Chairman Scott, Ranking Member Warren, other Members. Thank you for having me and allowing me to share the story of Old Glory Bank which launched from beautiful Elmore City, Oklahoma, in April of 2023, and became a market solution to debanking. And Chairman Scott, we are a community bank that does do character loans, and we would love to have your business. Nathan, we have a program on being the on-off ramp for crypto, and we would love your business.

[Laughter.]

Mr. GANNON. Do you have one for law firms?

Mr. RING. You bet. I'm honored to speak on behalf of more than 50,000 customers across all 50 States, our 88 passionate employees,

and our pro-America cofounders, including someone here today. I've got radio and TV host Larry Elder with us today, future Governor of California, I hope.

I've got the 27th Governor of Oklahoma and former two-term Member of Congress with us, Mary Fallin-Christensen. I've got former—one of our other cofounders, former copresident of Fox News and the White House Deputy Chief of Staff of Communications for President Trump's first term, Bill Shine, with us. Of course, we have our brilliant and beautiful chief legal officer who's also my wife of 20 years, Anne Marie Ring.

And two of our cofounders who could not be here today are former Secretary of HUD Dr. Carson and America's favorite patriot, country music icon John Rich. And hopefully he's tweeting right now talking about this. I want to also thank Mr. Wade Christensen, who's with us today from the great State of Oklahoma whose family previously owned the bank we purchased to launch Old Glory Bank and who are now co-owners of the bank.

So as we heard today, lots of debanking going on. And there's two types the way I define it. There's the regulatory type of debanking which other folks much smarter than I am will talk about. And there's Operation Choke Point 1.0, 2.0, and there's probably some 2½ in there somewhere.

And then there's participant debanking which is where the big banks debank you. So other folks will talk about the regulatory. But I just want to remind folks it cannot be a coincidence that in April of 2022 both the FDIC put out FIL 16-22 and the SEC put out SAB 121.

There was clearly—those are big organizations. They were clearly working together to choke out not only banks acting as a custodian for other people's customers' crypto but to stop the demand deposit services of a bank. And if a crypto company can't provide that on and off ramp, you choke out the business, and that is what has happened in America.

But the more interesting part of it is the participant debanking. And that is the voluntary effort by the big banks to debank Americans who disagreed with them on the issues we all know, whether it's COVID, the vaccines, or who supported Donald Trump, including his wife who is debanked as we know, and other conservative causes. And I don't know the First Lady, but I can assure you she is not a money laundering risk, and she was debanked.

The founders of Old Glory Bank saw what many of us saw. But instead of sitting around and complaining about it, we all got together and created Old Glory Bank as a market response. We purchased a one-branch bank in beautiful Elmore City, Oklahoma, on November 30th, 2022. And just 5 months later, working hard, we launched the best digital-first banking service in America.

In less than 2 years, we grew from 10 million in deposits to now over 170 million in deposits. We grew from 300 customers in Elmore City to now more than 50,000 customers across all 50 States. We serve over 2,000 small businesses.

We have respectfully better products than the megabanks. But our service is in Durant, Oklahoma, not offshore. Our customers love us and we love our customers.

As part of our market solution, in less than 2 years, we had to do a 360-degree approach. We had to do our own version of cancel-proof PayPal called Old Glory Pay. We had to launch a cancel-proof version of GoFundMe called Old Glory Alliance.

We launched Old Glory Cash-In so our customers can walk into one of 88,000 locations across America and deposit cash. You always talk about the friction point of banking online, how do you deposit cash. We solved that with Old Glory Cash-In.

We are serving Middle America. And the one I'm most proud of is Old Glory Protect. We have a free \$100,000 line of duty death benefit for our protectors, God forbid they're killed in the line of duty.

John Rich and I show up at your house and give you \$100,000 if you bank at Old Glory Bank. And the protectors are a big group: law enforcement, military, firefighters including volunteer firefighters, and importantly, U.S. Border Patrol Agents.

We all know debanking is wrong. But I believe a simple solution is a market solution, not regulatory with all respect. We've got to keep—make it easier for banks to start and run.

And I'll close with this. In the last 2 years, 229 banks closed or were merged. Only 8 were started. We've lost 73 percent of our banks in the last 40 years. It is not sustainable.

We've got to make it easier to start and run banks. Thank you.

Chairman SCOTT. Thank you, sir. Next, we'll hear from Mr. Aaron Klein, Senior Fellow at Brookings Institution. You are now recognized.

OPENING STATEMENT OF AARON KLEIN, SENIOR FELLOW IN ECONOMIC STUDIES, BROOKINGS INSTITUTION

Mr. KLEIN. Thank you, Chairman Scott, Ranking Member Warren, Members of the Committee. Thank you for the opportunity to testify on the pernicious consequences of debanking in America. All of the views I offer here today are my own.

Ten percent of American households are currently unbanked or were unbanked at some point within the last year. Not having a bank account adds significant costs, makes people less healthy, and makes it impossible to fully participate in America's increasingly digital economy. People are debanked because the cost of basic banking is too high.

There are unpredictable fees. Banks don't offer the services they want. There's a lack of trust in banks, concerns about privacy, and problems opening an account due to identification or bad credit histories.

Checking accounts are free for those who always have money, while those living paycheck-to-paycheck pay a myriad of fees that can easily reach over 500 dollars a year, making basic banking unaffordable.

My written testimony illustrates how debanking harms consumers and businesses and enumerates ideas for reform. I want to highlight five proposals to combat debanking. First, require all banks to offer and credit unions to offer BankOn-style accounts. BankOn accounts are affordable, low fee, non-overdraft accounts that are wildly popular among consumers and are considered a best practice by the American Bankers Association. Why should any fed-

erally insured bank or credit union not be required to offer a best practice account?

Two, reduce penalties and surprise fees that debank the financially vulnerable. Most of America's largest banks and many small banks and credit unions voluntarily reform their overdraft practices. According to my estimate, that will return 5 billion dollars a year into the pockets of people living on the financial edge.

But many did not. The CFPB's overdraft regulation recognizes the economic fact that overdraft is credit and treats it accordingly. That rule should be allowed to go forward. However, the rule erred in not—in exempting banks and credit unions under 10 billion dollars which includes many institutions whose overdraft practices ought to raise serious concerns.

I'll mention one, Armed Forces Bank. They generate 92 dollars of overdraft per customer compared to just over one dollar of overdraft per customer from Bank of America. How is that bank or any bank that generates a majority or totality of its profit year after year on overdraft, operating in a safe and sound practice? Regulators need to treat it as such.

Three, we need to improve the design of the financial system to better serve working people. How can Amazon get anything to almost anyone's door faster than it takes two banks to transfer electronic funds? If America instituted real time payments when England did, people would've saved over 100 billion dollars in overdraft fees, check cashing fees, and payday loan fees alone.

Seventy percent of the people who go to a check casher have a bank account. Why are they at the check casher? Because the check casher gives them cash immediately. The bank doesn't.

The Federal Reserve has been required by law to lower the amount of time a bank can sit on your check and they have ignored the law for 37 years, even when the past CFPB director called for modernization. Legislation introduced by Senator Warren and Senator Van Hollen, the Payments Modernization Act, would hardwire this into law and fix this problem and would be the most effective thing I can think to combat debanking by improving the quality of services banks offer to people living on the edge.

Four, reform AML. When Congress established the \$10,000 CTR limit in 1972, you could walk in and buy a fully loaded, brand new Cadillac in cash and not trigger that report. Today, Mr. Scott, I don't know if your used car would trigger a CTR.

Chairman SCOTT. I'm not sure it would trigger anything, but thank you very much.

[Laughter.]

Mr. KLEIN. If you adjust that \$10,000 limit for inflation, you'd be over \$75,000 dollars today. Why is Congress—why are—what's the Government doing looking at things at such a different level?

In addition, banks file 2.5 million Suspicious Activity Reports today, an increase of 10 times more than they did 20 years ago. Banks spend a lot of money making SARs and they pass that along to consumers and small businesses. And the result in economic terms are low profit customers get pushed out, high profit customers keep their bank account.

Look at Japanese baseball star Shohei Ohtani. He got to keep his bank account despite somebody fraudulently impersonating him

and wiring 17 million dollars into the account of a bookie. That person kept their account, but plenty of low income people as Senator Warren pointed out, 11,955 people lost their account.

It has to do with the economics here. States need to—there's a cannabis banking issue that deals with SARs as well where I hope the Safe Banking Act which was a good step forward but needs to go further.

Last, five, we need to reform these Do Not Bank list systems like CheX where you get kicked out for being just poor, not for fraud. The BankOn program has helped solve that, and that ought to be done across the board.

I thank you all for holding this important hearing, and I look forward to answering your questions.

Chairman SCOTT. Thank you, Mr. Klein. I'll start the questions, and then we'll have the Ranking Member. We'll go back and forth.

Mr. Ring, the Biden administration took several actions that likely contributed to the debanking of crypto firms. In January 2023, the prudential regulators issued a joint statement urging banks to limit their exposure to cryptocurrency activities and associated risks. The FDIC IG disclosed that the existence of pause letters sent to financial firms between March of '22 and May of '23 asking them to pause planned or ongoing crypto-related activities and provide additional information.

As I said earlier, we received validation today with Chair Hill's actions. The FCC issued Staff Accounting Bulletin 121 which effectively preventing banks from holding digital assets in custody. These actions collectively help create an environment where banks became reluctant to work with crypto firms fearing regulatory backlash.

You've worked to create a banking environment focused on being a home for so many Americans and businesses who have been debanked. I'm hoping you can share what your interactions have been like with our Federal banking regulators.

Mr. RING. Well, I'd like to say that I'm standing between the regulators in America, and I'm the only bank executive who is not intimidated by the regulators. And I definitely fly too close to the sun, but you've got to, to protect America.

And what was really disappointing about FIL 16-22 that you referenced, Chairman Scott, is that on its face if you read it, it wasn't entirely unreasonable about safety and soundness. Unfortunately, the examiners took that to stop banks from even being in the on and off ramp. So if you're a legal crypto business, it's one thing that there could be some challenges holding customers tokens and keys.

But to think you could not be that legal business' bank account was the real problem with FIL 16-22. And thank goodness it's been exposed. SAB 121, I don't know how that passed the laugh test.

To think that if you're holding a customer's crypto that you've got to book that as a liability and then put capital against it is ridiculous. And thankfully, that's been rescinded.

Chairman SCOTT. Thank you for that answer. Mr. McCauley, Anchorage Digital has the honor of being the only OCC-related federally chartered crypto bank in the United States. This stamp of ap-

proval from the OCC should provide your company with legitimacy and access to traditional banking services.

However, as you detailed in your testimony, Anchorage has still struggled to access the traditional banking system despite you're a bank. This is unacceptable. Could you elaborate on Anchorage's debanking experience and the impact on your business operations, including making payroll for your employees and going beyond the 20 percent layoffs, devastating for any business?

Our employees are very much like our family when you're in business. And I'd love for you to share in addition other issues and challenges that you face because they don't want you to be a bank.

Mr. McCAULEY. Senator Scott, thank you for that question. I think the first effect that was so pernicious about the debanking that has gone on for the last several years has been the betrayal of the bargain that is the American experiment. We were taught growing up that we would have a fair legal system and a fair justice system that we could face our accusers.

And so I would say the most devastating part of this to the crypto industry has been that betrayal of trust. And I think that as we look forward to the new Administration coming in and thinking about the path forward here, that is probably the most important thing to reestablish is this industry's trust in the reliability of the American banking system and the legal and justice system here.

Chairman SCOTT. I would suggest it goes to the entire Government. Anytime you see the weaponization of Government against you or your industry, it makes you not just cautious but leery of the entire system itself. I wonder if you would—because your day-to-day interaction with so many crypto firms, how widespread is debanking in the crypto space?

Mr. McCAULEY. So an anecdote I can share is I was speaking at a meet up of about 100 crypto founders in San Francisco. And just as a show of hands, I said, hey, who here has had trouble getting a bank account or has had debanking issues? All the hands in the room went up.

And so to say this is pervasive is an understatement. It's been across the entire industry. Everybody has dealt with this. In fact, it became so commonplace to us that it became background noise. And we started to think about it. It was just assumed that if you're a crypto company, you would have trouble getting bank services.

Chairman SCOTT. Unbelievable. Ranking Member Warren.

Senator WARREN. Thank you, Mr. Chairman. So debanking is a real problem, and we need to work across the aisle to solve it. I've got a stack of stories sent in by consumers and organizations that were debanked. I'd like to submit them for the record.

Chairman SCOTT. Without objection.

Senator WARREN. Thank you, Mr. Chairman. These stories are from Muslim Americans, from cannabis businesses, from formerly incarcerated individuals, all of whom lost their bank accounts for no apparent reason. So I want to talk about what kind of recourse consumers have or don't have when they are debanked. Mr. McCauley, you testified that your company lost its bank account. When you tried to open a new one, dozens of banks, including some

of the biggest banks in the country, turned you down. Which of the big banks refused to offer you an account?

Mr. MCCAULEY. Senator, I don't think it's productive to name individual banks. I believe the banks were the victims here.

Senator WARREN. OK. I just want to get it into the record because we have recourse. Did you get an opportunity to appeal the decision with any of those banks?

Mr. MCCAULEY. No, Senator. There was no room for discussion with the banks.

Senator WARREN. So, no appeals at all. That's unfortunate. The CFPB has accepted 11,955 complaints from consumers and organizations that were unable to open accounts or their accounts were wrongly closed just in the last 3 years. Do you agree that it's useful to have a database for this information so that we can identify trends, both the types of individuals or businesses that are targeted and also the banks where this is happening?

Mr. MCCAULEY. Senator, more data and more transparency will help.

Senator WARREN. OK, good. I don't think for a second that you should be locked out of our banking system. In many cases, it is wrong for banks to close accounts and threaten your ability to make payroll or pay rent on time without even providing an explanation so long as you're following the law. So Mr. McCauley, do you agree that people who are illegitimately debanked deserve some rules to protect them and an appeals process if they lose their accounts?

Mr. MCCAULEY. Yes, Senator. Something should be done to make sure that regulators do not do this again.

Senator WARREN. OK. And if banks are adopting policies that routinely debank people based on their beliefs or other illegitimate reasons, that's wrong. It needs to be stopped. Mr. McCauley, should consumers be protected from being debanked based on their political or religious beliefs?

Mr. MCCAULEY. Yes, Senator. Many individuals within the crypto industry were debanked, and I wish agencies had helped them.

Senator WARREN. And I presume you would carry that over to people who are debanked for other reasons as well—

Mr. MCCAULEY. Of course.

Senator WARREN. —because of their beliefs. The CFPB has been on the front lines of combating debanking for years now. In 2022, they added debanking to the list of illegal practices that bank examiners should be on the lookout for. Last year, they wrote rules to crack down on debanking by payment apps and the third party data aggregators that the banks use to decide who to kick out of the financial system.

Just last month, they proposed a rule to stop companies like PayPal that it considered fining users for certain types of speech on their platform. Mr. Klein, how would the CFPB's rules help put a stop to unfair debanking?

Mr. KLEIN. Well, Senator, the CFPB is really on the forefront of looking out for consumers, making sure consumers have access to high quality and fair banking practices, as opposed to the bank regulators who are too often focused on the bank.

I can think of five rules that the Bureau has: their contract rule; their UDAP or Unfair Discriminatory Practices Rule; their larger participant rule which would give them authority over places like Venmo and PayPal, which you just described; their data broker rule which includes credit reporting agencies like this CheX system that maintain a de facto do not bank list. Where, again, there's no economics to require those things to be accurate. It's simply a limited appeal process.

And their overdraft rule, because when you ask people who've lost their bank account or are out of the banking system, "Why don't you have a bank account?" the number one reason is it's too expensive. And there are overdraft fees, which some estimates were up to \$30 billion a year or more, are part of the larger reason people leave.

So, those five rules the Bureau put out would all combat debanking in various ways.

Senator WARREN. Thank you.

The CFPB is ready for this fight. And every day that the CFPB is locked out of doing its job, people are getting debanked.

If the President is serious about stopping debanking, then he needs a strong CFPB as his partner to get this done.

Thank you, Mr. Chairman.

Chairman SCOTT. Senator Rounds.

Senator ROUNDS. Thank you, Mr. Chairman.

Well, I think, as many of you can see in this room, the different directions that we're talking about here in terms of the direction that we need to go. Some of us are interested in having the regulatory oversight actually be identified as the problem here versus suggesting that the big, bad banks are suddenly doing this all on their own.

Let's walk our way through this.

Mr. McCauley, it's good to see you again. I'm glad that you decided that South Dakota was the right home base for you when you started the State-chartered trust facilities that you've got. You shared with us the challenge that you had in getting bank.

First of all, you are the first and only federally chartered crypto bank; correct?

Mr. MCCAULEY. Yes. That's correct.

Senator ROUNDS. And Anchorage Digital is both a qualified custodian and has a conditional OCC bank charter.

What's the nature of your accounts with the other banks? Checking accounts?

Mr. MCCAULEY. Basic checking accounts and holding our capital reserves. And then, further, we, as a condition for charter, hold cash for our clients at partner banks.

Senator ROUNDS. So, any of that illegal?

Mr. MCCAULEY. Absolutely not.

Senator ROUNDS. So, you ever overdraft?

Mr. MCCAULEY. No.

Senator ROUNDS. So, in other words it's not a reason, it's not a case of a business reason why anybody would not do business with you, other than the fact that you were a crypto gen—or you would hold crypto in trust for other people, and that was a no-no?

Mr. MCCAULEY. That's right.

And to put a very, a finer point on it, the bank that debanked us was actively trying to work with us more.

Senator ROUNDS. But for some reason there appears to be a point at which they said we can't do this with you anymore. Was it because they didn't want to bank with you?

The answer to that is no, that wasn't the case. What was the case?

Mr. McCAULEY. No, not the case.

Senator ROUNDS. What was it?

Mr. McCAULEY. They wanted to bank with us. And many of the other banks that we reached out to after that bank account was closed also wanted to work with us. This was consistent across the board. The banks did want to work with us, were not discriminating against us, but they were worried about regulatory risks.

Senator ROUNDS. So, you weren't doing an illegal activity like cannabis, which is federally illegal to do, and you weren't overdrafting, you were simply part of a legal industry that banks were told by regulators would be a problem for the bank. Is that correct?

Mr. McCAULEY. That's right. I'm a, a bit of a square. I like rules. I like following rules. And so, we've always followed all the rules and regulations.

Senator ROUNDS. Mr. Gannon.

Thank you, sir.

Mr. Gannon, you've represented financial institutions. Are you finding that these banks simply don't want to do business with people or is it a matter of for people that will follow the law, that aren't violating the law, and are not business risks of simply overdrafting their accounts. These banks want to look for business but, because of a regulatory environment that they have been in, they have been forced to decide whether they want to do business with certain types of industries, whether they were gun manufacturers, people that sold guns, people that did the terrible thing of being in the business of crypto activity, and so forth, were now suddenly being identified because of the type of business that they had, which was a legal business, by regulators who were coming down hard on them.

What can a regulator do to a bank that doesn't want to comply with their demand, whether it be written or implied?

Mr. GANNON. Senator, the regulators can do quite a bit. The banks are not making this up. They like to have customers, like all business like to have customers. Regulators have a lot of tools subject almost to their complete discretion.

Senator ROUNDS. Supervisory in nature?

Mr. GANNON. Supervisory tools.

Senator ROUNDS. The auditors walk in and say, Guess what? You've got a problem. A CAMEL rating might change; correct?

Mr. GANNON. Correct. Like——

Senator ROUNDS. What happens if a CAMEL rating changes for a bank? Let's say it goes from a two to a three, what happens? Do they get bonded?

Mr. GANNON. They don't. That's a very, very bad result, Senator.

What happens is you're pretty much locked out of any ability to expand. Your what you pay for your FDIC insurance goes up. And

there are a lot of other strictures on what you can do as you go forward and attempt to grow your business.

So, that is, that really is the big hammer that the regulators have. And management rating can be almost everything. One of the—Anything.

One of the things that's remarkable is if you look at the Fed's supervisory report from November of 2024, you will find out that they say two-thirds of the large banks in the United States are not well managed.

Those same banks—and we have a chart on this in our written statement—those same banks have record levels of capital and liquidity. And I can tell you, Senator, they also invest enormous amounts in technology, in community reinvestment, et cetera, perhaps higher than any time in history. Yet, somehow two-thirds of them are not well managed.

Senator ROUNDS. Thank you.

Mr. GANNON. That doesn't make a lot of sense.

Senator ROUNDS. Thank you.

Mr. Chairman, I just really appreciate you taking the time to have this hearing. And I think the focus of what's happening to banks who want to do business with legitimate businesses, and the struggle they've had with a supervisory approach for the last couple of years which has put pressure on them for what they consider to be inappropriate types of legal businesses, this has got to stop.

Thank you, Mr. Chairman.

Chairman SCOTT. Thank you, Mr. Rounds. And thank you for the questions. They were illuminating. Senator Reed.

Senator REED. Thank you very much, Mr. Chairman. And thank you, all, gentlemen, for your testimony.

One of the factors involved in this discussion is reputational risk because that's often the justification for the actions and rules of the Federal banking regulators. Last year we had a very positive discussion about the Safe Banking Act. And I've worked with my colleagues to come up with a compromise that would still allow reputational risk to be a factor, but to put up some guardrails with regard to its application.

Mr. Klein, can you elaborate on the importance of maintaining reputational risk as a factor in evaluation, and also the guardrails that might be in place?

Mr. KLEIN. Yes, Senator.

I think the compromise that was worked out in the Safe Banking Act on reputational risk effectively addressed that problem. Look, at the end of the day all banks are a reputation-based business. Trust is the cornerstone of all banks.

Consumers trust that the banks have their money. And when a bank loses trust, it has the possibility to have a run on it.

So, the need to consider reputational risk is real and it is important. It is possible that it is abused, and you need to have guardrails on it. But it is absolutely a certain and important part of bank regulation and supervision.

Senator REED. Thank you.

Mr. Ring, I know you understand this very well because in your offering circle or back in 2024 you've consistently pointed out the dangers of money laundering and terrorist financing. And one of

the aspects of crypto, it's a rather new phenomenon, is that it seems to be a very often-used vehicle for financing of places like North Korea, financing of illicit activities.

Does that put more pressure on you to be more stringent and regulate? And, also, as regulators to be more careful in watching what you do?

Mr. RING. I believe the Bank Secrecy Act, which is what you're talking about for AML—and by the way, for folks not in this room, the Bank Secrecy Act has nothing to do with secrets, and has nothing to do with your customer data. It is strictly about money laundering and those, and those rules that you're talking about.

I am, I am not in favor of the amount of delegation law enforcement has done on banks with respect to these type of issues. They're real issues, but banks should not be on the front lines because what happens is that that, that is the Trojan Horse for banks to do whatever they want. Oh, it's AML, BSA issues. Or the regulators that come in and say you can't do crypto because of that.

If you're checking out at a grocery store, does the cashier and the bagger have to let the police know you bought some chemicals? Of course not. And so, I believe it's the Trojan Horse and should be a small component of the issues you're worried about with crypto.

Senator REED. Well, again, I think the bank regulators are trying to react to a relatively new phenomenon. Crypto is about a decade in—

Mr. RING. Shouldn't take 10 years, respectfully.

Senator REED. No. But it's a situation in which looking from our perspective in national security on the Armed Services Committee, North Korea makes a lot of money through crypto operations. And a lot of these, as you point out in your offering circle is terrorist groups use it, too.

So, I think there has to be a heightened awareness both in the industry and also within the regulators with respect to crypto. And that's a factor that's not common, that's not as prominent in other banking institutions that don't do crypto.

Mr. RING. I believe every bank has the same concern about AML and terrorist activities. And I don't believe that crypto is the overwhelming factor that, that the Bank Secrecy Act really which is preventing, is going to solve what you want, respectfully.

Senator REED. Mr. Klein, you have a comment?

Mr. KLEIN. Yeah. I wish every bank felt the same way. I think one of the problems that we have in our anti-money laundering system is we've created an economic structure where the costs are very high. And the banks respond by saying if you're a low profit customer we don't want you because of the AML costs. But if you're a high profit customer, we'll just pay the AML fine.

I mean, I can't understand how a foreign national was wiring \$17 million in hundred-thousand-dollar increments—and I encourage you all to listen to the D, read the DOJ's filing and listen to the, to the audio that's been released of his interpreter saying, I'm paying \$200,000 to this illegal bookie's bank account for a personal, for a car loan. And maybe there will be more.

And that bank account was not closed.

So, I think that there's a very different world going on between very wealthy people, very wealthy businesses, and banks who see AML as a fine and a cost. Some, not most. Not most.

But what I'm saying here is that we have an AML system where the economics of it are not in line with the objectives of it, which are to use this information to catch criminals. We're reporting too much information that's not useful, but there's too much criminal activity where banks are being let off the hook too easily just to pay a fine.

Senator REED. Thank you.

Chairman SCOTT. Thank you. Senator Tillis.

Senator TILLIS. Thank you, Mr. Chairman. Thank you, all of you, for being here today.

Mr. Chair, when you were opening up I was thinking about why I knew what a 90-day note was when I was 14 years old. Because it kind of went like this:

My dad did construction work. He had a relationship with a couple of agents, insurance agents. And when they had damage that was not of a major scale, that was my dad's work. And I was a 14-year-old helper that would be in the bank parking lot when my dad would go in to a banker in Nashville, Tennessee, that he had a relationship with and got a 90-day note.

And that's what paid, that's what paid the bills for the project that ultimately put food on our table.

We have all but overregulated those personal relationships out of business. My dad today probably couldn't get that 90-day note because he'd have some supervisor breathing down the bank's back about how could you possibly give this man money that's living paycheck to paycheck and trying to feed six kids.

We are overregulating in a way that is debanking people *de facto*.

Now, Senator Warren mentioned, well, people have been debanked because they bounced a check a couple of times. That's called a, that's called managing a risk. I'm not saying that they should not find a way to provide that person with help, but them having a consistent pattern of bouncing checks does not help in the long term. We need to figure out how to help them manage their finances, not force banks to carry that at-risk customer on their, in their portfolio.

Now, if we talk about and then we also talked about, and we've got the cannabis business. Well, the last time I checked, the cannabis business is illegal at a Federal level. I, for one, think we should reexamine that.

But we damn sure shouldn't do it by passing the Bank Secrecy Act which makes it default legal before we've taken any firm position here that provides the industry with clarity. Somebody wants to work on rules of the road, and do that and bank the industry in a cohesive, sustainable way that doesn't kind of turn around the fact that it's still illegal at the Federal level, count me in. Happy to do it.

Now, I think we've got a lot of regulator-initiated debanking going on with this concept of reputational risk, Mr. Gannon. I think you've got people going into banks and, I don't know, these gun people may not be, you know, these unsavory people are—fill in the

blank. Now, I will tell you, so I want your, I want your input on that, but let me tell you what I've told every GSIB CEO that's been in my office. And everyone has been, and their counterparts in Europe. I said, if you act like a politician, I'm going to treat you like a politician. You provide banking services, period.

Now, if you adjudge as a CEO, if you adjudge that you want to do a bank that only banks blond-headed, blue-eyed people and there's a market opportunity for that and a growth strategy, knock yourself out. If you can prove to the investors and the shareholders in your entity that it is in the best interests of your bank and your underlying strategy to grow, fine.

But we have clearly seen reputational risk being overused by bank supervisors, bank examiners, saying, well, maybe you want to move out of there. And it changes depending upon who's in the White House.

I don't think that that's right in either case. Banks should be able to figure out what they can do to derive value and serve their customers.

Can you give me some examples or your thoughts on whether or not, Mr. Gannon, you believe that a lot of, a lot of these debankings is a direct result of regulators kind of doing a wink and a nod: this is an unsavory segment to serve?

Mr. GANNON. Senator, I do think that. And, and the reason is regulators have taken the term reputation risk and made it incredibly—

Senator TILLIS. It's overly broad. It's anything.

Mr. GANNON. It's, it's, it's almost the definition of subjective. It's, it's not really tied or linked to anything that's objective.

And one of the things that I can tell you, having sat in planning sessions for some fairly large banks, is it's impossible to plan against that. When you don't know what the terms are of what your regulator and supervisor want you to do, it's really difficult to come up with a plan.

Senator TILLIS. And the perverse consequence of all this stuff is it's costing banks more money, it's shutting down more market opportunities, and making it more difficult to continue to bank the people that just bounced a couple of checks. Because at some, at some point you're affecting the business plan, the underlying success of the business, and they have to close the aperture to the most profitable, most sustainable part of business.

So, I just feel like we need to, we need to—I'm here to talk about the regulator-initiated debanking. I'm not talking about other behaviors where people lose financial services. We need to have a hearing and a discussion about that.

But I would like anything you can provide for the record on some use cases of debanking that in your opinion was driven by regulator interaction. That would be very helpful.

I'm sorry, I don't have more time. Thank you.

Mr. GANNON. We'll do that, Senator.

Chairman SCOTT. Thank you. Senator Warner.

Senator WARNER. Thank you, Mr. Chairman.

I want to pick up where my friend Senator Tillis was on this question of reputational risk.

I think it has been overused. I've been trying to push the banks to use the discount window more often before we add additional tools. That's out there. But the response is always, well, reputational risk.

I do agree with Mr. Klein that banking is a reputation-based business. And if people start to lose confidence in that bank, they're going to move, whatever the regulator does or doesn't do.

And that's why I've got to ask, rhetorically at least, and perhaps my colleagues, you know, the United States dollar, and U.S. Government, and the full faith and credit all buildup the reputation of the United States of America.

Now, if any of your institutions suddenly let somebody into your payment system that had no background in banking, that had no understanding of money flows, but suddenly gets an ability without any screening to look at all of your customers' personal banking information, I believe that would cause reputational risk. And that is exactly what is happening in the United States Treasury at this moment in time.

We don't know if the DOGE crowd there's one person maybe has a clearance, the others we have no fricking idea. But the ability—and we don't know for sure whether this is a read-only ability or read and write, which past the legalese means that person can potentially go in and alter code or manipulate payments. I say to my Republican friends, guys, can't we agree that the risk of the United States is worth protecting?

And the idea that we've got people intentionally manipulating our payment system, we have no idea. And we're going to sit silently by?

This isn't about efficiency, this is about the kind of payment system we're going to have in our country. If any financial institution let unscreened individuals into their payment book or into the private banking information about their customers, Mr. Klein, I believe their reputation would go straight to hell.

Mr. KLEIN. Absolutely, Senator. I worked in the Treasury Department for almost 4 years with a Top Secret clearance; I was going nowhere near that.

And as you point out, this is not about efficiency. You, if you wanted to make the Treasury system more efficient, you would move it to a real-time payment network. Should have been done years ago. You wouldn't just sit there and take read-access to look at every single payment the U.S. Treasury Department does. Any bank that did that to their customers would be in deep violation.

Senator WARNER. It is also the fact that the payment system in the Treasury, that's not where determinations are made about whether something is illicit or illegal, that is actually the subject matter expertise that resides at the agency that has oversight.

Come on, guys, this is about the full faith and credit of the United States. It is about our reputation in the world. You're getting the same calls that I'm getting. They don't identify whether they're Democrats or Republicans. But these programs that may or may not be arbitrarily eliminated by somebody that we don't even know who they are? Efficiency, sign me up.

Turning over the payment system to people that we don't have any idea who they are, or what their goal is, or what their mission

is, where we can't even get a full answer whether they simply have read capabilities, or read and write, there's an enormous difference in those extra couple words.

And I just, you know, Mr. Chairman, this ought to be something that we, as the Banking Committee, that are looking at the Treasury, we ought to jointly want that.

You know, there's a 25-year-old that I read about in the news. I don't, I don't know the individual. I don't have the slightest idea if they've got security clearance.

I will tell you this—Mr. Gannon, I was going to ask you something about crypto but I'm not going to be able to get to you. I look forward to working with Sam Lummis on how we promote innovation but don't overdo on the risk side. And I think, you know, we can, we can do much better than we've done so far.

But I have to just tell you, you know, as somebody who was chair of the Intelligence Committee and now vice chair, and take that role as incredibly important, the notion that somebody maybe arbitrarily put out these payment flows, for something that looks kind of funky but they don't have any idea what it is we'll hurt our national security. Because candidly—and this is not classified—we fund things sometimes under a cover. We put out this information and the bad guys find out about this, people's lives are at risk.

And I implore you all as experts, I implore my colleagues, this should not be a partisan issue. Let's get to the bottom of who these people are, what kind of clearances they have, and make sure that we don't put in further jeopardy the risk and reputation of the U.S. Government, which I believe is under immediate and imminent attack from these unsanctioned individuals.

Thank you, Mr. Chairman.

Chairman SCOTT. Thank you, Mr. Warner.

Before I go to Mr. Kennedy, I do want to respond to your comment there, Mark. The Treasury just put this out: "Importantly, the ongoing review of Treasury's systems is not resulting in the supervision or rejection—suspension or rejection of any payment instructions submitted to Treasury by other Federal agencies across the Government. In particular, review at the Fiscal Service has not caused payments for obligations such as Social Security and Medicare to be delayed or re-routed. To be clear, the agency responsible for making the payment always drives the payment process. Currently, Treasury staff members working with Tom Krause, a Treasury employee, will have read-only access"—

Senator WARNER. Mr. Chairman.

Chairman SCOTT. Just—

Senator WARNER. Mr. Chairman, do you know—Mr. Chairman, can I, Mr. Chairman, I'd just like to. So, you are saying it is read-only and not read and write?

Chairman SCOTT. That's what Treasury just said.

Senator WARNER. And do you know the identity of these individuals? Mr. Krause is a known quantity and he's got security clearance. The other individuals who've been reported in the press, do they have security clearance, sir?

Chairman SCOTT. I'll just say this and—

Senator WARNER. Do you want that individual without security clearance to have access to all that information?

Chairman SCOTT. I was clarifying that comment you made and wanted to simply say that under the Biden administration we had no clue who was doing what most of the time. Mr. Kennedy.

Mr. KENNEDY. Senator Warner is a reasonable man. Everybody on this Committee knows that. And he's a good man. And I understand he's interested in process. And I'm not saying that process isn't important. But if the United States of America has been taking taxpayer money and using it to produce a transgender opera in Colombia, now I want to know about it. And I'm glad to know about it.

And it seems to me that that's the main issue with respect to all of this. And I look forward to talking further with my friend Mr. Warner about that.

I mean, for 4 years under President Biden, as was his right, the topic of discussion in Washington was: Who needs to pay more in taxes? Who needs to pay more in taxes?

That's no longer the main question. The main question is now, as it should be in my judgment, What the hell happened to all the money? And we're going to find out.

Now, I need to get back to the subject. With the exception of Mr. Klein, whose testimony I enjoyed, I understand his position. He wants to let the CFPB run America's banks. And I appreciate that perspective. But, Mr. Klein, it's not going to happen in your natural lifetime or mine.

Now, let me turn to the other gentlemen. What I hear Mr. McCauley, Mr. Ring, and Mr. Gannon saying is that some of America's banks have been discriminating, debanking customers because of their religious beliefs, because they support the Second Amendment, and/or because they hate fossil fuels.

I don't want to go with all three of you, I've run out of time.

Mr. Ring, is that what you're saying?

Mr. RING. Yes, sir.

Senator KENNEDY. Which banks?

Mr. RING. Well, I think it's been publicly reported that Bank of America has certainly picked and choosed when——

Senator KENNEDY. Who else?

Mr. RING. And Chase Bank has.

Senator KENNEDY. Who else?

Mr. RING. I think Citibank has.

Senator KENNEDY. Who else?

Mr. RING. I think Key Bank has.

Senator KENNEDY. I'm going to probably run out of names pretty soon, but I think the megabanks are.

Mr. RING. Old Glory Bank is not, of course. We love the Second Amendment and——

Senator KENNEDY. Well, then we need——

Mr. RING. ——fossil fuels.

Senator KENNEDY. We need to get those banks in here, Mr. Chairman. We need to get all those CEOs in here. Mr. Ring. I would agree.

Senator KENNEDY. Now, why—you, I appreciate your candor—why do you think, are banks doing this because they're scared of the regulators or are they doing this because the people running the banks are prosecuting their political beliefs?

Mr. RING. I think——

Senator KENNEDY. I mean, let me, when a bank, when a bank holds a seminar, taking up valuable employee time to discuss whether a man can breastfeed, are they doing that because regulators are leaning on them, or are they doing that because the CEO really thinks that is, that's subject to debate?

Mr. RING. I think it's definitely the latter. And I think it's also been on management——

Senator KENNEDY. What do you mean "the latter"?

Mr. RING. It is not the regulators. I do not believe the regulators push the big banks to debank conservative causes.

Senator KENNEDY. You don't?

Mr. RING. I, I do not. I think it was their internal choice by these big banks.

Senator KENNEDY. Why?

Mr. RING. Well, why? The same reason by Big Tech pick and choose winners. I think big banks pick and choose winners that they care about.

And that, and that's, that's why we need a market solution because you can't regulate that type of behavior without having unintended consequences. And now every time you get a customer application you've got to fill out five forms as to why you picked, did or did not pick that customer.

Senator KENNEDY. So, you think that that's the management of these banks that are just imposing their own politics on customers and, ultimately, ultimately to the detriment of the shareholder. Is that your testimony?

Mr. RING. Yes, sir.

Senator KENNEDY. Either of your two gentleman in my last 10 seconds disagree with that?

Mr. GANNON. I strongly disagree, Senator, yes. I've spent a lot of time with a number of banks who——

Senator KENNEDY. Who do you think it is?

Mr. GANNON. I believe it's the regulators.

Senator KENNEDY. How about you, sir?

Mr. McCAULEY. It's definitely the regulators. All the big banks wanted to work with crypto and were scared away from it by the regulatory apparatus. Senator Kennedy. All right. I'm out of time.

Thank you, Mr. Chairman.

Senator VAN HOLLEN. I thank you, Mr. Chairman. Thank all of you for your testimony.

Mr. Ring, you work hard to protect your customer-sensitive personal information, do you not?

Mr. RING. Yes, sir.

Senator VAN HOLLEN. And you wouldn't just turn it over to anybody who walked into your bank, would you?

Mr. RING. No.

Senator VAN HOLLEN. And, Mr. McCauley, I assume the same is true for you?

Mr. McCAULEY. Yes.

Senator VAN HOLLEN. So, I do want to bring up this issue that Senator Warner makes, because what we are witnessing right now in real-time is Elon Musk going into the Department of Treasury and demanding access to highly sensitive personal information that

could impact any American. The highest ranking civil service at the Department of Treasury resigned before he became complicit in turning over this information.

So, I know that Chairman Scott had to leave, but I want to underscore Senator Warner's point, and I know that Senator Warren shares these views, that this Committee, which has partial jurisdiction over the Department of the Treasury, we should have an urgent hearing on this. This should be a top priority. I would hope all of our colleagues, regardless of party, would want to know what is happening to this incredibly sensitive information that's just been turned in, turned over to somebody who happened to contribute over \$250 million to President Trump's reelection efforts.

In my view it's a corrupt bargain. And I think we should have a hearing urgently to address that matter.

A lot of people raid banks, but, you know, Elon Musk goes after the Treasury Department. It's a big heist of personal information. And in my view it's an abuse of power.

I appreciate Senator—and by the way, a lot of the statements that have been made regarding the use of some of these Federal funds, whether by AID or other foreign aid programs, have been patently false. Made in one, some cases by the chief spokesperson over at the White House. Just been proven proven false. And they haven't been able to provide any information to substantiate those claims.

I appreciate Senator Warren's pointing out that CFPB has been on the front lines of trying to protect people against debanking, so it is ironic that many people who want to make sure that we prevent debanking are trying to get rid of the CFPB.

Mr. Klein, I appreciate your statements regarding the issue of overdraft fees, and pointing out that for Americans who live paycheck to paycheck, and we're talking about tens and tens of millions of Americans, their lack of access to real-time payments is causing them to incur these huge additional fees. I think you said your estimate is \$5 billion a year.

And it's also in some cases resulting in getting them debanked. Is that correct?

Mr. KLEIN. Absolutely, Senator. One of the ways you get put on this do not bank list is that your account is closed.

Say you withdraw your account in good standing and you close it. But then the bank says, oh, for that last month of your account you didn't maintain a minimum amount, so you owe \$10. And they send the \$10 to your old address, but you closed your bank because you moved, and you never got the mail. Well, that \$10 fee then becomes another \$10 a month, another \$10. And they write it off in the collections and your data gets put on this do not bank list because your bank account was closed in bad standing.

And that's exactly how that process works.

Senator VAN HOLLEN. So, you referenced legislation that Senator Warren and I have introduced, the Payments Modernization Act. Could you talk about how this would address this very real problem?

Mr. KLEIN. Absolutely.

The Expedited Funds Availability Act of 1987 requires the Federal Reserve to make payments move faster as technology allows.

The Fed has done nothing in 37 years to update that regulation. As a result, banks sit on your money.

We can all agree in this Committee, and every American, that Friday was January 31st. If you were short on your rent, on your other obligations, you worked a second job, you got paid that Friday and you deposited your check, you took a picture of your check. I was on this Committee when we passed the Check 21 Act that lets you deposit your check on your phone on Friday, the bank can sit on your money and it just became available yesterday.

What happened between the 31st and the 4th? A bunch of bills got paid. The result of that: overdraft, overdraft, overdraft.

Now, your legislation would force the Fed's hand. Even though the law says "shall," not "may" but "shall," and the Fed just ignores it. Your legislation would rewrite that law to mean that your money would have been available on the 1st when your debits came out, and your overdrafts wouldn't have hit. And it would save people a tremendous amount of money.

The Bank of England did this in 2008. If we did it then, a hundred billion dollars a year would have gone back to people from check cashers, payday lenders, in overdraft fees. It's the best thing you could do to reduce income inequality without raising taxes or increasing Government spending.

And I can't understand how Amazon can get anything to your door faster than two banks can clear a check.

Senator VAN HOLLEN. Thank you.

Thank you.

Senator HAGERTY [presiding]. Thank you, Mr. Chairman.

I would like to welcome some Alabamians that are in the audience, in particular Kate Robertson, who is a senior in high school and is an outstanding star. I'm certainly proud to have her here today.

Also just want to say thank you for holding this hearing, Mr. Chairman. It's clear and it's been no secret that our financial regulators have become increasingly politicized over the last 4 years. We have heard our ranking member talk about the number of complaints that have been made to the CFPB over the last 3 years and, yet, this Committee in the last 2 years, led by, obviously, one our Democratic counterparts, has not held a hearing diving into this.

So, thank you, because this must stop. This is the United States of America and this, what's happening, is completely and totally unacceptable.

Look, when you're prioritizing a social agenda or a political one instead of actually ensuring that people have an opportunity and access to the American Dream, we, we've got to call that for what it is. And, obviously, our large institutions play a vital role in our country and our banking system, but they need to stick to that banking, not politics.

And so, Mr. Ring, what you testified here to today is incredibly alarming. And we need to get to the bottom of that.

I also just want to point out something that my colleagues have to hear me say all of the time, and that is just how grateful I am for our community banks and credit unions in Alabama that serve our local communities and give people access to the American

Dream and remember that that is actually what they're there for. So, thank you to them.

I do want to get to the bottom and better understand what spurred this debanking and why certain industries and conservative-aligned groups have been targeted over others and, importantly, how we can prevent this moving forward.

So, I want to start by quickly clarifying a few things for the record.

The first Trump administration finalized a fair access to banking rule focused specifically on addressing this issue. Mr. Gannon, what happened to that rule?

Mr. GANNON. That rule was revoked on January 20th, 2021.

Senator HAGERTY. Tell me who revoked that.

Mr. GANNON. The President of the United States.

Senator HAGERTY. That's the day he was sworn in?

Mr. GANNON. That's correct.

Senator HAGERTY. Uh-huh. And so the day he was sworn in he said we're not going to do this?

Mr. GANNON. There were a number of rules that were revoked that day. That happened to be one of them.

Senator HAGERTY. Well, thank you, Mr. Gannon. Is the supervision of the reputational risk a directive from Congress or found anywhere in law?

Mr. GANNON. Well, that's a little bit of a complex question. It certainly is found in, in law in the sense that Congress has directed the banking agencies to conduct supervisory activities. But the details about how that supervisory activity is conducted is almost entirely generated by the regulators themselves.

Senator HAGERTY. You mentioned earlier the subjective nature of that.

Mr. GANNON. Correct.

Senator HAGERTY. Does the reputational risk have any real connection to the material safety and soundness of a bank?

Mr. GANNON. Almost on no occasions that at least the literature has been able to come up is there a connection between reputational risk and some of the basic elements of banking: capital, liquidity, operations, and so on. There's a disconnect there.

And, in fact, the regulators—and this is quite interesting, at least to me—the regulators fined stakeholders for reputational risk. And one of those stakeholders is themselves.

So, it's a little bit difficult to argue with a regulator when they say you've got reputational risk—

Senator HAGERTY. Now, that's something.

Mr. GANNON. —because you're, because you're arguing with the stakeholder that owns that reputational risk.

Senator HAGERTY. Tell me, you mentioned earlier in your testimony about management rating.

Mr. GANNON. Right.

Senator HAGERTY. And you said many times it has actually nothing to do with management. Can you, can you dive into that a little bit more?

Mr. GANNON. Well, I'll go back, Senator, to what I just said. If you look at how banks really are resilient today and how they have higher levels of capital today, how they have more liquidity than

ever, how they have invested, a very interesting statistic, in 2016, which is a baseline that this data comes from, which was a, not an easy year for banks—Mr. Tarullo was still the vice, kind of acting vice chair for supervision of the Fed—banks spent let's say \$100 on technology in terms of compliance.

Senator HAGERTY. Uh-huh.

Mr. GANNON. Last year banks would have spent \$160 for the same activity.

So, banks have, have poured money into technology, into compliance, et cetera. Now, are banks perfect? No. Do things slide through? Yes, they do. But I don't think anybody can doubt the commitment to invest in these sorts of things. And reputation risk doesn't have anything to do with that.

Senator HAGERTY. Thank you very much.

And in my final few seconds, Mr. Ring, just to, just to level set here, what are the real world impacts to a small, legally operating business if they are denied access to our financial system? Because I know that you have seen that firsthand.

Mr. RING. Well, if you can't make payments and if you can't bank, then you can't exist in America. It has, it's happened in crypto, it's happened in the Second Amendment space, it's happened among conservative causes. You can't exist without banking.

Senator HAGERTY. Thank you for what you're doing.

Mr. RING. Thank you.

Senator CORTEZ MASTO. Thank you.

I am sorry one of my colleagues had to leave, Senator Kennedy, because I do, I do need to address this. And I so appreciate my colleague Senator Warner bringing this up.

You know, we can, and we should be, identifying waste, fraud, and abuse. I think we all agree about that. And we can do it, and we should be doing it as a Congress, but we should be doing it without giving a private, unelected citizen access to the Federal Treasury payment system that contains personal information of U.S. citizens.

Now, I hear my colleagues all of the time invoking former President Biden for all the bad things. If he had done this, I know my colleagues would be the first to call it out. And would be, I would be with you. I would be with you.

This is such an important issue for us to stand together on. And if we don't, who will? Who will?

So, I just, I am frustrated, along with my colleagues on this. But let me get back to the issue at hand. Because I also want to address the overdraft piece, Mr. Klein.

I know a vast majority of people who complained to the CFPB but also to AGs, I'm a former AG, I heard this as well, about losing access to bank accounts usually blame overdraft as the reason. Right?

And we know that one of the areas of focus and enforcement around this, if not the attorneys general, then it is the CFPB. And we know the CFPB took action to prevent illegal, punitive, expensive overdraft fees. In fact, in November Navy Federal Credit Union agreed to refund more than \$80 million to servicemembers and their families.

By the way, servicemembers are the number one group that is always constantly taken advantage of in this area.

And the credit union also paid a \$15 million civil penalty for charging illegal and deceptive overdraft fees.

So, Mr. Klein, you've been leading the call to end abuse of overdraft practices. We've heard you today. Can you talk a little bit more about it?

And it's more than just somebody just, just a bad check out there; right? And everyone that says it, well, they're just, they're just writing bad checks and they should be held accountable. It's more than that.

Can you talk a little bit about what we're talking here?

Mr. KLEIN. Yes. So, it's about reordering your transactions. You swipe your debit card during the day and maybe you run out of money at the end of the day, well, there are banks and credit unions who go and reorder your transactions from the highest dollar amount to the lowest in order to maximize the number of overdrafts that you have.

The State of New York just put out some new regulation prohibiting that practice of reordering your account.

There's other things about systems of debits and credits. Look, our outdated payment system runs on this technology called a batch, which not to bore you, but think about your washing machine. You throw everything in, you hit a button, it all comes out clean at the same time. One of the big values of real-time payment is it goes piece by piece, laundry by laundry.

When you do a batch, you don't know what comes out. Well, the question becomes when the batch is clean do we put in your credits first or do we take out your debits? And which order you pick, debits or credits, makes a big difference in the total quantity of overdraft if you post your credits before you put the money into your account. Right?

So, that's another pernicious practice that we see. And this is how you see a bank like Armed Services generate \$92 of overdraft per customer relative to other national banks that are around \$1, \$2, \$5, \$10.

You say to yourself, how can Armed Service Bank get \$92 of overdraft per customer? It's these types of tricks and trades.

And you're right, Senator, that in my research I keep finding that you find these practices at military bases, you find these practices that co-locate in Walmart or seek out other things. Eight percent, 9 percent of Americans pay 80 percent of the overdrafts. Those are very profitable customers for certain types of banks who try to bring them through the system.

And the last point I want to make as it relates, Senator Tillis made that comment about, oh, you passed a few bad checks. Why? Why did the check bounce? Well, the check bounced because of this time delay.

Other banks that have given people 48 hours to cure an overdraft have seen their overdraft numbers fall by 50 percent. This is some of the types of reforms that would occur if you moved to a faster payment system and you eliminated some of these checks.

And, sadly, the prudential regulators over the last 4 years have done nothing to stop these banks and credit unions who rely on

overdraft for more than 100 percent of their profit. They're giving safe and sound CAMEL ratings. I don't understand how their management has such a high CAMEL ratings because all they're doing is overdrafting people. They should be a check casher, not a bank.

Senator VAN HOLLEN. Thank you, Mr. Klein.

Senator RICKETTS. Thank you very much, Mr. Chairman. And I want to thank Chairman Scott and Ranking Member Warren for holding this hearing.

And thank you to our witnesses today, Mr. McCauley, Mr. Gannon, Mr. Ring, Mr. Klein, for being here as well to talk about this important topic.

What we saw over the last few years, the Biden administration weaponized Government at all different levels to be able to push its liberal agenda on the rest of the country. We saw it in things like having the EPA push EV mandates, Homeland Security ignored illegal immigration. We saw a number of different agencies do things, the FBI for example even identified Catholics as extremists and sought to put spies into the Catholic Church.

All of this undermines people's faith and belief in our system of Government. And what we're talking about here now where we have regulators that are pushing their agenda does the exact same thing: it undermines the rule of law in our country if regulators start pushing an agenda of what they want to see, what kind of businesses you do business with, versus what you're allowed to do, versus just saying making sure we have a safe banking system that is complying with our rules and regulations.

A legal business should not lose access to the banking system just because they deal in firearms, or crypto, or something like that because a regulator doesn't like that. That's just simply wrong.

But that's what we're seeing, of course, out of the last two Administrations. It was mentioned earlier about Choke Point 1.0 in the Obama administration. And firearms, you know, for example, that were disfavored were prejudiced against and tried to be forced out of the financial system.

And I think it was you, Mr. Ring, who just said that if you're out of the financial system you cease to exist as a business.

And then, of course, now more recently in the Biden administration it's been the crypto industry.

And I've got to tell you this is an issue that's near and dear to my heart. I came from the financial services industry. We have the most transparent, liquid capital markets in the world because of proper regulation. Regulation actually got us to the point where we have these great capital markets. And it's at risk when we have regulators that are undermining the faith of that.

We've got to make sure that we do not weaponize our regulators to push an agenda.

Mr. Gannon, during Operation Choke Point 1.2 and 2—or 1.0 and 2.0, did regulators exceed their statutory authority by focusing on vague metrics and reputational risk instead of safety and soundness?

Mr. GANNON. Senator, the way I'd answer that is to say that the effect of Operation Choke Point 1.0 and 2.0 is that many small, perfectly legal businesses are no longer in operation. The people that ran those businesses lost their jobs, lost their bank accounts.

I'm not sure what they're doing today. But that was a backdoor way to make those businesses illegal.

And getting to the point that I made earlier, if the regulators wanted those businesses to be illegal, they had to come to you and ask. And they didn't. Instead, they just executed their own agenda without the approval from Congress.

And that's what I mean by a distortion of the relationship between regulators and Congress. Their power comes from you, it does not fall from the sky.

Senator RICKETTS. So, did bank regulators evade the notice and comment rulemaking requirements of the Administrative Procedures Act by imposing requirements through formal guidance documents in both Choke Point operations?

Mr. GANNON. Yes, they did, Senator.

Senator RICKETTS. And why do you think they were doing that?

Mr. GANNON. Because notice and comment and, by the way, the Congressional Review Act, has the effect of shining a light on the activities that are afoot. You have to give notice. You have to take into account the comments. Critically, you have to do, if you're going to pass a rule under the Administrative Procedures Act, you have to do a valid cost-benefit analysis. And those sometimes can be difficult. Economists should run those; it's just simply hard.

And, oh, by the way, rules that never got approved through the Congressional Review Act process have never taken effect.

Senator RICKETTS. So, in fact, to your point earlier, by issuing formal guidance they were purposely trying not to come to Congress or not to raise the attention of the public of what they were trying to do. Is that a fair statement?

Mr. GANNON. I can't get into their heads, Senator, but that's the effect for sure.

Senator RICKETTS. Mr. Ring, your bank was one of many that was issued a consent order by the FDIC in recent years; is that correct?

Mr. RING. Yes.

Senator RICKETTS. Would you describe your relationship with your regulator to have been collaborative or more combative?

Mr. RING. I think it has gotten better recently. In fact, a great regulator at the FDIC, Joe Meade, who spent 30 years there, recently left, retired. Invested in our bank and he's now on the board. And I think that has helped.

But they, they definitely do not make it easier to be a new and growing bank; right?

Senator RICKETTS. Well, I see my time's up, Mr. Chairman.

But I do want to just wrap up by saying, again, my experience in the financial services field was that when you had regulators that had a relationship with the regulated community, that actually helped them do their job to find the bad actors.

And we all have an interest in really bad actors that are in our industries. And that when you take an approach where you weaponize Government, it's actually bad for the regulatory scheme in general because players or, you know, companies who are good, that are trying to stay in business and actually follow the rules are discouraged because the regulators are acting in a political manner.

So, thank you for indulging me there.

Chairman SCOTT [presiding]. Senator Kim.

Senator KIM. Thank you. Thank you to the four of you for coming on out. Mr. Klein, I wanted to just start with you. I thought you made some very poignant assessments about the Suspicious Activity Reports in particular. You mentioned about just, you know, millions of these every year that are being used. But as far as I can tell from your testimony, it doesn't seem like there is any feedback, any sense of are these useful. Is that correct?

Mr. KLEIN. Correct. Banks are not judged on the quality of their performance. They are judged on the quantity. And the consequence is the bank has every incentive to file more without getting information as to the quality of it. This is how filings have increased tenfold in 20 years.

In my written testimony, I cite some work that shows that the ability of it to lead to prosecutions for tax evasion, one of the primary purposes of AML, has been extremely thin.

Senator KIM. And so we are seeing a situation where the banks are filing millions of these. You know, they are costing them a lot of money and time. But we are not certain whether or not—it doesn't sound like they are getting any real feedback in terms of whether or not those have been useful.

And I think you cited, in fact, in terms of some reports it seemed like the IRS prosecutors may be used only a few hundred of some out of millions of different reports that come before them. Is that correct?

Mr. KLEIN. It is correct. Three-hundred-twenty-seven reports started a prosecution on tax evasion out of about 27 million. That's a piece from Nick Anthony at CATO. And let me just say, like, the way that I have come to analogize this is the thesis of the entire AML process is like as criminal as like a scuba diver swimming deep in the dark ocean in order to evade detection, and the money from the criminal activities are like the bubbles that float to the air.

And the idea here is that you use the data that comes in SARs and other things to find the bubbles and go down. But in point of fact, all we are doing in the current process is blowing air into the system. I don't understand who is reading all of these SAR reports.

And this gets to the point about State-licensed cannabis that was raised earlier. That is federally illegal. If the DEA wants to go in and shut down any cannabis company in the State, they can. But you don't need a bank report to tell you where the cannabis shop is. It's called Google Maps. It will work really well. Why are we forcing the banks to continue to file all of these things?

Senator KIM. Because this is putting pressure upon the banks. You know, when we are talking about reputational risks, you know, these are some of the calculations that banks are making in terms of having to file these reports.

One thing I wanted to ask you, you know, I thought you made a very convincing argument in terms of the currency transaction reporting, in terms of the lifting of that number that hasn't been lifted in quite some time. But I guess I wanted to ask with more specificity when it came to the Suspicious Activity Reports.

Do you have more concrete reform proposals there that our Committee should be looking into as we are thinking about our next steps?

Mr. KLEIN. Yeah, no, absolutely. So, for example, on State-licensed cannabis, right? If you're running a State-licensed cannabis business, you should be treated like other businesses. If law enforcement wants to deal with you, go to the State capitol, find where you are. Why you are being treated differently makes absolutely no sense.

The second thing is let's be clear on what the priorities are for banks to file SARs. There are areas where I think more suspicious activity, like elder abuse, which has been the subject of another CFPB report, is one where you could be providing more information.

But there is a whole host of different categories of activities. And I think what we need is a whole blue-sky approach where Treasury's Financial Crimes Enforcement Network and the bank regulators are brought before this Committee and the public to discuss a prioritization of what we are going after. Because in the 50 years we have been doing this regime, we keep adding more targets, never taking anybody off the list.

Senator KIM. And I think that is right. And, you know, I would have to say, Mr. McCauley, when I was, you know, hearing your testimony and just—I am sorry for what you went through in that kind of capacity. And when we look at the reputational harm or reputational risk that banks are considering here, yes, you know, it certainly seems like this excessive amount of reporting, other things like that, are adding to it.

And I think one thing I hope we can all agree on is, you know, having a greater sense of transparency across the board, but then also some sort of feedback loop, some process by which to try to appeal. Because it is not just on the SARs, but, you know, also the customers are unaware that something has been filed about them. And so there is just multiple layers of lack of transparency on that front.

And, you know, I also want to just raise this, not ask a question, but Mr. Klein, also you showed how with CheX and other components, again, that sense of transparency is missing as well as that lack of ability to appeal. So it just seems like that is something systematic that I think this Committee can hopefully dive in deeper on. So thank you so much. And I yield back.

Chairman SCOTT. Senator Banks.

Senator BANKS. Thank you, Mr. Chairman. Economy, Indiana, is a small town. Mr. McCauley, congratulations on your success.

Mr. MCCAULEY. Thank you.

Senator BANKS. It is really incredible, a fellow Hoosier to go on and do the same—the incredible things that you are doing.

My question for you is, obviously what happened to you is wrong. It was disruptive. It didn't just affect you, but it affected a lot of your employees and your partners. Was there ever an opportunity for you to seek or recover any of the losses that occurred to you?

Mr. MCCAULEY. Senator, there wasn't any opportunity to recover. The way losing your bank account works is you spend a lot of time,

you spend a lot of efforts, but there is not some sort of a recouping you can do there.

We did appeal to our regulator, the OCC, and let them know that this was happening to us, that our bank accounts were being closed, and that we are having some disruption of services there. But unfortunately, they weren't able to necessarily help. They can't necessarily say positive or negative things about any particular bank, and so they weren't able to help us get banked anywhere else.

Senator BANKS. Can you quantify the loss to you and others involved?

Mr. MCCAULEY. So we were—we had a trading business that we were operating that was doing hundreds of millions in volume per month that went to zero because we were no longer able to bring on our clients' cash and bring that into our institution. Because of that, we had to part ways with some of our staff as I mentioned in my written testimony.

Senator BANKS. And I assume that it wasn't just really rich people who were affected by that? Common, every day, working class investors that were affected, too?

Mr. MCCAULEY. Senator, our bank serves institutional investors, many of which are creating the products that the retail investors of America use, for example ETFs. We custody for some of the ETFs that are now owned by a broad swath of the U.S. population.

Senator BANKS. OK. Let me ask this a different way. When an innovator gets hurt, it always benefits the incumbent player and the industry. Do you think that the big bank that debanked you had incentives to do that?

Mr. MCCAULEY. Senator, I actually don't think that they did that. I think that many of the large banks in the country were actually in active conversations with Anchorage to add crypto as an offering. So they were looking to maybe become crypto custodians themselves or expand in that business line, which makes it so clear that this was not something that they wanted to do.

They did not want to debank crypto. Rather, they wanted to embrace crypto, but they were very suddenly forced to take a 180 direction and go in the opposite direction, not just stopping some of their crypto activity that they were looking to expand into, but actually closing accounts.

Senator BANKS. The Biden administration often claimed that the crypto industry was a magnet for fraud and crime. But you testified that Anchorage met the same know-your-customer and anti-money laundering standards that every other bank does. Why do you think the Biden administration was so dead set on suffocating crypto currency?

Mr. MCCAULEY. Senator, I can't necessarily comment on the motivations. What I can say that if you look at the way that the BSA works within America, the BSA works in America via the banks. The banks are the ones that carry that out.

So the very idea of kicking crypto out of the banking system was self-defeating because the way that we get transparency, the way that we get monitoring of an industry is to have it be integrated with the banking system. And so that's why I think the debanking was so wrong-headed and did not make any sense.

Senator BANKS. Mr. Gannon, when I think of debanking, I think of all of my services from the bank being taken away from me. But is there something in between? I mean, banks that might put holds on transactions or investments that we might not think of as debanking but would also be a similar type of politically motivated activity?

Mr. GANNON. Senator, that's possible. The technology exists to do it, but it's usually more broad based than that. Just as an example, I happen to be aware of a vineyard where the wife of the vineyard owner happened to be an investor in the cannabis industry.

The vineyard and the individuals that owned the vineyard all lost their accounts. They had nothing to do with the cannabis industry, but I guess it was a knock-on effect as far as the regulators were concerned because all those accounts went away.

That's the kind of—unfortunately, it would be nice to think that the regulators work with a scalpel. But it's really usually a five pound sledge hammer and a chisel.

Senator BANKS. Very interesting. Thank you. I yield back.

Chairman SCOTT. Thank you. Senator Warnock.

Senator WARNOCK. Thank you so very much, Mr. Chairman. Before I begin my questioning, I want to reiterate the request Ranking Member Warren and my Democratic colleagues have made to the Chairman to hold an oversight hearing in this Committee on Elon Musk's dangerous access to the Treasury Department systems that control \$6 trillion in annual payments to millions of American citizens, including Social Security, Medicare and tax refunds. I can tell you that the people of Georgia are not taking any comfort in the notion that this unelected billionaire has access to these systems.

I think it is urgent that this Committee and the Senate Finance Committee have a hearing to look into this matter to protect Americans' private data, data that they are required to provide and is now in the hands of Elon Musk and 22-year-old interns.

We are approaching the 2 year anniversary of the failures of Silicon Valley Bank, Signature Bank, and First Republic Bank, three of the largest bank failures in U.S. history. A review of Signature Bank's failures found that the FDIC, the Federal bank regulator responsible for making sure our money in the banks are safe, did not properly staff the team dedicated to the bank with regular job vacancies—regulatory job vacancies averaging 40 percent in the years leading up to the failure.

Bank examiners are overstretched and overworked. And based on today's conversation, it is clear that banks are begging for more communication, more certainty, more clarity from understaffed bank regulators. The last thing you want in business is uncertainty, a lack of clarity.

This is why I was frankly shocked by the FDIC's decision to withdraw job offers from more than 200 new bank examiners last week. Mr. Klein, you are an expert in bank regulation. Do you agree FDIC bank examiners are understaffed?

Mr. KLEIN. Yes.

Senator WARNOCK. And do you agree that this understaffing has consequences for bank examiners' ability to communicate with banks to provide regulatory clarity, especially when banks are deal-

ing with newer businesses that offer complicated or potentially risky financial products or services?

Mr. KLEIN. Absolutely.

Senator WARNOCK. What I'm hearing is the Trump administration's decision to rescind job offers to bank examiners at the FDIC is going to make it less likely, less likely, that some businesses, including the ones that my colleagues here today are concerned about, can access the traditional banking system or that they will be well-served by it. Is that fair?

Mr. KLEIN. Yes. One of my colleagues just talked about the difference between doing things with a scalpel and a five pound sledge hammer. And this hiring freeze is a really big sledge hammer.

Senator WARNOCK. I agree with that. And not only did the Trump administration rescind bank examiner job offers, they also emailed current examiners and basically encouraged them to quit, which will only compound our staffing problems for all of these businesses.

Mr. Klein, in addition to harming access to the banking system, what other risks may arise from understaffing our bank regulators?

Mr. KLEIN. Well, I mean, people talk about the need to create new banks. New banks have to be approved. It's a charter, not a license. And you need people there to approve the charter. You need people to update your models. You need people to collect and promote data and information. And there is a whole host of things that could be slowed down by simply being understaffed.

In addition, the FDIC is a little bit like an ambulance. It comes in when a bank fails. We have had several bank failures this year already. And you need to have an emergency SWAT team who is ready to go in.

The FDIC does a fantastic job of handling a failed bank. It closes Friday evening. Monday morning, insured depositors have full access to their money. That requires people. And it requires trained people, expert people, people with experience. Sometimes these things are more complicated, particularly in small town America where you can't just show up 30 people and sit in a hotel and not raise some concerns. And understaffing this puts our ability to handle failures so that people have access to their money immediately at great risk.

Senator WARNOCK. So I think this is very important because there is always this sort of baked in assumption that having regulators is a drag on the business. But you are demonstrating through your testimony that understaffing these bank examiners is bad for business, bad for innovation.

And everyone agrees that legal businesses should not be systematically excluded from the financial system. However, the way to do that is to hire and to empower regulators who can ensure banks are safe and sound and provide clear guidance to banks on permissible levels of risk.

Revoking job offers for bank examiners and pushing these experts out of their jobs in the precipitous way that we have seen, especially over the last 2 weeks, it puts all of us who rely on banks to keep our money safe at risk, and it is a drag on the business.

This is an issue that I look forward to continuing to work with this Committee on.

Thank you so very much for your testimony.

Senator HAGERTY. Thank you, Senator Warnock. And Senator Cramer, thank you for letting me—well, you just stepped down. Thank you for letting me take your spot.

Over the past 4 years, I have seen a shocking number of industries and individuals be denied financial services here in America.

I recently spoke with a company in my home State that is in an industry that is often politicized but always lawful. Here is what has happened to them. They have been denied business due to “reputational risk”. They have been prevented from expanding their credit facility. They have been denied insurance policies, and they have been denied the ability to renew coverage.

These are shocking problems that we see here. And this entire constellation of problems exist at multiple levels. First, you have got partisan ideologues that actually operate within banks, public affairs divisions or their so-called reputational risk committees that are exerting their influence to choke off disfavored industries.

You have got, externally, banks being pressured by political activist groups. You have got these shareholder proposals that are coming at the behest of a number of outside players that are particularly enabled by proxy advisory firms, which is another issue that this Committee will get at.

And last, we have had activist regulators that have abused their supervisory authority. They have imposed their own policy agendas that were never authorized by actual banking statutes or by the Congress. Bank examiners’ subjective assessments of risk are ripe for abuse by ideologically motivated supervisors.

The banks themselves are unable to speak out about debanking because when regulators pressure them to do it, there are strict confidentiality agreements. There are requirements, I should say, that prohibit these banks from even mentioning the reasons for service denial. Clearly, the banks themselves are very concerned about regulatory retaliation.

So whether this de facto debanking stems from either within the banks or within regulatory agencies, in both cases, we have unelected individuals that are dictating what kind of companies can exist and thrive in our Nation and with no directive at all from the American people or from their elected representatives.

So Mr. McCauley, I would like to start with you. This morning, FDIC Acting Chairman Travis Hill released 175 documents relating to its supervision of banks who are attempting to engage in crypto-related activities.

These documents confirm that banks faced extraordinary resistance and actually directives from supervisors to pause, to suspend, to refrain from expanding all types of crypto or blockchain related activity.

Mr. McCauley, have you seen us lose American companies and innovators to other jurisdictions as a result of the hostile posture of our Federal Government?

Mr. MCCAULEY. Senator Hagerty, thank you for the question. I have actually printed out one of the documents that came from the FDIC drop this morning. It is right there in plain letters. Quoting,

“We respectfully ask that you pause all crypto asset related activity.”

This is not a suggestion. This is right to the heart of it.

Senator HAGERTY. Mm-hmm.

Mr. McCAULEY. The FDIC was asking banks to pause their activity with crypto. The net effect of that, like you said, has been that a lot of the crypto activity has moved to other jurisdictions, other jurisdictions where people feel like they will get a fair shake, like they will get a fair opportunity to actually build their business. This has been damaging. Many of these kinds of businesses are businesses that we want within the United States, crypto businesses, crypto exchanges, and notably stablecoins.

So I thank you for your introduction of the bill about stablecoins. I think charting a path forward here is very important to us. And thank you for your leadership.

Senator HAGERTY. Well, I think it's incredibly important. And this type of innovation that we like to see on American shores is being pushed offshore. Can you tell me who signed that memo that you are looking at right now?

Mr. McCAULEY. This one is signed Eric T. Guyot, I think. He is the assistant regional director.

Senator HAGERTY. Whoever this person is, I have never heard their name before. They certainly aren't an elected official. Yet this person is taking on the authority and the responsibility to debank an industry here that has tremendous potential. So I think it is deeply concerning.

Mr. Gannon, I want to turn to you very quickly. There are important parts of our BSA and AML regime that are susceptible to weaponization for political purposes. Under our current system, senior public officials and their families can be designated as politically exposed persons or PEPs. And once you are designated as a PEP, you think about it. Former Senator Sam Brownback was designated a PEP. It results in higher regulatory scrutiny and therefore, an increased chance of account closure.

In your view, Mr. Gannon, how can our BSA and AML regime most effectively balance what are legitimate law enforcement concerns with the risks that unwanted account closures are going to occur with the—in fact the actual dampening effect, the chilling effect, that we have seen taking place? How do we balance that?

Mr. GANNON. Senator, there are two things, I think, that can be done. Number one is I think the partnership between the banks and the regulators needs to get into the 21st Century. And there is much better technology that exists rather than sending armies of people to go around filling out SARs and filling out currency transaction reports.

If you have better data, you will have better results. And if you have that result, that better result, then you can determine is somebody being debanked because, in fact, they are a risk, or are they being debanked because they may have some sort of association that the regulators find unpleasant?

Senator HAGERTY. Thank you. Senator Gallego.

Senator GALLEGO. Thank you so much, Chairman and Ranking Member. Mr. McCauley, in your testimony about how Anchorage Digital Bank manages risk and identifies suspicious activity to

comply with regulations. So how often would you say you detect potentially suspicious activity among your bank's clients?

Mr. MCCAULEY. Senator, we have active monitoring programs that look for suspicious activity. One of the things we're actually most proud about our systems is that we think they go beyond what traditional banks are able to do in that we look not at just point-to-point transactions, which are available in traditional banking, but because of the rich data that is available through blockchain systems, we are able to detect far more of that.

Now our client base that we serve is primarily institutional investors. So this is not the place that is necessarily set up to have a lot of potential money launderers in there. But we do make sure that any suspicious activity that we do detect is detected and dealt with.

Senator GALLEG0. And you go through the proper protocol filing? When you see something, everything else like that—

Mr. MCCAULEY. Of course.

Senator GALLEG0. —you abide by the regulations so it doesn't come down on you or your shareholders? Did you ever, because of just kind of the potential risk or feeling of risk within your own discretion just—or maybe it's just not worth the hassle, kind of choose to not open up a client or decline a client of any sort?

Mr. MCCAULEY. Absolutely, Senator. There are use cases that our bank is not well set up to support. There are client types or types of client activity that are not appropriate yet for the systems that we have in place. And so we do express some amount of judgment on that—

Senator GALLEG0. Right.

Mr. MCCAULEY. —on whether or not we can properly take on an account and handle the risks that may or may not be present.

Senator GALLEG0. Or just the hassle that may come with it because then you have to communicate with Government, and it has to go back and forth, back and forth for something that may not have much of a marginal return on investment.

Mr. MCCAULEY. And, yes, I think this is a State-owned bank procedure.

Senator GALLEG0. So it's important that we all think about this aspect, the promise of every bank and, you know, different regulators, you know, have different risk tolerances. And I think that's a very healthy thing for us to understand. But we should be very worried about kind of overcorrecting us on the other end that could also increase risk to the banking system. I think you are a good example of how to do it correctly, but others may not.

Mr. Ring, in your testimony, it had to do with "duplicative and overly burdensome" regulatory burden—burdensome regulatory burden—it is redundant, sorry about that—during the 6 month approval process for Old Glory Bank. What specific processes were duplicative, and how would you propose we consider addressing these problems while still making sure our regulators preserve their risk-based approach to monitoring safety and soundness in the banking system?

Mr. RING. That is a great question. Thank you. So to put this into perspective, we bought a \$10 million bank with only \$3 million

of loans in Elmore City. That is probably smaller than some bank accounts in here. And it took——

Senator GALLEG0. Not me. I wish, to be honest.

Mr. RING. It took 6 months, three rounds of additional information requests, and 300 pages of submission and then an all-hands call. And we had to deal with the FDIC, the Federal Reserve, and then even on the all-hands call, we had the CFPB there.

And respectfully, I have never talked to a regulator that was actually a banker, in all respect. Like if you deal with the FAA, they are former pilots. If you deal with so many organizations, they are actually the former business people. I have only dealt with the Federal regulators who, respectfully, were bureaucrats. And these are people that have never sat on the front side of a check. And I feel like they do not have the ability to apply judgment to some of these rules.

Senator GALLEG0. Well, what specifically would you recommend then?

Mr. RING. I would, going forward, make sure that you hire at least half of all regulators with prior banking experience, who actually know the impact of their regulations.

Senator GALLEG0. Any other?

Mr. RING. I would go back and find the last chairman of either the FDIC or the OCC that actually was a banker. I really think it is about that.

And then, respectfully, I think they need to quit stepping over dollars to pick up pennies. If you think about the banks that failed in 2023, it was lack of liquidity, and yet they are focused on the minutiae of banks and missing the forest for the trees, such as loans and liquidity is what causes banks to fail.

Senator GALLEG0. Right.

Mr. RING. Not, you know, respectfully, an AML policy.

Senator GALLEG0. Thank you. And Mr. Klein, I think you have a different opinion.

Mr. KLEIN. Yeah. I mean, Silicon Valley Bank didn't fail because of a lack of liquidity. It failed because of a core goal investment strategy in terms of its treasuries that it held.

Mr. RING. Except for the run.

Mr. KLEIN. So——

Senator GALLEG0. Mr. Ring.

Mr. KLEIN. Right. The run occurs when you realize the bank is out of capital, and the first people come when you had a 93 percent uninsured deposit because you are running a \$250 billion bank with four branches. It was not a regional bank. It was a tech start-up bank.

And part of the thing that frustrates me so much was it was bailed out. It's—the single largest depositor at Silicon Valley Bank was a crypto stablecoin company that had \$3 billion. And as an economist, I can't dream of a better natural experiment to understand the solvency of the stablecoin than the fact that on Friday afternoon, that Silicon Valley Bank was being closed under normal operations, which would have incurred losses on uninsured depositors, and that stablecoin went from a dollar to 87 cents on Saturday as people started to run. Then Sunday, the regulators bailed out, took all of our money, taxpayer money, fees that banks are

going to charge back on overdrafts and other low income people, and bailed out \$3 billion back to that crypto, and its stablecoin went right back up to par.

And so you see in this situation, is there is a connection in crypto and the banking system. What you see in this situation is that banks fail. And Silicon Valley Bank failed for a variety of reasons, but primarily because of its strategy, right? And I do agree with Mr. Ring on some of these concerns about the relationship between banks and their regulators. A CEO of Silicon Valley Bank sat on the board of San Francisco Fed.

Chairman SCOTT. Thank you so much. We are going over to Senator Moreno.

Senator MORENO. Well, thank you. Thank you, Chairman, for the time for the hearing. I think it is very timely.

I think one of the things that I would like to say at the beginning, especially for people watching this, is this can be a very clinical conversation. We are talking about debanking. But the reality is you have entrepreneurs that are absolutely getting devastated by these policies.

I think it is hard for some of my colleagues who have only been maybe attorneys or career politicians to know what it feels like as an entrepreneur to chase a dream and have that dream completely crushed, not because you had a bad idea, but because you had a Government that was looking out for itself and not looking out for you. So let me just say that from the beginning.

Let me start with you, Mr. McCauley. What type of cryptocurrency did Al Capone use?

Mr. MCCAULEY. I would say that primarily the privacy coin known as the U.S. dollar.

Senator MORENO. Got you. So I will look that one up and see if we can ban that one. How about Pablo Escobar, my fellow Colombian who gave a lot of reputational risk to fellow Colombians in what he did. What kind of crypto did he use?

Mr. MCCAULEY. I don't think he used any crypto.

Senator MORENO. Got you. How about Meyer Lansky?

Mr. MCCAULEY. I am not sure.

Senator MORENO. There was some comments about dictators in North Korea being powered by crypto. How about Ferdinand Marcos? What was his crypto currency of choice?

Mr. MCCAULEY. He did not have one.

Senator MORENO. Joe Kennedy?

Mr. MCCAULEY. He did not have one.

Senator MORENO. OK. Got you. So maybe money laundering wasn't invented by digital currency. Would that be fair to say?

Mr. MCCAULEY. Very fair to say.

Senator MORENO. OK. Let's move on to this topic of—Mr. Gannon, by the way, your bank helped me start my business. So let me just give that little disclaimer up front. I appreciate that your former chairman—

Mr. GANNON. I didn't know that, Senator.

Senator MORENO. Mr. Fish was very helpful so let me just get that conflict out. I subsequently sold all of my businesses so I have no conflicts. But let me just say this, how much of loans do you just automatically forgive? I was a really good client. I was a really

good client, made payments. When could I call you and ask you to forgive my loan?

Mr. GANNON. I don't believe you could do that, Senator.

Senator MORENO. Got you. So I am curious, because there was a conversation from one of my fellow Senators earlier about the rogueness of the Trump administration. And yet Joe Biden illegally, according to the Supreme Court, forgave student loans. And I remember that outcry, that need for an immediate Senate hearing on why we were not forgiving, you know, not chasing—why we would forgive student loans.

Now maybe my Democrat colleagues think it is great that somebody becomes a gender studies major at Brown and racks up \$200,000 in student debt. But I had technicians working for me that racked up thousands of dollars in tool loans that the bank wasn't really—so what is wrong with a technician that a gender studies major should get their loans forgiven and why aren't we seeing outrage on that?

Mr. Gannon, have you ever heard of such a thing as loan forgiveness from banks? And please give me the name of that bank.

Mr. GANNON. I don't have a name for you, Senator, but what I can say is some of my best friends at the banks where I have worked were credit risk analysts. And they look very hard at each loan, and they analyze the credit. And if we make the loan, we expect you to repay it.

Senator MORENO. Well, that seems like an impossible standard. So let's move on, Mr. Ring, to you on this topic of regulation.

It seems like there is a debate in this room of who has caused debanking. The good news is we agree that there is debanking. I think that should be the first headline. Not so long ago people were denying it. Right? So we have agreed on that. That is an incredible accomplishment of the 119th Congress. We have reached that conclusion.

So the question becomes why and who is responsible? Now, in your mind, do you think that there is—is it easy for a small community bank, let's say for example in Montpelier, Ohio, to compete with JPMorgan Chase or Bank of America?

Mr. RING. It is almost impossible. I find that about 75 percent of our time is spent serving regulators and only 25 percent serving customers. And when you are on small margins of a community bank, you cannot compete with the big guys easily. We are working hard at it, but it is very hard.

We have the same regulations as the big bank, but yet we have less people and less money.

Senator MORENO. So you don't have 2,000 lawyers at your beck and call?

Mr. RING. Unfortunately, I am both the lawyer and the CEO along with my wife. So we—

Senator MORENO. Probably H.R. also.

Mr. RING. She is. And marketing.

Senator MORENO. All right. There you go. And Mr. Ring, I actually applaud your testimony around helping working class Americans that are getting crushed by banks. Do you think it is fair to say that a lot of people know somebody or have themselves been

screwed by banks? I think that's fair to say. And I appreciate that you are doing that.

But I think it is competition that ultimately makes that go away. Don't you think like if there is just a lot more banks, a lot more choices, don't you think that is the best elixir?

Mr. KLEIN. So America has almost 10,000 banks and credit unions. I think there are some serious structural problems.

Senator MORENO. How many did we have 10 years ago?

Mr. KLEIN. We had more, Senator.

Senator MORENO. How many did we have 4 years ago?

Mr. KLEIN. We had a lot more because you couldn't bank in multiple States.

Senator MORENO. The competition has dropped.

Mr. KLEIN. If you want more banks—

Senator MORENO. So competition has dropped dramatically. So let me just end with this, and I hope my colleagues understand philosophically as a business guy, the most greedy organization on the planet is the Government. You pay your taxes, Mr. Klein, 1 day late, what do you get paid—what do you pay, like a \$5 overdraft fee? No. You get late charges, interest that would make the mafia jealous.

So let's just understand that the reason that the Government is so damn greedy is because there is no competition in Government. We need more competition in banking. That will fix this.

Chairman SCOTT. Thank you, sir. Senator Alsobrooks.

Senator ALSOBROOKS. Thank you. First of all, thank you to Chair Scott and Ranking Member Warren for hosting today's hearing. And I want to thank all of our witnesses as well for your participation.

I can say I agree with all of the others who you have heard today who believe that we should both be expanding access to credit and capital for all Americans and that we are concerned about making sure that we keep our financial system safe as well from criminals and fraudsters and scammers. And I happen to believe we can do both at the same time.

And so I have—I also would like to say that Mr. McCauley and Mr. Ring, you have both spoken about the need to protect the integrity of our financial system from politics. And I have to tell you that I could not agree more. And so these should be fairly easy questions that I have just for both of you.

You both run businesses that depend on maintaining the trust of your clients. And so my question is would these clients trust you if you shared their most sensitive financial information with someone outside your bank and without their consent?

Mr. MCCAULEY. Senator, no, they would not trust us if we shared that information.

Mr. RING. No, Senator.

Senator ALSOBROOKS. And so I ask as well, should an unelected billionaire be snooping on Social Security payments, say for example to my elderly parents? Would you agree that that was wrong?

Mr. RING. If you are talking about Elon Musk, I believe the unintended consequences of that is probably offset by trying to save taxpayers' money. And we haven't found a better way to do it yet.

Senator ALSOBROOKS. And so you believe that your clients and other elderly people who find someone snooping around in their Social Security payments that they would be OK with that?

Mr. RING. I don't know Elon Musk, but I don't think that is what they are doing. I think they are looking at actual taxpayer monies going out the door.

Mr. McCAULEY. Senator, if we hired an external auditor to come and look at our books to make sure that we were doing a good job of being fiscally responsible, I think our clients would welcome that.

Senator ALSOBROOKS. And you think they would be comfortable with doing that—someone doing that who is outside of your bank structure? Say, for example, could I do that and look at your clients' information?

Mr. RING. Senator, going through the right process and procedures for hiring and bringing that auditor in would be extremely important and making sure they had direct, careful access to the data would be important.

Senator ALSOBROOKS. So I would just say, I would echo Senator Warren and Senator Van Hollen's sentiments on the seriousness of this. And I really hope that our business leaders will have the courage to speak out about a practice that I can tell you I know you would never allow for your own clients.

And so my next question is for Mr. Gannon and for Mr. Klein, there have already been studies on how banks and bank regulators can better balance the need for safety and soundness with financial inclusion.

So for example, a 2023 report from the Treasury Department examines circumstances where financial institutions indiscriminately end relationships with broad categories of people in the name of mitigating risk.

That report demonstrated that unfair debanking often results in less financial inclusion, less fairness, and ultimately consumers and small business owners are being pushed toward less safe and less affordable financial products and services.

And that 2023 report recommended that financial regulators promulgate rules that promote a supervisory culture that balances legitimate risk, mitigation, and strategies that include financial inclusion.

So Mr. Klein, as far as you are aware, have regulators adopted this 2023 recommendation?

Mr. KLEIN. No, they have not. Regulators push banks to use systems like CheX and other do not bank lists for BSA, AML, for other things, for other types of risk platforms. And they do not adopt this. And I have been extremely disappointed at what the Prudential regulators have done.

This BankOn movement has done a much better job in my opinion of trying to get a better screen to let folks in, folks who are not fraud risks. I am unaware of anything in the BankOn program that has a greater risk of fraud than any other type of account. And so I've been—from my experience I have seen too little adoption of alternative ways to bring people into the system and too slow adoption by regulators to do something different.

Senator ALSOBROOKS. Thank you. And just one final question. The Community Reinvestment Act is a law that encourages banks to meet the credit needs of underbanked communities, especially low and moderate income neighborhoods. And this law requires banking agencies to assess banking institution's records of meeting the credit needs of its community.

So I just want to ask quickly, Mr. Klein, how can supervisory debanking make it harder for banks to meet their community reinvestment obligations?

Mr. KLEIN. So I struggle because a lot of these overdraft predator banks I have seen have gotten outstanding Community Reinvestment Act from their regulators who keep giving them a passing grade even when the bank loses money on every element of its business model other than overdraft. So I have seen some deeply problematic practices.

Senator ALSOBROOKS. Thank you so much.

Chairman SCOTT. Thank you, ma'am. I will turn to Senator Cramer.

Senator CRAMER. Thank you, Mr. Chairman, for having this important hearing, Ranking Member Warren, as well, for your leadership and congratulations to both of you. The title looks good on both of you. And thank you to our witnesses.

I have to just state this hair-on-fire outrage by our Democratic friends over a successful businessman giving his time away from his business, I might add, to look at the books of the Federal Government to identify waste, fraud, abuse, and inefficiencies is some sort of a crime while Mr. Ring's bank has never met a regulator that has a business background, or a banking background. The irony is really quite rich. I think we should have a few more business people looking at our Federal books.

That said, thank you all for being here. My main interest in the debanking discussion, and I am interested in all of it, and I think both sides have brought up a lot of interesting issues. But it's not so much the individual that I am interested in, or even the individual company, but rather the categorical discrimination against large swaths of businesses, entire industries of businesses, constitutionally protected industries, legal industries, I find frightening.

And I just want to reconcile, at least in my own mind, the different answers that the three of you gave to Senator Kennedy about which came first. Is this a problem with the regulators or is this a problem with the bank presidents, to which I would say yes.

The precursor to the regulators, quite honestly, and the regulations—the precursor to this whole debanking thing was this bizarre ESG movement in corporate America. And that was happening before the regulators thought, “Hot dog, we got another issue we can, you know, shove at these guys.”

So whether it's—I've talked to many of the bank presidents who very much support the legislation that me and 40 of my closest friends so far have introduced, the Fair Access to Banking Act, which doesn't require, by the way, a bank to do anything, but it does prohibit them from categorically discriminating against legal industries.

And the reason some of the bank presidents who have never dared say it out loud tell me they support it is because they want this burden removed from them. They want this political pressure from their 30-year-old staff or the regulator, you know, that they fear or the political movement of the day or the activist investors that are trying to impose their values, they want that removed from them. I am just saying let's not discriminate against large industry.

And so I guess I would just ask each of you, what is your sense of a bill like a Fair Access to Banking Act, that again, doesn't require anybody—it is not saying you have to bank this industry. It says you are prohibited from discriminating against them. Does this seem like a radical idea?

Mr. RING. Well, if I could go first.

Senator CRAMER. Sure.

Mr. RING. I think the regulators have pushed debanking of industries, which you are talking about, I think midlevel executives pushed debanking of individuals for political causes.

Senator CRAMER. Sure.

Mr. RING. And my worry is, Senator, with a good intentioned bill like that, you would have to prove somehow that we followed the law. And so every time a relationship didn't work out, there would have to be some type of reporting.

And so I actually respectfully think the free market is always the best way to solve these problems. With more banks, let banks bank where they want. If a pro-life bank wants to exist and not bank Planned Parenthood, let them because there is a bank that would love to bank Planned Parenthood.

Senator CRAMER. But if you were going to discriminate against large industries, should you be able to be insured by the Federal Government?

Mr. RING. Well, that's a great question. Because what is unfortunate is the regulators were doing this through policies and guidelines as we have already talked about. Like digest those, you know, FIL 16-22 and SAB 121 and that is how you stop it, is holding those individual regulators accountable, I feel.

Senator CRAMER. Mr. Gannon.

Mr. GANNON. Yeah, Senator, if I could respond to that by simply saying that what needs to be done consistent with the act that you have introduced is simply that there is more transparency.

Senator CRAMER. Yes.

Mr. GANNON. And there is more notice——

Senator CRAMER. Yes.

Mr. GANNON. —when these kinds of decisions are made. And one of the—there has been a long sort of volume of Executive orders coming out of the White House. But one of them revived an Executive order from 2019 called 13892. That Executive order gives more due process to folks who wish to contest the actions of regulators than the due process clause itself allows.

Senator CRAMER. Well, maybe a law that puts that in statute would be better.

Mr. GANNON. Correct.

Senator CRAMER. My time is up, Mr. Chairman.

Chairman SCOTT. Thank you, Senator Cramer.

Senator CRAMER. Thank you both.

Chairman SCOTT. Senator Lummis.

Senator LUMMIS. Thank you, Mr. Chairman. Thank you, Ranking Member. And I think that today was the first time I have ever heard the term hot dog used in testimony. And I so appreciate that from my colleague from North Dakota.

Mr. Gannon, it is a pleasure to see you here today. I want to thank you for everything you have done for the State of Wyoming in the last few years. I just want you to know that I am personally grateful. And I am going to start with you. In your legal opinion, what is reputational risk?

Mr. GANNON. That would be very difficult to define, Senator, because it really has no definition. It is something that is, as I said earlier, it is malleable. It can be reinterpreted. It is in the discretion of the regulators.

So what is reputation risk today? It might be something different tomorrow.

Senator LUMMIS. Does it give bank examiners license to censor viewpoints or base regulatory decisions on someone's subjective viewpoint of what is a controversial comment?

Mr. GANNON. It can.

Senator LUMMIS. Well, let me show you that it does. So here is this quote from an internal excerpt. It is a confidential Federal Reserve Implementation Handbook on account access. It requires that Federal Reserve staff consider whether a person has made a "controversial comment" in making decisions about access to the payment system. And of course, access to the payment system is a defining feature of a bank, is it not?

Mr. GANNON. Correct, very much so. Without that, a bank is vault.

Senator LUMMIS. So is it dangerous for the Fed to serve as judge and jury on a particular banker's speech?

Mr. GANNON. Senator, I am kind of absorbing that still a little bit because it is really quite unusual. I have never seen anything like that before. But my immediate reaction is number one, it sort of proves out the comments I have been making about the subjectivity around reputation risk because, who is to say what is controversial and what is not controversial? That is number one.

Number two, it is chilling to me that it is possible that access to the Federal Reserve payment system might be dependent on whether the applicant was engaged in some sort of controversial commentary or—now I can see it, or activities. That is the kind of stuff that is—that is the kind of thing you see in countries that appear on OFAC lists.

So I don't see how it has any place in assessing the capabilities of an institution to have access to the Federal banking system. We don't want to be in a place where free speech is chilled because there is a concern that I might not get access to banking services.

Mr. KLEIN. I agree very much, Senator. And I have been very deeply concerned by the Kansas City Federal Reserve precluding places like the credit union in Colorado from accessing the payment system. And that chart puts my hair on fire.

Mr. GANNON. If I might add to that, by the way.

Senator LUMMIS. Yes, Mr. Gannon.

Mr. GANNON. I believe in litigation involving an institution in Wyoming, Custodia Bank, I believe, if I recall correctly from the oral argument, the position of the Federal Reserve is that the Federal Reserve Bank of Kansas City has complete and unfettered discretion as to whether or not they allow access to the payment systems. That is a lot of power.

Senator LUMMIS. Thank you, Mr. Gannon. And that is a concern of mine. I know this is hard to see. I couldn't see it from where you are sitting.

Mr. GANNON. I can see it now.

Senator LUMMIS. OK. Let me read it to you all. This, again, is an internal memo within the Fed. It says, Reserve Bank staff generally should consider the conduct of the institution and its leadership and whether association with the institution poses undue reputational risk to the Reserve Bank.

Is the institution's leadership associated with controversial commentary or activities? What is a controversial comment or activity? What is that?

Mr. GANNON. Senator, I have no idea.

Senator LUMMIS. Is it in the eye of the beholder?

Mr. GANNON. It's completely in the eye of the beholder, yes.

Senator LUMMIS. Mr. Ring, what is a controversial commentary or activity?

Mr. RING. Well, considering the things I have said about pro-American causes and the flag, I feel like that was written for me.

Senator LUMMIS. Mr. McCauley.

Mr. MCCAULEY. It appears to be a tacit attempt to hold back speech that is considered undesirable.

Senator LUMMIS. And thank you. What I would call this is hard proof of Operation Choke Point. And it has now been discovered by Congress. Thank you, Mr. Chairman. I yield back.

Chairman SCOTT. Thank you, Senator, very much for your thoughts and your comments. Thank you to each of the witnesses for participating in today's really important hearing. More to come, by the way. This will not be the last time we have an opportunity to talk about debanking in this Nation.

For Senators who wish to submit questions for the hearing record, those questions are due 1 week from today, Wednesday, February 12th. Witnesses have 45 days from that day to follow up with answers.

Thank you. And the Committee is adjourned.

[Whereupon, at 12:32 p.m., the hearing was adjourned.]

[Prepared statements, responses to written questions, and additional material submitted for the record follow:]

PREPARED STATEMENT OF CHAIRMAN TIM SCOTT

Good morning and thank you all for being with us today.

We're here to address an issue that strikes at the core of what it means to live in a free and fair society: access to financial services.

Every federally legal business and law-abiding citizen deserves to be treated equally, regardless of political views or ideological leanings.

This is an issue that is deeply personal to me.

When my grandfather was growing up in the Jim Crow South, banks did business with people they felt looked the right way—based on the color of their skin.

One's ability to get a loan to finance their home or State a business was based primarily on the color of their skin. And in the 1940s, my mother experienced the same redlining that has been persistent, pervasive, and unfortunate for decades.

Thankfully, our Nation continues to evolve in the right direction.

And in the 1990s, when I was starting my small business, I went to a bank and looked for an opportunity to get a loan. I'll say, without any question, at that time as a kid growing up in poverty in a single parent household my best asset—Mr. Ricketts—was a 1990, ten-year old car with 253,000 miles. One would not consider that an asset, perhaps a liability, but it was my only means of transportation. And I will tell you, without a doubt, for me, it was an asset.

The bank, however, helped me completely understand it was not. However, in those days someone could get a character loan, because of your time in a community, because of your relationships with local and community banks. Because of that, not only was my financial life changed, not only did my American Dream become a reality, but more importantly, my mother's American Dream became a reality.

We saw the strengthening confidence in our banking system, because things had changed in the right direction.

With that loan everything seemed to get better.

Had I not gotten that line of credit, I may not be here chairing this Committee today.

You see my story is so consistent with so many other Americans story that really reflects positively on the American Dream.

In this country, access to credit is one of the cornerstones of building your American Dream.

Owning a home and starting a business are challenging journeys filled with complexities, and achieving success is never a guarantee, nor should it be.

That's why access to financial services is so important.

The United States is home to a vast competitive network of banks and payment providers, creating one of the most robust and diverse financial services ecosystems on the planet.

It is this incredible landscape that offers countless opportunities for homeowners and entrepreneurs to build a healthy foundation and make strides toward achieving their version of the American Dream.

However, it is incredibly alarming and disheartening to hear stories about financial institutions cutting off services to digital asset firms, political figures, and conservative-aligned businesses and individuals.

Under the Biden administration, we've seen the rise of what many are calling Operation Chokepoint 2.0, where Federal regulators exploited their power, pressuring banks to cut off services to individuals and businesses with conservative disposition, or folks aligned with industries they just didn't like—like the color of one's skin in my family's history.

I wholeheartedly believe that debanking someone over their political ideology is un-American and goes against the core values that our Nation was founded on.

Today, we'll have an opportunity to hear from Anchorage Digital's CEO, whose OCC-chartered bank was debanked, Old Glory Bank's CEO, who started a bank to serve those who had been debanked, and from a legal expert with extensive experience navigating these regulatory abuses, and from a policy expert at the Brookings Institution.

This hearing will also examine how practices similar to the original Operation Chokepoint have persisted, despite assurances that they would end.

We'll investigate the role both regulators and financial institutions have played in these harmful practices, which hurt not just businesses but also consumers and our entire economy.

This issue should concern every American, regardless of political affiliation and that's why I am committed a bipartisan solution to stop this form of discrimination.

This hearing is just the beginning.

We are here to shine a bright light on these unacceptable practices and to hold those responsible accountable. The message is crystal clear: no regulator, and no bank, is above the principles of fairness and market access.

Speaking of shining a light, I was so glad to see that just a couple of hours ago, the FDIC under President Trump's leadership released a fresh set of never-before-seen supervisory documents, which further prove that Chokepoint 2.0 was real.

I will be going through the documents in greater detail, but rest assured for those in this room, and those watching at home, they paint a disgusting and disheartening picture of abuse.

As Acting Chair Hill characterized them, "these and other actions sent the message to banks that it would be extraordinarily difficult—if not impossible—to move forward with crypto related activities."

I commend the new FDIC leadership for its commitment to transparency, but it is a shame that it took an election—an election—for the agency to begin following the laws of our country.

Thank you. I look forward to hearing from our witnesses and working with colleagues on both sides of the aisle to stop debanking and protect every American's right to participate fully in the economy.

PREPARED STATEMENT OF RANKING MEMBER ELIZABETH WARREN

Thank you, Mr. Chairman. Thank you for holding today's hearing on debanking. It is a real problem, and I hope it is something we can work on together.

People need access to a bank account in order to thrive in today's economy. The same goes for businesses. Without a banking account, you really can't get along.

"Debanking" happens when a bank shuts down a customer's bank account because they think that account poses a financial, legal, or reputational risk to the bank. Once the bank shuts someone out, they may share that information with companies that get paid to maintain a Do Not Bank list—with the result that the customer is blacklisted everywhere.

For me, this is straightforward. It doesn't matter who you voted for, what you believe, or the origin of your last name—people shouldn't be arbitrarily denied access to their banks, locked out of their accounts, or stripped of their banking privileges.

To help identify what is going on, my staff reviewed the Consumer Financial Protection Bureau complaint database, looking for cases where consumers reported that they were unable to open accounts or their accounts were wrongly closed—classic debanking. Mr. Chairman, we put together a supplemental memo on this data that I'd like to make part of the Committee record.

My staff identified 11,955 complaints—and that's only the people who took time to file complaints and only in the past 3 years.

They all reported common themes.

No warning.

No explanation.

No chance to dispute or appeal.

They described how one day, all of a sudden, they lost their place in the banking system.

We know from the consumer complaint hotline that millions of Americans—of all political stripes—have had the same experience.

Tens of millions of customers have been blacklisted by the banking industry because they overdrafted their account a few times.

Formerly incarcerated Americans have been debanked because of their criminal history.

Some people have been debanked for merely having the same name as someone who has a criminal history.

Muslim Americans and Armenian Americans have faced debanking on account of their last names.

Nonprofits and charities operating internationally have been debanked through no fault of their own.

Lawful cannabis businesses have been unable to open accounts, and employees of those businesses have also been debanked.

This shouldn't be happening. So we need to figure out why, and who is responsible. My staff did some more work here as well. They found that just four big banks—Bank of America, JPMorgan, Wells Fargo, and Citibank—accounted for half of all the complaints filed at the CFPB.

Donald Trump was onto a real problem when he criticized Bank of America for its debanking practices.

Banks may be taking shortcuts when it comes to assessing risks. Rather than investing time and resources to identify true criminal risks and shutting down those accounts, big banks are relying on black box algorithms and middle-men companies and shutting down accounts without doing careful due diligence.

We can prevent these abuses. I know that the Consumer Financial Protection Bureau is a favorite whipping boy of Republicans on this Committee, but the CFPB is the main agency in our Government that is actively working to stop unfair debanking.

Let me say that again: the CFPB is the one agency that is actively working to stop unfair debanking. Right now, the agency has five different rules either in place or in progress that would help prevent debanking by addressing some of the root causes, from overdraft fee practices to religious discrimination. And the CFPB is working to hold banks accountable when they close law-abiding citizens and businesses' accounts for no good reason.

I sent a letter to President Trump today that walks through the CFPB's work. I'd like to make that letter part of the Committee record. I said the CFPB is the one agency fighting back against debanking, but that may be at risk.

Earlier this week, Treasury Secretary and Acting CFPB Director Scott Bessent halted all CFPB rulemaking, enforcement investigations, and litigation against financial institutions that are breaking the law—including the banks that are wrongfully debanking their customers. The freeze Secretary Bessent has put on the CFPB means more Americans across the country will be unfairly debanked, and they will lose the one agency that is working to help them.

There is additional work to be done by the Treasury Department, the Federal Reserve, the FDIC, and other regulators to issue clear Anti-Money Laundering rules and guidance for banks to follow, which would reduce the incentive to use debanking as a form of risk management.

Mr. Chairman, I'll say again: I appreciate your holding this hearing. Debanking is a real problem, and I'm eager to work with you and President Trump to support the CFPB's efforts to make sure that banks treat all people fairly and that we put an end to this debanking.

PREPARED STATEMENT OF NATHAN MCCAULEY

COFOUNDER AND CEO, ANCHORAGE DIGITAL

FEBRUARY 5, 2025

Thank you, Chairman, Ranking Member, and distinguished Members of this Committee for having me as a witness today on the important issue of debanking and ensuring fair access to banking.

I am Nathan McCauley, the CEO and cofounder of Anchorage Digital, an institutional crypto platform that is home to the Nation's first and only federally chartered crypto bank. I grew up in a small town in the Midwest called Economy, Indiana, with a population of about 150 people. Though I came from what many call "flyover country" and one of my first jobs was grilling burgers at McDonalds—I had big dreams. I wanted to be a computer engineer and entrepreneur. Early in my career, I worked on cryptography and as a security engineer. In 2017, after being asked for years by friends to help them manage the private keys to their crypto wallets, my cofounder and I decided to start a company to offer a safe way for institutions to custody their crypto at scale.

That company is Anchorage Digital, which has offices in South Dakota, New York, Portugal, and Singapore and 400 employees around the globe, including 282 employees across 37 different U.S. States. As a remote first company, our employees are distributed throughout the United States providing great jobs in big cities but also small towns.

Under the terms of our national bank charter, granted to us by the Office of the Comptroller of the Currency (the OCC) in January 2021, Anchorage Digital Bank safeguards digital assets, or more specifically the cryptographic keys to access digital assets. We have over a thousand institutional clients, including crypto-native companies, public and private funds, wealth and asset managers, and sovereign wealth funds. Anchorage Digital also provides these institutions access to other services such as staking, on-chain governance, settlement, and over-the-counter trading. We are proof that crypto companies can operate safely and soundly within the regulatory perimeter, and we are proud of the role we play as a bridge between the traditional financial system and the emerging crypto economy.

I am grateful for the opportunity today to tell our story: how we sought out the highest level of regulatory scrutiny and certainty by becoming a national bank, how

we built a best-in-class compliance program, and how we were nevertheless debanked, and denied access to banking services that our company depended on—the ramifications of which we are still dealing with to this day.

What It Means To Be a Federally Regulated Crypto Bank

For those who are not familiar, I want to briefly explain what it means to be a federally regulated crypto bank. We are subject to multiple on-site examinations by the OCC each year, including in-depth reviews of our documents and processes to ensure that we operate in a safe and sound manner and comply with applicable laws and regulations. Our examiners assess how we manage numerous categories of risk including credit risk, liquidity risk, price risk, operational risk, compliance risk, strategic risk, and reputational risk. Finally, we are held to the same asset management, BSA/AML and OFAC compliance, IT, security, and other standards as any other federally regulated bank. In fact, we have the ability to go beyond what traditional banks do in terms of transaction monitoring. We monitor the flow of funds not only within our bank, but funds that were once in the bank, and identify suspicious activity to an extent not possible in the traditional financial system. This has led to us assisting law enforcement in their efforts to catch and or sanction persons conducting illegal activities, well after these funds have left the bank.

Meeting the requirements of a Federal bank charter is a significant undertaking. Yet we sought one because we believe that Anchorage Digital, our clients, and the industry benefit from the OCC's extensive supervisory experience and expertise, and that our business is a model for how existing laws and regulations can be adapted to the unique benefits and risks of new technologies.

How We Were Debanked

Despite being a federally regulated bank ourselves, subject to the same liquidity, capital, and risk management expectations of other federally chartered banks, we were debanked. I will describe here briefly what that experience looked like for our company—an experience that we believe was shared by many in our industry and perhaps in other industries, as well.

For over 2 years, we had been doing business with our bank. We were a valuable client to them: we held a corporate bank account there, and they held our client fees from custody and other services, along with general corporate funds used for day-to-day business expenses such as payroll and administrative expenses. The relationship was so positive that we were in active discussions to expand our partnership. Not once in our 2½ year relationship had they raised any issues. We were a highly regulated, well-capitalized, well-run business—in many ways the ideal bank client.

One day in June 2023, we received an urgent email from the bank informing us that they needed to speak with us that day. On the call, we were told that our account would be closed in 30 days because they were not comfortable with our crypto clients' transactions. We attempted to explain the source of all payments from our crypto clients were fully documented as a part of our robust KYC, AML, sanctions compliance, and other internal transaction monitoring and attribution processes, and that we would be willing to provide more information to their risk management team. They were uninterested. They refused to engage in further discussions, provide any additional explanation, or offer any chance to appeal the decision.

Alongside this experience, we found ourselves shut out of the banking system at other touchpoints. After the closure of some of the few banks that were willing to serve crypto clients in March of 2023, we were forced to find a new bank to hold clients' cash funds in custody for trading purposes, as well as an account to hold segregated regulatory capital, both required to be held at an FDIC-insured bank under the terms of our bank charter. Again, we should have been a desirable, low-risk client for a bank. Yet over the course of a 7-month period we spoke to over 40 banks and were rejected by all of them. Many did not even cite a reason; others just vaguely told us it was not within their risk appetite to work with crypto clients.

While Anchorage Digital was eventually able to find banks willing to partner with us, the impact of being nearly shut out of the banking system was devastating. It was extremely disruptive to our business and our clients, and contributed to the difficult decision we made in 2023 to lay off 20 percent of our workforce, including 70 U.S. employees. To this day, our clients lack the ability to send wire transfers to third parties, a basic banking service we previously had access to. Furthermore, it abruptly ended opportunities to provide subcustody to other national banks we were actively exploring partnerships with.

So why did this happen? I believe that regulators pressured banks to cut off services to the crypto industry. Why do I think this? Two things: a series of anti-crypto regulatory actions between 2021 to 2023, and my own lived experience.

First, in January 2021, the OCC put a hold on its Fair Access Rule, which may have prevented discrimination against disfavored industries such as crypto. Then in November 2021, the OCC issued Interpretive Letter 1179, requiring banks to seek permission from the OCC before engaging in legal crypto banking activities. Shortly thereafter, in April 2022, the FDIC required banks under its supervision to flag any current or potential business with crypto, and warned of the risks of conducting business with such entities. Also that month, the SEC issued SAB 121, which effectively prevented any public bank from providing custody of digital assets at scale. Finally, in what I believe was the nail in the coffin that led to the en masse debanking of the crypto industry, the Federal Reserve, FDIC, and OCC issued a joint statement in January 2023 warning banks against serving crypto clients or engaging in crypto activities of their own. The implied threat of enforcement action was clear, leaving many banks with no choice but to cut off crypto clients completely.

Second, my lived experience. Outside of what happened to our company, I am an investor in four crypto companies that struggled to obtain and keep their bank accounts during this time, forcing some of them to shut down. Further, I have at least two employees that have been debanked because of what they believe is their association with the crypto industry. Finally, I have spoken to dozens of crypto leaders that have been debanked personally or had their crypto companies debanked.

I want to remind this Committee and the public that none of the actions by the regulators described above were authorized by Congress or subjected to agency rule-making, both of which would have allowed for the public to weigh in and offered transparency and accountability. The entire process was opaque, unfair, and amounted to a de facto ban on crypto by choking it off from the Federal banking system, something any industry needs to survive.

Moving Forward

Congress is right to investigate what happened, to protect and promote fair and open access to banking services for all law-abiding citizens and companies, as the President's Executive order on digital assets recently stated.

Debanking is about more than just the inconvenience and disruption to our business and many others in the crypto industry. It is about the broader issue of ensuring fair access to the financial system and fostering the growth of an industry that could benefit Americans in terms of jobs, technological innovation, and financial inclusion. It is a threat to American values to create such arbitrary barriers against new technology and innovation which undermines our economic competitiveness as a country.

I am encouraged by this Committee's efforts to investigate and put an end to the practice of debanking, including special attention to the debanking of crypto firms. In addition to holding hearings such as this one, I urge Congress to consider legislation similar to what has been passed at the State level to ensure fair access to financial services. Furthermore, the new Administration should consider rescinding the January 2023 joint banking regulators' statement and the OCC's interpretive letter 1179, which imposed an arbitrary pre-clearance requirement for banks wishing to engage in certain crypto activities.

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

PREPARED STATEMENT OF STEPHEN T. GANNON
PARTNER, DAVIS WRIGHT TREMAINE LLP
FEBRUARY 5, 2025

My name is Stephen T. Gannon and I am a partner in the Financial Services practice at Davis Wright Tremaine LLP. I have previously served as a senior legal executive at Citizens Financial Group, Capital One Financial Corporation, and Wachovia Securities. I have spent the last two and a half decades as a legal advisor regarding the strategic decision-making for several of the largest U.S. financial institutions. I represent a wide range of traditional and modern financial services providers and other participants in the financial services market. I am also the co-editor and co-author of a book published in 2024 by the American Bar Association titled *Banking on Blockchain*.

I am here in my individual capacity today and not on behalf of any client. The views I express are my own, and not necessarily those of Davis Wright Tremaine LLP, any client, or any other organization with which I have been or am affiliated.

1. Introduction

Recent events have once more put debanking and “Operation Choke Point” back in the spotlight. “Debanking” is the termination, often without notice or explanation, of banking services for those engaged in politically disfavored, but legal, conduct—such as crypto and other digital assets activities, among many other kinds of activities in the U.S. economy.¹ The most recent iteration of Operation Choke Point, “Operation Choke Point 2.0” (“OCP 2.0”) has been an effort to discourage banks from engaging in crypto-related projects based on various regulatory and supervisory policies at the federal banking agencies—the Board of Governors of the Federal Reserve System (the “Federal Reserve Board”), the Federal Deposit Insurance Corporation (the “FDIC”), and the Office of the Comptroller of the Currency (the “OCC”).

OCP 2.0 follows Operation Choke Point 1.0 (“OCP 1.0”), which stemmed from an initiative that the U.S. Department of Justice (the “DOJ”) began in 2012, and, as described by the FDIC’s Office of Inspector General (the “FDIC OIG”), was intended to protect consumers from fraud perpetrated by fraudulent merchants, financial institutions, and financial intermediaries known as third-party payment processors.² Unfortunately, they appeared to quickly pivot. According to the House Oversight Committee, “Operation Choke Point was created by the [DOJ] to ‘choke out’ companies the administration considers a ‘high risk’ or otherwise objectionable, despite the fact that they are legal businesses.”³

In August 2013, members of Congress became concerned that the FDIC and DOJ were pressuring financial institutions and third-party payment processors to

¹ This is not to say that debanking is limited to the crypto industry. A review of the Consumer Financial Protection Bureau’s (the “CFPB”) database indicates over 14,000 complaints regarding account closures for a variety of reasons, including investing or trading in cryptocurrency.

² FED. DEPOSIT INS. CORP. (hereinafter “FDIC”), OFFICE OF INSPECTOR GEN., OFFICE OF AUDITS & EVALUATIONS REPORT NO. AUD-15-008, THE FDIC’S ROLE IN OPERATION CHOKE POINT AND SUPERVISORY APPROACH TO INSTITUTIONS THAT CONDUCTED BUSINESS WITH MERCHANTS ASSOCIATED WITH HIGH-RISK ACTIVITIES i (2015), <https://www.fdicigoig.gov/sites/default/files/reports/2022-08/15-008AUD.pdf>.

³ House Oversight Committee Report, “The Department of Justice’s ‘Operation Choke Point’: Illegally Choking Off Legitimate Businesses?”, 1 (May 29, 2014), <https://oversight.house.gov/wp-content/uploads/2014/05/Staff-Report-Operation-Choke-Point1.pdf>.

terminate business relationships with lawful lenders that provided short-term credit options to underserved consumers, such as payday loans.⁴

Debanking and Operation Choke Point are not, technically, the same thing. But there is overlap between the two concepts and, in their most current iteration, they are focused on the same result—slowing or terminating the expansion of digital asset services into the U.S. banking system.

On November 26, 2024, Marc Andreessen, general partner of venture capital firm Andreessen Horowitz, commented on *The Joe Rogan Experience* podcast about alleged debanking which drew interest from founders of and individuals related to crypto and other digital assets companies who had lost their banking relationships, often without notice or explanation. In addition, in early December 2024, the U.S. District Court for the District of Columbia compelled the FDIC to produce a series of “pause” letters that, as a practical matter, acted as directives to banks to cease any crypto business in which they engaged and, at least indirectly, to terminate banking relationships with crypto companies and related individuals.⁵

There also is a purported whistleblower group called “FDIC Exposed” that claims to possess additional documents and recordings that allegedly confirm the FDIC’s debanking efforts. While those claims have not been confirmed, government whistleblowers were important in bringing OCP 1.0 to the forefront and, ultimately, to an end.

In addition, in Section 1(a)(iii) of Executive Order 14178 of January 23, 2025, on crypto (“Strengthening American Leadership In Digital Financial Technology”), the second Trump Administration noted that it will support the responsible growth

⁴ *Id.* at i–ii (while the FDIC OIG concluded that “With the exception of payday lenders, [it] found no instances among the financial institutions [it] reviewed where the FDIC pressured an institution to decline banking services to a merchant on the high-risk list,” nevertheless, “references to specific merchant types in the summer 2011 edition of the FDIC’s Supervisory Insights Journal and in supervisory guidance created a perception among some bank executives that [the FDIC OIG] spoke with that the FDIC discouraged institutions from conducting business with those merchants”). See also, FDIC Vice Chair Travis Hill, “Charting A New Course: Preliminary Thoughts On FDIC Policy Issues”, Speech Before Banking Law Comm. of Am. Bar Ass’n, (January 10, 2025) (hereinafter “Hill Policy Remarks”).

⁵ Minute Order, *History Associates Inc. v. FDIC*, No. 1:24-cv-1857-ACR (D.D.C. Dec. 12, 2024). The FDIC reproduced the “pause” letters on January 3, 2025, which are available at <https://www.fdic.gov/foia/history-associates-inc-v-fdic-fdics-redacted-pause-letters-january-3-2025>.

and use of digital assets by, among other things, “protecting and promoting fair and open access to banking services for all law abiding individual citizens and private sector entities alike,” suggesting a general concern about debanking.

Allegations of debanking and OCP 2.0 have led to calls for remediation, transparency, and accountability from those who have been affected. However, the framework of statutes, regulations, guidance, and supervisory practices and expectations that exist today makes attaining effective remedies against the federal government challenging or simply too costly for banks and other regulated and supervised entities.⁶

In this review, I first will focus on the regulation and supervision of banks and notable ways that federal banking agencies and other federal regulators have used these tools in unpredictable and unfair ways, notwithstanding the need for effective regulation and supervision of the financial system.

Then I will set forth an analysis of the challenges to and potential remedies for claims against the government for those harmed by debanking and Operation Choke Point 2.0, whether individuals or entities. For example:

- When U.S. citizens have been harmed by federal government misconduct do they have remedies, what are they and how may they be secured?
- Can the victims of government conduct that deprives them of their constitutional rights obtain economic remedies?
- How may government actors from so-called “independent” agencies be held accountable?
- Are there alternative remedial methods that might be employed?

2. Regulation and Supervision of Banks—Conduct that Allows Debanking and OCP 1.0 and OCP 2.0 to Happen

Banks are heavily regulated and supervised unlike any other entities in the United States. Broadly speaking, regulation involves the rules that apply to all regulated entities, while supervision means the entity-specific requirements, expectations, and standards that the federal banking and others may impose on them. Both

⁶ For simplicity, we generally refer to “banks,” unless otherwise noted.

are motivated by a desire to prevent macro-prudential and micro-prudential risks, promote safety and soundness, prevent financial crimes, consumer harm, and other goals. But while regulation is public, supervision is secret. For instance in regulation, federal agencies prescribe standards that apply to banks generally, such as lending limits; in supervision, examiners scrutinize each bank's specific loan activities and issue confidential criticisms about those loans, their underwriting, concentration, or other factors.

2.1. Reputational Risk as an Amorphous Supervisory Tool

Prior to the mid-1990s, bank supervisors did not specifically regulate so-called "reputational risk." Their primary focus was on the fundamental components of safety and soundness, capital, credit, and market risk. However, the OCC and the Federal Reserve Board both began to develop new "risk focused" supervisory approaches. Each federal banking regulator developed its own list of risks, but each chose to include reputational risk. Over time, the regulators broadened the list of "stakeholders" who might be affected by reputational risk to include not only investors and customers, but counterparties, correspondents, employees and the regulators themselves.⁷ To demonstrate the breadth of the concept, the Federal Reserve Board explicitly noted that "negative publicity" could present reputational risk, even if the publicity is not true.⁸

Without notice or comment as would be expected for a rulemaking, in 1996 the bank examiners modified the centerpiece of bank supervision, the Uniform Financial Institutions Ratings System known by the acronym "CAMELS" (Capital adequacy, Asset quality, Management, Earnings, Liquidity and Sensitivity (to interest rate changes)),⁹ to include reputational risk as part of both the asset quality and management ratings. CAMELS was created in 1979 to measure a bank's financial condition and operations. This change would have sweeping consequences for both banks.¹⁰

⁷ OFFICE OF THE COMPTROLLER OF THE CURRENCY (hereinafter, "OCC"), LARGE BANK SUPERVISION HANDBOOK 64 (2018).

⁸ BD. OF GOVERNORS OF THE FED. RESERVE SYS. (hereinafter, "Federal Reserve Board"), COMMERCIAL BANK EXAMINATION MANUAL § 4012.1 (2019).

⁹ While there are other ratings systems too, for simplicity I focus on CAMELS here.

¹⁰ See Julie A. Hill, *Regulating Bank Reputation Risk*, 54 GA. L. REV. 523 (2019).

The concept of reputational risk is not consistently clear or based on objective indicia. Reputational risk is thought of as ancillary to credit risk, operational risk and other primary risks managed by banks. But because of its mutable nature, reputational risk is present in every facet of banking.¹¹ In short, regulators can find reputational risk almost wherever they choose to look. It was ripe for use in a program of debanking.

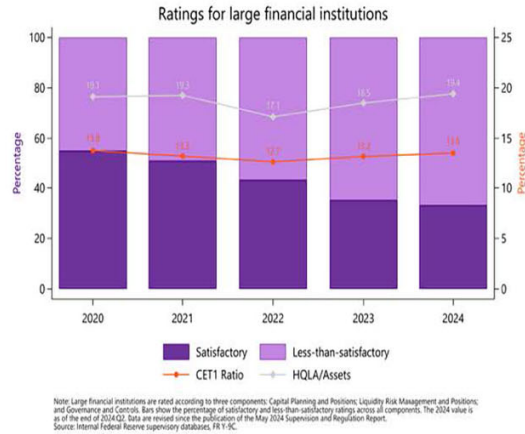
Because regulators list *themselves* as among the so-called “stakeholders” to whom reputational risk is relevant, any finding of reputational risk is—by definition—nearly indisputable.

Reputational risk is not necessarily tied to a violation of law but often arises in connection with Matters Requiring Attention (“MRAs”), which are both issued and resolved outside of the public view and can prompt a downgrade in a bank’s Management or composite rating under the CAMELS ratings system. Even if all other rating elements are strong, an unsatisfactory management rating may affect the bank’s ability to engage in acquisitions, engage in various activities, or add branches—any or all of which can drive fundamental changes to a bank’s strategic plan. These kinds of ratings downgrades are effectively unappealable (appeals processes exist, but chances of success are rather low: in 2024, banks had a win-loss record in appeals of 0–12). For banks, such downgrades are to be avoided at all costs. That, of course, provides tremendous leverage to bank examiners to dictate their desired results. Indeed, the Bank Policy Institute (“BPI”) recently opined that “[e]xaminers use the ‘M’ in ‘CAMELS’ as a weapon to dictate bank behavior.”¹²

The results of such unbound discretion can be seen in the below chart, demonstrating that despite record levels of capital and liquidity, two-thirds of large banks are considered *not* well-managed by the Federal Reserve Board. The disconnect between the regulators’ perception and the market is telling.

¹¹ *Id.* at 552.

¹² *Bank Supervision is Broken. Here’s How to Fix It*, BANK POLICY INST. (Nov. 19, 2024), <https://bpi.com/bank-supervision-is-broken-heres-how-to-fix-it/>.



In Congressional testimony on July 15, 2014, former FDIC Chair William Isaac described OCP 1.0 as “one of the most dangerous programs I have experienced in my 45 years of service as a bank regulator, bank attorney and consultant, and bank board member.”¹³ He further noted that: “No one really knows what reputational risk means beyond the fact that a bank is doing something that a regulator doesn’t like but can’t quantify in terms of risk under the CAMELS rating system. This development has been a major factor in shifting the banking agencies from their primary role as guardians of the safety and soundness and stability of the financial system to amorphous financial social welfare agencies.”¹⁴ In a 2025 webinar, Mr. Isaac stated that if federal bank regulators wish to make a lawful activity illegal, they should go to Congress and ask that it be made illegal.¹⁵

¹³ TESTIMONY OF WILLIAM M. ISAAC, SENIOR MANAGING DIRECTOR, FTI CONSULTING, INC. & FORMER FDIC CHAIRMAN, BEFORE THE SUBCOMM. ON FIN. INST. & CONSUMER CREDIT OF THE H. COMM. ON FIN. SERVS. (July 15, 2014), <https://financialservices.house.gov/uploadedfiles/hrg-113-ba15-wstate-wisaac-20140715.pdf>.

¹⁴ *Id.*

¹⁵ Davis Wright Tremaine Webinar, SECURA ISAAC (Jan. 14, 2025), <https://securaisaac.com/news/davis-wright-tremaine-webinar>. For instance, according to the FDIC’s OIG, “in early 2011 the FDIC

a) Negative Impact of Reputational Risk on Banks

The intensified use of reputational risk also had a negative impact on banks themselves because it inserted bank examiners into the actual business of managing a bank as opposed to supervising risks to a bank's safety and soundness. And this was done in ways for which, as noted above, most banks were powerless to object. BPI commented on this non-public regime in 2017, 2020, and again in 2024:

- In 2017, BPI noted that reputational risk is “rarely, and likely never, a safety and soundness risk.”¹⁶
- In 2020, BPI observed that examining for reputational risk can devolve into “examination as political consulting.”¹⁷
- In 2024, that theme was expanded on when BPI opined that bank examiners have expanded their supervisory powers to the point that it “is subject to no checks and balances” and “operates in secret based on the varying views of individual examiners, and the agencies have created their own enforcement regime, not based on rule or law, to impose significant penalties on banks that do not follow their mandates. These penalties can be severe and greatly affect the ability of banks to run their business; they range from limits on the business growth, orders to divest from certain lines and customers, denials of mergers and acquisitions and increases in deposit insurance fees, among other things.”¹⁸

Adding to the challenge, the federal banking agencies can pursue these actions without direct, written orders or other directives. According to Professor Todd

employed extraordinary examination resources in an attempt to identify compliance violations that would require the bank to exit [Refund Anticipation Loans],” specifically the FDIC sent “an unprecedented 400 examiners to examine to 250 tax preparers throughout the country and [one] bank.” FDIC, OFFICE OF INSPECTOR GEN., REPORT NO. OIG-16-1001, REPORT OF INQUIRY INTO THE FDIC’S SUPERVISORY APPROACH TO REFUND ANTICIPATED LOANS AND THE INVOLVEMENT OF FDIC LEADERSHIP AND PERSONNEL iii (2016), https://www.fdicog.gov/sites/default/files/reports/2022-08/OIG-16-001_0.pdf.

¹⁶ Greg Baer, *Rethinking Safety and Soundness Supervision*, BANK POLICY INST. (Aug. 31, 2017), <https://bpi.com/rethinking-safety-and-soundness-supervision>.

¹⁷ Greg Baer, *How and Why Regulators Protecting the Reputations of Banks?*, BANK POLICY INST. (Jan. 10, 2020), <https://bpi.com/how-and-why-are-regulators-protecting-the-reputations-of-banks>.

¹⁸ *Bank Supervision is Broken. Here's How to Fix It*, *supra* note 10.

Zywicki of George Mason University's Antonin Scalia Law School, "What banks understand is the government just doesn't make suggestions. When the government suggests something, everyone understands that's an order, and that's how banks respond."¹⁹

The 2024 BPI article further examines how reputational risk enables bank examiners to abuse their power: "Today's examiners are using the examination process to push banks out of legitimate activity that benefits economic growth.... [B]ank examiners now feel empowered to tell individual banks how to run their businesses by shedding business lines or clients as they have a strong incentive to find problems and prevent banks from taking risk."²⁰

For instance, in anti-money laundering examinations, agencies "can designate certain industries or companies [such as crypto] as 'high risk,' a designation that comes with so high a compliance burden as to force the bank to expel the customers from the bank."²¹ And this conduct is not limited to politically unpopular businesses as noted above. In fact, examiners also have pushed banks out of the mortgage servicing business, leveraged lending, synthetic risk transfers, and relationships with third-party non-bank service providers.

b) Knock-on Effects

The misuses of reputational risk and debanking are by no means restricted to the crypto community. Banks are in the business of making loans that are safe and sound and which stimulate economic growth. Outside of financial crimes, sanctions and related contexts—when regulators interpose themselves between a bank and its customers by, in effect, telling banks which customers it may or may not bank, all parties suffer. Moreover, there is little predictability or logic to the regulators' decisions, and therefore they are not helpful to industry participants looking to understand the contours of permissible activities and other articulated policies.

Thus, MRAs should be redefined to be limited to a *material and present financial* risk to a bank and not simply the latest "flavor-of-the-month" risk (*e.g.*, reputational, climate, third-party, talent, compensation, governance risk) unless such risk

¹⁹ Rupa Subramanya, *The Debanking of America*, THE FREE PRESS (Oct. 17, 2024), <https://www.thefp.com/p/debanking-america-melania-barron-trump-january-6-muslims>.

²⁰ *Bank Supervision is Broken. Here's How to Fix It*, *supra* note 10.

²¹ *Id.*

also meets the objective test of a likelihood of material and present financial harm.²² Indeed, the “M” element of the CAMELS system has become so subjective and so dominant that it suggests a need for either replacement of that element with a more objective standard or a rethinking of current CAMELS framework.

In a similar vein, federal bank regulators use the term “safety and soundness” in a rather malleable way, covering activities which they do not like and can connect to nearly any form of risk. Notably, “unsafe or unsound practice” is not defined in the Federal Deposit Insurance Act, but courts have generally interpreted the term as referring to two components: (1) an imprudent act (2) that places an abnormal risk of financial loss or damage on a banking institution.²³ Many MRAs referring to safety and soundness simply do not make the connection to this serious level of *financial* risk. Often, other concepts such as “operational risk” stand in as a substitute. Yet, for instance, the banking industry is among the most organized and resilient against cyberattacks.

And, reconsidering the above chart, Federal Reserve Board guidance says that a well-managed firm “has sufficient financial and operational strength and resilience to maintain safe and sound operations through a range of conditions, including stressful ones.”²⁴ Therefore, if the same agency is correct that approximately two-thirds of the large banks in the United States are *not* well managed, then those findings either amount to a major crisis or are meaningless.

2.2. Confidential Supervisory Information Used Overbroadly

Supervisory scrutiny takes place out of public view primarily through implied or express threats to issue MRAs and downgrade CAMELS ratings from prudential regulators. These decisions and the communications surrounding them fall under Confidential Supervisory Information (“CSI”) protections, which the federal

²² This would also limit the use of “industry MRAs” which are, in fact, another form of rulemaking which is executed outside the protections of the Administrative Procedure Act and the Congressional Review Act.

²³ See *Seidman v. Office of Thrift Supervision (Matter of Seidman)*, 37 F.3d 911, 926-27 (3d Cir. 1994); *Michael v. FDIC*, 687 F.2d 337, 352 (7th Cir. 2012); *Landry v. FDIC*, 204 F.3d 1125 (D.C. Cir. 2000).

²⁴ See, e.g., 83 Fed. Reg. 58729 (November 21, 2018).

banking agencies have codified in regulation.²⁵ CSI includes reports of examination and inspection, confidential operating and condition reports, and any information derived from, relating to, or contained in them and any documents prepared by, or on behalf of, or for the use of the agencies.²⁶ It essentially covers any examination activity. Regulators consider CSI their property and that the unauthorized disclosure of CSI is prohibited and punishable as a felony.²⁷

Under this veil of supervisory secrecy, the federal banking agencies could pursue a policy of debanking while publicly stating that they neither prohibit nor discourage banks from doing business with any specific industries or businesses. Bank examiners have been able to use reputational risk and CSI to achieve policy goals to penalize disfavored industries or individuals without the individuals having either any effective recourse or even knowledge as to why they were debanked.

There is a complete absence of any process allowing an individual to contest such a decision. Other critics maintain that this practice also violates the Administrative Procedure Act (“APA”) because it acts as a *sotto voce* alternate for rulemaking. This cuts against the need for transparency in rulemaking. As noted by the previous Federal Reserve Board Vice Chair for Supervision, in delegating to federal banking agencies the significant power to write regulations, Congress also codified “a regulatory process that emphasizes transparency. ... This transparency is intended to prevent arbitrary, capricious, and thus ineffective regulation by inviting broad public participation and mandating a deliberate public debate over the content of proposed rules. ... Transparency is central to our ability to assert that our rules are fair.”²⁸

2.3. OCP 1.0 and Banking (2013–2017)

Debanking first arose during the Obama Administration when legal but politically disfavored businesses with activities involving payday lending, firearms,

²⁵ See 12 C.F.R. Part 4 Subpart C (OCC); 12 C.F.R. Part 261 Subpart C (Federal Reserve Board); 12 C.F.R. Part 309 (FDIC); *see also* 12 C.F.R. Part 1070 (CFPB).

²⁶ *Id.* at 121.

²⁷ 18 U.S.C. § 641.

²⁸ Randall K. Quarles, Vice Chair for Supervision, Board of Governors of the Federal Reserve System, “Spontaneity and Order: Transparency, Accountability, and Fairness in Bank Supervision,” Speech Before Banking Law Comm. of Am. Bar Ass’n (January 17, 2020), <https://www.federalreserve.gov/newsevents/speech/quarles20200117a.htm>.

tobacco, fossil fuels, among others, began to receive negative attention from federal banking agencies. Examiners allegedly encouraged banks to end their relationships with these businesses, thus “choking” them off from the financial system.

For banks, OCP 1.0 was essentially governed by bank regulators’ subjective perceptions of which businesses were unsavory and, therefore, might pose so-called “reputational risk” to banks that had them as customers. It had two general components: (1) agencies would publish informal guidance, and (2) exert pressure on banks within the highly confidential confines of examinations.²⁹

a) OCP 1.0 Is Challenged in Court

In 2014, OCP 1.0 was challenged in the U.S. District Court for the District of Columbia by a trade association of payday lenders which sued the FDIC, the OCC and the Federal Reserve Board.³⁰

While denying the APA claim, the court ruled that plaintiffs had stated an appropriate due process claim under the Fifth Amendment. The court found that the plaintiffs’ interest in conducting a legal business was protected as an interest in property. The court noted that the stigma applied by the regulators which caused plaintiffs to lose their bank account was a colorable allegation of a property interest in a bank account which was sufficient to support a due process claim.³¹ The court found that “where a person’s good name, reputation, honor, or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential.”³²

b) Congressional Review and Criticism of OCP 1.0

At the same time, Congressional and trade group criticism of OCP 1.0 substantially increased, with senior legislators such as Representative Jeb Hensarling issuing warnings that the newly defined concept of reputational risk could easily “be invoked to compel a depository institution to sever a customer relationship with a small business operating in accordance with all applicable laws and regulations, but

²⁹ David H. Thompson et al., *Operation Choke Point 2.0: The Federal Bank Regulators Come for Crypto*, COOPER & KIRK, PLLC (Mar. 24, 2023), <https://www.cooperkirk.com/wp-content/uploads/2023/03/Operation-Choke-Point-2.0.pdf>.

³⁰ *Comm. Fin. Servs. Ass’n of Am. v. FDIC*, 132 F. Supp. 3d 98 (D.D.C. 2015).

³¹ *Id.* at 121.

³² *Id.* (quoting *Wisconsin v. Constantineau*, 400 U.S. 433, 437 (1971)).

whose industry is deemed reputationally risky for no other reason than it has been the subject of unflattering press coverage, or that certain executive branch agencies disapprove of its business model[,]” while others described it as an “illegal and abusive practice.”³³ And, in a highly critical staff report issued in May 2014, the Committee on Oversight and Government Reform concluded that OCP 1.0 forced banks to terminate relationships with a wide variety of entirely lawful and legitimate merchants and that the DOJ lacked adequate authority for the initiative.³⁴ Ultimately, this pressure caused the FDIC to amend its guidance on these matters, in 2017 the DOJ informed Congress it was ending OCP 1.0, and the civil litigation was ultimately resolved during the first Trump Administration in 2019.

However, while this may have appeared to be a win for plaintiffs and for those affected, there was no lasting accountability for this regulatory misconduct for the federal banking agencies.

2.4. What Is Old Is New Again: OCP 2.0 (2021–2024)

Even after the end of OCP 1.0, the federal banking agencies leveraged their supervisory powers to effectively direct bank conduct in ways that have been difficult to counter. Without lasting accountability for the federal agencies,³⁵ and with the encouragement of the Biden Administration, these same tools were available when federal banking agencies perceived the rising popularity of digital assets as a threat in OCP 2.0.

There has been a recent outpouring of alleged examples of debanking on social media by commenters involved in the digital asset industry—as well as the fintech industry more broadly. These commenters claim that they were not only debanked but were denied access to products such as payment services and card processing.

³³ Letter from Rep. Jeb Hensarling, Chairman, H. Comm. on Fin. Servs., to Janet Yellen, Chair, Federal Reserve Board (May 22, 2014); Press Release, Rep. Blaine Luetkemeyer, Luetkemeyer Reintroduces Legislation to Protect More Americans from Operation Choke Point (Feb. 15, 2015), <https://luetkemeyer.house.gov/news/documentsingle.aspx?DocumentID=398536>.

³⁴ Press Release, Federal Reserve Board et al., Joint Statement on Crypto-Asset Risks to Banking Organizations (Jan. 3, 2023), <https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20230103a1.pdf>.

³⁵ See C. Boyden Gray, *The FDIC’s “Operation Choke Point” Settlement Doesn’t Make Victims Whole*, REAL CLEAR MARKETS (June 26, 2019), https://www.realclearmarkets.com/articles/2019/06/26/the_fdics_operation_chokepoint_settlement_doesnt_make_victims_whole_103798.html.

Some observers also claim that the overall debanking effort in OCP 2.0 had a direct connection to the failure of both Silvergate Bank and Signature Bank, both of which had provided significant services to the crypto industry through their respective 24/7 crypto settlement layers, SEN and SigNet. For instance, some believe Silvergate Bank's growth was fatally undermined by the imposition of a non-public limit on crypto customer deposits to no more than 15 percent of the bank's total deposits, making its business model unsustainable. Silvergate Bank described it in a more anodyne (though chilling) fashion in its Chapter 11 filing, stating: "[T]he federal bank regulatory agencies would not tolerate banks with significant concentrations of digital asset, customers, ultimately preventing Silvergate Bank from continuing its digital asset focused business model."

Signature Bank was put into receivership while *still solvent*, over the protests of its board member, former House Financial Services Committee Chair Barney Frank, who opined that Signature Bank's closure was "just a way to tell people, 'We don't want you dealing with crypto.'"³⁶ The FDIC noted that the reason for the closure of Signature Bank was rooted in what the FDIC perceived to be "poor management" and communication.³⁷ Remarkably, the FDIC refused to sell off Signature Bank's crypto-focused deposits or its SigNet product,³⁸ contrary to its policy of maximizing value for taxpayers and minimizing costs to the Deposit Insurance Fund by selling assets at the best possible prices.

Notably, other crypto-friendly banks and their customers, were subsequently targets of regulatory action. Moreover, OCP 2.0 may provide an explanation for why the OCC denied national trust bank charters—via the expiration of time—to both Protego and Paxos after they had been conditionally approved. OCP 2.0 may also be connected to the denial of Fed Master Account services (ACH/FedWire) to state-chartered novel institutions like Custodia Bank (a special-purpose depository

³⁶ Geoff Mulvihill, *Barney Frank Coauthored the Dodd-Frank "Too Big to Fail" Law. Now He Says His Bank's Failure Was A Message About "Dealing With Crypto."*, FORTUNE (Mar. 13, 2023), <https://fortune.com/2023/03/13/signature-bank-seized-to-send-a-message-crypto-barney-frank>.

³⁷ FDIC, FDIC'S SUPERVISION OF SIGNATURE BANK (Apr. 28, 2023), <https://www.fdic.gov/news/press-releases/2023/pr23033a.pdf>.

³⁸ Nic Carter, *Insider the Biden Admin's Plot to Destroy Silvergate and Debank Crypto For Good*, PIRATE WIRES (Sept. 25, 2024), <https://www.piratewires.com/p/inside-biden-admin-plot-to-destroy-silvergate-and-debank-crypto-for-good-nic-carter>.

institution chartered under Wyoming law).³⁹ Finally, it also may provide insight into why a consent order was issued to Customers Bank and why Metropolitan Bank stopped serving crypto customers. The message was simple: banks and crypto are not to be mixed.⁴⁰

In 2023, the regulators issued a joint statement briefly saluting the concept that banks “are neither prohibited nor discouraged from providing banking services to customers of any specific class or type ...” while at the same time stating that the issuing or holding of crypto assets “... is highly likely to be inconsistent with safe and sound banking practices.”⁴¹ Under that standard, even the holding of stablecoins backed 100 percent by U.S. dollars or U.S. Treasuries would be deemed to be inconsistent with safety and soundness principles. Thus, if Federal Reserve Board Chairman Powell’s recent statement that banks are “perfectly able” to serve crypto customers is the policy of the Federal Reserve Board,⁴² the Federal Reserve Board should withdraw the language from the 2023 joint statement.

Nonetheless, understanding regulatory actions in this space requires a balanced approach. There is no question that digital assets carry risk, and that regulation has a crucial role to play in ensuring that fair disclosures are made regarding those risks, safety and soundness is promoted, and practical measures are implemented to combat money laundering, terrorism financing, and related criminal activity. However, friction has arisen regarding how to achieve these goals in a way that is consistent with the beneficial features of this new technology and its

³⁹ Notably, Custodia Bank was denied access to the Federal Reserve Board’s payment systems even though deposits are 100 percent reserved and Custodia Bank complies with all of Wyoming’s investor protection standards, including compliance standards evidenced by a 700 page manual. Custodia is in litigation with the Federal Reserve Board and the Federal Reserve Bank of Kansas City. It is notable that in that litigation, defendants claim that Regional Federal Reserve Banks (which are not federal agencies) have complete discretion as to whether to grant or deny a Master Account to any applicant. Thus, as a practical matter, it appears that the government contends that access to a payment system established and paid for by the government can be denied by a non-government actor with no appeal or recourse.

⁴⁰ Dan Ellis, *Custodia Takes A Step Back Ahead of Trump Term*, BANKING DIVE (Nov. 26, 2024), <https://www.bankingdive.com/news/custodia-caitlin-long-fed-sec-trump-crypto-court/734068>.

⁴¹ Press Release, Federal Reserve Board et al., Joint Statement on Crypto-Asset Risks to Banking Organizations (Jan. 3, 2023), <https://www.federalreserve.gov/newsevents/press-releases/files/bcreg20230103a1.pdf>.

⁴² Jerome Powell, Chair, Federal Reserve Board, Transcript of Press Conference (Jan. 29, 2025), <https://www.federalreserve.gov/mediacenter/files/POMCpresconf20250129.pdf>.

opportunities. Fortunately, proposed rulemaking and legislative solutions are already part of the public record, and they can provide a solid foundation on which to build a workable and reasonable program of regulatory oversight and compliance.

OCP 2.0 appears to have been broader and more coordinated than OCP 1.0 and may ultimately prove more difficult to unwind. Below we examine some of the tools used by the federal banking agencies in their debanking efforts in this more recent iteration.

2.5. Subregulatory Action: Shrouded In Secrecy and Lacking a Legal Basis

a) Guidance—Generally

Federal agencies produce a wide range of materials. So-called legislative rules in administrative law are substantive regulations that agencies issue to implement statutory authorities, and subject to some exceptions, federal agencies must generally conduct notice-and-comment rulemaking before adopting legislative rules under the APA.⁴³ Non-legislative rules include interpretive rules and policy statements, which are often called guidance documents.⁴⁴ They include “letters, ‘Frequently Asked Questions,’ bulletins, and other informal guidance that exist on websites, manuals, and everywhere in between ... [c]ritics have called [them] ‘regulatory dark matter.’”⁴⁵

Technically, “[s]ubregulatory guidance isn’t law—it’s just paper.”⁴⁶ But in an era of deference to federal agencies under the now repudiated *Chevron* doctrine (court deference to agencies for rulemakings) and the not-yet-repudiated *Auer* doctrine (court deference to agencies for their own guidance), there is “a real risk that guidance can, practically speaking, end up having the same effect as regulation.”⁴⁷

⁴³ ADMIN. CONFERENCE OF THE UNITED STATES, INFORMATION INTERCHANGE BULL. NO. 34, DISTINGUISHING BETWEEN LEGISLATIVE RULES AND NON-LEGISLATIVE RULES (2024), 34 Distinguishing Between Legislative Rules and Non-Legislative Rules.pdf.

⁴⁴ *Id.*

⁴⁵ Claire McCusker Murray, Principal Deputy Associate Attorney General, Remarks at the Compliance Week Annual Conference (May 20, 2019), <https://www.justice.gov/opa/speech/remarks-principal-deputy-associate-attorney-general-claire-mccusker-murray-compliance>.

⁴⁶ *Id.*

⁴⁷ *Id.*

b) When Mere Paper is Treated as the Law

It may seem unusual that unenforceable guidance—mere paper—has such power over banks as well as their vendors and customers. A significant part of the reason for this practice stems from the difficulty banks have in challenging the actions of federal regulators because federal banking agencies claim that all examination materials amount to CSI. According to the federal banking agencies, all materials conveyed by them and all materials produced by a bank (even those which have been generated by the bank itself) are CSI.⁴⁸ Thus, much if not all of the reasoning for material supervisory determinations made by the regulators is hidden from the public.

Indeed, the regulators take the view that CSI is their “property,” and therefore, the disclosure of CSI is a criminal violation of 18 U.S.C. § 641, which prohibits the *theft* of government property. Bank examiners state this proposition as if it is settled law, but it is far from clear. Indeed, as this committee has heard in previous testimony, the absence of support in federal law “for many of the secrecy traditions of the banking regulators will surprise many who have accepted them as if they were contained in hallowed texts.”⁴⁹ In fact, “the federal banking regulators used the passage of FOIA in the mid-1960s, a statute meant to expand the scope of information available to the public, to expand their zone of confidentiality beyond the scope of the traditional bank examination.”⁵⁰ Moreover, the federal regulators’ reliance on federal law as a buttress for their claims of confidentiality is less than strong: “There is no federal statute that explicitly prohibits anyone other than bank examiners from disclosing the bank examination or parts of it, such as CAMELS or other ratings.”⁵¹ While there is a federal criminal statute that prohibits *bank examiners* from disclosing the results of an examination, there is no comparable statute

⁴⁸ See, e.g., 12 C.F.R. § 4.32(b)(1)(i)(A) (defining non-public OCC information to include “a record created or obtained ... [b]y the OCC in connection with the OCC’s performance of its responsibilities, such as a record concerning supervision, licensing, regulation, and examination of a national bank.”).

⁴⁹ STATEMENT OF MARGARET E. TAHYAR BEFORE THE S. COMM. ON BANKING, HOUSING, & URBAN AFFAIRS (APR. 30, 2019), <https://www.banking.senate.gov/imo/media/doc/Tahyar%20Testimony%204-30-19.pdf> (hereinafter, “Tahyar Statement”).

⁵⁰ Tahyar Statement, at 3.

⁵¹ *Id.* at 6.

imposing a similar requirement on the bank being examined.⁵² However, the Comptroller of the Currency, if not satisfied with the response of a national bank, may disclose an examination.⁵³ Thus, the statutory burden for keeping examinations confidential falls far more upon the federal regulators than the banks.

That is not, however, the current state of play. As any bank or practitioner knows, the current “informal nonpublic shadow system of regulation is neither transparent nor accountable.”⁵⁴ What the current confidentiality strictures consist of “are not rules at all, but a series of oral principles, not made public nor written down, but which reflect the views of some legal staff at a moment in time.”⁵⁵ Thus, as in the case of debanking, confidentiality shields the supervisors’ actions from public scrutiny. It is one thing if confidentiality is chosen to protect financial stability, national security, trade secrets, or the like. But when it is chosen to protect the regulator from public scrutiny, it is not appropriate.

Moreover, the entire concept of CSI is on uncertain legal ground. Whether 18 U.S.C. § 641 provides support for the regulators’ claim that bank examination materials (including those generated by the bank in the ordinary course of business) is dependent on whether such information amounts to “property” of the government. A robust line of U.S. Supreme Court cases makes clear that only traditional forms of property count as “property” for purposes of federal criminal law and have rejected efforts to apply the federal fraud statutes to matters involving “intangible” rights.⁵⁶ Recently, in *Kelly v. United States*, the U.S. Supreme Court unanimously held that, if the object of a fraud was not traditional property, then any “incidental” effects on property are insufficient to support wire fraud liability.⁵⁷ After *Kelly*, the

⁵² *Id.* at 6 n.11; see 18 U.S.C. § 1906.

⁵³ Tahyar Statement, at 6 n.11; see 12 U.S.C. § 481.

⁵⁴ Tahyar Statement, at 11.

⁵⁵ *Id.*

⁵⁶ See *Cleveland v. U.S.*, 531 U.S. 12, 24 (2000) (re-affirming that federal statutes cannot be used to punish loss of “intangible rights unrelated to money or property”); *McNally v. U.S.*, 483 U.S. 350, 360 (1987) (holding that mail fraud statute is “limited in scope to the protection of property rights”); *Carpenter v. U.S.*, 484 U.S. 19, 25–26 (1987) (requiring the object of a fraud to be something that has “long been recognized as property”). Additionally, while Congress may delegate its authority to agencies to define criminal punishments, it must “make[] the violation of regulations a criminal offense.” *Loving v. United States*, 517 U.S. 748, 768 (1996). Here, Congress has never made violation of the banking agencies rules a crime.

⁵⁷ 590 U.S. 391, 400–404 (2020).

government changed its position in similar “property” cases. In the year before *Kelly* was decided, the Second Circuit held that certain confidential regulatory information was government property under the federal statutes.⁵⁸ As a result of *Kelly*, the DOJ changed positions, telling the Second Circuit that confidential regulatory information does not bear any direct connection to traditional concepts of property.⁵⁹ The Second Circuit agreed with that confession of error, holding that the prosecution in that case was invalid under *Kelly*.⁶⁰

Moreover, the assertion of criminal liability in connection with CSI has significant constitutional concerns. It amounts to an across-the-board gag rule essentially creating a system of prior restraint contrary to the First Amendment. Prior restraints on speech imposed by the government almost never survive constitutional challenge.⁶¹ And here, it is clear that disclosure of CSI by banks is speech. Moreover, content-based restrictions on speech trigger the highest level of strict scrutiny.⁶² The principle of lenity supports this reading of the statute.⁶³ And, as Justice Sotomayor recently explained in *Dubin v. United States*, the government’s “boundless” interpretation of a statutory text stands in contrast to the Court’s traditional restraint in assessing the reach of a criminal statute.⁶⁴ Creative interpretations are disfavored when criminal penalties are at stake: “[c]rimes are supposed to be defined by the legislature, not by clever prosecutors riffing on equivocal language.”⁶⁵

⁵⁸ *United States v. Blaszcak*, 947 F.3d 19 (2d Cir. 2019).

⁵⁹ Appellee’s Br. at 7–9, *United States v. Blaszcak*, No. 18–2811 (2d Cir. Apr. 2, 2021), ECF No. 453.

⁶⁰ *United States v. Blaszcak*, 56 F.4th 230, 243 (2d Cir. 2022).

⁶¹ See *Bantam Books v. Sullivan*, 372 U.S. 58 (1963).

⁶² See, e.g., *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015) (“Content-based laws ... are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests.”).

⁶³ See *Wooden v. United States*, 595 U.S. 360, 383–97 (2022) (Gorsuch, J., concurring). Moreover, as the Framers saw it, “subjecting ... men to punishment for things which, when they were done, were breaches of no law ... ha[s] been, in all ages, the favorite and most formidable instrument of tyranny.” THE FEDERALIST NO. 84 (Alexander Hamilton).

⁶⁴ 599 U.S. 110 (2023).

⁶⁵ *Id.* at 129–30 (quoting *United States v. Spears*, 729 F.3d 753, 758 (7th Cir. 2013)).

In short, when it comes to CSI, it appears increasingly likely that the government's reach has exceeded its grasp and that reach may soon be further truncated by the courts.

In any event, such resistance to disclosure appears contrary to the second Trump Administration's actions concerning transparency in financial services regulation to-date. For example, in a January 9, 2025 speech, Federal Reserve Board Governor Michelle Bowman stated plainly: "Regulators should operate in a transparent way and carefully and meticulously follow administrative procedures when making revisions to the regulatory framework there we go we should take a similar approach to shifts in supervisory focus. Doing so promotes trust and accountability to the public"⁶⁶

2.6. Limits on Crypto Imposed By Regulatory Statements

In July 2020, the OCC determined in a series of interpretive letters that (1) cryptocurrency custody services for customers, (2) holding stablecoin reserves, and (3) the use of independent node verification networks and stablecoins for payment activities, are permissible activities for national banks and federal savings associations.⁶⁷ These interpretive letters have never been rescinded and still provide direction to national banks, federal savings associations, and any state banks that can engage in the same activities as national banks under so-called "wild card" state statutes.

But in a series of subsequent interpretive letters, the federal banking agencies appointed themselves as gatekeepers for all bank-related crypto activity.⁶⁸ It became obvious that the gate was not going to open as long as the bank regulators had

⁶⁶ Michelle W. Bowman, Governor, Federal Reserve Board, Reflections on 2024: Monetary Policy, Economic Performance, and Lessons for Banking Regulation, Speech Before California Bankers Association 2025 Bank Presidents Seminar (Jan. 9, 2025), <https://www.federalreserve.gov/newsevents/speech/bowman20250109a.htm>.

⁶⁷ OCC, Interpretive Letter 1170 (July 22, 2020); OCC, Interpretive Letters 1172 (Sept. 21, 2020); OCC, Interpretive Letter 1174 (Jan. 4, 2021).

⁶⁸ See Federal Reserve Board, Supervision and Regulation Letter SR 22-6/CA 22-6 (Aug. 16, 2022); FDIC, Financial Institutions Letter FIL-16-2022 (Apr. 7, 2022); OCC, Interpretive Letter 1179 (Nov. 18, 2021). As a technical matters, these releases are guidance and therefore unenforceable. Press Release, Federal Reserve Board et al., Interagency Statement Clarifying the Role of Supervisory Guidance (Sept. 11, 2018), <https://www.fdic.gov/news/press-releases/2018/pr18059a.pdf>. However, in the event, they were enforced and followed.

anything to say about it. This was reenforced by President Biden's Executive Order 14067 ("Ensuring Responsible Development of Digital Assets") and culminated in the January 2023 interagency "Joint Statement on Crypto-Assets Risks to Banking Organizations," in which the federal banking agencies told the banking industry that crypto activity would be seen as "highly likely to inconsistent with safe and sound banking practices." For any bank that cared about its CAMELS ratings, the message was clear.

a) The Pause Letters

That messaging (which, despite a promised "crypto sprint"⁶⁹ was never followed by any guidelines as to how crypto activities might be *approved*), was amplified when the federal banking regulators began a process of contacting banks to tell them to "pause" or stop the crypto activities in which they may have been engaged. In November 2023, Coinbase submitted a FOIA request to the FDIC asking for copies of those letters. The FDIC opposed the production of those letters, forcing Coinbase to go to court. When the court ultimately ordered the FDIC to produce those letters, they were heavily redacted, and Coinbase returned to court to get an order lifting the redactions. As noted above, these "pause" letters appear to demonstrate that the regulators made a concerted effort to convince banks to abandon their crypto activity, despite the fact that the activity itself was, and remains, legal.⁷⁰

3. The Impact of Debanking

The absence of accountability by government actors is a difficult fact for many to comprehend. Examples abound, but a recent one will suffice. The cumulative losses for the failures of Silicon Valley Bank and Signature Bank exceeded \$25 billion. There has been broad acknowledgment that the federal banking agencies overseeing those banks missed (or did not adequately supervise the banks for) the actual

⁶⁹ Press Release, Federal Reserve Board et al., Joint Statement on Crypto-Asset Policy Sprint Initiative and Next Steps (Nov. 23, 2021), <https://www.federalreserve.gov/newsevents/press-releases/files/bcreg20211123a1.pdf>.

⁷⁰ The FDIC responded that these letters were simply routine provisions for guidance while the agency analyzed the safety and soundness impact of such activity on banks. However, most of the letters are dated in early 2022 and nearly three years later no such analysis has been forthcoming. Because the FDIC was not obligated to end its "pause" within any period of time it could simply wait until the projects at hand were abandoned, as nearly all of them were. But according to the current FDIC Acting Chair, the pause letters were sent "to more than 20 banks *instructing* them to refrain from all 'crypto related activity'." (emphasis added). Hill Policy Remarks.

interest rate risk that drove those failures. Yet, individual and institutional accountability appears to be absent. This raises serious questions. In the absence of accountability, what impact might instances like this have on the public trust in the U.S. financial regulatory framework?⁷¹

Losing a banking relationship in today's digitally integrated economy is more than an inconvenience. It deprives one of the ability to hold money safely, pay employees, transfer money to pay bills or support family members and friends, make charitable contributions, and enjoy the typical pleasures of modern life. It can also impact credit scores and impair, if not destroy, the ability to operate a small business or non-profit organization.

The nature of this harm was recognized by Judge Gladys Kessler in connection with OCP 1.0, noting that if plaintiffs' losses caused by the banking agencies were to continue, they would be cut off from the banking system and/or put out of business.⁷² Notably, the current Acting Chair of the FDIC agrees, recently noting that "[a]ccess to a bank account is essential for individuals and businesses to participate in many aspects of the modern economy."⁷³

⁷¹ This concern is both old and current, as noted in 2023 by Philip K. Howard, Marc Andreessen, and Thomas Sowell. See PHILIP K. HOWARD, *NOT ACCOUNTABLE* 7 (2023) ("The absence of accountability ... is a recipe for a cynical and ineffective organization."); Marc Andreessen, *The Techno-Optimist Manifesto*, ANDREESSEN HOROWITZ (Oct. 16, 2023) ("Our enemy is the know-it-all credentialed expert worldview ... unelected and unaccountable—playing God with everyone else's lives, with total insulation from the consequences."), <https://a16z.com/the-techno-optimist-manifesto>; *Consequences Matter: Thomas Sowell on "Social Justice Fallacies"*, HOOVER INST. (Sept. 15, 2023) ("[O]ne of the real problems is that you have people making decisions for which they pay no price when they're wrong, no matter how high a price other people pay."), <https://www.hoover.org/research/consequences-matter-thomas-sowell-social-justice-fallacies>. In 2018, well after OCP 1.0 had ended, former Oklahoma Governor and President of the American Bankers Association, Frank Keating, wrote about OCP 1.0: "We must demand answers from those accountable and a remedy for the harm done.... Otherwise, we risk setting a terrible precedent that ideology and partisan bias can control our regulatory agenda at the expense of banks and small businesses alike." Frank Keating, *Operation Choke Point Reveals True Injustices of Obama's Justice Department*, THE HILL (Nov. 7, 2018), <https://thehill.com/blogs/congress-blog/politics/415478-operation-choke-point-reveals-true-injustices-of-obamas-justice>. To my knowledge, there is no public record of any individual or institutional accountability for Operation Choke Point 1.0. See *The Federal Deposit Insurance Corporation's Role Operation Choke Point: Hearing Before the Subcomm. on Oversight & Investigations of the H. Comm. on Fin. Servs.*, 114th Cong. (Mar. 24, 2015).

⁷² *Advance Am. Cash Advance Ctrs., Inc. v. FDIC*, 251 F. Supp. 3d 78 (D.D.C. 2017).

⁷³ Hill Policy Remarks.

3.1. Relief May Be On the Horizon—But Are Available Tools Fit For Purpose?

Even before these revelations, OCP 2.0 had been criticized by members of Congress, commenters, and regulators themselves.

More recently, Representative French Hill, the new Chair of the House Financial Services Committee has made it plain that “[l]egal businesses in the United States ... should have the freedom to bank and have financial services.” Indeed, Rep. Hill has laid out a series of *Banking Principles*, the very first of which states in part that the “federal prudential regulators should not be able to order institutions to terminate a customer’s account without a material reason for doing so in order to reverse the weaponization of government as demonstrated by Operation Choke Point.”⁷⁴ He further pledged to “fully investigate conduct of agency personnel” regarding OCP 2.0.⁷⁵ Indeed, in announcing this hearing as chairman, Senator Tim Scott echoed similar concerns.⁷⁶

a) The Path Forward

That policy is about to change. And while prior harm cannot be undone, there are a number of practical steps the second Trump Administration and Congress can take to ensure that the prior policy is quickly reversed and does not come back. Given the complexity and secretive nature of supervision to accomplish OCP 2.0, comprehensive remedies are needed—more than passing a law or issuing new agency policies. In the end, lasting change will be grounded in accountability and transparency. I set forth below a few of those steps and encourage others to offer other suggestions:

- **Publish the Fair Access Rule in the Federal Register.** This will fulfill the policy requirements of the Dodd-Frank Act and will level the playing field.

⁷⁴ Press Release, Rep. French Hill, Rep. Hill Outlines Principles to Make Banking Great Again (Nov. 14, 2024), <https://hill.house.gov/news/documentsingle.aspx?DocumentID=9376>.

⁷⁵ *Id.*

⁷⁶ Press Release, Tim Scott, Chair, Senate Banking Committee, Banking Committee Will Investigate Debanking (Jan. 24, 2025) (“Debanking is un-American – every legal business deserves to be treated the same regardless of their political beliefs. Unfortunately, under Operation [Choke Point] 2.0, Biden regulators abused their power and forced financial institutions to cut off services to digital asset firms, political figures, and conservative-aligned businesses and individuals. This is unacceptable.”), <https://www.banking.senate.gov/newsroom/majority/scott-banking-committee-will-investigate-debanking>.

Moreover, a Fair Access Rule could be extended to the FDIC and the Federal Reserve Board.

The OCC's Fair Access Rule would "codify more than a decade of OCC guidance stating that banks should conduct risk assessments of individual customers, rather than make broad-based decisions affecting whole categories or classes of customers, when providing access to services, capital, and credit."⁷⁷ The OCC halted publication of the final rule on January 28, 2021, "to review the final rule and the public comments the OCC received, as part of an orderly transition."⁷⁸ It has never finished its review. Today, the Fair Access Rule, is a final rule that has never been published.

- **Restore transparency and use new regulatory reform functions.** Lift the curtain with respect to what actually happened in OCP 2.0. Drop all objections to existing FOIA requests. Agencies should use regulatory reform officers and task forces to establish the actual record. Require the senior legal officer or the Inspector General of each federal banking agency to report on these efforts promptly. Impose penalties for bad faith resistance to FOIA requests (similar to anti-retaliation statutes binding government agencies). Launch a major and comprehensive report on OCP 2.0, led by the new "Crypto Czar." Report on how debanking was approved and developed within the relevant agency, and craft internal policies and procedures to ensure it cannot be repeated.
- **Remove the ambiguity and vagueness from bank supervision.** Make definitions of key terms, such as "reputational risk," "safety and soundness," and "management" far more objective. Return to a ratings system focused on the potential for material and present harm to the financial condition of the bank, and focus on actual risks posed by customers not by categories of business. The second Trump Administration could begin with an Executive Order mandating the removal of all opaque references to reputational risk from examination manuals to be replaced with objective safety and soundness standards and measurements.

⁷⁷ Press Release, OCC, OCC Puts Hold on Fair Access Rule (Jan. 28, 2021), <https://www.occ.gov/news-issuances/news-releases/2021/nr-occ-2021-14.html>.

⁷⁸ *Id.*

- **Remove the regulatory gatekeeping function.** Amend (or repeal) OCC Interpretive Letter 1179, FDIC FIL-16-2022, and Federal Reserve Board SR 22-6 to make clear that these standards are not intended to be insurmountable barriers to reasonable compliance efforts.
- **Develop a new standard to govern potential account closures that are not related to national security concerns or criminality.** For instance, a challenged account could remain open but subject to enhanced monitoring for a set period such as six months. The customer pays a fee for the cost of the enhanced review. If after that period there are no grounds to close the account, the fee is returned plus reasonable market interest.
- **Provide reasonable notice of account closures.** This notice would include an opportunity for the customer to respond/appeal.
- **Enhance communication.** Require agencies to hold public meetings with industry leaders every six months to receive feedback about the supervisory process. Appoint an interagency “Innovation Council” to develop programs (e.g., “sandboxes”) to both educate the agencies and develop programs to foster safe and sound innovation, enabling the United States to catch up to countries like Brazil, Nigeria and Singapore that already have launched such programs.
- **Acknowledge items of “guidance” that are actually rules and make standards more objective.** Direct a review and identification of past “guidance” on this subject (e.g., FIL-41-2014) that amounts to rules under the APA or CRA and require that they go through the appropriate processes. Require that any rulemaking on what constitutes reputational risk uses objective standards, particularly with regard to the assessment of the “Management” component of the CAMELS rating. Analyze how bank supervision has developed since the advent of “reputational risk” and report publicly on which practices amount to rulemaking subject to the APA and the CRA. Acknowledge that rules that have not been scrutinized under the CRA have no force or effect.⁷⁹

⁷⁹ 5 U.S.C. §§ 801–808. See also Paul Larkin, *The Reach of the Congressional Review Act*, HERITAGE FOUNDATION (Feb. 8, 2017), <https://www.heritage.org/government-regulation/report/the-reach>.

- **Empower those injured by regulatory conduct.** Adopt legislation providing a civil cause of action against federal regulatory agencies that have harmed citizens through conduct adjudged to be illegal. Consider creation of a United States Court of Appeals for Administration, as called for in the 1940 Walter-Logan Act, allowing for more direct and timely challenges to administrative actions which fall outside of, or are in violation of, an agency's jurisdictional boundaries or other limiting requirements.
- **Other considerations.** The new Administration could consider new Executive Orders and federal banking agency policies to implement the changes noted above as well as damages and restoration of the *status quo ante* for those entities damaged by OCP 2.0, as well as settling outstanding litigation in a manner that preserves safety and soundness but permits innovation. It could also explore liberalizing exceptions to CSI rules when there are allegations of inappropriate examiner conduct, as well as whether CSI must in fact be treated as so confidential. Revising each agencies' supervisory appeals process for meaningful relief could also help a great deal.
- **Congressional actions to support the new Administration's actions.**
 - Continue investigations by appropriate Senate and House Committees.
 - Acknowledge the uniqueness of digital assets and blockchain and hold hearings on the development of a "Digital Asset Commission" whose sole responsibility would be the development rules for crypto issuers and exchanges and the banks that serve them.
 - Enact Section 10(b) of the SAFER Banking Act, to ban a federal banking agency from requesting the termination of a deposit account unless it had a valid reason to do so, and reputational risk could not be used as a dispositive reason for such a request.⁸⁰

the-congressional-review-act; Paul Larkin, *Reawakening the Congressional Review Act*, 41 HARV. J. L. & PUB. POL'Y 187 (2019). Notably, if Congress passes a Joint Resolution of Disapproval and the President signs the Joint Resolution, the rule is invalidated and the agency cannot promulgate a new rule that is "substantially the same" as the one invalidated. *Id.*

⁸⁰ S. 2860, 118th Congress (2023).

3.2. Agency Accountability and Customer Remediation

Notwithstanding these promising developments and potential fixes, a glaring gap remains. Is there a remedy for those who already have been harmed by past governmental conduct? Given the existing barriers to securing compensation from the federal government and its agents for violation of one's constitutional rights, which may prove too heavy to bear for small businesses and individuals, I suggest an alternative method for providing economic remediation to those harmed by de-banking and OCP 2.0.

a) Transparency at the Federal Banking Agencies

An initial step would be transparency at the agencies (including production of records) and an analysis of the drivers of OCP 2.0 by those responsible, senior-level agency personnel.⁸¹ There is an argument that in light of recent legal developments that “independent” agencies, such as the FDIC, are not immune from oversight by the Executive Branch as once thought. In 2019 the Department of Justice's Office of Legal Counsel issued an opinion indicating that “independent” agencies were, in fact, subject to Presidential directives regarding regulatory planning. The U.S. Supreme Court's decisions in *Seila Law*⁸² and *Collins*⁸³ also clarified the right of the President to remove both principal officers and inferior officers of independent agencies, provided they performed executive functions, and further expanded “cause” removals to include disobedience to an Executive Order.⁸⁴ The recent Executive Order⁸⁵ to readopt Schedule F to remove civil service protections for senior career officials serving in policy making roles further fortified those powers. The exercise of newly-clarified powers should make it easier and faster to determine appropriate accountability for any wrongdoing that may be found.

⁸¹ The “FDIC Exposed” group is insistent that most FDIC personnel work hard to do their jobs and have no culpability for OCP 2.0.

⁸² *Seila Law v. CFPB*, 591 U.S. 197 (2020).

⁸³ *Collins v. Yellen*, 594 U.S. 220 (2021).

⁸⁴ See Aditya Bamzai & Aaron L. Nielson, *Article II and the Federal Reserve*, 109 Cornell L. Rev. 843, 889 (2024).

⁸⁵ Exec. Order No. 14,171, 90 Fed. Reg. 8,625 (Jan. 31, 2025).

b) Claims for Damages

Second, there is an outside possibility of making a tort claim under the Federal Tort Claims Act ("FTCA") against the agency. However, constitutional claims under the Due Process Clause fall outside the definition of a "tort" in the classic sense, making the FTCA a poor fit. Moreover, under the FTCA, a claimant must first exhaust his administrative remedies. Claims for violations of constitutional rights could be brought under the *Bivins* doctrine,⁸⁶ a judicially-created implied right of action allowing a claimant to pursue both compensatory and punitive damages, but *Bivins* claims have fallen into disfavor and they now are limited to three instances in which relief has been granted in the past.⁸⁷ It is not likely to be favorably considered by the courts.

c) Another, Innovative Way

The harm done by debanking and OCP 2.0 is troubling. Individuals and entities engaging in lawful businesses were deprived of an essential tool needed in order for them to meaningfully participate in the U.S. market. Banks were pressured by their supervisors to do so within the confines of a secrecy and the threat of supervisory criticisms and public enforcement actions. It would seem that under such circumstances (1) banks should have meaningful means to challenge federal banking regulators that impose such pressures on them and (2) for bank customers traditional protections should be modified to allow for remedial compensation.⁸⁸

With other paths difficult as a practical matter, the Trump Administration, acting through the Crypto Czar and in conjunction with the consent of the federal banking agencies, could consider establishing a commission (or similar body) to review and process OCP 2.0 and debanking claims in an efficient and fair manner.⁸⁹

⁸⁶ *Bivins v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

⁸⁷ (1) Unconstitutional home searches, (2) gender discrimination, and (3) denial of medical treatment to federal prisoners. The Court confirmed these limitations in *Egbert v. Boule*, noting that any thought that the Court might expand its view in the absence of Congressional action was a "false hope." 596 U.S. 482 (2022).

⁸⁸ As Professor Philip Hamburger has pointed out in *Is Administrative Law Unlawful?*, the protection of government officials from damages actions is to designate them as a "specially protected class" and to elevate them above the law. PHILIP HAMBURGER, *IS ADMINISTRATIVE LAW UNLAWFUL?* 302 (2014).

⁸⁹ Similar methods will soon be employed by the Trump Administration. The January 20, 2025 Executive Order "Ending The Weaponization Of The Federal Government" requires that the

The commission would not have the power to order compensation—that would take Congressional action. Rather, it would *recommend* compensation to be paid from the U.S. Treasury with adjustments to agency budgets, as necessary.⁹⁰ The members of this commission would serve without pay and would have a mandate to complete their work within a specified amount of time (e.g., no later than December 31, 2025).⁹¹

The process would be simple:

- A claimant would submit to the commission a form, signed under penalty of perjury and with consent to a meaningful fine if the claim was false, explaining the details of the claim. Each claimant would attach information regarding damage suffered, direct and indirect.
- The commission would notify the federal banking agency, which would have an opportunity to respond promptly but in a reasonable amount of time (e.g., 14 days), or the claim would be deemed agreed to by the agency.
- The commission could ask for one round of additional information from the claimant, the agency or both, to be provided in another prompt but reasonable time period (e.g., 14 days).
- The commission could then make its recommendation as to compensation to be recommended, if any (e.g., in instances where the harm was merely nominal, temporary, or speculative, remedial compensation would not be recommended). The commission also would be required to take into account any actions of the agency to mitigate the harm to the claimant.

Attorney General “take appropriate action to review the activities of all ... agencies exercising civil or criminal enforcement authority of the United States and identify any instances where an ... agency’s conduct appears to have been contrary to the purposes and policies of this order” and to prepare a report “with recommendation for appropriate remedial actions” Exec. Order No. 14,147, 90 Fed. Reg. 8,235 (Jan. 28, 2025).

⁹⁰ There is an existing mechanism for payment. The Judgement Fund, which is administered by the Bureau of the Fiscal Service, pays court judgments and compromise settlements against the government. See 31 U.S.C. § 1304.

⁹¹ If this body qualified as an advisory body, it would have to comply with the Federal Advisory Committee Act, 5 U.S.C. § 1001, and implementing regulations, 41 C.F.R. Part 102–103.

- In extraordinary cases (to be defined) the commission could recommend a punitive damages award.
- As part of its recommendation, the commission also would have the ability to make findings concerning the conduct of individual agency members, particularly whether they had acted in bad faith.
- Once the recommendation was made, the agency would have a prompt but reasonable period (e.g., 14 days) to either accept the recommendation, deny it, or agree to a different amount.
- In all cases of denials (in whole or in part), the agency would need to explain its reasoning.
- In the event the recommendation indicated a finding of misconduct with respect to an individual within the agency, the agency would be required to make a decision on whether such individual would continue his or her employment.
- All denials would be referred to the appropriate Congressional committees, such as this committee, for further review and the commission and agencies would make other reports to Congress.

Unless legislation is enacted, these recommendations would be just that—recommendations without the force of law. However, the transparency and speed of the process coupled with the revelation of the harm done, should provide sufficient moral suasion to result in reasonable compensation for those individuals and institutions who have been harmed and can prove it. More than 110 years later, it remains true that “sunlight is the best disinfectant.”⁹²

The process would not be perfect, and it would not be a judicial decision, but it would move swiftly and should have a better chance of achieving “rough justice” within a short time frame.⁹³

⁹² Louis Brandeis, *What Publicity Can Do*, HARPER'S WEEKLY (Dec. 20, 1913); see also JAMES BRYCE, *THE AMERICAN COMMONWEALTH* (1888) (“[I]njustice [and] tricks ... of all sorts shun the light; to expose them is to defeat them.”).

⁹³ Among other considerations, to ensure administrative transparency and completeness, and to comply with any federal recordkeeping requirements, the commission also could have the power

4. Conclusion

Justice delayed is justice denied. The harm caused by OCP 2.0 and debanking has been suffered now for years and is ongoing. The government should fix what it has broken.

For banks, supervisory reform is needed to prevent federal banking agencies from exerting informal pressure on banks that amount to secret law that is not widely known or articulated or meaningfully appealable. Congress has a number of legislative proposals on both sides of the aisle that could go far. In addition, the agency heads that are sympathetic today to the Executive Orders that have recently been revived, which add more procedural and substantive protections for regulated entities—notably Executive Order 13892—should consider implementing those principles in meaningful and robust final regulations. These regulations would codify the provisions of the Executive Orders and, ideally, should include procedures for good faith disagreements and resolutions with the federal banking and related agencies. Once promulgated, those regulations would not merely disappear with a new administration and any changes to them would be subject to the strictures of the APA.

For customers, if the usual tools are employed, the usual result—slow, expensive, and insufficient—will be achieved. Inspired by the principles driving the regulatory reform initiative, remedial fixes can be done in a way that is fast, relatively inexpensive, and dispenses reasonable justice.

Of course, the ideas outlined here are just a start and modifications may be in order. Nonetheless, a process to provide compensation for these harms should be begun without delay—if not this process, then another one.

But a meaningful remedy would be a refreshing sign that the United States is committed to innovation and financial modernization that is developed in a responsible and safe manner, with a cooperative government as an ally, not an adversary. It is important that regulatory credibility be restored. That can only be done through accountability and full transparency. To settle for anything less is to simply to create a temptation to do it all over again.

to employ, at the agency's expense, a claims administrator who would process and keep records with respect to each individual claim as well as its consideration and disposal.

PREPARED STATEMENT OF MIKE RING
 PRESIDENT, CEO, AND COFOUNDER, OLD GLORY BANK
 FEBRUARY 5, 2025

Chairman Scott, Ranking Member Warren, and Members of the Banking Committee, thank you for allowing me to share how Old Glory Bank, launched from Elmore City, OK, in April 2023, became a market solution to debanking.

I am honored to speak on behalf of our more than 50,000 customers across all 50 States, our 88 passionate employees, and our pro-America cofounders, including Radio and TV Host Larry Elder (who is here with us today), the 27th Governor of Oklahoma and former two-term Member of Congress, Mary Fallin-Christensen (who is here with us today), former Copresident of Fox News and White House Deputy Chief of Staff of Communications for President Trump's 45th administration, Bill Shine (who is here with us today), Old Glory Bank cofounder and Chief Legal Officer (also my wife of more than 20 years), Anne Marie Ring (who is here with us today), plus the former Secretary of HUD, Dr. Ben Carson, and America's favorite patriot, Country Music Icon and John Rich (both of whom could not join us today). I'm also honored that Mr. Wade Christensen is here with us today, from the Great State of Oklahoma, whose family previously owned the bank we purchased to launch Old Glory Bank, who are now co-owners of Old Glory Bank.

My perspective is that there have been two forms of debanking in America, regulatory debanking and participant debanking. Old Glory Bank is a market response to both.

Regulatory Debanking

Regulatory Debanking is an orchestrated effort by the Fourth Branch of Government—the administrative state, to deny banking services to LEGAL industries.

The original Operation Choke Point began in 2013, when the Obama DOJ, working with the FDIC, bullied Banks to stop serving the firearms industry. This had the intended impact of choking-out deposit and lending services to the firearms industry, which Old Glory Bank has been working hard to solve since we launched in April of 2023.

Operation Chokepoint 2.0 was started in early 2022 when the Biden administration caused the FDIC and the SEC to bully banks into not serving legal crypto companies, through FIL 16–22 and SAB 121.

FIL 16–22, issued by the FDIC, effective April 2022, while reasonable on its face, was intentionally misused by the FDIC to choke-out banks from providing depositary services to legal crypto companies.

SAB 121, issued by the SEC, also effective April 2022, set forth irrational accounting rules for holding crypto as a custodian.

Thankfully, FIL 16–22 has been exposed with lawsuits, and SAB 121 was revoked by the new Administration 2 weeks ago.

But, for almost 3 years, this one-two punch by the FDIC and the SEC had the intended effect of preventing banks from serving as a custodian of crypto and choking out banks from providing demand deposit services, which prevented banks from being the on-off ramp for legal crypto companies.

Participant Debanking

On the other hand, Participant Debanking is a voluntary effort by the Big Banks to debank Americans who disagreed with them on COVID, or who supported Donald Trump, or who held or donated to conservative causes.

However, instead of sitting around complaining about what the Big Banks were doing, we created Old Glory Bank to be a market response.

After a lengthy and difficult regulatory approval process, we purchased a one-branch bank in beautiful Elmore City, OK, on November 30, 2022. Five months later, in April 2023, Old Glory Bank launched the best digital-first banking service for America. In less than 2 years, we grew from \$10mm in deposits to more than \$175mm in deposits. We grew from 300 customers in the Elmore City area, to more than 50,000 customers across all 50 States. We now serve more than 2,000 small businesses across America. I humbly submit that we have better products than the mega banks, plus better service. Our customer service center is in beautiful Durant, OK, (not offshore), and we actually love our customers and respect their views.

As part of our market solution, in less than 2 years, we launched a cancel-proof version of PayPal, called Old Glory Pay. We launched a cancel-proof version of GoFundMe, called Old Glory Alliance. We launched Old Glory Cash-In, so that our customers can easily deposit cash at 88,000 retail locations across America. We launched Old Glory Protect, which is a free \$100,000 line-of-duty death benefit for

America's Protectors, such as the military, firefighters, U.S. Border Patrol Agents, and Law Enforcement.

Big Banks debanking Americans is clearly wrong, but I do not believe the answer is additional regulations telling banks who they must bank. If that occurs, this will certainly boomerang on us.

For example, an openly pro-life bank should not be required to accept planned parenthood as a customer. Likewise, an openly pro-green bank should not be required to accept oil and gas companies as a customer. This should be a market decision, not a Government decision. Consider Tesla—Elon Musk never wanted EV mandates. Just a market opportunity.

I believe that the simple solution to debanking, is more banks.

Allow the free market to solve this problem.

Unfortunately, the administrative state makes it too difficult to start and run a bank. In the prior 4 decades, America lost 73 percent of its banks. But starting a new bank is nearly impossible. For example, in a 2-year period of 2023 and 2024, about 8 new banks started. During the fiscal year period for 2023 and 2024, there was a reduction of 229 Banks (as reported by the FDIC).

This lack of new banks is not because there are less entrepreneurs, less bankers, or less communities to serve. It's because the administrative state makes it too hard to start and grow a bank. To put this in perspective, in June 2022, we submitted an application to buy a one-branch bank in beautiful Elmore City, OK, with only \$10mm in deposits and less than \$3mm in loans. Yet to obtain regulatory approval to buy this little bank, it took 6 months, 3 rounds of additional information requests and more than 300 pages of submissions.

I'll never forget an all-hands Zoom call we had with the FDIC, the Federal Reserve, and the CFPB, many of whom were D.C.-based (with preferred pronouns). They were visibly disgusted at being forced to talk to me about debanking, the Flag, and Pro-America issues. These career bureaucrats behaved like they were on Shark Tank, with the discretion to pick winners and losers. On that call, I actually had a career bureaucrat ask me: "If Old Glory Bank is such a good idea, why has no one done this before?" Of course, to any actual businessperson, that's the whole point. No one had done this before.

Conclusion

Senators, for all of the talk about not wanting Banks who are "too big to fail," the exact opposite has happened. Big Banks keep getting bigger, small banks keep disappearing, and new banks are restricted from launching. With so few banks, the big banks have too much power over freedom and the economy.

Please, instead of imposing any new requirements about debanking, consider a reimagined look at the existing regulatory scheme on banks. A free market can fix debanking. We merely need to make it possible for more great banks like Old Glory Bank.

PREPARED STATEMENT OF AARON KLEIN
 SENIOR FELLOW IN ECONOMIC STUDIES, BROOKINGS INSTITUTION
 FEBRUARY 5, 2025

Investigating the Real Impacts of Debanking in America
 Testimony of Aaron Klein, Miriam K. Carliner Chair and Senior Fellow, Brookings Institution

Chairman Scott, Ranking Member Warren, and members of the Banking, Housing, and Urban Affairs Committee, thank you for the opportunity to testify on the consequences of debanking in America.¹ I commend the Committee for focusing on this real and pressing problem. Access to a bank account is a prerequisite to full participation in America's economy. Barriers to having a bank account for consumers and businesses have to be identified and lowered. This is an issue I have spent years researching, analyzing, and working on during my tenure in public service including the honor and privilege of working for this Committee for over eight years.

My testimony explains several factors that have driven debanking, with a focus on individuals. I then look at the progress that has been made in bringing people into the banking system, then conclude with policy recommendations for the new Administration, financial regulators, the financial services industry, and Congress to tackle debanking and increase financial inclusion.

If I can leave you with just one takeaway from today, it is this: the best way to combat debanking is to bring people and businesses into the banking system by lowering costs for basic accounts, reforming outdated regulations that hinder access, and creating better services that meet the needs of those living paycheck to paycheck.

What drives the debanking of American consumers

The best way to understand what drives people out of the banking system is to ask those who do not have bank accounts or those who have actually been debanked.

The FDIC's survey on the unbanked and under-banked elucidates the problem.² First, the magnitude: [5.6 million](#), or 4.2% of households, did not have a bank account in 2023. Just under 6% of households³ have a bank account now, but at some point over the past year did not. That means that 10% of the American population is either currently unbanked or was unbanked at some point within the last year. Not having a bank account adds significant cost, makes people financially and physically less healthy, and makes it harder to access future opportunities and fully participate in America's increasingly digital economy.⁴

¹ The views I express in this testimony are my own and do not necessarily reflect the views of other Brookings Institution staff members, officers, or Trustees.

² Federal Deposit Insurance Corporation (FDIC), *2023 FDIC National Survey of Unbanked and Underbanked Households* (Federal Deposit Insurance Corporation, 2024), <https://www.fdic.gov/household-survey/2023-fdic-national-survey-unbanked-and-underbanked-households-report>.

³ This discussion of population is based on households as defined in the FDIC survey. See Federal Deposit Insurance Corporation (FDIC), *2021 FDIC National Survey of Unbanked and Underbanked Households*, 27.

⁴ Aaron Klein, "Can Fintech Improve Health?," Brookings, September 24, 2021, <https://www.brookings.edu/articles/can-fintech-improve-health/>.

Approximately one in ten Black, Hispanic, and Native American households lack a bank account, about five times higher than for whites. Being unbanked is even more likely among those with a disability, with an unbanked rate above 11%.⁵

Consumers tell us that among the main reasons they don't have bank accounts are:⁶

1. Banking is too expensive: consumers don't have enough money to meet minimum account balances without incurring fees
2. Account fees are too high overall and unpredictable
3. Banks don't offer the services they need such as instant funds availability
4. A lack of trust in banks, concerns about privacy, and problems opening an account due to identification challenges that can come from past banking or credit history

Part of the reason consumers see banking as too expensive is that basic bank accounts are designed for wealthier people or for workers from a bygone era when most families had one worker who had one steady job. That is not the reality today for many Americans who work multiple jobs with sporadic hours and live paycheck-to-paycheck.

Checking accounts are "free" for those who have, for [some banks](#),⁷ up to \$1500 or more in their bank accounts on an average day, or have a steady job with direct deposit. Failure to meet either of these criteria results in [extra charges](#) that are often over \$100 a year.⁸ No wonder the number one reason unbanked people cite for not having an account is a failure to consistently meet minimum balance requirements.⁹ This also explains why being unbanked is strongly correlated with income. More than one in five households who earn \$15,000 or less per year are unbanked, compared with less than one in fifty who earn \$50,000 to \$75,000 and less than one in one hundred among those who earn over \$75,000 a year.¹⁰

The next biggest price concern is that fees are "too unpredictable". The most painful unpredictable fee is an overdraft fee, which is charged when a consumer has run out of money and the bank processes a payment. [After regulators exempted overdraft fees](#) from lending laws, the amount of such fees ballooned to an estimated \$30 billion per year.¹¹ Just [under 9%](#) of

⁵ Federal Deposit Insurance Corporation (FDIC), *2021 FDIC National Survey of Unbanked and Underbanked Households*, 24.

⁶ Federal Deposit Insurance Corporation (FDIC), *2021 FDIC National Survey of Unbanked and Underbanked Households*, 28.

⁷ "Compare Checking Accounts," RegionsBank, accessed February 4, 2025, <https://www.regions.com/personal-banking/checking/compare-checking-accounts>.

⁸ Liz Smith, "Checking Account Fees: How Much Are They and How Can You Avoid Them?" SmartAsset, accessed February 4, 2025, <https://smartasset.com/checking-account/cost-of-checking-account-fees-and-how-to-avoid>.

⁹ Federal Deposit Insurance Corporation (FDIC), *2021 FDIC National Survey of Unbanked and Underbanked Households*, 3.

¹⁰ Federal Deposit Insurance Corporation (FDIC), *2021 FDIC National Survey of Unbanked and Underbanked Households*, 23.

¹¹ Aaron Klein, "Getting Over Overdraft," Brookings, November 7, 2022,

<https://www.brookings.edu/articles/getting-over-overdraft/>; Maria LaMagna, "Overdraft Fees Haven't Been This

Americans are considered “heavy overdrafters” who average more than 10 overdrafts per year and pay nearly 80% of all overdraft fees.¹² With many banks and credit unions charging a penalty fee of \$35 per overdraft, and some also adding a non-sufficient funds fee (NSF), these fees can add up to a significant share of some consumers’ incomes.¹³

Consumers who frequently overdraft their accounts are unlikely to meet high minimum balance requirements and can thus find themselves paying both monthly minimum and overdraft fees. Such costs could approach \$500 per year, proving the adage that it is expensive to be poor in America. The cost of basic banking is the main reason why people leave the banking system and why many cannot afford to return. About one in nine currently-unbanked households reported having a bank account in the past twelve months.¹⁴ For many of these people, leaving the banking system is the cheaper alternative to the high costs imposed by many financial institutions for trying to bank while living on the financial edge.

One out of every five unbanked persons report that banks don’t offer the services they need as a major reason why they are unbanked.¹⁵ A prime example of this is access to their own money. When a person deposits their paycheck or any other check, banks and credit unions are allowed to sit on those funds for several business days. With weekends and holidays, the practical effect for someone living paycheck-to-paycheck can be devastating.

Consider a person who last week came up short on their bills, worked a second or third job, and got paid on Friday, January 31. They pull up their phone and deposit the check, which enters the processing system at the speed of light. However, because the Federal Reserve has not increased the speed at which banks are required to make that check available in over 37 years (in violation of the Expedited Funds Availability Act’s requirements that the Fed do so) the person does not have access to their paycheck until Tuesday, February 4.¹⁶ This means that while the person had the money in time to pay rent and other bills due and automatically deducted on Saturday, February 1, the person could still be charged overdrafts, late fees, or face other consequences of being late.

Bad since the Great Recession,” MarketWatch, April 2, 2018, <https://www.marketwatch.com/story/overdraft-fees-havent-been-this-bad-since-the-great-recession-2018-03-27>.

¹² “CFPB Research Shows Banks’ Deep Dependence on Overdraft Fees,” Consumer Financial Protection Bureau, December 1, 2021, <https://www.consumerfinance.gov/about-us/newsroom/cfpb-research-shows-banks-deep-dependence-on-overdraft-fees/>.

¹³ Chanelle Bessette and Spencer Tierney, “Overdraft Fees: Compare What Banks Charge in 2025,” NerdWallet, January 24, 2025, <https://www.nerdwallet.com/article/banking/overdraft-fees-what-banks-charge>.

¹⁴ Federal Deposit Insurance Corporation (FDIC), *2021 FDIC National Survey of Unbanked and Underbanked Households*, 27.

¹⁵ Federal Deposit Insurance Corporation (FDIC), *2021 FDIC National Survey of Unbanked and Underbanked Households*, 28.

¹⁶ Seth Frotman, “Response to Petition for Rulemaking,” January 8, 2025, https://files.consumerfinance.gov/f/documents/cfpb_aaron-klein_response_508_2025-01.pdf.

This explains [my research](#) that found that 70 of people who use check cashers—a notoriously expensive way to get cash quickly—have bank accounts.¹⁷ Why would someone use a check casher when they have a bank account? Because the check casher gives you instant access to your money, while the bank does not. The failure of the banking system to give people faster access to their money makes banking much more expensive and drives people out of the banking system.

It does not need to be like this. Universal banking is the norm in countries like the United Kingdom, Canada, and Germany where [almost everyone \(more than 99.5% of people\) has a bank account](#).¹⁸ Had America instituted real-time payments when the United Kingdom did in 2008, people working paycheck to paycheck would have saved over \$100 billion that instead has gone to overdraft fees, check cashers, and payday lenders.¹⁹ Access to faster payments is one way we could help make this happen and reduce debanking.

Reforming Anti-Money Laundering Laws and Regulations

Another major set of reasons cited by consumers deals with issues of trust, privacy, and identity verification. These three issues relate, in various ways, to the application of anti-money laundering (AML) laws including the Bank Secrecy Act (BSA) and regulations implementing Know Your Customer (KYC) requirements among others, and their [enforcement](#).²⁰ America's AML system is built on the simple and powerful premise that many crimes generate money and that money often finds its way into the banking system. Using the information and data from the banking system can allow law enforcement to catch and convict criminals. An analogy: if criminals are like scuba divers swimming in darkness at the bottom of the ocean, they can be hard to find. Money, like air bubbles, floats to the surface. If you can trace the bubbles to the bottom, you can catch the crook.

Unfortunately, our [AML system](#) in practice operates with a great deal of inefficiency, which makes banking more expensive for everyone, and drives the debanking of some consumers and small businesses.²¹

Banks are required to report on a myriad of activities, many of which provide little, if any, benefit to law enforcement. Consider the currency transaction reporting (CTR) rule, which

¹⁷ Aaron Klein, "Can Fintech Improve Health?" https://www.brookings.edu/wp-content/uploads/2021/09/20210922_Klein_Can_fintech_improve_health.pdf

¹⁸ "The Global Findex 2021: Interactive Executive Summary Visualization," Text/HTML, World Bank, accessed February 3, 2025, <https://www.worldbank.org/en/publication/globalfindex/interactive-executive-summary-visualization>.

¹⁹ Aaron Klein, Comment Letter to the Federal Reserve, December 14, 2018 https://www.federalreserve.gov/SECRS/2018/December/20181221/OP-1625/OP-1625_121418_133277_428769914666_1.pdf

²⁰ Aaron Klein, "State Incorporation Laws: Good for Crooks, Bad for Banks," Brookings, April 10, 2017, <https://www.brookings.edu/articles/state-incorporation-laws-good-for-crooks-bad-for-banks/>.

²¹ Aaron Klein, "3 Steps to Improve Anti-Money Laundering Regulation," Brookings, December 9, 2020, <https://www.brookings.edu/articles/3-steps-to-improve-anti-money-laundering-regulation/>.

requires banks to report on any transaction above \$10,000 in cash. When Congress established that rule in 1972, a person could have bought a brand new, fully loaded [Cadillac in cash](#) and not triggered such a report.²² Had we adjusted the \$10,000 CTR limit for inflation, it would be over \$75,000 today.²³ We have not, however, and the result was 20.9 million CTRs filed in 2023.²⁴ If Congress set the threshold for criminal activity at a much higher level fifty years ago, what is the compelling reason for the government to be looking at transactions so much lower today? And who in law enforcement is reading these 21 million reports to use them proactively?

Suspicious activity reports (SARs) are another AML requirement the goals of which make sense but have run amuck. KYC rules specify that when a bank has reason to believe their customer is engaged in something suspicious, they are required to report it. The idea here is that will create leads for law enforcement to follow to catch criminals. Does it work? We do not know. Banks are not told how effective their SAR filings are for law enforcement, [hindering](#) their ability to file more effectively.²⁵

Banks filed 2.5 million SARs in 2023,²⁶ compared to just [288,000 SARs](#) in 2003.²⁷ Who is reading all of these? Are SARs fulfilling their purpose? SARs are expensive for banks, which [spend billions annually](#) on SAR compliance.²⁸ Treasury's FinCEN estimates each SAR requires two hours of work by the filing bank, while banks argue the true number is more than 20 hours.²⁹ Whichever it is, the costs of SAR filings are staggering and have grown sharply over the past two decades.

These costs are passed back on to consumers and businesses both generally and specifically toward those who are the subject of SAR filings. Consider the reporting required of banking a person who works at a state-licensed cannabis company. Because cannabis is illegal under federal law, banks [must flag](#) these workers' accounts as suspicious and begin copious

²² Aaron Klein and Kristofer Reading, "Why Do 1970s Prices Dictate Anti-Money Laundering Rules?," Bipartisan Policy Center, March 17, 2016, <https://bipartisanpolicy.org/blog/1970s-prices-anti-money-laundering/>.

²³ Using [BLS CPI inflation calculator](#) \$10,000 in January 1972 equals \$76,790 in December 2024. "CPI Inflation Calculator," Bureau of Labor Statistics, accessed February 4, 2025, https://www.bls.gov/data/inflation_calculator.htm.

²⁴ U.S. Government Accountability Office, *Currency Transaction Reports: Improvements Could Reduce Filer Burden While Still Providing Useful Information to Law Enforcement* (Washington, D.C., 2024), 46, <https://www.gao.gov/assets/gao-25-106500.pdf>.

²⁵ Bank Policy Institute Staff, "The Truth About Account Closures," Bank Policy Institute, December 13, 2024, <https://bpi.com/the-truth-about-account-closures/>.

²⁶ Financial Crimes Enforcement Network (FinCEN), *Year in Review for FY 2023* (Washington, D.C., 2024), 3, https://www.fincen.gov/sites/default/files/shared/FinCEN_Infographic_Public_508FINAL_2024_June_7.pdf.

²⁷ "The SAR Activity Review - By the Numbers" (Financial Crimes Enforcement Network, June 2009), https://www.fincen.gov/sites/default/files/sar_report/sar_by_numb_12.pdf.

²⁸ "Study Reveals Annual Cost of Financial Crime Compliance Totals \$61 Billion in the United States and Canada," LexisNexis Risk Solutions, February 21, 2024, <https://risk.lexisnexis.com/about-us/press-room/press-release/20240221-true-cost-of-compliance-us-ca>.

²⁹ Bank Policy Institute Staff, "Trades Urge FinCEN to Recognize Accurate Estimates for the Time Required to File SARs," Bank Policy Institute, July 1, 2024, <https://bpi.com/trades-urge-fincen-to-recognize-accurate-estimates-for-the-time-required-to-file-sars/>.

reporting.³⁰ Failure to do so, or reporting less than is expected, can trigger regulatory fines and other sanctions. For many banks, these costs are [simply not worth it](#), leading them to [deny services](#) and debank people and businesses.³¹

The same is true for state-licensed cannabis companies. [One report](#) from my state of Maryland indicated that only three banks or credit unions in the state will bank cannabis companies and they charge around \$20,000 per year to open and maintain a simple bank account.³² [These costs](#) reflect both a lack of competition and the high regulatory burden banks and credit unions face due to all of the filings required for these businesses.³³ As a result, [many cannabis companies](#) are effectively debanked and forced to operate with cash (since payment processing firms are wary of finding themselves debanked for serving cannabis companies), which makes these business targets for criminals.³⁴

What is the marginal value gained by banks filing SARs and reporting on cannabis companies? If law enforcement wants to find and shut down cannabis businesses there is a much cheaper, [faster method](#): search Google Maps.³⁵ If you want to find who owns these companies go to the state capital where there are substantial records filed.

Consumers who are deemed high-risk, or more accurately high-cost and low-profit, can become debanked for similar reasons. Data on this is difficult to come by. As the [New York Times](#) [concluded](#) in a report on the costs and consequences of SARs and debanking, "If the bank has filed a SAR, it isn't legally allowed to tell you, and the federal government prosecutes only a small fraction of the people whom the banks document in their SARs. As a result, you don't what you're under suspicion for."³⁶

³⁰ "BSA Expectations Regarding Marijuana-Related Businesses," Financial Crimes Enforcement Network, February 14, 2014, <https://www.fincen.gov/resources/statutes-regulations/guidance/bsa-expectations-regarding-marijuana-related-businesses>.

³¹ Jaclyn Allen, "Littleton Family Claims Bank Closed Accounts after Husband Reveals He Works in the Pot Industry," Denver 7 Colorado News (KMGH), August 3, 2018, <https://www.denver7.com/news/contact7/littleton-family-claims-bank-closed-accounts-after-husband-reveals-he-works-in-the-pot-industry>; Michael R. Blood, "New Era for Pot Regulation Leaves Old Problem: Many Cannabis Companies Can't Find a Bank," AP News, May 1, 2024, <https://apnews.com/article/marijuana-biden-reschedule-banks-illegal-f298832392d3e7aedb066204ecec792b>.

³² Meghan Thompson, "Maryland Cannabis Companies Face Exorbitant Fees To Access Banking Services," Outlaw Report, June 18, 2021, <https://outlawreport.com/maryland-cannabis-companies-face-exorbitant-fees-to-access-banking-services/>.

³³ Aaron Klein, "Banking Regulations Create Mess for Marijuana Industry, Banks, and Law Enforcement," Brookings, April 23, 2018, <https://www.brookings.edu/articles/banking-regulations-create-mess-for-marijuana-industry-banks-and-law-enforcement/>.

³⁴ Aaron Klein, "Cannabis: The New Green That's Filling State Coffers," Brookings, May 1, 2019, <https://www.brookings.edu/articles/cannabis-the-new-green-thats-filling-state-coffers/>.

³⁵ Aaron Klein, "Op-Ed: An Easy Fix Could Give the Marijuana Industry Access to Banking," Los Angeles Times, January 30, 2019, <https://www.latimes.com/opinion/op-ed/la-oe-klein-marijuana-banking-20190130-story.html>.

³⁶ Ron Lieber and Tara Siegel Bernard, "Why Banks Are Suddenly Closing Down Customer Accounts," *The New York Times*, November 5, 2023, sec. Business, <https://www.nytimes.com/2023/11/05/business/banks-accounts-close-suddenly.html>.

Combining the over 20 million annual CTRs, the 4.5 million SARs from banks and others who file, plus other related BSA filings, the total financial services tracking regime is generating around 27 million filings a year under the broad BSA banner.³⁷ The IRS, for which this data should help catch tax evaders, [notes](#) that 85% of their criminal prosecutions involve someone who has had a report filed on them. However, only around 15% of those prosecutions begin because of a BSA filing.³⁸ Because the IRS does not prosecute many people (an issue for another day), [research from Nicholas Anthony at the CATO Institute](#) finds that in the most recent year of data, only 372 total IRS prosecutions began with information from any of these 27 million filings.³⁹ That's a large and costly haystack of data to produce such few prosecutions for tax evasion. We would be better served by a regime that produced fewer reports that are better targeted to the activities we want to stop.

Our AML framework generates significant expenses for a subset of consumers and businesses. Banks respond economically and will tolerate and pass along AML costs for customers who are profitable enough. Those who are not profitable have a hard time getting a bank account. A [New York Times study](#) identified who many of these people are: small businesses that deal with a lot of cash—such as bars, restaurants, and cannabis firms—and people who send money to their families overseas.⁴⁰

Having shown the debanking of those who are deemed unprofitable, it is illustrative to look at how a wealthy person who should have triggered substantial AML, SARs, and other flags but seemed to have no problem keeping his bank account.

Shohei Ohtani, the most famous baseball player in the world, was implicated in a large-scale gambling operation in which the Department of Justice [alleges](#) his interpreter, Ippei Mizuhara, gained access to Ohtani's bank account and wired huge sums of money from his account (which had almost no other activity) to a bank account run by a person running an illegal sports betting operation.⁴¹ DOJ has [released](#) a phone call in which Mizuhara impersonates Ohtani to ask to wire \$200,000 to this alleged bookie and when asked by the bank he says it is for a "car loan" to a "friend" and could be followed by more transfer requests.⁴² This was one of a series of wire transfers totaling nearly \$17 million from a foreign national's bank account to another individual's personal bank account. While we do not know if Ohtani's bank filed SARs on him at any point, we do know that the bank account was kept open, the wires sent, and the customer

³⁷ Nicholas Anthony, "Update on Anti-Money Laundering Data from FinCEN," Cato Institute, September 16, 2024, <https://www.cato.org/blog/update-anti-money-laundering-data-fincen>.

³⁸ Anthony, "Update on Anti-Money Laundering Data from FinCEN."

³⁹ Anthony, "Update on Anti-Money Laundering Data from FinCEN."

⁴⁰ Lieber and Bernard, "Why Banks Are Suddenly Closing Down Customer Accounts."

⁴¹ U.S. Attorney's Office, Central District of California, "Japanese-Language Translator Charged in Complaint with Illegally Transferring More Than \$16 Million from Baseball Player's Account," United States Department of Justice, April 11, 2024, <https://www.justice.gov/usao-cdca/pr/japanese-language-translator-charged-complaint-illegally-transferring-more-16-million>.

⁴² Evan Drellich and Sam Blum, "Exclusive: Audio Reveals Ohtani's Former Interpreter Impersonating Dodgers Star in Call with Bank," *The New York Times*, accessed February 3, 2025, <https://www.nytimes.com/athletic/6084445/2025/01/23/shohei-ohtani-interpreter-audio-money-transfer-ippei/>.

was given what he wanted – even when he was being impersonated. This is one example of how the wealthy avoid being debanked while those who are less profitable customers are debanked.

The Ohtani case also illustrates problems with identity verification, which can be a barrier to becoming banked, a driver of debanking, and a costly compliance problem in our existing AML regime. While the movement to a digital world with online banking has improved the world of financial services, it has also made digital identity verification more important and more difficult. Complicating these matters, the only mandatory federal identity given is a social security number (SSN).

In our digital era, a nine-digit figure assigned at birth is no longer the gold standard of identity verification. The use of digital IDs can reduce fraud and the incidence of human error in the verification process, increase the security of private customer information, and decrease the potential for discrimination. By reducing the cost of the verification using a risk-based process, digital IDs can promote financial inclusion.

My state of Maryland, like many others, has moved to a digital driver's license. But while digital identity works seamlessly for some applications, banks generally use outdated technology, sometimes at the instance of regulators. It is ironic that Treasury's Financial Crimes Enforcement Network (FinCEN) had been focused on the question of whether and how to move from using all nine digits of an SSN instead of just four for verification purposes⁴³ just when digital identity technology is making rapid advances in both the private and public sectors. FinCEN should instead be leading a consortium of financial regulators, financial industry representatives, and technology firms in developing a superior identity system.⁴⁴ This Committee should conduct vigorous oversight over FinCEN's identity plans to ensure they balance civil liberties, privacy, and AML goals. New technology should in this case allow win-win outcomes.

We must also ensure that as part of KYC, BSA, and AML compliance we avoid creating a "Do Not Bank List." There are concerns that services like CheX Systems are used by 80% of banks and credit unions to determine whether to open an account.⁴⁵ Regulations for customer verification under BSA include a specific reference to CheX Systems for data eligibility.⁴⁶ Yet the first issue the Consumer Financial Protection Bureau (CFPB) mentions in why a consumer may be denied a

⁴³ Financial Crimes Enforcement Network (FinCEN), "Request for Information and Comment on Customer Identification Program Rule Taxpayer Identification Number Collection Requirement," Federal Register, March 29, 2024, <https://www.federalregister.gov/documents/2024/03/29/2024-06763/request-for-information-and-comment-on-customer-identification-program-rule-taxpayer-identification>.

⁴⁴ Aaron Klein, "Comments on FinCEN's Proposed Changes to Customer Identification Rules," Brookings, May 20, 2024, <https://www.brookings.edu/articles/comments-on-fincens-proposed-changes-to-customer-identification-rules/>.

⁴⁵ Chi Chi Wu, "Account Screening Consumer Reporting Agencies: A Banking Access Perspective" (National Consumer Law Center, October 1, 2015), 3, <https://www.nclc.org/resources/account-screening-consumer-reporting-agencies-a-banking-access-perspective/>.

⁴⁶ Federal Deposit Insurance Corporation (FDIC), "Bank Secrecy Act, Anti-Money Laundering, and Office of Foreign Assets Control: Section 8.1," n.d., <https://www.fdic.gov/resources/supervision-and-examinations/examination-policies-manual/section8-1.pdf>.

bank account is a person's negative history as reported by CheX Systems.⁴⁷ CheX Systems reporting contains information about people ranging from suspicion of prior fraud to any past bank or credit union account that was closed with a negative balance, including those held jointly.⁴⁸ Because data on CheX and the other major reporting company, Early Warning Services, are not public it is not clear how much banks rely on their data in making account denial decisions. However, one older study estimates that 2.3 million account applications were denied in a single year based on these reports.⁴⁹ That would be equal to approximately 40% of the total number of unbanked households.⁵⁰

The effect of using CheX systems means that if a person is reported to have problems that for any reason, result in a low score flagging them as 'not bankable' it can be difficult to open a high-quality bank account. What if the report on you is placed in error? While CheX is regulated as a credit reporting agency, there is no requirement that its list be accurate. Instead, the law only requires that they conduct a reasonable investigation if a person claims they should be removed from the list. As one report concluded: "Based on consumer complaints, it seems that financial institutions and account screening CRAs often fail to conduct meaningful or substantive investigations when a consumer lodges a dispute."⁵¹ The Treasurer of San Francisco found: "systemic issues in both ChexSystems' design and implementation, resulting in significant confusion and unfairness and ultimately undue exclusion for low-income consumers, and in particular Black consumers."⁵²

Build on Positive Momentum

A discussion of solutions to reduce debanking should acknowledge the progress that has already been made and what has worked that can be built upon. The unbanked rate has fallen by almost half since peaking at over 8% in 2011.⁵³ As unbanked rates have fallen, so too have rates among racial minorities and the disabled, who remain significantly more likely to be unbanked or become debanked.⁵⁴ While many factors are at play, I believe a few have been particularly effective and deserve mention.

⁴⁷ "Why Was I Denied a Checking Account?," Consumer Financial Protection Bureau, December 18, 2024, <https://www.consumerfinance.gov/ask-cfpb/why-was-i-denied-a-checking-account-en-1113/>.

⁴⁸ "Why Was I Denied a Checking Account?"

⁴⁹ Wu, "Account Screening Consumer Reporting Agencies: A Banking Access Perspective," 6.

⁵⁰ Federal Deposit Insurance Corporation (FDIC), *2023 FDIC National Survey of Unbanked and Underbanked Households*, 1.

⁵¹ Wu, "Account Screening Consumer Reporting Agencies: A Banking Access Perspective," 4.

⁵² Maya Oubre et al., "Blacklisted: How ChexSystems Contributes to Systemic Financial Exclusion" (San Francisco, CA: San Francisco Office of Financial Empowerment, June 2021), 7.

⁵³ Federal Deposit Insurance Corporation (FDIC), *2023 FDIC National Survey of Unbanked and Underbanked Households*, 1.

⁵⁴ While not a transactional banking product, ABLE accounts helping the disabled create savings vehicles while maintaining eligibility for SSDI and other benefits have shown promise. Social Security Administration believes more can be done to improve their effectiveness a topic worth future exploration see: Jody Ellis, Marlene Ulisky,

The [Bank-On program](#),⁵⁵ a spin-off of the SAFE Account FDIC pilot program, certifies low-cost, high-quality bank accounts. These accounts have low, predictable fees (which are often waivable) and do not allow high-cost unpredictable fees such as overdrafts.⁵⁶ These accounts have become popular at financial institutions that offer them, with [some reporting](#) 20% or more of new accounts meeting these criteria⁵⁷ and, in the aggregate, there were [more than](#) 11 million total Bank-On accounts open as of the end of 2023.⁵⁸

Most of America's largest banks proactively reduced their reliance on overdrafts and eliminated non-sufficient funds (NSF) fees. As I outlined in testimony before this Committee in 2022,⁵⁹ these changes collectively resulted in \$5 billion per year going from bank profit back into the pockets of people most at risk of leaving the banking system. Since then, more banks and credit unions have reformed their practices, but many have not.

The CFPB has put out a strong proposed [overdraft regulation](#)⁶⁰ that is based on the fundamental economic reality that the extension of overdraft in return for a fee that is meant to be profitable for the bank, and punitive for the consumer, should be classified as credit. As an economist, it is difficult for me to argue with that logic. As a regulatory matter, it is problematic that the CFPB's rule exempts the majority of banks and credit unions with less than \$10 billion in assets. Not only will that create an unlevel playing field, but [my research](#) has uncovered that a handful of those institutions are overdraft predators that generate overdraft revenue at rates of more than 65 times as much per consumer as some of the largest banks.⁶¹ In 2024, for example, Bank of America averaged \$1.37 in overdraft fees per customer while Armed Forces Bank averaged \$91.77 per customer.⁶²

and Laurie Schaller, "ABLE Act – 10 Years of Progress for People With Disabilities," SSA, December 19, 2024, <https://blog.ssa.gov/able-act-10-years-of-progress-for-people-with-disabilities/>.

⁵⁵ "BankOn," accessed February 4, 2025, <https://joinbankon.org/>.

⁵⁶ "Expand Banking Access In Your Community With Bank On," American Bankers Association, May 6, 2022, <https://www.aba.com/news-research/analysis-guides/expand-banking-access-in-your-community-with-bank-on>.

⁵⁷ Aaron Klein, "How to Fix the Covid Stimulus Payment Problem: Accounts, Information, and Infrastructure," Just Money, August 18, 2020, <https://justmoney.org/a-klein-how-to-fix-the-covid-stimulus-payment-problem-accounts-information-and-infrastructure/>.

⁵⁸ Lisa J. Locke and Nishesh Chalise, "Bank On National Data Hub: Findings from 2023," Federal Reserve Bank of St. Louis, November 12, 2024, <https://www.stlouisfed.org/community-development/bank-on-national-data-hub/bank-on-report-2023>.

⁵⁹ Aaron Klein, "Examining Overdraft Fees and Their Effects on Working Families," Brookings, May 4, 2022, <https://www.brookings.edu/articles/examining-overdraft-fees-and-their-effects-on-working-families/>.

⁶⁰ Consumer Financial Protection Bureau, "Overdraft Lending: Very Large Financial Institutions," Federal Register, December 30, 2024, <https://www.federalregister.gov/documents/2024/12/30/2024-29699/overdraft-lending-very-large-financial-institutions>.

⁶¹ Aaron Klein, "A Few Small Banks Have Become Overdraft Giants," Brookings, March 1, 2021, <https://www.brookings.edu/articles/a-few-small-banks-have-become-overdraft-giants/>.

⁶² Authors calculation of overdraft fees per 12/31/2024 call reports using overdraft revenue divided by number of insured accounts <\$250,000. Note that Armed Forces Bank earns an additional \$17.23 per year per customer on "periodic maintenance fees" and \$14.49 per customer on average per year for "All other service charges on deposit accounts" (15d on call report) bringing their total fee income on low income customers to an average of \$123.49

Seeing a market opportunity to challenge legacy banking, with technology, a combination of financial technology (fintech) firms have launched many of which target those who are unbanked or underbanked with products that they hope are better, cheaper, and faster. These new products and methods of reaching people offer substantial promise. A generation ago, the conversation about debanking was largely focused on branches and physical locations. Thanks to smartphone adoption, a large majority of even the neediest people have the equivalent of multiple bank branches in their pockets. That's why branch location and hours are no longer a major reason the unbanked cite for not having an account. The growth of new fintech entrants into the banking system offers the potential to improve financial access and lower costs for consumers. It also generally requires a partnership with a bank or credit union to access parts of the financial and payment systems that are currently only available to regulated banks and credit unions.

However, some fintechs, and banks who partner with them, have played fast and loose with laws and regulations. Regulators need to continue to enforce rules and regulations appropriately. I fear that a wave of deregulation, particularly of a culture of laxity in enforcement, would give the impression that cops are off the beat and that bad actors can prey on the financially vulnerable. [Reports](#) that CFPB staff have been instructed to stop working on all investigations into illegal activity should be concerning to this Committee.⁶³

Defunding the financial police is a mistake with potentially grave consequences. The [failure of Synapse](#) in 2024 highlights both the complex operations of some of these fintechs and the devastating consequences to consumers who had no idea where their money really was.⁶⁴ Regulators need to be vigilant in monitoring the chain of companies that interact between a consumer and their bank accounts. Creating high standards and enforcing them may mean that some company's economics do not work. If a fintech's economics rely on a process that does not comply with law or intelligent regulation that just means it doesn't work. That is not debanking.

Progress has come through a combination of industry reforms, regulation, and competition. Each of these can be furthered to combat debanking and increase financial inclusion. Well-designed legislation is necessary since, despite the substantial progress made over the last decade, obstacles remain. Here are specific actions that Congress, regulators, and industry can take.

Debanking Solutions

per year. For more on Armed Forces overdraft fees see: "Overdrafts & Alternatives FAQs," Armed Forces Bank, accessed February 4, 2025, <https://www.afbank.com/learn/help-center/overdrafts-and-alternatives>.

⁶³ Kate Berry, "Treasury's Bessent Tells CFPB Staff to Stop Everything," American Banker, February 3, 2025, <https://www.americanbanker.com/news/treasury-bessent-tells-cfpb-staff-to-stop-everything>.

⁶⁴ Hugh Son, "How Thousands of Americans Got Caught in Fintech's False Promise and Lost Access to Bank Accounts," CNBC, July 2, 2024, <https://www.cnbc.com/2024/07/02/synapse-fintech-fdic-false-promise.html>.

The Committee's prioritization of debanking as an issue is itself a step forward. Holding hearings on this topic can help focus attention among financial regulators, the Treasury Department, industry, consumer advocates, and impacted individuals and businesses. I hope it also builds a record for bipartisan legislation to reduce the cost of basic banking and reform anti-money laundering laws. Here are 8 recommendations that can reduce debanking and ensure that all Americans and businesses can access mainstream, low-cost, high-quality banking services.

Bring More Working People Into the Banking System

- 1) *Require all banks and credit unions to offer Bank-On style accounts.*

Bank-On accounts are affordable, low-fee, non-overdraft accounts that have proven popular among consumers. The American Bankers Association considers offering these accounts a best practice.⁶⁵ There is no reason why any federally insured bank or credit union should not be required to offer the best practice bank account.

- 2) *Reduce penalty and surprise fees that debank the financially vulnerable.*

More banks and credit unions need to reform their overdraft practices. Regulators should crack down on predatory overdraft practices and banks and credit unions that rely on them. The CFPB's proposed overdraft regulation is a great starting point. Congress should resist any attempt to overturn it. The observed practice of some banks and credit unions reordering a consumer's transactions during a day in order to maximize overdraft revenue is wrong. The state of New York just banned this practice and federal regulators should follow. Federal regulators have for at least a decade turned a blind eye to institutions they regulate like Woodforest, Armed Forces, and Academy Banks that rely on overdraft fees for the majority of their profits -- and ever more egregiously DBA First Texas National Bank and Frontwave Credit Union for whom overdraft fees were more than 100% of their profits (losing money on every other aspect of their business). Any bank or credit union that relies on overdraft fees for the majority of its profit for consecutive years is operating in an unsound and unsafe business practice and should be regulated accordingly.

- 3) *Improve the design of the financial system to better serve working people.*

How can it be that Amazon can deliver almost anything to almost anyone's door faster than two banks can electronically transfer funds? This delay costs little to people with a lot in their bank accounts and costs a lot to people with little in their bank accounts.

When Congress passed the Expedited Funds Availability Act in 1987, it required the Federal Reserve (later amended in the Dodd-Frank Act to include jointly with the Director of the CFPB) to reduce time lags for holding funds consistent with

⁶⁵ Aaron Klein, "Universal Bank Accounts Necessary for Families to Bank on Child Tax Credit," Brookings, April 29, 2021, <https://www.brookings.edu/articles/universal-bank-accounts-necessary-for-families-to-bank-on-child-tax-credit/>.

technological advances. The law includes the term “shall” and not “may.”⁶⁶ Having spent years on the staff of this Committee, I know the political fights those two words can cause. The Federal Reserve has ignored this law and continues to do so. The Payments Modernization Act, [proposed](#) in the last several Congresses by Senators Van Hollen and Warren,⁶⁷ would hardwire today’s instant payment world into law and make a massive difference in combatting debanking as well as a host of other problems. I can think of no other banking policy that would do as much to help people as simply giving them faster access to their own money.

Reform Anti-Money Launder Laws and Rules

1) *Raise the currency transaction reporting threshold.*

A reasonable place to start would be to the level it was originally set at in 1972, indexed for inflation, which would be just over \$75,000. Other thresholds may make more sense depending on what level of transactions and resources are made available to monitor them. Whatever new level is chosen, it should be indexed to inflation going forward to avoid this type of creep.

2) *Reform Suspicious Activity Reporting.*

FinCEN and federal financial regulators need to overhaul the SARs reporting system. The system would benefit from a rethink with an explicit prioritization of what types of suspicious activity are most important and a process by which financial institutions are given clearer directives on what to and what not to file. The costs of SAR compliance need to be considered particularly as it relates to filings on lower-income and lower profit generating accounts. SAR reform should be considered in the trilemma framework proposed by Judge and Kashyap where the trade-offs between financial inclusion, civil liberties, and effective AML are weighed against each other.⁶⁸

3) *Improve and pass the SAFE Banking Act.*

Specifically with respect to debanking cannabis, the SAFE Banking Act, which passed the Banking Committee last year, would be a helpful piece of legislation. However, because it does not directly address any element of the costly and unproductive SAR filing associated with banking state-licensed cannabis companies, I fear the bill’s

⁶⁶ Aaron Klein, “Petition to Bank Regulators for Faster Payment Processing,” Brookings, October 2, 2024, <https://www.brookings.edu/articles/petition-to-bank-regulators-for-faster-payment-processing/>.

⁶⁷ “Van Hollen, Warren, Pressley, Garcia Introduce Bill to Provide Americans Immediate Access to Money in Their Bank Accounts,” U.S. Senator Chris Van Hollen of Maryland, September 22, 2022, <https://www.vanhollen.senate.gov/news/press-releases/van-hollen-warren-pressley-garcia-introduce-bill-to-provide-americans-immediate-access-to-money-in-their-bank-accounts>

⁶⁸ Kathryn Judge and Anil K Kashyap, “Anti-Money Laundering: Opportunities for Improvement” (Philadelphia, PA: University of Pennsylvania: Wharton Initiative on Financial Policy & Regulation, 2024), <https://wifpr.wharton.upenn.edu/wp-content/uploads/2024/03/WIFPR-Anti-Money-Laundering-Judge-and-Kashyap.pdf>.

impact would likely overwhelm what its proponents have argued. I encourage the Committee to either combine SAFE Banking with broader SARs reform or enhance SAFE Banking to address the problems with SARs filing on state-licensed cannabis businesses.

- 4) *Reform, reduce reliance, or eliminate the usage of ChexSystems and similar “do not bank lists”.*

Those who commit or seek to commit fraud deserve punishment, for which financial exclusion may be appropriate. Being poor should not be criminalized, and having a bank account end in a negative balance should not result in permanent exclusion from the financial system. Banks and credit unions, with permission or prodding from regulators, should change how they rely on ChexSystems and other identity or fraud verification scoring systems to only focus on actual cases of fraud. Bank-On accounts have made some progress using a reformed version of ChexSystems data reporting focusing just on fraud as opposed to past closed accounts (real or in error) as a way to allow more people to qualify for bank accounts while not increasing fraud risks to the bank.⁶⁹ This should be the norm for all accounts everywhere.

Congress should require these systems along with other credit reporting agencies to produce accurate reports. Current incentives for these companies are to produce reports at as low a cost as possible and to tolerate significant errors (particularly if those errors are symmetric). Inaccurate information such as being incorrectly placed on a “do not bank list” poses significant and potentially irreparable harm. A person must have proper recourse to have a fair adjudication of any erroneous information.

- 5) *Incorporate new technology to improve efficiency and lower costs.*

Financial institutions and regulators use outdated technology for a variety of BSA/AML/KYC compliance costs. What I wrote in a [paper](#) with then-University of Michigan Professor Michael Barr and former Federal Reserve Bank of New York official Kay Gifford about international remittances holds for both that purpose and more broadly: “Financial institutions wary of changing to new technology spend more on each transaction, reducing their incentive to compete and bring in new customers. To the extent costs are averaged across customers, non-users of international money transmission pay more in higher bank fees. Innovators seeking to serve cross-border markets are unable to compete as the de-risking cycle reduces access to financial institutions for money transmission businesses. AML/CTF objectives are not met as illicit funds are able to move more easily, masked by either larger flows outside of financial institutions by migrants, or by slower, lower technological processes by which financial institutions move funds. Looking for the

⁶⁹ <https://www.fisglobal.com/-/media/fisglobal/files/PDF/product-sheet/ChexSystems-Bank-On-Bundle-Product-Sheet.pdf>

real needle in the haystack gets harder when either fake needles or more hay is added.”⁷⁰

In conclusion, debanking is a serious problem in America. Reforming the structure of basic bank accounts, with a strong eye focused on lowering their costs to consumers and to banks and credit unions to provide them is the best path to bringing people into the banking system. Much of this can be done through regulation, changes in industry practices, and in some instances legislation. The concrete changes listed in the testimony offer a path to reduce debanking and enhance opportunity for millions of Americans, reduce regulatory costs, and strengthen our ability to combat crime.

Thank you again for holding this important hearing and I look forward to answering your questions.

⁷⁰ Michael Barr, Karen Gifford, and Aaron Klein, “How New Technologies Can Enhance Anti-Money Laundering Efforts and Provide Financial Access,” Brookings, April 17, 2018, <https://www.brookings.edu/articles/how-new-technologies-can-enhance-anti-money-laundering-efforts-and-provide-financial-access/>.

**RESPONSES TO WRITTEN QUESTIONS OF
SENATOR CORTEZ MASTO FROM AARON KLEIN**

Q.1. Why should SARs reform be paired with the SAFER Banking Act?

A.1. Response not received in time for publication.

Q.2. How should SARs filing requirements be changed for State-legalized cannabis businesses?

A.2. Response not received in time for publication.

**RESPONSES TO WRITTEN QUESTIONS OF
SENATOR BLUNT ROCHESTER FROM AARON KLEIN**

Q.1. *Transparency*—Financial institutions play an important role in protecting our communities from financial crimes. Anti-money laundering reporting requirements are structured to not tip off bad actors. However, without updates to these decades-old regulations, law-abiding citizens may be caught up in reporting.

What steps should we take to improve these reporting systems to target bad actors more accurately?

A.1. Response not received in time for publication.

Q.2. How can we better balance the need for transparency for consumers with the importance of confidentiality in serious situations?

A.2. Response not received in time for publication.

Q.3. *Barriers to Bank Accounts for Justice-Involved Individuals*—In the House, I cochaired the Bipartisan Second Chance Task Force, and I look forward to reintroducing the bipartisan Clean Slate Act, which seals eligible criminal records and allows those who have completed their sentence to participate fully in society, including accessing a bank account. We have worked on this at the Federal level and now States are passing their own Clean Slate laws. So much progress has been made across the country. Despite these strides, the fact remains that for returning citizens, it is still too hard to access a bank account.

What barriers to banking do returning citizens face?

A.3. Response not received in time for publication.

Q.4. Does the use of AI and machine learning in risk analysis pose a debanking threat to returning citizens?

A.4. Response not received in time for publication.

Q.5. Where do returning citizens turn if they've been denied a bank account?

A.5. Response not received in time for publication.

Q.6. Do you think returning citizens would have better economic and social outcomes if they had full access to the financial system? How so?

A.6. Response not received in time for publication.

Q.7. *Cannabis Banking*—Starting this spring, the first recreational cannabis dispensaries will be licensed in Delaware. Up to 30 new retail businesses will have the opportunity to open. It is a public safety hazard if they are forced to operate in all-cash.

What does Congress need to do here to address debanking of State-legal cannabis businesses?

A.7. Response not received in time for publication.

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

**Letter for the Record by the National Iranian American Council (NIAC)****Senate Committee on Banking, Housing, and Urban Affairs****Hearing on "Investigating the Real Impacts of Debanking in America"****February 5, 2025**

The National Iranian American Council is pleased that the Senate Banking Committee has decided to focus on the issue of debanking as one of its first actions in the 119th Congress. As an organization dedicated to defending the civil rights of the Iranian-American community, we share the concerns of Sen. Tim Scott (R-SC), the Chairman of the Banking Committee, on debanking, which he calls "unacceptable and un-American." Likewise, we appreciate the efforts of Sen. Elizabeth Warren, the Ranking Member of the Banking Committee, to urge regulators to take this problem seriously and enact impactful reforms.

We hope that the committee will take this opportunity to address why financial institutions debank or de-risk a variety of groups of Americans. We believe that these impacts are deeply intertwined and urge that policy responses deal with the full scope of the debanking problem.

The scale of debanking on the Iranian-American community is massive and should not be overlooked. Just one bank - Bank of America - indicated that its own records show it had restricted the accounts of 15,000 individuals of Iranian heritage. Clearly, significant reform is needed to safeguard the rights of consumers and prevent negative impacts on the economy.

Debanking of the Iranian-American community

For years, our organization has fielded complaints after financial institutions debanked the accounts of Iranian Americans and Iranian nationals alike.

From conversations with many of the financial institutions that have engaged in harmful de-risking practices, it is clear that these actions have been driven by efforts to comply with existing U.S. sanctions regulations on Iran. Specifically, U.S. sanctions broadly prohibit transactions between U.S. persons and entities and persons subject to the jurisdiction of Iran. These restrictions are not defined particularly clearly, which appears to have led to significant overenforcement of sanctions on the part of some major U.S. financial institutions who have de-risked or closed the accounts of many Iranian Americans and Iranian nationals,

often without valid cause or justification.

Critically, the U.S. government has indicated for some time that Iranian Americans and Iranian nationals ordinarily resident in the United States do not need to have their accounts restricted. For example, Treasury FAQ #118 addresses a scenario in which a client is in Iran to visit a relative and whether such an individual should be restricted from banking services. The FAQ answers “No. As long as you are satisfied that the client is not ordinarily resident in Iran, then the account does not need to be restricted.”¹ However, either this clear directive has often been ignored or does not filter through to financial institutions and their compliance practices.

Ranking Member Warren has long advocated for this issue on behalf of individuals of Iranian heritage and other impacted communities. In May 2024, Senator Warren – along with Representative Ilhan Omar – sent a letter to financial regulatory agencies with proposed executive actions to reduce the negative impacts of de-risking.² This letter follows previous efforts to address financial access issues for underserved communities, including a December 2022 letter³ to the banking regulators in the lead up to Treasury’s de-risking strategy⁴ and a February 2024 letter to JPMorgan, Citi, Wells Fargo, and Bank of America seeking more information on their de-risking practices.⁵ These efforts have rightly shined a light on harmful debanking practices by financial institutions and set out a series of reforms to ensure transparency, accountability, and preventative measures.

What harm does debanking cause?

NIAC has collected many stories from our community over the years, including the following:

- One U.S. citizen opened an account at Chase Bank for the purpose of assisting their elderly parents in repatriating approximately \$70,000 in assets from

¹ Treasury FAQ # 118, <https://ofac.treasury.gov/faqs/118>.

² Omar, Warren Lead Colleagues in Urging Regulatory Agencies to Combat Discrimination in Financial System by Curbing ‘De-Risking’ Practices, <https://omar.house.gov/media/press-releases/omar-warren-lead-colleagues-urging-regulatory-agencies-combat-discrimination>

³ Rep. Omar and Sen. Warren Lead Letter Calling on Regulators to Improve Banking Access for Communities of Color, <https://omar.house.gov/media/press-releases/rep-omar-and-sen-warren-lead-letter-calling-regulators-improve-banking-access>

⁴ Treasury Department Announces 2023 De-Risking Strategy, <https://home.treasury.gov/news/press-releases/jv1438>

⁵ Omar, Warren, Lawmakers Seek Information from Big Banks on Account Closure Practices that Discriminate Against Muslim Americans, <https://omar.house.gov/media/press-releases/omar-warren-lawmakers-seek-information-big-banks-account-closure-practices>

Iran, which is authorized under sanctions regulations.⁶ The citizen notified their local Chase Bank branch about their intentions ahead of the transfer of funds. However, shortly after the transfers were complete, Chase Bank closed the account and restricted its funds, meaning the family has been blocked entirely from these assets without recourse for more than a year. The funds were intended to be used for elder care and to pay for medical expenses related to cancer treatment, adding to the stress of such difficult issues.

- A U.S. citizen of Iranian heritage had their account restricted by Wells Fargo, blocking their access to their money for several weeks, despite the fact that the individual had provided the bank with all documentation including proof of citizenship. Subsequent communication from the bank included directives about notifying the bank ahead of extended travel to Iran.
- One U.S. citizen had an account that was to be used for a down payment on a home frozen by Bank of America, in spite of the fact that they had not been to Iran in two decades and had already sent official documentation to the bank to confirm their U.S. citizenship.
- An Iranian national studying at a U.S. university had their account at Bank of America closed, where the individual had put all of their savings while in the United States. To add insult to injury, the bank reportedly sent the funds to the individual by check, which was lost in the mail and added further delay and hardship.
- A PhD student in the United States had their checking account closed by TD Bank without notice or lawful justification. Three days after the closure of their account, TD Bank sent a letter indicating the account would be closed at a future date. The abrupt closure resulted in the individual missing utility payments. Moreover, after experiencing this difficulty with the account closure at TD Bank, the individual sought to open a new checking account at Chase Bank that was blocked the day after it was opened.
- Finally, two U.S. citizens had their accounts with Bank of America blocked multiple times with no prior notice. Their credit card was closed with no notice and they were told by their local bank branch that the bank “can’t provide any information” regarding the reasons for the closure and that they are regarded as “high risk” customers. Later, Bank of America closed their checking and savings accounts, while Merrill Edge – a Bank of America company – closed their retirement account with only 1-day notice.

Our organization has dealt with many financial institutions who have de-risked members of our community for more than a decade. Some of them have been forthcoming in rectifying their actions, such as Bank of Hawaii.⁷ Others have been willing to engage with us but have signaled that their room for maneuver is limited as a result of U.S. regulations,

⁶ See Section 560.550 of the Iranian Transactions and Sanctions Regulations.

⁷ Bank of Hawaii Re-Opens Accounts for Iranians in U.S., March 11, 2014, https://www.niacouncil.org/press_room/bank-of-hawaii-re-opens-accounts-for-iranians-in-us/.

including PayPal.⁸ Still others have shrugged off complaints and continued their damaging and discriminatory practices, like Bank of America. Harmful de-risking practices by Bank of America and other financial institutions - often with no notice and despite confirmations from their clients of their U.S. residency - is often quite damaging.

These practices have been unacceptable and our organization has formally requested that Bank of America cease these de-risking actions, which are not required by U.S. regulations, to little avail, on at least three occasions since 2014.⁹ Only thanks to a recent class action lawsuit was our organization made aware of the full extent of Bank of America's harmful practices. The bank itself has identified as many as 15,000 accounts connected to individuals of Iranian heritage who had their accounts restricted in an apparent effort to comply with U.S. sanctions.¹⁰

The notion that just one financial institution has engaged in 15,000 account closures - and counting - against a relatively small immigrant community in the United States should be a major signal that something is wrong with federal guidance and urgent reforms are needed.

Wells Fargo Bank has also engaged in a pattern of mass debanking of the Iranian-American community. As part of this process, Wells Fargo has demanded that customers of Iranian heritage sign an "Iran Declaration." This document requires customers to affirm under the threat of legal action that they have no intent to return to Iran and reside there for longer than six months in any twelve month period in perpetuity, which has had the effect of confusing and driving its customers of Iranian heritage away.¹¹

Why is this happening?

Essentially, extensive federal regulations have incentivized banks to shutter the accounts of their consumers to mitigate risk across a variety of different groups. The more a financial institution can prove that they have done to institute robust compliance protocols, the less they have to fear fines that could reach into the billions of dollars.

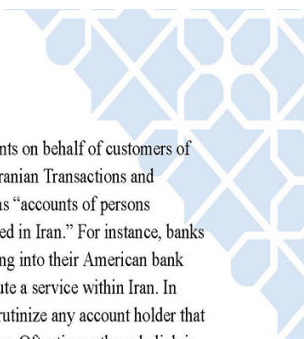
Under U.S. sanctions, banks must ensure that they are neither servicing sanctioned individuals or allowing individuals resident in Iran to bank. U.S. sanctions targeting

⁸ NIAC Continues to Engage PayPal and Venmo on Community's Concerns with Account Freezes, May 6, 2021, <https://www.niacouncil.org/news/niac-continues-to-engage-paypal-and-venmo-on-communitys-concerns-with-account-freezes/>.

⁹ See NIAC letters to Bank of America complaining of their de-risking practices from 2014, 2018 and 2019, https://www.niacouncil.org/press_room/niac-urges-bank-of-america-to-halt-iranian-account-closures/, https://www.niacouncil.org/press_room/niac-calls-bank-america-end-discriminatory-practices-iranian-americans/, https://www.niacouncil.org/press_room/niac-letter-bank-america-discriminatory-account-closures-2/.

¹⁰ Bank of America is being sued for discriminating against Iranians, March 5, 2024, https://www.niacouncil.org/news_publications/bank-of-america-sued-for-discrimination-against-iranians/.

¹¹ NIAC Sends Letter to Wells Fargo Bank Calling Out Discrimination Against Iranians, <https://www.niacouncil.org/news/niac-sends-letter-to-wells-fargo-bank-calling-out-discrimination-against-iranians/>.



Iran do not prohibit U.S. financial institutions from holding accounts on behalf of customers of Iranian origin, but rather from servicing “Iranian accounts.” The Iranian Transactions and Sanctions Regulations (“ITSR”), 31 C.F.R. Part 560, defines this as “accounts of persons ordinarily resident in Iran, except when such persons are not located in Iran.” For instance, banks must prohibit an Iranian American who is visiting Iran from logging into their American bank account to check a statement or pay a bill, as these actions constitute a service within Iran. In practice, however, these regulations lead to extensive efforts to scrutinize any account holder that may have any link to Iran to screen them out and deny them service. Oftentimes, the sole link is an individual’s national heritage, as many Iranian-American citizens have had accounts closed who have never even set foot in Iran.

Likewise, the Banking Manual, put out by the Federal Financial Institutions Examination Council (FFIEC)¹², unifies the banking regulations administered by various government agencies. It stipulates that a “bank’s policies, procedures, and processes should address how the bank will identify and review transactions and accounts for possible OFAC violations, whether conducted manually, through interdiction software, or a combination of both...The bank’s policies, procedures, and processes should also address how it will determine whether an initial OFAC hit is a valid match or a false hit.” The Manual warns that the longer a possible account violating sanctions is maintained, the stiffer the penalties for a sanctions violation. It warns “the bank should keep in mind that OFAC considers the continued operation of an account or the processing of transactions post-designation, along with the adequacy of the bank’s OFAC compliance program, to be a factor in determining the appropriate enforcement response to an apparent violation of OFAC regulations.” While the Banking Manual explicitly warns financial institutions not to service any accounts that may pose a sanctions compliance risk, which may be determined by a software algorithm, it has no language warning against overenforcement. Thus, U.S. regulations prime banks for discriminatory behavior toward communities of Middle Eastern descent, in particular.

How can debanking be addressed?

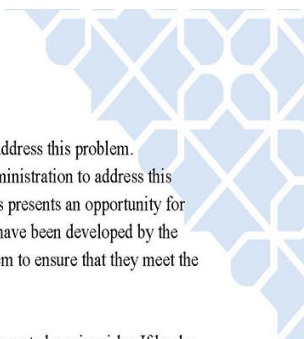
Lawmakers should understand that this is not a problem faced by one group of people or perpetrated by just one financial institution. It is a systemic problem in our banking sector, and it stems from the environment created by an intense regulatory environment that banks must try to navigate. All too often, they respond by purging customers they wrongly perceive as high-risk.

The prior administration did initiate a comprehensive review¹³ of debanking, publishing

¹² Bank Secrecy Act/Anti-Money Laundering Banking Manual, <https://bsaaml.ffiec.gov/manual/OfficeOfForeignAssetsControl/01>

¹³ The Department of Treasury’s De-risking Strategy, https://home.treasury.gov/system/files/136/Treasury_AMLA_23_508.pdf





a report and initiating a rule change¹⁴ process that could begin to address this problem. However, many of the ideas that were considered in the Biden administration to address this problem, including the rule change, were never implemented. This presents an opportunity for the Trump administration. It can pick up the good ideas that may have been developed by the prior administration to combat debanking, while expanding on them to ensure that they meet the scale of the challenge for all those impacted by it.

Failure to change the incentives around debanking for everyone impacted carries risks. If banks believe it is acceptable to debank one group of people based on perceived risk, it is only a matter of time before they apply this logic to others. As a result, we hope the committee takes a wide view of this problem and engages seriously in efforts to ensure bank practices are targeted narrowly at bad actors, not entire categories of people.



¹⁴ The Department of Treasury's Proposed Rule Change, <https://www.federalregister.gov/documents/2024/07/03/2024-14414/anti-money-laundering-and-countering-the-finance-of-terrorism-programs>

Before the
SENATE COMMITTEE ON BANKING, HOUSING & URBAN AFFAIRS

Regarding
Investigating the Real Impacts of Debanking in America

Statement on behalf of
Consumer Federation of America

February 3, 2025

Submitted by:

Adam Rust
Director of Financial Services
Consumer Federation of America
1620 I St, NW, Suite 200
Washington D.C. 20006
arust@consumerfed.org

Dear Chair Scott and Ranking Member Warren:

Thank you for holding this hearing to examine the growing problem of "debanking." Access to a bank account is paramount to existing in our country. Households need access to a bank account to buy everyday necessities, get paid by their employers, save money for significant expenses, and achieve longer-term financial goals. Unfortunately, many Americans suddenly and without warning lose access to their bank accounts, sometimes for inexplicable reasons that are out of their control. Being evicted from your bank account is alarming and can destabilize numerous aspects of your life. It is expensive -reports estimate that the cost of remaining unbanked could be as much as \$40,000 over a lifetime¹ and time-consuming.

The Consumer Federation of America is an association of non-profit consumer organizations established in 1968 to advance consumer interests through research, advocacy, and education. CFA works to advance pro-consumer policies on various issues before Congress, the White House, federal and state regulatory agencies, state legislatures, and the courts. We communicate and work with public officials to promote beneficial policies, oppose harmful ones, and ensure a balanced debate on issues important to consumers.

Debanking is a widespread problem. The Consumer Financial Protection Bureau's consumer complaint database is replete with examples of consumers whose accounts have been closed, and they detail the painstaking efforts by those individuals to attempt to fix problems and regain access.

¹ Fellowes, Matt, and Mia Mabanta. "Banking on Wealth: America's New Retail Banking Infrastructure and Its Wealth-Building Potential." Brookings Institution, January 2008.
http://www.brookings.edu/~media/research/files/reports/2008/1/banking%20fellowes/01_banking_fellowes.pdf

The fact is that most account closures happen because of pernicious banking junk fees, including overdraft fees. A 2021 report from the San Francisco Treasurer's Office about debanking highlights research demonstrating that 97.5 percent of the 30 million bank accounts they evaluated were closed because of overdrafts.² Excessive overdraft fees push consumers into a downward debt spiral that becomes increasingly difficult to escape. Lower-income consumers are hit the hardest, and multiple \$35 overdraft fees eat away at their ability to have enough money in their bank account to cover their living costs while staying out of overdraft territory.

An overdraft may be the most expensive form of credit in today's marketplace. Most overdrafts charged due to debit card purchases occur for transactions of less than \$26. Yet, the prevailing cost of an overdraft exceeds \$27 and is often greater than \$35. Also, since the majority are repaid in 3 or fewer days, the prevailing interest rate on an overdraft is 16,000 percent.³

Ninety percent of frequent overdrafters typically had only a few hundred dollars in their bank account at the end of a day. For too many adults, these shortages are not an unfortunate exception but a fact of life. Federal Reserve research finds that almost forty percent of American adults have less than \$400 in liquid savings. The share is even higher for adults without post-secondary education, living in rural areas, or under age 30: 49 percent, 43 percent, and 48 percent, respectively.⁴ This leads to situations where consumers are debanked simply for being poor, defeating the purpose of maintaining a bank account where you can hold and save money. It is, therefore, unsurprising that a top reason for not holding a bank account is that consumers *do not trust banks*.

When bank accounts cost too much, people choose not to use them. For over a decade, the Federal Deposit Insurance Corporation (FDIC) has surveyed unbanked and underbanked Americans. Consistently, respondents attribute their decision to leave the banking system or substitute services offered by banks with non-bank alternatives because of high fees. In the FDIC's most recent survey, 33.4 percent of respondents listed "bank account fees are too high," "bank account fees are too unpredictable," or "don't have enough money to meet minimum balance requirements" as a primary reason not to use a bank.⁵

Once debanked, individuals stay outside the system for extended durations at great expense.

The FDIC's report acknowledged that more than half of all unbanked people have had a bank account in the past. Their experiences with account costs—and the "gotcha" nature of many penalty account fees—directly inform their decision-making.

² Oubre, Maya, Molly Cohen, Jessica Lindquist, Jacob Dumez, and Carly Bertolozzi. "Blacklisted: How ChexSystems Contributes to Systemic Financial Exclusion." San Francisco Office of Financial Empowerment, June 2021. <https://www.sfgov.org/ofe/sites/default/files/2021-06/Blacklisted-How%20ChexSystems%20Contributes%20to%20Systemic%20Financial%20Exclusions%20-%20FINAL.pdf>.

³ Consumer Financial Protection Bureau. "Fact Sheet: The CFPB's Proposed Rule to Curb Excessive Fees on Overdraft Loans By Very Large Banks and Close a Decades-Old Loophole." Fact Sheet, January 2024. https://files.consumerfinance.gov/f/documents/cfpb_overdraft-credit-very-large-financial-institutions_fact-sheet_2024-01.pdf.

⁴ "Survey of Household Economics and Decision-making: Adults Who Would Cover a \$400 Emergency Expense Using Cash or Its Equivalent." Report on the Economic Well-Being of U.S. Households. Board of Governors of the Federal Reserve System, 2024. <https://www.federalreserve.gov/default.htm>.

⁵ "2023 FDIC National Survey of Unbanked and Underbanked Households." Federal Deposit Insurance Corporation, November 2024. <https://www.fdic.gov/household-survey/2023-fdic-national-survey-unbanked-and-underbanked-households-report>.

Once debanked, people remain unbanked, often against their preference. Negative consumer data reporting agencies maintain lists of people whose accounts have been closed involuntarily. The two largest firms are ChexSystems, a subsidiary of Fidelity National Information Services, and Early Warning Services, a company owned by a consortium of large banks. Eighty percent of banks use a consumer reporting agency to assist with their decision to approve or deny applications for bank accounts.⁶

Involuntary account closures are widespread. A 2014 study from the CFPB revealed that six percent of bank accounts had been closed involuntarily in the prior year.⁷ Most closures result from negative balances, underscoring the connection between debanking and overdraft fees. As well, the frequency of closures can vary dramatically from bank to bank. The same study also found that the bank with the highest rate of closures exceeded the lowest rate by fourteen-fold, underscoring that bank policies strongly influence debanking outcomes.

A ChexSystems report distinguishes between types of fraudulent activity on an account. "Account abuse" involves unpaid debts and unintentional account mismanagement. It is distinct from "suspected fraud," which describes cases where the bank suspects intentional efforts to misuse an account for financial gain.

Unfortunately, rather than making a distinction that preferences lawful consumers above others, the credit reporting agencies debank both groups. Even though they are not associated with fraud – and typically only due to debts triggered by overdrafts – a record of "account abuse" can still prevent a consumer from being able to open a new account in the future. The negative mark will remain for five years if the account holder does not satisfy the debt. Even if the debt is repaid, the black mark associated with an appearance on a negative list can be a reason to be rejected.⁸

From ChexSystems' FAQs for consumers:

Question: "If I pay what is owed on my account, will the information be removed from my ChexSystems report?"

Answer: "The retention period for reported information is 5 years from the date of closure. The furnisher is under no obligation to remove an accurate report of account mishandling. The furnisher is obligated to update the closure status of reported account information to accurately reflect a paid in full or settled in full status and date when applicable. When ChexSystems receives a closure status update from the furnisher, the report will be updated, but the reported account information will remain on file."⁹

⁶ Wu, Chi Chi, and Katie Plat. "Account Screening Consumer Reporting Agencies: A Banking Access Perspective." National Consumer Law Center, October 1, 2015. <https://www.nclc.org/resources/account-screening-consumer-reporting-agencies-a-banking-access-perspective/>.

⁷ Consumer Financial Protection Bureau. "CFPB Study of Overdraft Programs." White paper, June 2013. https://files.consumerfinance.gov/f/201306_cfpb_whitepaper_overdraft-practices.pdf.

⁸ Oubre, Maya, Molly Cohen, Jessica Lindquist, Jacob Dumez, and Carly Bertolozzi. "Blacklisted: How ChexSystems Contributes to Systemic Financial Exclusion." San Francisco Office of Financial Empowerment, June 2021. <https://www.sfgov.org/ofe/sites/default/files/2021-06/Blacklisted-How%20ChexSystems%20Contributes%20to%20Systemic%20Financial%20Exclusions%20-%20FINAL.pdf>.

⁹ ChexSystems. "ChexSystems Frequently Asked Questions." FAQ. Accessed February 3, 2025. <https://www.chexsystems.com/answers-to-frequently-asked-questions>.

The net effect is that once a person has fallen into debt resulting from too many overdraft fees, adverse reports may lock them out of the banking system.

Consumer comments on FICO's MyFICO Forum reveal where people were blocked from opening new accounts.¹⁰ Once listed on ChexSystems, many people may have to wait years to open an account. ChexSystems has a web portal that permits consumers to challenge a listing, but most people are unaware of the option. Some individuals will return to the banking system through a "second-chance checking account" or only tangentially with a far less functional prepaid debit card. They are likely to pay high fees as a condition for doing so.¹¹

When a person is victimized by a criminal scam, they may be debanked. Financial institutions will frequently close compromised accounts to block further charges. Unfortunately, when an account is closed, the account holder may be reported to a bureau. Even if access is restored, account holders may have been unable to access their remaining balances. Victims of identity theft experience similar challenges.

Debanking is also a problem for non-bank wallets and payment apps

While non-bank payment apps are not real bank accounts, consumers store funds in wallets. At the end of 2023, PayPal held \$38.9 billion in customer funds.¹² In 2025, the CFPB issued an enforcement action against Block, the corporate owner of Cash App, for harm resulting from its account closure policies. According to the CFPB, Block's weak security protocols made accounts vulnerable. When Block closed or froze accounts, the company did not provide an explanation beyond a statement that the consumer had violated the "Terms of Service." When consumers appealed, the company was slow to respond, and even if they were successful, weeks might pass before consumers were able to access their funds.¹³

We can look forward to one positive development. With its new authority to supervise larger participant payment apps and digital wallet companies, the CFPB will be able to monitor the activities of these companies as a part of its examination processes. The rule will expand protections against debanking. When policies lead to debanking, the CFPB will be able to issue directives and matters requiring attention.

Formerly incarcerated individuals face systemic hurdles to qualify for a bank account

When people leave incarceration, they may be unable to qualify for a bank account. This may lead to challenges to fulfill requirements for probation. Certainly, it adds to the difficulties after release. Many formerly incarcerated individuals live in transition housing. Often, these communities share a common

¹⁰ Brady, Sarah. "What Is ChexSystems?" Intuit Credit Karma, November 27, 2018.

<https://www.creditkarma.com/advice/i/what-is-chexsystems>.

¹¹ Tierney, Spencer. "Blocked by ChexSystems? What to Know." *NerdWallet* (blog), March 5, 2024.

<https://www.nerdwallet.com/article/banking/blocked-by-chexsystems-what-to-know>.

¹² "PayPal Annual Report for the Year Ending December 31, 2023," 10-k. PayPal, February 2024.

[https://www.sec.gov/Archives/edgar/data/1633917/000163391724000024/pvpl-](https://www.sec.gov/Archives/edgar/data/1633917/000163391724000024/pvpl-20231231.htm#1f56b845c89409e91714e0acd7818b5_46)

[20231231.htm#1f56b845c89409e91714e0acd7818b5_46](https://www.sec.gov/Archives/edgar/data/1633917/000163391724000024/pvpl-20231231.htm#1f56b845c89409e91714e0acd7818b5_46).

¹³ Consumer Financial Protection Bureau. "Consent Order in the Matter of Block, Inc.," January 16, 2025.

https://files.consumerfinance.gov/f/documents/cfpb_block-inc-consent-order_2025-01.pdf.

address. As a result, banks will not mail debit cards to post office boxes or in care of the transition housing management.

Formerly incarcerated individuals need access to the payments system. They must pay for fines and fees. In a recent survey, 78 percent of formerly incarcerated individuals revealed they owed debts for fines and fees. For the majority, the fees could not be waived or reduced through community service.¹⁴ They may also more when governments assess surcharges, interest and penalty fees.¹⁵

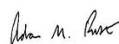
Unfortunately, because they have been outside of the banking system during incarceration, they are often rejected for new accounts because of poorly informed anti-fraud filters. Additionally, many will have debts on obligations they held before they entered incarceration. Since “release” cards used by correctional facilities drain accounts with steep fees, they are not a solution, either.¹⁶

Conclusion

A banking charter is a privilege. When a company receives a banking charter, it gains significant advantages. With a master account at the Federal Reserve, a bank can use the Fed’s payment services. These services, which are essential for commercial banking, include FedACH, FedWire, and FedNow, as well as its check and cash services. Banks can access capital from the Fed as well. Because banks can insure deposits, their liabilities are perceived to be lower risk, resulting in a lower cost of capital. These privileges underscore why banks should not overlay punitive fees on consumers. A banking charter is not a license to extract penalty fees.

All too often, the costs of overdraft fees push people out of the banking system. Thank you for the opportunity to offer this statement for the record.

Sincerely,



Adam Rust

¹⁴ Kaupal, Arjun, Tanya Ladha, and David Silberman. “Financial Health and Criminal Justice: The Impacts of Involvement.” The Financial Health Network and the University of Southern California Dornsife Center for Economic and Social Research, May 2021. https://s3.amazonaws.com/cfsi-innovation-files-2018/wp-content/uploads/2021/05/26150028/FSL_CriminalJustice_Quant_Report_2021.pdf.

¹⁵ National Consumer Law Center, and Collateral Consequences Resource Center. “The High Cost of a Fresh Start: A State-by-State Analysis of Court Debt as a Bar to Record Clearing.” August 2022. <https://www.nclc.org/wp-content/uploads/2022/08/Report-High-Cost-of-Fresh-Start.pdf>.

¹⁶ Consumer Financial Protection Bureau. “Justice-Involved Individuals and the Consumer Financial Marketplace,” January 2022. https://files.consumerfinance.gov/f/documents/cfpb_jic_report_2022-01.pdf.

Statement for the Record

On Behalf of

Americans for Financial Reform

to the

Senate Committee on Banking, Housing and Urban Development

“Investigating the Real Impacts of Debanking in America”

February 5, 2025

Statement for the Record
On Behalf of
Americans for Financial Reform
to the
Senate Committee on Banking, Housing and Urban Development
“Investigating the Real Impacts of Debanking in America”
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Dear Chair Scott, Ranking Member Warren, and members of the Committee:

Americans for Financial Reform (AFR) appreciates the opportunity to provide a Statement for the Record for the House Financial Services Committee on “Investigating the Real Impacts of Debanking in America.” AFR is a nonpartisan and nonprofit coalition of more than 200 civil rights, consumer, labor, business, investor, faith-based, and civic and community groups. Formed in the wake of the 2008 crisis, AFR continues to work towards a strong, stable, and ethical financial system. We are committed to eliminating inequity and systemic racism and fighting for a just and sustainable economy for everyone.

The first Committee hearing of the session might have been about the real costs people face from the financial and housing sector that make it harder to make ends meet and invest in their families’ futures. The affordable housing crisis, the skyrocketing cost and declining availability of property insurance, the prevalence of junk fees and deceptive practices in consumer financial products are all adding to household expenses and undermining the economic security of millions of families. The Committee could be examining the data breach at the Treasury Department’s Bureau of Fiscal Services by the new United States Department of Government Efficiency Service that compromised the personal financial data — including Social Security numbers and bank account identifiers — of millions of people. This seizure of sensitive personal information by unelected and highly-partisan actors without statutory authority poses significant privacy and conflict of interest concerns to nearly everyone.

Instead, today’s hearing focuses on the grievances of some firms that have faced difficulty accessing customer accounts when banks appropriately consider the risks these businesses can pose to bank customers or the bank’s financial and operational resilience. These wealthy investors are complaining that their companies were denied access to banking services because the banking regulators purportedly do not like crypto or other ventures. This allegation of so-called de-banking is a red herring to obscure these real risks. This gambit is an effort by President Trump, Elon Musk, their wealthy allies in the crypto, venture capital, and finance worlds to attack basic financial regulatory oversight and protections, even as they seek to establish their own financial services businesses that they are pushing to be allowed to operate with little or lax oversight and with special exceptions and exemptions without regard to the risks these ventures pose to customers, financial institutions, or financial stability.

The goal of this deceptive narrative is to get regulators to ignore — and encourage banks to ignore — the risks that these relationships can pose to their customers and institutions. Regulators have a responsibility to consider risks and to make sure that banks are considering risks, whether cybersecurity risks, fraudulent transaction risks, reputational risks, regulatory compliance with

consumer banking safeguards or bank secrecy or anti-money laundering risks. And all of these risks should be considered under the rubric of systemic risk. These risks can harm banks' customers, but they can also present real risks to the safety and soundness of the institutions and the financial system. The Committee should recognize that hand-wringing over so-called debanking is a ruse to discourage regulators from doing their jobs: attending to risks and requiring banks to do the same.

Much of the so-called de-banking narrative is centered around whether crypto firms should have access to banking services even when they engage in reckless speculation, egregious self-dealing, or enable illegal and harmful financial transactions. This feeds into the broader deregulatory push to undercut and weaken the financial regulatory architecture designed to reduce the likelihood and severity of future financial crises. The latest crypto-fueled deregulatory mantra has claimed that these critical safeguards stifle innovation. And, some banks have made common cause with fossil fuel companies and other conservatively-aligned business sectors to attack efforts to address the very real financial risks posed by their enterprises.

The crypto industry's attacks on basic and prudential regulatory oversight are easily countered by the ample evidence that many crypto firms did and do have access to banking services and banking regulators did not and are not stepping in to block crypto access to banks.

It is plainly a fallacy that crypto firms have not had access to banks, their services, or their payment systems. In 2021, when crypto firms were riding high and the crypto bubble was expanding, crypto related companies had access to both large banks and specialized banks that provided custody, holding deposits, payment facilitation, trading and transfers, and more. In mid-2022, a crypto trade magazine identified more than sixty large U.S. and foreign banks that held investments or relationships with crypto related companies, including major banks such as BNY Mellon, Citigroup, Goldman Sachs, JPMorgan Chase, and Morgan Stanley. There were at least 136 FDIC insured national and state banks that were engaged in crypto-related activities or planned to be engaged in such activities in 2023, according to an FDIC Inspector General Report. Many of these banks continued providing services to the industry throughout the crash.

Nor did the regulators impose a heavy hand that prevented or banned banks from engaging with crypto firms. Prior to the beginning of 2023, banking regulators such as the Office of the Comptroller of the Currency and FDIC had issued guidance that urged banks to use caution when working with the crypto industry. In a few cases, regulators required banks to provide notification when banks increased their business dealings with crypto firms and in some cases provided banks with no objection letters. But these perhaps too lenient notes of caution absolutely were not prohibitions. Only when the crypto industry collapse became widespread and began to undermine the failing regional banks did banking regulators' actions become more proscriptive.

By the time the crypto bubble began to collapse in the spring of 2022, the risks presented by the crypto industry to the banking sector were widespread and systemic. These risks included illicit finance, market manipulation, fraud, cybersecurity risks, market volatility, legal and regulatory uncertainty, and many more problems that were endemic across crypto platforms large and small. The crash exposed the fraud at FTX. But it also highlighted problems related to fragility, centralization, interconnectedness and a host of other stability issues that contributed to the failures or significant stumbles at large firms that dominated and defined crypto markets such as Terraform Labs, Three Arrows Capital, Voyager, Celsius, and BlockFi, and more.

Even in the midst of the 2022 crypto crash that destroyed \$2 trillion in customer investments, crypto firms did have access to banking services. Silicon Valley Bank, Silvergate, and Signature Bank and others had retooled their business models to cater primarily to the crypto industry, tech start-ups, and venture capital funders and held tens of billions of dollars in assets associated with the crypto industry. Banking regulators did not intervene until several large regional banks with close interrelationships with crypto firms began to collapse. These regional bank failures were disruptive to customers and threatened to harm the broader financial system. To be sure, some banks chose not to expose themselves to the risks the crypto industry has and does pose, which meant that some parts of the crypto industry may have faced challenges demonstrating they were clients who posed an acceptable level of risk. But banks are meant to be able to make such decisions based on their own expertise in finance and on the guidance of regulators. Certainly, banks should not be required to bank crypto firms, irrespective of the risk.

Even though crypto is now on an upswing, serious risks are still present and still can pose significant risks to federally chartered and insured financial institutions. During the 2022 crash, federal financial regulators did contain the damage and walled off the crypto sector from the rest of the financial sector and real economy. If anything, banking regulators might have provided more proscriptive guidance, sooner. But their actions served to prevent more widespread harm.

The regulatory recognition that the crypto industry can and does present fairly ordinary and classic risks to financial institutions is appropriate and does not represent political considerations that punish the industry. Regulators should consider — and require banks to consider — the compliance, operational, liquidity, consumer protection, reputational, and other risks to protect their customers and their institutions when engaging with *any* business. It is not unique to crypto or the other firms or sectors that have led the so-called de-banking charge.

We do, however, want to draw the Committees attention to real problems people face in maintaining bank accounts. A set of actions by banks and high-cost lenders can push customers out of the mainstream financial world and into the arms of fringe finance firms that are more likely to charge unfairly high prices, impose unfair terms or conditions, or perpetuate deceptive or fraudulent practices. Customers who face repeated excessive overdraft junk fees can have their accounts shut down and these high fees are an important reason people are unbanked or underbanked. These fees are typically \$35 per overdraft, far in excess of the average \$26 shortage that led to these fees, and families who pay overdraft fees spend an average of \$225 every year in overdraft fees. The Consumer Financial Protection Bureau has issued a final rule that would lower overdraft fees to \$5 for bigger banks (exempting those under \$10 billion in assets), but this commonsense protection that will save families \$5 billion annually is under attack.

Similarly, people who have taken out predatory and high-priced payday loans can have their accounts suspended or shut down when the payday lenders repeatedly access and debit their accounts. These loans are tied to people's bank accounts and the high-interest rates and fees trap people in a cycle of debt, with about 80 percent of the loans going to refinance another payday loan. Payday and car-title lenders charge \$3 billion in interest and fees annually and these charges can be automatically extracted from people's checking accounts and cause them to become overdrawn, leading to account suspension and closures. In addition, as the Treasury Department has documented, banks do sometimes freeze or close the accounts of people, groups, and entities — especially Muslim people, people in immigrant communities, people with cross-border financial

connections, people impacted by the carceral system — without notice or explanation. More needs to be done to stop capricious and unfair suspensions and cancellations of bank accounts.

The Committee should be wary of arguments that treat important bank judgments about risk as *per se* bias and that regulators focus on a narrower set of regulatory criteria. These types of policies would likely force banks to take on clients regardless of the known risks they could pose to customers and institutions and would curtail regulators' ability to examine financial institutions or enforce basic safety and soundness rules. This would effectively politicize sensible and prudential regulatory oversight by discouraging banks from refusing or limiting banking services to clients even when they posed clear and known risks to their depositors or institutions for fear of reprisals from regulators or other government officials. Banks should not arbitrarily or capriciously deny banking services to firms or customers, and they should not engage in practices that drive lower-income customers out of the banking system. But that does not mean that regulators or banks should ignore or be forced to ignore known risks that could harm their customers or their institutions.



122 C Street N.W., Suite 700, Washington, DC 20001

February 5, 2025

The Honorable Tim Scott, Chairman
 The Honorable Elizabeth Warren, Ranking Member
 Committee on Banking, Housing, and Urban Affairs
 United States Senate
 534 Dirksen Senate Office Building
 Washington, DC, 20510

Dear Chairman Scott, Ranking Member Warren, and Members of the Committee:

On behalf of National Taxpayers Union (NTU), America's oldest national-level taxpayer advocacy organization, I am pleased to submit comments in connection with today's hearing, "Investigating the Real Impacts of Debanking in America." Taxpayers have a deep and abiding interest in many issues under your committee's jurisdiction, including the regulatory topics under discussion at this hearing.

"Debanking" has become a pejorative term that self-styled activists wield to imply that banks are irresponsibly and arbitrarily removing businesses and individuals from their customer rolls. In reality, it is irresponsible and arbitrary government policy that is perpetuating the problem. The Bank Secrecy Act, combined with various information surveillance requirements grouped under the description "know your customer" can be deployed in malicious ways to target politically disfavored industries. A notorious example was the Obama Administration's "Operation Choke Point"¹ (launched against firearms retailers, short-term lending institutions, and other businesses) but more recently the Biden Administration has perpetuated this practice against new industries, among them cryptocurrency (dubbed "Choke Point 2.0")²

Cryptocurrency is already plagued by some of the most administratively inept Internal Revenue Service reporting regulations, on which NTU's research arm has commented extensively.³

¹ See, for example, <https://charityandsecurity.org/news/controversial-operation-choke-point-program-has-ended/>.

² See, for example, <https://www.whitecase.com/insight-alert/new-operation-choke-point-quickly-changing-rules-crypto-activities-member-banks>.

³ See <https://www.ntu.org/foundation/detail/ntufs-comments-on-irs-cryptocurrency-regulations> and <https://www.ntu.org/foundation/detail/ntuf-comments-on-the-proposed-digital-asset-proceeds-from-broker-transactions>.

Unworkable financial rules and enforcement policies from the Federal Deposit Insurance Corporation, the Treasury's Financial Crimes Enforcement Network, and other entities make the regulatory position of the cryptocurrency sector practically untenable.

For their part, banks are in an untenable position as well. They are forced to spend billions compiling "Suspicious Activity Reports" and "Current Transaction Reports" on customers and applicants that federal authorities rarely follow through with enforcement action. Those very same authorities nonetheless threaten institutions with fines for failing to "de-bank" more aggressively. In essence, taxpayers are being bilked twice – first by regulators not doing their jobs and second by banks' wasted compliance costs that could better be spent innovating and growing the private sector economy. Ironically, "structuring" of cash transactions remains an activity that banks are compelled to police, even as the NTU-backed Taxpayer First Act of 2019 placed prudent limits on how the IRS can enforce tax laws with regard to such structuring.⁴

The various banking surveillance dictates can even conspire to give innocent, legitimate customers cause to "de-bank" themselves. The burdensome disclosures act to deter many from continuing or initiating a banking relationship. NTU's research affiliated described this phenomenon in another context, when the Treasury sought license early in the Biden Administration to dramatically expand information reporting on bank account customers for tax purposes and concluded: "Distrust of the IRS may also discourage the 5 percent of unbanked households from opening a savings or checking account."⁵

Worse, taxpayers are threatened by federally mandated "paper chase" functions that distract banks and their shareholders from concentrating on genuine problems which, left ignored, precipitate government bailouts of fundamentally unsafe and unsound institutions. Among these are the excesses of the bank examiner process. As NTU explained in a commentary last year:

[The] convoluted bank examination regime ... sends thousands of government "examiners" from several agencies into banks' backrooms and boardrooms for investigation of often immaterial matters with no transparency, little chance of appeal, and the prospect of massive compliance costs.

... This is exactly the situation that taxpayers face in many Internal Revenue Service examinations, with similar or even greater implications for the economy as a whole. Bank examiners use the "CAMELS" approach to their work, meaning they focus upon Capital adequacy, Asset quality, Management, Earnings, Liquidity, and Sensitivity. Unfortunately, the "M" in CAMELS has taken on an outsized role in recent years among those charged with eyeing the safety and soundness of banks, which is highly risky for taxpayers who

⁴ See <https://www.ntu.org/library/doclib/2019/04/NTU-Comments-on-the-Taxpayer-First-Act.pdf>.

⁵ See <https://www.ntu.org/foundation/detail/whats-the-deal-with-irs-tax-enforcement-and-the-federal-budget>.

are counting on the government to pay greater attention to the “C,” “A,” “E,” “L,” and “S” of that acronym as well.⁶

Taxpayers are hopeful that today’s hearing can and should serve as a starting point on a journey to more rational financial services regulations, starting with more robust implementation of the Anti-Money Laundering Act, comprehensive reforms to the Bank Secrecy Act, major guardrails for bank examinations (including a functioning appeals process), and transparent national standards for banking access to ensure that law-abiding individuals and businesses are not excluded from financial services based on political, ideological, or regulatory pressure. Providing certainty for banks to serve all lawful customers without fear of reprisal from regulatory institutions is critical to maintaining a free and open financial system.

NTU would be honored to engage with committee members and staff on how these imperative changes can be effectuated. Please feel free to contact us in this regard.

Thank you for your consideration.

Sincerely,



Pete Sepp, President

⁶ See <https://www.ntu.org/publications/detail/feds-take-second-chance-to-craft-banking-rules-and-taxpayers-are-watching>.

Submission by The National ATM Council, Inc.,
To the Senate Banking Committee, Respecting the Continued
Termination and Denial of Financial Services by U.S. Financial Institutions
That Persist, for No Valid Reason, in Debanking Individuals and Businesses

To the Honorable Members of the Committee:

The following is submitted, in response to Chairman Scott's announcements of January 28th, by The National ATM Council, Inc. ("NAC"), a nationwide not-for-profit trade association of businesses and individuals that own, operate and supply bank-sponsored (and, in a growing number of cases, bank-branded) automated teller machine (ATM) terminals deployed at public locations throughout the United States.

NAC and its members do not seek to pursue any political agenda. Our objective is merely to provide a service that fulfills the needs of members of the public, who are finding that their access to the funds in their bank accounts is being increasingly diminished by the ongoing consolidation of institutions in the banking industry, with more and more bank offices and bank branches being closed down every month. We welcome this opportunity to inform the Committee of the severe effects that the debanking of independent ATM businesses has had on the men and women of our industry and the consumers they seek to serve.

Independently owned, bank-sponsored ATM terminals are found in a wide variety of public venues, including convenience stores, supermarkets, hotel lobbies, restaurants, and shopping malls, where members of the public can use them, regardless of the city and state in which the terminal is located, to access the funds in their FDIC-insured bank accounts at banks, credit unions, or savings and loan associations throughout the country, regardless, again, of where any such depository institution may be located. Notably, these ATMs typically are the only ones to be found that serve the marginalized, lower-income, higher-crime communities across our nation,

where reliable access to cash access is most vital, and that, without the continued presence of these ATMs, would be transformed into “cash deserts.”

When ATMs first were put into service in the U.S., only federally insured depository institutions were allowed to own and operate them. When such bank-owned ATMs were the only ones permitted, there were approximately 110,000 terminals in the U.S., but the number of terminals has multiplied approximately fivefold, to over 500,000, since competition by independent, bank-sponsored ATMs was permitted by the global financial networks in 1996. Moreover, since then, after ATM ownership became permissible for nonbank providers, the independent sector of the business has expanded to the point that, according to a nationwide study conducted in 2018, bank-sponsored independently owned ATMs constitute more than fifty-nine percent (59%) of all ATMs in service throughout the nation, and have been shown by survey data to be the ones that serve our lower socio-economic communities nationwide.

Notwithstanding their important role in helping provide widespread daily cash access throughout the USA, and the fact that they all are bank-sponsored, independent ATM providers nevertheless have had to contend for many years with being debanked for no discernible valid reason whatsoever, and then having to contend immediately with the great difficulties of obtaining replacement bank accounts.

The prospect of being debanked—having one’s deposit accounts suddenly closed and not being able to obtain a replacement account—is an existential threat for every ATM operator, because no such operator can continue to do business without having reliable access to at least one bank account. Not only must ATM operators have a continuous source of currency to be loaded into their terminals, but the transfers of funds to reimburse operators for the currency that has been dispensed from their terminals—transmitted from the depository institutions holding the

accounts from which ATM customers withdraw their funds—are made solely through automated-clearing-house (ACH) transfers, which can be sent only to accounts at insured financial institutions. Thus, when an ATM operator is deprived of its bank accounts, there is no way that it can obtain reimbursement for the funds withdrawn from its terminals, and it therefore cannot continue to do business.

The issue of debanking began to arise for ATM operators nearly a dozen years ago, after the Department of Justice, in the summer of 2013, announced the launching of “Operation Choke Point,” in which federal law enforcement authorities, working with financial regulators, targeted “cash-intensive” businesses, such as sellers of firearms and ammunition, payday lenders, escort and dating services, money transmitters, and others, on the ground that some of those businesses were conducted in violation of federal law. Although independent ATM providers were never included on the FDIC’s so-called “high risk” business list (which banks should shun), simply because cash was the primary business product provided by ATM companies, these businesses were wrongfully swept up in the mass “de-risking” that followed the Operation Choke Point regime’s misuse of the banking system to implement political policy objectives.

Beginning more than ten years ago, representatives and members of NAC undertook numerous meetings, conference calls, and extensive correspondence about the dire consequences of debanking with federal law-enforcement and financial regulatory authorities, including officials and staff of the Financial Crimes Enforcement Network (FinCEN) of the Department of the Treasury, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Federal Reserve System, the Consumer Financial Protection Bureau (CFPB), and the Federal Financial Institutions Examination Council (FFIEC).

The FFIEC is an interagency group of representatives from the federal financial regulatory agencies, and includes a representative of state financial regulatory authorities. Its members meet periodically and publish a detailed manual for financial regulatory agency examiners to use that sets forth recommended steps and techniques that examiners of federal financial institutions should follow in reviewing the activities of any such institution insofar as those activities relate to the institution's relations with and services for its customers that are engaged in particular lines of business.

Thus, there are sections in the manual that contain recommendations for examining an institution's dealings with customers engaged in, for example, trade finance activities, customers that provide trust and asset management services, those that are non-bank financial institutions, those that are charities and nonprofit organizations, those that are independent ATM operators, etc.

Because the FFIEC Manual's section on independent ATM operators (f/k/a "privately owned" ATM companies) contained numerous mischaracterizations of the actual risk associated with these companies—and those mischaracterizations were cited by many large banks as a basis to deny banking services to the sector—NAC and its members had meetings and discussions with the federal financial regulatory agencies and with Members of Congress and their staffs, including Members and staff of the House Financial Services Committee, in regard to the continuing problem of debanking and the need to revise and correct the Manual and related regulatory and banking materials that amounted to a wholly unfounded *de facto* "blacklisting" of the sector.

It goes without saying that operators of independent ATMs are unique among all other businesses in that (1) under the rules of the electronic financial networks, through which financial institutions conduct monetary transfers throughout the nation, such operators must be

sponsored by a financial institution in order to obtain the membership in and access to the networks that is essential to the operation of their Independent ATM businesses; and (2) their core product and service being provided to the public is the provision of cash. Given these unique circumstances, there is no reasonable or logical basis upon which independent ATM operators simply can be grouped with and treated exactly like other “cash-intensive” businesses with respect to risk or other considerations.

It is nonetheless understandable that banks and their regulators—including bank examiners—have legitimate interests in reviewing and understanding the activities and transactions of every bank customer, even those that are bank-sponsored, through whose accounts significant volumes of currency regularly pass.

In the case of independent ATM providers, however, all such businesses must be bank-sponsored—and, as such, are subject to stringent background, financial, criminal, OFAC, etc., reviews on the front end, before being allowed to enter the business and provide ATM services—as well as, thereafter, being subject to continuing ongoing review and monitoring of their business and activities by their sponsor banks. Accordingly, we respectfully submit that there is no reason that these businesses should be subjected to experiencing the repeated denials of banking services that have become the norm today across the U.S., where the major banks have almost entirely debanked the sector, and independent ATM providers continue to face growing difficulties in obtaining banking services, on a reasonable-cost basis, or at all.

In the wake of Operation Choke Point, NAC began to hear from its members that growing numbers of independent ATM operators were finding themselves being debanked, in many cases after years, and sometimes decades, of having enjoyed successful and trouble-free dealings with their banks. These operators reported that they were told by their bankers simply that their

accounts were to be closed, and that they would have to move them to another bank. Sometimes they were given vague reasons, such as that the closure resulted from a recent “security review” of the bank, or of the customer’s accounts, or was a result of the bank’s having detected what were considered “unusual” or “anomalous” transactions in those accounts. In the vast majority of cases, however, no reason was given, or the bank simply told them that its account agreement gave it the right to close any account at any time, without having to give any reason.

At the time that debanking became a serious and continuing issue for the independent ATM industry, NAC was aware that many banks then were, as they remain now, mindful of the often severe penalties—civil and sometimes criminal—imposed on banks found to have engaged in money-laundering, or whose customers had used bank facilities in money-laundering or in transactions related to terrorist financing—among the most serious offenses of those targeted by Operation Choke Point. Such offenses are prohibited under the federal Bank Secrecy Act (BSA) and related statutes, and those statutes also require that a wide variety of cash-intensive businesses adopt and enforce “Anti-Money-Laundering” (AML) programs, intended to detect activities and transactions that may be indicative of illegal activity.

Responsible independent ATM operators accordingly have long recognized that banks have an obligation to conduct due diligence on the activities of their customers, and especially of customers whose bank transactions involve significant volumes of cash. Such due diligence includes, among other things, ensuring that banks are kept informed, by customers whose accounts handle high volumes of cash, of the sources of the funds that are deposited into those accounts, and of the use or disposition of funds that are withdrawn or disbursed from them.

Accordingly, NAC developed its “Recommended Settlement/Vault Cash Account Guidelines for U.S. ATM Operators” (the “Guidelines”), and it continues to urge that all of its members

conduct their ATM businesses in accordance with the Guidelines, which NAC understands is, in fact, almost universally being followed by businesses in the sector today.

Regrettably, however, experience has shown that independent ATM operators who have followed the Guidelines, and have complied with extensive and burdensome audit and other requirements imposed by their financial institutions, nonetheless have had their accounts closed, again, in virtually every case, with no specific reasons given and without having been informed by their banks of any “compliance” or other issues whatsoever that would have warranted or justified such account closures. In many cases, such instances of debanking have occurred in the course of the rampant consolidation of financial institutions that has continued since Operation Choke Point, which, ironically, simultaneously has resulted in reducing such institutions’ branch footprints, while at the same time cutting off banking services to independent ATM deployers that seek to serve the very communities abandoned by those shrunken footprints.

One of the first matters that NAC raised in its correspondence and discussions with federal regulators, in the course of its efforts to obtain relief from the repeated and widespread debanking of NAC members, concerned the contents of a portion of the BSA/AML Examination Manual published by the FFIEC.

At the time that NAC began these discussions and meetings, the section of the Manual that related to examining depository institutions’ dealings with their customers in the independent ATM industry appeared under the heading “Privately Owned Automated Teller Machines—Overview.” NAC considered this categorization of its members’ ATMs as “private” to be pejorative and, therefore, sought to have it changed to a more appropriate characterization as “independent.” Throughout this section of the Manual, NAC also saw what it considered numerous other misstatements and mischaracterizations about the industry, and the manner in which its

business typically is conducted. In NAC's view, much of the section seemed to have been deliberately formulated to provoke, among bankers or bank examiners, unwarranted suspicion of the independent ATM industry and the people and businesses engaged in it, and about whether its operations were lawful or were such as could create unreasonable risk for banks that provide banking services to businesses in the industry.

The opening paragraph of the section, for example, began as follows: "Privately owned ATMs are particularly susceptible to money laundering and fraud." Our representatives emphatically told agency representatives that NAC was not then—as it is not now—aware of even the slightest credible evidence indicating that there is, or ever has been, any such "particular susceptibility" to money laundering and fraud in the independent ATM industry.

Over the ensuing years, NAC and its representatives met numerous times with officials of the various federal regulatory and law-enforcement agencies to discuss this concern and other matters in the exam manual that NAC found objectionable.

NAC also brought these objectionable aspects to the attention of Members of Congress and their staffs, and some of these Members engaged directly, in meetings, in telephone conversations, and in conference calls—sometimes including NAC representatives—with senior agency officials and agency representatives who were members of the FFIEC. Representatives of NAC testified in hearings before the House Financial Services Committee. These discussions continued over several years, in correspondence, telephone conferences, and face-to-face meetings.

Notably, from the very first meetings that NAC representatives held with top representatives of FinCEN and other agencies, up to and including the most recent meetings with House Financial Services Committee Members and FFIEC representatives, whenever agency officials

were asked if they could provide evidence indicating that bank-sponsored independent ATM operators, or their ATMs, ever had been misused for money laundering, terrorist financing, or other illicit activity, they failed to provide any such evidence that would support the mischaracterization of the bank accounts of independent ATM operators as “high risk” accounts, notwithstanding that, of necessity, those accounts regularly deal with large amounts of cash (see attached pictographs on the Closed-Loop Cash Cycle for independent ATMs, and on the current extensive oversight infrastructure in place that constantly monitors these businesses).

These efforts by NAC and its Congressional supporters culminated on December 1, 2021, when the Federal Reserve released the FFIEC’s revised section of its BSA/AML Examination Manual relating to examination of institutions’ dealings with independent ATM operators. As revised, the section is now entitled: “INDEPENDENT AUTOMATED TELLER MACHINE OWNERS OR OPERATORS.” Its revised first paragraph begins, “Automated Teller Machines (ATMs) offer fast and convenient access to cash and are an important channel in providing financial services, including in underserved markets.” The language that formerly appeared in the section, suggesting that these businesses present a high risk of involvement in money-laundering, etc., is now gone.

While the improvements to the Manual were indeed significant, and the intention was to cause the nation’s financial institutions to understand that these are accounts that now are not to be disfavored (as they help to serve those communities that otherwise would be “cash deserts”) and thus are not to be treated categorically as “high risk” accounts, the effect of the improvements seems to have been, at best, only temporary. The reality today is that independent ATM operators continue to be blacklisted by virtually all the major financial institutions in the U.S., and obtaining a bank account on reasonable terms and in reasonable proximity to their

businesses—or at all—remains a real and sustained challenge for all too many ATM companies. Moreover, contrary to what we understood as Federal Reserve Chairman Powell’s commitment to the then Ranking Member of the House Financial Services Committee, the feedback we’ve received, on a confidential basis, from banks following their examinations, is that the federal and state examiners have evidenced little understanding of the significant changes made to the Independent ATM section of the Manual. In his letter, the Chairman emphasized that “the updated Manual expressly states that this particular industry does not automatically present a higher risk of money laundering, terrorist financing, or other illicit financial activity,”

He went on to say: “In managing all of their customer relationships, banks should operate in compliance with applicable BSA/AML requirements and reasonably manage and mitigate risks related to the unique characteristics of those relationships [and] should take a risk-based approach when managing customer relationships.” We understand that the intention of his words was to encourage, and not discourage, financial institutions to take a fresh, risk-based look at providing essential banking services to the Independent ATM sector once again, and to end the blacklisting based on the misunderstanding and mischaracterization of their being “automatically” considered “high risk” accounts. In the real world, however, we find little if any evidence of banks’ applying such a new approach. The three largest U.S. banks (themselves having the most widespread financial-institution ATM presence), and most of the other large financial institutions across America, categorically (and with only rare exceptions) as a matter of internal policy continue refusing to provide banking services to Independent ATM providers.

Having continued, and even intensified, in recent months, this debanking of independent ATM operators remains an ongoing reality and, as more financial institutions adopt a “no-ATM-accounts” policy, the practice persists and grows, unnecessarily restricting ATM deployments,

unnaturally spurring consolidation in the independent ATM industry sector, limiting the ability of new entrants to get into the business, further constricting the public's access to cash—too often in areas where such access already is, and long has been, severely lacking—and ultimately forcing rate increases in ATM surcharges to consumers across the board throughout the nation.

Based on the foregoing, NAC respectfully requests that, as a matter of national security with respect to our country's economy and the ongoing widespread access to United States currency by our citizens and visitors, any legislation relating to "debanking" that is considered by this Committee include measures calculated to ensure the restoration of reasonable access to banking services for independent ATM businesses nationwide.

NAC expresses its heartfelt gratitude to Chairman Scott and the Committee for their efforts to investigate, understand, and act upon this important issue.

Respectfully submitted,

The National ATM Council, Inc.

/s/ Bruce Wayne Renard
Executive Director



Statement for the Record
of
National Consumer Law Center
(on behalf of its low-income clients)
for hearing on
Investigating the Real Impacts of Debanking in America
before the
Senate Committee on Banking, Housing, and Urban Affairs

Wednesday, February 4, 2025

1. Introduction and Summary

Thank you for the opportunity to submit this statement for the record and to highlight the impact that lack of bank account access has on American consumers.

Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has worked for consumer justice and economic security for low-income and other disadvantaged people in the United States through its expertise in policy analysis and advocacy, publications, litigation, expert witness services, and training.

Participation in the U.S. financial system often begins with access to a bank account. Yet, despite progress in recent years, too many people still do not have bank accounts or find that their accounts have been frozen or closed. A top reason that people are or become unbanked is high fees, in particular high, snowballing overdraft fees. The Consumer Financial Protection Bureau's (CFPB) overdraft fee rule would fix that problem, reducing most big bank overdraft fees from \$35 to \$5 and eliminating incentives for big banks to push people into overdrafting. Congress must not overturn this important rule that returns \$5 billion back-end, abusive junk fees to families struggling with high prices.

Another reason that people lose or are denied bank account access is because financial institutions have broad discretion in setting risk tolerances for who they choose to allow as customers. This broad discretion often translates into policies that negatively impact the very consumers who are seeking entrance into the financial system. These barriers negatively impact communities of color disproportionately and lead to a higher population of unbanked individuals. Overbroad policies related to Bank Secrecy Act compliance can also result in bank account closures and freezes, with consumers given no reason for the bank's action and no opportunity to respond. Often, people are denied access to the funds they need to buy food and pay rent because automated fraud detection programs wrongfully identified the account or a transaction as suspicious.

At the same time, vigilant Bank Secrecy Act (BSA) compliance is essential to stop the rash of fraud that is enabling criminals to seize billions of dollars from Americans every year. Criminals cannot steal money if they have nowhere to receive or launder it. BSA enforcement is critical at financial institutions, and it especially must be improved at non-bank entities like Block's Cash App. Criminals must be debanked.

As Congress considers legislation to regulate crypto-assets, it is essential that crypto firms be required to conduct full BSA compliance. Crypto-assets are one of the top vectors for fraud and other illegal activity, and the growth of the crypto industry will only result in more fraud if strict controls are not built in.

2. The CFPB's big bank overdraft fee rule will increase bank account access.

Despite progress over the years, too many Americans are still unbanked. In 2023, 4.2 percent of U.S. households – representing about 5.6 million households – were unbanked.¹ The lack of bank account access is especially troublesome in certain communities. More than one in 10 (11.2%) households with a disability are unbanked, as are 12.2% of Native American, 10.6% of Black, and 9.5% of Latino households.²

Lack of trust in banks, high bank account fees, and bank account fees that are too unpredictable are among the top reasons people are unbanked.³ Large, surprise overdraft fees are a key problem; overdraft practices lead to a vast majority of bank account closures.⁴

Additionally, overdraft practices disproportionately affect consumers of color. As compared with white consumers, Black consumers are 69 percent more likely, and Latino consumers are 60 percent more likely to reside in a household charged at least one overdraft or NSF fee in the past year.⁵

Overdraft fees have long been one of the most pernicious and deceptive taxes on being poor. Years ago, overdraft fees were charged rarely, merely to cover the cost and risk to the bank for the occasional courtesy of covering a check that would otherwise bounce. Many banks also offered overdraft lines of credit that charged a reasonable interest rate, costing only pennies if the overdraft was quickly paid off.

But as consumers began to receive wages and other income by direct deposit and to make payments using debit cards that can be approved or declined in real time, financial institutions saw an opportunity to push consumers to overdraft and make money off people living paycheck to paycheck. A variety of practices sprang up that put financial institutions at odds with their customers, focused on increasing profits rather than helping improve consumers' financial health.

Instead of competing honestly with transparent monthly fees, financial institutions promoted “free checking” but covered their costs with back-end fees imposed on their most vulnerable

¹ Federal Deposit Insurance Corporation (FDIC), 2023 FDIC National Survey of Unbanked and Underbanked Households (November 2024).

² *Id.*

³ Fed. Deposit Ins. Corp., 2023 FDIC National Survey of Unbanked and Underbanked Households, 3 (Table ES.3) <https://www.fdic.gov/household-survey/2023-fdic-national-survey-unbanked-and-underbanked-households-report>.
⁴ Campbell, Dennis, Martinez-Jerez, Asis, and Tufano, Peter, “*Bouncing Out of the Banking System: An Empirical Analysis of Involuntary Bank Account Closures*,” Harvard Business School, April 2012, <https://www.hbs.edu/faculty/Pages/item.aspx?num=41390>; Consumer Financial Protection Bureau, Federal Register Notice, “Final Rule on Overdraft Lending: Very Large Financial Institutions,” December 30, 2024, <https://www.federalregister.gov/documents/2024/12/30/2024-29699/overdraft-lending-very-large-financial-institutions#footnote-65-p106773>.

⁵ Consumer Fin. Prot. Bureau, Overdraft and Nonsufficient Fund Fees: Insights from the Making Ends Meet Survey and Consumer Credit Panel, 25 (Dec. 2023) https://files.consumerfinance.gov/f/documents/cfpb_overdraft-nsf-report_2023-12.pdf.

customers. Many banks eliminated reasonably priced overdraft lines of credit in favor of “courtesy” overdraft programs that just meant a lot of fees.

A vicious cycle led to piling on overdraft fees that triggered more overdrafts and more overdraft fees. Banks have engaged in practices⁶ to maximize overdraft fees including:

- Unreasonably high fees for each overdraft, typically \$35, far higher than needed to cover the banks’ costs;
- Multiple overdraft fees per day, with no limits at some banks and as many as six \$35 fees (\$210) even at banks that limit the number;
- “Extended” or “sustained” overdraft fees, making it more difficult for a struggling account holder to recover;
- Opaque and often manipulative practices to increase overdraft fees involving deposit clearing, debit holds, and transaction posting order. Fees may even be charged when the consumer had sufficient funds in the account when the transaction was authorized.
- Overdraft fees on debit card purchases and ATM withdrawals instead of simply declining the transaction at no charge.
- Automatically collecting the overdraft by offsetting the next deposit, even when it is Social Security, unemployment, military/veterans compensation, public benefits or wages needed to pay for necessities.

After allowing, and in some cases encouraging, people to overdraft, banks close the accounts of those who struggle to bring their accounts out of the red. The resulting negative reports to account screening agencies such as ChexSystems and Early Warning Services then stop people from getting new accounts and exile them from the banking system.⁷

But the CFPB’s Rule on Overdraft Lending: Very Large Financial Institutions would address the harms caused by current overdraft practices. Under the rule, very large financial institutions would have the ability to provide different types of overdraft services. They can (1) charge a \$5 fee to cover their costs for surprise overdraft fees, or a higher amount if they can show their costs are greater; (2) cover overdrafts through links to savings or credit cards; or (3) if they wish to make a profit, banks can provide overdraft lines of credit with transparent pricing, time to pay, and other requirements that apply to credit cards.

The rule would save the average household that pays overdraft fees \$225 a year. The rule will also reduce manipulative practices and increase transparency and fair competition by eliminating

⁶ These practices are described in Smith, Peter et al., Center for Responsible Lending, Banks Must Stop Gouging Consumers During the COVID-19 Crisis at 1-2 (June 2020), <https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-overdraft-covid19-jun2019.pdf> (“CRL, Banks Must Stop Gouging Consumers”).

⁷ See NCLC, Press Release, Report: Account Screening Consumer Reporting Agencies Impede Access for Millions (Oct. 19, 2015), <https://www.nclc.org/media-center/report-account-screening-consumer-reporting-agencies-impede-access-for-millions.html>.

the incentive for exploitative practices to push people into overdrafting. The rule will thus restore trust in banks and reduce high and unpredictable fees, addressing top reasons people are unbanked.

At the same time, the rule allows banks to offer overdraft credit profitably as long as they do so in a more transparent and fair manner. There are no price restrictions on overdraft lines of credit. Moreover, big banks like [Capital One](#), [Citibank](#), and [Ally](#) have continued covering overdrafts even while completely eliminating overdraft fees. Congress should support the overdraft rule and oppose any Congressional Review Act resolution of disapproval.

3. Bank regulators appropriately enforce Bank Secrecy Act (BSA) requirements to deny criminals bank accounts, but overbroad bank BSA policies can hinder access to bank accounts.

A. Debanking criminals will help reduce the billions lost in fraud every year, and the BSA can assist with identifying those criminals.

In an effort to stop money laundering and the flow of money to criminal activities in general, Congress passed a series of laws starting with the Bank Secrecy Act of 1970.⁸ “BSA” is shorthand for “a series of laws and regulations enacted in the United States to combat money laundering and the financing of terrorism.”⁹ “BSA” refers to the “Bank Secrecy Act;” “AML” refers to “Anti-Money Laundering;” and “CFT” refers to “Countering the Financing of Terrorism.”

The Bank Secrecy Act and its implementing regulations are not just about drug cartels and terrorism. They also help to stop an array of criminal activity, including fraud. Fraud profits can also fuel terrorism and other activities by international criminal syndicates. The BSA imposes requirements on financial institutions to have systems to verify the identity of their customers and their businesses, to monitor accounts to ensure they are not being used for illicit purposes, and to report suspicious activity. Vigorous BSA oversight can prevent bad actors from opening accounts or using them to receive funds taken from consumers in unauthorized transactions or through fraud schemes. A lax AML/CFT regime can facilitate criminal activity.

B. FinCEN should take additional steps to address payment fraud under the BSA.

The BSA regime plays an important role in combatting fraud, and FinCEN should take additional steps to address payment fraud. First, FinCEN should place stricter requirements on non-bank entities that engage in payment and banking services. Second, FinCEN should update

⁸ See Fin. Crimes Enf’t Network, [History of Anti-Money Laundering Laws](#), available at [www.fincen.gov](#).

⁹ Fed. Deposit Ins. Corp., [Bank Secrecy Act/Anti-Money Laundering \(BSA/AML\)](#), available at [www.fdic.gov](#).

the Suspicious Activity Report (SAR) to capture information about accounts that receive fraudulent funds.

i. FinCEN must place stricter BSA requirements on non-bank entities that engage in payment and banking services.

FinCEN should expand the Customer Identification Program (CIP) and customer due diligence (CDD) requirements for entities other than banks that engage in payment and banking services, such as person-to person (P2P) payment apps, payment processors, fintech companies offering banking as a service or offering bank-like services, and crypto-related entities including crypto exchange platforms.

Person-to-person (P2P) payment apps have become increasingly popular among consumers. Seventy-six percent of households use Venmo or Cash App. In addition to P2P payment services, consumers are also increasingly adopting other forms of technology to make payments. These newer payment apps and technologies are accepted by more retailers, demonstrate a rapid growth trajectory, are situated within platforms with other financial services, and are being structured to work with crypto.

These platforms have become fertile ground for fraudsters and organized crime, posing risks to consumers and law enforcement. According to the FTC, “payment app or service” is the third largest category of payment method specified by fraud victims in terms of number of reports (after credit cards and debit cards) for all of 2023, and the second largest category of payment method specified by fraud victims in terms of number of reports (after credit cards) for the first two quarters of 2024. The Consumer Financial Protection Bureau (CFPB) has also seen high growth in complaints about fraud in P2P apps and digital wallets. The existing P2P payment systems of large technology companies and financial institutions simply are not safe for consumers to use.

P2P fraud has a particularly harsh impact on low-income families and communities of color. These communities, already struggling and often pushed out of the traditional banking system, can least afford to lose money to scams and errors. Because many minorities are also unbanked or underbanked, they are the target audience for use of many of the P2P apps. For example, a September 2022 Pew Research Center survey shows that 59% of Cash App users are Black and 37% are Hispanic and Cash App has been subject to reports of widespread fraud, failing to protect the very vulnerable populations it targets. As a result, both the Conference of State Bank Supervisors (CSBS) and the CFPB have taken enforcement action against Block, the operator of Cash App. The CSBS ordered Block to pay an \$80 million and “undertake corrective action for violations of the Bank Secrecy Act (BSA) and anti-money laundering (AML) laws that safeguard

the financial system from illicit use.”¹⁰ Similarly, the CFPB found that Block failed to take timely, appropriate, and effective measures to prevent, detect, limit, and address fraud on the Cash App platform.¹¹

ii. FinCEN should update the Suspicious Activity Report (SAR) to capture information about accounts that receive fraudulent funds.

FinCEN can help in the fight against payment fraud by updating the suspicious activity report (SAR) to encompass information about the accounts used to receive ill-gotten funds. The current SAR form only accommodates accounts related to the reporting institution. In fraud cases where the destination account of the perpetrator is known, reporting institutions relegate the destination account to the narrative. This makes identification and aggregation of fraudulent activity more difficult for law enforcement.

When a consumer’s financial institution files a SAR following an incident of payment fraud, if the payment was sent through a system that identifies the recipient (such as a wire transfer, ACH, or P2P system), the SAR should identify the recipient institution and account. Allowing accounts not domiciled at the reporting institution to be reported and designated appropriately would assist FinCEN and law enforcement in identifying, aggregating, and prioritizing fraud investigations to better protect consumers.

Since fraud schemes affect many victims at various reporting institutions, fraud often results in a hub-and-spoke relationship with one account receiving funds from many different, unrelated accounts. This typology is recognized in the FFIEC Exam Manual and should be supported at FinCEN by enhancing the SAR reporting process to include the fraud perpetrator’s account at the receiving institution.

We urge FinCEN to enhance the SAR process to capture the identity of the account and institution that received the fraudulent funds.

C. Crypto firms must comply with BSA requirements to prevent an escalation of illicit finance.

Bank regulators have been criticized for supposedly being overly harsh in denying crypto-related firms access to bank accounts. We do not address the safety and soundness issues posed when banks engage with the crypto industry, nor will we comment on whether particular firms should or should not be allowed accounts.

¹⁰ CSBS, “State Regulators Issue \$80 Million Penalty to Block, Inc., Cash App for BSA/AML violations,” (Press Release) (Jan. 15, 2025), available at <https://www.csbs.org/newsroom/state-regulators-issue-80-million-penalty-block-inc-cash-app-bsaaml-violations>.

¹¹ *In re. Block, Inc.*, CFPB No. 2025-CFPB-0001 (Jan. 16, 2025) (consent order), available at https://files.consumerfinance.gov/f/documents/cfpb_block-inc-consent-order_2025-01.pdf.

However, as Congress considers legislation to regulate crypto-assets, it is essential that crypto firms be required to conduct full BSA compliance. Crypto-assets are one of the top vectors for fraud and other illegal activity, and the growth of the crypto industry will only result in more fraud if strict controls are not built in.

“Cryptocurrency” “is the second largest category of payment method reported by fraud victims to the FTC in terms of number of dollars lost (after bank transfer or payment) for all of 2023 and the first three quarters of 2024.”¹² Crypto platforms are not just prone to fraud by third parties; several crypto firms that suffered losses or became insolvent during the 2022 crash in the crypto markets engaged in practices many believe were unfair, abusive, or deceptive.¹³

Enforcement of BSA requirements is essential to prevent crypto-assets from being used to perpetrate criminal activity. Both federal¹⁴ and state regulators¹⁵ have appropriately brought enforcement actions against crypto players that had lax programs to conduct due diligence on their customers, monitor transactions, and report suspicious activities. Appropriate BSA reporting can even help to address issues like online child sexual exploitation and human trafficking.¹⁶

Vigilant BSA oversight of accounts involving crypto-assets is also important as crypto-assets make their way into the U.S. banking and payments system. Several large, well-capitalized crypto firms have made it clear that their business model is focused on making crypto and blockchain-based ledgers a mainstream payment method for American consumers. For example, at least one major payment provider has created a stablecoin expressly intended to facilitate consumers’ purchase of household goods and services,¹⁷ while another crypto “native” firm has created a platform where retail merchants are provided crypto wallets that can receive direct crypto payments from customers, without the need to convert crypto assets into fiat currency to

¹² FTC fraud reports by payment method, available at <https://public.tableau.com/app/profile/federal.trade.commission/viz/FraudReports/PaymentContactMethods>. The FTC can identify the payment method that the criminal used in only a small fraction of fraud reports, and fraud is underreported in general, so the FTC’s numbers vastly understate the amount of fraud facilitated by crypto-assets.

¹³ Federal Trade Commission, “*FTC Reaches Settlement with Crypto Company Voyager Digital; Charges Former Executive with Falsely Claiming Consumers’ Deposits Were Insured by FDIC*,” (Oct. 12, 2023), available at <https://www.ftc.gov/news-events/news/press-releases/2023/10/ftc-reaches-settlement-crypto-company-voyagerdigital-charges-former-executive-falsely-claiming>.

¹⁴ See, e.g., U.S. Dep’t of Treasury, Press Release, U.S. Treasury Announces Largest Settlements in History with World’s Largest Virtual Currency Exchange Binance for Violations of U.S. Anti-Money Laundering and Sanctions Laws (Nov. 21, 2023), <https://home.treasury.gov/news/press-releases/jy1925> FinCEN; Press Release, FinCEN Announces \$29 Million Enforcement Action Against Virtual Asset Service Provider Bittrex for Willful Violations of the Bank Secrecy Act (Oct. 11, 2022), <https://www.fincen.gov/news/news-releases/fincen-announces-29-million-enforcement-action-against-virtual-asset-service>.

¹⁵ See N.Y. Dep’t of Fin’l Svcs., Press Release, Superintendent Adrienne A. Harris Announces \$100 Million Settlement with Coinbase, Inc. after DFS Investigation Finds Significant Failings in the Company’s Compliance Program (Jan. 4, 2023), https://www.dfs.ny.gov/reports_and_publications/press_releases/pr202301041.

¹⁶ See FinCEN, Press Release, FinCEN Sees Increase in BSA Reporting Involving the Use of Convertible Virtual Currency for Online Child Sexual Exploitation and Human Trafficking (Feb. 13, 2024), <https://www.fincen.gov/news/news-releases/fincen-sees-increase-bsa-reporting-involving-use-convertible-virtual-currency>.

¹⁷ PayPal, “Designed for Payments. 1 USD: 1 PYUSD on PayPal,” (accessed Jan. 5, 2024), available at <https://www.paypal.com/us/webapps/mpp/digital-wallet/manage-money/crypto/pyusd>.

settle the transaction.¹⁸ Reports claim that the platform processes payments for thousands of merchants, for ‘on-chain’ payments worth billions of dollars.¹⁹ Consumers need protection when crypto-assets are used for payments,²⁰ BSA/AML compliance is essential to ensure that “purchases” using crypto-assets are not used to enable criminals to receive stolen funds or conduct criminal activity.

D. Blunt-fisted, opaque identification requirements impede bank account access.

NCLC supports efforts to strengthen and modernize the anti-money laundering and countering the financing of terrorism (AML/CFT) program requirements for financial institutions²¹ while recognizing that more clarity is needed to address the negative impacts of overly broad AML/CFT programs implemented by financial institutions. The implementation of AML/CFT programs, including the Customer Identification Program and Customer Due Diligence assessment, can negatively impact consumers who are trying to open a bank account. AML/CFT oversight may also cause financial institutions to freeze or close a consumer’s account when unusual activity is detected or the account is deemed risky.

Financial institutions do not generally publicize which forms of identification they will accept from consumers when reviewing an application for a bank account. This uncertainty means underserved consumers have no sense of whether they will be successful in opening an account.

Additionally, consumers are not often told why the financial institution denied a request to open a bank account.²² This generates an impression among consumers that they are not allowed to engage in our system because of some intrinsic quality around their situation, when it could ultimately be caused by the use of discretion among individual branch employees, a consumer report such as ChexSystems, or a regional or national bank policy. Regardless of the reason, being denied access to financial services can be embarrassing, especially when the denial occurs in person. One negative interaction with our financial system can influence the way a consumer will interact with the system for years to come. The industry opacity is unjustified given the stakes.

¹⁸ Coinbase, “A New Standard in Global Crypto Payments: Coinbase Commerce,” (accessed Jan. 5, 2024), available at <https://www.coinbase.com/commerce>.

¹⁹ Akolkar, Bhushan, “New Payments Protocol for Coinbase Commerce to Facilitate Instant Crypto Settlements,” CoinGape (blog), (Nov. 17, 2023), available at <https://coingape.com/new-payments-protocol-for-coinbasecommerce-to-facilitate-instant-crypto-settlements/>.

²⁰ Any consumer payments made using crypto-assets should come with the full protections given to accounts under the Electronic Fund Transfer Act.

²¹ See NCLC Comments regarding FinCEN’s Rulemaking on Anti-Money Laundering and Countering the Financing of Terrorism Programs, (Sept. 3, 2024) available at https://www.nclc.org/wp-content/uploads/2024/09/2024.09.03_Comments_FinCEN-Dept-Treasury-on-AML-Rulemaking.pdf.

²² Because a bank account (demand deposit account) does not meet the definition of credit under the Equal Credit Opportunity Act, no adverse notice is required to be provided to the applicant/consumer. However, if a financial institution relied on a consumer report from ChexSystems, for example, it should provide the consumer with an adverse action notice under the Fair Credit Reporting Act.

The excuse most often cited by the financial industry for this lack of transparency—and their unwillingness to accept certain alternative forms of ID for underserved consumers—is that they must comply with the BSA. Among other requirements imposed by the BSA, financial institutions must implement a Customer Identification Program (CIP) to verify the identity of an applicant.

However, federal regulations implementing the BSA openly permit banks to use a wide range of identification methods to open accounts for their customers and to implement their CIP. At its core, the CIP must explain the bank's procedures for opening an account, including stating what identifying information will be obtained from each customer and how the bank will verify their customers' identities through both documentary and non-documentary methods.²³

A financial institution has broad discretion in what policies it adopts in its CIP. The only requirements BSA regulations impose are that a financial institution must obtain, at a minimum, the following information from a customer prior to opening an account:

- (1) Name;
- (2) Date of birth, for an individual;
- (3) Address; and
- (4) an Identification number, which must be a taxpayer identification number for "U.S. persons" or one or more of several options for non-U.S. persons, including an Individual Tax Identification Number issued by the IRS, a passport number and country of issuance, an alien identification card number, or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.²⁴

While the identifying information listed above is required for account opening, there is an additional requirement that financial institutions employ "risk-based procedures" for verifying the identity of each customer to the extent "reasonable and practicable," and within a reasonable time after the account is opened.²⁵ These procedures must enable the financial institution to form a reasonable belief that it knows the true identity of each customer, and the procedures must be "based on the bank's assessment of the relevant risks, including those presented by the various types of accounts maintained by the bank, the various methods of opening accounts provided by the bank, the various types of identifying information available, and the bank's size, location, and customer base."²⁶

²³ 31 C.F.R. § 1020.220(a)(2)(ii).

²⁴ 31 C.F.R. § 1020.220(a)(2)(i)(A)(1)-(4).

²⁵ 31 C.F.R. § 1020.220(a)(2).

²⁶ 31 C.F.R. § 1020.220(a)(2).

It is the requirement to utilize “risk-based” procedures consistent with the bank’s level of risk tolerance that gives banks broad discretion in choosing who they bank. The “risk-based” procedures are often utilized as a shield for obfuscating account-opening policies. Without transparency into these policies, banks may ultimately engage in discriminatory practices, utilizing overly simplistic policies that exclude immigrants, formerly incarcerated people, and unhoused individuals who may lack access to various forms of government-issued identification.

More clarity is needed in the guidance federal regulators provide to financial institutions. For example, local advocates in New York City, along with the New York Bankers Association, wrote to the federal financial regulators in 2015, asking if the then-emerging municipal ID for the City of New York would meet the minimum standards for verifying identity at account opening.²⁷ The regulators’ response did clarify that accepting the city’s ID would not contradict the minimum standards in the regulations. But the regulators left the ultimate decision of whether to accept the municipal ID up to individual banks, writing that each institution “may determine that more information than the ID Card is necessary”²⁸ to satisfy their duties under this regulatory regime.

FinCEN, along with the Office of the Comptroller of the Currency, the Federal Reserve Board, the Federal Deposit Insurance Corporation, and the National Credit Union Administration OCC, should consider implementing more detailed guidelines on how banks and credit unions should exercise their discretion to ensure that they meet the obligations of the Bank Secrecy Act while also not excluding consumers from our banking system. These guidelines should emphasize the importance of transparency in account opening requirements, particularly for underserved consumers that may experience barriers to obtaining traditional forms of ID; provide guidance for local governments on developing municipal ID programs; and explicitly name forms of ID that may be used as primary and secondary ID for individuals unlikely to have access to state-issued ID. Similarly, the regulators should specify that there is likely a corresponding risk of unfair, deceptive, or abusive practices associated with discriminating against consumers on the basis of race or national origin, and that a denial of a bank account that relies, at least in part, on information obtained within a consumer report triggers adverse action notice requirements under the Fair Credit Reporting Act.²⁹

E. Overly broad AML/CFT programs prevent innocent consumers from access to their bank accounts and funds.

Recently, many consumers have raised concerns about bank account closures and/or freezes that seem to occur without any sudden change of behavior by the consumer. Consumers report

²⁷ Corkery, Michael and Silver-Greenberg, Jessica, “*Banks Reject New York City IDs, Leaving ‘Unbanked’ on Sidelines*,” NY Times, (Dec. 23, 2015), <https://www.nytimes.com/2015/12/24/business/dealbook/banks-reject-new-york-city-ids-leaving-unbanked-on-sidelines.html?login=smartlock&auth=login-smartlock>

²⁸ *Id.*

²⁹ 15 U.S.C. § 1681m(a).

frustration and uncertainty tied to account closures and freezes— primarily the lack of information as to why the closure or freeze occurred and the inability to access funds in a timely manner.

The number of consumers who have complained about checking and savings account closures to the CFPB more than doubled since 2017.³⁰ In 2022 the CFPB ordered Wells Fargo to pay \$160 million to over one million people for improperly freezing or closing bank accounts from 2011 to 2016 when it “believed that a fraudulent deposit had been made into a consumer deposit account based largely on an automated fraud detection system.”³¹

There have been other stories featured by reporters detailing the devastating impact sudden account closures and freezes can have on consumers, especially when they are deprived of access to their funds, are not provided any information about the reason for the institution’s actions, and are not provided an opportunity to address any perceived risk.

Following are a few examples from a New York Times article detailing the responses consumers received after discovering their accounts were either frozen or closed and the attempts to communicate with their financial institutions about it:³²

- Naafeh Dhillon, 28 from Brooklyn, NY, learned his account had been closed after his debit card and credit card were declined. He was later told by a Chase representative that the “bank’s global security and investigation team had ultimately made the decision. Would the representative transfer him to that department? Nope... Since he wasn’t given a specific reason for the closure, he couldn’t disprove whatever raised suspicions in the first place.”
- Todd Zolecki, 47 of Media, PA, did not have his account closed, but they did lock him out of access to his account. “They said your account has been suspended for further review,” Why? “We can’t tell you that. The only thing we can tell you is it can take up to 60 days for this review.”

One of the reasons for the increase in account closures and freezes has to do with the increased adoption of tools utilized by financial institutions to combat payment fraud and detect suspicious

³⁰ Consumer Fin. Prot. Bureau, Consumer Complaint Database, trends data for complaints received due to checking or savings account closure, https://www.consumerfinance.gov/data-research/consumer-complaints/search/?chartType=line&dateInterval=Month&dateRange=All&date_received_max=2024-01-27&date_received_min=2011-12-01&has_narrative=true&issue=Closing%20an%20account%E2%80%A2Company%20closed%20your%20account&lens=Product&product=Checking%20or%20savings%20account&searchField=all&sublens=sub_product&tab=Trends (last visited Feb. 20, 2024).

³¹ *In re. Wells Fargo Bank, N.A.*, CFPB No. 2022-CFPB-0011 (Dec. 20, 2022) (consent order), available at https://files.consumerfinance.gov/f/documents/cfpb_wells-fargo-na-2022_consent-order_2022-12.pdf.

³² Barnard, Tara Siegel and Lieber, Ron, “Banks Are Closing Customer Accounts, With Little Explanation,” N.Y. Times (Apr. 8, 2023), https://www.nytimes.com/2023/04/08/your-money/bank-account-suspicious-activity.html?unlocked_article_code=1.QU0.szRm.kfoZRQdD7-O6&smid=url-share.

activity, including adoption of artificial intelligence (AI) and machine learning technologies. Fraud vigilance is critical, and new technologies can play an important role. However, these tools may harm innocent consumers if not utilized properly and if institutions do not have clear procedures and timelines in place to restore access to funds that are improperly frozen.

Financial institutions have an obligation under the BSA to ensure that they maintain and follow internal ongoing customer due diligence (CDD) policies. The CDD policies must allow the institution to understand “the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and [c]onducting ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information.”³³

Because of the CDD obligation and the ongoing problem of payment fraud, sometimes the appropriate response by an institution who suspects its customer is engaging in fraudulent or other illicit activity is to freeze a transaction or close an account that is being used to receive fraudulent funds before the funds are gone and more consumers can be defrauded. But sometimes banks get it wrong, especially when automated tools are used.

According to the Bank Policy Institute, “a sample of the largest banks reviewed approximately 16 million alerts, filed over 640,000 SARs, and received feedback from law enforcement on a median of 4% of those SARs. Ultimately, this means that 90-95% of the individuals that banks report on were likely innocent.”³⁴ As these numbers demonstrate, even activity that leads to the filing of a SAR may ultimately not warrant an account freeze or closure.

The impact of sudden account closures in response to potential fraud on innocent consumers cannot be overstated. Often, the most vulnerable people have been denied access to their money, rendering them unable to eat or pay rent. Some impact on innocent individuals may be impossible to avoid, as banks may need to act quickly on imperfect information. But that is why it is imperative to have procedures in place to enable people to dispute account freezes and closures and get their money back as soon as possible.

For example, after Chime embarked on a marketing campaign to convince people to open Chime accounts to receive their stimulus payments, its inadequate identity verification led to a wave of fraud. Chime then froze numerous accounts. But instead of enabling people to quickly prove their identities, some people were left without their money for months on end:

- “Chime stole my entire unemployment backpay.... I’m a single mom of 4 kids and they stolen \$1400 from me and refuse to give it back and now we are about to be evicted.”³⁵

³³ 31 C.F.R. § 1020.210(a)(2)(v)(b)(2)(v).

³⁴ Bank Policy Institute, *The Truth About Suspicious Activity Reports*, (Sept. 22, 2020) <https://bpi.com/the-truth-about-suspicious-activity-reports/> (citing, Bank Pol’y Inst., *Getting to Effectiveness—Report on U.S. Financial Institution Resources Devoted to BSA/AML & Sanctions Compliance*, (Oct. 29, 2018) https://bpi.com/wp-content/uploads/2018/10/BPI_AML_Sanctions_Study_vF.pdf).

³⁵ Kessler, Carson, “*A Banking App Has Been Suddenly Closing Accounts, Sometimes Not Returning Customers’ Money*,” ProPublica (July 6, 2021), available at <https://www.propublica.org/article/chime>.

Similarly, Bank of America froze 350,000 unemployment debit cards in California after extensive fraud reports. But the freezes caught many legitimately unemployed workers, and the bank failed to respond in a timely fashion to their complaints:

- “Heather Hauri got a text from Bank of America that suggested her debit card may have been compromised too. When she responded that she had not made the transactions in question, she was locked out of her account. ‘The whole account is frozen,’ she said. ‘You can’t get your own money.’”³⁶

Months later, after a lawsuit was filed, a judge prohibited the bank from freezing accounts for California unemployment benefits based solely on an automated fraud filter and required it to do a better job of responding when jobless people say their benefits were stolen.³⁷ The CFPB ultimately brought an enforcement action against Bank of America,³⁸ and also against U.S. Bank³⁹ for similar conduct in indiscriminately freezing accounts and leaving them frozen for long periods of time. This conduct harmed the most vulnerable consumers – those who had lost their jobs and were relying on unemployment benefits.

Sudden account closures are also common among immigrant communities. For instance, immigrants from Iran have reported having their bank accounts closed suddenly after being asked to provide proof of legal residency in the country.⁴⁰

If people cannot access the money they need based on red flags triggered by automated fraud tracking systems, then they need a timely solution, not another obstacle. Yet that is what occurs; consumers face obstacles upon obstacles. When a consumer complains about an account closure or freeze, the complaint is often not followed by a reasonable investigation by the financial

³⁶ KCAL News, “Bank Of America Freezes EDD Accounts Of Nearly 350,000 Unemployed Californians For Suspected Fraud,” (Oct. 29, 2020), available at <https://www.cbsnews.com/losangeles/news/bank-of-america-freezes-edd-accounts-of-nearly-350000-unemployed-californians-for-suspected-fraud/>.

³⁷ McGreevy, Patrick, “Bank of America must provide more proof of fraud before freezing EDD accounts, court orders,” Los Angeles Times (Jun. 1, 2021), available at <https://www.latimes.com/california/story/2021-06-01/bank-of-america-ordered-to-unfreeze-unemployment-benefit-cards-in-california>.

³⁸ CFPB, “Federal Regulators Fine Bank of America \$225 Million Over Botched Disbursement of State Unemployment Benefits at Height of Pandemic,” (Press Release) (July 14, 2022), available at <https://www.consumerfinance.gov/about-us/newsroom/federal-regulators-fine-bank-of-america-225-million-over-botched-disbursement-of-state-unemployment-benefits-at-height-of-pandemic/>.

³⁹ CFPB, “CFPB Orders U.S. Bank to Pay \$21 Million for Illegal Conduct During COVID-19 Pandemic,” (Press Release) (Dec. 19, 2023), available at [https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-us-bank-to-pay-21-million-for-illegal-conduct-during-covid-19-pandemic/#:~:text=The%20CFPB%20and%20OCC%20together,411%2DCFPB%20\(2372\).](https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-us-bank-to-pay-21-million-for-illegal-conduct-during-covid-19-pandemic/#:~:text=The%20CFPB%20and%20OCC%20together,411%2DCFPB%20(2372).)

⁴⁰ See, e.g., *Nia v. Bank of America, N.A.*, 603 F.Supp.3d 894, (S.D. Cal. May 18, 2022) (Denying motion to dismiss); Chouhoud, Youseff, *Banking While Muslim*, Inst. for Soc. Pol’y and Understanding, 4 (Mar. 14, 2023), <https://www.ispu.org/banking-while-muslim/> (last visited Feb 20, 2024) (finding that one-third of Muslims reporting challenges with the banking system had their accounts closed or suspended); Wile, Rob, “He’s Been Studying in the U.S. Legally for 7 Years. Bank of America Froze His Account Anyway,” Miami Herald, (Aug. 31, 2018), <https://www.miamiherald.com/news/business/article217095125.html>.

institution that includes a discussion with the consumer or that provides any clear timeline to unfreeze their money.

Crude AML/CFT compliance policies can shut consumers out of our banking system. However, with respect to account freezes and closures, the Electronic Funds Transfer Act (“EFTA”) may provide an opportunity for consumers to protect against overly aggressive BSA policies. For example, the EFTA has clear error resolution timelines and procedures, and those should be used when consumers cannot access their funds. If a consumer is unable to make an electronic withdrawal or transfer because of an account closure or freeze based on suspected fraud, that action should be viewed as an error – an incorrect transfer of zero instead of the requested amount – triggering the error resolution rights, duties, timelines, and investigation procedures of the EFTA.

FinCEN and bank regulators should also provide guidance to financial institutions about what information they may and should provide to accountholders regarding freezes and account closures while still complying with the BSA. For example, they could clarify in an FAQ that, while financial institutions are not allowed to disclose that a SAR was filed, they are allowed to describe the specific activities that raised concerns, giving the consumer an opportunity to respond.

As shown by the CFPB’s recent enforcement actions and in light of risks of unfair, deceptive, or abusive practices when consumers’ funds are held indefinitely, the CFPB and bank regulators should also provide guidance to financial institutions about the importance of having clear procedures to enable consumers to quickly regain access to their funds when they are frozen due to concerns of suspicious activity and provide guidance as to the timeliness of returning an accountholder’s funds after account closure.

4. Communities of color and justice-involved individuals are disproportionately unbanked.

Bank account data exhibits disparities by race: 12.2% of Native American, 10.6% of Black, and 9.5% of Latino households are unbanked compared to only 1.9% of white households.⁴¹

Language barriers can increase the likelihood of being unbanked. Many financial institutions do not have a system to obtain or maintain information about their consumers’ language preferences, which makes it difficult for consumers to access any language services a bank might offer. This inconsistency and lack of transparency forces consumers to rely on others, such as children and other family members or friends, to translate highly technical documents involving

⁴¹ Fed. Deposit Ins. Corp., 2023 FDIC National Survey of Unbanked and Underbanked Households, 2 (Table ES.2) <https://www.fdic.gov/household-survey/2023-fdic-national-survey-unbanked-and-underbanked-households-report>.

personal and sensitive information.⁴² This game of telephone often leads to greater confusion and misunderstanding among Limited English Proficiency consumers, to say nothing of breached privacy, which can have dire consequences for families when they encounter financial hardship. It can take up to thirty years for an individual to achieve native-level proficiency in a foreign language, and financial disclosures often require a very high degree of language proficiency, even for native English speakers.⁴³

Notably, more than one in 10 (11.2%) households with a disability are unbanked, and while working-age households with a disability in 2023 comprised 8.1 percent of households overall, they made up 21.5 percent of the unbanked.⁴⁴

Additionally, if an individual has any criminal history (a justice-involved individual), they are more likely to be unbanked. People who have served their time and are trying to become productive citizens face barriers even if their crime had nothing to do with financial fraud.

Black, Latino, and Native people are massively overrepresented in the criminal legal system. For instance, Black Americans are twice as likely to be arrested as white Americans,⁴⁵ and are more likely to be stopped by the police, detained, charged with more serious crimes, and sentenced more harshly than white American.⁴⁶ As the U.S. Department of Housing and Urban Development has stated, these racial and ethnic disparities are “well established and persistent,” and “cannot be simply attributed to certain groups committing more crimes and are better explained by biases” in the criminal legal system.”⁴⁷

⁴² Kleimann Communication Group, Language Access for Limited English Proficiency Borrowers: Final Report 14 (April 2017), <https://www.flhfa.gov/PolicyProgramsResearch/Policy/Documents/Borrower-Language-AccessFinalReport-June-2017.pdf>.

⁴³ Why It's So Hard to Learn Another Language After Childhood, Time, (May 2, 2018), <https://time.com/5261446/language-critical-period-age/>.

⁴⁴ Fed. Deposit Ins. Corp., 2023 FDIC National Survey of Unbanked and Underbanked Households, 18 <https://www.fdic.gov/household-survey/2023-fdic-national-survey-unbanked-and-underbanked-households-report>.

⁴⁵ Waddell, Kaveh, “How Tenant Screening Reports Make It Hard for People to Bounce Back from Tough Times,” Consumer Reports (Mar. 11, 2021), <https://www.consumerreports.org/electronics/algorithmic-bias/tenant-screening-reports-make-it-hard-to-bounce-back-from-tough-times-a2331058426/>; Avery, Beth et al., Nat'l Employment Law Proj. Fair Chance Licensing Reform: Opening Pathways for People with Records to Join Licensed Professions 18 (2018), <https://www.nelp.org/publication/fair-chance-licensing-reform-opening-pathways-for-people-with-records-to-join-licensed-professions/>.

⁴⁶ Hinton, Elizabeth et al., Vera Inst. of Just., An Unjust Burden: The Disparate Treatment of Black Americans in the Criminal Justice System 1, 7–10 (2018), <https://www.vera.org/downloads/publications/for-the-record-unjust-burden-racial-disparities.pdf>.

⁴⁷ Memorandum from Principal Deputy Assistant Sec'y for Fair Hous. and Equal Opportunity, U.S. Dep't of Housing and Urban Dev., to Office of Fair Hous. & Equal Opportunity, Fair Hous. Assistance Program Agencies, Fair Hous. Initiatives Program Grantees, at 3 (June 10, 2022), available at <https://www.hud.gov/sites/dfiles/FHEO/documents/implementation%20of%20OIGC%20Guidance%20on%20Application%20of%20FHA%20Standards%20to%20the%20Use%20of%20Criminal%20Records%20-%20June%2010%202022.pdf>; see also U.S. Equal Emp. Opportunity Comm'n, Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions under Title VII of the Civil Rights Act; NELP, Fact Sheet.

People with disabilities and members of the LGBTQ+ community are also disproportionately represented in the criminal legal system. According to the U.S. Commission on Civil Rights, "[i]ncarcerated people are twice as likely to have an intellectual disability, four to six times more likely to have a cognitive disability, twice as likely to have a mobility disorder, three to four times more likely to be blind or have a vision impairment, and two to three times more likely to have a hearing impairment than the general population."⁴⁸ The incarceration rate of LGBTQ+ individuals is more than three times that of the U.S. adult population.⁴⁹

Justice-involved people may struggle to access checking and savings accounts due to various account opening requirements.⁵⁰ First, banks typically require photo identification to open a bank account. A person may have had their driver's license suspended because of outstanding criminal justice debt that they cannot afford to pay⁵¹ or had their ID expire or get lost while incarcerated, meaning they cannot satisfy this requirement.

Second, people must demonstrate proof of address both to renew a license and to open a bank account.⁵² Justice-involved people may struggle to meet this requirement if they are currently incarcerated, living in a halfway house or other temporary group residence, or are unhoused.

Third, banks may deny justice-involved people accounts based on credit checks.⁵³ For example, banks generally request reports on potential customers from companies such as Early Warning Systems and ChexSystems that include information on accounts closed by banks because of unpaid fees or suspected fraud.⁵⁴ People leaving incarceration may face these issues, including because managing accounts while in prison or jail can be very difficult. People also report having been victims of identity theft or "identity sharing" gone wrong while incarcerated.⁵⁵

Fourth, some accounts come with conditions to maintain an account – opening deposits, minimum balances, or monthly fees. Justice-involved individuals, including those who recently

⁴⁸ U.S. Comm'n on Civ. Rts., *Collateral Consequences: The Crossroads of Punishment, Redemption, and the Effects on Communities* 21 (2019), <https://www.usccr.gov/files/pubs/2019/06-13-Collateral-Consequences.pdf>.

⁴⁹ *Id.* at 21; *see also id.* at 22 ("Although 4.1 percent of American adults identify as LGBT, 9.3 percent of male prisoners and 42.1 percent of female prisoners identified as LGBT or reported having same-sex encounters before incarceration. . . . Twenty-one percent of transgender women and 10 percent of transgender men report that they have spent time in jail or prison.")

⁵⁰ Consumer Financial Protection Bureau, *Justice-Involved Individuals and the Consumer Financial Marketplace*, at 27, 29 (Jan. 2022), https://files.consumerfinance.gov/f/documents/cfpb_jic_report_2022-01.pdf.

⁵¹ Currently, half of all U.S. states still suspend, revoke or refuse to renew driver's licenses for unpaid traffic, toll, misdemeanor and felony fines and fees. Fines & Fees Justice Center, *Free to Drive: National Campaign to End Debt-Based License Restrictions*, <https://finesandfeesjusticecenter.org/campaigns/national-drivers-license-suspension-campaign-free-to-drive/> (last visited Feb. 14, 2024).

⁵² Consumer Financial Protection Bureau, *Justice-Involved Individuals and the Consumer Financial Marketplace*, at 29 (Jan. 2022), https://files.consumerfinance.gov/f/documents/cfpb_jic_report_2022-01.pdf.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ Harper, Annie et al., "Let Me Be Bill-free": Consumer Debt in the Shadow of Incarceration, 63 *Sociological Perspectives* 992 (2020); CFPB, *Justice-Involved Individuals Report*, at 26.

left incarceration, likely have limited financial resources as described above, and will struggle to meet these requirements.⁵⁶

We urge Congress, the U.S. Department of the Treasury, and federal regulators to collaborate and ensure that overly broad, discriminatory criminal records policies do not bar access to bank accounts including by:

- issuing guidance clarifying that financial institutions may accept non-traditional forms of identification, such as prison IDs;
- encouraging and supporting correctional facilities in helping people obtain official picture identification prior to leaving incarceration; and
- issuing guidance clarifying and encouraging banks and lenders to permit applicants to provide non-traditional addresses, such as addresses of temporary group residences, homeless shelters and correctional facilities.⁵⁷

5. Conclusion

Bank account access is crucial for participation in the U.S. financial system. Lawful access to bank accounts can be improved by implementation of the CFPB's overdraft fee rule, by giving consumers information and remedies when their accounts are inappropriately frozen or closed, and by ensuring that overbroad derisking efforts under the cover of BSA compliance do not block law abiding individuals from opening accounts. At the same time, more rigorous enforcement of BSA requirements can prevent criminals from using accounts to receive stolen money and fuel their criminal enterprises.

With any questions, please contact Carla Sanchez-Adams, Senior Attorney at the National Consumer Law Center, at csanchezadams@nclc.org.

Thank you for the opportunity to provide this statement for the record.

Yours very truly,

National Consumer Law Center (on behalf of its low-income clients)

⁵⁶ CFPB, Justice-Involved Individuals Report, at 29.

⁵⁷ As discussed at the Department of Treasury's Re-Entry Financial Resilience Discussion: Addressing Barriers in Financial Services for Justice-Impacted Communities on January 12, 2024, some credit unions, such as Stepping Stones Federal Credit Union already serve incarcerated people. Brock Fritz, 'Everything we do is to better the community,' Credit Union National Association (Jan. 10, 2024), <https://news.cuna.org/articles/123443-everything-we-do-is-to-better-the-community>.

flowhub

February 3, 2025

The Honorable Tim Scott
Chairman
Committee on Banking, Housing, and Urban Affairs
Washington, DC 20510

The Honorable Elizabeth Warren
Ranking Member

Dear Chairman Scott and Ranking Member Warren:

Thank you for your leadership in investigating the issue of debanking under Operation Chokepoint 2.0 and including Flowhub's testimony in the written record. As a federally legal operator that has been unjustifiably debanked on account of its customer base, we applaud this effort and the possibility of realizing banking reforms that regulated industries desperately need.

By way of background, Flowhub Holdings, Inc. (Flowhub) is a technology and software company that provides a compliance-based retail management platform designed specifically for highly regulated industries. Flowhub is built to ensure strict compliance with state regulations and integrates seamlessly with regulatory platforms including Prescription Management Platforms (PMPs) and state regulatory and enforcement bodies such as the Montana Cannabis Control Division (CCD), Ohio Division of Cannabis Control (DCC), the Florida Department of Health, Office of Medical Marijuana Use (OMMU), Mississippi State Department of Health (MSDH), Colorado Marijuana Enforcement Division (MED), the Missouri Department of Health and Senior Services (DHSS), and the Oregon Liquor and Cannabis Commission (OLCC), along with 32 other state regulatory bodies.

Since its inception in 2015, Flowhub has raised \$50 million in venture capital from investors like PayPal, Kraft Heinz (Evolv Ventures), and Headline, along with other respected firms. Flowhub is a proud American business with nearly 100 employees, many of whom bring senior-level experience from companies like Wayfair, Uber, and HubSpot.

Notwithstanding Flowhub's status as a well-funded, federally legal business, we have suffered discrimination by banks on account of servicing customers in the state-legal cannabis industry. For example, in January 2025, one of Flowhub's Senior Engineers was denied a mortgage by a credit union simply because of the source of his income. This discrimination almost cost his family the home he was purchasing. Like many other federally legal industries that support the \$32 billion dollar¹ state-legal cannabis industry (e.g., accountants, lawyers, insurance carriers, healthcare providers and many more), Flowhub and its employees and customers suffer daily discrimination by banks, including:

- Personal and business account closures;
- Mortgage denials;
- Mortgage refinancing denials;

¹ <https://businessofcannabis.com/us-cannabis-sales-to-hit-32bn-this-year-as-industry-continues-record-growth/>

- Home Equity Loan denials;
- Foreclosures;
- Usurious banking service fees and rates;
- Usurious and predatory lending terms; and
- Asset seizures.²

Flowhub itself has been debanked multiple times, and in more than one instance suffered major business disruptions, including nearly missing payroll, as we scrambled to implement temporary stopgap solutions. Now in 2025, despite other companies being able to accept credit cards, many of our customers are forced to remit payment to Flowhub by money order, because traditional financial institutions refuse to provide basic depository services, despite the fact that Flowhub is not a cannabis operator. This outdated system doesn't just hinder our operations—it also complicates doing business for our customers, many of whom face the same constraints.

These challenges highlight the systemic barriers faced by businesses in highly regulated sectors, and unfortunately, debanking incidents for companies like Flowhub, which provide ancillary services to the state-regulated cannabis industry, are commonplace. Organizations that simply exercise their First Amendment rights by advocating for drug policy changes have been debanked, irrespective of the fact that the organizations are not cannabis operators.³ Even state governments with regulated cannabis industries have faced challenges in maintaining financial services.⁴

The root of the problem is that discrepancies between U.S. state and federal cannabis laws leave this \$32 billion dollar industry without stable banking access. Like the industries that service them, state-legal cannabis businesses are routinely debanked and excluded from access to basic financial services, leaving hundreds of thousands of Americans—from executives down to part-time workers—denied home loans or mortgages, and even having family members' accounts frozen due to perceived involvement with the cannabis industry.⁵

The impacts of banking discrimination against the cannabis industry, including debanking, are not isolated to the industry but rather have proven far-reaching adverse effects on communities due to the large number of all-cash transactions necessitated by the lack of traditional banking.⁶ Senator Daines identified the public safety risk in debanking the regulated cannabis industry in his advocacy for the Secure and Fair Enforcement Regulation (SAFER) Banking Act in 2024, which, as described in detail below, would specifically provide banking and Operation Chokepoint relief to state-regulated cannabis and all regulated industries. Senator Daines aptly described SAFER Banking as “a public safety bill,” stating: “It’s not about cannabis, it’s about safety and the crime that is exploding in our communities.”⁷

² Flowhub has provided detailed accounts of banking discrimination of its employees and customers, including debanking, separately.

³ <https://www.cincinnati.com/story/news/2017/07/13/card-denied-marijuana-advocacy-groups-bank-account-terminated/471637001/>

⁴ <https://cnsmaryland.org/2023/04/05/federal-banking-rules-make-funding-maryland-cannabis-industry-tricky/>

⁵ <https://www.businessinsider.com/cannabis-executives-and-employees-cant-get-mortgages-accounts-2022-6>

⁶ <https://abc3340.com/news/local/cannabis-cash-rise-in-robberies-as-banks-wont-take-money-from-medical-marijuana-businesses-alabama-gadsden-crime>

⁷ <https://bankingjournal.aba.com/2023/03/sen-daines-defends-reg-reform-law-in-remarks-to-aba-summit/>

Fortunately, as Senator Daines advocated, SAFER Banking provides a turnkey legislative solution that ends Operation Chokepoint and provides a pathway for the regulated cannabis industry to access traditional banking and mitigate the need for cash transactions.

In summary, the SAFER Banking Act, introduced as H.R. 1996 in the 117th Congress, is a legislative proposal designed to protect financial institutions that provide services to state-legal cannabis businesses. The act aims to resolve the conflict between federal and state laws by ensuring that banks and credit unions can offer financial services to cannabis-related businesses without facing federal penalties. By providing a safe harbor for financial institutions, the SAFER Banking Act seeks to reduce the risks associated with cash-only operations in the cannabis industry, enhance public safety, and promote financial inclusion for cannabis businesses operating within the legal frameworks of their respective states. The SAFER Banking Act would amend the Bank Secrecy Act and other relevant federal statutes to provide explicit legal protections for financial institutions serving cannabis businesses, facilitating safer and more efficient financial transactions in the cannabis industry. The Bill was passed by the House of Representatives on April 19, 2021, with a bipartisan vote. However, it has faced challenges in the Senate, where it has not yet been brought to a vote. Under this Congress, the SAFER Banking Act has the opportunity to provide safe harbor to U.S. stock exchanges to list state-regulated cannabis operators. Ironically, U.S. law permits Canadian cannabis operators to list on U.S. stock exchanges, while barring American operators who are forced to list exclusively on Canadian exchanges.

Initiatives like the SAFER Banking Act would create a financial safe harbor for state-legal cannabis businesses and employees, but would also end Operation Chokepoint by requiring regulators to have actual valid reasons for account termination rather than perceived risk. Critically, the SAFER Banking Act provides relief only to state-legal cannabis operators and does not open banking to illicit industries, including trafficking of illicit cannabis, fentanyl, and other substances. Further, the SAFER Banking Act does not federally legalize cannabis; it does not change criminal penalties associated with conduct related to cannabis; and it does not require banks to service regulated cannabis businesses. The SAFER Banking Act merely *allows* financial institutions to service state-legal and licensed businesses and those interacting with state-legal industries, like Flowhub, without fear of retribution.

As Senator Daines explained, the SAFER Banking Act is about “reducing the risk of crime and providing much-needed clarity for law enforcement officers. It’s also about protecting legal business’ access to financial institutions. Whether it’s a legal cannabis business, a legal gun manufacturer, or a legal energy company, no [business] should be shut out of banks or credit unions because of ideological differences.”⁸

The economic case for ending Operation Chokepoint and providing banking relief to the cannabis industry—and ancillary companies like Flowhub—is clear. The state-legal cannabis industry operates in 39 states, employs over 440,000 workers nationwide (who remain uncounted in the U.S. Employment Situation Summary without reform), and generated over \$32 billion in revenue in 2024.⁹

⁸ <https://www.daines.senate.gov/2023/09/27/daines-safer-banking-act-is-headed-to-the-floor/>

⁹ <https://www.newsweek.com/us-marijuana-industry-all-time-high-jobs-sales-1891143>

Yet despite its rapid growth and economic contributions, the industry remains stifled by banking discrimination. As President Calvin Coolidge famously said, “The business of the American people is business.” With fair access to traditional financial services, the state-regulated cannabis industry could fully embody this principle, unlocking its true potential.

This Congress has the opportunity to fulfill President Trump’s campaign commitment by advancing banking reform and ending Operation Chokepoint for American businesses like Flowhub. President Trump has explicitly endorsed state-legal cannabis banking reform, and, in this “Promises Made, Promises Kept” and “Revolution of Common Sense” administration, Flowhub is optimistic that Congress will deliver meaningful relief to the state-legal cannabis industry, the ancillary businesses that support it, and their collective hundreds of thousands, if not millions, of American workers.

Sincerely,

A handwritten signature in black ink, appearing to be 'KS' with a stylized flourish.

Kyle Sherman
Founder & CEO Flowhub



STATEMENT FOR THE RECORD

By

THE FREE SPEECH COALITION

“Investigating the Real Impacts of Debanking in America”

United States Senate Committee on Banking, Housing, and Urban Affairs

February 5, 2025

Introduction

Chairman Scott, Ranking Member Warren, and members of the Committee, the Free Speech Coalition (FSC) appreciates the opportunity to submit this Statement for the Record as the Committee examines the serious consequences of debanking in America. More specifically, our statement highlights the growing and unjustified trend of restricting basic financial services from lawful businesses and individuals in the adult industry.

About the Free Speech Coalition

The Free Speech Coalition is the non-partisan trade association representing the legal adult industry with the mission of protecting the rights and freedoms of our members. For over thirty years, FSC has been a resource, an advocate, and a leader in the communities that we serve. An increasingly important matter for our membership is the lack of reliable access to basic financial products and services and the increasing evidence that FSC members are being subject to systematic debanking despite FSC members representing no increased risk to the banking system.

As in many industry sectors, the pandemic had a profound impact on the adult industry and spurred innovation. The creation of digital content platforms enabled thousands of individuals to supplement lost income or start new careers in adult content creation. Unfortunately, concurrent with this phenomena is evidence that financial regulators are putting pressure on banks to terminate relationships with those who participate in the adult industry leaving thousands – and potentially hundreds of thousands – of legal workers without the ability to access basic financial services.

Despite being a lawful industry that adheres to legal and financial compliance requirements, FSC members continue to experience systematic debanking—a practice that deprives individuals and businesses of fundamental financial services without clear justification. As financial institutions and federal banking regulators appear to apply subjective moral judgments rather than objective risk assessments, thousands of legal workers, independent entrepreneurs, and businesses are left without access to banking, payment processing, and lending.

The Real-World Impact of Debanking on the Adult Industry

The issue of debanking is not theoretical—it has profound, tangible consequences for law-abiding Americans. According to FSC's 2023 [*Financial Discrimination and the Adult Industry Report*](#), nearly **80% of surveyed industry professionals** reported experiencing some form of financial unfairness, and **63% had an account closed by a bank or digital payment**

provider, such as Zelle, Cash App, Paypal, or Venmo. These closures often occur **without warning, due process, or clear reasoning**.

Among the affected:

- Independent performers, creators, and small business owners who rely on digital platforms for income.
- Technology companies providing services to adult professionals.
- Educational organizations, advocacy groups, and even FSC itself—a 501(c)(6) nonprofit that has been denied banking services.

Moreover, this financial exclusion disproportionately harms women and individuals from marginalized communities, exacerbating economic inequality and forcing many into precarious financial situations, leading to a higher risk of financial exploitation.

Regulatory Overreach and the Chilling Effect of FinCEN Guidance

The current wave of debanking in the adult industry can be traced back to unclear and overly broad regulatory guidance, particularly from the Financial Crimes Enforcement Network (FinCEN).

- **Misinterpretation of "High-Risk" Designations:** Financial institutions and digital payment platforms **misconstrue FinCEN's risk-based guidance** and default to closing accounts rather than assessing individual risk.
- **Conflation with Human Trafficking:** FinCEN advisories, particularly the **2014 and 2020 human trafficking risk indicators**, have led institutions to **wrongly associate routine transactions in the adult industry with illicit activity**.
- **Fear of Regulatory Repercussions:** The legacy of past government initiatives, such as Operation Choke Point, continues to instill **uncertainty among financial institutions** that servicing lawful adult businesses will result in heightened scrutiny from federal banking regulators.

While financial institutions and digital payment platforms are not required to close accounts merely because of Suspicious Activity Reports (SARs), **many institutions claim that FinCEN's guidance leaves them no choice**. This chilling effect creates a de facto prohibition on financial services for an entire legal industry.

Personal Testimonies: The Human Cost of Financial Exclusion

1. Alana, Actress, Labor Advocate, and Mother

"After being a customer with Wells Fargo for over 30 years, Wells Fargo decided I was high risk due to my line of work and ended our relationship. Without any cause or reason, other than they were reevaluating our business relationship, my good credit with the bank was tossed to the side, all because I am adult actress. As the President of the performer union, I felt discriminated against for my choice of legal occupation. As a mother, a registered voter, a tax payer, and active advocate for our industry, I have seen others go through similar issues, but this was my first true experience of financial discrimination."

2. Zoë, CEO of an eCommerce Startup in the Adult Industry

"Since entering the sex toy industry nearly 10 years ago, I have been denied basic banking services such as a savings account, have been prohibited from using PayPal as an individual, am ineligible for the vast majority of loans or lines of credit, and in one instance in 2016 had funds withheld by the Michigan state treasury for unexplained reasons. I consider my experiences with banking discrimination to be relatively minor, relative to my colleagues in the industry, and yet it significantly disrupts my life and ability to prosper as a small business owner."

3. Maeve, Independent Content Creator & Small Business Owner

"Fall 2022 Charles Schwab shut down my checking account with no reason given. I was receiving payments from my main streaming site and OnlyFans. The closure letter was dated within one week of my last OnlyFans deposit. Upon contacting the bank, I was told they would not provide a reason and that there was no appeals process. I was not allowed to speak with anyone above frontline customer service agents."

Legislative and Regulatory Path Forward

The Free Speech Coalition urges Congress to take the following steps to ensure financial fairness and equal access for all legal businesses:

1. Clarify FinCEN Guidance

- Congress should work with FinCEN to **explicitly affirm that lawful adult industry businesses do not present an inherent financial crime risk.**
- FinCEN should **revise its advisory language** to prevent the **misuse of trafficking-related "red flags"** against legal adult businesses.

2. End Arbitrary Debanking

- Congress should investigate cases of **arbitrary and preemptive account closures** and demand transparency from financial institutions regarding their risk assessment processes.
- **Regulatory agencies must provide clear due process protections** to ensure businesses have recourse before account terminations.

3. Promote a Truly Risk-Based Approach

- Rather than blanket exclusions, banks, credit unions, and payment platforms should be encouraged to **evaluate businesses on their individual merits** and compliance history.

4. Increase Congressional Oversight of Financial Institutions' Practices

- The Senate Banking Committee should examine whether financial institutions are making **independent, objective risk assessments** or merely acting out of fear of regulatory backlash.

Conclusion

The ongoing debanking of the adult industry raises serious concerns around financial fairness and due process. The **denial of basic financial services to a lawful industry undermines fundamental American values**—economic freedom, equal opportunity, and the rule of law.

FSC remains committed to working with Congress, regulatory agencies, and financial institutions to ensure that all Americans—regardless of their lawful profession—have equal access to the financial system.

We thank Chairman Scott, Ranking Member Warren, and the Committee for its leadership on this critical issue and urge swift action to address the real-world harms of debanking in America.

Sincerely,



Alison Boden
Executive Director
Free Speech Coalition

February 5, 2025

Re: Stop Government from Weaponizing Financial Institutions

Dear Chairman Scott and Ranking Member Warren,

We, the undersigned organizations, write to express deep concern over government bureaucrats pressuring financial institutions to close customer accounts. Politicized risk assessments mandated by regulators undermine the free market. Regulations should never be weaponized to silence disfavored industries or individuals.

Weaponization of financial institutions can target individuals or entire industries. A recent Freedom of Information Act request [revealed](#) that the Biden Administration engaged in a deliberate effort to pressure financial institutions to stop engaging in crypto activities. Industry debanking is not new — it echoes Operation Choke Point under the Obama Administration, in which regulators targeted lawful industries such as firearms dealers and payday lenders under the guise of risk management.

Regulatory pressure to force debanking decisions usually takes the form of risk assessments. For example, it was discovered that the [FDIC was targeting a list of “high-risk” industries](#), including companies responsible for firearm and ammunition sales, coin dealers, and online gambling. The FDIC quietly amended the report years later, but the damage to public trust remains.

A significant driver of this issue is the overly burdensome Bank Secrecy Act, which mandates that financial institutions monitor and report on their customers to the government. Many of these reports provide little to no value for law enforcement or national security. Banks are required by law to file suspicious activity reports (“SARs”) and currency transaction reports (“CTRs”) with the Financial Crimes Enforcement Network — a bureau of the U.S. Department of Treasury. SARs are used to tip off law enforcement that banks suspect that a crime might be taking place. CTRs flag large cash transactions (exceeding \$10,000). According to [FinCEN](#), 4.6 million SARs were filed in 2023 and fewer than 0.3% of these SARs contributed to an active FBI or IRS investigation. According to the [Government Accountability Office](#), over 170 million CTRs were filed between 2014 and 2023, but only 5% were ever accessed by law enforcement, and even fewer were used for law enforcement or national defense purposes.

SARs and CTRs ultimately contribute to some customers being debanked, regardless of whether a crime is being committed. Nonetheless, banks are fined for not being sufficiently aggressive in debanking criminals that law enforcement did not catch despite the bank filing a SAR, forcing banks to err on the side of debanking when they are unsure if a crime has been committed. Banks are also prohibited by law from telling customers about the existence of a SAR, meaning customers are often left without answers when debanking occurs. Law enforcement and national security experts leverage some of this information to aid criminal investigations. However, a more strategic approach is needed to protect innocent customers from getting wrapped up in the scope of these reporting exercises. The Anti-Money Laundering Act of 2020 could solve this problem by allowing banks to focus on identifying criminals, rather than filing reports for the sake of filing reports.

The current regulatory system places banks in an impossible position — either comply with the government’s unspoken blacklist or risk hundreds of millions of dollars in penalties. As a result, banks are being forced to become de facto law enforcement agencies without knowing the full story of any of the enforcement actions they are pressured to take. The consequences are severe: entire industries are shut out of the financial system, and individuals are left without recourse.

To address this growing threat, Congress must act to rein in rogue regulators and prevent government bureaucrats from debanking disfavored individuals and groups. Furthermore, Treasury should implement the Anti-Money Laundering Act of 2020, which has gone nowhere under the Biden Administration.

Weaponizing financial regulation to punish disfavored individuals and industries is a dangerous abuse of power that threatens economic freedom. If left unchecked, this practice will not stop with cryptocurrency firms or firearms dealers—it will expand to any industry or individual who falls out of favor with those in power. Congress must act now to prevent further erosion of financial access and ensure that Americans can participate in the economy without fear of ideological discrimination.

Sincerely,



Grover Norquist
President
Americans for Tax Reform



Steve Pociask
Chief Executive Officer
American Consumer Institute



James Erwin
Interim Director
Shareholder Advocacy Forum



John Berlau
Director of Finance
Competitive Enterprise
Institute



Chuck Muth
President
Citizen Outreach



Tom Hebert
Executive Director
Open Competition Center



Ryan Ellis
President
Center for a Free Economy



David Williams
President
Taxpayer Protection Alliance



Yaël Ossowski
Deputy Director
Consumer Choice Center



Matthew Kandrach
President
Consumer Action for a
Strong Economy



Phil Kerpen
President
American Commitment



Jeff Mazzella
President
Center for Individual Freedom



Brandon Arnold
President
National Taxpayers Union



Agricultural Scientific LLC
216 Privello Pl
Simpsonville, SC 29681

February 4, 2025

Chairman Tim Scott
Senate Committee on Banking, Housing, and Urban Affairs
535 Dirksen Senate Office Building
Washington, DC 20510

Chairman Scott,

Agricultural Scientific and our parent company GEM Funds have been de-banked on three occasions for owning Bitcoin Mining hardware and publicly traded Bitcoin mining stock Core Scientific (CORZ Nasdaq).

I will gladly sign an affidavit detailing these experiences, but the most egregious came from Truist Bank in January 2024. Here are the historical details:

- In 2021 GEM Mining (unrelated company to Agricultural Scientific) established checking accounts at SunTrust (now Truist) to purchase Bitcoin mining hardware.
- In 2022 SunTrust de-banked all GEM Mining accounts due to involvement with Bitcoin mining industry.
- SunTrust allowed GEM Yield LLC (sister company to Agricultural Scientific) to keep both their checking account as well as their brokerage account that holds publicly traded Bitcoin mining company Core Scientific (CORZ Nasdaq).
- In early 2023 Truist approaches Agricultural Scientific about investing \$7 million in New Market Tax Credits (NMTC) in their tomato greenhouse project in South Carolina.
- Agricultural Scientific sends Truist lawyers almost \$100,000 for legal fees for NMTC transaction
- In November 2023 GEM Yield purchased approximately \$150,000 in Core Scientific stock (CORZ Nasdaq) in their Truist Brokerage account
- In December 2023 GEM Yield received a call to verify if the Core Scientific stock purchases were fraud, which they were not.
- On January 9, 2024 Agricultural Scientific and all GEM related entities received an email that Truist will be cancelling all checking accounts and the NMTC transaction due to "non-credit reasons."
- On January 9, 2024 Agricultural Scientific sent an email to Truist copying Bill Rogers (CEO) asking for an explanation on why the relationship was severed and requesting the NMTC transaction for the tomato greenhouse to go forward. There was no response.
- On January 10, 2024 Agricultural Scientific sent an email to Truist relationship manager Chris Eaves pleading that the NMTC transaction not be cancelled as it threatened the greenhouse project closing with USDA. There was no response.
- On January 11, 2024 Agricultural Scientific sent a final email to Truist CEO Bill Rogers asking a response to our previous correspondence. There was no response.

In summary, Agricultural Scientific and various GEM Fund entities were debanked and the USDA closing for a critically needed food supply chain tomato greenhouse project was blown up because one of the GEM entities owned publicly traded Core Scientific stock (CORZ Nasdaq). We would request that Truist CEO Bill Rogers be asked to testify at this committee for the actions of the bank, the NMTC fees we were forced to pay are refunded, and Truist commit to restoring the NMTC transaction for our tomato greenhouse.

Sincerely,



Zeb Portanova
CEO
Agricultural Scientific
zeb@gemfunds.com
803-571-5137



February 4, 2025

Chairman Tim Scott
Senate Banking Committee
Washington, D.C. 20510

Ranking Member Elizabeth Warren
Senate Banking Committee
Washington, D.C. 20510

Dear Chairman Scott and Ranking Member Warren:

On behalf of ACA International (ACA), I am writing regarding the hearing, “Holding Megabanks Accountable: An Update on Banking Practices, Programs and Policies.” ACA International is the leading trade association for credit and collection professionals. Founded in 1939, and with offices in Washington, D.C., and Minneapolis, Minnesota, ACA represents approximately 1,600 members, including credit grantors, third-party collection agencies, asset buyers, attorneys, and vendor affiliates in an industry that employs more than 150,000 individuals worldwide.

ACA members include the smallest of businesses that operate within a limited geographic range of a single state, and the largest of publicly held, multinational corporations that operate in every state. The majority of ACA-member debt collection companies, however, are small businesses. According to recent ACA member data, 35% of ACA members have 10 employees or fewer, 56% of ACA members have 25 employees or fewer, and 70% of ACA members have 100 employees or fewer.

As part of the process of attempting to recover outstanding payments, ACA members are an extension of every community’s businesses. ACA members work with these businesses, large and small, to obtain payment for the goods and services already received by consumers. In years past, the combined effort of ACA members has resulted in the annual recovery of billions of dollars –

dollars that are returned to and reinvested by businesses, and dollars that would otherwise constitute losses on the financial statements of those businesses. Without an effective collection process, the economic viability of these businesses and, by extension, the American economy in general, is threatened. Recovering rightfully owed consumer debt enables organizations to survive, helps prevent job losses, keeps credit, goods, and services available, and reduces the need for tax increases to cover governmental budget shortfalls.

Consumer harm can result in several ways when unpaid debt is not addressed, and ACA members work to help consumers understand their financial situation and what can be done to address it and improve it. Despite the fact that they are highly regulated, and their work helps ensure a functioning economy, ACA's members have been unfairly targeted by banks in Operation Choke Point and other similar efforts that have led to banking relationship terminations. In recent years, one of the largest banks in the country stated to an ACA member, "We will not be able to open the savings account for XX because any debt collection activity or entity is considered high risk for our bank." The bank added, "Upon a second review, we maintain the same decision based on the industry type." This is ironic because banks also engage in debt collection directly and using third-party agencies.

In states where a banking relationship is required to have a license to operate, banking terminations can threaten the existence of collection businesses, as well as their employees' jobs. There is often little notice and no specific explanation for why a banking relationship was terminated. While the number of ACA members impacted by these efforts has declined since the height of Operation Choke Point, the highly questionable practice of categorical discrimination from banks against the debt collection industry continues.

The Fair Access to Banking Act, bicameral legislation introduced by Senator Kevin Cramer (R-ND) and Congressman Andy Barr (R-KY), addresses these issues by ensuring that banks have a responsibility to make decisions about whether to provide a person with financial services based on impartial criteria free from prejudice or favoritism. Importantly, the legislation requires that making decisions about banking relationships is based on individualized risk-based analysis using empirical data evaluated under quantifiable standards, rather than on categorical decisions discriminating against entire industries. Furthermore, it requires that, when denying any person

financial services, the covered bank offer to provide written justification to the person explaining the basis for the denial, including any specific laws or regulations the covered bank believes are being violated by the person or customer. ACA believes this legislation is necessary because previous articulations of the fair access principle without the force and effect of law have been inadequate in deterring rogue examiners, as well as banks with political and agenda-driven ideologies.

Allowing individuals to pick winners and losers in the financial services marketplace based on individual unresearched ideologies is a very dangerous slippery slope, not just for ACA members but for all Americans. Accordingly, ACA asks that Congress consider these issues in both chambers and hold banks that engage in unfair and discriminatory practices against legal and highly regulated businesses accountable for their actions.

Thank you for your attention to these important matters.



February 4, 2025

Dear Senator Warren,

As an advocate for cannabis policies that are fair, I urge you to oppose any provisions that would grant stock market access in federal cannabis banking legislation at this time. While stock market access may be appropriate in the future, allowing it while cannabis remains federally illegal would unfairly benefit large corporations, while everyday Americans and small businesses continue to face the consequences of prohibition.

While I support efforts to ensure that financial access is fair for all cannabis businesses, as evidenced by my testimony before the Senate Committee Banking Housing and Urban Affairs May 2023 hearing, "[Examining Cannabis Banking Challenges of Small Businesses and Workers](#)," I am deeply concerned that some of the largest cannabis corporations are now pushing for stock market access so they can continue to grow larger and wealthier, even as small businesses and everyday Americans continue to struggle under the burdens of federal cannabis prohibition.

As detailed in recent Congressional Research Service (CRS) reports [here](#) and [here](#), the SAFE Banking Act currently limits safe harbor protections to depository institutions, including community development financial institutions (CDFIs) and minority depository institutions (MDIs). For many years SAFE's proponents have argued that these provisions would address cash transactions that have made dispensaries frequent robbery targets. However, these claims that SAFE would enhance public safety have become less prominent as large marijuana businesses have set their eyes on a different goal.

Now, corporate lobbyists are attempting to expand these protections to securities exchanges. Some have argued that cannabis businesses should have access to the same financial institutions as hemp businesses under SAFE, ignoring the fundamental difference that hemp was fully legalized at the federal level under the 2018 Farm Bill. Others claim that prohibiting U.S. cannabis companies from listing on NASDAQ and NYSE while foreign cannabis companies can be "un-American," -- though an understandable frustration, this position disregards the fact that U.S. cannabis companies continue to operate in violation of federal law, whereas Canadian cannabis companies comply with their national legalization framework.

These arguments distract from the real issue: the primary challenge in cannabis banking is not a lack of stock market access but the continued federal prohibition of cannabis. [A recent 2025 CRS report on debanking](#) underscored this reality "Cannabis is legal in several states but is banned at the federal level." Granting major corporations access to the stock market, while marijuana is still illegal, would be short-sighted. It prioritizes profit before people and is likely to

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exacerbate the challenges of small businesses who will continue to face barriers to capital and financial assistance, such as Small Business Administration grants and loans. It would also likely disrupt state regulatory programs that depend on the success of small and local businesses.

For these reasons, I strongly urge you to reject any effort to include stock market access in cannabis banking legislation. Including such provisions would increase opposition to the bill, including from the Drug Policy Alliance and other advocates who have worked to ensure that cannabis policies are both responsible and fair. If Congress is committed to supporting small and local cannabis businesses, I encourage you consider and pass legislation that deschedules cannabis -- removes it from the Controlled Substances Act (CSA) and provides access to federal grants, loans, and economic support programs—resources that have been proven to help small businesses grow and thrive.

I appreciate your leadership on this issue and would welcome the opportunity to discuss this matter with you further.

Sincerely,

Cat Packer

Director of Drug Markets and Legal Regulation
Drug Policy Alliance

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January 29, 2025

The Honorable Tim Scott
Chairman
Committee on Banking, Housing, and Urban Affairs
Washington, DC 20510

The Honorable Elizabeth Warren
Ranking Member

Dear Chairman Scott and Ranking Member Warren:

We strongly support your willingness to investigate the issue of debanking under Operation Chokepoint 2.0, but as one of the most frequent targets of debanking, the state-legal cannabis industry cannot be left out of policy solutions that look to resolve the issue of debanking. The state-legal cannabis industry operates in 39 states and employs over 440,000 workers nationwide, generating over \$32 billion dollars in revenue in 2024.¹² However, due to discrepancies between state and federal laws in the United States, the cannabis industry and its employees have been frequently targeted by regulators and financial institutions alike.

State-legal and approved cannabis businesses are routinely debanked and excluded from financial services that would increase public safety and financial transparency. So too are the businesses' employees — from executives down to part-time workers who are denied home loans, mortgages, and even have family members' accounts frozen because of perceived involvement with the cannabis industry.³ Even more objectionable, organizations that simply exercise their First Amendment rights of advocating for *changes* in the laws related to cannabis have been debanked, even when these organizations do not actually touch or process cannabis themselves.⁴ State governments who have authorized cannabis sales have also faced challenges in maintaining financial services.⁵

A lack of access to financial services for the cannabis industry has created numerous problems that are all too familiar for those who have been debanked, including but not limited to:

Account Closures: Many cannabis related businesses have had their business accounts closed, despite operating in compliance with state laws, and having approval from state unable to conduct even the most basic of business operations

Personal Banking Issues: Individual employees have been unable to secure mortgages, auto loans, or other personal loans because of their association with cannabis, creating significant impacts on financial stability and life planning

Higher Operational Risks: A lack of access to traditional financial services leads to cannabis businesses operating primarily in cash. A high volume of cash creates security concerns for communities and businesses alike and has led to a string of violent robberies

¹ <https://www.newsweek.com/us-marijuana-industry-all-time-high-jobs-sales-1891143>

² <https://businessofcannabis.com/us-cannabis-sales-to-hit-32bn-this-year-as-industry-continues-record-growth/>

³ <https://www.businessinsider.com/cannabis-executives-and-employees-cant-get-mortgages-accounts-2022-6>

⁴ <https://www.cincinnati.com/story/news/2017/07/13/card-denied-marijuana-advocacy-groups-bank-account-terminated/471637001/>

⁵ <https://csmmaryland.org/2023/04/05/federal-banking-rules-make-funding-maryland-cannabis-industry-tricky/>

at dispensaries nationwide.⁶ Due to ongoing conflict between federal and state law, many insurance providers are also unwilling to work with cannabis businesses.⁷

Difficulty in Tax Collection: The debanking of cannabis businesses complicates how tax payments are collected. Businesses must physically deliver tax payments to collection offices, creating a burden both on the business and the tax collector.

Limited Growth Opportunities: Even when banking services are offered they are limited—while some banks and credit unions are willing to work with the cannabis industry, it results in costly monthly fees, and limited access to loans, credit lines, and electronic payment processing. Additionally, cannabis companies are barred from listing on the United States capital markets.

There is a turnkey legislative solution that ends Operation Chokepoint and ensures that state legal cannabis businesses don't face the issue of debanking. Initiatives like the SAFE Banking Act would create a financial safe harbor for cannabis businesses and employees but would also end Operation Chokepoint by requiring regulators to have actual valid reasons for account termination rather than perceived risk. The SAFE Banking Act does **not** federally legalize cannabis; it does **not** change criminal penalties associated with conduct related to cannabis; and it does **not** require banks to service cannabis businesses. The SAFE Banking act merely *allows* financial institutions to serve state legal and licensed businesses and those interacting with the state-legal industry without fear of retribution.

No business should be at risk of being debanked, especially if it complies with state licensing and regulation requirements. We appreciate your consideration and look forward to the development of a policy solution that ends Operation Chokepoint and ceases debanking within the state legal cannabis industry.

Sincerely,

The United States Cannabis Roundtable

CC: Members of the Committee on Banking, Housing and Urban Affairs



The United States Cannabis Roundtable (USCR) was formed in 2025, combining the National Cannabis Roundtable and the United States Cannabis Council. The organization represents all facets of the state-legal cannabis industry from large multistate operators down to individual license holders, service providers, and ancillary businesses.

⁶<https://biz3340.com/news/local/cannabis-cash-rise-in-robberies-as-banks-wont-take-money-from-medical-marijuana-businesses-alabama-gabede-n-cnn/#>

⁷https://www.cga.ct.gov/hss/related/20220329_Connecticut%20Insurance%20Department%20Reports/2022%20Cannabis%20Insurance%20Report.pdf

CONGRESSIONAL TESTIMONY

Financial Fairness for All: Ending the Discriminatory Practice of Debanking

Testimony Submission for the Full Senate Hearing

Investigating the Real Impacts of Debanking in America

Senate Committee on Banking, Housing, and Urban Affairs
United States Senate

Submitted: February 4, 2025

Wa'el Alzayat

Chief Executive Officer

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Policy Fellow

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National Director of Policy and Advocacy

Introduction

Debanking occurs when financial institutions close or deny access to bank accounts based on perceived risks rather than clear evidence of wrongdoing. While banks have a responsibility to prevent illicit activity, the enforcement of these measures has been inconsistent, disproportionately harming Muslim Americans, businesses, and nonprofit organizations. The increasing use of third-party screening companies and artificial intelligence-driven (AI) risk assessments has exacerbated this issue, creating a system in which entire communities face unjust exclusion from financial services. These opaque and often unchallengeable decisions undermine economic stability and civil rights, limiting affected individuals' and organizations' ability to participate fully in society.

It is critical to examine the impact of these practices and explore policy solutions to ensure financial institutions uphold transparency, fairness, and equal access to banking services for all. Without meaningful reform, entire communities will continue to face systemic financial exclusion, weakening economic opportunity, civic engagement, and the fundamental rights of those unfairly targeted. Addressing this issue is not only a matter of financial equity but also a critical step in upholding principles of equity, due process, and non-discrimination in our nation's banking system.

Impacts of Discriminatory Banking

Research [confirms](#) that Muslim Americans in the United States face systemic banking challenges. A 2022 survey conducted by the Institute for Social Policy and Understanding (ISPU), in partnership with Islamic Relief USA and LaunchGood, found that Muslim Americans are the most likely faith group to experience banking difficulties. Findings show that 27% of Muslim Americans report challenges, compared to 12% of the general public and 14% of Jewish respondents. Muslim Americans are twice as likely (29%) as the general public (14%) to have a personal bank account investigated for sending payments. They are more than twice as likely (64%) as the general public (26%) to experience issues with business banking. Additionally, 62% of Muslim nonprofits that reported challenges faced financial disruptions, nearly four times the rate of the general public (17%). These statistics illustrate how Muslim Americans and their institutions endure excessive scrutiny without justification.

[LaunchGood](#), a crowdfunding platform serving the global Muslim community, exemplifies debanking's impact. Despite raising over \$300 million for humanitarian causes, including \$10 million for earthquake relief in Turkey and Syria, LaunchGood has faced repeated financial discrimination. In 2019, its longstanding payment processor severed ties without warning or explanation. A subsequent payment platform, acquired by a major U.S. bank, rejected 50% of UK-based Muslim donors by citing "too many Muslim and Arabic names." After securing a new

processor, a board member arbitrarily demanded LaunchGood's removal as a client. These disruptions cost LaunchGood an estimated \$100 million in donations and over \$5 million in lost revenue. More critically, they obstructed the flow of humanitarian aid and limited financial inclusion for Muslim-led initiatives.

Muslims frequently experience unexplained account closures and investigations of routine transactions. Personal, business, and nonprofit accounts are often shut down without due process. Muslims are flagged for financial scrutiny based on arbitrary "keyword" triggers, and many are denied the ability to open accounts or use payment platforms. These issues are systemic across major financial institutions and these practices hinder economic participation and limit entrepreneurship.

A recent ISPU [report](#), *Crackdown Déjà Vu? New and Ongoing Threats to Muslim Nonprofits*, emphasizes the institutional challenges Muslim-led organizations face. Muslim charitable and nonprofit organizations have come under increased scrutiny following advocacy efforts and protests related to U.S. foreign policy in the Middle East. The report highlights how misinformation campaigns, often promoted by nonstate actors, falsely portray Muslim charities as linked to terrorism. These narratives are discreetly shared with financial institutions and potentially lead to account closures and service denials. Legislative efforts such as [H.R. 6408](#) could further impact the financial stability of Muslim nonprofits by granting the executive branch broad discretionary powers to strip organizations of their tax-exempt status.

The Consumer Financial Protection Bureau (CFPB) has taken several steps to [address](#) debanking concerns:

- Contract Rule (Jan. 2025) - A proposed rule prohibiting companies from denying services based on consumer comments, reviews, or political or religious views.
- Data Broker Rule (Dec. 2024) - A rule clarifying that data brokers selling sensitive consumer information qualify as "consumer reporting agencies" under the Fair Credit Reporting Act. This ensures consumers can challenge account closures.
- Larger Participant Rule (Nov. 2024) - A finalized rule granting CFPB oversight over large payment platforms like PayPal and Cash App to address financial discrimination.
- Updates to UDAP Exam Manual (Mar. 2022) - These updates direct examiners to identify evidence of discrimination (including illegal debanking).
- Overdraft Rule (Dec. 2024) - A final rule limiting excessive overdraft fees, which have led to the involuntary closure of millions of accounts.

Despite these measures, there are still significant gaps remaining in addressing financial discrimination against marginalized communities, particularly Muslims who continue to face the disproportionate impacts of debanking.

Recommendations

To address financial discrimination against Muslim Americans and other marginalized groups, the Senate should mandate transparency in account closures, prohibit arbitrary debanking, and strengthen oversight. Regulations must ensure AI and third-party screening systems do not disproportionately target religious communities, while expanding legal protections under the Equal Credit Opportunity Act. A redress mechanism should be established to allow affected individuals and nonprofits to challenge unfair banking practices. Expanding funding for community-based financial institutions and promoting inclusive banking standards will help ensure equal access to financial services for all.

Conclusion

Addressing this issue is both an economic and civil rights necessity. We urge the Senate to take decisive action to prevent financial discrimination and promote an inclusive banking system that serves all communities equitably. We appreciate your attention to this urgent issue and stand ready to support efforts ensuring financial fairness for all Americans.