

118TH CONGRESS  
1ST SESSION

# S. 293

To amend the Federal Reserve Act to prohibit certain financial service providers who deny fair access to financial services from using taxpayer funded discount window lending programs, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 7, 2023

Mr. CRAMER (for himself, Mrs. BRITT, Mr. TUBERVILLE, Mr. SULLIVAN, Mr. BOOZMAN, Mr. COTTON, Mr. RUBIO, Mr. SCOTT of Florida, Mr. CRAPO, Mr. RISCH, Mr. BRAUN, Ms. ERNST, Mr. MARSHALL, Mr. MORAN, Mr. CASSIDY, Mr. KENNEDY, Mrs. HYDE-SMITH, Mr. WICKER, Mr. SCHMITT, Mr. DAINES, Mrs. FISCHER, Mr. RICKETTS, Mr. TILLIS, Mr. HOEVEN, Mr. VANCE, Mr. LANKFORD, Mr. MULLIN, Mr. GRAHAM, Mr. SCOTT of South Carolina, Mrs. BLACKBURN, Mr. HAGERTY, Mr. CORNYN, Mr. CRUZ, Mrs. CAPITO, Mr. JOHNSON, Mr. BARRASSO, and Ms. LUMMIS) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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## A BILL

To amend the Federal Reserve Act to prohibit certain financial service providers who deny fair access to financial services from using taxpayer funded discount window lending programs, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Fair Access to Bank-  
3 ing Act”.

4 **SEC. 2. FINDINGS.**

5 Congress finds that—

6 (1) article I of the Constitution of the United  
7 States guarantees the people of the United States  
8 the right to enact public policy through the free and  
9 fair election of representatives and through the ac-  
10 tions of State legislatures and Congress;

11 (2) banks rightly objected to the Operation  
12 Choke Point initiative through which certain govern-  
13 ment agencies pressured banks to cut off access to  
14 financial services to lawful sectors of the economy;

15 (3) banks are now, however, increasingly em-  
16 ploying subjective, category-based evaluations to  
17 deny certain persons access to financial services in  
18 response to pressure from advocates from across the  
19 political spectrum whose policy objectives are served  
20 when banks deny certain customers access to finan-  
21 cial services;

22 (4) the privatization of the discriminatory prac-  
23 tices underlying Operation Choke Point by banks  
24 represents as great a threat to the national economy,  
25 national security, and the soundness of banking and

1 financial markets in the United States as Operation  
2 Choke Point itself;

3 (5) banks are supported by the United States  
4 taxpayers and enjoy significant privileges in the fi-  
5 nancial system of the United States and should not  
6 be permitted to act as de facto regulators or  
7 unelected legislators by withholding financial services  
8 to otherwise credit worthy businesses based on sub-  
9 jective political reasons, bias, or prejudices;

10 (6) banks are not well-equipped to balance risks  
11 unrelated to financial exposures and the operations  
12 required to deliver financial services;

13 (7) the United States taxpayers came to the aid  
14 for large banks during the Great Recession of 2008  
15 because they were deemed too important to the na-  
16 tional economy to be permitted to fail;

17 (8) when a bank predicates the access to finan-  
18 cial services of a person on factors or information  
19 (such as the lawful products a customer manufac-  
20 tures or sells or the services the customer provides)  
21 other than quantitative, impartial risk-based stand-  
22 ards, the bank has failed to act consistent with basic  
23 principles of sound risk management and failed to  
24 provide fair access to financial services;

1           (9) banks have a responsibility to make deci-  
2           sions about whether to provide a person with finan-  
3           cial services on the basis of impartial criteria free  
4           from prejudice or favoritism;

5           (10) while fair access to financial services does  
6           not obligate a bank to offer any particular financial  
7           service to the public, to operate in any particular ge-  
8           ographic area, or to provide a service the bank offers  
9           to any particular person, it is necessary that—

10                   (A) the financial services a bank chooses to  
11                   offer in the geographic areas in which the bank  
12                   operates be made available to all customers  
13                   based on the quantitative, impartial risk-based  
14                   standards of the bank, and not based on wheth-  
15                   er the customer is in a particular category of  
16                   customers;

17                   (B) banks assess the risks posed by indi-  
18                   vidual customers on a case-by-case basis, rather  
19                   than category-based assessment; and

20                   (C) banks implement controls to manage  
21                   relationships commensurate with these risks as-  
22                   sociated with each customer, not a strategy of  
23                   total avoidance of particular industries or cat-  
24                   egories of customers;

1           (11) banks are free to provide or deny financial  
2           services to any individual customer, but first, the  
3           banks must rely on empirical data that are evaluated  
4           consistent with the established, impartial risk-man-  
5           agement standards of the bank; and

6           (12) anything less is not prudent risk manage-  
7           ment and may result in unsafe or unsound practices,  
8           denial of fair access to financial services, cancelling,  
9           or eliminating certain businesses in society, and have  
10          a deleterious effect on national security and the na-  
11          tional economy.

12 **SEC. 3. PURPOSES.**

13          The purposes of this Act are to—

14           (1) ensure fair access to financial services and  
15           fair treatment of customers by financial service pro-  
16           viders, including national and State banks, Federal  
17           savings associations, and State and Federal credit  
18           unions;

19           (2) ensure banks conduct themselves in a safe  
20           and sound manner, comply with laws and regula-  
21           tions, treat their customers fairly, and provide fair  
22           access to financial services;

23           (3) protect against banks being able to impede  
24           otherwise lawful commerce and thereby achieving  
25           certain public policy goals;

1           (4) ensure that persons involved in politically  
2           unpopular businesses but that are lawful under Fed-  
3           eral law receive fair access to financial services  
4           under the law; and

5           (5) ensure banks operate in a safe and sound  
6           manner by making judgments and decisions about  
7           whether to provide a customer with financial services  
8           on an impartial, individualized risk-based analysis  
9           using empirical data evaluated under quantifiable  
10          standards.

11 **SEC. 4. ADVANCES TO INDIVIDUAL MEMBER BANKS.**

12          (a) MEMBER BANKS.—Section 10B of the Federal  
13 Reserve Act (12 U.S.C. 347b) is amended by adding at  
14 the end the following:

15          “(c) PROHIBITION ON USE OF DISCOUNT WINDOW  
16 LENDING PROGRAMS.—No member bank with more than  
17 \$10,000,000,000 in total consolidated assets, or sub-  
18 sidiary of the member bank, may use a discount window  
19 lending program if the member bank or subsidiary refuses  
20 to do business with any person who is in compliance with  
21 the law, including section 8 of the Fair Access to Banking  
22 Act.”.

23          (b) INSURED DEPOSITORY INSTITUTIONS.—Section  
24 8(a)(2)(A) of the Federal Deposit Insurance Act (12  
25 U.S.C. 1818(a)(2)(A)) is amended—

1 (1) in clause (ii), by striking “or” at the end;

2 (2) in clause (iii), by striking the comma at the  
3 end and inserting “; or”; and

4 (3) by adding at the end the following:

5 “(iv) an insured depository institution  
6 with more than \$10,000,000,000 in total  
7 consolidated assets, or subsidiary of the in-  
8 sured depository institution, that refuses to  
9 do business with any person who is in com-  
10 pliance with the law, including section 8 of  
11 the Fair Access to Banking Act,”.

12 (c) NONMEMBER BANKS, TRUST COMPANIES, AND  
13 OTHER DEPOSITORY INSTITUTIONS.—Section 13 of the  
14 Federal Reserve Act (12 U.S.C. 342) is amended by in-  
15 serting “*Provided further*, That no such nonmember bank  
16 or trust company or other depository institution with more  
17 than \$10,000,000,000 in total consolidated assets, or sub-  
18 sidiary of such nonmember bank or trust company or  
19 other depository institution, may refuse to do business  
20 with any person who is in compliance with the law, includ-  
21 ing , including section 8 of the Fair Access to Banking  
22 Act:” after “appropriate:”.

23 **SEC. 5. PAYMENT CARD NETWORK.**

24 (a) DEFINITION.—In this section, the term “payment  
25 card network” has the meaning given the term in section

1 921(c) of the Electronic Fund Transfer Act (15 U.S.C.  
2 1693o-2(c)).

3 (b) PROHIBITION.—No payment card network, in-  
4 cluding a subsidiary of a payment card network, may, di-  
5 rectly or through any agent, processor, or licensed member  
6 of the network, by contract, requirement, condition, pen-  
7 alty, or otherwise, prohibit or inhibit the ability of any per-  
8 son who is in compliance with the law, including section  
9 8 of this Act, to obtain access to services or products of  
10 the payment card network because of political or  
11 reputational risk considerations.

12 (c) CIVIL PENALTY.—Any payment card network  
13 that violates subsection (b) shall be assessed a civil penalty  
14 by the Comptroller of the Currency of not more than 10  
15 percent of the value of the services or products described  
16 in that subsection, not to exceed \$10,000 per violation.

17 **SEC. 6. CREDIT UNIONS.**

18 Section 206(b)(1) of the Federal Credit Union Act  
19 (12 U.S.C. 1786) is amended by inserting “or is refusing  
20 or has refused, or has a subsidiary that is refusing or has  
21 refused, to do business with any person who is in compli-  
22 ance with the law, including section 8 of the Fair Access  
23 to Banking Act,” after “as an insured credit union,”.

24 **SEC. 7. USE OF AUTOMATED CLEARING HOUSE NETWORK.**

25 (a) DEFINITIONS.—In this section:



1 (1) COVERED CREDIT UNION.—The term “cov-  
2 ered credit union” means—

3 (A) any insured credit union, as defined in  
4 section 101 of the Federal Credit Union Act  
5 (12 U.S.C. 1752); or

6 (B) any credit union that is eligible to  
7 make application to become an insured credit  
8 union under section 201 of the Federal Credit  
9 Union Act (12 U.S.C. 1781).

10 (2) MEMBER BANK.—The term “member bank”  
11 has the meaning given the term in the third undesig-  
12 nated paragraph of the first section of the Federal  
13 Reserve Act (12 U.S.C. 221).

14 (b) PROHIBITION.—No covered credit union, member  
15 bank, or State-chartered non-member bank with more  
16 than \$10,000,000,000 in total consolidated assets, or a  
17 subsidiary of the covered credit union, member bank, or  
18 State-chartered non-member bank, may use the Auto-  
19 mated Clearing House Network if that member bank,  
20 credit union, or subsidiary of the member bank or credit  
21 union, refuses to do business with any person who is in  
22 compliance with the law, including section 8 of this Act.

23 **SEC. 8. FAIR ACCESS TO FINANCIAL SERVICES.**

24 (a) DEFINITIONS.—In this section:

25 (1) BANK.—The term “bank”—

1 (A) means an entity for which the Office  
 2 of the Comptroller of the Currency is the appro-  
 3 priate Federal banking agency, as defined in  
 4 section 3 of the Federal Deposit Insurance Act  
 5 (12 U.S.C. 1813); and

6 (B) includes—

7 (i) member banks;

8 (ii) non-member banks;

9 (iii) covered credit unions;

10 (iv) State-chartered non-member  
 11 banks; and

12 (v) trust companies.

13 (2) COVERED BANK.—

14 (A) IN GENERAL.—The term “covered  
 15 bank” means a bank that has the ability to—

16 (i) raise the price a person has to pay  
 17 to obtain an offered financial service from  
 18 the bank or from a competitor; or

19 (ii) significantly impede a person, or  
 20 the business activities of a person, in favor  
 21 of or to the advantage of another person.

22 (B) PRESUMPTION.—

23 (i) IN GENERAL.—A bank shall not be  
 24 presumed to be a covered bank if the bank

1 has less than \$10,000,000,000 in total as-  
2 sets.

3 (ii) REBUTTABLE PRESUMPTION.—

4 (I) IN GENERAL.—A bank is pre-  
5 sumed to be a covered bank if the  
6 bank has \$10,000,000,000 or more in  
7 total assets.

8 (II) REBUTTAL.—A bank that  
9 meets the criteria under subclause (I)  
10 can seek to rebut this presumption by  
11 submitting to the Office of the Comp-  
12 troller of the Currency written mate-  
13 rials that, in the judgement of the  
14 agency, demonstrate the bank does  
15 not meet the definition of covered  
16 bank.

17 (3) COVERED CREDIT UNION.—The term “cov-  
18 ered credit union” means—

19 (A) any insured credit union, as defined in  
20 section 101 of the Federal Credit Union Act  
21 (12 U.S.C. 1752); or

22 (B) any credit union that is eligible to  
23 make application to become an insured credit  
24 union under section 201 of the Federal Credit  
25 Union Act (12 U.S.C. 1781).

1           (4) DENY.—The term “deny” means to deny or  
2 refuse to enter into or terminate an existing finan-  
3 cial services relationship with a person.

4           (5) FAIR ACCESS TO FINANCIAL SERVICES.—  
5 The term “fair access to financial services” means  
6 persons engaged in activities lawful under Federal  
7 law are able to obtain financial services at banks  
8 without impediments caused by a prejudice against  
9 or dislike for a person or the business of the cus-  
10 tomer, products or services sold by the person, or fa-  
11 voritism for market alternatives to the business of  
12 the person.

13           (6) FINANCIAL SERVICE.—The term “financial  
14 service” means a financial product or service, includ-  
15 ing—

- 16           (A) commercial and merchant banking;
- 17           (B) lending;
- 18           (C) financing;
- 19           (D) leasing;
- 20           (E) cash, asset, and investment manage-  
21 ment and advisory services;
- 22           (F) credit card services;
- 23           (G) payment processing;
- 24           (H) security and foreign exchange trading  
25 and brokerage services; and

1 (I) insurance products.

2 (7) MEMBER BANK.—The term “member bank”  
3 has the meaning given the term in the third undesig-  
4 nated paragraph of the first section of the Federal  
5 Reserve Act (12 U.S.C. 221).

6 (8) PERSON.—The term “person”—

7 (A) means—

8 (i) any natural person; or

9 (ii) any partnership, corporation, or  
10 other business or legal entity; and

11 (B) includes a customer.

12 (b) REQUIREMENTS.—

13 (1) IN GENERAL.—To provide fair access to fi-  
14 nancial services, a covered bank, including a sub-  
15 sidiary of a covered bank, shall, except as necessary  
16 to comply with another provision of law—

17 (A) make each financial service the covered  
18 bank offers available to all persons in the geo-  
19 graphic market served by the covered bank on  
20 proportionally equal terms;

21 (B) not deny any person a financial service  
22 the covered bank offers unless the denial is jus-  
23 tified by such quantified and documented fail-  
24 ure of the person to meet quantitative, impar-

1            tial risk-based standards established in advance  
2            by the covered bank;

3            (C) not deny, in coordination with or at  
4            the request of others, any person a financial  
5            service the covered bank offers; and

6            (D) when denying any person financial  
7            services the covered bank offers, provide written  
8            justification to the person explaining the basis  
9            for the denial, including any specific laws or  
10           regulations the covered bank believes are being  
11           violated by the person or customer.

12           (2) JUSTIFICATION REQUIREMENT.—A jus-  
13           tification described in paragraph (1)(D) may not be  
14           based solely on the reputational risk to the covered  
15           bank.

16           (c) CAUSE OF ACTION FOR VIOLATIONS OF THIS  
17           SECTION.—

18           (1) IN GENERAL.—Notwithstanding any other  
19           provision of law, a person may commence a civil ac-  
20           tion in the appropriate district court of the United  
21           States against any covered bank or covered credit  
22           union that violates or fails to comply with the re-  
23           quirements under this section, for harm that person  
24           suffered as a result of such violation.

1           (2) NO EXHAUSTION.—It shall not be necessary  
2           for a person to exhaust its administrative remedies  
3           before commencing a civil action under this section.

4           (3) DAMAGES.—If a person prevails in a civil  
5           action under this section, a court shall award the  
6           person—

7                     (A) reasonable attorney’s fees and costs;

8                     and

9                     (B) treble damages.

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