Fair Access to Banking

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The approach in the Fair Access to Banking Act would be a misguided reaction to the U.S. government pressuring banks and other financial institutions to close customer accounts. Rather than respond to the government's role in this saga, the bill would instead target financial institutions. This approach fails to confront the root cause of the problem—governments increasingly using financial systems as tools of political influence and control.

As the world delves deeper into the digital age, governments have increasingly recognized that financial activity can be targeted to undermine political movements, shut down rivals, and circumvent traditional constraints. This phenomenon can be seen abroad where anti-money laundering laws have been used to go after political rivals and seen here in the United States where vague regulations have been used to shut down politically disfavored businesses.[1]

Nowhere was this reality more evident in the United States than the experience under Operation Choke Point—an Obama administration initiative to choke off businesses from access to financial services.[2] While many people believed this practice ended during the first Trump administration, concerns about debanking reemerged under the Biden administration.[3] Reports have shown that people affiliated with the cryptocurrency industry, religious groups, and others have had their financial accounts suddenly shut down with little to no explanation.[4] A common thread during this experience has been that banks have repeatedly told these customers they are not allowed to explain the decision.

To address these concerns, some members of Congress have proposed the Fair Access to Banking Act as a possible solution.[5] However, the methods prescribed in the Fair Access to Banking Act are troubling. In the worst case, the bill responds to government pressure on financial institutions by further restricting what those institutions are allowed to do. A better approach is to instead target the main source of the problem: misguided laws and regulations that allow the government to pressure these businesses in the first place. Congress should help expose how widespread debanking has become and cut out the tools that the government has used to pressure banks and other financial institutions.

A Brief Primer on Debanking

Usually characterized as the sudden closure of a financial account, debanking has been in and out of the headlines repeatedly

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over recent years.[6] However, the best place to begin in understanding this phenomenon is with Operation Choke Point—a 2013 initiative under the Obama administration.[7]

Originally led by the Department of Justice, "Operation Choke Point" was the official title of an initiative that went after controversial businesses between 2013 and 2017. The initiative began with the intent of targeting fraudulent businesses, but quickly spread to payday lenders, pawn shops, gun shops, state-licensed cannabis dispensaries, and other businesses.[8] However, instead of going after the businesses directly, the initiative targeted the financial system as a sort of bottleneck.[9]

One of the key tools in Operation Choke Point was the regulation of reputational risk.[10] As the name suggests, this practice involves shifting the focus of regulators away from traditional factors found on a financial institution's balance sheet and toward broader issues like negative publicity.[11] The thinking was that having a controversial person, business, or activity associated with a financial institution could cause clients to leave, and that exit could ultimately undermine the stability of the institution. When it came to the question of who might present a higher risk to the financial institution's reputation, the Federal Deposit Insurance Corporation at one point named 30 different categories of businesses.[12] This list included businesses like gun shops, coin dealers, firework shops, payday loans, and tobacco shops. Despite this list describing mostly legal businesses, the message was clear: doing business here meant facing higher scrutiny, higher compliance costs, and a higher chance of facing enforcement actions.[13]

Reputational risk, however, is not the only tool at the government's disposal. The laws and regulations surrounding the Bank Secrecy Act have also played a role in the sudden account closures.[14] For example, companies sending money between the United States and Somalia quickly found themselves debanked in 2015 after "a broad U.S. crackdown on money laundering."[15] In one case, the Office of the Comptroller of the Currency ordered Merchant Bank to shut down these companies' accounts unless it could "maintain sufficient transparency to reasonably ensure the legitimacy of the sources and uses of customer funds."[16] In other words, the government made it so costly to serve these customers that the bank had to shut down their accounts.

Ultimately, Operation Choke Point appeared to shut down after the end of the Obama administration. Although members of Congress introduced several bills, none of these bills were signed into law.[17] Instead, what ultimately signaled the end of Operation Choke Point was when assistant attorney general Stephen E. Boyd sent a letter to Congress in August 2017.[18] Boyd wrote, "All of the [Department of Justice's] bank investigations conducted as part of Operation Chokepoint are now over, the initiative is no longer in effect, and it will not be undertaken again."[19]

Reflecting on the absence of any binding constraints to prevent Operation Choke Point from returning, Dennis Shaul, CEO of the Community Financial Services Association of America, warned in 2018 that "A dangerous precedent has been set here. If

government regulators under one administration can target businesses they personally disfavor, any subsequent administration can do the same."[20] After a few years, Shaul's prediction came true with what would later be described by the public as "Operation Chokepoint 2.0."[21]

In 2020 and 2021, the Office of the Comptroller of the Currency sent interpretive letters to financial institutions to address the rising interest in cryptocurrency.[22] Concerns quickly spread that these letters were an underhanded attempt to stop financial institutions from engaging in cryptocurrency-related activities. Concerns spread so much that the Office of the Comptroller of the Currency later sent another letter to clarify that "the activities addressed in those interpretive letters are legally permissible for a bank to engage in, *provided* the bank can demonstrate, to the satisfaction of its supervisory office, that it has controls in place to conduct the activity in a safe and sound manner" (emphasis added).[23] However, this clarification was cause for concern in and of itself. The letter effectively said that financial institutions are legally allowed to participate in cryptocurrency-related activities, but they must first prove they can do so safely and get permission from regulators before moving forward.

The issue intensified in 2022 when the Federal Deposit Insurance Corporation began sending private letters instructing financial institutions to "pause" or "refrain from expanding" any and all cryptocurrency-related activity.[24] Although these letters would not become public for another two years, the Federal Deposit Insurance Corporation publicly released a joint statement with the Federal Reserve and Office of the Comptroller of the Currency in the beginning of 2023.[25] After listing a series of risks the regulators were concerned about, they warned financial institutions that "It is important that risks related to the crypto-asset sector that cannot be mitigated or controlled do not migrate to the banking system."[26] The regulators further said, "Given the significant risks highlighted by recent failures of several large crypto-asset companies, the agencies continue to take a careful and cautious approach related to current or proposed crypto-asset-related activities and exposures at each banking organization."[27] Less than a week later, Metropolitan Commercial Bank announced it would stop all cryptocurrency-related activity.[28]

With these experiences in mind, Castle Island Ventures founding partner Nic Carter described the experience as "Operation Choke Point 2.0" in February 2023 saying, "What began as a trickle is now a flood: the US government is using the banking sector to organize a sophisticated, widespread crackdown against the crypto industry."[29] And much like how Operation Choke Point began with a single target and then spread, it seems that Operation Choke Point 2.0 also spread beyond its initial focus on cryptocurrency. The *New York Times* revealed later in 2023 that it had discovered 500 people who recently had their bank accounts closed without explanation.[30] One customer learned after his credit card was denied that his account was shut down due to "unexpected activity." The bank refused to say more on the exact cause for termination other than that "Financial institutions have

an obligation to know our customers and monitor transactions."

In 2024, *Free Press* journalist Rupa Subramanya found the issue extended even further.[31] Across the country, Americans affiliated with religious groups, middle eastern countries, African countries, and politics were finding themselves debanked. A month later, additional attention came to the issue after Andreesen Horowitz cofounder Marc Andreessen appeared on the Joe Rogan Experience podcast and shared that he had seen at least 30 people debanked.[32] After years of issues bubbling up to the surface, the issue of debanking had captured the nation's attention and sent many policymakers looking for solutions.[33]

The Fair Access to Banking Act

With 36 cosponsors in the Senate and 126 cosponsors in the House, the Fair Access to Banking Act received considerable attention during the 118th Congress.[34] It's likely to be one of many approaches under consideration in the 119th Congress now that debanking and Operation Choke Point have once again captured the nation's attention.[35] However, the approach in the Fair Access to Banking Act would chart a troubling course for financial services. Rather than go after the government for pressuring financial institutions to cut ties with certain groups, the bill would set further restrictions on what those institutions may do. In doing so, the bill threatens to punish financial institutions by abruptly cutting off their access to services provided by the Federal Reserve, Federal Deposit Insurance Corporation, National Credit Union Administration, and even the National Automated Clearing House Association (a private business).[36]

Findings and Foundations

The findings sections of bills are not legally binding. However, these sections do help lay the foundation for a bill—especially when it comes to deciphering intent. Therefore, to understand the approach taken in the Fair Access to Banking Act, it is best to start with the findings in Section 2 of the bill.[37]

The section starts by correctly noting that banks were pressured by the government to cut off financial services to certain businesses under Operation Choke Point.[38] However, the focus is then quickly shifted away from government overreach—arguing that banks have since "privatized" Operation Choke Point by being selective about who they conduct business with. The bill goes on to say that banks being selective about their clients is "a threat to the national economy, national security, and the soundness of banking."[39] The argument in the bill is that it is wrong for banks to be selective about their clients because "banks are supported by the United States taxpayers and enjoy significant privileges" and therefore they "should not be permitted to act as de facto regulators or unelected legislators by withholding financial services to otherwise credit worthy businesses based on subjective political reasons, bias, or prejudices." The argument goes further to claim "banks are not well-equipped to balance risks unrelated to financial exposures."

With this framing in mind, Section 2 of the bill then attempts to explain what banks should do going forward. For example, it says that the "financial services a bank chooses to offer" must be "available to all customers based on quantitative, impartial risk-based standards of the bank, and not based on whether the customer is in a particular category of customers." Doing so must also be "on a case-by-case basis, rather than a category-based assessment." In closing, the findings section of the bill states that "banks are free to provide or deny financial services to any individual customer" so long as they follow the rules for doing so established by the government.

There is much to unpack here. However, the basic theory underlying the bill appears to be that banks should not have the freedom to deny customers so long as banks use government services. The bill appears to hedge this argument slightly by assuring the public that banks would still be "free" to make quantifiable assessments. However, what's written later in the bill (and legally binding) does not follow this assurance.

The Approach

To understand what the Fair Access to Banking Act would do in practice, the next step is to jump to the end of the bill where its definitions and requirements are established in Section 8. The most important parts of this section are Section 8(a)(5) and Section 8(b).

Section 8(a)(5) defines "fair access to financial services" as being when people engaged in lawful activity are "able to obtain financial services at banks without impediments caused by a prejudice against or dislike for a person or the business of the customer, products or services sold by the person, or favoritism for market alternatives to the business of the person." In practice, this condition means a bank cannot turn away a customer because they dislike their business or conduct. One point to note is that while the bill later presents conditions for banks, credit unions, and other financial institutions, the definition provided for "fair access" is written in a way that *only* appears to apply to "banks."

Section 8(b) sets the requirements of the bill. For a bank to be classified as providing fair access under this bill, "a covered bank" would have to "make each financial service [it] offers available" to everyone in the area served by the bank. Furthermore, a bank would not be allowed to deny services in coordination with or at the request of others. And again, while the bill later presents conditions for banks, credit unions, and other financial institutions, the requirement only appears to apply to "banks."

The requirement in Section 8(b) comes with two exceptions. A bank can only deny services if it finds it needs to do so "to comply with another provision of law" or because there is a "quantified and documented failure of the [customer] to meet quantitative, impartial risk-based standards" established by the bank. Should a denial be permissible under these circumstances, a bank is required to provide a written justification explaining the cause for closing the account. Crucially, the bill states reputational risk cannot be the sole justification.

Despite the bill being a response to the issue of debanking, these conditions would do nothing to prevent a bank from shutting down a customer's account in cases where regulators have made it exceedingly costly to continue offering services.[40] Even more importantly, these conditions would do nothing to stop regulators from pressuring banks in the first place. Consider the case of the companies that were debanked for doing business with Somalia. As previously described, the Office of the Comptroller of the Currency ordered these accounts to be shut down unless the bank could "maintain sufficient transparency to reasonably ensure the legitimacy of the sources and uses of customer funds."[41] On one hand, banks could claim the Fair Access to Banking Act's exception that it is too costly to maintain increased supervision of these accounts under these circumstances. On the other hand, banks could claim the Fair Access to Banking Act's other exception that they are complying with the laws under the Bank Secrecy Act. Either way, the conditions described in Section 8(b) would have done nothing to prevent the government from pressuring the banks to shut down the accounts.

Should a financial institution deny services in a manner inconsistent with the bill's definition of providing fair access to financial services, the institution would then in turn be denied access to a whole suite of public-sector and private-sector services. What services would be denied depends on what type of financial institution violated the law (Table 1). Sections 4, 5, 6, and 7 of the bill outline the consequences for member banks, nonmember banks, insured depository institutions, trust companies, payment card networks, and credit unions. As for the consequences, they include losing access to the Federal Reserve discount window, Federal Deposit Insurance Corporation insurance, the Federal Reserve's payment processing services, National Credit Union Administration insurance, and the Automated Clearing House Network.

There are several problems with these consequences. The biggest issue is the general idea of punishing financial institutions by cutting off access to often required government services for activity conducted at the government's request. Between the stigma associated with the discount window and the moral hazard problems associated with deposit insurance,

Table 1

Enforcement actions in the Fair Access to Banking Act would undermine financial stability

Institution	Violation	Consequence
Member Banks	Refusing to do business with any person who is in compliance with the law.	No access to the Federal Reserve's Discount Window and no access to the Automated Clearing House.
Insured Depository Institutions	Refusing to do business with any person who is in compliance with the law.	No access to the Federal Deposit Insurance Corporation's deposit insurance.
Nonmember Banks, Trust Companies, and Other Depository Institutions	Refusing to do business with any person who is in compliance with the law.	No access to the Federal Reserve's deposit or payment processing services.
Payment Card Networks	Refusing to do business with any person who is in compliance with the law because of political or reputational risk considerations.	Assessed a civil penalty by the Comptroller of the Currency no greater than 10 percent of the value of the services denied or $10,000.
Credit Unions	Refusing to do business with any person who is in compliance with the law.	No access to National Credit Union Administration insurance and no access to the Automated Clearing House.

Source: The Fair Access to Banking Act.
Note: Member banks, insured depository institutions, nonmember banks, trust companies, and other depository institutions must have at least $10 billion in total consolidated assets for the law to be applicable. Card networks do not have a threshold.

there are a great deal of reforms that should take place to achieve a more competitive and more efficient financial system.[42] However, suddenly cutting off access to deposit insurance, the discount window, and other banking services without other reforms could prove to be a death note for many financial institutions.

Under current law, banks and credit unions are often required to have deposit insurance to accept deposits. For example, deposit insurance is an explicit requirement for Maryland, New York, and other states' banking charters.[43] In effect, revoking a bank's deposit insurance would be to revoke their state charter. Putting such a consequence on the table would inadvertently introduce new risks to the financial system. It may be easy to say banks should be forced to operate without "help from the government" if they want to debank people, but current law has made banks dependent on these services.[44] Furthermore, in an ironic twist of fate, shutting down a financial institution for debanking one customer would then result in every customer (of that institution) being debanked.

The problems with the consequences run deeper as well. While Congress does have a role to play in setting the rules for government agencies like the Federal Reserve, Federal Deposit Insurance Corporation, National Credit Union Administration, and Office of the Comptroller of the Currency, the same cannot be said so easily of the National Automated Clearing House Association—the privately-run business who oversees the Automated Clearing House. The questionable nature of this enforcement action can be seen in the language of the bill where every enforcement action is built into existing law (e.g., 12 U.S.C. Section 347b, 12 U.S.C. Section 342, and 15 U.S.C. Section 1693o–2(c), and 12 U.S.C. Section 1786). The provisions regarding the Automated Clearing House, however, would be created as an entirely new statute—an early red flag that Congress could be venturing into uncharted waters. Losing access to the network would severely undermine a bank's ability to operate, but this provision may also constitute its own case of government overreach where the government would be "de-payment systeming" customers of the National Automated Clearing House Association.

Finally, the bill has a major error in how the consequences were drafted. The general format of the consequences described in Sections 4, 5, 6, and 7 of the bill is as follows:

> No [institution type] with more than $10,000,000,000 in total consolidated assets, or subsidiary of the [institution type], may use a [government program] if the [institution type] or subsidiary refuses to do business with any person who is in compliance with the law, including section 8 of the Fair Access to Banking Act.

The problem here is that this condition contradicts other language in the bill. First, the condition says no one can be denied service if they are in compliance with the law. This statement clashes with Section 2 and Section 8 of the bill where banks are promised the ability to deny services if they

can justify the decisions with quantifiable metrics. Second, the condition does point to Section 8 of the bill as a way to mend the contradiction, but the language in the bill ultimately says it is *the customer* who must be in compliance with Section 8, not the financial institution. Third, and finally, Section 8 is cited in the conditions for non-bank financial institutions, but Section 8 only references "banks" in its definition of fair access to financial services and its requirements. Therefore, Section 8 would not apply to credit unions, payment card networks, trust companies, or other financial institutions.

Recommendations

Congress should take a new approach to address the problem of debanking—one that both exposes how widespread debanking has become and cuts out the tools that the government has used to pressure banks and other financial institutions.

To expose how widespread debanking has become, Congress should repeal the confidentiality requirements that prevent financial institutions from telling customers why their accounts were closed. Time after time, customers have reported feeling helpless because banks inform them that they are not allowed to say why the account was closed.[45] To be clear, so long as banks are still required to file suspicious activity reports under the Bank Secrecy Act and are at risk of being held at fault if they miss a report, "all their incentives are toward closing accounts."[46] The difference, however, is that customers will actually be allowed to know the issue and, in turn, share that with others. Some people may be tempted to defend the secrecy of these reports on the grounds that notifying customers would tip off criminals, but the government has yet to prove that these reports have actually been effective in identifying criminal activity in the first place.[47] All the available evidence suggests the majority of these reports are filed on innocent Americans.[48]

While members of Congress may be tempted to go further and force financial institutions to explain their actions, this path is not necessary. If a financial institution chooses to leave customers in the dark, it will be their own downfall as they become known for being unreliable. Yet, one major obstacle that has prevented market forces from addressing the issue previously has been the plea that banks would inform customers of the truth had only they been allowed to. Congress should remove this veil of confidentiality. To achieve this end, Congress should repeal 31 U.S.C. Section 5318(g)(2), 12 U.S.C. Section 3420(b), and 18 U.S.C. Section 1510. Furthermore, Congress should instruct the Federal Reserve to reform 12 C.F.R. Part 261 and instruct the Federal Deposit Insurance Corporation to reform 12 C.F.R Part 309 so financial institutions that are the subject of confidential supervisory information may share that information as they see fit.[49] Doing so would go a long way in adding transparency that would help better identify if additional reforms are needed.

To cut out the tools that the government has used to pressure banks and other financial institutions, Congress should end the use of reputational risk to shut down accounts. Financial institutions should be

free to tailor their reputations as they see fit with the customers that fit their business plans so long as neither party is breaking the law. To take this tool off the table, Congress could use the following language:[50]

> (1) IN GENERAL.—If a government official formally or informally requests or orders a financial institution to terminate a specific customer account or a group of customer accounts, the government official shall—
>
> > (A) provide such request or order to the financial institution in writing; and
> >
> > (B) accompany such request or order with a written justification for why such termination is needed, including any specific laws or regulations the government official believes are being violated by the customer or group of customers, if any.
>
> (2) JUSTIFICATION REQUIREMENT.—A justification described under paragraph (1)(B) may not be based solely on the reputation risk to the financial institution.

Congress should also look to reform the larger Bank Secrecy Act regime.[51] While the costs of this system have been evident in the accounts shut down, the money spent on compliance, and the privacy lost, the government has yet to provide compelling evidence that these trade-offs deliver meaningful benefits.[52] Repealing the Bank Secrecy Act, repealing the reporting requirements, or even just reforming the reporting requirements could all go a long way in changing the incentives financial institutions face.

Motivated government officials may find other ways to pressure financial institutions to close accounts. However, these tools have been left on the table for far too long. It's time for Congress to rein in the regulators.

Conclusion

The issue of debanking has rightly generated significant concern in the halls of Congress, but the approach taken in the Fair Access to Banking Act is not the right solution. Rather than respond to the government's role in this saga, the bill would instead target financial institutions. Instead, to get to the heart of this problem, Congress should help expose how widespread debanking has become and cut out the tools that the government has used to pressure banks and other financial institutions. To do so, Congress should reform the Bank Secrecy Act regime by repealing (at the very least) the confidentiality requirements associated with filing suspicious activity reports. Then, Congress should end the practice of using the regulation of reputational risk to justify closing accounts. These measures would greatly decrease the chances of an Operation Choke Point 3.0 while still respecting the freedoms of all parties involved.

Appendix: Key Dates

The following timeline is not an exhaustive list, but it does showcase notable developments between 2012 and 2024. These developments show a consistent trend of the U.S. government pressuring financial institutions to deny services to legal businesses.

- November 2012: Assistant United States Attorney officially proposes "Operation Choke Point."[53]
- February 2013: The Department of Justice subpoenas banks for customers' information.[54]
- March 2013: First public description of Operation Choke Point.[55]
- May 2013: Reports emerge of people working in the adult entertainment industry debanked.[56]
- May 2014: U.S. House committee issues report criticizing Operation Choke Point.[57]
- February 2015: Businesses working with Somalia debanked. [58]
- February 2016: Obama administration threatens to veto legislative response to stop Operation Choke Point.[59]
- August 2017: The Department of Justice commits to ending Operation Choke Point.[60]
- July 2020-January 2021: The Office of the Comptroller of the Currency sent interpretive letters to financial institutions to address the rising interest in cryptocurrency.[61]
- November 2021: The Office of the Comptroller of the Currency clarified its stance on cryptocurrency activity.[62]
- March - October 2022: FDIC instructs financial institutions in a series of private letters to "pause all crypto asset-related activity."[63]
- January 2023: The Federal Reserve, FDIC, and OCC release a joint statement to discourage banks from engaging with cryptocurrency due to risks to safety and soundness.[64]
- February 2023: Concerns emerge of Operation Choke Point 2.0.[65]
- November 2023: The New York Times reveals study of over 500 cases of debanking.[66]
- November 2024: Investor Marc Andreesen shares he personally knows of 30 people debanked.[67]

Notes

[1] Félix Maradiaga, "How Dictators Use Financial Repression Against Their Opponents," *Journal of Democracy*, November 2024; Rupa Subramanya, "The Debanking of America," *The Free Press*, October 17, 2024; Blaine Leutkemeyer, "Evidence Is Now Clear: Operation Choke Point Hurt Lawful Businesses," *American Banker*, October 24, 2018.

[2] Iain Murray, "Operation Choke Point: What It Is and Why It Matters," Competitive Enterprise Institute, July 2014.

[3] As will be discussed at length later in the paper, assistant attorney general Stephen E. Boyd wrote a letter in August 2017 to assure members of Congress that Operation Choke Point had been shut down. However, concerns emerged again in 2023 that the tools used in Operation Choke Point were once again in effect. Stephen E. Boyd, Stephen E. Boyd to Bob Goodlatte, August 16, 2017; Nic Carter, "Operation Choke Point 2.0 Is Underway, And Crypto Is In Its Crosshairs," *Pirate Wires*, February 8, 2023.

[4] Rupa Subramanya, "The Debanking of America," *The Free Press*, October 17, 2024.

[5] Committee on Banking, Housing, and Urban Affairs, Fair Access to Banking Act, U.S. Senate, 118th Cong., 1st Sess., Report no. 118-293, 2023.

[6] Rupa Subramanya, "The Debanking of America," *Free Press*, October 17, 2024; Nicholas Anthony, "The Writers at Saturday Night Live Need to Learn About Debanking," *Coin Telegraph*, February 6, 2024; Tara Siegel Bernard and Ron Lieber, "Banks Are Closing Customer Accounts, With Little Explanation," *New York Times*, April 8, 2023.

[7] Operation Choke Point may be the first formal initiative, but the issue of debanking existed prior to its inception. For example, in 2010, reports emerged that foreign embassies based in Washington D.C. received notice "with no explanation whatsoever" that their accounts were being shut down. According to the State Department at the time, however, "several banks… are calculating that the effort spent making sure government accounts are not being abused for money laundering purposes, sometimes with suspected links to terrorism, is becoming too complicated and costly to justify keeping the accounts." In fact, earlier that same year, the Senate Permanent Committee on Investigations criticized Angola "for an ongoing corruption problem, weak anti-money laundering (AML) controls, and a cash-intensive banking system." Josh Roggin, "37 Embassies in Washington Face Banking Crisis," *Foreign Policy*, November 19, 2010; Carl Levin, "Opening Statement of Sen. Carl Levin, Permanent Subcommittee on Investigations Hearing on Keeping Foreign Corruption Out of the United States: Four Case Histories," Press Release, February 4, 2010.

[8] U.S. House of Representatives Committee on Oversight and Government Reform, "Choke Point Appendix 1 of 2," Staff Report, May 29, 2014.

[9] Alan Zibel and Brent Kendall, "Probe Turns Up Heat on Banks," *Wall Street Journal*, August 7, 2013.

[10] Julie Hill, "Why Government Shouldn't Regulate Reputation Risk at Banks," Mercatus Center, April 23, 2020.

[11] Federal Deposit Insurance Corporation, "Guidance for Managing Third-Party Risk," 2008.

[12] The full list of high risk categories included ammunition sales, cable box de-scramblers, coin dealers, credit card schemes, credit repair, services dating services, debt consolidation scams, drug paraphernalia, escort services, firearm sales, firework sales, get rich products, government grants, home-based charities, life-time guarantees, life-time memberships, lottery sales, mailing lists, money transfer networks, online gambling, payday loans, pharmaceutical sales, Ponzi schemes, pornography, pyramid sales, racist materials, surveillance equipment, telemarketing, tobacco sales, travel clubs. U.S. House of Representatives Committee on Oversight and Government Reform, "The Department of Justice's 'Operation Choke Point': Illegally Choking Off Legitimate Businesses?" Staff Report, May 29, 2014.

[13] As Allysia Finley would later put it: "When government makes a suggestion, it's an order. As a result, banks may have felt compelled to close accounts—without being able to inform customers of their reason for doing so." Allysia Finley, "Debanking and the Return of Operation Choke Point," *Wall Street Journal*, December 12, 2024.

[14] Norbert Michel and Jennifer Schulp, "Revising the Bank Secrecy Act to Protect Privacy and Deter Criminals," Cato Institute, July 26, 2022.

[15] As Ryan Tracy explained in the *Wall Street Journal*, "Somali companies have had trouble obtaining bank accounts for years, in large part because banks and regulators fear the firms could, knowingly or not, facilitate illicit fundraising for terrorist groups operating there. The obstacles to obtaining an account intensified in recent years as many banks have pulled back from operating in high-risk countries or from providing banking services for check cashers, remittance companies and other businesses considered to pose elevated money-laundering risk." Ryan Tracy, "Bank to Close Accounts Related to Somalia," *Wall Street Journal*, February 4, 2015.

[16] Ryan Tracy, "Bank to Close Accounts Related to Somalia," *Wall Street Journal*, February 4, 2015.

[17] Bills introduced to address Operation Choke Point included the End Operation Choke Point Act of 2014 and the Firearms Manufacturers and Dealers Protection Act of 2015. Committee on Financial Services, End Operation Choke Point Act of 2014, U.S. House, 113th Cong., 2nd Sess., Report no. 113-4986, 2014; Committee on Financial Services, Firearms Manufacturers and Dealers Protection Act of 2015, U.S. House, 114th Cong., 1st Sess., Report no. 114-1413, 2015.

[18] Stephen E. Boyd, Stephen E. Boyd to Bob Goodlatte, August 16, 2017.

[19] Distancing the new administration from Operation Choke Point, Boyd also described the operation as "a misguided initiative conducted during the previous administration." Stephen E. Boyd, Stephen E. Boyd to Bob Goodlatte, August 16, 2017.

[20] Dennis Shaul, "There's No Downplaying the Impact of Operation Choke Point," *American Banker*, November 28, 2018.

[21] Nic Carter, "Operation Choke Point 2.0 Is Underway, And Crypto Is In Its Crosshairs," *Pirate Wires*, February 8, 2023; Nicholas Anthony, "Is Operation Choke Point Bank and Targeting Cryptocurrencies?" *Cato at Liberty* (blog), February 23, 2023.

[22] Office of the Comptroller of the Currency, "Authority of a National Bank to Provide Cryptocurrency Custody Services for Customers," Interpretive Letter #1170, July 22, 2020; Office of the Comptroller of the Currency, "OCC Chief Counsel's Interpretation on National Bank and Federal Savings Association Authority to Hold Stablecoin Reserves," Interpretive Letter #1172, September 21, 2020; Office of the Comptroller of the Currency, "OCC Chief Counsel's

Interpretation on National Bank and Federal Savings Association Authority to Use Independent Node Verification Networks and Stablecoins for Payment Activities," Interpretive Letter #1174, January 4, 2021.

[23] Office of the Comptroller of the Currency, "Chief Counsel's Interpretation Clarifying: (1) Authority of a Bank to Engage in Certain Cryptocurrency Activities; and (2) Authority of the OCC to Charter a National Trust Bank," Interpretive Letter #1179, November 2021.

[24] History Associates Inc. v. FDIC, November 22, 2024.

[25] Federal Deposit Insurance Corporation. "Joint Statement on Crypto-Asset Risks to Banking Organizations," Press Release, January 3, 2023.

[26] Federal Deposit Insurance Corporation. "Joint Statement on Crypto-Asset Risks to Banking Organizations," Press Release, January 3, 2023.

[27] Federal Deposit Insurance Corporation. "Joint Statement on Crypto-Asset Risks to Banking Organizations," Press Release, January 3, 2023.

[28] Metropolitan Commercial Bank, "Metropolitan Bank Holding Corp. to Exit Crypto-Asset Related Vertical," Press Release, January 9, 2023.

[29] Nic Carter, "Operation Choke Point 2.0 Is Underway, And Crypto Is In Its Crosshairs," *Pirate Wires*, February 8, 2023.

[30] Tara Siegel Bernard and Ron Lieber, "Banks Are Closing Customer Accounts, With Little Explanation," *New York Times*, April 8, 2023; Ron Lieber and Tara Siegel Bernard, "Why Banks Are Suddenly Closing Down Customer Accounts," *New York Times*, November 5, 2023.

[31] Rupa Subramanya, "The Debanking of America," *Free Press*, October 17, 2024.

[32] Critics correctly pointed out that Andreessen made a number of errors. However, his general description of the issues in the current financial system are correct. PowerfulJRE, "Joe Rogan Experience #2234 - Marc Andreessen," YouTube video, November 26, 2024.

[33] Competitive Enterprise Institute (@ceidotorg), "CEI hosted a Capitol Hill briefing today with @SenLummis to discuss Operation Choke Point 2.0 and the pernicious trend of debanking. Senator Lummis is a leader on crypto and banking issues, & is wholly committed to ending the weaponization and politicization of finance," X, December 11, 2024, 4:27 p.m., https://x.com/ceidotorg/status/1866958012344307993; Ritchie Torres (@RitchieTorres), "I sit on the House Financial Services Committee, which oversees the banking regulators. I am aware of no real limitation on the ability of banking regulators to de-bank law-abiding citizens and businesses without due process of law. The federal government's unfettered powers of de-banking represents an insidious threat to civil liberties in America. Marc Andreessen raises a real issue that transcends partisanship," X, December 1, 2024, 3:52 p.m., https://x.com/RitchieTorres/status/1863325426875326521; U.S. Senate Banking Committee GOP (@BankingGOP), "No legal business should ever be debanked. But make no mistake, Director Chopra is not an ally in the fight against debanking, and neither are the career bureaucrats @CFPB. Director Chopra's recent actions are little more than an attempt to expand the CFPB's jurisdiction," December 11, 2024, 3:17 p.m., https://x.com/BankingGOP/status/1866940390638784517.

[34] Committee on Banking, Housing, and Urban Affairs, Fair Access to Banking Act, U.S. Senate, 118th Cong., 1st Sess., Report no. 118-293, 2023; Committee on Financial Services, Fair Access to Banking Act, U.S. House, 118th Cong., 1st Sess., Report no. 118-2743, 2023.
[35] Allysia Finley, "Debanking and the Return of Operation Choke Point," *Wall Street Journal*, December 12, 2024.
[36] As addressed later in the paper, this paper's criticism of abruptly cutting off access to these services should not be mistaken for a sweeping defense of these services.
[37] The purposes in Section 3 are skipped only because the largely reiterate what was already stated in Section 2.
[38] Despite other sections in the bill naming credit unions, card networks, and other financial institutions, Section 2 of the bill only makes reference to banks.
[39] Committee on Banking, Housing, and Urban Affairs, Fair Access to Banking Act, U.S. Senate, 118th Cong., 1st Sess., Report no. 118-293, 2023.
[40] For example, companies working with Somalia were cut off after regulators set unrealistic standards for banks serving those customers. Ryan Tracy, "Bank to Close Accounts Related to Somalia," *Wall Street Journal*, February 4, 2015.
[41] Ryan Tracy, "Bank to Close Accounts Related to Somalia," *Wall Street Journal*, February 4, 2015.
[42] To learn more about both the stigma associated with the discount window and the moral hazard problems associated with deposit insurance, see George Selgin, "Vice Chair Quarles' Stigma Problem," *Cato at Liberty* (blog), February 13, 2020; George Selgin, "Envisioning Monetary Freedom," *Cato Journal*, Spring/Summer 2020.
[43] For an example of how deposit insurance has become a legal requirement, see Maryland Code, Financial Institutions, Title 5, Subtitle 5, Section 5-509, https://law.justia.com/codes/maryland/financial-institutions/title-5/subtitle-5/section-5-509/; Consolidated Laws of New York, Chapter 2, Article 5-C, Section 222(12), https://law.justia.com/codes/new-york/bnk/article-5-c/222/; Connecticut General Statues, Title 36a, Chapter 664b, Section 36a-70, https://law.justia.com/codes/connecticut/2019/title-36a/chapter-664b/section-36a-70/.
[44] It is also worth briefly noting that financial institutions do not receive these services for no charge. For deposit insurance from the Federal Deposit Insurance Corporation, banks must pay premiums and other direct costs. For example, insured institutions spent $3.2 billion on premiums in the fourth quarter of 2023. However, that does not account for the costs incurred after the closures of Silicon Valley Bank and Signature Bank in 2023. To that end, financial institutions faced another cost. As explained by the Federal Deposit Insurance Corporation, "The cost to the Deposit Insurance Fund of protecting the uninsured depositors will be paid for through a special assessment on the banking industry, consistent with the statute." To name just two examples, Bank of America spent $2.1 billion and Wells Fargo spent $1.9 billion on this special assessment in the fourth quarter of 2023. Federal Deposit Insurance Corporation, "Annual Report 2023," February 22, 2024; Bank of America, "Bank of America Reports Fourth-Quarter 2023 Financial Results," January 12, 2024; Wells Fargo, "4Q3 Financial Results," January 12, 2024; Federal Deposit Insurance Corporation, "Special Assessment Pursuant to Systemic Risk Determination," Deposit Insurance Assessments.

[45] Tara Siegel Bernard and Ron Lieber, "Banks Are Closing Customer Accounts, With Little Explanation," *New York Times*, April 8, 2023; Ron Lieber and Tara Siegel Bernard, "Why Banks Are Suddenly Closing Down Customer Accounts," *New York Times*, November 5, 2023; Rupa Subramanya, "The Debanking of America," The FP, October 17, 2024.
[46] Bank Policy Institute, "The Truth About Suspicious Activity Reports," Bank Policy Institute, September 22, 2020.
[47] Nicholas Anthony, "Update on Anti-Money Laundering Data from FinCEN," *Cato at Liberty* (blog), September 16, 2024.
[48] Nicholas Anthony, "Update on Anti-Money Laundering Data from FinCEN," *Cato at Liberty* (blog), September 16, 2024.
[49] Another issue to consider is that of matters requiring attention (commonly abbreviated as MRAs). However, they are a more complicated matter given that "MRAs have no origin or even reference in law or regulation; rather, they have grown up as an informal convention in the examination process, and since taken formal root." Greg Baer and Jeremy Newell, "The MRA is the Core of Supervision, but Common Standards and Practices are MIA," *Bank Policy Institute*, February 8, 2018.
[50] This language is modified from Committee on Financial Services, Financial Institution Customer Protection Act of 2017, 115th Cong., 1st Sess., Report no. 115-2706, 2017.
[51] Norbert Michel and Jennifer Schulp, "Revising the Bank Secrecy Act to Protect Privacy and Deter Criminals," *Cato Institute*, July 26, 2022.
[52] Nicholas Anthony, "Update on Anti-Money Laundering Data from FinCEN," *Cato at Liberty* (blog), September 16, 2024.
[53] U.S. House of Representatives Committee on Oversight and Government Reform, "Choke Point Appendix 1 of 2," Staff Report, May 29, 2014.
[54] Iain Murray, "Operation Choke Point: What It Is and Why It Matters," Competitive Enterprise Institute, July 2014.
[55] Iain Murray, "Operation Choke Point: What It Is and Why It Matters," Competitive Enterprise Institute, July 2014.
[56] Iain Murray, "Operation Choke Point: What It Is and Why It Matters," Competitive Enterprise Institute, July 2014.
[57] U.S. House of Representatives Committee on Oversight and Government Reform, "The Department of Justice's "Operation Choke Point": Illegally Choking Off Legitimate Businesses?" Staff Report, May 29, 2014.
[58] Ryan Tracy, "Bank to Close Accounts Related to Somalia," *Wall Street Journal*, February 4, 2015.
[59] White House, "H.R. 766 – Financial Institution Customer Protection Act of 2015," Statement of Administration Policy, February 2, 2016.
[60] Stephen E. Boyd, Stephen E. Boyd to Bob Goodlatte, August 16, 2017.
[61] Office of the Comptroller of the Currency, "Authority of a National Bank to Provide Cryptocurrency Custody Services for Customers," Interpretive Letter #1170, July 22, 2020; Office of the Comptroller of the Currency, "OCC Chief Counsel's Interpretation on National Bank and Federal Savings Association Authority to Hold Stablecoin Reserves," Interpretive Letter #1172, September 21, 2020; Office of the Comptroller of the Currency, "OCC Chief Counsel's

Interpretation on National Bank and Federal Savings Association Authority to Use Independent Node Verification Networks and Stablecoins for Payment Activities," Interpretive Letter #1174, January 4, 2021.

[62] Office of the Comptroller of the Currency, "Chief Counsel's Interpretation Clarifying: (1) Authority of a Bank to Engage in Certain Cryptocurrency Activities; and (2) Authority of the OCC to Charter a National Trust Bank," Interpretive Letter #1179, November 18, 2021.

[63] History Associates Inc. v. FDIC, November 22, 2024.

[64] Federal Deposit Insurance Corporation. "Joint Statement on Crypto-Asset Risks to Banking Organizations," January 3, 2023.

[65] Nic Carter, "Operation Choke Point 2.0 Is Underway, And Crypto Is In Its Crosshairs," *Pirate Wires*, February 8, 2023.

[66] Ron Lieber and Tara Siegel Bernard, "Why Banks Are Suddenly Closing Down Customer Accounts," *New York Times*, November 5, 2023.

[67] PowerfulJRE, "Joe Rogan Experience #2234 - Marc Andreessen," YouTube video, November 26, 2024.