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S. 563

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.

IN THE SENATE OF THE UNITED STATES

MARCH 3, 2021

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

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,*

3 **SECTION 1. SHORT TITLE.**

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

1 **SEC. 2. FINDINGS.**

2 Congress finds that—

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

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

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

19 (4) the privatization of the discriminatory prac-
20 tices underlying Operation Choke Point by banks
21 represents as great a threat to the national economy,
22 national security, and the soundness of banking and
23 financial markets in the United States as Operation
24 Choke Point itself;

25 (5) banks are supported by the United States
26 taxpayers and enjoy significant privileges in the fi-

1 nancial system of the United States and should not
2 be permitted to act as de facto regulators or
3 unelected legislators by withholding financial services
4 to otherwise credit worthy businesses based on sub-
5 jective political reasons, bias or prejudices;

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

9 (7) the United States taxpayers came to the aid
10 for large banks during the great recession of 2008
11 because they were deemed too important to the na-
12 tional economy to be permitted to fail;

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

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

1 (10) while fair access to financial services does
2 not obligate a bank to offer any particular financial
3 service to the public, or to operate in any particular
4 geographic area, or to provide a service the bank of-
5 fers to any particular person, it is necessary that—

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

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

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

21 (11) banks are free to provide or deny financial
22 services to any individual customer, but first, the
23 banks must rely on empirical data that are evaluated
24 consistent with the established, impartial risk-man-
25 agement standards of the bank; and

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

7 **SEC. 3. PURPOSE.**

8 The purposes of this Act are to—

9 (1) ensure fair access to financial services and
10 fair treatment of customers by financial service pro-
11 viders, including national and state banks, Federal
12 savings associations and State and Federal credit
13 unions;

14 (2) ensure banks conduct themselves in a safe
15 and sound manner, comply with laws and regula-
16 tions, treat their customers fairly, and provide fair
17 access to financial services;

18 (3) protect against banks being able to impede
19 otherwise lawful commerce and thereby achieve cer-
20 tain public policy goals;

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

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

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

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

11 “(c) PROHIBITION ON USE OF DISCOUNT WINDOW
12 LENDING PROGRAMS.—No member bank with more than
13 \$10,000,000,000 in total consolidated assets, or sub-
14 sidiary of the member bank, may use a discount window
15 lending program if the member bank or subsidiary refuses
16 to do business with any person who is in compliance with
17 the law, including section 8 of the Fair Access to Banking
18 Act.”.

19 (b) INSURED DEPOSITORY INSTITUTIONS.—Section
20 8(a)(2)(A) of the Federal Deposit Insurance Act (12
21 U.S.C. 1818(a)(2)(A)) is amended—

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

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

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

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

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

19 **SEC. 5. PAYMENT CARD NETWORK.**

20 (a) **DEFINITION.**—In this section, the term “payment
21 card network” has the meaning given the term in section
22 921(c) of the Electronic Fund Transfer Act (15 U.S.C.
23 1693o–2(c)).

24 (b) **PROHIBITION.**—No payment card network, in-
25 cluding a subsidiary of a payment card network, may, di-

1 rectly or through any agent, processor, or licensed member
 2 of the network, by contract, requirement, condition, pen-
 3 alty, or otherwise, prohibit or inhibit the ability of any per-
 4 son who is in compliance with the law, including section
 5 8 of this Act, to obtain access to services or products of
 6 the payment card network because of political or
 7 reputational risk considerations.

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

13 **SEC. 6. CREDIT UNIONS.**

14 Section 206(b)(1) of the Federal Credit Union Act
 15 (12 U.S.C. 1786) is amended by inserting “or is refusing
 16 or has refused, or has a subsidiary that is refusing or has
 17 refused, to do business with any person who is in compli-
 18 ance with the law, including section 8 of the Fair Access
 19 to Banking Act,” after “as an insured credit union,”.

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

21 (a) DEFINITIONS.—In this section:

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

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

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

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

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

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

22 (a) DEFINITIONS.—In this section:

23 (1) BANK.—The term “bank”—

24 (A) means an entity for which the Office
 25 of the Comptroller of the Currency is the appro-

1 private Federal banking agency, as defined in
 2 section 3 of the Federal Deposit Insurance Act
 3 (12 U.S.C. 1813); and

4 (B) includes—

5 (i) member banks;

6 (ii) non-member banks;

7 (iii) covered credit unions;

8 (iv) State-chartered non-member
 9 banks; and

10 (v) trust companies.

11 (2) COVERED BANK.—

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

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

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

20 (B) PRESUMPTION.—

21 (i) IN GENERAL.—A bank shall not be
 22 presumed to be a covered bank if the bank
 23 has less than \$10,000,000,000 in total as-
 24 sets.

25 (ii) REBUTTABLE PRESUMPTION.—

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

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

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

16 (A) any insured credit union, as defined in
17 section 101 of the Federal Credit Union Act
18 (12 U.S.C. 1752); or

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

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

1 (5) FAIR ACCESS TO FINANCIAL SERVICES.—

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

10 (6) FINANCIAL SERVICE.—The term “financial
 11 service” means a financial product or service, includ-
 12 ing—

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

24 (7) MEMBER BANK.—The term “member bank”
 25 has the meaning given the term in the third undesig-

1 nated paragraph of the first section of the Federal
2 Reserve Act (12 U.S.C. 221).

3 (8) PERSON.—The term “person”—

4 (A) means—

5 (i) any natural person; or

6 (ii) any partnership, corporation, or
7 other business or legal entity; and

8 (B) includes a customer.

9 (b) REQUIREMENTS.—

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

14 (A) make each financial service it offers
15 available to all persons in the geographic mar-
16 ket served by the covered bank on proportion-
17 ally equal terms;

18 (B) not deny any person a financial service
19 the covered bank offers unless the denial is jus-
20 tified by such quantified and documented fail-
21 ure of the person to meet quantitative, impar-
22 tial risk-based standards established in advance
23 by the covered bank;

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

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

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

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

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

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

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

8 and

9 (B) treble damages.

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