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1ST SESSION

H. R. 987

To amend certain banking laws 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 HOUSE OF REPRESENTATIVES

FEBRUARY 5, 2025

Mr. BARR (for himself, Mr. MEUSER, Mr. SCOTT FRANKLIN of Florida, Mr. CLYDE, and Mr. HARRIGAN) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To amend certain banking laws 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”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

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

6 (2) financial institutions rightly objected to the
7 Operation Choke Point initiative through which cer-
8 tain government agencies pressured financial institu-
9 tions to cut off access to financial services to lawful
10 sectors of the economy;

11 (3) in response to pressure from advocates
12 whose policy objectives are served when financial in-
13 stitutions deny certain customers access to financial
14 services, financial institutions are now, however, in-
15 creasingly employing subjective, category-based eval-
16 uations to deny certain persons access to financial
17 services;

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

24 (5) financial institutions are supported by the
25 United States taxpayers and enjoy significant privi-

1 leges in the financial system of the United States
2 and should not be permitted to act as de facto regu-
3 lators or unelected legislators by withholding finan-
4 cial services to otherwise credit worthy businesses
5 based on subjective political reasons, bias or preju-
6 dices;

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

10 (7) the United States taxpayers came to the aid
11 for large financial institutions during the great re-
12 cession of 2008 because they were deemed too im-
13 portant to the national economy to be permitted to
14 fail;

15 (8) when a financial institution predicates the
16 access to financial services of a person on factors or
17 information (such as the lawful products a customer
18 manufactures or sells or the services the customer
19 provides) other than quantitative, impartial risk-
20 based standards, the financial institution has failed
21 to act consistent with basic principles of sound risk
22 management and failed to provide fair access to fi-
23 nancial services;

24 (9) financial institutions have a responsibility to
25 make decisions about whether to provide a person

1 with financial services on the basis of impartial cri-
2 teria free from prejudice or favoritism;

3 (10) while fair access to financial services does
4 not obligate a financial institution to offer any par-
5 ticular financial service to the public, or to operate
6 in any particular geographic area, or to provide a
7 service the financial institution offers to any par-
8 ticular person, it is necessary that—

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

17 (B) financial institutions assess the risks
18 posed by individual customers on a case-by-case
19 basis, rather than category-based assessment;
20 and

21 (C) financial institutions implement con-
22 trols to manage relationships commensurate
23 with these risks associated with each customer,
24 not a strategy of total avoidance of particular
25 industries or categories of customers;

1 (11) financial institutions are free to provide or
2 deny financial services to any individual customer,
3 but first, the financial institutions must rely on em-
4 pirical data that are evaluated consistent with the
5 established, impartial risk-management standards of
6 the financial institution; and

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

13 **SEC. 3. PURPOSE.**

14 The purposes of this Act are to—

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

20 (2) ensure financial institutions conduct them-
21 selves in a safe and sound manner, comply with laws
22 and regulations, treat their customers fairly, and
23 provide fair access to financial services;

1 (3) protect against financial institutions being
2 able to impede otherwise lawful commerce and there-
3 by achieve certain public policy goals;

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

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

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

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

18 “(c) PROHIBITION ON USE OF DISCOUNT WINDOW
19 LENDING PROGRAMS.—No member bank with more than
20 \$50,000,000,000 in total consolidated assets, or sub-
21 sidiary of the member bank, may use a discount window
22 lending program if the member bank or subsidiary refuses
23 to do business with any person who is in compliance with
24 the law, including section 8 of the Fair Access to Banking
25 Act.”.

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

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

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

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

8 “(iv) an insured depository institution
9 with more than \$500,000,000,000 in total
10 consolidated assets, or subsidiary of the in-
11 sured depository institution, that refuses to
12 do business with any person who is in com-
13 pliance with the law, including section 8 of
14 the Fair Access to Banking Act.”.

15 (c) NONMEMBER BANKS, TRUST COMPANIES, AND
16 OTHER DEPOSITORY INSTITUTIONS.—Section 13 of the
17 Federal Reserve Act (12 U.S.C. 342) is amended by in-
18 serting “*Provided further*, That no such nonmember bank
19 or trust company or other depository institution with more
20 than \$50,000,000,000 in total consolidated assets, or sub-
21 sidiary of such nonmember bank or trust company or
22 other depository institution, may refuse to do business
23 with any person who is in compliance with the law, includ-
24 ing, including section 8 of the Fair Access to Banking
25 Act:” after “appropriate:”.

1 **SEC. 5. PAYMENT CARD NETWORKS.**

2 (a) DEFINITION.—In this section, the term “payment
3 card network” has the meaning given the term in section
4 921(c) of the Electronic Fund Transfer Act (15 U.S.C.
5 1693o–2(c)).

6 (b) PROHIBITION.—No payment card network, in-
7 cluding a subsidiary of a payment card network, may, di-
8 rectly or through any agent, processor, or licensed member
9 of the network, by contract, requirement, condition, pen-
10 alty, or otherwise, prohibit or inhibit the ability of any per-
11 son who is in compliance with the law, including section
12 8 of this Act, to obtain access to services or products of
13 the payment card network because of political or
14 reputational risk considerations.

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

20 **SEC. 6. CREDIT UNIONS.**

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

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

2 (a) DEFINITIONS.—In this section:

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

5 (A) any insured credit union, as defined in
6 section 101 of the Federal Credit Union Act
7 (12 U.S.C. 1752); or

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

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

16 (b) PROHIBITION.—No covered credit union, member
17 bank, or State-chartered non-member bank with more
18 than \$50,000,000,000 in total consolidated assets, or a
19 subsidiary of the covered credit union, member bank, or
20 State-chartered non-member bank, may use the Auto-
21 mated Clearing House Network if that member bank,
22 credit union, or subsidiary of the member bank or credit
23 union, refuses to do business with any person who is in
24 compliance with the law, including section 8 of this Act.

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

26 (a) DEFINITIONS.—In this section:

1 (1) BANK.—The term “bank”—

2 (A) means an entity for which the Office
3 of the Comptroller of the Currency is the appro-
4 priate Federal banking agency, as defined in
5 section 3 of the Federal Deposit Insurance Act
6 (12 U.S.C. 1813); and

7 (B) includes—

8 (i) member banks;

9 (ii) non-member banks;

10 (iii) covered credit unions;

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

13 (v) trust companies.

14 (2) COVERED BANK.—

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

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

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

23 (B) PRESUMPTION.—

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

1 has less than \$50,000,000,000 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 \$50,000,000,000 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. Refusing to provide or continue to pro-
13 vide financial services to a person because the per-
14 son engaged in rude or harassing conduct toward an
15 employee of a bank is not a violation of this section.

16 (6) FINANCIAL SERVICE.—The term “financial
17 service” means a financial product or service, includ-
18 ing—

- 19 (A) commercial and merchant banking;
20 (B) lending;
21 (C) financing;
22 (D) leasing;
23 (E) cash, asset and investment manage-
24 ment and advisory services;
25 (F) credit card services;

1 (G) payment processing;

2 (H) security and foreign exchange trading
3 and brokerage services; and

4 (I) insurance products.

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

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), except as necessary to
13 comply with another provision of law—

14 (A) shall make each financial service it of-
15 fers available to all persons in the geographic
16 market served by the covered bank on propor-
17 tionally equal terms;

18 (B) may not deny any person a financial
19 service the covered bank offers unless the denial
20 is justified by such quantified and documented
21 failure of the person to meet quantitative, im-
22 partial risk-based standards established in ad-
23 vance by the covered bank;

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

4 (D) shall, when denying any person finan-
5 cial services the covered bank offers, 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 covered
14 bank.

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 that violates or fails
21 to comply with the requirements under this Act, for
22 harm that person suffered as a result of such viola-
23 tion.

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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