

118TH CONGRESS  
1ST SESSION

# H. R. 2743

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 HOUSE OF REPRESENTATIVES

APRIL 20, 2023

Mr. BARR (for himself, Mr. POSEY, Mr. SESSIONS, Mr. MEUSER, Mr. NUNN of Iowa, Mr. OGLES, Mr. DESJARLAIS, Mr. BERGMAN, Mr. BISHOP of North Carolina, Mr. BACON, Mr. AMODEI, Mr. HUIZENGA, Mr. CARTER of Georgia, Mr. WITTMAN, Mr. MOOLENAAR, Mr. TIMMONS, Mr. HUDSON, Mr. FALLON, Mr. FITZGERALD, Mr. MOONEY, Mr. GOSAR, Mr. WILLIAMS of Texas, Ms. STEFANIK, Mrs. CAMMACK, Mr. ISSA, Mr. RESCHENTHALER, Mrs. LESKO, Mr. ROSE, Mr. EMMER, Mr. BABIN, Mr. CLYDE, Mr. WILSON of South Carolina, Mr. WALBERG, Mr. ZINKE, Mr. BURLISON, Mr. ALLEN, Ms. VAN DUYN, Mr. GIMENEZ, Mr. LAMBORN, Mr. LAMALFA, Mr. NORMAN, and Mr. DUNN of Florida) introduced the following bill; which was referred to the Committee on Financial Services

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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) financial institutions rightly objected to the  
12 Operation Choke Point initiative through which cer-  
13 tain government agencies pressured financial institu-  
14 tions to cut off access to financial services to lawful  
15 sectors of the economy;

16 (3) in response to pressure from advocates  
17 whose policy objectives are served when financial in-  
18 stitutions deny certain customers access to financial  
19 services, financial institutions are now, however, in-  
20 creasingly employing subjective, category-based eval-  
21 uations to deny certain persons access to financial  
22 services;

23 (4) this privatization of the discriminatory prac-  
24 tices underlying Operation Choke Point by financial  
25 institutions represents as great a threat to the na-  
26 tional economy, national security, and the soundness

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

3 (5) financial institutions are supported by the  
4 United States taxpayers and enjoy significant privi-  
5 leges in the financial system of the United States  
6 and should not be permitted to act as de facto regu-  
7 lators or unelected legislators by withholding finan-  
8 cial services to otherwise credit worthy businesses  
9 based on subjective political reasons, bias or preju-  
10 dices;

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

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

19 (8) when a financial institution predicates the  
20 access to financial services of a person on factors or  
21 information (such as the lawful products a customer  
22 manufactures or sells or the services the customer  
23 provides) other than quantitative, impartial risk-  
24 based standards, the financial institution has failed  
25 to act consistent with basic principles of sound risk

1 management and failed to provide fair access to fi-  
2 nancial services;

3 (9) financial institutions have a responsibility to  
4 make decisions about whether to provide a person  
5 with financial services on the basis of impartial cri-  
6 teria free from prejudice or favoritism;

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

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

21 (B) financial institutions assess the risks  
22 posed by individual customers on a case-by-case  
23 basis, rather than category-based assessment;  
24 and

1           (C) financial institutions implement con-  
2           trols to manage relationships commensurate  
3           with these risks associated with each customer,  
4           not a strategy of total avoidance of particular  
5           industries or categories of customers;

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

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

18 **SEC. 3. PURPOSE.**

19          The purposes of this Act are to—

20           (1) ensure fair access to financial services and  
21           fair treatment of customers by financial service pro-  
22           viders, including national and State banks, Federal  
23           savings associations, and State and Federal credit  
24           unions;

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

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

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

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

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

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

22               “(c) PROHIBITION ON USE OF DISCOUNT WINDOW  
23          LENDING PROGRAMS.—No member bank with more than  
24          \$100,000,000,000 in total consolidated assets, or sub-  
25          sidiary of the member bank, may use a discount window

1 lending program if the member bank or subsidiary refuses  
2 to do business with any person who is in compliance with  
3 the law, including section 8 of the Fair Access to Banking  
4 Act.”.

5 (b) INSURED DEPOSITORY INSTITUTIONS.—Section  
6 8(a)(2)(A) of the Federal Deposit Insurance Act (12  
7 U.S.C. 1818(a)(2)(A)) is amended—

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

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

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

12 “(iv) an insured depository institution  
13 with more than \$100,000,000,000 in total  
14 consolidated assets, or subsidiary of the in-  
15 sured depository institution, that refuses to  
16 do business with any person who is in com-  
17 pliance with the law, including section 8 of  
18 the Fair Access to Banking Act.”.

19 (c) NONMEMBER BANKS, TRUST COMPANIES, AND  
20 OTHER DEPOSITORY INSTITUTIONS.—Section 13 of the  
21 Federal Reserve Act (12 U.S.C. 342) is amended by in-  
22 serting “*Provided further*, That no such nonmember bank  
23 or trust company or other depository institution with more  
24 than \$100,000,000,000 in total consolidated assets, or  
25 subsidiary of such nonmember bank or trust company or

1 other depository institution, may refuse to do business  
2 with any person who is in compliance with the law, includ-  
3 ing, including section 8 of the Fair Access to Banking  
4 Act:” after “appropriate:”.

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

6 (a) DEFINITION.—In this section, the term “payment  
7 card network” has the meaning given the term in section  
8 921(c) of the Electronic Fund Transfer Act (15 U.S.C.  
9 1693o–2(c)).

10 (b) PROHIBITION.—No payment card network, in-  
11 cluding a subsidiary of a payment card network, may, di-  
12 rectly or through any agent, processor, or licensed member  
13 of the network, by contract, requirement, condition, pen-  
14 alty, or otherwise, prohibit or inhibit the ability of any per-  
15 son who is in compliance with the law, including section  
16 8 of this Act, to obtain access to services or products of  
17 the payment card network because of political or  
18 reputational risk considerations.

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



1 **SEC. 6. CREDIT UNIONS.**

2 Section 206(b)(1) of the Federal Credit Union Act  
3 (12 U.S.C. 1786) is amended by inserting “or is refusing  
4 or has refused, or has a subsidiary that is refusing or has  
5 refused, to do business with any person who is in compli-  
6 ance with the law, including section 8 of the Fair Access  
7 to Banking Act,” after “as an insured credit union,”.

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

9 (a) DEFINITIONS.—In this section:

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

12 (A) any insured credit union, as defined in  
13 section 101 of the Federal Credit Union Act  
14 (12 U.S.C. 1752); or

15 (B) any credit union that is eligible to  
16 make application to become an insured credit  
17 union under section 201 of the Federal Credit  
18 Union Act (12 U.S.C. 1781).

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

23 (b) PROHIBITION.—No covered credit union, member  
24 bank, or State-chartered non-member bank with more  
25 than \$100,000,000,000 in total consolidated assets, or a  
26 subsidiary of the covered credit union, member bank, or

1 State-chartered non-member bank, may use the Auto-  
2 mated Clearing House Network if that member bank,  
3 credit union, or subsidiary of the member bank or credit  
4 union, refuses to do business with any person who is in  
5 compliance with the law, including section 8 of this Act.

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

7 (a) DEFINITIONS.—In this section:

8 (1) BANK.—The term “bank”—

9 (A) means an entity for which the Office  
10 of the Comptroller of the Currency is the appro-  
11 priate Federal banking agency, as defined in  
12 section 3 of the Federal Deposit Insurance Act  
13 (12 U.S.C. 1813); and

14 (B) includes—

15 (i) member banks;

16 (ii) non-member banks;

17 (iii) covered credit unions;

18 (iv) State-chartered non-member  
19 banks; and

20 (v) trust companies.

21 (2) COVERED BANK.—

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

1 (i) raise the price a person has to pay  
2 to obtain an offered financial service from  
3 the bank or from a competitor; or

4 (ii) significantly impede a person, or  
5 the business activities of a person, in favor  
6 of or to the advantage of another person.

7 (B) PRESUMPTION.—

8 (i) IN GENERAL.—A bank shall not be  
9 presumed to be a covered bank if the bank  
10 has less than \$100,000,000,000 in total  
11 assets.

12 (ii) REBUTTABLE PRESUMPTION.—

13 (I) IN GENERAL.—A bank is pre-  
14 sumed to be a covered bank if the  
15 bank has \$100,000,000,000 or more  
16 in total assets.

17 (II) REBUTTAL.—A bank that  
18 meets the criteria under subclause (I)  
19 can seek to rebut this presumption by  
20 submitting to the Office of the Comp-  
21 troller of the Currency written mate-  
22 rials that, in the judgement of the  
23 agency, demonstrate the bank does  
24 not meet the definition of covered  
25 bank.

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

13          (5) FAIR ACCESS TO FINANCIAL SERVICES.—  
14       The term “fair access to financial services” means  
15       persons engaged in activities lawful under Federal  
16       law are able to obtain financial services at banks  
17       without impediments caused by a prejudice against  
18       or dislike for a person or the business of the cus-  
19       tomer, products or services sold by the person, or fa-  
20       voritism for market alternatives to the business of  
21       the person. Refusing to provide or continue to pro-  
22       vide financial services to a person because the per-  
23       son engaged in rude or harassing conduct toward an  
24       employee of a bank is not a violation of this section.

1           (6) FINANCIAL SERVICE.—The term “financial  
2           service” means a financial product or service, includ-  
3           ing—

4                   (A) commercial and merchant banking;

5                   (B) lending;

6                   (C) financing;

7                   (D) leasing;

8                   (E) cash, asset and investment manage-  
9           ment and advisory services;

10                  (F) credit card services;

11                  (G) payment processing;

12                  (H) security and foreign exchange trading  
13           and brokerage services; and

14                  (I) insurance products.

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

19           (b) REQUIREMENTS.—

20                   (1) IN GENERAL.—To provide fair access to fi-  
21           nancial services, a covered bank (including a sub-  
22           sidiary of a covered bank), except as necessary to  
23           comply with another provision of law—

24                           (A) shall make each financial service it of-  
25           fers available to all persons in the geographic

1 market served by the covered bank on propor-  
2 tionally equal terms;

3 (B) may not deny any person a financial  
4 service the covered bank offers unless the denial  
5 is justified by such quantified and documented  
6 failure of the person to meet quantitative, im-  
7 partial risk-based standards established in ad-  
8 vance by the covered bank;

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

12 (D) shall, when denying any person finan-  
13 cial services the covered bank offers, provide  
14 written justification to the person explaining  
15 the basis for the denial, including any specific  
16 laws or regulations the covered bank believes  
17 are being violated by the person or customer, if  
18 any.

19 (2) JUSTIFICATION REQUIREMENT.—A jus-  
20 tification described in paragraph (1)(D) may not be  
21 based solely on the reputational risk to the covered  
22 bank.

23 (c) CAUSE OF ACTION FOR VIOLATIONS OF THIS  
24 SECTION.—

1           (1) IN GENERAL.—Notwithstanding any other  
2 provision of law, a person may commence a civil ac-  
3 tion in the appropriate district court of the United  
4 States against any covered bank that violates or fails  
5 to comply with the requirements under this Act, for  
6 harm that person suffered as a result of such viola-  
7 tion.

8           (2) NO EXHAUSTION.—It shall not be necessary  
9 for a person to exhaust its administrative remedies  
10 before commencing a civil action under this Act.

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

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

15                   and

16                   (B) treble damages.

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