

119TH CONGRESS
1ST SESSION

S. _____

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

Mr. CRAMER introduced the following bill; which was read twice and referred to the Committee on _____

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”.

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

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

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

23 (5) banks are supported by the United States
24 taxpayers and enjoy significant privileges in the fi-
25 nancial system of the United States and should not

1 be permitted to act as de facto regulators or
2 unelected legislators by withholding financial services
3 to otherwise credit worthy businesses based on sub-
4 jective political reasons, bias, or prejudices;

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

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

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

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

24 (10) while fair access to financial services does
25 not obligate a bank to offer any particular financial

1 service to the public, to operate in any particular ge-
2 ographic area, or to provide a service the bank offers
3 to any particular person, it is necessary that—

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

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

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

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

24 (12) anything less is not prudent risk manage-
25 ment and may result in unsafe or unsound practices,

1 denial of fair access to financial services, cancelling,
2 or eliminating certain businesses in society, and have
3 a deleterious effect on national security and the na-
4 tional economy.

5 **SEC. 3. PURPOSES.**

6 The purposes of this Act are to—

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

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

16 (3) protect against banks being able to impede
17 otherwise lawful commerce and thereby achieving
18 certain public policy goals;

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

23 (5) ensure banks operate in a safe and sound
24 manner by making judgments and decisions about
25 whether to provide a customer with financial services

1 on an impartial, individualized risk-based analysis
2 using empirical data evaluated under quantifiable
3 standards.

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

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

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

16 (b) INSURED DEPOSITORY INSTITUTIONS.—Section
17 8(a)(2)(A) of the Federal Deposit Insurance Act (12
18 U.S.C. 1818(a)(2)(A)) is amended—

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

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

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

23 “(iv) an insured depository institution
24 with more than \$10,000,000,000 in total
25 consolidated assets, or subsidiary of the in-

1 sured depository institution, that refuses to
2 do business with any person who is in com-
3 pliance with the law, including section 8 of
4 the Fair Access to Banking Act,”.

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

16 **SEC. 5. PAYMENT CARD NETWORK.**

17 (a) DEFINITION.—In this section, the term “payment
18 card network” has the meaning given the term in section
19 921(c) of the Electronic Fund Transfer Act (15 U.S.C.
20 1693o–2(c)).

21 (b) PROHIBITION.—No payment card network, in-
22 cluding a subsidiary of a payment card network, may, di-
23 rectly or through any agent, processor, or licensed member
24 of the network, by contract, requirement, condition, pen-
25 alty, or otherwise, prohibit or inhibit the ability of any per-

1 son who is in compliance with the law, including section
2 8 of this Act, to obtain access to services or products of
3 the payment card network because of political or
4 reputational risk considerations.

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

10 **SEC. 6. CREDIT UNIONS.**

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

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

18 (a) DEFINITIONS.—In this section:

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

21 (A) any insured credit union, as defined in
22 section 101 of the Federal Credit Union Act
23 (12 U.S.C. 1752); or

24 (B) any credit union that is eligible to
25 make application to become an insured credit

1 union under section 201 of the Federal Credit
2 Union Act (12 U.S.C. 1781).

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

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

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

17 (a) DEFINITIONS.—In this section:

18 (1) BANK.—The term “bank”—

19 (A) means an entity for which the Office
20 of the Comptroller of the Currency is the appro-
21 priate Federal banking agency, as defined in
22 section 3 of the Federal Deposit Insurance Act
23 (12 U.S.C. 1813); and

24 (B) includes—

25 (i) member banks;

- 1 (ii) non-member banks;
2 (iii) covered credit unions;
3 (iv) State-chartered non-member
4 banks; and
5 (v) trust companies.

6 (2) COVERED BANK.—

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

9 (i) raise the price a person has to pay
10 to obtain an offered financial service from
11 the bank or from a competitor; or

12 (ii) significantly impede a person, or
13 the business activities of a person, in favor
14 of or to the advantage of another person.

15 (B) PRESUMPTION.—

16 (i) IN GENERAL.—A bank shall not be
17 presumed to be a covered bank if the bank
18 has less than \$10,000,000,000 in total as-
19 sets.

20 (ii) REBUTTABLE PRESUMPTION.—

21 (I) IN GENERAL.—A bank is pre-
22 sumed to be a covered bank if the
23 bank has \$10,000,000,000 or more in
24 total assets.

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

10 (3) 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 (4) DENY.—The term “deny” means to deny or
20 refuse to enter into or terminate an existing finan-
21 cial services relationship with a person.

22 (5) FAIR ACCESS TO FINANCIAL SERVICES.—
23 The term “fair access to financial services” means
24 persons engaged in activities lawful under Federal
25 law are able to obtain financial services at banks

1 without impediments caused by a prejudice against
2 or dislike for a person or the business of the cus-
3 tomer, products or services sold by the person, or fa-
4 voritism for market alternatives to the business of
5 the person.

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

9 (A) commercial and merchant banking;

10 (B) lending;

11 (C) financing;

12 (D) leasing;

13 (E) cash, asset, and investment manage-
14 ment and advisory services;

15 (F) credit card services;

16 (G) payment processing;

17 (H) security and foreign exchange trading
18 and brokerage services; and

19 (I) insurance products.

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

24 (8) PERSON.—The term “person”—

25 (A) means—

- 1 (i) any natural person; or
2 (ii) any partnership, corporation, or
3 other business or legal entity; and
4 (B) includes a customer.

5 (b) REQUIREMENTS.—

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

10 (A) make each financial service the covered
11 bank offers available to all persons in the geo-
12 graphic market served by the covered bank on
13 proportionally equal terms;

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

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

23 (D) when denying any person financial
24 services the covered bank offers, provide written
25 justification to the person explaining the basis

1 for the denial, including any specific laws or
2 regulations the covered bank believes are being
3 violated by the person or customer.

4 (2) JUSTIFICATION REQUIREMENT.—A jus-
5 tification described in paragraph (1)(D) may not be
6 based solely on the reputational risk to the covered
7 bank.

8 (c) CAUSE OF ACTION FOR VIOLATIONS OF THIS
9 SECTION.—

10 (1) IN GENERAL.—Notwithstanding any other
11 provision of law, a person may commence a civil ac-
12 tion in the appropriate district court of the United
13 States against any covered bank or covered credit
14 union that violates or fails to comply with the re-
15 quirements under this section, for harm that person
16 suffered as a result of such violation.

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

20 (3) DAMAGES.—If a person prevails in a civil
21 action under this section, a court shall award the
22 person—

23 (A) reasonable attorney's fees and costs;

24 and

25 (B) treble damages.