Congress of the United States

Washington, DC 20515

May 15, 2024

The Honorable Janet Yellen
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue N.W.
Washington, DC 20220

The Honorable Martin J. Gruenberg
Chair
Federal Deposit Insurance Corporation
550 17th Street N.W.
Washington, DC 20429

The Honorable Michael J. Hsu
Acting Comptroller of the Currency
Office of the Comptroller of the Currency
400 7th Street S.W.
Washington, DC 20219

The Honorable Jerome H. Powell
Chair
Federal Reserve Board
20th Street and Constitution Avenue N.W.
Washington, DC 20551

The Honorable Andrea Gacki
Director
Financial Crimes Enforcement Network
1500 Pennsylvania Avenue N.W.
Washington, DC 20220

The Honorable Todd M. Harper
Chair
National Credit Union Administration
1775 Duke Street,
Alexandria, VA 22314

The Honorable Rohit Chopra
Director
Consumer Financial Protection Bureau
1700 G Street NW
Washington, D.C. 20552

Dear Secretary Yellen, Chair Gruenberg, Acting Comptroller Hsu, Chair Powell, Director Gacki, Chair Harper, and Director Chopra:

We write to ask your agencies to take robust action to modernize anti-money laundering and financial crimes compliance obligations to protect and promote equitable banking access for Muslim Americans and immigrant communities. Banks have increasingly engaged in the practice of "de-risking,"– where financial institutions terminate or restrict business relationships indiscriminately with broad categories of customers rather than manage risk associated with the relationship consistent with risk-based supervisory or regulatory requirements.[1] While Congress can and should take action to expand financial inclusion, the Biden Administration can also take executive action to prevent discriminatory account closures and restrictions.

[1] Anti-Money Laundering Act of 2020, Pub. L. No. 116–283, Div. F, Title LXII, Sec. 6215(c)(1), January 1, 2021 ("AMLA"); The New York Times, "The Way Big Banks Shut Down Customer Accounts is Callous. Let's Fix It," Ron Lieber, December 30, 2023, https://www.nytimes.com/2023/12/30/your-money/banks-closed-accounts-fixes.html.

The threat of de-risking is especially stark for customers from the Muslim American community. Financial institutions may consider Muslim and Arab, Middle Eastern, and South Asian Americans "high risk," potentially erroneously, when sending payments or remittances abroad or donating to charities or religious institutions.[2] De-risking can also undermine the stability and sustainability of countries that depend on remittances for economic development.[3]

We wrote to the U.S. banking regulators in 2022 to express our concern about this problem and to request information on the agencies' work to promote equitable banking access.[4] The Office of the Comptroller of the Currency (OCC), Federal Deposit Insurance Corporation (FDIC), National Credit Union Administration, Federal Reserve, and Department of the Treasury responded. While the five agencies all reiterated that "no customer type presents a single level of uniform risk," they articulated no new rulemakings aimed at expanding financial inclusion or preventing de-risking.[5]

Reports of de-risking have only increased since then. The *New York Times* recently received hundreds of reports from customers on major financial institutions shutting down accounts, often without warning, ostensibly as a result of banks' efforts to mitigate suspicious activity.[6]

Federal agencies have taken some encouraging steps on this issue. The Department of the Treasury released a strategy on de-risking in April 2023, which provided recommendations on how the agency could promote consistent regulatory expectations, incentivize U.S. banks to avoid de-risking, and advance public and private engagement and cooperation at home and abroad.[7] Treasury recommended that policymakers set clear supervisory guidance while

[2] Government Accountability Office, "Remittances to Fragile Countries: Treasury Should Assess Risks from Shifts to Non-Banking Channels," pp. 1, 16, 19, March 8, 2018, https://www.gao.gov/assets/gao-18-313.pdf; Government Accountability Office, "Bank Secrecy Act: Views on Proposals to Improve Banking Access for Entities Transferring Funds to High-Risk Countries," p.1, December 16, 2021, https://www.gao.gov/assets/gao-22-104792.pdf; Muslim Americans face additional challenges in banking: One study found that a "quarter of the American Muslim population have faced hurdles while banking in the United States." ISPU, "Banking While Muslim," Youssef Chouhoud, March 14, 2023, https://www.ispu.org/banking-whilemuslim/.

[3] American Banker, "The 'de-risking' trend is harming countries that rely on remittances," Saema Somalya and Matt Cameron, October 26, 2023, https://www.americanbanker.com/opinion/the-de-risking-trend-is-harmingcountries-that-rely-on-remittances.

[4] Letter from Senator Elizabeth Warren to the Heads of U.S. Banking Regulators, December 2, 2022, https://www.warren.senate.gov/imo/media/doc/POC%20Banking%20Discrimination%20FINAL%20Letter%20w.%20signatures.pdf.

[5] Letter from U.S. Treasury to Representative Omar, June 1, 2023, (On file with Representative Omar's office); Letter from OCC to Senator Elizabeth Warren, March 29, 2023, (On file with Senator Elizabeth Warren's office); Letter from FDIC to Senator Elizabeth Warren, February 13, 2023, (On file with Senator Elizabeth Warren's office); Letter from NCUA to Representative Omar, February 9, 2023, (On file with Representative Omar's office); Letter from Fed to Representative Omar, March 29, 2023, (On file with Representative Omar's office).

[6] The New York Times, "The Way Big Banks Shut Down Customer Accounts is Callous. Let's Fix It," Ron Lieber, December 30, 2023, https://www.nytimes.com/2023/12/30/your-money/banks-closed-accounts-fixes.html; An Iranian-American who serves as Chief Financial Officer of a multi-billion dollar-firm also revealed that he was unable to open bank accounts or credit cards with a dozen major financial institutions after being incarcerated for sanctions-related charges that were overturned on appeal, American Banker, "As CFO of a multibillion-dollar firm, I couldn't get a checking account," Mahmoud Reza Banki, April 5, 2024, https://www.americanbanker.com/opinion/as-cfo-of-a-billion-dollar-company-i-couldnt-get-a-checking-account.

[7] U.S. Department of the Treasury, "AMLA The Department of the Treasury's De-Risking Strategy," April 2023, https://home.treasury.gov/system/files/136/Treasury_AMLA_23_508.pdf.

considering the effects of de-risking, consider clarifying and revising anti-money laundering (AML) regulations and guidance for money-service businesses, and support international financial institutions' efforts to address de-risking.[8]

Your agencies, however, should not stop there. Specifically, we encourage you to consider the following proposals:

1. **Issue a joint agency statement affirming that financial inclusion is a public priority for anti-money laundering/combating the financing of terrorism (AML/CFT) policy.** The *Anti-Money Laundering Act of 2020* (AMLA) directed the Secretary of the Treasury, in consultation with the Attorney General, federal banking regulators, and national security agencies, to establish and make public priorities for anti-money laundering and countering the financing of terrorism policy.[9] The act mandated that these priorities be updated regularly.[10] The same act made clear that in establishing minimum standards for anti-money laundering programs, the Treasury Department and banking regulators should take into account that "[t]he extension of financial services to the underbanked and the facilitation of financial transactions, including remittances" is a "key policy goal[]" of the United States."[11] Treasury and the other banking regulators should issue an updated priority statement that affirms the importance of ensuring financial inclusion while also safeguarding our financial system from exploitation by illicit actors.

2. **Create a formal advisory group on financial inclusion.** As noted by the Center for Strategic & International Studies, de-risking and financial access "cut across a broad swath of complex issues - sanctions, AML/CFT, illicit finance, financial inclusion/exclusion, foreign/humanitarian/peacebuilding/development assistance, and security - as well as numerous U.S. government agencies, there is no official or body responsible for these topics."[12] While some international bodies have addressed de-risking, there is no domestic forum "for policymakers and regulators to address balanced approaches to the range of issues."[13] For these reasons, it is crucial to create a formal advisory group on financial inclusion. The advisory group should include representatives from each of the financial regulatory agencies as well as external stakeholders to promote closer coordination between all U.S. government stakeholders on the impact of AML/CFT/sanctions.

3. **Issue Financial Crimes Enforcement Network (FINCEN) FAQs, advisories, or alerts to help financial institutions avoid shutting down or restricting accounts unnecessarily.** Banks are incentivized to close accounts in order to avoid enforcement

[8] U.S. Department of the Treasury, "AMLA The Department of the Treasury's De-Risking Strategy," April 2023, https://home.treasury.gov/system/files/136/Treasury_AMLA_23_508.pdf.

[9] 31 U.S.C. 5318(h)(4)(A).

[10] 31 U.S.C. 5318(h)(4)(B).

[11] 31 U.S.C. 5318(h)(2)(B)(ii).

[12] Center for Strategic & International Studies, "Mitigating Financial Access Challenges: Proposals to Address Financial Access Challenges," Sue E. Eckert and Jacob Kurtzer, p. 27 https://csis-website-prod.s3.amazonaws.com/s3fs-public/publication/221025_Eckert_MSWG_Proposals.pdf?VersionId=q.ek7KW4xGmpvQSehJyWDaBzuN3TYgKE.

[13] *Id.*

actions for AML/CFT violations.[14] However, innocent customers may be increasingly subject to de-risking. The Consumer Financial Protection Bureau (CFPB) received twice as many complaints regarding account closures last year as it did in 2017.[15] FinCEN should issue guidance addressing common scenarios for which banks have conducted de-risking but that do not actually merit account closure.[16] FinCEN does not currently maintain FAQs or advisories relating to Suspicious Activity Reports ("SARs") with this focus.[17] FinCEN's guidance could address, for example: whether board members of a non-profit should be affected if the nonprofit is subject to a SAR; whether joint account holders should be affected if one of the joint holder's is subject to a SAR; whether an account should be closed due to a clerical effort that is subsequently addressed by the customer; and whether an account should be closed, rather than merely restricted, when a customer is traveling to a sanctioned country.

4. **Amend the Department of the Treasury annual examiner training required by Section 6307 of AMLA to include a discussion of financial inclusion metrics.** As noted in Treasury's April 2023 de-risking strategy, a potential driver of de-risking is the lack of regulatory clarity as to how examiners evaluate banks' AML/CFT programs.[18] Treasury explained that "[w]hile the FFIEC BSA/AML Examination Manual establishes standard AML/CFT examination procedures, there are variations in how those procedures are interpreted and applied in practice."[19] Treasury has the authority to establish and update training materials and standards for bank examiners.[20] Additionally, 31 U.S.C. 5334(a)(4) specifically provides that the federal examiner training shall include discussion of "de-risking and the effect of de-risking on the provision of financial services."[21] Including a module on financial inclusion that considers the effects of de-risking will help standardize how examiners evaluate banks' AML/CFT procedures.

5. **Promulgate Treasury guidance requiring banks to provide consumers with pre-clearance mechanisms for transactions likely to trigger AML flags.** Under AMLA,

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[14] Global Center of Cooperative Security, "Understanding Bank De-Risking and its Effects on Financial Inclusion," Tracy Durner & Liat Shetret, pp. 3, 5, November 2015, https://www-cdn.oxfam.org/s3fs-public/file_attachments/rr-bank-de-risking-181115-en_0.pdf.

[15] Consumer Financial Protection Bureau, "Consumer Complaint Database," https://www.consumerfinance.gov/data-research/consumer-complaints/search/?chartType=line&dateInterval=Month&dateRange=All&date_received_max=2024-04-28&date_received_min=2011-12-01&has_narrative=true&issue=Closing%20an%20account%E2%80%A2Company%20closed%20your%20account&lens=Product&product=Checking%20or%20savings%20account&searchField=all&subLens=sub_product&tab=Trends; New York Times, "Banks are Closing Customer Accounts, With Little Explanation," Tara Siegel Bernard and Ron Lieber, April 8, 2023 https://www.nytimes.com/2023/04/08/your-money/bank-account-suspicious-activity.html.

[16] 31 U.S.C. § 310(b)(2)(A), (B), (E), (J), (K), (L).

[17] Financial Crimes Enforcement Network, "Answers to Frequently Asked Bank Secrecy Act (BSA) Questions," https://www.fincen.gov/answers-frequently-asked-bank-secrecy-act-bsa-questions.

[18] U.S. Department of the Treasury, "AMLA The Department of the Treasury's De-Risking Strategy," pp. 40-44, April 2023, https://home.treasury.gov/system/files/136/Treasury_AMLA_23_508.pdf.

[19] U.S. Department of the Treasury, "AMLA The Department of the Treasury's De-Risking Strategy" pp. 40, April 2023, https://home.treasury.gov/system/files/136/Treasury_AMLA_23_508.pdf.

[20] 31 U.S.C. 5334(b).

[21] 31 U.S.C. 5334(a)(4).

Treasury has the authority, in consultation with the appropriate federal functional regulator, "to prescribe minimum standards for AML programs."[22] In prescribing those standards, Treasury and the appropriate federal functional regulator are required to take into account "[t]he extension of financial services to the underbanked and the facilitation of financial transactions, including remittances, coming from the United States and abroad."[23] Treasury should require financial institutions' AML programs to include a process whereby customers concerned that a transaction might raise flags can proactively submit materials demonstrating the legitimacy of the transaction. The guidance should include clear details on which types of materials and notification processes would suffice.

6. **Establish Consumer Financial Protection Bureau minimum notice and dispute resolution requirements for consumers that experience account closures especially when a SAR is not filed.** Financial institutions are generally prohibited from revealing information regarding the filing of a SAR.[24] However, there may be instances in which banks de-risk consumer accounts but do not file a corresponding SAR. In those circumstances, the CFPB has authority to act under multiple consumer protection statutes. The CFPB should enforce those statutes to ensure that consumers are given adequate notice and resources to address account closures. The CFPB may also consider issuing guidance to the same effect. The relevant consumer protection authorities include:

    - Consumer Financial Protection Act (CFPA): "Under the [CFPA], the CFPB has the authority to take action against institutions violating consumer financial protection laws, including engaging in unfair, deceptive, or abusive acts or practices."[25] Last year, the CFPB found that a bank engaged in unfair acts or practices in violation of the CFPA when it froze tens of thousands of cardholder accounts without providing cardholders "adequate means to verify their identities and timely regain access to their benefits."[26] Earlier this month, the CFPB found that a financial technology company servicing consumer banking accounts violated the CFPA by failing to refund consumers' balances after account closures in a timely manner.[27] Thus, freezing or shutting off access to an entire account, rather than simply placing a hold on a flagged transaction, without giving adequate notice or recourse to a consumer potentially constitutes an unfair, deceptive, or abusive practice (UDAAP).

[22] 31 U.S.C. 5318(h)(2)(A).

[23] 31 U.S.C. 5318(h)(2)(B)(ii).

[24] *See* 31 U.S.C. 5318(g)(2)(A).

[25] Consumer Financial Protection Bureau, "CFPB Orders U.S. Bank to Pay $21 Million for Illegal Conduct During COVID-19 Pandemic," December 19, 2023, https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-us-bank-to-pay-21-million-for-illegal-conduct-during-covid-19-pandemic/; see also 12 U.S.C. 5531(a).

[26] Consumer Financial Protection Bureau, "U.S. Bank National Association," December 19, 2023, https://www.consumerfinance.gov/enforcement/actions/us-bank-national-association-prepaid-cards-2023/.

[27] Consumer Financial Protection Bureau, "CFPB Takes Action Against Chime Financial for Illegally Delaying Consumer Refunds," press release, May 7, 2024, https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-chime-financial-for-illegally-delaying-consumer-refunds/.

- Anti Discrimination laws: In discussing CFPB's UDAAP authority, CFPB Director Chopra has stated, "[w]hen a person is denied access to a bank account because of their religion or race, this is unambiguously unfair."[28] Closing accounts without notice or recourse, when conducted in a way that systematically impacts one protected group, may also constitute discrimination that violates the consumer protection laws.
- Electronic Fund Transfer Act (EFTA): EFTA "establishes the basic framework of the rights, liabilities, and responsibilities of participants in the electronic fund and remittance transfer systems."[29] Regulation E of EFTA (or "Reg E") requires that after a financial institution receives oral or written notice of an error from a consumer, the financial institution must "promptly investigate the oral or written allegation of error, complete its investigation within the time limits specified in Reg E, report the results of its investigation within three business days after completing its investigation, and correct the error within one business day after determining that an error has occurred."[30] A financial institution may violate Reg E by failing to timely investigate consumers' notices of error.
- Equal Credit Opportunity Act (ECOA): ECOA prohibits creditors from discriminating against credit applicants on the basis of characteristics like race, religion, and national origin.[31] Regulation B of ECOA (or "Reg B") specifies that applicants are protected from discrimination in any aspect of a credit transaction, including with regards to standards of creditworthiness, denial of credit, revocation, alteration, or termination of credit, and notification of action taken, including adverse action.[32] The CFPB has previously held that a bank violated Reg B by denying credit applications to Armenian Americans because of their ancestry and by giving false reasons for the credit denials.[33] A financial institution might similarly violate Reg B by revoking, altering, or terminating credit, or by failing to provide adequate notice of such actions, in a discriminatory manner.

We urge your agencies to consider these proposals to ensure all persons in the U.S. are able to fully access and participate in our financial services system. We also note that U.S. nonprofit organizations (NPOs) and money services businesses (MSBs) similarly experience de-risking by

[28] Consumer Financial Protection Bureau, "CFPB Targets Unfair Discrimination in Consumer Finance," March 16, 2022, https://www.consumerfinance.gov/about-us/newsroom/cfpb-targets-unfair-discrimination-in-consumer-finance/.

[29] Consumer Financial Protection Bureau, "Electronic Fund Transfers (Regulation E); Amendments," https://www.consumerfinance.gov/rules-policy/final-rules/electronic-fund-transfers-regulation-e/.

[30] 12 CFR 1005.11(c)(1).

[31] U.S. Department of Justice Civil Rights Division, "The Equal Credit Opportunity Act," https://www.justice.gov/crt/equal-credit-opportunity-act-3.

[32] Consumer Financial Protection Bureau, "12 CFR Part 1002 – Equal Credit Opportunity Act (Regulation B); 12 CFR 1001.1(a).

[33] Consumer Financial Protection Bureau, "CFPB Orders Citi to Pay $25.9 Million for Intentional, Illegal Discrimination Against Armenian Americans," November 8, 2023, https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-citi-to-pay-25-9-million-for-intentional-illegal-discrimination-against-armenian-americans/.

financial institutions, including as a result of transferring funds in support of humanitarian and peacebuilding activities.[34] We commend the Office of Foreign Assets Control (OFAC) for issuing regulations and guidance on the reach of economic sanctions for persons involved in humanitarian-related activities.[35] NPOs and MSBs provide vital assistance to international and domestic causes, and regulators should consider additional protections that should be extended to NPOs and MSBs seeking to bank in the United States.

Thank you for your attention to this important matter.

Sincerely,

Elizabeth Warren
United States Senator

Ilhan Omar
Member of Congress

Edward J. Markey
United States Senator

Bernard Sanders
United States Senator

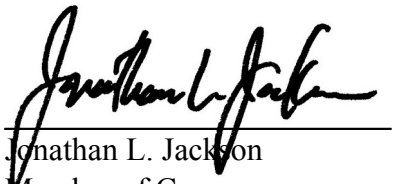
Katie Porter
Member of Congress

Alexandria Ocasio-Cortez
Member of Congress

[34] CSIS, "Mitigating Financial Access Challenges: Proposals from the CSIS Multi-stakeholder Working Group on Financial Access," p. 1, Sue Eckert, Jacob Kurtzer, October 2022, https://csis-website-prod.s3.amazonaws.com/s3fs-public/publication/221025_Eckert_MSWG_Proposals.pdf?VersionId=q.ek7KW4xGmpvQSehJyWDaBzuN3TYgKE.

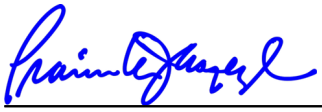
[35] Department of the Treasury, Office of Foreign Assets Control, "Supplemental Guidance for the Provision of Humanitarian Assistance," February 27, 2023, https://ofac.treasury.gov/media/931341/download?inline.

Rashida Tlaib
Member of Congress

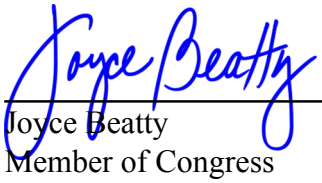


Jonathan L. Jackson
Member of Congress

Barbara Lee
Member of Congress



Pramila Jayapal
Member of Congress



Joyce Beatty
Member of Congress