Policy Brief

Ensuring Freedom and Fair Access in Banking

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Overview

Imagine waking up to discover your bank accounts have suddenly been blocked, without any explanation or immediate way to resolve the issue. Your family is totally unprepared for this abrupt loss of financial access and, within days, your business could face bankruptcy. This scenario is not hypothetical; it is increasingly common.

According to the Federal Deposit Insurance Corporation (FDIC), about 10% of Americans are either currently unbanked or were unbanked at some point within the last year.[2] Moreover, the Consumer Financial Protection Bureau (CFPB) has received approximately 12,000 complaints in the past two years from individuals either "unable to open" a bank account or experiencing the loss of their existing accounts.[3]

Given the stigma, nonexistent legal solutions, and limited public awareness, the actual number of affected individuals and entities is likely higher. Debanking predominantly impacts Americans with disabilities, low-income families, individuals involved in politics, and business owners in key industries. It also significantly affects sectors classified as “high-risk” by financial regulators, including oil and gas, cryptocurrency, private banking, emerging technologies, and cash-intensive sectors. Additionally, entities involved in

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[2] https://www.fdic.gov/household-survey/2023-fdic-national-survey-unbanked-and-underbanked-households-report

[3] https://www.banking.senate.gov/imo/media/doc/debanking_complaints_analysis.pdf

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international activities, such as trade companies, universities, foundations, and correspondent banks, face increased vulnerability to financial exclusion.

This is an issue that must be addressed. Financial inclusion is not only essential for people's ability to become productive members of society. It is also key to prevent them from using financial services outside of the regulated financial system, which undermines the purposes of the Bank Secrecy Act by making it harder to detect and deter illicit finance.

Current legislative proposals, while commendable, do not sufficiently address all underlying factors driving this phenomenon. In this policy brief, we lay down a series of recommendations in order to ensure people and companies' fair access to financial services.

Issues to be Addressed

1. **Incomplete Focus of Current Legislation:**

The CAMELS rating system is used by banking regulators to assess financial institutions based on Capital adequacy, Asset quality, Management, Earnings, Liquidity, and Sensitivity to market risk. "Reputational risk" is a subjective element within this framework, referring to the potential negative public perception that may affect a bank's operations or financial condition. The Financial Integrity and Regulation Management (FIRM) Act, proposed by Senator Tim Scott, seeks to eliminate this subjective criterion to reduce arbitrary regulatory actions. However, the FIRM Act does not comprehensively address other systemic issues such as excessive compliance burdens, transnational regulatory abuses, or targeted misinformation campaigns that contribute significantly to debanking. Without addressing these additional issues, legislation will be inadequate to fully resolve debanking.

2. **Sector-Wide and Customer-Specific Exclusion:**

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Debanking is not an issue isolated to the crypto assets sector. U.S. anti-money laundering (AML) regulations and international FATF Recommendations are causing banks to close the accounts of customers in sectors classified as "high risk" of being part of illicit activities. This issue affects sectors like corresponding banking as well as oil and gas. It also affects types of customers like international businesses, nonprofits, and politically exposed persons. Moreover, as financial compliance requirements increase in length and complexity, certain types of customers are also financially excluded as they become unprofitable or too risky for banks to maintain. In general, this issue is affecting minorities like legal immigrants, people with disabilities, and Americans trying to have banking relationships abroad.

3. **Targeted Smear Campaigns:**

Targeted smear campaigns involve the deliberate dissemination of false accusations against individuals or organizations, claiming involvement in financial crimes such as money laundering, corruption, or terrorist financing. These campaigns are often orchestrated by authoritarian regimes or malicious competitors aiming to financially exclude their opponents by spreading fabricated allegations through financial intelligence databases and media sources frequently consulted by banks during customer due diligence. Political refugees, human rights activists, nonprofits, and legitimate businesses frequently become targets, facing immediate banking disruptions as financial institutions opt for precautionary "de-risking"—terminating relationships to avoid potential regulatory complications and public scrutiny. Even after proving innocence, victims often suffer enduring reputational damage, remaining economically isolated due to lingering compliance concerns and risk aversion among financial institutions.

4. **Transnational Debanking:**

Congress should also address the issue of "transnational debanking." To summarize, foreign governments are abusing the U.S. anti-money laundering

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framework to transnationally repress people and companies in the U.S. These non-democratic governments are abusing the *principle of trust* that the U.S. extends to them in matters related to money laundering, terrorism financing, and cyber security. Through these mechanisms, they can block bank accounts, freeze assets, access sensitive financial data, and launch legal actions against their opponents in the U.S. This situation puts U.S. citizens, policymakers, political refugees, and international entrepreneurs at risk. Currently, there are no legal remedies to protect people from this form of abuse. Foreign regimes don't even need a court decision to initiate these attacks.

5. **Rising Compliance Costs and Complexity:**

Annual compliance costs related to AML/CFT regulations are growing exponentially, affecting economic performance:

- Increasing market concentration as smaller entities exit due to high compliance burdens.
- Raising transaction costs for international trade and investment.
- Stifling innovation and entrepreneurship by creating high entry barriers.
- Weakening the global dominance of the U.S. dollar by complicating correspondent banking relations.

Policy Recommendations

International Framework Reform

- Include Financial Inclusion in FATF Evaluations: Advocate for changes to the Financial Action Task Force (FATF) Mutual Evaluation Process to make financial inclusion a core assessment criterion, rather than a peripheral "contextual factor." Currently, FATF evaluators have discretion to note inclusion levels in introductory sections, but these observations do not influence a country's compliance ratings. By requiring assessors to consider

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nationwide financial inclusion metrics (e.g. the rate of unbanked citizens, frequency of account denials, and reasons for refusal) as part of the formal evaluation, FATF would incentivize jurisdictions to actively advance inclusion. This reform would turn FATF's stated commitment to financial inclusion into a tangible, measurable requirement, encouraging countries to balance AML/CFT controls with the right to banking for all lawful customers.

- **Introduce a Vetted "Green List" for AML/CFT Cooperation:** Recommend a thorough reassessment of Mutual Legal Assistance Treaties (MLATs) and other international AML/CFT cooperation agreements to ensure they are not enabling wrongful persecution. In practice, numerous foreign states have misused cooperation mechanisms such as INTERPOL notices or mutual legal assistance requests to target political opponents and dissidents under the guise of financial crime enforcement. To counter this, the U.S. should establish a "green list" of trusted partner jurisdictions that uphold strong rule-of-law standards and human rights protections. Only countries on this vetted list would partake in close AML/CFT intelligence-sharing and legal cooperation, while those with records of politicized abuse would face restricted collaboration. This approach would realign international AML/CFT efforts with their original intent by privileging cooperation with jurisdictions that won't weaponize financial regulations, thereby preventing "injustice laundering" across borders. It also signals that global financial integrity frameworks must not come at the expense of individual liberties or be exploited by authoritarian interests.

Domestic Regulatory and Supervisory Reform

- **Restore Public Authority for AML/CFT Enforcement:** Shift the primary responsibility for investigating and enforcing AML/CFT rules away from private financial institutions and back to competent public authorities. Under the current regime, banks and other financial firms act as frontline enforcers—conducting extensive customer due diligence, monitoring

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transactions, and filing suspicious activity reports—under threat of heavy penalties. This deputization of the private sector not only imposes enormous compliance costs but also encourages over-cautious behavior (e.g. "de-risking" entire categories of customers) to avoid regulatory issues. Rebalancing this framework would entail bolstering the capacity of public investigative agencies (such as financial intelligence units and law enforcement) to handle complex financial crime probes, rather than outsourcing that role to banks. In practice, regulators should clarify that while institutions must maintain vigilance, it is the state's duty to identify and pursue illicit finance. Freeing banks from being quasi-regulators will reduce their incentive to indiscriminately drop clients, and allow them to focus on legitimate risk management guided by public-sector expertise and oversight.

- **Simplified Compliance Pathways for Vulnerable Populations:** Develop streamlined due diligence procedures and low-risk banking products tailored to financially excluded and vulnerable groups. Vulnerable communities and certain economic sectors struggle to access basic accounts due to standard KYC (Know Your Customer) rules that they find hard to satisfy (e.g. lack of traditional ID or proof of address) and due to banks' fear of regulatory penalties. To address this, regulators should design simplified customer due diligence (CDD) frameworks for defined low-risk scenarios and explicitly permit financial institutions to onboard clients under these simplified protocols. In parallel, banks should be encouraged (or required) to offer minimal-risk accounts or services that have built-in limitations (such as capped transaction sizes, restricted total monthly credits, or usage only for essential payments). These protected financial products would meet AML/CFT standards by virtue of their limits, while granting marginalized customers entry into the formal financial system. By clearly delineating what simplified checks are acceptable and providing safe harbor products for the unbanked, authorities can materially increase inclusion without compromising on integrity.

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- **Update Outdated Transaction Thresholds:** Modernize financial monitoring and reporting thresholds to reflect contemporary economic realities, thereby easing unnecessary burdens on low-value transactions. Many AML/CFT requirements (such as cash transaction report limits or due diligence triggers for transfers) were set decades ago and have not kept pace with inflation or changes in financial behavior. As a result, thresholds that were intended to capture significant transactions now frequently ensnare modest sums, subjecting ordinary consumers and small businesses to disproportionate scrutiny and bureaucracy. Regulators should systematically review and raise these dollar/euro thresholds to an appropriate current value, and index them to inflation going forward. Adjusting these parameters will reduce the compliance load on trivial amounts and allow both financial institutions and enforcement agencies to concentrate resources on truly suspicious or high-value activities. In short, right-sizing the rules to economic context can preserve effectiveness while minimizing friction for everyday transactions.

- **Special Licensing to Prevent Unjust "De-banking":** Create a Special License mechanism to protect individuals and entities who are at high risk of unwarranted financial exclusion despite being engaged in lawful activity. This reform is particularly aimed at activists, journalists, opposition politicians, and NGOs who find themselves repeatedly "de-banked" or denied services because of political attacks, including targeted misinformation campaigns and transnational debanking. Under the proposed system, such a person or organization could apply for a designated Special License status through a rigorous vetting conducted by competent authorities. If granted, the license would obligate banks to provide at least basic financial services to the license-holder and shield the individual's account from automatic closure solely due to risk profile. Under this scheme, the bank would not have the compliance burden for this individual, but the U.S. Government. The Special License would also impose stricter controls on how the person's financial data is shared, preventing routine dissemination of their information through

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de-risking databases or "blacklists." In effect, this mechanism offers a legal guarantee of financial inclusion for those unfairly stigmatized by AML/CFT risk models, ensuring that genuine political dissidents or other high-risk but law-abiding clients are not continually ostracized from the financial system.

Legislative Amendments

- Amend the Senate's FIRM Act to Ensure Fair Access to Banking: This paper recommends amending the Financial Integrity and Regulation Management (FIRM) Act to codify a statutory "right to banking" for all law-abiding individuals and legal entities. This amendment would recognize access to basic banking services as an essential civic utility rather than a discretionary privilege. Arbitrary exclusion of lawful customers from the financial system undermines economic freedom and denies vulnerable communities. fair access to essential services. It also deprives regulators of visibility into financial activity that would otherwise occur within supervised institutions, weakening effective oversight of illicit finance risks. Moreover, blanket de-risking practices directly conflict with the U.S. Treasury's mandate under the Bank Secrecy Act (BSA) to detect and deter illicit finance.

- Amend CAMELS to Require Objective, Risk-Based Criteria: Revise the CAMELS rating framework so that assessments are confined to quantifiable, risk-focused factors aligned with explicit statutory mandates of safety and soundness. This entails exercising ambiguous considerations like "reputational risk" that lack clear legal or financial basis. Banking agencies should update their examination manuals accordingly, ensuring ratings reflect concrete metrics (capital adequacy, asset quality, etc.) rather than examiners' subjective perceptions. Notably, the Office of the Comptroller of the Currency has already moved in this direction, emphasizing that removing "reputation risk" as a supervisory category "does not reduce expectations for sound risk management" but instead ensures "supervisory actions are grounded in objective and material risk considerations". In the same spirit,

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pending legislation in Congress (the FIRM Act) would prohibit regulators from using "reputational risk" in oversight, thereby stopping officials from pressuring banks based on subjective concerns rather than actual risk – a change intended to keep access to banking governed by prudent risk management at banks and not the personal perspective of regulators

- **Document and Review Supervisory Criticisms:** Require that all supervisory criticisms or adverse findings that affect a bank's rating be communicated in writing and subject to independent review. Examiners should be obligated to provide written justification – with reference to specific violations or risk metrics – for any rating downgrade or enforcement recommendation. An internal yet independent oversight unit (or ombudsman) should then review these documented criticisms to verify they are evidence-based and consistent with applicable laws and guidelines. This paper trail and review process would deter regulators from issuing off-the-record or ill-defined critiques, enhancing transparency and accountability. It ensures that no demerit is levied without a documented rationale, and that banks are evaluated against known standards rather than unstated examiner biases.

- **Create a Federal Financial Exclusion Monitoring Unit:** Legislate the establishment of a dedicated federal unit to systematically track, analyze, and report on trends in financial exclusion. This could be set up within the Department of the Treasury or an appropriate independent agency, and its formation could be mandated by an amendment to the FIRM Act or related financial services law. The unit's responsibilities would include collecting data on account closures and denials across the banking sector, investigating patterns of debanking, and publishing periodic reports on the state of financial access in the country. By having an official body focused on this issue, policymakers would gain empirical insight into how AML/CFT measures and bank practices are affecting inclusion over time. For example, if certain demographics or communities see disproportionate account closures, the unit would flag this for remedial action. In essence, this reform creates an

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ongoing diagnostic tool to ensure that financial oversight policies do not inadvertently spawn widespread exclusion, and it supplies an evidence base for future adjustments to laws or regulations.

- **Mandate a Cost-Benefit Analysis of all AML/CFT Measures:** Include provisions in the FIRM Act (or parallel financial legislation) that require any significant AML/CFT regulation to undergo rigorous, empirical cost-benefit analysis both before implementation and at regular intervals afterward. Regulators would be obliged to quantify the expected benefits of a proposed rule (in terms of illicit funds prevented or criminal networks disrupted) and weigh them against the expected costs (compliance expenditures, impact on financial inclusion, slower transaction throughput, etc.). Similarly, existing AML/CFT rules should be periodically reviewed to assess their real-world effectiveness versus burdens. This legislative change addresses a current gap: despite AML/CFT frameworks imposing hundreds of billions in compliance costs globally, there is often scant evaluation of whether each measure is achieving proportionate results in crime reduction. By institutionalizing cost-benefit analyses, Congress would promote accountability and evidence-based policymaking in the financial regulation sphere. Rules found to have negligible benefits or excessive unintended harms (such as pushing legitimate users out of banking) could then be reformed or repealed. Over time, this process would help right-size the AML/CFT regime, preserving only those tools that genuinely deliver net positive outcomes for security and society.

- **Strengthen the Countering Transnational Repression Act of 2025:** Recommend amendments to the Countering Transnational Repression Act of 2025 (recent legislation aimed at curbing cross-border persecution by authoritarian governments) to include solutions to the issue of transnational financial repression. For example, it should have protections for victims of abuses of AML/CFT laws. Notably, individuals who publicize or testify about how regimes have weaponized money-laundering laws to persecute them

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often face "broadcast reprisals" – further punitive actions like account closures or smear campaigns triggered by the publicity of their case. The Act should be expanded to shield such whistleblowers and victims from additional financial retaliation. This could involve, for example, direct government agencies to assist these individuals in maintaining access to banking (perhaps via the Special License system mentioned above or other support). By building in these safeguards, the law would ensure that bringing dark practices to light does not result in the victim's further marginalization. In broader terms, protecting those who dare to expose AML/CFT abuses reinforces democratic values and encourages accountability, sending a message that speaking up against injustice will not lead to one's financial ruin in jurisdictions that uphold the rule of law.

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