Testimony of the Honorable Byron Donalds

Member of Congress

Senate Committee on Banking, Housing and Urban Affairs

Hearing entitled "Fairness in Financial Services: Racism and Discrimination in Banking."

December 1, 2022

Chairman Brown, Ranking Member Toomey, thank you for inviting me to testify in front of the Committee on the important discussion surrounding racism and discrimination in financial services.

As someone whose spent most of my career in the professional financial services industry, I can speak firsthand on the issues in this space and the complexities that make our capital markets the envy of the world. As a black man, I understand the burden of discrimination and racism, and because of that, I am thankful that discrimination is not legal in our country, and for laws that validate this fact. Is our financial system perfect? No. Is it far superior, and more inclusive, in comparison to the rest of the world, and is it constantly evolving? Absolutely.

For a long time, our country has had a significant number of unbanked people. Thanks to developments in fintech and banks leveraging fintech partnerships, traditionally unbanked or underserved Americans now have access to the products, tools, and resources that they need to succeed and participate in the global economy.

There are several different ways that we could address gaps in our banking system, and I'm sure that we will get into some of those this afternoon. While I can certainly point to the breakdown of banking relations in minority communities post Dodd-Frank or speak to some of the frivolous red tape that ultimately negatively impacts minority communities, I would like to start off with the most glaringly obvious fact. Our markets cannot flourish and best benefit consumers when contending with ambiguity and regulatory uncertainty. Secondly, agencies cannot expand their own authorities in ways that contradict statute, avoid congressional review, and dismiss the Administrative Procedure Act (APA) and Congressional Review Act (CRA). It is harmful and frankly, it is illegal.

Case in point—the Consumer Financial Protection Bureau's anarchic steps to address "gaps" and "unfairness" in the financial services industry. The CFPB's use of the Unfair or Deceptive Acts or Practices (UDAAP) authority flagrantly contradicts the Dodd-Frank Act's treatment of unfairness and discrimination, which under the law are two separate and distinct concepts. Far too often, the heavy hand of government ushers in sweeping changes that radically transform our markets and implicate American taxpayers and consumers—rejecting transparency and denying debate by critical voices—through rulemakings and guidance, and by expanding the scope of government authority. This way of governing isn't in good faith and, quite simply, is not a sustainable way of conducting business for the people.

Discrimination and racism should absolutely be taken seriously, and that is why there are laws in place such as the Equal Credit Opportunity Act (ECOA) and the Civil Rights Act. Disparate impact cannot be used as a justification for government overreach. I think everyone in the room today could find common ground in acknowledging that there is progress to be made in closing the gap, but that isn't possible with a financial activist mindset infused with disadvantageous policy prescriptions that do nothing to solve the problem. I've worked in several financial institutions and what I can tell you is that there are two colors financial institutions are concerned with: green and red. There are two categories considered: credit worthy or risk prone. There is no subliminal mission to deny access to products based off race, sexuality, religion, or any other identification of the sort. Banks prioritize handling business, and if an individual meets the standards necessary to conduct business with them, that is what the bank will do every time. Taking credit risks into account is responsible banking, it isn't racism or discrimination, and we've got to stop governing in a way that assumes minority communities cannot do better and figure out ways that can help individuals who are struggling to prosper. How can we help create better outcomes for consumers?

1. Agencies should adhere to the rule-making process. They should be engaging equally with all stakeholders to have a full picture and prevent undue harm on consumers or unintentional consequences. Collaboration is key to address nuanced issues. There should be many voices represented and given enough time to provide substantial feedback.

2. We should relax de novo banking requirements. Since Dodd-Frank the number of banks has declined, and that has a critical impact on minority institutions. Two-hundred and fourteen banks have failed since Dodd Frank was passed[1]. We saw the impact this had on minorities at the beginning of the pandemic, with the Paycheck Protection Program (PPP). It wasn't a case of banks not wanting to engage with minorities. There simply wasn't a pre-existing relationship, which inhibited small minority owned businesses from getting the first round of PPP.
3. So much of our government isn't working for the people. The runaway, unaccountable, and financial activism-focused Consumer Financial Protection Bureau (CFPB) is at the spear tip of this worsening problem. As elected officials, it is imperative that we empower consumers and businesses, not engulf them with bureaucratic shackles that stifle economic freedom and access to capital. It is high time for Congress to eliminate the CFPB and allow our free markets to flourish. Earlier this year, I introduced legislation (H.R.6409 - Repeal CFPB Act) with now Senator-Elect Budd of North Carolina to abolish this consumer-last agency once and for all.
4. Actions taken by agencies should be proven by unbiased data, not anecdotal evidence, or assumptions. Agencies should also assess the actions taken by industry leaders to ensure there isn't duplication between the regulators' actions and what banks are already doing to address the needs of underserved communities. For example, BPI put out 30 best practices to address the needs of minority communities. Citi Bridge has worked to connect small and midsize business with local lenders for loans up to $10 million. Bank of America has 700 community financial centers in low and moderate-income neighborhoods that help connect the unbanked and underbanked to the products and financial education they need. These actions do not align with the narrative that the CFPB has created.
5. Financial literacy should be prioritized. Discrimination and disparate impact are not the same, and we've got to understand that equal opportunity doesn't necessarily mean equal outcomes. If individuals lack credit worthiness and that impacts other outcomes relating to financial services, we

[1] https://www.fdic.gov/resources/resolutions/bank-failures/failed-bank-list/

should be looking at ways to address this, like alternative data. People should understand the fundamentals of budgeting, saving, and borrowing. The reality is that not every American will reach a place of financial wealth, but I believe most Americans can reach a place of financial health.

6. Congress and this administration should work together to address inflation. This is why I am a proud co-lead of my colleague French Hill's Price Stability Act, which would end the Fed's dual mandate and ensure the central bank concentrates exclusively on containing inflation. Inflation is one of the most harmful things to affect minority communities. It has a negative impact that Americans feel every day when they open their bills, fill up their gas tank, and stock their fridge. This prevents individuals from being able to save and move the needle economically. If people don't have money, they don't have a reason to bank.
7. This administration should explore the role that responsible innovation and technology through Fintech can play in providing access to capital and financial services to all. Fintech when done responsibly has been shown to bridge the gap and break down traditional barriers to financial services in underserved communities. This was seen very clearly during the PPP process where fintech lenders were critical in delivering PPP loans to underrepresented populations, particularly Black-owned businesses during the pandemic. Studies have shown that about 1 in 4 Black-owned companies applied with fintech lenders. By leveraging the latest technology, fintech creates economic justice and opportunity to deliver nimble and scalable financial, lending, and payment solutions for every family and small business. Since the start of this administration, federal financial regulators, especially at the CFPB and FDIC, have shown an aversion to new financial innovations in lending, payments, and other traditional banking functions under the guise of their "increased profiles", without sufficient evidence to substantiate these claims. The leaders at these financial regulatory agencies would do well to remember the very real benefits provided by fintech and technology-focused banks to underserved communities during and after the Pandemic, and not regulate these innovations out of the market, ultimately harming the consumers these agencies claim to help.

To close I would like to say this: Agencies must return to their missions. My best advice to all agencies is to focus on your mission. We in Congress have an obligation to balance and check agencies that overreach. We are not doing that. This Congress and this Administration owe the American people focus on the issues that actually matter to Americans, and policy that moves the needle where it counts. The FTX disaster is perfect model to illustrate how our current regulators and the current legal framework are being used to pursue social campaigns like climate change, abortion, and other wish list items of tomorrow, rather than prioritizing the issues plaguing every American right now.