

STATEMENT OF
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BEFORE
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CONSUMER PROTECTION
OF THE COMMITTEE ON BANKING, HOUSING, AND
URBAN AFFAIRS
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**ENSURING FAIR ACCESS TO BANKING: POLICY
LEVERS AND LEGISLATIVE SOLUTIONS**

JULIE ANDERSEN HILL BIOGRAPHY

My name is Julie Andersen Hill. I am the Dean and Wyoming Excellence Chair at the University of Wyoming College of Law. My area of legal specialty is banking regulation. For the last 17 years I have studied, taught, and written about banking regulation as an academic. I was a faculty member at the University of Alabama and the University of Houston before returning to Wyoming.

I also have practical banking experience. Prior to becoming an academic, I practiced law in Washington, DC at Skadden, Arps, State, Meagher, and Flom LLP, where I represented large financial institutions. Before I was an attorney, I worked at community banks.

While I am currently privileged to lead the only law school in the state of Wyoming, I am here today as a subject matter expert. The views I express are my own, and not necessarily those of the University of Wyoming, its College of Law, or other organizations with which I have been affiliated.

I. THE PROBLEM: DEBANKING AND RUMORS OF DEBANKING

Chairman Tillis, Ranking Member Cortez Masto, and members of the Subcommittee, thank you for asking me to testify today on debanking.¹

Access to banking is important. It enables people, organizations, and industries to participate in the economy. Debanking—the closing or withholding of accounts for reasons unrelated to violations of law, financial risk, or business purpose—threatens access to banking services. Debanking, for example, occurs when a bank closes an account for political reasons.

This, of course, is not the first congressional body to examine debanking. Beginning in 2014, there were hearings surrounding Operation Choke Point.² At that time, Congress was examining allegations that the Department of Justice, the FDIC, and other regulators pressured banks to cut off services for payday lenders. More recent hearings have focused on whether the crypto industry, the firearms industry, immigrant groups, and others have been debanked.³

One thing that is apparent from these hearings is that there is disagreement about why banks are closing accounts. Are banks being pressured by government supervisors to cut off disfavored groups? Are banks unilaterally imposing their own political preferences? Or do banks have legitimate business and financial reasons for their account decisions? Some believe that debanking is a large problem, while others dismiss it as a conspiracy theory.

While it is important to investigate how often debanking happens and why, I believe that persistent allegations of debanking alone are enough for Congress to consider regulatory reforms. A stable banking system relies on public trust in government banking supervisors. Debanking and persistent rumors of debanking undercut trust in government supervision. Let me explain why.

Banks, like a lot of businesses, depend on trust. But unlike some other businesses, banks do not have good ways to signal that they are trustworthy. Suppose you want to buy a refrigerator. You know that some refrigerators will not work properly. The manufacturer worries that unless you believe you will receive a good refrigerator, you will not buy one. The manufacturer solves this problem by offering a warranty. If the refrigerator turns out to be bad, the manufacturer will replace it. If only a small number of refrigerators go bad, you can trust that you will receive a good

¹ A more comprehensive examination of my research and recommendations on debanking is forthcoming in the Texas A&M Law Review. A draft of the article is available on SSRN. Julie Andersen Hill, *Government Debanking* (last revised 2025), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5384353.

² See, e.g., *The Department of Justice's "Operation Choke Point": Hearing before the Subcomm. on Oversight & Investigation of the Comm. on Fin. Servs.*, 113th Cong. (2014); *Guilty Until Proven Innocent? A Study of the Propriety & Legal Authority for the Justice Department's Operation Choke Point: Hearing before the Subcomm. on Regul. Reform, Com., & Antitrust L. of the H. Comm. on the Judiciary*, 113th Cong. (2014); *The Federal Deposit Insurance Corporation's Role in Operation Choke Point: Hearing before the Subcomm. on Oversight & Investigations of the H. Comm. on Fin. Servs.*, 114th Cong. (2015); *The FDIC's Targeting of Refund Anticipation Loans: Hearing before the Subcomm. on Oversight & Investigations of the H. Comm. on Fin. Servs.*, 114th Cong. (2016).

³ See, e.g., *Debanking and Operation Choke Point 2.0: Regulatory Accountability and Remedies: Hearing before the S. Comm. on Banking, Hous., & Urban Affs.*, 119th Cong. (2025); *Operation Choke Point 2.0: The Biden Administration's Efforts to Put Crypto in the Crosshairs: Hearing before the Subcomm. in Oversight & Investigations of the H. Comm. on Fin. Servs.*, 119th Cong. (2025).

refrigerator.⁴ Banks, however, are not like manufacturers. When a bank has financial difficulties, all the bank’s deposits are in peril. Because banks lend out their money, they don’t have a good way to allow a sudden increase in withdrawals. We end up with a bank run very much like the one depicted in the classic Christmas movie “It’s a Wonderful Life.”⁵ A run can spread to other banks, causing a banking panic. Runs and panic have the potential to destroy even solvent banks by making them liquidate assets at fire sale prices.⁶ This is bad.

Instead of expecting banks to rely solely on their own reputation, our supervisory framework prevents runs and panics by allowing banks to rely on the trustworthiness of government insurance and government supervision.⁷ We trust banks because we trust the government supervisors who keep an eye on them.

If debanking or rumors of debanking cause the public to view government bank supervisors as politically polarized, the supervisors lose some of their credibility. Banks may also be less forthcoming and less willing to cooperate with regulators.⁸ This has the potential to destabilize the banking system and contribute to runs and panics.

II. THE CAUSE: SUPERVISORY DISCRETION AND SECRECY

There are two features of the banking regulatory system that prevent government supervisors from credibly assuring us that debanking does not occur. First, bank regulators have discretionary supervisory power to engage in debanking. Using reputation risk or other supervisory tools, bank examiners have the power to influence bank decisions for political reasons. Banks have little recourse when bank supervisors stretch their authority. Second, bank regulators’ supervisory actions are largely secret. This means that those alleging government debanking rarely have proof of the reason that they have been shut out of the banking system. But it also means that banks and bank supervisors have a difficult time convincing the public that debanking does not happen. My testimony examines these two features in more detail.

A. Discretion

First, although banking regulators have assured both banks and the public that they do not pressure banks to debank customers,⁹ they have been unsuccessful in stopping the persistent

⁴ JONATHAN R. MACEY, *THE DEATH OF CORPORATE REPUTATION: HOW INTEGRITY HAS BEEN DESTROYED ON WALL STREET* 19–27 (2013) (providing the refrigerator example).

⁵ *IT’S A WONDERFUL LIFE* (Liberty Films 1946).

⁶ See MICHAEL S. BARR, HOWELL E. JACKSON & MARGARET E. TAHYER, *FINANCIAL REGULATION: LAW AND POLICY* 236 (2016).

⁷ Christopher McKenna & Rowena Olegario, *Corporate Reputation and Regulation in Historical Perspective*, in *THE OXFORD HANDBOOK OF CORPORATE REPUTATION* 260, 268 (Michael L. Barnett & Timothy G. Pollack eds., 2012); John C. Coffee, Jr., *Systemic Risk After Dodd-Frank: Contingent Capital and the Need for Regulatory Strategies Beyond Oversight*, 111 *COLUM. L. REV.* 795, 815–16 (2011).

⁸ GARY J. MILLER & ANDREW B. WHITFORD, *ABOVE POLITICS: BUREAUCRATIC DISCRETION AND CREDIBLE COMMITMENT* 191 (2016) (arguing that the politicization of the Office of Thrift Supervision caused the “loss of belief in the agency’s willingness and ability to make professional decisions” and ultimately resulted in the four largest institutions supervised by the regulator failing in the same year).

⁹ For example, following Operation Choke Point the FDIC assured the public that “[r]egulatory threats, undue pressure, coercion, and intimidation designed to restrict access to financial services for lawful business have no place at the FDIC.” Press Release, Statement of the Fed. Deposit Ins. Corp. (May 22, 2019), <https://www.fdic.gov/sites/default/files/2024-03/pr19040a.pdf>. More recently, federal banking regulators issued

concerns about debanking. The regulatory disavowals lack persuasive power because they are inconsistent with the discretion that banking supervisors claim. Banking agencies claim broad power—including power that would allow them to force debanking—but they ask the public to believe that they do not use that power. In many cases, the banking regulator’s power is so broad that banks have little opportunity to challenge it.

Of course, some discretion is necessary for supervisors to exercise professional judgments about acceptable levels of financial risk.¹⁰ But other supervisory discretion serves little purpose other than to give supervisors authority to impose policy preferences about things only tangentially related to bank safety. Congressional testimony is not the time or place for a complete catalogue of over-broad supervisory discretion. Instead, I want to highlight two areas where regulators appear to have used their discretion to effectuate debanking.

1. Reputation Risk

The first is reputation risk. Reputation risk is not a term that appears in general federal banking statutes.¹¹ The term is only sparsely used in federal regulations.¹² Instead, federal banking supervisors fleshed out the idea of reputation risk in their supervisory handbooks.¹³ These handbooks, explained that reputation risk was the risk of “negative public opinion”¹⁴ or “negative publicity.”¹⁵ Banking agencies said that reputation risk was present in every aspect of banking.¹⁶ In considering whether publicity was “negative,” bank supervisors accounted for not only the

a joint statement reaffirming that “[b]anking organizations are neither prohibited nor discouraged from providing banking services to customers of any specific class or type, as permitted by law or regulation.” Bd. of Gov. of the Fed. Rsr. Sys., FDIC, Office of the Comptroller of the Currency, Joint Statement on Liquidity Risks to Banking Organizations Resulting from Crypto-Asset Market Vulnerabilities (Feb. 23, 2023), <https://www.fdic.gov/news/press-releases/2023/pr23010a.pdf>.

¹⁰ See, e.g., Peter Conti-Brown & Sean Vanatta, *Risk, Discretion, and Bank Supervision*, 2025 COLUM. BUS. L. REV. 129, 130 (2025) Lev Menand, *Too Big to Supervise: The Rise of Financial Conglomerates and the Decline of Discretionary Oversight in Banking*, 103 CORNELL L. REV. 1527, 1588 (2018).

¹¹ The term does appear in 12 U.S.C. § 4513b (2024) which instructs the Federal Housing Finance Agency (FHFA) to establish standards to “identify, measure, monitor, and control material risks, including reputation risks.” However, the FHFA only has supervisory authority over Fannie Mae, Freddie Mac, the Federal Home Loan Banks, and the Office of Finance. *Id.* at § 4511(b)(2).

¹² 12 C.F.R. § 1.5 (instructing national banks to consider “reputation risk” when banks engage in securities-related activities); 12 C.F.R. §§ 3.101(b), 217.101, 324.101 (excluding “reputation risk” from the definition of “operation risk” used in risk-weighting assets under the advanced measurement approaches). The term also appears in a small number of appendices to regulations. See, e.g., 12 C.F.R. pt. 30, apx. D, pt. II.B (stating that certain large insured national banks should establish a risk governance framework that considers “[c]redit risk, interest rate risk, liquidity risk, price risk, operational risk, compliance risk, strategic risk, and reputation risk”).

¹³ For an explanation of the development of reputation risk as a supervisory concept see Julie Andersen Hill, *Regulating Bank Reputation Risk*, 54 GA. L. REV. 523, 542–53 (2019).

¹⁴ OFFICE OF THE COMPTROLLER OF THE CURRENCY, COMPTROLLER’S HANDBOOK: EXAMINATION PROCESS, LARGE BANK SUPERVISION, ver. 1.2, 34 (2022), www.occ.gov/publications-and-resources/publications/comptrollers-handbook/files/large-bank-supervision/pub-ch-large-bank-supervision.pdf [hereinafter OCC SUPERVISION HANDBOOK] (“Reputation risk is the risk to current or projected financial condition and resilience arising from negative public opinion.”); *Third-Party Arrangements: Elevating Risk Awareness*, Fed. Deposit Ins. Corp. (last updated June 29, 2023), <https://www.fdic.gov/bank-examinations/third-party-arrangements-elevating-risk-awareness> (“Reputation risk is the risk arising from negative public opinion.”).

¹⁵ BD. OF GOVERNORS OF THE FED. RSRV. SYS., COMMERCIAL BANK EXAMINATION MANUAL § 4012.1 (effective Oct. 2023), <https://www.federalreserve.gov/publications/files/cbem.pdf> [hereinafter FED BANK EXAMINATION MANUAL].

¹⁶ OCC SUPERVISION HANDBOOK, *supra* note 14, 34.

views of the banks' customers who might withdraw deposits, but also for the views of other "stakeholders" including the "regulators" themselves.¹⁷

Given the broad scope of reputation risk, it is not surprising that it was identified as the regulatory tool driving debanking. During Operation Choke Point, a FDIC field supervisor in Atlanta warned a bank that "[e]ven under the best of circumstance, if this venture is undertaken with the proper controls and strategies to try to mitigate risks, since your institution will be linked to an organization providing payday services, your reputation could suffer."¹⁸ In New York, the state regulator's guidance warned banks to "evaluat[e] and manag[e] their risks, including reputational risks that may arise from their dealings with the NRA or similar gun promotion organizations."¹⁹ The Federal Reserve instructed Reserve Bank staff to "consider . . . whether association with the institution poses undue reputation risk to the Reserve Bank" when evaluating bank requests to open Federal Reserve accounts.²⁰

In a 2019 paper published in the *Georgia Law Review*, I examined how regulators have used reputation risk.²¹ I found that in most cases, reputation risk is an ancillary consideration to credit risk, operational risk, or other primary risk.²² In these instances, reputation risk adds little because regulators have strong tools to address the root problems. Bank supervisors do not need reputation risk to punish a bank for opening unauthorized accounts because opening unauthorized accounts is already illegal. Sometimes, however, regulators use reputation risk to weigh in on hot-button topics like gun rights, payday lending, and fossil fuels. It is this use that damages trust in bank supervision.

Amid recent scrutiny of debanking, federal banking regulators have removed references to reputation risk from their examination manuals.²³ They have also issued a joint notice of proposed rulemaking that would codify the removal of reputation risk from their supervisory programs.²⁴ While this is laudable, it may not be a permanent change. In the aftermath of Operation Choke Point a decade ago, the FDIC assured the public that its supervisors were not restricting banking

¹⁷ *Id.*

¹⁸ STAFF OF H. COMM. ON OVERSIGHT & GOV'T REFORM, 113TH CONG., FEDERAL DEPOSIT INSURANCE CORPORATION'S INVOLVEMENT IN "OPERATION CHOKE POINT" 13 (COMM. PRINT 2014).

¹⁹ Letter from Maria T. Vullo, Superintendent, N.Y. Dep't of Fin. Servs., to the CEO or Equivalents of N.Y. State Chartered to Licensed Fin. Insts. (Apr. 19, 2018).

²⁰ Rob Copeland, Peter Eavis & Colby Smith, *No, You Don't Actually Have a Right to a Bank Account*, N.Y. TIMES <https://www.nytimes.com/2025/05/15/business/trump-debanking-crypto.html> (May 18, 2025).

²¹ Hill, *supra* note 13.

²² *Id.* at 563–68.

²³ Press Release, OCC, News Release 2025-21, OCC Ceases Examination for Reputation Risk (Mar. 20, 2025), <https://www.occ.treas.gov/news-issuances/news-releases/2025/nr-occ-2025-21.html>; Letter from Travis Hill, Acting Chairman FDIC, to Dan Mueser, Chairman, Subcomm. on Oversight & Investigations Comm. on Fin. Svcs. U.S. House of Rep. (Mar. 24, 2025), <https://aboutblaw.com/bhDr>; Fed. Rsrv. Bd., SR95-51 (SUP): Rating the Adequacy of Risk Management Processes and Internal Controls at State Member Banks and Bank Holding Companies (June 23, 2025), www.federalreserve.gov/supervisionreg/srletters/SR9551.htm.

²⁴ Prohibition on Use of Reputation Risk, 90 Fed. Reg. 48,825 (2025).

access for lawful businesses.²⁵ Yet we are still talking about debanking because the supervisory reforms of the time were not robust or permanent enough to address debanking concerns. Statutory changes eliminating supervision of reputation risk would be both more permanent and more enforceable.

2. Supervision and the Management Rating

The second example of pernicious discretion comes from the examination process. As part of the examination process, supervisors prepare a report rating the bank on the CAMELS factors: Capital adequacy, Asset quality, Management, Earnings, Liquidity, and Sensitivity to market risk.²⁶ For each factor, a bank receives a rating on a one to five scale, with one being the strongest rating.²⁷ But there is no carefully calibrated grading rubric. Instead, the ratings are at least partly a matter of subjective examiner judgment. Of the CAMELS factors, the management rating is the most subjective.²⁸ In assigning the management rating, examiners consider management’s “[r]esponsiveness to recommendations from auditors and supervisory authorities.”²⁹ Management can receive a poor rating, even when the bank is financially strong in all other areas.³⁰

The management rating is important because it is a major component of a bank’s composite CAMELS rating.³¹ A poor composite rating raises deposit insurance premiums and restricts access to borrowing from the discount window.³² Regulators may also use a poor management rating to deny bank requests for mergers and branching.³³

²⁵ Press Release, Statement of the Fed. Deposit Ins. Corp. (May 22, 2019), <https://www.fdic.gov/sites/default/files/2024-03/pr19040a.pdf>.

²⁶ Fed. Fin. Insts. Examination Council, Uniform Financial Institutions Rating System, 61 Fed. Reg. 67,021 (Dec. 19, 1996).

²⁷ *Id.* at 67,022.

²⁸ See, e.g., Sumit Agarwal, Bernardo C. Morais, Amit Seru, & Kelly Shue, *Noisy Experts? Discretion in Regulation*, Nat’l Bur. Of Econ. Research Working Paper 32,344 (Apr. 2024), https://www.nber.org/system/files/working_papers/w32344/w32344.pdf (calling the management rating “a highly subjective component”); Joe Adler, *Why Camels Aren’t as Secret as You Think*, AM. BANKER, Aug. 15, 2011, at 1 (stating that the management rating is “not necessarily quantifiable”); Kathryn Reed Edge, *Anatomy of a Bank Failure*, TENN. B.J., Apr. 2012, at 25 (“The composite is not an average of the other ratings and is sometimes highly subjective.”).

²⁹ FED. DEPOSIT INSURANCE CORP. RISK MANAGEMENT MANUAL OF EXAMINATION POLICIES § 1.1-26 (Oct. 2025), www.fdic.gov/resources/supervision-and-examinations/examination-policies-manual/risk-management-manual-complete.pdf; OCC SUPERVISION HANDBOOK, *supra* note 14, at 97; see also FED BANK EXAMINATION MANUAL, *supra* note 15, § 1100.3 (evaluating whether the bank’s board is “unresponsive to . . . external suggestions for improvement in the bank”).

³⁰ *Bank Supervision is Broken. Here’s How to Fix It.*, BANK POL’Y INST. (Nov. 19, 2024), <https://bpi.com/bank-supervision-is-broken-heres-how-to-fix-it/>.

³¹ The composite rating is not a numerical average of the other CAMELS ratings. Fed. Fin. Insts. Examination Council, Uniform Financial Institutions Rating System, 61 Fed. Reg. 67,021, 67,025 (Dec. 19, 1996). In assigning a composite rating, examiners tend to “place the most weight, approximately 50 percent” on management. Agrwal, *et al.*, *supra* note 28, at 6.

³² *Risk-Based Assessments*, FDIC (last updated Aug. 15, 2024), <https://www.fdic.gov/deposit-insurance-assessments/risk-based-assessments> (noting the use of the composite CAMELS rating when calculating deposit insurance premiums); *Frequently Asked Questions*, The Federal Reserve Discount Window (last visited Feb. 23, 2025), <https://www.frbdiscountwindow.org/en/Pages/General-Information/Frequently-Asked-Questions.aspx>. (opening question “[H]ow do Reserve Banks determine which financial institutions are eligible for primary credit?”) (explaining that banks with a composite CAMELS rating of 1, 2, or 3 are eligible for primary credit).

³³ See *Bank Supervision is Broken. Here’s How to Fix It.*, BANK POL’Y INST. (Nov. 19, 2024), <https://bpi.com/bank-supervision-is-broken-heres-how-to-fix-it/>; Clifford S. Stanford, *Towards a Coherent and Consistent Framework for Treatment of Confidential Supervisory Information*, 22 N.C. BANKING INST. 41, 62-63 (2018).

Investigations into Operation Choke Point uncovered evidence that bank supervisors “recommended” that banks close accounts of payday lenders. For example, one Chicago-based FDIC supervisor wrote: “In the end we are getting [a bank] out of [payment processing for a payday lender] through moral persuasion and as you know from a legal perspective we don’t have much of a position, if any.”³⁴ The FDIC’s Chicago Regional Director told Inspector General investigators that “he pursued a strategy of persuading the institution to terminate its payment processing relationship with the payday lender because it was his perception that senior FDIC management in the Washington, D.C. office . . . did not favor banking services that favored payday lending.”³⁵

Banks are incentivized to comply with these types of debanking recommendations, even if they do not agree with them. If they do not comply, their management rating may suffer.

Once examination ratings have been assigned, there is little opportunity to correct them. By statute, each banking regulator is required to provide an intra-agency process for appealing examination ratings and other material supervisory determinations.³⁶ A decade ago, I published a study of these appeals processes.³⁷ I found that appellate processes were broke; banks rarely appealed; and when banks did appeal, they lost.³⁸ I recommended that banks have access to an appeals process housed outside of the agencies’ supervisory function. I also recommended that the appellate body have enough authority to engage in a robust review of the bank’s complaint.

My recommendations do not carry the weight of bank supervisors’ recommendations. None of the regulators have adopted them. Today banks rarely use the process because they believe “that the risk of retribution from within the agency (whether real or just perceived) too often outweighs any benefit of pursuing an appeal.”³⁹ The banks that do appeal rarely have success.⁴⁰

To summarize, the management rating gives examiners authority to make recommendations to banks. It also gives examiners tools for punishing banks that do not follow the recommendations. This is a mechanism that bank supervisors can use to pressure banks to cut off banking access for disfavored customers. If bank supervisors do this, there is little avenue for banks to complain. Congress could reduce the opportunity for government-driven debanking by

³⁴ OFFICE OF INSPECTOR GEN., FED. DEPOSIT INS. CORP., AUD-15-008, THE FDIC’S ROLE IN OPERATION CHOKE POINT AND SUPERVISORY APPROACH TO INSTITUTIONS THAT CONDUCT BUSINESS WITH MERCHANTS ASSOCIATED WITH HIGH-RISK ACTIVITIES 27 (2015).

³⁵ *Id.*

³⁶ 12 U.S.C. § 4806(a) (2024).

³⁷ Julie Andersen Hill, *When Bank Examiners Get it Wrong: Financial Institution Appeals of Material Supervisory Determinations*, 92 WASH. U. L. REV. 1101 (2015).

³⁸ *Id.*

³⁹ *BPI and Trade Coalition Comment on FDIC Guidelines for Appeals of Material Supervisory Determinations*, BANK POL’Y INST. (Nov. 21, 2022), <https://bpi.com/bpi-and-trade-coalition-comment-on-fdic-guidelines-for-appeals-of-material-supervisory-determinations/>.

⁴⁰ See *Regulator Overreach: The Price Tag on American Prosperity: Hearing before the Subcomm. on Fin. Insts. of the H. Comm. on Fin. Servs.*, 119th Cong. (2025) (written testimony of Margaret E. Tahyar, Partner, Davis Polk) (noting that “[i]n 2024, banks in total went a combined 1-for-17 in the final supervisory appeal decisions published for the year”).

changing the focus of the management rating and requiring that the regulators adopt a more robust appeals process.

B. Secrecy

While Congress could certainly make some progress on debanking by limiting supervisory discretion, this is not a complete solution to the debanking problem. As I previously noted, some discretion is part of a properly functioning supervisory process. However, as long as bank supervisors have discretion, they will be tempted to stretch that authority beyond the bounds necessary for financially sound banking. Currently, secrecy surrounding banking supervision prevents us from effectively evaluating whether debanking is occurring. It also hides potentially problematic supervisory practices.

While some of the supervisory secrecy is rooted in statute and a legitimate concern for preventing bank runs, some secrecy comes from the banking agencies themselves and seems designed to avoid scrutiny.⁴¹ Federal banking agencies have adopted regulations stating that non-public information related to bank supervision is the “property” of the banking agency.⁴² As such, banking agencies take the position that banks and their employees can be punished for theft of public records if they release this confidential information.⁴³ Confidential supervisory information is defined broadly to include “non-public information” including information that was created as part of the supervisory process.⁴⁴ This prevents banks from disclosing regulatory pressure to debank customers.

Bank regulators are not just stingy about the information banks can release; they are also stingy about responding to requests for information about supervisory practices. For example, when Coinbase made a Freedom of Information Act request for FDIC correspondence instructing banks to pause crypto-related activity, the FDIC denied the request claiming the letters were confidential supervisory information.⁴⁵ After being ordered to produce the letters, the FDIC turned

⁴¹ Cf. *Examining How Banking Agencies Supervise and Regulate Financial Institutions: Hearing before the S. Comm. on Banking, Hous., & Urban Affs.*, 116th Cong. 36, 37-39 (2019) [hereinafter *Examining How Banking Agencies Supervise*] (written testimony of Margaret E. Tahyar, Partner, Davis Polk) (discussing the tradition of secrecy surrounding bank supervision).

⁴² 12 C.F.R. §§ 4.23(b)(2); 4.36 (OCC); 12 C.F.R. §§ 309.5(g)(8), 309.6(a) (FDIC); 12 C.F.R. §§ 261.20(b), 261.22(e) (Federal Reserve).

⁴³ See BD. OF GOVERNORS OF THE FED. RESRV. SYS., LARGE INSTITUTION SUPERVISION COORDINATING COMMITTEE PROGRAM MANUAL, Apx. (2023), www.federalreserve.gov/publications/files/liscc-program-manual-202302.pdf (stating that “persons disclosing or receiving” examination information may be subject to the penalties in 18 U.S.C. § 641 (2024)). There is room to question whether this statute focused on government “property” was meant to protect things like confidential supervisory information. Prominent banking attorney Meg Tahyar “suspects that the general federal property law was pressed into service by the federal banking regulators because no other statutory authority was available.” *Examining How Bank Agencies Supervise*, *supra* note 41, at 38 (written testimony of Margaret E. Tahyar) (noting that while the term “property” may have made sense when talking about physical documents it makes less sense “with the development of email and the cloud”); see also Peter Conti-Brown, *The Curse of Confidential Supervisory Information*, BROOKINGS (Dec. 20, 2019), <https://www.brookings.edu/articles/the-curse-of-confidential-supervisory-information/> (noting, perhaps somewhat incredulously, that “[t]he Fed asserts the same law that criminalized stealing money from the public fisc also applies to anyone who gains access to [confidential supervisory information]”).

⁴⁴ 12 C.F.R. § 261.2(b)(1); see also 12 C.F.R. § 4.32 (stating that information is non-public if it was “created or obtained . . . [b]y the OCC in connection with the OCC’s performance of its responsibilities, such as a record concerning supervision, licensing, regulation, and examination of a [bank]”); 12 C.F.R. § 30.95(g)(8) (stating that “[r]ecords that are contained in or related to examination, operating, or condition reports” are confidential).

⁴⁵ Complaint ¶¶ 52-53, *History Assoc. Inc. v. Fed. Deposit Ins. Corp.*, Case No. 24-cv-01857 (D. D.C. filed June 27, 2024); Answer ¶¶ 52-53, *History Assoc. Inc. v. Fed. Deposit Ins. Corp.*, Case No. 24-cv-01857 (D. D.C. filed August 7, 2024).

over letters that were so heavily redacted that a judge concluded the redactions were not made in good faith.⁴⁶ Eventually, after a change in leadership, the FDIC produced the letters.⁴⁷ The bottom line is that bank regulators do not reliably release information that allows the public or even members of Congress evaluate whether bank supervisors are using their discretion in an acceptable manner.

Congress has the power to change this. Congress should amend the law to clarify that not all supervisory information is “property” protected by criminal law.⁴⁸ Congress should then take a hard look at what confidentiality is necessary to prevent runs and panics and encourage banks to share information with them.⁴⁹ Congress should note that recent forced disclosures of information (for example, the pause letters) do not seem to have caused runs or wide-spread harm to the banking system. This suggests it would be possible to “disclose specific aspects of the examination process” like “redacted examination reports” or CAMELS ratings.⁵⁰ Such disclosures would give “consumers, investors, banks, and scholars important information about the health of individual institutions and the system itself.”⁵¹ It would also give the public insight into the banking supervision system that may help the public more effectively evaluate debanking claims. Congress could also consider whether regular disclosure to members of Congress serving an oversight role would be an effective check on discretionary overreach.⁵²

III. CONCLUSION

In conclusion, debanking and rumors of debanking have plagued the financial system for years. Complaints come from both sides of the political aisle.⁵³ These complaints threaten the trust that Americans have in bank supervision and potentially destabilize the banking industry. Everyone interested in good governance should consider reforms that address the supervisory discretion and secrecy that allow debanking concerns to persist.

⁴⁶ *U.S. Judge Condemns FDIC’s ‘Lack of Good Faith’ Over Coinbase FOIA Redactions*, BRAVE NEW COIN (Dec. 15, 2024), <https://bravenewcoin.com/insights/u-s-judge-condemns-fdics-lack-of-good-faith-over-coinbase-foia-redactions>.

⁴⁷ Press Release, FDIC Releases Documents Related to Supervision of Crypto-Related Activities (Feb. 5, 2025), <https://fdic.gov/news/press-releases/2025/fdic-releases-documents-related-supervision-crypto-related-activities>; Correspondence Related to Crypto-Related Activities (Feb. 5, 2025), <https://fdic.gov/foia/correspondence-related-crypto-related-activities>.

⁴⁸ 18 U.S.C. §§ 641, 655 (2024).

⁴⁹ These are the two most cited justification for protecting information related to bank supervision. *See* Stanford, *supra* note 33, at 41-42; Heidi Mandanis Schooner, *The Secrets of Bank Regulation: A Reply to Professor Cohen*, 6 GREEN BAG 2d 389, 391 (2003) (identifying the runs and panics justification).

⁵⁰ Conti-Brown, *supra* note 43.

⁵¹ *Id.*

⁵² Thom Tillis, The Ensuring Fair Access to Banking Act of 2025, at 2, <https://www.tillis.senate.gov/services/files/AEE8D69B-809B-4178-AD78-85BAF375D1D3> (recommending legislation that would “allow[] (with appropriate classified materials safeguards) select members of Congress to request the Confidential Supervisory Information (CSI) created in an examination process”).

⁵³ *See* Nicholas Anthony, *Trump Debanks the Left? Antifa Terrorist Designation Means New Pressure*, CATO AT LIBERTY, <https://www.cato.org/blog/trump-debanks-left-antifa-terrorist-designation-means-new-pressure> (Nov. 13, 2025, 9:52 a.m.).