

United States Senate

WASHINGTON, DC 20510-0908

September 15, 2021

Mr. Michael J. Hsu
Acting Comptroller of the Currency
Office of the Comptroller of the Currency
U.S. Department of the Treasury
400 7th Street SE
Washington, D.C. 20219

Dear Acting Comptroller Hsu:

We write with regard to the importance of ensuring that Americans do not lose access to banking services due to their political affiliation or beliefs. An individual's access to banking services should be based on objective measures of creditworthiness and financial risk, not their political views. Unfortunately, many Americans are vulnerable to arbitrary efforts—most notably by large banks receiving taxpayer support—to lock them out of access to credit based on their political views. This is unacceptable, and should be vigilantly guarded against by regulators as a threat to the integrity of our financial system.

Recently, reports surfaced that the credit cards of Lori Flynn, wife of Lieutenant General Michael Flynn, USA, Retired, former National Security Adviser to President Trump, were allegedly terminated by JPMorgan Chase & Co. due to the bank's concerns with the "reputational risk" that affiliation with Mrs. Flynn could bring to the company.¹ The bank has since claimed that the determination was in error, and has reinstated Mrs. Flynn's account. However, regardless of whether the termination of Mrs. Flynn's credit cards by the bank was in fact made in error, the possibility raised by this event that "reputational risk" could include the political views or histories of the bank's customers is of great concern to many Americans. If political views are considered a valid factor in a bank's determination of reputational risk for the purposes of determining access to credit, the banking services of millions of Americans could be put in jeopardy.

Unfortunately, the Biden Administration has contributed to the ambiguity of the legal landscape around fair access to credit that permits events like the above to occur and threatens the public's trust in our financial system. In January, the Office of the Comptroller of the Currency (OCC) paused its publication of the rule "Fair Access to Financial Services," that would have solidified guidance ensuring that large banks conduct individual risk assessments of customers and use impartial standards to determine credit worthiness rather than making broad determinations based on a customer's class or categorical affiliation.² This was a commonsense rule that should be reinstated.

In response to this action, one-third of the U.S. Senate, led by Senator Cramer, introduced the *Fair Access to Banking Act*. This bill lays out specific rules barring large banks and financial institutions from discriminating against lawfully operating people and businesses. Further, several of our Senate colleagues joined Senator Rubio in introducing the *Financial Defense of Industrial Contractors (FDIC) Act*, legislation that would protect federal contractors from discrimination by large banks after reports

¹ <https://www.dailymail.co.uk/news/article-9944457/Chase-tells-General-Flynns-wife-theyre-cancelling-card.html>

² <https://www.occ.gov/news-issuances/news-releases/2021/nr-occ-2021-14.html>

surfaced that several mega banks had refused depository services to contractors which operated facilities on behalf of Immigration and Customs Enforcement (ICE). These banks receive significant public support from American taxpayers and, due to their size, control large portions of the credit market both directly and indirectly by setting norms. They should not be allowed to deny funds to otherwise creditworthy firms with a federal contract and continue to receive federal support. This bill would remove Federal Deposit Insurance Corporation insurance from firms who choose to do so.

In light of these concerns, we request that you respond to the following questions:

- What steps will you take to ensure that Americans are not penalized for their political affiliation and beliefs when seeking financial services?
- Will you commit to reinstating the 2020 Fair Access rule at the OCC, or revising existing guidance to ensure that large banks do not deny banking services as a result of an individual's categorical or political affiliation?

Thank you for your consideration. We look forward to your prompt reply.

Sincerely,



Marco Rubio
U.S. Senator



Kevin Cramer
U.S. Senator