December 29, 2025

Chief Counsel's Office
Attention: Comment Processing
Office of the Comptroller of the Currency
400 7th Street, SW
Suite 3E-218
Washington, DC 20219

Jennifer M. Jones
Deputy Executive Secretary
Attention: Comments—RIN 3064-AG12
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429VIA ELECTRONIC
SUBMISSION

Re: Prohibition on Use of Reputation Risk by Regulators (Docket ID OCC-2025-0142/ RIN 3064-AG12)

Dear Sirs and Madams:

The Online Lenders Alliance (OLA) is pleased to submit comments in response to the Office of the Comptroller of the Currency's (OCC) and Federal Deposit Insurance Corporation's (FDIC) (collectively the Agencies) Notice of Proposed Rulemaking (NPRM) regarding the prohibition of the use of reputational risk by regulators. OLA appreciates the opportunity to provide its members' perspective on this topic.

About OLA and its Members

OLA represents the growing industry of innovative companies that develop and deploy pioneering financial technology, including proprietary underwriting methods, sophisticated data analytics and non-traditional delivery channels, to offer online consumer loans and related products and services. OLA's members include online lenders, vendors and service providers to lenders, consumer reporting agencies, payment processors and marketing firms.

Fintech companies have pioneered innovative and modern online techniques for advertising and marketing, preventing and managing fraud risk, underwriting and managing credit risk, servicing loans, and conducting compliant collection activities in a manner that is fair and transparent to consumers seeking to obtain a loan or a line of credit online. Online lenders provide benefits to consumers, particularly those in underserved communities, with fast, safe, and convenient choices.

OLA is leading the way to improve consumer protections, with a set of standards that ensure borrowers are fully informed, fairly treated, and able to use lending products responsibly. To accomplish this, OLA members voluntarily agree to hold themselves to a set of Best Practices, a set of rigorous standards above and beyond current legal and regulatory requirements. OLA members, the industry, and any partners with whom OLA members work use these standards to stay current on the changing legal and regulatory landscape.

OLA Best Practices cover all facets of the industry, including advertising and marketing, privacy, payments, and mobile devices. Most importantly, OLA Best Practices are designed to help consumers make educated financial decisions by ensuring that the industry fully discloses all loan terms in a transparent, easy-to-understand manner.[1]

Much of the innovation undertaken by OLA members has given consumers greater access to financial services and products across multiple applications and platforms in a safe and accessible manner. This is especially the case when it comes to access to capital, as the ability to find and secure credit is often a determining factor in a consumer's financial wellbeing. Online lenders provide benefits to consumers, particularly those in underserved communities, with fast, safe, and convenient choices that simply are not available through traditional lending markets.

OLA is encouraged that the proposal would promote policies that support the online lending industry's ability to innovate in a manner that serves American consumers' needs in a safe and secure manner. In addition to protecting the safety and soundness of our financial markets, it is incumbent on Federal regulators to ensure customers have fair access to financial services and receive evenhanded treatment by financial institutions. There has been a broad and longstanding anti-discrimination principle that individuals are entitled to be treated fairly by national banks and Federal savings associations. That principle is reinforced by specific laws, such as the Equal Credit Opportunity Act, the Fair Housing Act, and the Community Reinvestment Act, among others.

The proposal to remove reputational risk from the Agencies' supervisory programs is in keeping with the intent of these standards, and OLA strongly supports its enactment. Establishing clear regulatory guidelines will go a long way in ensuring that all legitimately licensed businesses have fair access to our nation's banking system.

The Need for Rulemaking

History has shown that not all sectors of our economy have enjoyed fair access. For proof, one only needs to look at Operation Choke Point, one of the first instances of debanking. This program, instituted during the Obama administration, demonstrates why a change like the one proposed by the Agencies is sorely needed. Operation Choke Point purportedly was rooted in the principles that the U.S. banking system should not be used for unlawful purposes and that U.S. banks have an obligation to monitor their customers' accounts to ensure that they are not being used for such unlawful purposes.

However, this was not the true goal of Operation Choke Point. Its real purpose was to target a group of legitimately licensed businesses that some senior agency officials viewed as undesirable to certain constituencies. The targeted industries included the online lending industry due to their work in the small-dollar lending market.

[1] Online Lenders Alliance Best Practices, https://onlinelendersalliance.org/best-practices/

Once Operation Choke Point was initiated, the U.S. Department of Justice (DOJ) issued subpoenas under Section 951 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. However, this was an overreach beyond the intended purpose of Section 951, which was established to provide regulators with the tools necessary to pursue civil penalties against entities that commit fraud, not to target private companies performing legal business. In a coordinated campaign, DOJ, working with federal bank regulators, pressed financial institutions to end relationships with targeted industries.

Many banks stopped providing financial services to members of these industries altogether due to political pressure and fear of retribution. Since Operation Choke Point came to light, there have been several attempts to rectify the damage done to the online lending industry, both through judicial proceedings and congressional action.

Operation Choke Point Related Litigation

In 2014, a complaint was brought in federal court against the FDIC, Federal Reserve Board of Governors and OCC, alleging that federal banking regulators participated in—and were continuing to take part in–Operation Choke Point. According to the plaintiffs, the defendants engaged in a two-part campaign: first, promulgating regulatory guidance regarding reputation risk; and second, relying on that guidance "as the fulcrum for a campaign of backroom regulatory pressure seeking to coerce banks to terminate longstanding, mutually beneficial relationships."[2]

The plaintiffs sought declaratory and injunctive relief to set aside certain informal guidance documents and other actions by the FDIC, Federal Reserve Board and OCC on the grounds they violated the Administrative Procedures Act and deprived the plaintiffs of due process of law.[3] In July 2017, the D.C. federal district court permitted the plaintiffs' due process claims to proceed.

By 2019 an agreement was reached. In exchange for the plaintiffs' dismissal of the suit, the FDIC agreed to issue a statement summarizing their long-standing policies and guidance regarding the circumstances in which the FDIC recommends that a financial institution terminate a customer's deposit account, reiterating pre-existing public guidance to financial institutions about providing banking services and carrying out Bank Secrecy Act (BSA) obligations. In addition, the agency pledged to conduct additional training of its examination workforce on its policies by the end of 2019 "to ensure that its examiners adhere to the highest standards of conduct and respect the rule of law."[4]

Congressional Action

While the legal challenges were working their way through the courts, Operation Choke Point also was subject to extensive congressional review. No fewer than three House committees held hearings between 2014 and 2018 on the negative consequences of Operation Choke Point.[5] These actions helped shed considerable light on the operation and led the FDIC to issue a Financial Institution Letter in January 2015 that clarified the agency's position regarding Operation Choke Point. The letter stated that banks should take "a risk-based approach in assessing individual customer relationships rather than declining to provide banking services to entire categories of customers without regard to the risks presented by an individual

[2] *Advance America v. Federal Deposit Insurance Corp.*
[3] Ibid.
[4] Statement of the Federal Deposit Insurance Corporation May 22,2019
[5] *The Department of Justice's 'Operation Choke Point'*" House Financial Services Committee July 15, 2014; *Guilty until Proven Innocent? A Study of the Propriety & Legal Authority for the Justice Department's Operation Choke Point."* House Judiciary Committee July 17, 2014; "*The Federal Deposit Insurance Corporation's Role in Operation Choke Point*" House Financial Services Committee, March 24, 2015; *Federal Trade Commission Enforcement of operations Choke Point-Related Businesses*. House Committee on Oversight and Government Reform, July 26, 2018

customer or the bank's ability to manage the risk."[6]

This action was followed by testimony before a Congressional committee by the FDIC Chairman, reiterating that banks should act like banks by accurately assessing individual customer risk, not by shunning customers just because they are members of certain industries.[7] The FDIC later followed up these statements with a letter outlining further actions that the regulator would take to end Operation Choke Point, committing to investigate the agency's prior actions and hiring an outside law firm to investigate the matter.[8]

During the 118th Congress, a bill entitled the "*Secure And Fair Enforcement Regulation Banking Act (SAFER) Banking Act,*" was introduced. A major focus of this legislation was to put an end to debanking and address many of the issues created by Operation Choke Point. This legislation also included a provision that would have required the disclosure of deposit account terminations mandated by federal banking agencies.[9]

Administration Action

On August 7, 2025, President Trump issued an Executive Order (EO) titled *"Guaranteeing Fair Banking For All Americans*" directing federal banking regulators to prevent financial institutions and financial service providers from denying or restricting financial services and products based on the recipients' political or religious beliefs. The Order also requires regulators to remove the concept of "reputational risk" that could lead to debanking from supervisory guidance, manuals, and related examination materials.[10]

Impact of Removing Reputational Risk from Supervisory Programs

These actions were meant to put an end to debanking initiatives like Operation Choke Point. However, OLA continues to receive anecdotal evidence from its members that the industry still is finding its access to financial services curtailed, with no satisfactory explanation from their banks. Although the actions taken by regulators to date have been encouraging, they have been unsuccessful in undoing the systemic problems created by Operation Choke Point. It remains the sense of many in the industry that bank executives still believe that some federal bank examiners negatively view providing financial services to members of certain industries.

That is why the proposed rule to codify the removal of reputation risk from their supervisory programs is so important. This will provide much needed reinforcement, setting clear parameters regarding the obligation that financial institutions must provide fair access to financial services to all legitimately licensed businesses. There is no place for politics in our banking system. It is important to bring about the end of debanking initiatives like Operation Choke Point once and for all. Such initiatives are no less than an abuse of government power and are antithetical to the best interests of the banking industry, the U.S. economy, and the consumers who rely on legal banking products and services.

To reinforce these changes OLA recommends that the Agencies consider including in their proposed rule a requirement that national banks and federal savings associations report to the OCC and the FDIC information regarding all deposit account terminations, including the reason(s) for such terminations. Furthermore, the proposed rule should require the Agencies to make this information publicly available annually in a report

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[6] FDIC Encourages Institutions to Consider Customer Relationships on a Case-by-Case Basis https://www.fdic.gov/news/press-releases/2015/pr15009.html
[7] *The Federal Deposit Insurance Corporation's Role in Operation Choke Point*" House Financial Services Committee March 24, 2015
[8] https://www.consumerfinancemonitor.com/wp-content/uploads/sites/14/2018/12/fdic_response_to_rep._luetkemeyer.pdf
[9] https://www.congress.gov/bill/118th-congress/senate-bill/2860?loclr=cga-bill
[10] https://www.whitehouse.gov/presidential-actions/2025/08/guaranteeing-fair-banking-for-all-americans/

covering deposit account termination data for each reporting bank and savings association along with aggregate statistics on deposit account terminations. This would be similar to the provisions of Section 10(b)(2)(B) of the SAFER Act and should provide reasonable but limited exceptions from public reporting for terminations that result from the terminated customer:

(i) posing a threat to national security;
(ii) engaging in money laundering, terrorist financing, drug trafficking, or other illicit criminal financing activity;
(iii) being listed on an Office of Foreign Assets Control's ("OFAC") Specially Designated Nationals ("SDN") sanctions list or other non-SDN sanctions list which prohibits the national bank or federal savings association from doing business with such customer;
(iv) being an agent of, located in, or subject to the jurisdiction of, the government of a country subject to comprehensive, country-wide OFAC sanctions, or a country on the State Sponsors of Terrorism List; or
(v) doing business with an entity described in (iv), unless the OCC determines that the customer or group of customers has conducted due diligence to avoid doing business with any entity.

Including this additional reporting requirement as a part of the Agencies' formal rulemaking will assist in advancing the goals of the Executive Order and put an end to politicized and unlawful de-banking.

By placing these standards into a regulation consistent with the Administrative Procedures Act (APA), these actions will provide a much stronger bulwark than previous actions by regulators. This also will send a clear message that debanking efforts like Operation Choke Point are no longer in effect, and that no agency or bank examiner has the authority to continue pursuing policies that result in debanking. Such actions would assure banks that they may provide financial services without discriminating against certain industries. Without such action, banks' perception of "regulatory risk" will continue to deny financial services to legitimate and profitable businesses.

Conclusions

The proposal by the OCC and FDIC to remove reputational risk from their supervisory manuals is a positive step that would encourage stability in the lending space and increase access to credit uniformity across all markets. It should be noted that any future proposals should apply to both national and state-chartered banks supervised by the OCC and FDIC. OLA encourages other regulators, including the Federal Reserve, to follow suit and provide regulatory guidance on the issue of debanking.

OLA appreciates this opportunity to offer input on this important issue. If you have questions or need additional information, please feel free to contact me at [redacted].

Respectfully submitted,

Michael Day
Policy Director
Online Lenders Alliance