



Statement for the Record  
of  
National Consumer Law Center  
(on behalf of its low-income clients)  
for hearing on  
Investigating the Real Impacts of Debanking in America  
before the  
Senate Committee on Banking, Housing, and Urban Affairs  
Wednesday, February 4, 2025

## **1. Introduction and Summary**

Thank you for the opportunity to submit this statement for the record and to highlight the impact that lack of bank account access has on American consumers.

Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has worked for consumer justice and economic security for low-income and other disadvantaged people in the United States through its expertise in policy analysis and advocacy, publications, litigation, expert witness services, and training.

Participation in the U.S. financial system often begins with access to a bank account. Yet, despite progress in recent years, too many people still do not have bank accounts or find that their accounts have been frozen or closed. A top reason that people are or become unbanked is high fees, in particular high, snowballing overdraft fees. The Consumer Financial Protection Bureau's (CFPB) overdraft fee rule would fix that problem, reducing most big bank overdraft fees from \$35 to \$5 and eliminating incentives for big banks to push people into overdrafting. Congress must not overturn this important rule that returns \$5 billion back-end, abusive junk fees to families struggling with high prices.

Another reason that people lose or are denied bank account access is because financial institutions have broad discretion in setting risk tolerances for who they choose to allow as customers. This broad discretion often translates into policies that negatively impact the very consumers who are seeking entrance into the financial system. These barriers negatively impact communities of color disproportionately and lead to a higher population of unbanked individuals. Overbroad policies related to Bank Secrecy Act compliance can also result in bank account closures and freezes, with consumers given no reason for the bank's action and no opportunity to respond. Often, people are denied access to the funds they need to buy food and pay rent because automated fraud detection programs wrongfully identified the account or a transaction as suspicious.

At the same time, vigilant Bank Secrecy Act (BSA) compliance is essential to stop the rash of fraud that is enabling criminals to seize billions of dollars from Americans every year. Criminals cannot steal money if they have nowhere to receive or launder it. BSA enforcement is critical at financial institutions, and it especially must be improved at non-bank entities like Block's Cash App. Criminals must be debanked.

As Congress considers legislation to regulate crypto-assets, it is essential that crypto firms be required to conduct full BSA compliance. Crypto-assets are one of the top vectors for fraud and other illegal activity, and the growth of the crypto industry will only result in more fraud if strict controls are not built in.

## 2. The CFPB’s big bank overdraft fee rule will increase bank account access.

Despite progress over the years, too many Americans are still unbanked. In 2023, 4.2 percent of U.S. households – representing about 5.6 million households – were unbanked.<sup>1</sup> The lack of bank account access is especially troublesome in certain communities. More than one in 10 (11.2%) households with a disability are unbanked, as are 12.2% of Native American, 10.6% of Black, and 9.5% of Latino households.<sup>2</sup>

Lack of trust in banks, high bank account fees, and bank account fees that are too unpredictable are among the top reasons people are unbanked.<sup>3</sup> Large, surprise overdraft fees are a key problem; overdraft practices lead to a vast majority of bank account closures.<sup>4</sup>

Additionally, overdraft practices disproportionately affect consumers of color. As compared with white consumers, Black consumers are 69 percent more likely, and Latino consumers are 60 percent more likely to reside in a household charged at least one overdraft or NSF fee in the past year.<sup>5</sup>

Overdraft fees have long been one of the most pernicious and deceptive taxes on being poor. Years ago, overdraft fees were charged rarely, merely to cover the cost and risk to the bank for the occasional courtesy of covering a check that would otherwise bounce. Many banks also offered overdraft lines of credit that charged a reasonable interest rate, costing only pennies if the overdraft was quickly paid off.

But as consumers began to receive wages and other income by direct deposit and to make payments using debit cards that can be approved or declined in real time, financial institutions saw an opportunity to push consumers to overdraft and make money off people living paycheck to paycheck. A variety of practices sprang up that put financial institutions at odds with their customers, focused on increasing profits rather than helping improve consumers’ financial health.

Instead of competing honestly with transparent monthly fees, financial institutions promoted “free checking” but covered their costs with back-end fees imposed on their most vulnerable

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<sup>1</sup> Federal Deposit Insurance Corporation (FDIC), 2023 FDIC National Survey of Unbanked and Underbanked Households (November 2024).

<sup>2</sup> *Id.*

<sup>3</sup> Fed. Deposit Ins. Corp., 2023 FDIC National Survey of Unbanked and Underbanked Households, 3 (Table ES.3) <https://www.fdic.gov/household-survey/2023-fdic-national-survey-unbanked-and-underbanked-households-report>.

<sup>4</sup> Campbell, Dennis, Martinez-Jerez, Asis, and Tufano, Peter, “*Bouncing Out of the Banking System: An Empirical Analysis of Involuntary Bank Account Closures*,” Harvard Business School, April 2012, <https://www.hbs.edu/faculty/Pages/item.aspx?num=41390>; Consumer Financial Protection Bureau, Federal Register Notice, “Final Rule on Overdraft Lending: Very Large Financial Institutions,” December 30, 2024, <https://www.federalregister.gov/documents/2024/12/30/2024-29699/overdraft-lending-very-large-financial-institutions#footnote-65-p106773>.

<sup>5</sup> Consumer Fin. Prot. Bureau, Overdraft and Nonsufficient Fund Fees: Insights from the Making Ends Meet Survey and Consumer Credit Panel, 25 (Dec. 2023) [https://files.consumerfinance.gov/f/documents/cfpb\\_overdraft-nsf-report\\_2023-12.pdf](https://files.consumerfinance.gov/f/documents/cfpb_overdraft-nsf-report_2023-12.pdf).

customers. Many banks eliminated reasonably priced overdraft lines of credit in favor of “courtesy” overdraft programs that just meant a lot of fees.

A vicious cycle led to piling on overdraft fees that triggered more overdrafts and more overdraft fees. Banks have engaged in practices<sup>6</sup> to maximize overdraft fees including:

- Unreasonably high fees for each overdraft, typically \$35, far higher than needed to cover the banks’ costs;
- Multiple overdraft fees per day, with no limits at some banks and as many as six \$35 fees (\$210) even at banks that limit the number;
- “Extended” or “sustained” overdraft fees, making it more difficult for a struggling account holder to recover;
- Opaque and often manipulative practices to increase overdraft fees involving deposit clearing, debit holds, and transaction posting order. Fees may even be charged when the consumer had sufficient funds in the account when the transaction was authorized.
- Overdraft fees on debit card purchases and ATM withdrawals instead of simply declining the transaction at no charge.
- Automatically collecting the overdraft by offsetting the next deposit, even when it is Social Security, unemployment, military/veterans compensation, public benefits or wages needed to pay for necessities.

After allowing, and in some cases encouraging, people to overdraft, banks close the accounts of those who struggle to bring their accounts out of the red. The resulting negative reports to account screening agencies such as ChexSystems and Early Warning Services then stop people from getting new accounts and exile them from the banking system.<sup>7</sup>

But the CFPB’s Rule on Overdraft Lending: Very Large Financial Institutions would address the harms caused by current overdraft practices. Under the rule, very large financial institutions would have the ability to provide different types of overdraft services. They can (1) charge a \$5 fee to cover their costs for surprise overdraft fees, or a higher amount if they can show their costs are greater; (2) cover overdrafts through links to savings or credit cards; or (3) if they wish to make a profit, banks can provide overdraft lines of credit with transparent pricing, time to pay, and other requirements that apply to credit cards.

The rule would save the average household that pays overdraft fees \$225 a year. The rule will also reduce manipulative practices and increase transparency and fair competition by eliminating

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<sup>6</sup> These practices are described in Smith, Peter et al., Center for Responsible Lending, Banks Must Stop Gouging Consumers During the COVID-19 Crisis at 1-2 (June 2020), <https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-overdraft-covid19-jun2019.pdf> (“CRL, Banks Must Stop Gouging Consumers”).

<sup>7</sup> See NCLC, Press Release, Report: Account Screening Consumer Reporting Agencies Impede Access for Millions (Oct. 19, 2015), <https://www.nclc.org/media-center/report-account-screening-consumer-reporting-agencies-impede-access-for-millions.html>.

the incentive for exploitative practices to push people into overdrafting. The rule will thus restore trust in banks and reduce high and unpredictable fees, addressing top reasons people are unbanked.

At the same time, the rule allows banks to offer overdraft credit profitably as long as they do so in a more transparent and fair manner. There are no price restrictions on overdraft lines of credit. Moreover, big banks like [Capital One](#), [Citibank](#), and [Ally](#) have continued covering overdrafts even while completely eliminating overdraft fees. Congress should support the overdraft rule and oppose any Congressional Review Act resolution of disapproval.

**3. Bank regulators appropriately enforce Bank Secrecy Act (BSA) requirements to deny criminals bank accounts, but overbroad bank BSA policies can hinder access to bank accounts.**

**A. Debanking criminals will help reduce the billions lost in fraud every year, and the BSA can assist with identifying those criminals.**

In an effort to stop money laundering and the flow of money to criminal activities in general, Congress passed a series of laws starting with the Bank Secrecy Act of 1970.<sup>8</sup> “BSA” is shorthand for “a series of laws and regulations enacted in the United States to combat money laundering and the financing of terrorism.”<sup>9</sup> “BSA” refers to the “Bank Secrecy Act;” “AML” refers to “Anti-Money Laundering;” and “CFT” refers to “Countering the Financing of Terrorism.”

The Bank Secrecy Act and its implementing regulations are not just about drug cartels and terrorism. They also help to stop an array of criminal activity, including fraud. Fraud profits can also fuel terrorism and other activities by international criminal syndicates. The BSA imposes requirements on financial institutions to have systems to verify the identity of their customers and their businesses, to monitor accounts to ensure they are not being used for illicit purposes, and to report suspicious activity. Vigorous BSA oversight can prevent bad actors from opening accounts or using them to receive funds taken from consumers in unauthorized transactions or through fraud schemes. A lax AML/CFT regime can facilitate criminal activity.

**B. FinCEN should take additional steps to address payment fraud under the BSA.**

The BSA regime plays an important role in combatting fraud, and FinCEN should take additional steps to address payment fraud. First, FinCEN should place stricter requirements on non-bank entities that engage in payment and banking services. Second, FinCEN should update

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<sup>8</sup> See Fin. Crimes Enf't Network, [History of Anti-Money Laundering Laws](#), available at [www.fincen.gov](http://www.fincen.gov).

<sup>9</sup> Fed. Deposit Ins. Corp., [Bank Secrecy Act/Anti-Money Laundering \(BSA/AML\)](#), available at [www.fdic.gov](http://www.fdic.gov).

the Suspicious Activity Report (SAR) to capture information about accounts that receive fraudulent funds.

**i. FinCEN must place stricter BSA requirements on non-bank entities that engage in payment and banking services.**

FinCEN should expand the Customer Identification Program (CIP) and customer due diligence (CDD) requirements for entities other than banks that engage in payment and banking services, such as person-to person (P2P) payment apps, payment processors, fintech companies offering banking as a service or offering bank-like services, and crypto-related entities including crypto exchange platforms.

Person-to-person (P2P) payment apps have become increasingly popular among consumers. Seventy-six percent of households use Venmo or Cash App. In addition to P2P payment services, consumers are also increasingly adopting other forms of technology to make payments. These newer payment apps and technologies are accepted by more retailers, demonstrate a rapid growth trajectory, are situated within platforms with other financial services, and are being structured to work with crypto.

These platforms have become fertile ground for fraudsters and organized crime, posing risks to consumers and law enforcement. According to the FTC, “payment app or service” is the third largest category of payment method specified by fraud victims in terms of number of reports (after credit cards and debit cards) for all of 2023, and the second largest category of payment method specified by fraud victims in terms of number of reports (after credit cards) for the first two quarters of 2024. The Consumer Financial Protection Bureau (CFPB) has also seen high growth in complaints about fraud in P2P apps and digital wallets. The existing P2P payment systems of large technology companies and financial institutions simply are not safe for consumers to use.

P2P fraud has a particularly harsh impact on low-income families and communities of color. These communities, already struggling and often pushed out of the traditional banking system, can least afford to lose money to scams and errors. Because many minorities are also unbanked or underbanked, they are the target audience for use of many of the P2P apps. For example, a September 2022 Pew Research Center survey shows that 59% of Cash App users are Black and 37% are Hispanic and Cash App has been subject to reports of widespread fraud, failing to protect the very vulnerable populations it targets. As a result, both the Conference of State Bank Supervisors (CSBS) and the CFPB have taken enforcement action against Block, the operator of Cash App. The CSBS ordered Block to pay an \$80 million and “undertake corrective action for violations of the Bank Secrecy Act (BSA) and anti-money laundering (AML) laws that safeguard

the financial system from illicit use.”<sup>10</sup> Similarly, the CFPB found that Block failed to take timely, appropriate, and effective measures to prevent, detect, limit, and address fraud on the Cash App platform.<sup>11</sup>

**ii. FinCEN should update the Suspicious Activity Report (SAR) to capture information about accounts that receive fraudulent funds.**

FinCEN can help in the fight against payment fraud by updating the suspicious activity report (SAR) to encompass information about the accounts used to receive ill-gotten funds. The current SAR form only accommodates accounts related to the reporting institution. In fraud cases where the destination account of the perpetrator is known, reporting institutions relegate the destination account to the narrative. This makes identification and aggregation of fraudulent activity more difficult for law enforcement.

When a consumer’s financial institution files a SAR following an incident of payment fraud, if the payment was sent through a system that identifies the recipient (such as a wire transfer, ACH, or P2P system), the SAR should identify the recipient institution and account. Allowing accounts not domiciled at the reporting institution to be reported and designated appropriately would assist FinCEN and law enforcement in identifying, aggregating, and prioritizing fraud investigations to better protect consumers.

Since fraud schemes affect many victims at various reporting institutions, fraud often results in a hub-and-spoke relationship with one account receiving funds from many different, unrelated accounts. This typology is recognized in the FFIEC Exam Manual and should be supported at FinCEN by enhancing the SAR reporting process to include the fraud perpetrator’s account at the receiving institution.

We urge FinCEN to enhance the SAR process to capture the identity of the account and institution that received the fraudulent funds.

**C. Crypto firms must comply with BSA requirements to prevent an escalation of illicit finance.**

Bank regulators have been criticized for supposedly being overly harsh in denying crypto-related firms access to bank accounts. We do not address the safety and soundness issues posed when banks engage with the crypto industry, nor will we comment on whether particular firms should or should not be allowed accounts.

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<sup>10</sup> CSBS, “*State Regulators Issue \$80 Million Penalty to Block, Inc., Cash App for BSA/AML violations*,” (Press Release) (Jan. 15, 2025), available at <https://www.csbs.org/newsroom/state-regulators-issue-80-million-penalty-block-inc-cash-app-bsaaml-violations>.

<sup>11</sup> *In re. Block, Inc.*, CFPB No. 2025-CFPB-0001 (Jan. 16, 2025) (consent order), available at [https://files.consumerfinance.gov/f/documents/cfpb\\_block-inc-consent-order\\_2025-01.pdf](https://files.consumerfinance.gov/f/documents/cfpb_block-inc-consent-order_2025-01.pdf).

However, as Congress considers legislation to regulate crypto-assets, it is essential that crypto firms be required to conduct full BSA compliance. Crypto-assets are one of the top vectors for fraud and other illegal activity, and the growth of the crypto industry will only result in more fraud if strict controls are not built in.

“Cryptocurrency” “is the second largest category of payment method reported by fraud victims to the FTC in terms of number of dollars lost (after bank transfer or payment) for all of 2023 and the first three quarters of 2024.<sup>12</sup> Crypto platforms are not just prone to fraud by third parties; several crypto firms that suffered losses or became insolvent during the 2022 crash in the crypto markets engaged in practices many believe were unfair, abusive, or deceptive.<sup>13</sup>

Enforcement of BSA requirements is essential to prevent crypto-assets from being used to perpetrate criminal activity. Both federal<sup>14</sup> and state regulators<sup>15</sup> have appropriately brought enforcement actions against crypto players that had lax programs to conduct due diligence on their customers, monitor transactions, and report suspicious activities. Appropriate BSA reporting can even help to address issues like online child sexual exploitation and human trafficking.<sup>16</sup>

Vigilant BSA oversight of accounts involving crypto-assets is also important as crypto-assets make their way into the U.S. banking and payments system. Several large, well-capitalized crypto firms have made it clear that their business model is focused on making crypto and blockchain-based ledgers a mainstream payment method for American consumers. For example, at least one major payment provider has created a stablecoin expressly intended to facilitate consumers’ purchase of household goods and services,<sup>17</sup> while another crypto “native” firm has created a platform where retail merchants are provided crypto wallets that can receive direct crypto payments from customers, without the need to convert crypto assets into fiat currency to

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<sup>12</sup> FTC fraud reports by payment method, available at <https://public.tableau.com/app/profile/federal.trade.commission/viz/FraudReports/PaymentContactMethods>. The FTC can identify the payment method that the criminal used in only a small fraction of fraud reports, and fraud is underreported in general, so the FTC’s numbers vastly understate the amount of fraud facilitated by crypto-assets.

<sup>13</sup> Federal Trade Commission, “*FTC Reaches Settlement with Crypto Company Voyager Digital; Charges Former Executive with Falsely Claiming Consumers’ Deposits Were Insured by FDIC*,” (Oct. 12, 2023), available at <https://www.ftc.gov/news-events/news/press-releases/2023/10/ftc-reaches-settlement-crypto-company-voyagerdigital-charges-former-executive-falsely-claiming>.

<sup>14</sup> See, e.g., U.S. Dep’t of Treasury, Press Release, U.S. Treasury Announces Largest Settlements in History with World’s Largest Virtual Currency Exchange Binance for Violations of U.S. Anti-Money Laundering and Sanctions Laws (Nov. 21, 2023), <https://home.treasury.gov/news/press-releases/jy1925> FinCEN; Press Release, FinCEN Announces \$29 Million Enforcement Action Against Virtual Asset Service Provider Bittrex for Willful Violations of the Bank Secrecy Act (Oct. 11, 2022), <https://www.fincen.gov/news/news-releases/fincen-announces-29-million-enforcement-action-against-virtual-asset-service>.

<sup>15</sup> See N.Y. Dep’t of Fin’l Svcs., Press Release, Superintendent Adrienne A. Harris Announces \$100 Million Settlement with Coinbase, Inc. after DFS Investigation Finds Significant Failings in the Company’s Compliance Program (Jan. 4, 2023), [https://www.dfs.ny.gov/reports\\_and\\_publications/press\\_releases/pr202301041](https://www.dfs.ny.gov/reports_and_publications/press_releases/pr202301041).

<sup>16</sup> See FinCEN, Press Release, FinCEN Sees Increase in BSA Reporting Involving the Use of Convertible Virtual Currency for Online Child Sexual Exploitation and Human Trafficking (Feb. 13, 2024), <https://www.fincen.gov/news/news-releases/fincen-sees-increase-bsa-reporting-involving-use-convertible-virtual-currency>.

<sup>17</sup> PayPal, “Designed for Payments. 1 USD: 1 PYUSD on PayPal,” (accessed Jan. 5, 2024), available at <https://www.paypal.com/us/webapps/mpp/digital-wallet/manage-money/crypto/pyusd>.



settle the transaction.<sup>18</sup> Reports claim that the platform processes payments for thousands of merchants, for ‘on-chain’ payments worth billions of dollars.<sup>19</sup> Consumers need protection when crypto-assets are used for payments,<sup>20</sup> BSA/AML compliance is essential to ensure that “purchases” using crypto-assets are not used to enable criminals to receive stolen funds or conduct criminal activity.

#### **D. Blunt-fisted, opaque identification requirements impede bank account access.**

NCLC supports efforts to strengthen and modernize the anti-money laundering and countering the financing of terrorism (AML/CFT) program requirements for financial institutions<sup>21</sup> while recognizing that more clarity is needed to address the negative impacts of overly broad AML/CFT programs implemented by financial institutions. The implementation of AML/CFT programs, including the Customer Identification Program and Customer Due Diligence assessment, can negatively impact consumers who are trying to open a bank account. AML/CFT oversight may also cause financial institutions to freeze or close a consumer’s account when unusual activity is detected or the account is deemed risky.

Financial institutions do not generally publicize which forms of identification they will accept from consumers when reviewing an application for a bank account. This uncertainty means underserved consumers have no sense of whether they will be successful in opening an account.

Additionally, consumers are not often told why the financial institution denied a request to open a bank account.<sup>22</sup> This generates an impression among consumers that they are not allowed to engage in our system because of some intrinsic quality around their situation, when it could ultimately be caused by the use of discretion among individual branch employees, a consumer report such as ChexSystems, or a regional or national bank policy. Regardless of the reason, being denied access to financial services can be embarrassing, especially when the denial occurs in person. One negative interaction with our financial system can influence the way a consumer will interact with the system for years to come. The industry opacity is unjustified given the stakes.

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<sup>18</sup> Coinbase, “A New Standard in Global Crypto Payments: Coinbase Commerce,” (accessed Jan. 5, 2024), available at <https://www.coinbase.com/commerce>.

<sup>19</sup> Akolkar, Bhushan, “New Payments Protocol for Coinbase Commerce to Facilitate Instant Crypto Settlements,” CoinGape (blog), (Nov. 17, 2023), available at <https://coingape.com/new-payments-protocol-for-coinbasecommerce-to-facilitate-instant-crypto-settlements/>.

<sup>20</sup> Any consumer payments made using crypto-assets should come with the full protections given to accounts under the Electronic Fund Transfer Act.

<sup>21</sup> See NCLC Comments regarding FinCEN’s Rulemaking on Anti-Money Laundering and Countering the Financing of Terrorism Programs, (Sept. 3, 2024) available at [https://www.nclc.org/wp-content/uploads/2024/09/2024.09.03\\_Comments\\_FinCEN-Dept-Treasury-on-AML-Rulemaking.pdf](https://www.nclc.org/wp-content/uploads/2024/09/2024.09.03_Comments_FinCEN-Dept-Treasury-on-AML-Rulemaking.pdf).

<sup>22</sup> Because a bank account (demand deposit account) does not meet the definition of credit under the Equal Credit Opportunity Act, no adverse notice is required to be provided to the applicant/consumer. However, if a financial institution relied on a consumer report from ChexSystems, for example, it should provide the consumer with an adverse action notice under the Fair Credit Reporting Act.

The excuse most often cited by the financial industry for this lack of transparency— and their unwillingness to accept certain alternative forms of ID for underserved consumers— is that they must comply with the BSA. Among other requirements imposed by the BSA, financial institutions must implement a Customer Identification Program (CIP) to verify the identity of an applicant.

However, federal regulations implementing the BSA openly permit banks to use a wide range of identification methods to open accounts for their customers and to implement their CIP. At its core, the CIP must explain the bank’s procedures for opening an account, including stating what identifying information will be obtained from each customer and how the bank will verify their customers’ identities through both documentary and non-documentary methods.<sup>23</sup>

A financial institution has broad discretion in what policies it adopts in its CIP. The only requirements BSA regulations impose are that a financial institution must obtain, at a minimum, the following information from a customer prior to opening an account:

- (1) Name;
- (2) Date of birth, for an individual;
- (3) Address; and
- (4) an Identification number, which must be a taxpayer identification number for “U.S. persons” or one or more of several options for non-U.S. persons, including an Individual Tax Identification Number issued by the IRS, a passport number and country of issuance, an alien identification card number, or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.<sup>24</sup>

While the identifying information listed above is required for account opening, there is an additional requirement that financial institutions employ “risk-based procedures” for verifying the identity of each customer to the extent “reasonable and practicable,” and within a reasonable time after the account is opened.<sup>25</sup> These procedures must enable the financial institution to form a reasonable belief that it knows the true identity of each customer, and the procedures must be “based on the bank’s assessment of the relevant risks, including those presented by the various types of accounts maintained by the bank, the various methods of opening accounts provided by the bank, the various types of identifying information available, and the bank’s size, location, and customer base.”<sup>26</sup>

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<sup>23</sup> 31 C.F.R. § 1020.220(a)(2)(ii).

<sup>24</sup> 31 C.F.R. § 1020.220(a)(2)(i)(A)(1)-(4).

<sup>25</sup> 31 C.F.R. § 1020.220(a)(2).

<sup>26</sup> 31 C.F.R. § 1020.220(a)(2).

It is the requirement to utilize “risk-based” procedures consistent with the bank’s level of risk tolerance that gives banks broad discretion in choosing who they bank. The “risk-based” procedures are often utilized as a shield for obfuscating account-opening policies. Without transparency into these policies, banks may ultimately engage in discriminatory practices, utilizing overly simplistic policies that exclude immigrants, formerly incarcerated people, and unhoused individuals who may lack access to various forms of government-issued identification.

More clarity is needed in the guidance federal regulators provide to financial institutions. For example, local advocates in New York City, along with the New York Bankers Association, wrote to the federal financial regulators in 2015, asking if the then-emerging municipal ID for the City of New York would meet the minimum standards for verifying identity at account opening.<sup>27</sup> The regulators’ response did clarify that accepting the city’s ID would not contradict the minimum standards in the regulations. But the regulators left the ultimate decision of whether to accept the municipal ID up to individual banks, writing that each institution “may determine that more information than the ID Card is necessary”<sup>28</sup> to satisfy their duties under this regulatory regime.

FinCEN, along with the Office of the Comptroller of the Currency, the Federal Reserve Board, the Federal Deposit Insurance Corporation, and the National Credit Union Administration OCC, should consider implementing more detailed guidelines on how banks and credit unions should exercise their discretion to ensure that they meet the obligations of the Bank Secrecy Act while also not excluding consumers from our banking system. These guidelines should emphasize the importance of transparency in account opening requirements, particularly for underserved consumers that may experience barriers to obtaining traditional forms of ID; provide guidance for local governments on developing municipal ID programs; and explicitly name forms of ID that may be used as primary and secondary ID for individuals unlikely to have access to state-issued ID. Similarly, the regulators should specify that there is likely a corresponding risk of unfair, deceptive, or abusive practices associated with discriminating against consumers on the basis of race or national origin, and that a denial of a bank account that relies, at least in part, on information obtained within a consumer report triggers adverse action notice requirements under the Fair Credit Reporting Act.<sup>29</sup>

#### **E. Overly broad AML/CFT programs prevent innocent consumers from access to their bank accounts and funds.**

Recently, many consumers have raised concerns about bank account closures and/or freezes that seem to occur without any sudden change of behavior by the consumer. Consumers report

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<sup>27</sup> Corkery, Michael and Silver-Greenberg, Jessica, “Banks Reject New York City IDs, Leaving ‘Unbanked’ on Sidelines,” NY Times, (Dec. 23, 2015), <https://www.nytimes.com/2015/12/24/business/dealbook/banks-reject-new-york-city-ids-leaving-unbanked-on-sidelines.html?login=smartlock&auth=login-smartlock>

<sup>28</sup> *Id.*

<sup>29</sup> 15 U.S.C. § 1681m(a).

frustration and uncertainty tied to account closures and freezes— primarily the lack of information as to why the closure or freeze occurred and the inability to access funds in a timely manner.

The number of consumers who have complained about checking and savings account closures to the CFPB more than doubled since 2017.<sup>30</sup> In 2022 the CFPB ordered Wells Fargo to pay \$160 million to over one million people for improperly freezing or closing bank accounts from 2011 to 2016 when it “believed that a fraudulent deposit had been made into a consumer deposit account based largely on an automated fraud detection system.”<sup>31</sup>

There have been other stories featured by reporters detailing the devastating impact sudden account closures and freezes can have on consumers, especially when they are deprived of access to their funds, are not provided any information about the reason for the institution’s actions, and are not provided an opportunity to address any perceived risk.

Following are a few examples from a New York Times article detailing the responses consumers received after discovering their accounts were either frozen or closed and the attempts to communicate with their financial institutions about it:<sup>32</sup>

- Naafeh Dhillon, 28 from Brooklyn, NY, learned his account had been closed after his debit card and credit card were declined. He was later told by a Chase representative that the “bank’s global security and investigation team had ultimately made the decision. Would the representative transfer him to that department? Nope... Since he wasn’t given a specific reason for the closure, he couldn’t disprove whatever raised suspicions in the first place.”
- Todd Zolecki, 47 of Media, PA, did not have his account closed, but they did lock him out of access to his account. “They said your account has been suspended for further review,” Why? “We can’t tell you that. The only thing we can tell you is it can take up to 60 days for this review.”

One of the reasons for the increase in account closures and freezes has to do with the increased adoption of tools utilized by financial institutions to combat payment fraud and detect suspicious

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<sup>30</sup> Consumer Fin. Prot. Bureau, Consumer Complaint Database, trends data for complaints received due to checking or savings account closure, [https://www.consumerfinance.gov/data-research/consumer-complaints/search/?chartType=line&dateInterval=Month&dateRange=All&date\\_received\\_max=2024-01-27&date\\_received\\_min=2011-12-01&has\\_narrative=true&issue=Closing%20an%20account%E2%80%A2Company%20closed%20your%20account&lens=Product&product=Checking%20or%20savings%20account&searchField=all&subLens=sub\\_product&tab=Trends](https://www.consumerfinance.gov/data-research/consumer-complaints/search/?chartType=line&dateInterval=Month&dateRange=All&date_received_max=2024-01-27&date_received_min=2011-12-01&has_narrative=true&issue=Closing%20an%20account%E2%80%A2Company%20closed%20your%20account&lens=Product&product=Checking%20or%20savings%20account&searchField=all&subLens=sub_product&tab=Trends). (last visited Feb. 20, 2024).

<sup>31</sup> *In re. Wells Fargo Bank, N.A.*, CFPB No. 2022-CFPB-0011 (Dec. 20, 2022) (consent order), available at [https://files.consumerfinance.gov/f/documents/cfpb\\_wells-fargo-na-2022\\_consent-order\\_2022-12.pdf](https://files.consumerfinance.gov/f/documents/cfpb_wells-fargo-na-2022_consent-order_2022-12.pdf).

<sup>32</sup> Barnard, Tara Siegel and Lieber, Ron, “*Banks Are Closing Customer Accounts, With Little Explanation*,” N.Y. Times (Apr. 8, 2023), [https://www.nytimes.com/2023/04/08/your-money/bank-account-suspicious-activity.html?unlocked\\_article\\_code=1.QU0.szRm.kfoZROdD7-O6&smid=url-share](https://www.nytimes.com/2023/04/08/your-money/bank-account-suspicious-activity.html?unlocked_article_code=1.QU0.szRm.kfoZROdD7-O6&smid=url-share).

activity, including adoption of artificial intelligence (AI) and machine learning technologies. Fraud vigilance is critical, and new technologies can play an important role. However, these tools may harm innocent consumers if not utilized properly and if institutions do not have clear procedures and timelines in place to restore access to funds that are improperly frozen.

Financial institutions have an obligation under the BSA to ensure that they maintain and follow internal ongoing customer due diligence (CDD) policies. The CDD policies must allow the institution to understand “the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and [c]onducting ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information.”<sup>33</sup>

Because of the CDD obligation and the ongoing problem of payment fraud, sometimes the appropriate response by an institution who suspects its customer is engaging in fraudulent or other illicit activity is to freeze a transaction or close an account that is being used to receive fraudulent funds before the funds are gone and more consumers can be defrauded. But sometimes banks get it wrong, especially when automated tools are used.

According to the Bank Policy Institute, “a sample of the largest banks reviewed approximately 16 million alerts, filed over 640,000 SARs, and received feedback from law enforcement on a median of 4% of those SARs. Ultimately, this means that 90-95% of the individuals that banks report on were likely innocent.”<sup>34</sup> As these numbers demonstrate, even activity that leads to the filing of a SAR may ultimately not warrant an account freeze or closure.

The impact of sudden account closures in response to potential fraud on innocent consumers cannot be overstated. Often, the most vulnerable people have been denied access to their money, rendering them unable to eat or pay rent. Some impact on innocent individuals may be impossible to avoid, as banks may need to act quickly on imperfect information. But that is why it is imperative to have procedures in place to enable people to dispute account freezes and closures and get their money back as soon as possible.

For example, after Chime embarked on a marketing campaign to convince people to open Chime accounts to receive their stimulus payments, its inadequate identity verification led to a wave of fraud. Chime then froze numerous accounts. But instead of enabling people to quickly prove their identities, some people were left without their money for months on end:

- “Chime stole my entire unemployment backpay.... I’m a single mom of 4 kids and they stolen \$1400 from me and refuse to give it back and now we are about to be evicted.”<sup>35</sup>

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<sup>33</sup> 31 C.F.R. § 1020.210(a)(2)(v);(b)(2)(v).

<sup>34</sup> Bank Policy Institute, *The Truth About Suspicious Activity Reports*, (Sept. 22, 2020) <https://bpi.com/the-truth-about-suspicious-activity-reports/> (citing, Bank Pol’y Inst., *Getting to Effectiveness—Report on U.S. Financial Institution Resources Devoted to BSA/AML & Sanctions Compliance*, (Oct. 29, 2018) [https://bpi.com/wp-content/uploads/2018/10/BPI\\_AML\\_Sanctions\\_Study\\_vF.pdf](https://bpi.com/wp-content/uploads/2018/10/BPI_AML_Sanctions_Study_vF.pdf).)

<sup>35</sup> Kessler, Carson, “*A Banking App Has Been Suddenly Closing Accounts, Sometimes Not Returning Customers’ Money*,” ProPublica (July 6, 2021), available at <https://www.propublica.org/article/chime>.

Similarly, Bank of America froze 350,000 unemployment debit cards in California after extensive fraud reports. But the freezes caught many legitimately unemployed workers, and the bank failed to respond in a timely fashion to their complaints:

- “Heather Hauri got a text from Bank of America that suggested her debit card may have been compromised too. When she responded that she had not made the transactions in question, she was locked out of her account. ‘The whole account is frozen,’ she said. ‘You can’t get your own money.’”<sup>36</sup>

Months later, after a lawsuit was filed, a judge prohibited the bank from freezing accounts for California unemployment benefits based solely on an automated fraud filter and required it to do a better job of responding when jobless people say their benefits were stolen.<sup>37</sup> The CFPB ultimately brought an enforcement action against Bank of America,<sup>38</sup> and also against U.S. Bank<sup>39</sup> for similar conduct in indiscriminately freezing accounts and leaving them frozen for long periods of time. This conduct harmed the most vulnerable consumers – those who had lost their jobs and were relying on unemployment benefits.

Sudden account closures are also common among immigrant communities. For instance, immigrants from Iran have reported having their bank accounts closed suddenly after being asked to provide proof of legal residency in the country.<sup>40</sup>

If people cannot access the money they need based on red flags triggered by automated fraud tracking systems, then they need a timely solution, not another obstacle. Yet that is what occurs; consumers face obstacles upon obstacles. When a consumer complains about an account closure or freeze, the complaint is often not followed by a reasonable investigation by the financial

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<sup>36</sup> KCAL News, “*Bank Of America Freezes EDD Accounts Of Nearly 350,000 Unemployed Californians For Suspected Fraud*,” (Oct. 29, 2020), available at <https://www.cbsnews.com/losangeles/news/bank-of-america-freezes-edd-accounts-of-nearly-350000-unemployed-californians-for-suspected-fraud/>.

<sup>37</sup> McGreevy, Patrick, “*Bank of America must provide more proof of fraud before freezing EDD accounts, court orders*,” Los Angeles Times (Jun. 1, 2021), available at <https://www.latimes.com/california/story/2021-06-01/bank-of-america-ordered-to-unfreeze-unemployment-benefit-cards-in-california>.

<sup>38</sup> CFPB, “*Federal Regulators Fine Bank of America \$225 Million Over Botched Disbursement of State Unemployment Benefits at Height of Pandemic*,” (Press Release) (July 14, 2022), available at <https://www.consumerfinance.gov/about-us/newsroom/federal-regulators-fine-bank-of-america-225-million-over-botched-disbursement-of-state-unemployment-benefits-at-height-of-pandemic/>.

<sup>39</sup> CFPB, “*CFPB Orders U.S. Bank to Pay \$21 Million for Illegal Conduct During COVID-19 Pandemic*,” (Press Release) (Dec. 19, 2023), available at [https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-us-bank-to-pay-21-million-for-illegal-conduct-during-covid-19-pandemic/#:~:text=The%20CFPB%20and%20OCC%20together,411%2DCFPB%20\(2372\)](https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-us-bank-to-pay-21-million-for-illegal-conduct-during-covid-19-pandemic/#:~:text=The%20CFPB%20and%20OCC%20together,411%2DCFPB%20(2372)).

<sup>40</sup> See, e.g., *Nia v. Bank of America, N.A.*, 603 F.Supp.3d 894, (S.D. Cal. May 18, 2022) (Denying motion to dismiss); Chouhoud, Youseff, *Banking While Muslim*, Inst. for Soc. Pol’y and Understanding, 4 (Mar. 14, 2023), <https://www.ispu.org/banking-while-muslim/> (last visited Feb 20, 2024) (finding that one-third of Muslims reporting challenges with the banking system had their accounts closed or suspended); Wile, Rob, “*He’s Been Studying in the U.S. Legally for 7 Years. Bank of America Froze His Account Anyway*,” Miami Herald, (Aug. 31, 2018), <https://www.miamiherald.com/news/business/article217095125.html>.

institution that includes a discussion with the consumer or that provides any clear timeline to unfreeze their money.

Crude AML/CFT compliance policies can shut consumers out of our banking system. However, with respect to account freezes and closures, the Electronic Funds Transfer Act (“EFTA”) may provide an opportunity for consumers to protect against overly aggressive BSA policies. For example, the EFTA has clear error resolution timelines and procedures, and those should be used when consumers cannot access their funds. If a consumer is unable to make an electronic withdrawal or transfer because of an account closure or freeze based on suspected fraud, that action should be viewed as an error – an incorrect transfer of zero instead of the requested amount – triggering the error resolution rights, duties, timelines, and investigation procedures of the EFTA.

FinCEN and bank regulators should also provide guidance to financial institutions about what information they may and should provide to accountholders regarding freezes and account closures while still complying with the BSA. For example, they could clarify in an FAQ that, while financial institutions are not allowed to disclose that a SAR was filed, they are allowed to describe the specific activities that raised concerns, giving the consumer an opportunity to respond.

As shown by the CFPB’s recent enforcement actions and in light of risks of unfair, deceptive, or abusive practices when consumers’ funds are held indefinitely, the CFPB and bank regulators should also provide guidance to financial institutions about the importance of having clear procedures to enable consumers to quickly regain access to their funds when they are frozen due to concerns of suspicious activity and provide guidance as to the timeliness of returning an accountholder’s funds after account closure.

#### **4. Communities of color and justice-involved individuals are disproportionately unbanked.**

Bank account data exhibits disparities by race: 12.2% of Native American, 10.6% of Black, and 9.5% of Latino households are unbanked compared to only 1.9% of white households.<sup>41</sup>

Language barriers can increase the likelihood of being unbanked. Many financial institutions do not have a system to obtain or maintain information about their consumers’ language preferences, which makes it difficult for consumers to access any language services a bank might offer. This inconsistency and lack of transparency forces consumers to rely on others, such as children and other family members or friends, to translate highly technical documents involving

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<sup>41</sup> Fed. Deposit Ins. Corp., 2023 FDIC National Survey of Unbanked and Underbanked Households, 2 (Table ES.2) <https://www.fdic.gov/household-survey/2023-fdic-national-survey-unbanked-and-underbanked-households-report>.

personal and sensitive information.<sup>42</sup> This game of telephone often leads to greater confusion and misunderstanding among Limited English Proficiency consumers, to say nothing of breached privacy, which can have dire consequences for families when they encounter financial hardship. It can take up to thirty years for an individual to achieve native-level proficiency in a foreign language, and financial disclosures often require a very high degree of language proficiency, even for native English speakers.<sup>43</sup>

Notably, more than one in 10 (11.2%) households with a disability are unbanked, and while working-age households with a disability in 2023 comprised 8.1 percent of households overall, they made up 21.5 percent of the unbanked.<sup>44</sup>

Additionally, if an individual has any criminal history (a justice-involved individual), they are more likely to be unbanked. People who have served their time and are trying to become productive citizens face barriers even if their crime had nothing to do with financial fraud.

Black, Latino, and Native people are massively overrepresented in the criminal legal system. For instance, Black Americans are twice as likely to be arrested as white Americans,<sup>45</sup> and are more likely to be stopped by the police, detained, charged with more serious crimes, and sentenced more harshly than white American.<sup>46</sup> As the U.S. Department of Housing and Urban Development has stated, these racial and ethnic disparities are “well established and persistent,” and “cannot be simply attributed to certain groups committing more crimes and are better explained by biases” in the criminal legal system.”<sup>47</sup>

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<sup>42</sup> Kleimann Communication Group, Language Access for Limited English Proficiency Borrowers: Final Report 14 (April 2017), <https://www.fhfa.gov/PolicyProgramsResearch/Policy/Documents/Borrower-Language-AccessFinalReport-June-2017.pdf>.

<sup>43</sup> Why It's So Hard to Learn Another Language After Childhood, Time, (May 2, 2018), <https://time.com/5261446/language-critical-period-age/>

<sup>44</sup> Fed. Deposit Ins. Corp., 2023 FDIC National Survey of Unbanked and Underbanked Households, 18 <https://www.fdic.gov/household-survey/2023-fdic-national-survey-unbanked-and-underbanked-households-report>.

<sup>45</sup> Waddell, Kaveh, “How Tenant Screening Reports Make It Hard for People to Bounce Back from Tough Times,” Consumer Reports (Mar. 11, 2021), <https://www.consumerreports.org/electronics/algorithmic-bias/tenant-screening-reports-make-it-hard-to-bounce-back-from-tough-times-a2331058426/>; Avery, Beth et al., Nat’l Employment Law Proj. Fair Chance Licensing Reform: Opening Pathways for People with Records to Join Licensed Professions 18 (2018), <https://www.nelp.org/publication/fair-chance-licensing-reform-opening-pathways-for-people-with-records-to-join-licensed-professions/>.

<sup>46</sup> Hinton, Elizabeth et al., Vera Inst. of Just., An Unjust Burden: The Disparate Treatment of Black Americans in the Criminal Justice System 1, 7–10 (2018), <https://www.vera.org/downloads/publications/for-the-record-unjust-burden-racial-disparities.pdf>.

<sup>47</sup> Memorandum from Principal Deputy Assistant Sec’y for Fair Hous. and Equal Opportunity, U.S. Dep’t of Housing and Urban Dev., to Office of Fair Hous. & Equal Opportunity, Fair Hous. Assistance Program Agencies, Fair Hous. Initiatives Program Grantees, at 3 (June 10, 2022), available at <https://www.hud.gov/sites/dfiles/FHEO/documents/Implementation%20of%20OGC%20Guidance%20on%20Application%20of%20FHA%20Standards%20to%20the%20Use%20of%20Criminal%20Records%20-%20June%2010%202022.pdf>; see also U.S. Equal Emp. Opportunity Comm’n, Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions under Title VII of the Civil Rights Act; NELP, Fact Sheet.



People with disabilities and members of the LGBTQ+ community are also disproportionately represented in the criminal legal system. According to the U.S. Commission on Civil Rights, "[i]ncarcerated people are twice as likely to have an intellectual disability, four to six times more likely to have a cognitive disability, twice as likely to have a mobility disorder, three to four times more likely to be blind or have a vision impairment, and two to three times more likely to have a hearing impairment than the general population."<sup>48</sup> The incarceration rate of LGBTQ+ individuals is more than three times that of the U.S. adult population.<sup>49</sup>

Justice-involved people may struggle to access checking and savings accounts due to various account opening requirements.<sup>50</sup> First, banks typically require photo identification to open a bank account. A person may have had their driver's license suspended because of outstanding criminal justice debt that they cannot afford to pay<sup>51</sup> or had their ID expire or get lost while incarcerated, meaning they cannot satisfy this requirement.

Second, people must demonstrate proof of address both to renew a license and to open a bank account.<sup>52</sup> Justice-involved people may struggle to meet this requirement if they are currently incarcerated, living in a halfway house or other temporary group residence, or are unhoused.

Third, banks may deny justice-involved people accounts based on credit checks.<sup>53</sup> For example, banks generally request reports on potential customers from companies such as Early Warning Systems and ChexSystems that include information on accounts closed by banks because of unpaid fees or suspected fraud.<sup>54</sup> People leaving incarceration may face these issues, including because managing accounts while in prison or jail can be very difficult. People also report having been victims of identity theft or "identity sharing" gone wrong while incarcerated.<sup>55</sup>

Fourth, some accounts come with conditions to maintain an account – opening deposits, minimum balances, or monthly fees. Justice-involved individuals, including those who recently

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<sup>48</sup> U.S. Comm'n on Civ. Rts., *Collateral Consequences: The Crossroads of Punishment, Redemption, and the Effects on Communities* 21 (2019), <https://www.usccr.gov/files/pubs/2019/06-13-Collateral-Consequences.pdf>.

<sup>49</sup> *Id.* at 21; *see also id.* at 22 ("Although 4.1 percent of American adults identify as LGBT, 9.3 percent of male prisoners and 42.1 percent of female prisoners identified as LGBT or reported having same-sex encounters before incarceration. . . . Twenty-one percent of transgender women and 10 percent of transgender men report that they have spent time in jail or prison.").

<sup>50</sup> Consumer Financial Protection Bureau, *Justice-Involved Individuals and the Consumer Financial Marketplace*, at 27, 29 (Jan. 2022), [https://files.consumerfinance.gov/f/documents/cfpb\\_jic\\_report\\_2022-01.pdf](https://files.consumerfinance.gov/f/documents/cfpb_jic_report_2022-01.pdf).

<sup>51</sup> Currently, half of all U.S. states still suspend, revoke or refuse to renew driver's licenses for unpaid traffic, toll, misdemeanor and felony fines and fees. Fines & Fees Justice Center, *Free to Drive: National Campaign to End Debt-Based License Restrictions*, <https://finesandfeesjusticecenter.org/campaigns/national-drivers-license-suspension-campaign-free-to-drive/> (last visited Feb. 14, 2024).

<sup>52</sup> Consumer Financial Protection Bureau, *Justice-Involved Individuals and the Consumer Financial Marketplace*, at 29 (Jan. 2022), [https://files.consumerfinance.gov/f/documents/cfpb\\_jic\\_report\\_2022-01.pdf](https://files.consumerfinance.gov/f/documents/cfpb_jic_report_2022-01.pdf).

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> Harper, Annie et al., "Let Me Be Bill-free": Consumer Debt in the Shadow of Incarceration, 63 *Sociological Perspectives* 992 (2020); CFPB, *Justice-Involved Individuals Report*, at 26.

left incarceration, likely have limited financial resources as described above, and will struggle to meet these requirements.<sup>56</sup>

We urge Congress, the U.S. Department of the Treasury, and federal regulators to collaborate and ensure that overly broad, discriminatory criminal records policies do not bar access to bank accounts including by:

- issuing guidance clarifying that financial institutions may accept non-traditional forms of identification, such as prison IDs;
- encouraging and supporting correctional facilities in helping people obtain official picture identification prior to leaving incarceration; and
- issuing guidance clarifying and encouraging banks and lenders to permit applicants to provide non-traditional addresses, such as addresses of temporary group residences, homeless shelters and correctional facilities.<sup>57</sup>

## 5. Conclusion

Bank account access is crucial for participation in the U.S. financial system. Lawful access to bank accounts can be improved by implementation of the CFPB's overdraft fee rule, by giving consumers information and remedies when their accounts are inappropriately frozen or closed, and by ensuring that overbroad derisking efforts under the cover of BSA compliance do not block law abiding individuals from opening accounts. At the same time, more rigorous enforcement of BSA requirements can prevent criminals from using accounts to receive stolen money and fuel their criminal enterprises.

With any questions, please contact Carla Sanchez-Adams, Senior Attorney at the National Consumer Law Center, at [csanchezadams@nclc.org](mailto:csanchezadams@nclc.org).

Thank you for the opportunity to provide this statement for the record.

Yours very truly,

National Consumer Law Center (on behalf of its low-income clients)

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<sup>56</sup> CFPB, Justice-Involved Individuals Report, at 29.

<sup>57</sup> As discussed at the Department of Treasury's Re-Entry Financial Resilience Discussion: Addressing Barriers in Financial Services for Justice-Impacted Communities on January 12, 2024, some credit unions, such as Stepping Stones Federal Credit Union already serve incarcerated people. Brock Fritz, 'Everything we do is to better the community,' Credit Union National Association (Jan. 10, 2024), <https://news.cuna.org/articles/123443-everything-we-do-is-to-better-the-community>.