

Congress of the United States

Washington, DC 20515

December 2, 2022

The Honorable Janet Yellen
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue N.W.
Washington, DC 20220

The Honorable Michael J. Hsu
Acting Comptroller of the Currency
Office of the Comptroller of the Currency
400 7th Street S.W.
Washington, DC 20219

The Honorable Martin J. Gruenberg
Acting Chair
Federal Deposit Insurance Corporation
550 17th Street N.W.
Washington, DC 20429

The Honorable Jerome H. Powell
Chair
Federal Reserve Board
20th Street and Constitution Avenue N.W.
Washington, DC 20551

The Honorable Todd M. Harper
Chair
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314

The Honorable Himamauli Das
Acting Director
Financial Crimes Enforcement Network
1500 Pennsylvania Avenue N.W.
Washington, DC 20220

To the Heads of U.S. Banking Regulators:

We write to request an update on your work to modernize sanction policies and anti-money laundering/financial crimes compliance (AML/FCC) obligations to protect and promote equitable banking access for Muslim Americans and immigrant communities. Countless U.S. individuals, businesses, and charities have been victims of discriminatory policies and practices that appear to limit their access to financial services because of their religion or national origin. During this pandemic, many diaspora communities and charitable organizations in our districts have still found it challenging to send remittances and other life-saving forms of financial assistance to countries with weak financial governance and that are subject to U.S. sanctions. It is undoubtedly in the national interest of the United States to ensure the transmission of such funds go through formal, regulated, and transparent channels. The federal government must step in to halt and reverse these discriminatory actions that are directly tied to federal restrictions.

In response to rules defined through the USA PATRIOT Act and other measures to strengthen the Bank Secrecy Act (BSA), banks have been inclined to exclude participants from their financial systems. Partly as a reaction to these regulations and the aggressive, non-risk-based attitudes of bank examiners, financial institutions have increasingly engaged in the practice of “de-risking,” shutting out entire classes of individuals and organizations perceived to be unprofitable due to low revenue potential, high-cost for compliance, and high-risk in general. Many Muslim and Arab, Middle Eastern and South Asian Americans, simply because of their connections – real or perceived – have been systematically cut off from financial services.¹

¹ See: [“U.S. Muslim Charities and the War on Terror: A Decade in Review.”](#) (2011). Charity and Security Network.; Eckert, Sue E., Kay Guinane and Andrea Hall. (2017). [“Financial Access for U.S. Nonprofits.”](#) Charity and Security Network.; Gordon, Stuart and Sherine El Taraboulsi-McCarthy. (2018). [“Counter-terrorism, bank de-risking and humanitarian response: A Path Forward.”](#) (2018). Humanitarian Policy Group.; Government Accountability Office. (2018). [“Remittances to Fragile Countries: Treasury Should Assess Risks from Shifts to Non-Banking Channels.”](#) (GAO-18-313).; Government Accountability Office. (2021). [“Bank Secrecy Act: Views on Proposals to Improve Banking Access for Entities Transferring Funds to High-Risk Countries.”](#) (GAO-22-104792).

Additionally, the use of sanctions has dramatically escalated and in turn has also increased compliance obligations of U.S. and foreign financial institutions. Banks' interpretation of and reaction to U.S. sanctions can play an inhibiting role in banking access for individuals and organizations affiliated with certain sanctioned and conflict-impacted countries. For example, sanctions block financial institutions from servicing accounts of persons "ordinarily resident" but not located in affected countries like Iran.² This vague formulation has left it up to banks to seek to determine which of their customers might be "ordinarily resident." Rather than engaging in a fact-based inquiry to determine how to serve customers who are located in the U.S. and entitled to access financial services, many banks opt for overcompliance, restricting or closing accounts indiscriminately, often with little to no notice, or pathways for redress.

These sanction challenges were illuminated by a recent class action lawsuit against Bank of America (BoA) regarding its treatment of a customer of Iranian origin. The class action was filed on behalf of Mohammed Farshad Abdollah Nia, an immigrant from Iran and a permanent resident of the United States.³ Mr. Nia claims that his bank account was unjustly closed even though he followed BoA's policy regarding proof of residency, which it says is necessary to comply with U.S. sanctions. BoA still proceeded to close the account without prior verbal or written notice. BoA attempted to dismiss the case, but the Honorable Cynthia Bashant of the Southern District of California denied the motion. In her order, Judge Bashant noted that the allegations support a plausible inference of intentional discrimination from the bank.⁴ Whether or not the court ultimately finds that Bank of America engaged in unlawful discrimination based on national origin, it is clear to us that the bank's approach aimed to avoid, rather than manage, the risk of sanctions and BSA enforcement.

In addition to encouraging ethnic and religious discrimination, the current interpretation and application of sanctions and AML/FCC regulations risk weakening our broader national security and humanitarian objectives. U.S.-based charities, crowd-funding platforms, non-governmental organizations (NGOs), and non-profit organizations (NPOs) provide vital assistance to worthy causes both at home and abroad. These organizations play a crucial role in fighting conditions conducive to terrorism and reducing the appeal of terrorism by building social structures and increasing inter-community dialogue and understanding.⁵ When charitable organizations do not have adequate financial access, they are forced to conduct transactions in unregulated channels, thereby creating increased security risks for these actors and undermining the very national security goals that AML/FCC regulations are designed to uphold.

Banking as a charity/nonprofit and "banking while Muslim" are not illegal and must stop being treated as such. As elected officials, it is our responsibility to amplify the voices of our constituents who feel powerless in the face of big banks and unaccountable regulators. Many families and businesses across the country have felt the harsh impacts of our current sanctions and AML/BSA regimes for far too long, especially during this pandemic that has further disrupted formal transfer channels. We are advocating for a more inclusive financial system, and we reject that there is a binary choice between creating financial inclusion and protecting our financial system from abuse by illicit actors. These should be complementary goals.

We request a response to these questions no later than 30 days after receiving this letter:

² ["OFAC Sanctioned Countries."](#) (2022). Princeton University.

³ ["Bank of America Faces Groundbreaking Class Action After Years of Discriminatory Practices."](#) (2022). NIAC.

⁴ Ortega, Bruno. ["Bank of America Discrimination Against Non-Citizens Class Action Lawsuit."](#) (2022). Migliaccio & Rathod LLP.

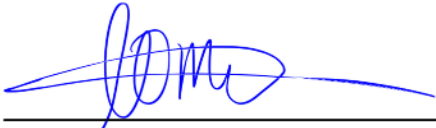
⁵ ["Tackling the Financing of Terrorism."](#) (2009). United Nations Counter-Terrorism Implementation Task Force.

1. What steps are all the banking regulators taking in your examinations of financial institutions to prevent discriminatory account closures and restrictions, especially of Muslim-affiliated organizations and other aid groups working in fragile countries?
2. For all banking regulators, what regulatory language or guidance has been considered and updated in the Federal Financial Institutions Examination Council (FFIEC) BSA/AML Examination Manual to deter financial institutions from over-enforcing U.S. sanctions?
3. The FY2021 National Defense Authorization Act ([see PL 116-283, Sec. 6215\(c\)](#)) included provisions requiring the Office of the Comptroller of the Currency (OCC) to conduct an analysis on financial services de-risking and Treasury Department to develop and review a strategy to reduce de-risking. What is the timeline of the OCC analysis and Treasury report to Congress? How will you engage and incorporate stakeholder input?
4. For Treasury or the Office of Foreign Assets Control (OFAC) or the Financial Crimes Enforcement Network (FinCEN) and the OCC and Federal Reserve, would the provision of a license authorization for U.S. persons to conduct personal banking transactions while in Iran and other high-risk countries reduce unnecessary and discriminatory account closures from U.S. financial institutions? ([see GAO-22-104792 report, pg. 6](#))
5. Has Treasury (or OFAC) considered appropriately defining “ordinarily resident” in Iran and other sanctioned countries, and distinguishing that from an individual “ordinarily resident” in the United States, in order to reduce ambiguity around sanction enforcement?
6. Would the Treasury (or FinCEN), the Federal Reserve, Federal Deposit Insurance Corporation, and the OCC consider implementing guidance to examine, redesign, or limit the use of automated technologies, such as artificial intelligence software, by financial institutions to combat money laundering and terrorist financing that may be unfairly and erroneously scrutinizing individuals based on name, national heritage, race, or religion?
7. Will Treasury propose any new plans to make sure that financial services providers in the charitable sector are not automatically assessed as carrying undue risk when charities demonstrate comprehensive approaches to risks and provide transparency of operations?
 - a. Is Treasury considering establishing new models of risk-sharing or safe payment channels where private institutions are unwilling to serve the charitable sector?

It is in our shared interest that all persons in the U.S. are able to fully access and participate in our financial services system. It is an unjust and undue burden for certain immigrant communities to face financial access barriers. We stand ready to work with you and support both immediate and long-term solutions to improve banking access to developing countries in order to prevent humanitarian crises, increase global stability, and protect our national security.

While we appreciate that AML/FCC/BSA regulations, unlawful discrimination against protected religious and national-origin groups, remittance access, and sanctions policy are distinct issue sets, they are often indistinguishable for communities unable to adequately access banking services. We look forward to your responses and to working together on these interrelated issues.

Sincerely,



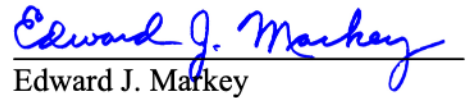
Ilhan Omar
Member of Congress



Elizabeth Warren
United States Senator



Rashida Tlaib
Member of Congress



Edward J. Markey
United States Senator



Joyce Beatty
Member of Congress



Jesús G. "Chuy" García
Member of Congress




Barbara Lee
Member of Congress



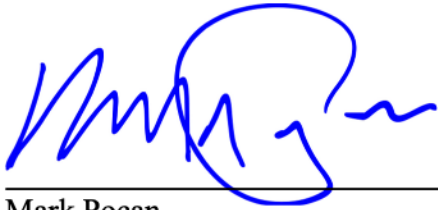
Pramila Jayapal
Member of Congress



Henry C. "Hank" Johnson, Jr.
Member of Congress



Bonnie Watson Coleman
Member of Congress



Mark Pocan
Member of Congress



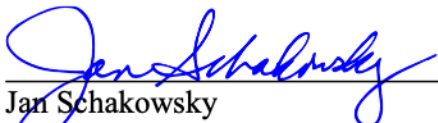
Jamaal Bowman, Ed.D.
Member of Congress



Debbie Dingell
Member of Congress



Marie Newman
Member of Congress



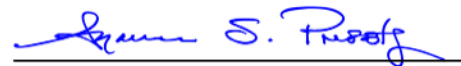
Jan Schakowsky
Member of Congress



Katie Porter
Member of Congress



Alexandria Ocasio-Cortez
Member of Congress



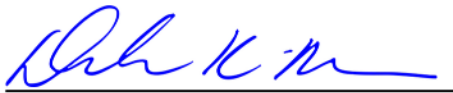
Ayanna Pressley
Member of Congress

André Carson

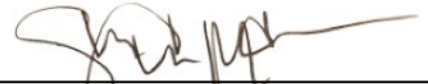
André Carson
Member of Congress



Bernard Sanders
United States Senator



Deborah K. Ross
Member of Congress



Sheila Cherfilus-McCormick
Member of Congress

cc: The Honorable Joseph Biden, President of the United States, The White House

The Honorable Anthony Blinken, Secretary, U.S. State Department

The Honorable Gary Gensler, Chair, U.S. Securities and Exchange Commission

The Honorable Rohit Chopra, Chair, Consumer Financial Protection Bureau

The Honorable Andrea Gacki, Director, Office of Foreign Assets Control

The Honorable Brian Nelson, Undersecretary, Office of Terrorism and Financial Intelligence