

TOO SAFE TO SUCCEED: How Financial Regulation Undermines Prosperity

This document will be updated as new information becomes available

DAVID WILLIAMS
DAN SAVICKAS
DAVID MCGARRY

TABLE OF CONTENTS

Introduction	1
Dodd-Frank: A Law Too Big to Fail	4
What is the SEC, Anyway?	7
The ESG Wars Have Begun	11
Just Say No to Price Controls	17
CFPB: Progressivism Incarnate	22
Putting a Chokehold on Financial Freedom	25
Big Brother in Banking	29
Community Reinvestment Act Overreach	32
Basel Standards: The Bank Slayer	34
Conclusion	36
References	37

Introduction

Capital is the oxygen of modern economies. Without it, companies cannot be created, business cannot be done, transactions cannot be completed, ideas cannot be manifested, and inventions cannot be brought to fruition. Further, entrepreneurs cannot go about creating goods and services of value without capital, and consumers cannot go about consuming.

How capital is circulated throughout the economy is a wildly complex process. From large hubs to the many proverbial red blood cells that ferry liquidity exactly where it is needed, when it is needed many economic organs serve crucial functions. Like the human body, the coordination of markets is almost miraculous in its intricacy and ability to sustain economic activity.



Many people seem to believe the financial services sector provides nothing of value to the economy. However, this line of thought could not be more mistaken. Financial institutions help to move capital from those who have it and don't need it to those who lack it and do need it. In other words, capital goes from places where it is less needed, and will be less productive, to places where it is more needed, and will be more productive. These institutions also perform other critical functions, such as mitigating risk and providing information.¹

An economy without robust financial institutions is one which forgoes innumerable opportunities for prosperity. Without effective means to distribute capital, entrepreneurs will find themselves unable to create new businesses, expand existing operations, invest in new technologies, and hire new workers. This makes for less wealth creation and less prosperity.

A dearth of available capital will harm “ordinary” Americans as well as big businesses and big financial institutions. As Alexander Hamilton noted centuries ago, banks “more frequently enable honest and industrious men, of small, or, perhaps, of no capital, to undertake and prosecute business.”² The rich and politically connected will, in all likelihood, manage to find some sources of funding. Absent broadly accessible capital markets, the small entrepreneur will likely find herself shut out entirely.

Similarly, investment benefits all classes of Americans. Although Wall Street attracts attention for its seven-figure salaries, the savings and retirement accounts of Main Street depend heavily on the profitability and stability of investing.³ Without financial markets this immense value simply would not exist.

Like the body, markets are imperfect; occasional maladies and malfunctions are facts of life. So-called “market failures,” however, often, upon closer inspection, prove to be the product of too much rather than too little regulation. Technocratic financial regulation is not congenial to American markets but has only been contracted in the last century or so. Nonetheless, it has proven chronic. Politicians and “disinterested” bureaucrats have determined that their judgements—not those of markets—can best determine risk and secure prosperity and stability.

Experience has unmasked this error. Regulation has failed entirely to banish crashes and panics from economic life.⁴ Central planning has created new dysfunctions and distortions.⁵ As anyone could have predicted, the contours of regulation have been shaped by—and skewed to the benefit of—the largest and most politically connected financial actors. The empirical reality of this failure has been documented by many economists, including the Cato Institute's Norbert J. Michel and Jennifer J. Schulp in their excellent primer, *Financing Opportunity*.⁶

Even crises that were not entirely regulators' fault have occurred under their close supervision, suggesting that still-closer bureaucratic supervision might not be the proper antidote.⁷ (The pain felt after shooting oneself in the foot shouldn't, some would argue, prompt one to fire again.) Like physicians who remained convinced of the virtues of bloodletting into the 19th century, today's technocrats insist on cures that have proven far more harmful than healthful to the financial sector and economy.

It is no coincidence that the financial services industry is both widely (though often unjustly) considered one of the most dysfunctional sectors in the U.S. economy and is one of the most heavily regulated.

This report will undertake a physical of sorts on the health of the financial services industry and diagnose many of the ailments that now afflict it. In the present technocratic age, these ailments are, inevitably, generally regulatory in nature; the system is wildly overmedicalized at present. Overregulation must be met with deregulation. The remedies prescribed herein range from the simple—see below: “Just Say No to Price Controls”—to the complex and systemic. Some require reversing errors of a year ago, while others require reversing the errors of a century ago.

As the saying goes, the first step to recovery is admitting one has a problem. This report attempts to take that first step.

Dodd-Frank: A Law Too Big to Fail

Some regulatory regimes seem too big to fail. They become so expansive, and so thoroughly entrenched, and serve so many special interests, that true reform seems near impossible. This is the story of the Dodd-Frank Act of 2010, enacted after the financial crisis of 2008.

A law's "comprehensiveness" does not necessarily indicate practicability. Despite its immense length—2,300 pages—Dodd-Frank nonetheless left much up to the bureaucrats that enforced it, creating economic uncertainty in its wake.⁸ As summed up by Diego Zuluaga:⁹

“

Dodd-Frank did much more than attempt to curtail bad practices. It eliminated previous regulatory agencies and added a slew of new ones. It established a fresh regime for banks deemed of systemic importance. The law also altered mortgage lending rules, seeking to better reflect the risk of these loans on bank balance sheets. It introduced new regulations on consumer lending, including a cap on debit card fees. It mandated the registration of hedge funds and required added disclosures for traded securities.

Dodd-Frank was a technocrat's dream in its breadth and scope. No crisis-era stone was left unturned, and a great many other future contingencies were addressed.



This sprawling imposition slowed recovery from the 2008 financial crisis—the very crisis to which the law responded. “A 2013 Federal Reserve Bank of Dallas study showed that the GDP recovery from the recession that ended in 2009 has been the slowest on record, 11% below the average for recoveries since 1960,” reported Peter J. Wallison of the American Enterprise Institute.¹⁰ Congress in its more reflective moments might have thought something along the lines of this immortal quip from the Duffel Blog: “Whoops, our bad.”

Vindicating the notion that regulatory burdens fall heaviest on small players, which lack the resources to shoulder them, Dodd–Frank seems to have contributed to the centralization of American finance. It eviscerated the number of new banks seeking charters. Further metrics suggest that the law has harmed homebuyers, homeowners, and low-income Americans prone to losing access to banking services.

Small businesses also suffered, as small-business lending declined. One report from researchers at Rutgers and Oberlin and the Federal Reserve Bank of Dallas found that “Bank survey results...indicate that bank credit standards for making [commercial and industrial] loans became relatively tighter for small businesses compared with medium- and large-sized firms during the period when [Dodd–Frank] requirements were most onerous on smaller banking organizations.”¹¹

Dodd–Frank also risked the data privacy of millions of Americans. Section 1033 of the law mandated that financial institutions allow consumers unlimited access to their data. While the theory behind this provision was that it would allow customers to more easily access their information to take their business to competing institutions, the results have been disappointing. The beneficiaries are large aggregators who build a business model off accessing this free data and then monetizing their treasure trove for profit.¹²

The Consumer Financial Protection Bureau (CFPB) promulgated a so-called “Open Banking Rule,” which interpreted Section 1033 to mean that any and all actors seeking to access this data ought to have unlimited, zero-cost access, regardless of the compliance costs foisted upon America’s banks. This left myriad gaps for privacy protections that could be more easily exploited by malicious third parties. Studies have shown that roughly 90 percent of data access requests come from such aggregators without a corresponding consumer request behind it. The Open Banking Rule was not about consumer protection.

Fortunately, the CFPB under the second Trump administration moved to scrap the Open Banking Rule in May of 2025. This will allow industry-led efforts on consumer privacy protections to continue apace. While some have tried to demagogue this rollback as a backdoor ban on cryptocurrencies and digital wallets, nothing could be further from the truth.



Repealing the (relatively) new rule will merely prevent unnecessary access to information but preserve open access for actual users and consumers.

Dodd-Frank also aimed to end bank bailouts.¹³ It failed, as the roughly \$22.5-billion rescue of Silicon Valley Bank (and other cases) demonstrated.¹⁴ The law continued to allow the Federal Deposit Insurance Corporation to play the taxpayer-funded white knight should a floundering bank pose a “systemic risk,”¹⁵ which not only perpetuated the bailout cycle but incentivized the concentration of capital in “systemically important banks.” As Judge Glock of the Manhattan Institute noted, “depositors understand that the systemic-risk exception and the rule barring general deposit guarantees move the U.S. banking system closer to a too-big-to-fail standard than ever before.”¹⁶ Too-big-to-fail seems to be here to stay.

The specter of failure is needed for any market to function well. As economist Joseph Schumpeter noted, the fear of failure often imposes market discipline more effectively than the hope for success. The promise of state intervention creates a moral hazard, freeing banks to make choices based on the promise that they will not bear the full burden of the consequences of their actions. Bailouts lead to less disciplined behavior in the markets, which in turn leads to more failures and bailouts. The vicious cycle hums along.

“Whoops, our bad.”

What is the SEC, Anyway?

Recently, the Securities and Exchange Commission (SEC) has endured something of an identity crisis of late. In the Biden era, the agency drifted ever further from its core mission set, becoming distracted with all manner of ideological side projects. The SEC has a three-pronged mission “of protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation.”¹⁷ This means ensuring that investors have the necessary information to make their own choices, not to ensure investors make choices of which regulators approve. Regulation should be crafted to provide maximal stability and predictability to the regulated, not left amorphous and subject to bureaucratic whim. And lastly, it means that the agency should assiduously avoid positioning itself for or against any question that does not fall dead center within its statutory bailiwick.

The Biden-era SEC failed on all these counts.



The Activist Biden SEC

Most notably, it advanced and finalized an emissions-disclosure rule, intended to require regulated firms to submit to burdensome reporting regimes with respect to their supposed “climate-related risks.”¹⁸

The logic of the rulemaking rested on a paradox. If, as the rule’s advocates claimed, “climate-related risks” were material to investors, and therefore a legitimate object of the SEC’s intention, they would be covered under preexisting reporting standards. If such risks were not material, and if the rulemaking was a fig-leaf for the anti-fossil fuel lobby, the SEC had no business proceeding. The latter was clearly the case.

As the American Enterprise Institute’s Benjamin Zycher argued, as a matter of mathematics, the rule would do nothing to curb hypothetical climate-related investment risk.¹⁹ “[A] given firm’s GHG emissions pose no such risks because the future climate effects of those emissions are effectively zero as a theoretical matter, and do not differ from zero as a matter of statistical significance,” Zycher wrote.

The climate disclosure rule provides a case study of the dangers of an activist SEC. Instead of guarding against fraud and providing disinterested governance, the agency attempted to herd investors towards its desired policy outcomes. It almost certainly did so lawlessly, without proper statutory authority (as Zycher and others have noted). Forcing a misallocation of capital away from profitable ventures directly contravenes the agency’s duty to facilitate capital formation.

The environmentalist Biden SEC did not content itself with merely disclosure-related adventurism. The agency sets guidelines for corporate governance and shareholder voting. In 2021, guidelines were amended to facilitate proposals concerning “issues of broad social or ethical concern related to the company’s business.”²⁰ These changes effected the desired surge in ideologically driven proposals. As a 2024 paper from the American Consumer Institute explains:²¹

S&P 1500 companies are now receiving more proposals than ever, and a large portion is [environmental/political topics (ESP)]-related. Specifically, the year 2021 saw a record-breaking number of proposals totaling 733, followed by 797 submissions in 2022. An incredible 503 of those were ESP and put on the proxy statement to be considered by the board compared to 220 just a decade ago. Yet, the number of governance-proposed submissions related to business operations is relatively unchanged. Proposals on ESP now

represent a much larger portion of total submissions, surging to 63 percent. And, for the first time, likely due to support from SEC changes, more than half of ESP-related submissions reached a vote in 2022.

Again, these measures did nothing to further the SEC's core mission. They amount to activism, not responsible stewardship of markets.

Crypto Killer

The Biden SEC launched an all-out assault against cryptocurrencies. Its chief weapon was uncertainty. The novelty of cryptocurrencies quite obviously raises new questions that regulators must answer. The SEC's strategy, however, was to keep its expectations of institutions dealing in crypto intentionally murky. This allowed it to deploy waves of lawsuits on little more than a whim. It is not clear which cryptocurrencies can be classified as securities under the controlling Howey Test of 1946, and thus which currencies and institutions ought to be subject to SEC supervision.²²



The crypto industry attempted to shield itself from uncertainty, begging for cognizable standards of conduct by which to operate.²³ The SEC declined to provide anything approaching clear guidance, preferring the sort of sway that can only be had from arbitrary power. Worse yet, “[t]

he SEC's ad-hoc enforcement actions—targeting some cryptocurrencies and exchanges while overlooking others without clear justification—foster confusion and erode confidence in the regulatory process,” a paper published earlier this year reports.²⁴ Affirming a timeless economic truth, the authors found that regulatory uncertainty put a significant damper on the crypto industry. “On average, prices drop by 5.2% within the first three days following each announcement, deepening to 17.2 %over 30 days,” they wrote. “Trading volumes also contract, reflecting an immediate shock and lingering reluctance to trade these assets.”

The Trump-directed SEC gives much cause for hope. Almost immediately after Inauguration Day, the agency scaled back Biden-era guidance that had greatly discouraged financial institutions from dealing in crypto.²⁵ Further, the agency dropped lawsuits against multiple firms in the industry, including exchange Coinbase.²⁶ It has established a Crypto Task Force “to provide clarity on the application of the federal securities laws to the crypto asset market and to recommend practical policy measures that aim to foster innovation and protect investors.”²⁷

The Crypto Task Force’s stated intention is to provide a solid, steady basis, not just for cryptocurrency regulation, but for all SEC action going forward. Regulated market actors need clear and stable guidelines, as well as protection from would-be fraudsters—not micromanagement and regulatory activism. Recent years have seen what ought to be routine interactions between regulators and the regulated become increasingly hostile; this must end.²⁸ Prudent, tailored and mission-focused regulation confined to a limited selection of statutorily set objectives will be most conducive to capital formation and economic flourishing.

The Trump SEC’s crypto pivot has continued apace. The agency seems determined not to undermine the development and adoption of the novel technology but to provide the certain legal standards within which industry and consumers may operate.

The ESG Wars Have Begun

Fiduciary duties place clear constraints on the activities of investment managers, who must maximize pecuniary gain while accommodating for risk. Public companies—within what Milton Friedman called “the basic rules of the society, both those embodied in law and those embodied in ethical custom”—must deliver the best possible returns to their shareholders.²⁹

These basic notions form the very foundation of the American economy. They ensure that all American investors—regardless of economic status—see the maximal returns on their investments. Countless Americans have built their savings and retirements on this foundation. “Some 72% of the value of publicly traded companies in America is owned by pensions, 401(k)s, individual retirement accounts, charitable organizations, and insurance companies funding life insurance policies and annuities,” former Senator Phil Gramm and policy expert Mike Solon noted in 2022.³⁰

Despite the success of the current model, solely pecuniarily focused fiduciary duties have fallen from favor among many on both the right and the left, albeit for different reasons. Worse still, both sides of the aisle have attempted to enlist government power in their partisan battles.

The Left Goes Tilting After Windmills

The left has long advocated that businesses consider myriad non-financial factors; indeed, the Milton Friedman quote above appeared in a 1970 essay lambasting the notion of “social responsibilities of business in a free-enterprise system.” Since then, it has sometimes gone under the name “stakeholder capitalism.” Now, the prevailing label is environmental, social, and governance (ESG).

What, precisely, ESG consists of remains somewhat unclear. What is clear is that the ESG movement believes that executives and fund managers should elevate progressive ideological priorities over their legal obligations and their obligation simply to do their jobs.³¹

For years, ESG advocates would insist that pursuing ESG-based objectives would not diminish profits, but markets have little patience for such nonsense. “Over the past five years, global ESG funds have underperformed the broader market by more than 250 basis points per year, an average 6.3% return compared with a 8.9% return,” Terrence Keeley, chief investment officer of 1PointSix LLC, explained in 2022.³² “This means an investor who put \$10,000 into an average global ESG fund in 2017 would have about \$13,500 today, compared with \$15,250

he would have earned if he had invested in the broader market.”

The reason ESG investing underperforms is simple. Funds are finite; diverting dollars from otherwise profitable enterprises because of, e.g., environmentalist scruples will necessarily mean forgoing the superlative profits those enterprises generate. High-flying moral intentions cannot, however, make a B-tier investment yield A-tier profits. For example, in 2022, “tech stocks fell by more than 30% while the energy sector, including oil and gas firms, gained nearly 60%,” Keeley wrote in 2023.³³ “Yet because of their net-zero pledge, ESG funds continue to overweight the former and underweight the latter.”

The best case of the pro-ESG crowd goes something like this: businesses’ environmentally and socially conscious practices will raise returns. Environmentally-conscious practices will do so, they say, because long-term environmental damage will wreak havoc on industries and economies. Socially conscious practices will ostensibly lead to higher returns because employees will perform better if better treated.

The former argument drifts into scientific questions beyond the remit of this report. But its claims are dubious, at best.

To the latter argument, ESG-skeptical commentators would respond that higher wages, better benefits, and other employment policies can enhance productivity and increase profits. This obvious fact has never been denied—not even by the most caricatural Friedmanite apostles. Indeed, such considerations fall comfortably within a traditional fiduciary-duty framework. There’s no need to employ a term such as ESG to obfuscate a basic calculation of business.

Regulatory Promotion of ESG and International Groups

The bogus assumption that pursuing ESG-based investing will not shrink returns has prompted lawmakers to protect the practice. For example, under President Joe Biden, the Department of Labor issued updates to the “prudence and loyalty” requirements of the Employee Retirement Income Security Act (ERISA).³⁴ Although the alterations had a far smaller effect than either proponents or opponents wanted to admit, they—and the rulemaking process itself—unquestionably served as “an advertisement that the executive branch—for the moment, at least—want[ed] more ideologically progressive investing,” as put in Reason at the time.³⁵

The federal government has also provided staggering subsidies for green-energy projects, making such projects seem far more feasible and attractive than they are.³⁶ Despite these subsidies, the movement to build green-energy infrastructure is floundering.³⁷

Internationally, foreign countries' pro-ESG regulations and networks of financial institutions, such as the Net Zero Banking Alliance, have further diverted capital flows from their proper courses. Europe's regulatory devotion to net-zero policies has wreaked havoc, both on the continent and globally. The goliaths of the financial industry committed themselves to ESG principles, harming their clients and investors and distorting the global market.

The Right Turns Against Markets

The right is quite correct that ESG investing fails to deliver maximal profits. Yet, instead of allowing markets to sort the issue out, conservatives have advanced proposals to curtail investing perceived to be related to ESG issues. Although they may seem a vindication of free markets, these proposals are, in fact, a subversion of them.³⁸ For example, while investing in fossil fuels might on average produce better returns than those in clean energy, certain clean-energy projects might fulfill niche demand for which a fossil-fuel project is unsuitable and, therefore, constitute an optimal investment. A better solution would be to erect neutral pecuniary obligations for fiduciaries without mention of ESG or any other confounding variable. Whether or not a given investment or business decision smacks of ESG, it ought to be evaluated solely by the profit it turns.



Many Republican lawmakers have failed to grasp this nuance. Many GOP-controlled state legislatures have enacted legislation that ban or discourage investing in projects that might be considered ESG, irrespective of their profitability. These bills have gone far past neutrality. For example, one 2025 Wyoming bill listed several considerations that cannot be considered “financial” factors (e.g., “Eliminating, reducing, offsetting or disclosing greenhouse gas emissions”).³⁹ Presumably, the bill’s sponsors would say that if a fiduciary took actions to eliminate emissions in a case when doing so would maximize profits, those actions would be legal. However, that language could easily be deployed in attempts to second-guess and micromanage profitable investment decisions perceived as pro-ESG.

Many GOP-controlled states have also divested state pensions from funds perceived to favor ESG—even in cases in which no more-profitable alternative existed.⁴⁰ This can lead to lower returns for state pensions, but presumably hinders ESG’s advance (which, it must be noted, is a decidedly non-pecuniary motivation). Moreover, a cohort of Republican attorneys general undertook an inquiry into financial institutions suspected of improper practices.⁴¹

Some states have gone further. Texas, for example, outright banned the investment of state funds in firms that engage in certain behaviors. As the Taxpayers Protection Alliance wrote in a letter to Texan legislators in September:



The Legislature acted on ESG issues in 2021 with the passage of SB 13 and SB 19.⁴² Both pieces of legislation ensure that the state does not do business with companies that boycott energy companies, discriminate against firearm companies, or boycott Israel. This is unnecessarily restrictive. Companies ought to be able to take whatever positions they like. Further, private individuals or associations have the freedom to do business with whomever they choose.

Politicization of pensions and investments must be avoided—or eliminated where it already exists. Texas should focus on generating the best returns for their taxpayers. If a high-performing fund uses ESG considerations, that should make little difference to account owners who see their balances continue to rise. The foremost consideration of elected representatives in Texas should be the wellbeing of Texans.

Republicans advancing such proposals show a lack of faith in their own positions. If it is true that ESG-obsessed investments yield smaller profits, this fact will be revealed by markets and market actors will adjust their behavior accordingly—all without the intervention of the government. Markets have performed this function for time immemorial, using price signals and personal financial incentives to direct capital and other resources to their best uses. Financial markets in modern times should function no differently.

Markets Remain the Perennial Champion

Republicans ought to have more confidence in markets. As noted, an obsession with ESG comes at the opportunity cost of lower profits. Markets have conveyed this information loud and clear, and financial institutions have begun to listen. The façade of ESG is cracking—no anti-market regulation needed.

A recent Wired headline says it best: “The Biggest US Banks Have All Backed Out of a Commitment to Reach Net Zero.”⁴³ To wit, “Bank of America, Citigroup, Goldman Sachs, JP Morgan, Morgan Stanley, and Wells Fargo left the Net Zero Banking Alliance between December and January,” the story reports. Meanwhile, BlackRock—once a champion of ESG—has withdrawn from the Net Zero Asset Managers initiative.⁴⁴ Vanguard withdrew in 2022.

In February, BP—née “British Petroleum”—renounced its hardline pivot to environmentalism, promising a roughly 20 percent spike in investment in fossil-fuel ventures. The company had flagged of late, falling behind competitors such as Chevron, ExxonMobil, and Shell.



“This is a reset BP, with an unwavering focus on growing long-term shareholder value,” BP CEO Murray Auchincloss said. The best intentions and most fervent wishes of environmentalists were insufficient. According to an Associated Press report, “Auchincloss told investors after the release of the update that the company’s faith in the green energy transition was ‘misplaced’ and that the company went ‘too far, too fast’ in recent years. Demand for oil and gas, he added, will be ‘needed for decades to come.’”⁴⁵

In short, the free-market experiment is working. ESG ideology is being proven false, and markets are reacting accordingly. Progressive ESG advocates claimed that ESG-obsessed investing would turn the same profits as investing based purely on pecuniary considerations. This disbelief in opportunity costs was quite silly from the beginning, but it was rightly adjudicated in the market, where such disputes ought to be settled. As Edmund Burke said, “Example is the school of mankind, and they will learn at no other.”

No central planner—on either the left or the right—possesses the knowledge needed to distinguish the “unproductive” investment from the “productive.” Markets, however, which possess and make use of the knowledge of countless individuals, can effectively make such determinations. In any sector, individuals will attempt to innovate new ways to do things. Some such experiments will prove their worth and generate profits; but many others will not, and, proven ineffective, will fade away as market actors pivot in search of effective ways to earn money.

The key to this process is freedom—freedom for individuals to innovate and freedom for bad ideas to fail. When politicians attempt to cushion ideologically favored business practices from the brutally honest information that markets convey, they impoverish their constituents. The market’s discipline is enforced with a harsh implement—failure. Despite the pain of failure, attempting to thwart this discipline for the sake of a politically favored few can only plunder the many in what is a fundamentally corrupt exercise in injustice and—to use Frédéric Bastiat’s phrase—spoliation.

The government must be neither friend nor foe to any given method of doing business. Although they often move too slowly for impatient commentators, markets in time will invariably sort themselves out.

Just Say No to Price Controls

Ordinarily, if one tries an experiment and it fails, the experiment shouldn't be repeated. Nonetheless, in the world of finance—and in economics generally—the idea of price controls retains its hold on policymakers' imaginations. Price controls just sound so good, although they're the regulatory equivalent of putting wallpaper on a wall eaten away by termites and declaring the problem solved. Papering the wall over doesn't repair the rot.

The inconvenient truth is that prices convey information. In well-meaning attempts to help Americans struggling with high prices—of food, energy, or interest rates—knowledge-poor politicians thinking only of intentions, not real-world effects, create new dysfunctions while failing to ameliorate the identified hardship. Prices are neither random nor arbitrary, but the product of the innumerable economic realities which coincide to produce them.

Capping a price does nothing to change those realities. In fact, by keeping the price of the regulated good or service artificially low, price controls result in more demand and less incentive to provide greater supply, conducing to shortages and other unintended economic ills. These policies are very old—just ask Hammurabi or Diocletian—but they routinely fail.⁴⁶ More recently, as scholars such as Amity Schlaes have documented, former President Richard Nixon, despite knowing better, capitulated to political pressures and instituted wage and price controls, causing exactly the sorts of economic woes that any basic economics class would predict.⁴⁷

The problems induced by price controls apply as much to the financial services sector, although sometimes they are less readily apparent than in other less complex, more tangible sectors. Proposals that purport to limit the allegedly predatory prices and fees of purportedly predatory industries cannot see either the underlying economic currents or the ways in which their policies will harm ordinary Americans.

The Durbin Amendment

In 2010, Sen. Richard Durbin (D-Ill.) managed to include his eponymous Durbin Amendment in the Dodd-Frank Act. The Durbin Amendment capped the interchange fees—known also as “swipe fees”—debit card issuers could charge at the point of sale.⁴⁸ As the costs of interchange fees fall on merchants, supporters of such caps argue that they will lower the cost of business and, in turn, lower consumer prices.

The experience of the Durbin Amendment diverges sharply from the theory that produced it. The Federal Reserve—charged with issuing a rulemaking to implement the law—dutifully cracked down on interchange fees, and cracked down hard. “Initial studies following the promulgation of the 2011 regulation focused on the reduction of interchange fees paid by merchants from 50¢ for the average transaction to 24¢, an amount close to the median 21¢ cost of processing debit card transactions,” writes Ronald Bird for the Cato Institute.⁴⁹

The Durbin Amendment did not help consumers. Research suggested it enriched large retailers primarily, who did not pass on their windfall to their customers. According to one paper from George Mason University, large retailers gained “\$1 billion to \$3 billion annually” at the expense of “low-income households.”⁵⁰ According to a study from the Richmond Federal Reserve, more than three-fourths of retailers did not alter their prices in the Durbin Amendment’s wake, while 21.6 percent raised prices; only 1.2 percent lowered prices.⁵¹

This loss incurred by debit card issuers (an estimated \$6.6 billion to \$8 billion annually) caused them to save money elsewhere—i.e., by trimming services they had previously provided their consumers.⁵² These lost services included rewards programs—indeed, debit card rewards programs were far more common in the pre-Durbin Amendment era. Now, they have largely disappeared, with rewards available only to credit-card holders.

Moreover, the Durbin Amendment raised the cost of having a bank account. This was previously a cost that had been kept down by profits from swipe fees. In 2009, more than three in four banks offered free accounts; that fell to 38 percent by 2013. The minimum account balance needed to dodge fees also spiked. “A typical lower-income bank customer



who previously qualified for a free current account but, after Durbin, no longer meets the minimum monthly balance requirement is likely paying around \$12 in monthly fees, as well as an additional \$1 or more in ATM fees,” the George Mason paper states. “That’s an annual cost of around \$160.”

Every time the grip of price controls tightens, the least well-off Americans suffer.⁵³ In comments to a Federal Reserve proceeding considering a tightening of debit card fee caps, Matthew Steilberg of Citizens and Farmers Bank noted that “Debit Card interchange income is the only other way we are able to offset...expenses.”⁵⁴ Citizens and Farmers Bank makes accounts available to individuals with shaky finances, Steilberg said. “Changes to debit card interchange regulations will likely mean we are losing money with each of these accounts and that may impact our decision to offer them.”

Repeating Recent History’s Mistakes

They say that history doesn’t repeat itself, but it rhymes. However, when two chapters of history are written by the same author, the rhyming can, in fact, come close to outright repetition.

In 2023, Sens. Dick Durbin (D-Illinois) and Roger Marshall (R-Kansas) introduced the Credit Card Competition Act (CCCA), a bill to lower interchange fees for credit cards.⁵⁵ While its mechanism differed from that of its 2010 antecedent, the CCCA aims at the same outcome: price controls. All the flaws of the one are inherent to the other, but despite the damage done by his previous efforts, Sen. Durbin persisted in following the same failed policies.

The CCCA would require large banks to allow multiple payment networks on their credit cards. This is intended to force “competition” against the two largest networks, Visa and Mastercard. More “competition” would make for lower prices, the logic goes. Of course, this begs the question of whether requiring banks to work with competitors they and consumers have deemed unworthy counts as true competition.

From its premises to its reasoning to its conclusions, the CCCA gets it all wrong. First, the dominance of Visa and Mastercard—a vaunted (and fictitious) “duopoly”—is greatly exaggerated.⁵⁶ Then, as explored above, the notion that a de facto price control will yield a nirvana of consumer wellbeing has no basis in economic theory or economic history. The CCCA is a destructive solution to an imagined problem—the equivalent of bleeding a patient to treat a psychosomatic disease.

A notable casualty of the CCCA enactment would be Americans’ cybersecurity. Interchange fees collected by Visa and Mastercard pay for strong cybersecurity protections, insulating the

networks against loss and cardholders against risk and inconvenience. If interchange-fee revenues fall, not only will rewards programs and access to financial services evaporate—as they did following the Durbin Amendment—but cybersecurity safeguards will likely crumble. This will make Americans’ finances less secure, all while large retailers collect rents and consumers gain nothing.

Interest Rates Are Prices, Too

Many politicians seem incapable of grasping the notion that interest rates are simply another price—the price of money, which factors in supply, demand, risk, and many other variables. There is an age-old misconception that the business of lending money is unproductive, that it creates nothing of value in the economy, that the profits accrued from interest payments are leeching extractions from creditors. “Usury,” Aristotle wrote in the Politics, “is most reasonably hated, because one’s possessions derive from money itself and not from that for which it was supplied.”⁵⁷



Despite its pedigree and persistence, this view is blinkered and economically unfounded. Lending and credit make capital available to people who badly need it, which allows them to

create businesses and wealth, thereby enriching society; to get a product or service, a financial incentive must exist to induce market actors to offer that product or service. If regulation lowers or eliminates the incentive to lend and provide credit, supply will shrink or disappear, leaving Americans without access to critical financial resources.

Nonetheless, price controls for interest rates seem like a good idea to a certain kind of lawmaker. Sens. Bernie Sanders (I-Vt.) and Josh Hawley (R-Mo.), alongside Reps. Alexandria Ocasio-Cortez (D-N.Y.) and Anna Paulina Luna (R-Fla.) have allied to introduce proposals to cap credit card interest rates at 10 percent.⁵⁸ The Republicans involved seem not to have taken a moment of reflection to consider why their compatriots are self-identified socialists or what that could mean for the soundness of their proposals.⁵⁹

An interest rate cap would restrict access to credit for struggling Americans. The availability of credit at high rates makes sense for all parties to the transaction. High rates are offered to high-risk borrowers. For banks, high rates provide compensation for risk and inevitable losses. For creditors, it's undoubtable that such rates are painful; but they are preferable to the alternative: having no access to credit at all. If banks cannot charge high rates, they will simply decline to extend credit.

Somebody with financial struggles quite obviously does not want to pay a 25 percent rate on a credit card bill. But paying that rate might be the only way to cover an emergency medical procedure, for example. As Thomas Sowell would say, there are no solutions, only tradeoffs; and it is better to have access to funds—even at a high price—than to have no access.

Moreover, capping interest rates creates a moral hazard. Consumers with poor credit, large debts, or other financial problems should not feel comfortable taking out credit or maintaining outstanding balances. However troublesome, high rates serve the invaluable function of incentivizing debtors to pay their debts as soon as possible and to avoid incurring those debts except when absolutely necessary.

As occurs so often, regulation to help down-on-their-luck Americans will, in practice, create conditions in which they suffer more.

CFPB: Progressivism Incarnate

If there is any project that militates against the Progressive theory of rationalistic, technocratic administration by ostensibly disinterested academic elites, it is the Consumer Financial Protection Bureau (CFPB). The brainchild of now-Sen. Elizabeth Warren (D-Mass.), and born of the Dodd-Frank Act, the CFPB was built to wield sweeping, ill-defined powers. It was also built to be unaccountable, leading to *Seila Law v. CFPB* (2020), a case in which the Supreme Court struck down statutory barriers that unconstitutionally limited the president's power to fire the agency's director.



As put by C. Boyden Gray and Adam J. White, Congress “delegate[d] effectively unbounded power to the CFPB, and couple[d] that power with provisions insulating CFPB against meaningful checks.”⁶⁰ Add onto that a constitutionally abnormal funding scheme, which allows the agency to set its budget and self-appropriate from the Federal Reserve.⁶¹ A challenge to this funding scheme rose to the Supreme Court, where the agency barely survived.⁶²

The CFPB has undertaken all manner of activities in which it has no business engaging.⁶³ The agency's responsibilities, in the main, range from redundant to destructive. Although it has done some good work combatting fraud, none could not have been done—and likely done better—by another agency.

Since President Trump's inauguration, the CFPB's status has been uncertain. Activities have been paused, and large-scale layoffs have ensued. A functional shuttering of the agency may be afoot. Nonetheless, the agency provides a number of case studies in governance done poorly.

Junk Regulation on Fees

The CFPB under Joe Biden was consumed by a hatred of fees—late fees,⁶⁴ overdraft fees,⁶⁵ so-called “junk” fees,⁶⁶ etc. It was lost on the agency that these fees usually exist because they serve an economic purpose. High late fees charged by credit card issuers, for example, discourage card holders from not paying their bills on time. If a business removes a line-item “junk” fee, its costs of doing business will remain the same, and the dollar amount of the deleted fee will likely be incorporated into the price of the service.

As Ryan Bourne and Sophia Bagley of the Cato Institute argued, anti-junk-fee enthusiasts subordinate economics to their personal sensibilities.⁶⁷ “It would clearly be more accurate to say that ‘junk fees’ as weaponized by the [Biden] White House are any fees the administration identifies some customers might dislike or find annoying,” they wrote. “That means this war on prices is likely to create substantial uncertainty for a raft of businesses in the future.”

The Zelle Lawsuit

Already, the Trump administration is putting the kibosh on its predecessor’s antics. In December, the CFPB sued Bank of America, JPMorgan Chase and Wells Fargo over an alleged failure adequately to combat fraud over the payment system Zelle.⁶⁸ The case was recently—and rightly—abandoned.⁶⁹

As Iain Murray of the Competitive Enterprise Institute (CEI) argued:⁷⁰



The Bureau justifies its action by saying that, ‘Under the Consumer Financial Protection Act [Dodd-Frank], the CFPB has the authority to take action against institutions violating consumer financial protection laws, including engaging in unfair, deceptive, or abusive acts and practices’.

It is difficult to say how improper use of Zelle’s platform could be regarded as meeting the legal definition of unfair, deceptive, or abusive. What the Bureau is really annoyed at is that scammers have used payment apps as a vehicle for payment of monies they have scammed out of people.

The case was illustrative of a common conflation that persists in the minds of many officials and almost invariably yields bad policy. The harms at issue were not the fault of the banks, but

of scammers. However, the CFPB saw the fact that bad actors used a specific service in the course of their wrongdoing as a casus belli to attack the services themselves. People, being people, and being unlikely to stop, will always attempt crimes, and during those crimes, they will use certain widely-available products and services. Besides peer-to-peer payment systems, criminals use—and will continue

to use—cars, phones, computers, guns, and other instruments to further their schemes. That does not mean that car manufacturers, telecommunications companies, technology companies or firearms dealers should be held to account.



Unhealthy Restrictions on the Uses of Medical Debt

Just as many people seem to think that markets and prices simply don't function the same in the financial services industry as they do in others, it is widely believed that the healthcare industry operates by its own unique set of rules. A CFPB rule finalized in January 2025 married the two misperceptions.⁷¹

The rule barred the incorporation of medical bills on credit reports. This might seem humane and compassionate, yet it only muddies the waters. Medical debt is, unquestionably, a quite painful reality for many Americans, often arising from circumstances entirely out of their control. Nonetheless, ignoring a fact does not erase that fact's existence. Disallowing financial institutions from accounting for the totality of their clients' financial situations will create unintended distortions and unforeseen second- and third-order effects. Examples of unintended consequences include larger required up-front payments for medical services and higher interest rates on debt to account for increased risk.

Few agencies have deserved termination more than the CFPB.⁷² That, like many of the reforms urged in this report, will require an act of Congress. There is much that the Trump administration can do to improve financial services regulation; but there is a ceiling. Ultimately, it must be Congress that does the work of large-scale reform. It can't be done any other way in the American constitutional system.

A federal court halted this rule in July.⁷³

Putting a Chokehold on Financial Freedom

Maintaining a good reputation was of great importance to the Founding Fathers. When George Washington said, “Associate yourself with men of good quality, if you esteem your own reputation; for ‘tis better to be alone than in bad company,” he offered sound advice.

Modern financial regulators have transformed this maxim into a threat and a tool of tyranny. They use amorphous regulatory standards known as “reputational risk” to cajole and bully institutions, governing by raised eyebrow and vague suggestion. If banks associate with businesses or individuals whom regulators have deemed of bad quality, they may find themselves subjected to investigations and other potentially crippling regulatory attention.

Besides relying heavily on the often-arbitrary discretion of bureaucrats, the reputational risk standard withdraws the act of regulation into a backroom out of sight of the public. While the drafting of a bill or a rulemaking proceeding would occur publicly—giving the public the chance to comment, either on the docket or in the public square—reputational risk is often invoked in private communications with private institutions, which could never see the light of day. This means that financial institutions might change their policies for no apparent reason, leaving their customers not just injured, but confused.

For example, Maria Vullo, then the superintendent of the New York State Department of Financial Services, threatened the National Rifle Association (NRA)’s insurance providers, ordering them “to continue evaluating and managing their risks, including reputational risks, that may arise from their dealings with the NRA or similar gun promotion organizations.”⁷⁴ Vullo even went further, suggesting to Lloyd’s of London that her office might close other investigations if the NRA were to be dropped as a client.⁷⁵ This information surfaced as the NRA sued Vullo, a case that ascended all the way to the Supreme Court.⁷⁶ In a 9–0 decision, the justices sided with the plaintiffs and free speech.⁷⁷

Operation Choke Point 2.0

In recent years, individuals engaging with cryptocurrencies began to notice something strange. With little explanation, their banks were closing their accounts. This oddity attracted increasing attention, until it became clear that this string of denials of service did not stem

from the banks' judgement but from the application of pressure by regulators. As recently confirmed in a series of letters sent by the Federal Deposit Insurance Corporation (FDIC), regulators had covertly pressured banks to “pause all crypto asset-related activity.”⁷⁸



Without formally banning or regulating cryptocurrencies, the FDIC attempted to asphyxiate the industry, robbing it of the capital needed to survive. “It appears that financial regulators have bought into the false narrative that cryptocurrency-focused businesses solely exist to facilitate or conduct illicit activities, and they seem blind to the opportunities for the potential innovations and new businesses that can be built,” Sen. Bill Hagerty (R-Tenn.) said.⁷⁹

This effort has colloquially become known as Operation Choke Point 2.0.

Crypto was not the only industry whose access to financial services evaporated before the heat of regulatory scrutiny. Multiple Christian groups—including one that does charity work in Uganda and the National Committee for Religious Freedom, headed by former U.S. Ambassador Sam Brownback (R-Kansas)—found their access to financial services severed.⁸⁰ When banks are questioned by their erstwhile customers about the reasons for such account closures, they are often prevented from disclosing the real reasons why.

The influence of the government looms behind all such cases.⁸¹

Operation Choke Point: The Origin Story

The existence of Operation Choke Point 2.0 implies the existence of an original Operation Choke Point. Indeed, beginning in 2012, the Department of Justice, the FDIC, and eventually the CFPB undertook to bully financial institutions into dropping politically disfavored clients. The victims included payday lenders, gun dealers, porn stars, and other “high-risk” entities.⁸²

Operation Choke Point continued until 2017, the year President Donald Trump first took office.⁸³ It operated on dubious statutory authority, and the bureaucrats responsible dodged congressional oversight of its actions.⁸⁴

If the government declines to travel down the thoroughfare of the requisite statutory or rulemaking processes, it ought not to resort to skulking down backroads and alleys to micromanage Americans’ choices. If an activity is not objectionable enough to be made illegal, the government ought to leave those who engage in it alone. If it is deemed too pernicious to be left legal, it should be banned within full view of the public.

The same due-process-related problems are attached to regulations implemented by guidance documents. Finding the strictures of rulemaking too troublesome, officials will often promulgate “non-binding” guidance, with a clear message: Comply, or else. To avoid scrutiny and remain in the good graces of the regulators in their lives, financial institutions often prefer not to make a fuss about such things. The good use to which regulators have put their informal powers vindicates James Madison’s observation that “An advisory Govt is a contradiction in terms.”⁸⁵

So tightly are financial services regulators interwoven with the decision-making of the industry they regulate—and so forceful is the control that they can, on a whim, exert—that far too many bureaucratic suggestions carry the force of black-letter law. As the exploits of Maria Vullo demonstrate, this problem pervades both federal and state regulatory systems. This state of affairs creates due process problems, for guidance letters sent privately by unelected bureaucrats are not subject to public scrutiny or democratic accountability. It also leaves far too much to the discretion and judgement of individual officials, almost ensuring arbitrary enforcement proceedings. John Adams defined a republic as a government of laws, and not of men.⁸⁶ In Adams’ sense, America’s financial services regulation is profoundly anti-republican.

President Trump’s Righteous Crusade Against Reputational Risk

Conservatives’ years-long counterinsurgency against the weaponization of “reputational risk” has begun to secure meaningful victories. In August, the White House issued an executive order censuring the practice of debanking, condemning Operation Choke Point, and directing

agencies to “remove the use of reputation risk or equivalent concepts that could result in politicized or unlawful debanking, as well as any other considerations that could be used to engage in such debanking, from their guidance documents, manuals, and other materials.”⁸⁷

The import of excising reputational risk from the federal government’s policy can hardly be stated too often or too emphatically. To ensure not only free markets, but a free citizenry, individuals and financial institutions must be free to contract with one another without the looming threat of regulatory retaliation. Such freedom of association is essential, not only on economic grounds, but on the grounds of free speech and free association.

One note of caution is in order with respect to President Trump’s executive order, which indicates that financial institutions themselves—apart from any interference by the state—ought not to be allowed to sever relations with customers on the grounds of politics. This, too, violates the principle of free association. Financial institutions may, internally, find many reasons to decline to do business with any specific individual—reasons related to morality, risk, and many other areas. It should also be observed that policies such as the one advanced in the executive order contain the seeds of discretionary enforcement. A motivated bureaucrat might assign ideological motives to a non-ideologically-driven debanking for the purpose of defending an like-minded ally. History provides too many examples of such conduct for this possibility to be dismissed.

Just as the federal government has no business telling banks not to associate with potential or current customers, it has no business forcing institutions to associate with potential or current customers.

Big Brother in Banking

The Bank Secrecy Act (BSA) of 1970 promotes “secrecy” in the way the reconciliation package passed by Congress in August 2022 promoted “inflation reduction.” It doesn’t. The law—and subsequent amending legislation—deputizes financial institutions in the federal government’s operations against money laundering and other criminal activities. Banks and other institutions must inform the federal government about everyday transactions as well as supposedly “suspicious” activities.⁸⁸

There are few statutes in such violent conflict with the Constitution. To protect Americans’ privacy (among other things), the Fourth Amendment enshrines “right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.”⁸⁹ The BSA destroys this security, forcing Americans to forgo their financial privacy as a precondition to doing business. To have money and use it, Americans must reveal their personal dealings to the federal government.

The BSA required institutions to keep certain records—“where such records have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.” Reporting of certain international transactions became required of financial institutions, as did certain domestic transactions. However, which domestic transactions were to be covered, how these disclosures were to be made and in what detail, and other not-unimportant specifics were left to the discretion of the Treasury Department.⁹⁰

In 1972, in its initial guidance, the Treasury set the transaction threshold at \$10,000, which has remained unchanged, despite inflation. This means that transactions—including deposits and withdrawals—exceeding this threshold are reported to the federal government. A mere \$10,000 in 1972 dollars comes to more than \$75,000 in 2024 dollars; thus, inflation has thrown ever-smaller transactions—in real terms—into the surveillance net of the BSA.

Several statutory updates to the BSA have ensued, including in the 2001 PATRIOT Act. Most significantly, perhaps, in 1992 Congress created a requirement that institutions submit so-called suspicious activity reports (SARs) notifying authorities of “any suspicious transaction relevant to a possible violation of law or regulation.”

Even putting aside the constitutional issues, the BSA is no unequivocal success. “[I]f judged by the standard of reducing predicate crimes, there is virtually no empirical evidence to suggest

that the approach has worked,” write Jennifer Schulp and Norbert Michel.⁹¹ “Instead, the evidence suggests that the BSA framework has proven a minor inconvenience for criminals but a major burden on law-abiding citizens.”

The BSA is not the only foe to Americans’ financial privacy. The SEC announced on February 10 that it would exempt personally identifiable information (PII) from collection in the Consolidated Audit Trail (CAT).⁹² This is a significant rollback of a significant abuse by the agency. The product of a 2012 SEC order, but not functional until 2020, the CAT gathered PII of all investors making moves with exchange-listed equities and options (PII gathering began in 2023).⁹³ By erasing anonymity and giving regulators an intimate view of the financial transactions of vast swaths of law-abiding Americans, the system did great violence to Fourth Amendment principles and the right to privacy.

The CAT fares no better when judged on concerns related to privacy and cybersecurity than it does when judged on those related to civil liberties. “The CAT will absorb information about tens of billions of trades daily, making it quite possibly the largest database in the world,” wrote Schulp.⁹⁴ It created a massive treasure trove of data, ripe for hacking.

This is exactly the kind of bad policy about which privacy advocates have long warned. Besides the obvious intrusion into Americans’ private affairs, collecting data necessarily creates treasure troves of data, ripe for hacking. In an increasingly digital world, there is no way to prevent data breaches altogether, but policymakers can mitigate the risks—first and foremost by avoiding the creation of treasure troves whenever possible. Arguing that the impossibility of totally eliminating cybercrime means that risk mitigation is pointless resembles arguing that the impossibility of totally eliminating car crashes means that everyone should drive while scrolling Instagram and with an open beer in hand. It must also be noted that, like everyone else, government agencies, including the SEC, are susceptible to cyber incidents.

The BSA and CAT’s woes point to a larger struggle within debates on financial services regulation. One side sees the flow of capital primarily as a facilitator of crime and other nefarious conduct—and as such, it must be closely monitored and managed, even at the cost of Americans’ privacy. To the other side, capital markets are just one complex feature of a complex society, and although they present unique challenges to law enforcement, their regulation must be undertaken within the parameters erected by the Constitution.

The government must refrain from invading Americans’ privacy, even though its restraint might incidentally aid criminal operations. Likewise, it must tolerate certain technologies—end-to-end encryption, being a paradigmatic example—that allow the general public—including, at times, nefarious actors—to safeguard its privacy.⁹⁵ If all privacy protections, legal

and technological, of which criminals make use were erased, a fundamental pillar of American constitutional governance would also disappear—and Americans would find themselves exposed at every turn to the government’s prying eyes. If the logic of the BSA and CAT were extended to all facets of regulation, America would devolve into a surveillance state.

As CEI’s Iain Murray has written, the very assumptions of U.S. financial services regulation erodes the foundations of freedom.⁹⁶ “A free society rests on some general presumptions, one of which is that most people are honest,” Murray argues. “Banking regulation turns that principle on its head—all are suspect, and your bank needs to work on that principle.”

Law enforcement entities will always find reasons to lobby to expand their capabilities; their concern is, after all, deploying every available tool to stop and catch the bad guys. The interests of law enforcement should not be dismissed; preventing crime and executing justice is at the core of the state’s proper role: to secure the rights to life, liberty, and property.

However, these interests must be balanced with other interests, including the individual’s right to privacy. It is also not uncommon for law-enforcement priorities—e.g., anti-money-laundering efforts—to serve as a fig leaf for unrestrained intrusions on liberty and privacy. The protection of some fundamental rights cannot come at the cost of the abrogation of others. In other words, the protection of rights must proceed within the boundaries set by the Constitution. No matter how essential the function of law enforcement in a free nation, that function cannot be carried out in a manner destructive of the very rights that make that nation free.

Community Reinvestment Act Overreach

Some laws don't garner much attention until they're abused. In 1977, Congress enacted the Community Reinvestment Act (CRA), intended to curb so-called "redlining" among financial institutions in economically challenged communities. In brief, the law pushes institutions to lend to low- and moderate-income borrowers in the regions in which they operate. Its requirements are tied to banks' physical location and where they accept deposits.

This often-forgotten law received the makeover of a lifetime in October 2023, significantly enlarging its application.⁹⁷ Not long after, multiple industry groups sued to halt the updates.⁹⁸



The plaintiffs argue that the CRA updates go beyond the statutory purview of the original law and are, under the Administrative Procedure Act, arbitrary and capricious. "As set forth in detail below, the Agencies have abandoned the statute's geographic, deposit-taking touchstone in favor of additional sweeping assessment areas...that have no connection to a bank's physical deposit-taking presence," the plaintiffs

state. "They also plan to assess large institutions' deposit products, contrary to the statute's explicit direction to focus on the 'credit needs' of the community."

Based on faulty analysis, the plaintiffs allege, the government imposed heavy compliance burdens—burdens whose imposition could not be delayed. Due to knowledge constraints, moreover, some institutions may not even be able to comply effectively with the new

guidelines. Worse still, “the Agencies offer no predictions, let alone evidence, that the Final Rules will lead to more lending of the sort that the CRA was designed to encourage,” the complaint reads. “To the contrary, the Agencies turn a blind eye to the substantial likelihood that these Final Rules will actually reduce lending to low- and moderate-income borrowers.” In a fit of philanthropy, the government may have erected barriers to the very objectives the CRA sought to secure.

In April 2024, the plaintiffs secured a preliminary injunction, which was appealed to the U.S. Court of Appeals for the Fifth Circuit. However, in March of this year, while the appeal was pending, the Trump administration (in its own words) filed “an unopposed motion to stay the appeal pending completion of a new rulemaking that would propose rescinding the enjoined 2023 CRA Final Rule and reinstating the CRA framework that existed prior to the 2023 CRA Final Rule.” The court granted this motion on April 1.

The CRA’s sordid story illustrates a larger danger of a library-length federal code implemented by an innumerable host of unaccountable bureaucrats. It is very easy for a statute with modest intentions to be contorted to cover new activities of which its authors never dreamed. For many bureaucrats, the (proper) question, “What are my powers based on a faithful reading of this law?” has been replaced by a new question: “What powers do I wish this law gave me?”

Federal law is so copious that most bureaucrats can find some statute that, with a bit of twisting of congressional intent when convenient, can be read to give them whatever power they happen to want. The benefits are often hypothetical and the costs painfully real and enormous. When regulators attempt to micromanage industries that they do not and cannot understand, chaos and confusion ensue, very often harming both regulated companies and their customers.

Too often, the clean-up job is left to the courts. This need not be, however. Congress, which enacts the laws, could intervene when bureaucrats abuse and contravene statutory text and intent. Certain ambiguities, loopholes, and other potential points of abuse sometimes become clear only after enactment. In such cases, Congress should act to provide clarity and reinforce its position as the leading branch of American governance.

Basel Standards: The Bank Slayer

A question lurking in between almost every line of this report is whether market forces can be trusted to work their magic within the financial services sector. Many commentators—even some of those who ordinarily prefer to leave the arrangement of the economy to the invisible hand—think the scale, importance, and complexity of financial markets requires heavy regulation. Phrases like “systemic risk” are bandied about to justify state interference in competitive processes, interrupting and distorting information conveyed in profits and losses. In most industries, a “father knows best” approach to regulation obviously amounts to heavy-handed statism and epistemic hubris.⁹⁹ However, when considering financial services, many seem to forget everything they knew about economics and human action.

According to the would-be planners, one thing that must be determined by regulators is the size of the reserves of capital financial institutions keep on hand. Of course, nothing approaching a truly free market exists in this sector, but there undoubtedly are more and less restrictive, more and less market-oriented, ways for regulators to approach the issue.

In 2023, a cohort of federal agencies proposed to raise substantially the capital-reserve requirements that bind covered banks.¹⁰⁰ This move—labeled by some as a “sea change”—drew a flurry of opposition.¹⁰¹ The Financial Services Forum (FSF) estimated its costs at \$100 billion annually.¹⁰² “Increasing capital is not free,” FSF president and CEO Kevin Fromer said. “The costs of the proposed changes would inevitably be borne by American families and business. The largest banks are already well capitalized. This proposal would impose enormous burdens with little or no marginal benefits.”



Then—Vice Chairman of the FDIC Travis Hill said that the “proposal rejects the notion of capital neutrality and takes a starkly different path, ‘gold plating’ the new Basel standard in a number of ways and dramatically increasing capital requirements for banks with certain business models.”¹⁰³

Opposition also came quickly from the Senate, led by Sen. Rick Scott (R-S.C.). Rigorous economic analysis had not been done, the senators wrote in a November 2023 letter.¹⁰⁴

“Ultimately, these large increases in capital have not been shown to be evidentially based as the [agencies promulgating this proposal] have failed to provide proper analysis or data to justify their merits, particularly around the costs they will impose throughout all sectors of the economy,” the letter read. Indeed, less than five of the proposal’s 316 pages covered the “impact and economic analysis.”¹⁰⁵

Understanding this proposal—often called “Basel III Endgame”—requires a journey back to 1988, with the establishment of Basel I, the first of a series of internationally standardized banking standards.¹⁰⁶ The U.S. adhered to these accords in 1990. However, Basel I did not manage to safeguard markets adequately against risk. The 2008 financial crisis exploded as updates—Basel II—were in the making. Basel II was abandoned in favor of a new iteration—Basel III—which the U.S. never implemented fully. As Norbert Michel put it, “Some folks portray the new rules as the final touches on Basel III, but the new proposal”—Basel III Endgame—“is sort of Basel IV-ish.”¹⁰⁷

As the Trump administration hardens its policy agenda, the future of Basel III Endgame seems uncertain.¹⁰⁸ In other cases, President Trump and his team have shown themselves friends of financial deregulation, and it can only be hoped that that impulse will prevail here, too.¹⁰⁹

These capital reserve requirements are especially pressing, given recent proposals to increase the statutory cap for federal deposit insurance. Currently, the FDIC must insure accounts with deposits up to \$250,000. Proposals are circulating that would increase that number to as much as \$25 million. A Taxpayers Protection Alliance estimate shows that could cost banks – and therefore customers – as much as \$30 billion.¹¹⁰

Ultimately, regulators cannot gather and make perfect use of the requisite knowledge to plan an economy—in financial services or any other sector. If they could, the implemented Basel I guidelines or the rest of the regulatory quagmire that binds financial institutions would have succeeded in stabilizing the financial services sector. Despite their high self-regard, bureaucrats do not have the foresight they so often claim to have. “It seemed like a good idea at the time” is a phrase that describes most failed regulatory schemes.

Conclusion

Something about finance baffles people. Financial markets are opaque and labyrinthine. The effects of any given transaction resound widely, and far, across the economy, often in nearly untraceable ways. Philosophers, politicians, and even many economists have harangued against the sector, all too unaware of its indispensable role in creating prosperity.¹¹¹

Financial markets work no differently from other markets. Profit and loss, supply and demand, success and failure, high and low prices—these factors are the surest producers of prosperity. When regulators forget basic economics in their haste to regulate complex economies, they invariably fail to achieve their stated ends—stability, prosperity, etc.—and introduce myriad inefficiencies and dysfunctions along the way.

Current efforts at deregulation at the Securities and Exchange Commission and elsewhere will do much good. But these are partial measures only. As the Taxpayers Protection Alliance wrote in 2024:¹¹²



Loosening the reins is no substitute for letting the stallion run free. So long as the structure of the regulatory state remains upright—with agencies, regulatory authority, and broad, discretionary enforcement powers—it will remain a source of central planning, over-regulation, and the concomitant instability and inefficiency. Only taking the Argentinian chainsaw to the very roots of control can ensure freedom prevails in financial markets.

This sort of reform will require legislative action—and legislative action from a Congress and state legislatures with the stomach for the mammoth task at hand. Reform will not be easy. It will require abundant patience and care and fending off technocrats and crony capitalists.

Capital is the oxygen of modern economies, upon which all economic life depends. Only a thoroughgoing reform of the regulatory regime governing financial services will allow the American economy to take a full breath and fill its lungs.

References

- 1 <https://store.cato.org/products/financing-opportunity-how-financial-markets-have-fueled-american-prosperity-for-more-than-two-centuries>
- 2 <https://www.fusionaier.org/post/explaining-opportunity>
- 3 <https://www.wsj.com/articles/stakeholder-capitalism-enlightenment-blackrock-esg-index-fund-passive-invest-elizabeth-warren-bernie-sanders-retirement-11653313715>
- 4 <https://store.cato.org/products/financing-opportunity-how-financial-markets-have-fueled-american-prosperity-for-more-than-two-centuries>
- 5 <https://aier.org/article/financialization-and-missed-boats/>
- 6 <https://store.cato.org/products/financing-opportunity-how-financial-markets-have-fueled-american-prosperity-for-more-than-two-centuries>
- 7 <https://www.cato.org/blog/dodd-frank-was-never-gutted-it-was-barely-touched>
- 8 <https://www.aei.org/articles/four-years-of-dodd-frank-damage/>
- 9 <https://www.cato.org/commentary/dodd-frank-trouble-good-reason>
- 10 <https://www.aei.org/articles/four-years-of-dodd-frank-damage/>
- 11 https://www.nber.org/system/files/working_papers/w24501/w24501.pdf
- 12 <https://www.protectingtaxpayers.org/consumer-financial-protection-bureau/the-reversal-of-the-cfpbs-section-1033-is-a-win-for-consumer-privacy/>
- 13 <https://www.city-journal.org/article/loophole-that-sank-dodd-frank>
- 14 <https://www.marketwatch.com/story/failed-banks-struck-a-22-5-billion-blow-to-the-deposit-insurance-fund-who-will-pay-the-price-e446ea87>
- 15 <https://www.congress.gov/crs-product/IF12378>
- 16 <https://www.city-journal.org/article/loophole-that-sank-dodd-frank>
- 17 <https://www.sec.gov/about/mission>
- 18 <https://www.sec.gov/files/rules/final/2024/33-11275.pdf>
- 19 https://www.aei.org/wp-content/uploads/2024/06/Zycher.Amicus.Iowa_v.SEC_as_filed_.24-1522.pdf?x85095
- 20 <https://www.theamericanconsumer.org/wp-content/uploads/2024/01/SEC-Shareholder-FINAL-Jan-8.pdf>
- 21 Ibid
- 22 <https://katten.com/crypto-in-the-courts-five-cases-reshaping-digital-asset-regulation-in-2025>
- 23 <https://www.coinbase.com/blog/we-asked-the-sec-for-reasonable-crypto-rules-for-americans-we-got-legal>
- 24 <https://blogs.law.ox.ac.uk/oblb/blog-post/2025/01/unintended-consequences-sec-crypto-enforcement-actions>

- 25 <https://www.sec.gov/rules-regulations/staff-guidance/staff-accounting-bulletins/staff-accounting-bulletin-122>
- 26 <https://www.sec.gov/newsroom/press-releases/2025-47>
- 27 <https://www.sec.gov/about/crypto-task-force>
- 28 <https://www.sec.gov/newsroom/speeches-statements/peirce-remarks-sec-speaks-040224>
- 29 <https://www.nytimes.com/1970/09/13/archives/a-friedman-doctrine-the-social-responsibility-of-business-is-to.html>
- 30 <https://www.wsj.com/articles/stakeholder-capitalism-enlightenment-blackrock-esg-index-fund-passive-invest-elizabeth-warren-bernie-sanders-retirement-11653313715>
- 31 <https://spectator.org/stakeholder-capitalism-nonsense/>
- 32 <https://www.wsj.com/articles/stakeholder-capitalism-enlightenment-blackrock-esg-index-fund-passive-invest-elizabeth-warren-bernie-sanders-retirement-11653313715>
- 33 <https://www.wsj.com/articles/vanguards-ceo-bucks-the-esg-orthodoxy-tim-buckley-net-zero-emissions-united-nations-initiative-nzam-f6ae910d>
- 34 <https://www.dol.gov/general/topic/retirement/erisa>
- 35 <https://reason.com/2023/03/21/bidens-first-veto-protects-and-promotes-esg/>
- 36 <https://floridadaily.com/opinion-the-cost-of-bidens-clean-energy-handouts-are-growing/>
- 37 <https://www.protectingtaxpayers.org/economy/the-market-is-putting-an-end-to-the-esg-craze/>
- 38 <https://www.cato.org/commentary/esg-another-name>
- 39 <https://www.wyoleg.gov/Legislation/2025/HB0080>
- 40 <https://spectator.org/blackrocks-failures-are-a-warning-for-all-institutions/>
- 41 <https://www.arnoldporter.com/en/perspectives/advisories/2022/10/state-attys-general-take-aim-at-banks-w-netzero>
- 42 <https://www.texasattorneygeneral.gov/sites/default/files/images/executive-management/OAG%20advisory%20on%20SB%2013%20and%2019%2010.18.23.pdf>
- 43 <https://www.wired.com/story/big-banks-abandoned-a-voluntary-climate-alliance-now-critics-are-calling-for-new-laws/>
- 44 <https://www.utilitydive.com/news/blackrock-leaves-nzam-wall-street-runs-from-climate-groups-nzba-ca100/737161/>
- 45 <https://apnews.com/article/bp-oil-green-reset-1b9cfca4c2da138f83ace86b5945e053>
- 46 <https://www.nationalreview.com/corner/whose-policies-are-stuck-in-the-past/>
- 47 <https://store.coolidgefoundation.org/products/great-society-by-amity-shlaes>
- 48 <https://stripe.com/ie/resources/more/interchange-fees-101-what-they-are-how-they-work-and-how-to-cut-costs#how-do-interchange-fees-work>
- 49 <https://www.cato.org/regulation/spring-2024/durbin-amendment-short-regulatory-history#readings>
- 50 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2446080
- 51 https://www.richmondfed.org/-/media/richmondfedorg/publications/research/economic_brief/2015/

pdf/eb_15-12.pdf

52 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2446080

53 <https://www.protectingtaxpayers.org/federal-agencies/tpa-submits-comments-to-federal-reserve-on-proposed-regulatory-changes-to-debit-card-interchange-fees/>

54 https://www.federalreserve.gov/SECRS/2024/January/20240118/R-1818/R-1818_011324_157194_404280591526_1.pdf

55 https://www.durbin.senate.gov/download/the-credit-card-competition-act-of-2023_-one-pager

56 <https://www.cato.org/blog/its-time-break-myth-credit-card-market-duopoly>

57 <https://www.fusionaier.org/post/explaining-opportunity>

58 <https://www.foxnews.com/politics/freedom-caucus-member-anna-paulina-luna-joins-aoc-push-10-credit-card-interest-rate-cap>

59 <https://www.vox.com/policy-and-politics/2018/6/27/17509604/alexandria-ocasio-cortez-democratic-socialist-of-america>; <https://www.washingtonpost.com/news/the-fix/wp/2015/04/29/bernie-sanders-is-an-avowed-socialist-and-democrats-are-actually-pretty-ok-with-that/>

60 https://www.washingtonpost.com/opinions/george-will-a-government-agency-answerable-to-no-one/2012/11/16/27a4f604-2f53-11e2-9f50-0308e1e75445_story.html

61 <https://thefederalist.com/2023/11/01/supreme-court-should-fire-the-rogue-regulators-at-the-unconstitutional-cfpb/>

62 https://www.supremecourt.gov/opinions/23pdf/22-448_o7jp.pdf

63 <https://www.cfpbmissioncreep.org/>

64 <https://www.consumerfinance.gov/about-us/newsroom/cfpb-bans-excessive-credit-card-late-fees-lowers-typical-fee-from-32-to-8/>

65 <https://www.consumerfinance.gov/about-us/newsroom/cfpb-closes-overdraft-loop-hole-to-save-americans-billions-in-fees/>

66 <https://www.consumerfinance.gov/about-us/blog/junk-fees-that-harm-competition/>

67 <https://www.cato.org/blog/incoherence-white-houses-anti-junk-fees-agenda>

68 <https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-jpmorgan-chase-bank-of-america-and-wells-fargo-for-allowing-fraud-to-fester-on-zelle/>

69 <https://www.nytimes.com/2025/03/04/business/zelle-scams-cfpb-lawsuit.html>

70 <https://cei.org/blog/cfpb-unfairly-targets-zelle/>

71 <https://www.consumerfinance.gov/about-us/newsroom/cfpb-finalizes-rule-to-remove-medical-bills-from-credit-reports/>

72 <https://www.nationalreview.com/2025/01/abolish-the-consumer-financial-protection-bureau/>

73 <https://law.justia.com/cases/federal/district-courts/texas/txedce/4:2025cv00016/235173/52/>

74 <https://www.documentcloud.org/documents/23115990-dfs-guidance-letter-sent-april-19-2019/>

75 <https://spectator.org/new-yorks-attempted-hit-on-the-nra-violated-the-first-amendment/>

76 <https://spectator.org/the-supreme-court-defends-free-speech/>

- 77 https://www.supremecourt.gov/opinions/23pdf/22-842_6kg7.pdf
- 78 <https://www.fdic.gov/foia/history-associates-inc-v-fdic-fdics-redacted-pause-letters-january-3-2025>
- 79 <https://bitcoinmagazine.com/print/operation-choke-point-2-0-how-u-s-regulators-fight-bitcoin-with-financial-censorship->
- 80 <https://adfllegal.org/article/de-banking-cancel-cultures-newest-threat/>
- 81 https://cei.org/opeds_articles/the-debanking-craze-reveals-everything-wrong-with-the-administrative-state/
- 82 <https://reason.com/2017/08/18/good-bye-and-good-riddance-to-operation/>
- 83 <https://www.cato.org/blog/congress-investigates-debanking-reintroduces-unfair-access>
- 84 <https://www.wsj.com/articles/probe-turns-up-heat-on-banks-1375923859?tesla=y>
- 85 https://press-pubs.uchicago.edu/founders/documents/amendl_religions64.html
- 86 <https://claremontreviewofbooks.com/a-government-of-laws-not-of-men/>
- 87 <https://www.whitehouse.gov/presidential-actions/2025/08/guaranteeing-fair-banking-for-all-americans/>
- 88 <https://www.cato.org/commentary/government-surveillance-doesnt-stop-banks-door>
- 89 <https://constitution.congress.gov/constitution/amendment-4/>
- 90 <https://www.cato.org/sites/cato.org/files/2023-04/policy-analysis-932-update-4-12-23.pdf>
- 91 Ibid
- 92 <https://www.sec.gov/newsroom/press-releases/2025-38>
- 93 <https://www.cato.org/commentary/sec-starting-massive-database-every-stock-trade>
- 94 Ibid
- 95 <https://www.nationalreview.com/2025/03/what-american-lawmakers-should-learn-from-europes-newest-tech-policy-blunders/>
- 96 https://cei.org/opeds_articles/the-debanking-craze-reveals-everything-wrong-with-the-administrative-state/
- 97 <https://www.govinfo.gov/content/pkg/FR-2024-02-01/pdf/2023-25797.pdf>
- 98 <https://www.globalfinregblog.com/2024/02/banking-trade-groups-challenge-new-community-reinvestment-act-regulation/>
- 99 <https://www.econlib.org/library/Essays/hykKnw.html>
- 100 <https://www.govinfo.gov/content/pkg/FR-2023-09-18/pdf/2023-19200.pdf>
- 101 https://www.ey.com/en_us/insights/banking-capital-markets/basel-iii-endgame-what-you-need-to-know
- 102 <https://fsforum.com/news/basel-iii-endgame-proposal-would-harm-american-households-businesses-and-the-broader-economy>
- 103 https://www.fdic.gov/news/speeches/2023/spjul2723b.html#_ftn5
- 104 https://www.banking.senate.gov/imo/media/doc/basel_iii_banking_gop_letter.pdf
- 105 <https://www.cato.org/commentary/hsus-comments-further-politicize-bank-capital-requirements>

106 <https://www.heritage.org/markets-and-finance/report/basel-iii-capital-standards-do-not-reduce-the-too-big-fail-problem>

107 <https://www.cato.org/commentary/hsus-comments-further-politicize-bank-capital-requirements>

108 <https://www.thomsonreuters.com/en-us/posts/government/bank-regulation-under-trump/>

109 https://www.realclearmarkets.com/articles/2025/02/13/bringing_the_sec_back_to_the_basics_of_good_governance_1090538.html

110 <https://www.americanbanker.com/opinion/raising-deposit-insurance-limits-would-cost-consumers-over-30-billion>

111 <https://www.fusionaier.org/post/explaining-opportunity>

112 <https://www.fusionaier.org/post/explaining-opportunity>

THE ONE BIG, BEAUTIFUL
BANKING REPORT

Fall 2025

www.protectingtaxpayers.org

TAXPAYERS
P R O T E C T I O N
ALLIANCE

This document will be updated as new information becomes available