Statement for the Record

On Behalf of

Americans for Financial Reform

to the

Senate Committee on Banking, Housing and Urban Development

"Investigating the Real Impacts of Debanking in America"

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Dear Chair Scott, Ranking Member Warren, and members of the Committee:

Americans for Financial Reform (AFR) appreciates the opportunity to provide a Statement for the Record for the Senate Committee on Banking, Housing and Urban Development on "Investigating the Real Impacts of Debanking in America." AFR is a nonpartisan and nonprofit coalition of more than 200 civil rights, consumer, labor, business, investor, faith-based, and civic and community groups. Formed in the wake of the 2008 crisis, AFR continues to work towards a strong, stable, and ethical financial system. We are committed to eliminating inequity and systemic racism and fighting for a just and sustainable economy for everyone.

The first Committee hearing of the session might have been about the real costs people face from the financial and housing sector that make it harder to make ends meet and invest in their families' futures. The affordable housing crisis, the skyrocketing cost and declining availability of property insurance, the prevalence of junk fees and deceptive practices in consumer financial products are all adding to household expenses and undermining the economic security of millions of families. The Committee could be examining the data breach at the Treasury Department's Bureau of Fiscal Services by the new United States Department of Government Efficiency Service that compromised the personal financial data — including Social Security numbers and bank account identifiers — of millions of people. This seizure of sensitive personal information by unelected and highly-partisan actors without statutory authority poses significant privacy and conflict of interest concerns to nearly everyone.

Instead, today's hearing focuses on the grievances of some firms that have faced difficulty accessing customer accounts when banks appropriately consider the risks these businesses can pose to bank customers or the bank's financial and operational resilience. These wealthy investors are complaining that their companies were denied access to banking services because the banking regulators purportedly do not like crypto or other ventures. This allegation of so-called de-banking is a red herring to obscure these real risks. This gambit is an effort by President Trump, Elon Musk, their wealthy allies in the crypto, venture capital, and finance worlds to attack basic financial regulatory oversight and protections, even as they seek to establish their own financial services businesses that they are pushing to be allowed to operate with little or lax oversight and with special exceptions and exemptions without regard to the risks these ventures pose to customers, financial institutions, or financial stability.

The goal of this deceptive narrative is to get regulators to ignore — and encourage banks to ignore — the risks that these relationships can pose to their customers and institutions. Regulators have a responsibility to consider risks and to make sure that banks are considering risks, whether cybersecurity risks, fraudulent transaction risks, reputational risks, regulatory compliance with

consumer banking safeguards or bank secrecy or anti-money laundering risks. And all of these risks should be considered under the rubric of systemic risk. These risks can harm banks' customers, but they can also present real risks to the safety and soundness of the institutions and the financial system. The Committee should recognize that hand-wringing over so-called debanking is a ruse to discourage regulators from doing their jobs: attending to risks and requiring banks to do the same.

Much of the so-called de-banking narrative is centered around whether crypto firms should have access to banking services even when they engage in reckless speculation, egregious self-dealing, or enable illegal and harmful financial transactions. This feeds into the broader deregulatory push to undercut and weaken the financial regulatory architecture designed to reduce the likelihood and severity of future financial crises. The latest crypto-fueled deregulatory mantra has claimed that these critical safeguards stifle innovation. And, some banks have made common cause with fossil fuel companies and other conservatively-aligned business sectors to attack efforts to address the very real financial risks posed by their enterprises.

The crypto industry's attacks on basic and prudential regulatory oversight are easily countered by the ample evidence that many crypto firms did and do have access to banking services and banking regulators did not and are not stepping in to block crypto access to banks.

It is plainly a fallacy that crypto firms have not had access to banks, their services, or their payment systems. In 2021, when crypto firms were riding high and the crypto bubble was expanding, crypto related companies had access to both large banks and specialized banks that provided custody, holding deposits, payment facilitation, trading and transfers, and more. In mid-2022, a crypto trade magazine identified more than sixty large U.S. and foreign banks that held investments or relationships with crypto related companies, including major banks such as BNY Mellon, Citigroup, Goldman Sachs, JPMorgan Chase, and Morgan Stanley. There were at least 136 FDIC insured national and state banks that were engaged in crypto-related activities or planned to be engaged in such activities in 2023, according to an FDIC Inspector General Report. Many of these banks continued providing services to the industry throughout the crash.

Nor did the regulators impose a heavy hand that prevented or banned banks from engaging with crypto firms. Prior to the beginning of 2023, banking regulators such as the Office of the Comptroller of the Currency and FDIC had issued guidance that urged banks to use caution when working with the crypto industry. In a few cases, regulators required banks to provide notification when banks increased their business dealings with crypto firms and in some cases provided banks with no objection letters. But these perhaps too lenient notes of caution absolutely were not prohibitions. Only when the crypto industry collapse became widespread and began to undermine the failing regional banks did banking regulators' actions become more proscriptive.

By the time the crypto bubble began to collapse in the spring of 2022, the risks presented by the crypto industry to the banking sector were widespread and systemic. These risks included illicit finance, market manipulation, fraud, cybersecurity risks, market volatility, legal and regulatory uncertainty, and many more problems that were endemic across crypto platforms large and small. The crash exposed the fraud at FTX. But it also highlighted problems related to fragility, centralization, interconnectedness and a host of other stability issues that contributed to the failures or significant stumbles at large firms that dominated and defined crypto markets such as Terraform Labs, Three Arrows Capital, Voyager, Celsius, and BlockFi, and more.

Even in the midst of the 2022 crypto crash that destroyed $2 trillion in customer investments, crypto firms did have access to banking services. Silicon Valley Bank, Silvergate, and Signature Bank and others had retooled their business models to cater primarily to the crypto industry, tech start-ups, and venture capital funders and held tens of billions of dollars in assets associated with the crypto industry. Banking regulators did not intervene until several large regional banks with close interrelationships with crypto firms began to collapse. These regional bank failures were disruptive to customers and threatened to harm the broader financial system. To be sure, some banks chose not to expose themselves to the risks the crypto industry has and does pose, which meant that some parts of the crypto industry may have faced challenges demonstrating they were clients who posed an acceptable level of risk. But banks are meant to be able to make such decisions based on their own expertise in finance and on the guidance of regulators. Certainly, banks should not be required to bank crypto firms, irrespective of the risk.

Even though crypto is now on an upswing, serious risks are still present and still can pose significant risks to federally chartered and insured financial institutions. During the 2022 crash, federal financial regulators did contain the damage and walled off the crypto sector from the rest of the financial sector and real economy. If anything, banking regulators might have provided more proscriptive guidance, sooner. But their actions served to prevent more widespread harm.

The regulatory recognition that the crypto industry can and does present fairly ordinary and classic risks to financial institutions is appropriate and does not represent political considerations that punish the industry. Regulators should consider — and require banks to consider — the compliance, operational, liquidity, consumer protection, reputational, and other risks to protect their customers and their institutions when engaging with *any* business. It is not unique to crypto or the other firms or sectors that have led the so-called de-banking charge.

We do, however, want to draw the Committees attention to real problems people face in maintaining bank accounts. A set of actions by banks and high-cost lenders can push customers out of the mainstream financial world and into the arms of fringe finance firms that are more likely to charge unfairly high prices, impose unfair terms or conditions, or perpetuate deceptive or fraudulent practices. Customers who face repeated excessive overdraft junk fees can have their accounts shut down and these high fees are an important reason people are unbanked or underbanked. These fees are typically $35 per overdraft, far in excess of the average $26 shortage that led to these fees, and families who pay overdraft fees spend an average of $225 every year in overdraft fees. The Consumer Financial Protection Bureau has issued a final rule that would lower overdraft fees to $5 for bigger banks (exempting those under $10 billion in assets), but this commonsense protection that will save families $5 billion annually is under attack.

Similarly, people who have taken out predatory and high-priced payday loans can have their accounts suspended or shut down when the payday lenders repeatedly access and debit their accounts. These loans are tied to people's bank accounts and the high-interest rates and fees trap people in a cycle of debt, with about 80 percent of the loans going to refinance another payday loan. Payday and car-title lenders charge $3 billion in interest and fees annually and these charges can be automatically extracted from people's checking accounts and cause them to become overdrawn, leading to account suspension and closures. In addition, as the Treasury Department has documented, banks do sometimes freeze or close the accounts of people, groups, and entities — especially Muslim people, people in immigrant communities, people with cross-border financial

connections, people impacted by the carceral system — without notice or explanation. More needs to be done to stop capricious and unfair suspensions and cancellations of bank accounts.

The Committee should be wary of arguments that treat important bank judgments about risk as per se bias and that regulators focus on a narrower set of regulatory criteria. These types of policies would likely force banks to take on clients regardless of the known risks they could pose to customers and institutions and would curtail regulators' ability to examine financial institutions or enforce basic safety and soundness rules. This would effectively politicize sensible and prudential regulatory oversight by discouraging banks from refusing or limiting banking services to clients even when they posed clear and known risks to their depositors or institutions for fear of reprisals from regulators or other government officials. Banks should not arbitrarily or capriciously deny banking services to firms or customers, and they should not engage in practices that drive lower-income customers out of the banking system. But that does not mean that regulators or banks should ignore or be forced to ignore known risks that could harm their customers or their institutions.