

# FINANCIAL DISCRIMINATION AGAINST THE FIREARM INDUSTRY

The National Shooting Sports Foundation condemns financial industry discrimination against the law-abiding and highly regulated businesses in the firearm and ammunition industry. NSSF supports federal legislation to discourage such practices including the Fair Access to Banking Act (S. 563 / H.R. 1729), introduced by Senator Kevin Cramer (R-N.D.) and Rep. Andy Barr (R-Ky.). These measures build on the Office of the Comptroller of the Currency's Fair Access to Financial Services Final Rule [Docket ID OCC-2020-0042] and would ensure that banking and credit decisions by financial institutions are based on individualized credit worthiness and impartial risk-based standards. Additionally, they would prevent financial institutions with over \$10 billion in assets from accessing taxpayer-subsidized government programs, including access to the Federal Reserve Discount Window Lending Programs, Federal Deposit Insurance Company and Automated Clearing House Network, when they are at the same time denying banking services to legal businesses under federal law.

***U.S. Sen. Kevin Cramer (R-N.D.) and Rep. Andy Barr (R-Ky.) introduced the NSSF®-supported Fair Access to Banking Act, which would ensure fair access to financial services and fair treatment of customers by financial service providers.***

- Firearm and ammunition manufacturers, distributors and retailers are devoted to supporting programs that promote the safe, legal and healthy use of their products.
- Efforts by mega banks, credit card processors and other financial institutions to bankrupt or financially cripple our industry will undermine industry growth and efforts to advance the aforementioned safety initiatives and should be condemned.
- NSSF supports legislation such as the Fair Access to Banking Act (S. 563 and H.R. 1729), which would work to end the discriminatory lending practices of major banking institutions that seek to circumvent the legislative process and set social policy from the boardroom.

## BACKGROUND

During the Obama Administration, a pattern of financial discrimination against federally licensed firearm retailers began to emerge under Operation Choke Point. This initiative formalized the discrimination in the form of an effort by the Federal Deposit Insurance Corporation (FDIC) and Department of Justice (DOJ) to stop financial institutions from offering services to some regulated industries in an attempt to choke off banking services. The FDIC categorized federally licensed firearm retailers and other companies in the firearm and ammunition industry – some of the most heavily regulated businesses – as “high risk” businesses without any evidence or justification. Due to this deliberate action, some banks have ended relationships with legal and legitimate companies solely based on social and political views. While the FDIC had indicated it will take steps to

end this indiscriminate targeting of the firearm industry, and the Justice Department has admitted the initiative was inappropriate and claims it has been terminated, there is no evidence that the resulting pattern of discrimination has ended. Financial institutions continue to discriminate against FFLs and systemically attempt to pick and choose the types of legal products they will tolerate their customers manufacturing and selling to law-abiding Americans. Operation Choke Point has effectively been privatized, away from the purview of elected officials and the voters they represent.

In an effort to address this, the Office of the Comptroller of the Currency under President Trump issued its Fair Access to Financial Services Proposed Rule on November 25, 2020, for the purposes of ensuring that national banks and Federal savings associations offer and provide fair

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access to financial services. The proposed rule, which drew in nearly 3,800 comments, reiterated that decisions must not rely on personal or political preference and must be based on quantitative evidence of risk. This fair, balanced approach would ensure that decisions are made based on rigorous risk-based analyses, not the political whims of external advocacy groups seeking to make law through the private policies of financial institutions. The Final Rule issued on January 14, 2021, however, was never published in the Federal Register prior to the start of the Biden Administration, and has since been placed on “pause” indefinitely.

### **CURRENT CHALLENGES**

According to a NSSF survey, individuals engaged in the legal business of manufacturing and selling firearms and ammunition products have experienced being refused goods and services by financial institutions simply because they were engaged in the lawful commerce of firearms and ammunition, a constitutionally protected activity. Often, ongoing mutually beneficial relationships with banks and industry members are terminated with a thirty-day notice, typically citing an internal policy that the customer is not allowed to view, let alone contest. Our members report facing discrimination from internet search engines, payment processors, social media companies, insurance companies and other service providers not covered by the FDIC. This discrimination and refusal to provide goods and services results in higher costs of

doing business, increased prices for consumers when exercising their Second Amendment Rights, and impacts our national security. The industry takes great pride in providing our nation’s warfighters the very best tools needed to carry out their missions and is able to do so by offsetting their R&D cost through the manufacturing of commercial items. If the ability for manufacturers to access capital for the commercial production and sale of firearms goes away, which is the hope of activists, it will drive up the cost for the Defense Department, our brave women and men in uniform, and ultimately the American taxpayer.

While the firearm industry respects the right of financial institutions and other service providers to make business decisions based on objective criteria, it is not the role of national banks and Federal savings associations, who rely on public institutions and backstops, to deliberately bankrupt a legal industry under pressure from external lobbying groups who strongly oppose the industry’s mere existence.

The challenges faced by the industry are far from anecdotal examples of discrimination against single business customers. The initiative to financially discriminate has become privatized and stands as a main goal of antigun groups. One gun control group, Guns Down America, even has a campaign called “Is Your Bank Loaded?”. This shame campaign scores and ranks banks based on their financial involvement with the firearm

industry and spells out how a bank can “improve” their score with the antigun group. It irrationally calls for banks to divest from the gun industry, invest in antigun programs, and publicly report details of firearm sales.

Gun control advocacy groups are increasingly seeking to skirt the legislative process and federal policy makers all together to curtail the Second Amendment right of Americans through Wall Street. Under pressure from these lobbying entities, investment firms are increasingly examining the legitimate trade practices of firearm and ammunition companies, forcing these companies to defend their heavily regulated products and procedures, and even divesting industry stocks to appease the gun control lobby, at the risk of not acting in the best interests of their paying clients.

Institutional investors, such as pension funds, are generally obligated to act according to the principle of fiduciary duty. In other words, they are required to act solely in the interest of their beneficiaries. Instead, they are increasingly falling victim to external manipulation by those whose only goal is to bankrupt the industry and end the Second Amendment.

Shareholders have every right and responsibility to know and understand how their assets are invested. However, the process has been highjacked by activists forcing companies in the industry to report on their actions taken to improve firearm safety and mitigate criminal activity. These activists unequivocally maintain



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a perspective that all firearm ownership, even by legal and law abiding, is undesirable and should be discouraged. Pension funds are under fire as well for making logical investments in solid, law-abiding companies. Shareholders stand to lose from allowing activists to play politics with their assets.

### **INDUSTRY ACTIONS**

While no one wants to see firearms misused by criminals, firearm and ammunition manufacturers, distributors and retailers are devoted to supporting programs that have proven effective at reducing the criminal misuse of firearms and safeguarding firearms from prohibited individuals and those who should not possess them

through NSSF's Real Solutions.Safer Communities.<sup>®</sup> campaign.

For example, the NSSF coordinates with law enforcement through industry-funded initiatives such as Don't Lie for the Other Guy™ and Project ChildSafe<sup>®</sup>. NSSF has led the way to encourage states and federal agencies to submit all prohibiting mental health records to the FBI's National Instant Criminal Background Check System (NICS) through FixNICS<sup>®</sup>. NSSF also partners with the American Foundation for Suicide Prevention and U.S. Department of Veterans Affairs to build and implement public education resources for firearm retailers, shooting ranges and the firearm-owning community about suicide prevention and firearms.

The industry that provides for these effective programs is the same industry that activists seek to bankrupt and pressure financial services providers to break ties with or prevent fair access to achieve that end. None of these programs and important efforts are shared with financial institutions by activists seeking to restrain the industry's legitimate businesses because activists would be admitting their efforts threaten the very existence of this great work. The unfounded financial discrimination against those in the firearm and ammunition industry, as well as the law-abiding citizens who purchase our products for a range of legitimate purposes, must end.

***NSSF***<sup>®</sup>  
***The Firearm Industry  
Trade Association***