

119TH CONGRESS
1ST SESSION

S. _____

To curtail the political weaponization of Federal banking agencies by eliminating reputational risk as a component of the supervision of depository institutions.

IN THE SENATE OF THE UNITED STATES

Mr. SCOTT of South Carolina (for himself, Mr. CRAPO, Mr. ROUNDS, Mr. TILLIS, Mr. KENNEDY, Mr. HAGERTY, Ms. LUMMIS, Mrs. BRITT, Mr. RICKETTS, Mr. CRAMER, Mr. MORENO, Mr. MCCORMICK, and Mr. BANKS) introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To curtail the political weaponization of Federal banking agencies by eliminating reputational risk as a component of the supervision of depository institutions.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Financial Integrity and
5 Regulation Management Act” or the “FIRM Act”.

6 **SEC. 2. FINDINGS; PURPOSES.**

7 (a) FINDINGS.—Congress finds that—

1 (1) the primary objective of financial regulation
2 and supervision by the Federal banking agencies is
3 to promote safety and soundness of depository insti-
4 tutions;

5 (2) all federally legal businesses and law-abid-
6 ing citizens regardless of political ideology should
7 have equal opportunity to obtain financial services
8 and should not face unlawful discrimination in ob-
9 taining such services;

10 (3) financial service providers are private enti-
11 ties entitled to provide services to whichever cus-
12 tomers they so choose, provided that those decisions
13 do not violate the law;

14 (4) financial service providers should strive to
15 ensure that all business decisions are based on fac-
16 tors free from unlawful prejudice or political influ-
17 ence;

18 (5) the use of reputational risk in supervisory
19 frameworks encourages Federal banking agencies to
20 regulate depository institutions based on the subjec-
21 tive view of negative publicity and provides cover for
22 the agencies to implement their own political agenda
23 unrelated to the safety and soundness of a deposi-
24 tory institution;

1 (6) Federal banking agencies have in fact used
2 reputational risk to limit access of federally legal
3 businesses and law-abiding citizens to financial serv-
4 ices in 2018 when the Federal Deposit Insurance
5 Corporation acknowledged that the agency used
6 reputational risk reviews to limit access to financial
7 services by certain industries, commonly known as
8 “Operation Choke Point”;

9 (7) reputational risk does not appear in any
10 statute and is an unnecessary and improper use of
11 supervisory authority that does not contribute to the
12 safety and soundness of the financial system.

13 **SEC. 3. DEFINITIONS.**

14 In this Act:

15 (1) **DEPOSITORY INSTITUTION.**—The term “de-
16 pository institution”—

17 (A) has the meaning given the term in sec-
18 tion 3 of the Federal Deposit Insurance Act (12
19 U.S.C. 1813); and

20 (B) includes an insured credit union.

21 (2) **FEDERAL BANKING AGENCY.**—The term
22 “Federal banking agency”—

23 (A) has the meaning given the term in sec-
24 tion 3 of the Federal Deposit Insurance Act (12
25 U.S.C. 1813); and

1 (B) includes—

2 (i) the National Credit Union Admin-
3 istration; and

4 (ii) the Bureau of Consumer Financial
5 Protection.

6 (3) INSURED CREDIT UNION.—The term “in-
7 sured credit union” has the meaning given the term
8 in section 101 of the Federal Credit Union Act (12
9 U.S.C. 1752).

10 (4) REPUTATIONAL RISK.—The term
11 “reputational risk” means the potential that nega-
12 tive publicity or negative public opinion regarding an
13 institution’s business practices, whether true or not,
14 will cause a decline in confidence in the institution
15 or a decline in the customer base, costly litigation,
16 or revenue reductions or otherwise adversely impact
17 the depository institution.

18 **SEC. 4. REMOVAL OF REPUTATIONAL RISK AS A CONSIDER-**
19 **ATION IN THE SUPERVISION OF DEPOSITORY**
20 **INSTITUTIONS.**

21 Each Federal banking agency shall remove from any
22 guidance, rule, examination manual, or similar document
23 established by the agency any reference to reputational
24 risk, or any term substantially similar, regarding the su-
25 pervision of depository institutions such that reputational

1 risk, or any term substantially similar, is no longer taken
2 into consideration by the Federal banking agency when
3 examining and supervising a depository institution.

4 **SEC. 5. PROHIBITION.**

5 No Federal banking agency may engage in any activ-
6 ity concerning or related to the regulation, supervision, or
7 examination, of the reputational risk, or any term sub-
8 stantially similar, or the management thereof, of a deposi-
9 tory institution, including—

10 (1) establishing any rule, regulation, require-
11 ment, standard, or supervisory expectation con-
12 cerning or related to the reputational risk, or any
13 term substantially similar, or the management there-
14 of, of a depository institution whether binding or
15 not;

16 (2) conducting any examination, assessment,
17 data collection, or other supervisory exercise con-
18 cerning or related to reputational risk, or any term
19 substantially similar, or the management thereof, of
20 a depository institution;

21 (3) issuing any examination finding, supervisory
22 criticism, or other supervisory or examination com-
23 munication concerning or related to reputational
24 risk, or any term substantially similar, or the man-
25 agement thereof, of a depository institution;

1 (4) making any supervisory ratings decision or
2 determination that is based, in whole or in part, on
3 any matter concerning or related to reputational
4 risk, or any term substantially similar, or the man-
5 agement thereof, of a depository institution; and

6 (5) taking any formal or informal enforcement
7 action that is based, in whole or in part, on any
8 matter concerning or related to reputational risk, or
9 any term substantially similar, or the management
10 thereof, of a depository institution.

11 **SEC. 6. REPORTS.**

12 Not later than 180 days after the date of enactment
13 of this Act, each Federal banking agency shall submit to
14 the Committee on Banking, Housing, and Urban Affairs
15 of the Senate and the Committee on Financial Services
16 of the House of Representatives a report that—

17 (1) confirms implementation of this Act; and

18 (2) describes any changes made to internal poli-
19 cies as a result of this Act.