



July 3, 2023

Delivered via electronic submission

The Honorable Rohit Chopra
Director, Consumer Finance Protection Bureau
1700 G St., NW
Washington, DC 20552

Free Speech Coalition Response to CFPB Request for Comment Re. Statement of Policy
Regarding Prohibition on Abusive Acts or Practices

Docket No. CFPB-2023-0018

Dear Director Chopra:

As the Executive Director of the Free Speech Coalition (FSC) – the trade association representing members of the adult film and entertainment industries for over three decades – I hereby submit FSC’s comment regarding the Consumer Financial Protection Bureau’s (CFPB) Request For Comment (Docket No. CFPB-2023-0018) on behalf of the millions of members of our industry¹ who are routinely discriminated against and subjected to abusive and predatory business practices by America’s banking and financial service providers.

Creating and distributing adult material, whether for commercial or personal purposes, is legal in every state in America.² Despite this core legal standing, industry workers – from producers and performers to technical and administrative staff, website designers and software engineers, even subcontractors and service providers – are singled-out by banks and financial services providers who deny them basic banking services like checking and savings accounts. The risk profiles of industry workers are no different (and often lower) than the general public, yet banks commonly reject their business.

¹ As used in this comment, the “adult industry” or “industry” refers to lawful businesses involved in the creation of adult content, development and production of sexual wellness products, and the related distribution and retail sales of both — an industry with an estimated revenue of over \$40b per year.

² Of course, the distribution, sale, and exhibiting of adult material is subject to various controls and regulations (e.g. zoning limitations), but adult material is otherwise recognized as a legitimate, constitutionally-protected form of speech and expression, and is legal in every state of the union.

Moreover, in addition to being blacklisted from opening accounts, industry members with existing accounts live under the constant threat of account closure. In contravention of Treasury Department guidelines on the conduct of bank de-risking activities,³ banks apply blanket exclusionary policies to members of the adult industry. Even industry members with existing, long-standing customer relationships and unblemished account histories routinely have accounts summarily shuttered, often with little or no notice, no explanation, and without any avenue for appeal or redress.

This opportunity to comment comes at a crucial time for the adult industry, which has grown exponentially in recent years, adding millions of new content creators and adult businesses who market their content across a proliferation of platforms. In accord with this growth, adult material and adult workers have acquired much broader social acceptance. But this growing acceptance has not carried over to the provision of financial services, where discrimination still runs rampant.

Consequently, this comment on CFPB's approach to abusive practices is particularly important because it provides:

- 1) an opening to educate CFPB officials about the persistence of common, widespread discriminatory and abusive policies and practices against members of the adult industry by banks and financial institutions across the U.S.;
- 2) insight for FSC membership regarding CFPB's approach to assessing potentially abusive conduct;
- 3) a baseline from which FSC members can compare our experiences in the banking and financial services marketplace against the criteria CFPB employs to regulate abusive bank conduct;
- 4) a platform to identify for the CFPB current bank practices which clearly fall within the definition of abusive practices, and an opportunity to ask CFPB to utilize its regulatory authority to prevent banks and financial institutions from engaging in such conduct.

Specifically, this comment discusses the exponentially higher charges and extra fees levied on adult businesses that are untethered to any indicia of elevated risk – conduct which aligns directly with the CFPB's definition of “[a]n abusive act or practice” because the bank conduct in question “takes unreasonable advantage of . . . the inability of the consumer to protect [their] interests . . . in selecting or using a consumer financial product or service⁴; and

³ See discussion of Treasury's 2023 Derisking Strategy, *supra*.

⁴ See CFPB Docket no. CFPB-2023-0018 Statement of Policy Regarding Prohibition on Abusive Acts or Practices, Request for Comment, p.5, fn 10 (citing S. Rep. No. 111-176, at 172 (Apr. 30, 2010), <https://www.congress.gov/congressional-report/111thcongress/senate-report/176/1> (“Current law prohibits unfair or deceptive acts or practices. The addition of ‘abusive’ will ensure that the Bureau is empowered to cover practices where providers unreasonably take advantage of consumers.”))

- 5) the opportunity to demonstrate to CFPB the necessity of employing an expansive view of the types of bank policies and practices considered to be abusive, based on the nature of the bank behavior at issue, the externalities and downstream consequences of such actions, and the long tradition of reading consumer protection law broadly to reach conduct that is abusive by its nature, though not proscribed within the strict statutory definitions

The abuse inflicted on members of the adult industry by banks and financial services providers is a full order of magnitude worse than what the Consumer Financial Protection Act (CFPA) contemplates. This comment shines a light into that dark corner, and beseeches the CFPB to marshal its regulatory authorities to prevent banks and financial institutions, to the extent possible, from engaging in this discriminatory activity.

I. The Free Speech Coalition

For over 30 years, FSC has been the primary trade association for the adult industry – a lawful business sector that operates in all 50 states. Throughout our history, FSC has defended the First Amendment rights of the industry, established ethics and safety guidelines, and worked in good faith with legislators, regulators and stakeholders to promote industry best practices, balance legitimate public health and safety concerns with core constitutional rights, and zealously protect our members' livelihoods and right of free expression.

Our membership is a diverse mix of corporations, businesses and individual performers/creators, nearly 75% of which qualify as small businesses. Our corporate and small business members employ tens of thousands in a variety of sectors, including content production and sales, pleasure product manufacturing and retail, software development, small business services, and more. The majority of our performer members (57%) are women.

In the United States alone, there are over one million adult content creators and workers. The vast majority of these are sole proprietors who create, market and sell their own content on so-called "fan" or webcam platforms. This sector of the industry has grown exponentially in the past several years, dramatically expanding the population of workers vulnerable to debanking and discrimination.

The adult industry is on the front line of the fight against child sexual abuse and exploitation, human trafficking, and the creation and dissemination of child sexual abuse material (CSAM), also known as child pornography. Our members utilize state-of-the-art screening protocols and age verification technologies to ensure that all participants and performers are of legal age and participating willingly, and we routinely partner with law enforcement organizations (LEO) to identify and help prosecute illegal conduct and the distribution of non-consensual intimate imagery.

II. Discriminatory and Abusive Practices by Banks and Financial Service Providers

The combination of the categorical denial of new accounts and the the systematic purge of existing accounts effectively exiles an entire class of lawful workers from the normal mechanisms of everyday commerce, stranding them in a cash economy that grows more anachronistic with each passing day, more untenable with every new fintech platform or innovation, and more endangered with each government effort to improve the quality and efficiency of any of the innumerable public/private interfaces requiring some form of payment.⁵

III. FSC MEMBER SURVEY – Significant Majorities of Adult Workers Affected

To acquire a better understanding of the extent to which banking discrimination impacts the adult industry, FSC recently surveyed adult industry members about their relevant experiences.⁶ The study was designed to determine:

1. How widespread discrimination is;
2. the forms it takes;
3. who is most affected; and
4. how it impacts legal businesses.

Even though FSC has itself been threatened with account closures and denied the opportunity to create new ones, the results were bracing.

Results

While the survey is still open to new respondents, from December 2022 to April 2023, over 600 industry members provided responses.

- 73% of respondents were US-based
- 64% of respondents did not have another significant source of income.
- Half of respondents named financial discrimination as their primary concern.

Respondent Profile

- 93% of respondents were 25 or older;
- 63% of respondents were women, 27% men, 7% were trans (all genders).
- Women constitute 70% of creators.
- More than half (51%) of respondents identify as LGBTQ+, and nearly 2/3 of content creators do.
- LGBTQ+ creators are more likely to be people of color, and more likely to be trans/gender non-conforming;

⁵ For instance, cash lanes at toll plazas, bridges and tunnels on major expressways such as I-95 are being eliminated, requiring a transponder such as an EZ-Pass connected to a bank account. It is possible to fund such accounts by depositing cash and a service center, but they are few and far between, and the additional steps required are impractical, inefficient and substantively unjustified.

⁶ See <https://www.freespeechcoalition.com/banks>

- 18% of respondents identify as a person of color, while 21% of creators do;

Commonality

- 36% of adult businesses have lost a bank account in the past year;
- 45% of adult businesses have lost a financial service account in the past year
- 46% of creator/performers have lost a financial service in the past year.

Not limited To Traditional Banks

- 63% of those earning money in the adult industry have lost a bank account or financial tool (Venmo, PayPal, CashApp) due to their source of income.

Credit Accounts

For any online businesses, loss or denial of credit card processing is catastrophic. Adult businesses are aware of the increased scrutiny they face and are meticulous about limiting chargebacks and regulatory compliance.

Credit card issues range from denial or loss of an individual card to denial or loss of processing on a platform. Guidance by credit card networks make this a distinct form of financial discrimination within the adult industry.

- 39% have lost access to a credit network due to their adult work

Your Application Has Been Denied, AND We Have More Bad News

Given the high rates of denial, adult industry members often avoid applying for loans and insurance since examination of the source of income can trigger account closures and other financial discrimination.

- 88% of respondents who have applied for a business loan have had a bank account closed or denied due to their involvement in the adult industry.
- 85% of those who have applied for insurance met with same result
- 55% of respondents have been denied insurance due to their adult work

Losing an account makes it difficult to run a business or pay bills, and can have a domino effect, complicating efforts to secure new accounts or keep old ones afloat. Those who have lost accounts are more likely to keep losing them, as well as other financial services.

Abuse, By The Numbers

Where industry members are able to acquire and maintain accounts, they are subjected to abusive business terms and practices in the form of higher administrative charges, separate fees, and risk premiums unrelated to any actual risk. For instance:

- A competitive payment processing fee for a standard small-business account might be 0.3% on top of the interchange rate.

- Square⁷ and Stripe⁸ both charge 2.9%+ 30¢ per transaction, while PayPal and Venmo charge 3.49% + 49¢ per transaction.⁹

The overwhelming majority of the adult industry is forced to process payments through a few third party providers. This gives the banks and service providers additional leverage to charge exorbitant amounts.

- The fee for a “normal” high-risk account might be 1.5% on top of the interchange rate.¹⁰
- For an adult merchant, this price can be as high 10-15%¹¹

Visa requires all merchants – including those in the adult industry – to stay under a threshold of 100 chargebacks per month and 0.9% ratio of disputes-to-sales transaction count. Adult merchants that exceed those limits face fines and will lose their ability to process transactions twice as quickly as those in other industries.

- According to Equifax, the overall chargeback-to-transaction ratio across all industries was 1.5% in 2022.¹²
- Keenly aware they will attract more stringent examination, adult businesses keep their charge-backs well under Visa’s required rate, and significantly under the average across all industries.

IV. The Cascading Effects of Banking Discrimination

In addition to the profound personal insult felt by FSC members, banking discrimination causes huge practical problems and often results in concrete personal injury. Independent access to banking means independent control of your finances. Control of your own finances means stewardship of the major components of life: food, shelter, healthcare, transportation, etc. Consequently, the impacts of banking discrimination are profound and far reaching, and the most pernicious result of blacklisting is the requisite channeling of industry workers’ finances through third parties in order to meet these necessities.

Handing control of your finances to someone else creates prime conditions for exploitation. Lawful income becomes the catalyst for coercion and servitude, as earnings can be stolen or withheld with little legal recourse.

Unable to establish credit, industry workers can’t independently get a mortgage or rent an apartment, establish utilities, get a car loan, etc., forcing them to channel their income – the

⁷ Square Processing Fees,” Square, <https://squareup.com/us/en/pricing>

⁸ “Pricing & fees,” Stripe, <https://stripe.com/pricing>

⁹https://www.paypalobjects.com/marketing/web/US/en/merchant_fees/US-merchant-fees-19-September2022.pdf

¹⁰ Kurt Woock, “High-Risk Merchant Accounts and Credit Card Processing: What You Need to Know,” Nerdwallet, November 9, 2021,

<https://www.nerdwallet.com/article/small-business/high-risk-merchant-account>

¹¹“All Inclusive Pricing, ” Epoch, accessed December 7, 2022, https://epoch.com/business_services

¹² “The Year in Chargebacks: 2022,” Midigator, accessed December 1, 2022, <https://midigator.com/chargeback-report-statistics/#us>

fruits of their labor – through the hands of a third party. Even where this third party is a spouse or relative, this form of dependence can be disastrous, as any dispute could result in being cut off from access to one’s earnings, put out on the street, or worse.

Banking discrimination fosters abuse by distant third parties, as well, by subjecting adult workers to extortion. Knowing that banks terminate accounts of adult workers, third parties weaponize discriminatory bank practices by threatening industry workers that they will reveal to the bank the source of an industry worker’s income, resulting in the worker losing their bank account. For example, In 2018, members of the “incel” community mounted a coordinated effort to report adult performers to PayPal, Venmo, Cash App, Amazon Pay, Stripe, Circle Pay, Snapchat, Kik, and even the IRS in order to intimidate and harass them.

Without access to banking, adult businesses can’t operate securely, as tax-paying members of society. They can’t access loans (or even apply, as the survey results indicate), can’t acquire many forms of insurance, are subject to fees and interest rates that are not correlated to risk of fraud or chargebacks, etc. These practices destabilize lives, livelihoods and businesses, pushing the industry into unregulated markets and subjecting workers to exploitation, manipulation, and many forms of coercion and abuse.

V. Importance of Banking Access in Ending Human Trafficking

Ironically, suspicion of human trafficking is one of the primary reasons banks claim is driving their aggressive termination of adult workers’ accounts, yet according to the Polaris Project, cutting off access to economic resources is more effective than overt force in coercing trafficking victims.

In addition to the role banking access plays in preventing human trafficking and exploitation, **it’s an integral part of catching and prosecuting traffickers when crimes are committed.** Financial evidence corroborates testimonial evidence, provides a hard accounting of coercion, and is key to identifying additional victims and perpetrators,

VI. Discriminatory Banking Practices Against the Adult Industry: Taking Unreasonable Advantage of Adult Workers’ Lack of Choice

Title X of Dodd-Frank, also known as the Consumer Financial Protection Act of 2010 (CFPA), created the Consumer Financial Protection Bureau, and granted it broad authority to administer, enforce, and implement federal consumer financial protection laws.¹³

Under the CFPA section 103(d)(2), it is illegal for an entity to take unreasonable advantage in any one or more of three circumstances:

¹³ Codified at 12 U.S.C. 5301-5641

- a. A lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service;
- b. **The inability of the consumer to protect the interests of the consumer in selecting or using a consumer financial product or service;**
- c. The reasonable reliance by the consumer on a covered person to act in the interests of the consumer¹⁴

The CFPB’s Statement of Policy discussing 103(d)(2)(b) (**in bold above**), notes that this provision largely addresses *unequal bargaining power* between the parties, such as the practical inability to switch providers, seek more favorable terms, or make other decisions to protect their interests.¹⁵

Of these provisions, higher charges and fees levied on adult businesses¹⁶ violate the prohibition of taking unreasonable advantage of the inability of adult businesses to protect their own interests in selecting or using a consumer financial product.

Prominent in the CFPB’s legislative history is the guarantee that CFPB oversight ensures that, “consumer[s] can shop and compare products based on quality, price, and convenience without having to worry about getting trapped by fine print into an abusive deal.”¹⁷ In CFPB’s discussion of conduct constituting “unreasonable advantage”, performing this analysis requires:

1. an evaluation of the specific facts and circumstances that may affect the nature of the advantage whether the advantage-taking was unreasonable under the circumstances.¹⁸
 - a. such an evaluation does not require an inquiry into whether advantage-taking is typical or not, and even a relatively small advantage may be abusive if it is unreasonable.¹⁹
 - b. unreasonable advantage often involves situations where companies have outsized market power, limiting consumers’ ability to protect their interests by shopping other providers for competitive pricing:
 - i. entities may not take unreasonable advantage of the fact that they are the only source for important information or services.²⁰

¹⁴ See CFPB Statement of Policy Regarding Prohibition on Abusive Acts or Practice, p. 17, discussing the requirements of CFPB section 1031(d)(2), 12 U.S.C. 5531(d)(2) [**emphasis added**]

¹⁵ *Id.* (*emphasis in original*)

¹⁶ See Section III, Abuse by the Numbers, *Supra* at p. 5

¹⁷ See S. Rep. No. 111-176, at 229 (2010), <https://www.congress.gov/congressional-report/111th-congress/senate-report/176/1>

¹⁸ See *Swift & Co. v. Wallace*, 105 F.2d 848, 854–55 (7th Cir. 1939) (“[U]nreasonable’ is not a word of fixed content and whether preferences or advantages are unreasonable must be determined by an evaluation of all cognizable factors which determine the scope and nature of the preference or advantage.”)

¹⁹ See CFPB Statement of Policy, p. 17.

²⁰ See CFPB, Supervisory Highlights: Issue 27, Fall 2022, at 8-9 (Sept. 2022), https://files.consumerfinance.gov/f/documents/cfpb_student-loan-servicing-supervisory-highlights-special-education-report_2022-09.pdf

- ii. unreasonable advantage-taking includes using statutory circumstances to acquire leverage over people or deprive consumers of legal rights.²¹
- iii. advantage-taking may be unreasonable when an entity caused one of the circumstances described in CFPB section 1031(d)(2).

CFPB's Statement of Policy on Abusive Practices notes that determinations of unreasonableness and unequal bargaining power often turn on the degree to which customers lack autonomy in choosing a financial product, limiting their ability to protect their own interests. In such situations, unequal bargaining power begets unreasonable advantage.²²

The CFPB analysis of unreasonableness is akin to contract law doctrine invalidating "contracts of adhesion", where a consumer has little to no ability to negotiate more favorable terms, and cannot obtain the desired product or service except by acquiescing to such terms.²³

In the instant case, adult industry workers and businesses have few options for banking and financial services, and thus no choice but to pay the higher cost, fees and surcharges, despite such provisions' lack of connectivity to increased risk.

The CFPB Policy Statement neatly encapsulates the prohibition by stating, "entities should not get a windfall due to . . . unequal bargaining power . . .".²⁴ The higher fees and costs charged to the adult industry are a textbook example of such an imbalance, and CFPB should use its investigative authority to assess bank policies and practices concerning members of the adult industry and, based on this investigation, consider appropriate remedies including the issuance of guidance specific to the industry, and where warranted, administrative or civil actions for violations of consumer protection laws.

VII. Banking Discrimination Against the Adult Industry Should Fall Within CFPB's Definition of Prohibited Conduct

As noted earlier, the statutory definition of abusive bank conduct does not contemplate the truly abusive practice of outright denial of services to industry participants conducting legitimate commerce in an otherwise legal industry. In our view, this form of abuse is echelons worse and more problematic than being charged higher costs, because blacklisting metastasizes so quickly, permeating an individual's life and infecting numerous other parts of their health, safety, prosperity and independence. For instance, the abusive practices discussed in the foregoing section flow from the commonality of the outright denial of services, thus supporting FSC's

²¹ See CFPB Policy Statement, discussion, p. First Amended Complaint at 40-41, CFPB v. Think Finance, LLC, No. 4:17-cv-00127 (D. Mont. Mar. 28, 2018) (It was abusive for a company to attempt to collect loans that, unbeknownst to the consumers, could not lawfully be collected because they were void.

²² *Id.* at 17.

²³ See [https://www.law.cornell.edu/wex/adhesion_contract_\(contract_of_adhesion\)](https://www.law.cornell.edu/wex/adhesion_contract_(contract_of_adhesion)) for a discussion of adhesion, and procedural and substantive unconscionability.

²⁴ See CFPB Policy Statement on Abusive Practices at p. 13.

position that the most effective way to remove the yoke of abusive treatment from the adult industry is to address the problem at its root.

CFPB's Policy Statement begins with a discussion of the evolution of consumer protections over the last 100+ years, from the creation of the Federal Trade Commission and the prohibition of "unfair methods of competition" and "unfair or deceptive acts or practices", to ongoing congressional action to bolster these prohibitions in response to "evolving norms, economic events, and judicial interpretations".²⁵

FSC urges the CFPB to continue this tradition of evolving protections to include the outright denial of services in your interpretation of abusive bank conduct, prohibiting such blacklisting where it is unrelated to actual elevated risk. The absence of banking services for members of the adult industry is not the result of simple inaction, it reflects the affirmative decisions of banks not to serve this population, distorting the market for these services to such a degree that it leads to an effective market failure. In such circumstances, government action is necessary to eliminate mistreatment, restore balance, and rectify the externalities emanating from such discriminatory practices. CFPB concedes as much on page 2 of the Policy Statement, observing that "[f]air dealing laws in the U.S. have long sought to address the risks and harms from market failures'. In the present case, the market failure is a direct result of bank discriminatory practices, imbuing the CFPB with authority to act.

Parallel Example – Extension of ECOA Protections

In this vein, previous CFPB actions have established significant groundwork right up to and circling the edge of the adult industry. For instance, on March 16, 2021, CFPB issued an interpretive rule extending the prohibition against sex discrimination under the the Equal Credit Opportunity Act (ECOA) to include discrimination on the basis of sexual orientation, gender identity, actual or perceived nonconformity with traditional sex- or gender-based stereotypes, and discrimination based on an applicant's social or other associations.²⁶

While this expansion of covered classes was consonant to the U.S. Supreme Court's decision in Bostock v. Clayton Cty, Ga.²⁷ (prohibitions against sex discrimination in Title VII of the Civil Rights Act of 1964 (Title VII) encompassing sexual orientation discrimination and gender identity discrimination), CFPB noted that it would have reached the same conclusion even in the absence of Bostock, extending, *sua sponte*, the definition of "sex" to include sexual orientation and/or gender identity, based on "[CFPB's] own "expertise in interpreting ECOA and Regulation B" in incorporating these attributes within the statutory protections.²⁸

²⁵ Id at 1.

²⁶ <https://www.federalregister.gov/documents/2021/03/16/2021-05233/equal-credit-opportunity-regulation-b-discrimination-on-the-bases-of-sexual-orientation-and-gender#footnote-43-p14366>

²⁷ 140 S. Ct. 1731, 207 L. Ed. 2d 218 (2020)

²⁸ See

<https://www.federalregister.gov/documents/2021/03/16/2021-05233/equal-credit-opportunity-regulation-b-discrimination-on-the-bases-of-sexual-orientation-and-gender#footnote-43-p14366>

Further, FSC believes the seeds of an extension of the CFPB prohibitions on redlining of the adult industry may have already been planted in the ECOA via the prohibition based on an applicant's "social or other associations".²⁹ In so acting, CFPB extended ECOA's protections to incorporate discrimination against individuals based on who their friends, associates, and neighbors might be (i.e. if an applicant is denied credit because they are business partners, or even neighbors, with a member of a protected class, that third party's protected status redounds to the applicant).³⁰

If CFPB is willing to confer ECOA protection based on proximity to a protected class, surely it could determine that outright denial of banking services based on a person's legal and constitutionally-protected vocation is abusive conduct under the CFPB.

VIII. De-risking and Abusive Practices

Similarly, additional Treasury Department policies parallel FSC's effort to stanche the flow of unnecessary account terminations, thus supporting the incorporation of blanket policies denying service to members of the adult industry in the CFPB's definition of abusive and, therefore prohibited, bank conduct.

In April, 2023, Treasury issued its 2023 De-risking Strategy, a report mandated by Congress in the Anti-Money Laundering Act of 2020 to examine the causes and impacts of financial institution de-risking,³¹ including policy recommendations to combat it.³²

The hallmark of de-risking continues to be the indiscriminate termination of business relationships with broad categories of customers (as opposed to individualized risk analysis and management). To the extent that de-risking is practiced by banks and financial service providers in the U.S., the government continues to object.³³

²⁹ "Regulation B clarifies that ECOA prohibits discrimination based not only on the characteristics of an applicant but also based on the characteristics of a person with whom an applicant associates." see 12 CFR part 1002, supp. I, ¶ 2(z)-1 (providing that "prohibited basis refers not only to characteristics—the race, color, religion, national origin, sex, marital status, or age—of an applicant (or officers of an applicant in the case of a corporation) but also to the characteristics of individuals with whom an applicant is affiliated or with whom the applicant associates").

³⁰ Official Staff Commentary, 12 CFR part 1002, supp. I, ¶ 2(z)-1).

³¹ actions taken by a financial institution to terminate, fail to initiate, or restrict a business relationship with a customer, or a category of customers, rather than manage risk associated with that relationship consistent with risk-based supervisory or regulatory requirements. See generally U.S. Dep't of the Treasury, The Treasury 2021 Sanctions Review (Oct. 2021), <https://home.treasury.gov/system/files/136/Treasury-2021-sanctions-review.pdf>

³² https://home.treasury.gov/system/files/136/Treasury_AMLA_23_508.pdf

³³ Id. "De-risking undermines several key U.S. government policy objectives by driving financial activity out of the regulated financial system, hampering remittances, preventing low- and middle-income segments of the population from efficiently accessing the financial system, and preventing the unencumbered transfer of humanitarian aid and disaster relief."

While Treasury’s strategy focuses on three categories of entities other than adult businesses,³⁴ Treasury’s preference that banks manage risk on an individualized customer basis is directly analogous to FSC goals in the context of the CFPB, as our members are continuously swept-up in bank efforts to shed compliance costs associated with anti-trafficking and anti-money laundering requirements, not because industry members represent actual risk.

Thus, incorporating indiscriminate blacklisting of adult businesses and batch termination of adult industry accounts in the CFPB’s definition of abusive conduct finds support in other Treasury initiatives, and would achieve similar ends.

IX. A Ray of Hope in Director Chopra’s Testimony

Finally, we are incredibly fortunate to conclude this comment with an expression of our gratitude to Director Chopra for a few brief comments he offered during House testimony at the end of the last Congress. During a December 14, 2022 appearance before the House Financial Services Committee, the Chair addressed an open ended question to Dir. Chopra, inquiring about “any other issues of concern” he might have. Dir. Chopra’s response brought us out of our chairs, clapping and shouting in appreciation.

Our cause for celebration was Dir. Chopra's expression of concern about punitive actions by financial institutions and online payment platforms against customers based solely on their exercise of otherwise completely legal speech. Accounts closed, funds embargoed, all shrouded in a veil of mystery, company professions of ignorance and surprise, until after hours on the phone, waiting, pleading, raging, the fifth supervisor we talk too informs us that that we have been suspended or terminated because of . . . because of what? Others are sanctioned for some expression of opinion or other anodyne but completely legal utterance, action or condition completely unrelated to their banking relationship. The same holds true for our industry, except our punishment is not conditioned overtly on any particular act, but on some amorphous risk or readily explainable pattern of activity. If only they would take a few moments to listen, and look a bit more closely, their concerns could be assuaged. But no.

And the apologies, one after another, each more meaningless and insincere, without any change in the surreal, arbitrary situation in which we find ourselves. As a representative of an industry whose members are routinely singled-out for such abusive treatment – as the Executive Director of an association subjected to this very same treatment, forced to scramble in desperation to make sure staff, vendors and everyone (including myself) got paid, Director Chopra’s brief expression of concern meant so much - it gave us hope in a situation otherwise marked by serial episodes of being personally wronged, and dredged through the searing futility of trying to fight a monolith. Days of uncertainty, furious and astonished that this is permitted in

³⁴ e.g. small- and medium sized Money Service Businesses (MSBs), often used by immigrant communities in the United States to send remittances abroad; NPOs operating abroad in high-risk jurisdictions; and foreign financial institutions with low correspondent banking transaction volumes. The problem is particularly acute for those operating in financial environments, especially those operating in locations characterized by high Money Laundering/ Terrorism Financing (ML/TF) risks.

an area of such critical, personal importance. It wasn't a fluke or some terrible mistake. It was a deliberate act to address . . . nothing. It isn't their money. We've done nothing wrong, broken no laws, transgressed no bank policies. But they have made a decision, based on nothing that we can discern, and that's it. There's no challenging the decision, no right of recourse, no remedy other than to slink away in shock, anger, and utter helplessness.

Who are these people, and what gives them the right to jeopardize my livelihood? This isn't an academic discussion of risk management policy for us. This is our ability to live and work in our chosen, legal profession.

In closing, I want to extend my deep personal gratitude, and the thanks of our industry, for your advocacy, time, attention and consideration in this matter. Wherever one comes down on the propriety of the adult industry, the plain fact is that it is legal, growing, and here to stay. Ours isn't a special pleading – we aren't asking for a loophole or special dispensation. We are asking the CFPB to grant our industry the legal protections to which we are rightfully entitled. It's that simple.

Sincerely,

A handwritten signature in black ink, appearing to read "Alison Boden". The signature is fluid and cursive, with the first name "Alison" written in a larger, more prominent script than the last name "Boden".

Alison Boden
Executive Director
The Free Speech Coalition