



STATEMENT FOR THE RECORD

By

THE FREE SPEECH COALITION

**“Oversight of the Financial Crimes Enforcement Network (FinCEN) and the Office of
Terrorism and Financial Intelligence (TFI)”**

House Committee on Financial Services

February 14, 2024

The Free Speech Coalition (FSC) appreciates the opportunity to provide a Statement for the Record to the House Committee on Financial Services hearing regarding the oversight of the Financial Crimes Enforcement Network (FinCEN) and the Office of Terrorism and Financial Intelligence (TFI).

About the Free Speech Coalition

The Free Speech Coalition is the non-partisan trade association representing the legal adult industry with the mission of protecting the rights and freedoms of our members. For over thirty years, FSC has been a resource, an advocate, and a leader in the communities that we serve. An increasingly important matter for our membership is the lack of reliable access to basic financial products and services and the increasing evidence that FSC members are being subject to systematic de-banking despite FSC members representing no increased risk to the banking system.

As in many industry sectors, the pandemic had a profound impact on the adult industry and spurred innovation. The creation of digital content platforms has enabled thousands of individuals to participate in the adult industry, in many cases, as a way to supplement income. Unfortunately, concurrent with this phenomena is evidence that financial regulators are putting pressure on banks to terminate relationships with those who participate in the adult industry leaving thousands – and potentially hundreds of thousands – of legal workers without the ability to access basic financial services.

Studies Show that Banks are Discriminating against the Majority of the Adult Industry

In May 2023, FSC surveyed our membership and produced a study on [Financial Discrimination and the Adult Industry](#). This report surveyed over 600 members of the industry to better understand the challenges they are facing in the financial sector. The results found that nearly four out of five respondents experienced some form of financial discrimination on account of their work, which is legal, including 63 percent who have had an account closed by bank or other financial services providers — 40 percent in the past year. Loan and insurance applications are routinely denied, even when unrelated to adult work.

This discrimination disproportionately affects women (63 percent of respondents) and the LGBTQ+ community (51 percent). Those in our industry are also likely to experience housing discrimination and employment discrimination based on their involvement with the adult industry. In fact, 64 percent do not have another significant source of income.

Our industry, and the work we do, is legal in all 50 states. Our members pay taxes, keep detailed records of those with whom we work, and adhere to a code of ethics. We are made up of retail

stores, production companies, technology platforms, product manufacturers, educators and independent models and creators. But no matter what we do, or where we work, we face financial discrimination. Even the FSC — a 501(c)6 non-profit with no relationship to production, manufacture, or distribution — has been unable to secure a secondary banking account for over three years.

FinCEN's Guidance is Unintentionally Harming the Adult Industry

While the roots of the discrimination are nuanced and complex, and our conversations with legislators, regulators, payment processors – and the banks themselves – suggest that much of the instability is due to guidance and regulations put forth by the Financial Crimes Enforcement Network (FinCEN) itself.

We strongly support efforts to safeguard the financial system, but it is vital to do so in a manner that does not limit or eliminate small business owners', employees', workers, consumers', and vulnerable populations' access to reliable banking services. Currently, however, many individuals and industries are prevented from accessing or are expelled altogether from financial services unintentionally due to banks' overly broad interpretation of FinCEN guidance around “high risk” activities. Banks routinely point to such guidance and specifically, Suspicious Activity Report filings, as justification for closing accounts and cutting off access to reliable banking services despite federal laws providing no authority for account cancellations under these conditions. It is clear that banks have come to the conclusion that in light of unclear guidance from FinCEN, it is *easier* to deny services to FSC members.

FinCEN's own guidance provides that, “There is no BSA regulatory requirement to terminate a customer relationship after the filing of a SAR or any number of SARs. The decision to maintain or close a customer relationship as a result of the identification of suspicious activity is a determination for a financial institution to make based on the information available to it, its assessment of money laundering or other illicit financial activity risks, and established policies, procedures, and processes.”¹ Joint guidance issued by FinCEN, the Federal Reserve, FDIC, OCC, and NCUA also provides, “Not all customers of a particular type automatically represent a uniformly higher risk of money laundering, terrorist financing, or other illicit financial activity.”² But, despite these statements, it appears some banks are not listening and are not giving their customers due consideration.

¹ Financial Crimes Enforcement Network, *Answers to Frequently Asked Questions Regarding Suspicious Activity Reporting and Other Anti-Money Laundering Considerations* (Jan. 19, 2021), <https://www.fincen.gov/resources/statutes-regulations/guidance/answers-frequently-asked-questions-regarding-suspicious>.

² Financial Crimes Enforcement Network, *Joint Statement on the Risk-Based Approach to Assessing Customer Relationships and Conducting Customer Due Diligence* (July 6, 2022), <https://www.fincen.gov/news/news-releases/joint-statement-risk-based-approach-assessing-customer-relationships-and>.

In particular, we believe that FinCEN guidance – the September 14, 2014 “[Advisory Guidance on Recognizing Activity that May be Associated with Human Smuggling and Human Trafficking - Financial Red Flags](#)” and subsequent October 15, 2020 “[Supplemental Advisory on Identifying and Reporting Human Trafficking and Related Activity](#)”) – have unintentionally resulted in banks mistaking the routine transactions of legal adult businesses for “red flag” indicators of human trafficking.

Conclusion

FSC has met with over 40 bipartisan congressional leaders and is dedicated to continue working with Congress, FinCEN, and the federal banking agencies to appropriately address these concerns, to clarify that law-abiding workers in the adult industry do not pose increased regulatory or financial risk, and to fight human trafficking. We do not believe that FSC member activities pose any unusual risk to the financial services sector and have seen no evidence as such. Further, we are a strong partner with law enforcement in efforts to eradicate illegal activity including human trafficking and believe that having proceeds of legal businesses in the regulated banking system is a strong component of separating legal from illegal activities.

Again, thank you for the opportunity to submit this Statement for the Record. We look forward to continuing to work with you and your colleagues to ensure fair, equitable, and reliable access to banking and financial services.

Sincerely,

A handwritten signature in black ink, appearing to read "Al. Boden". The signature is fluid and cursive, with a small "ad" written at the end.

Alison Boden
Executive Director
Free Speech Coalition