U.S. Senator Thom Tillis (R-NC)

The Ensuring Fair Access to Banking Act of 2025

PRONG 1: ESTABLISH A FEDERAL FAIR ACCESS STANDARD

- **PROBLEM**: Politically motivated attempts to terminate or withhold banking services from legally operating but disfavored constituencies remain a significant issue in the U.S. financial services ecosystem. Since the inception of Operation Choke Point in 2013, and the reemergence of similar practices during Choke Point 2.0, certain financial institutions and regulators have sought to limit financial access over First and Second Amendment-protected activities or due to the nature of a legally operating business. This behavior must be prohibited. Additionally, the proliferation of state-level laws aimed at combating this phenomenon (colloquially, fair access laws) presents a well-intentioned but operationally daunting patchwork of unique, often conflicting legal requirements.

- **OUR SOLUTION**: Creates a federal fair access standard designed to ensure Americans cannot be refused financial services for reasons based on their protected First Amendment rights, nor the business or industry sector of a legally operating business

    - Establishes federal preemption over state-level fair access laws to ensure uniformity of application of the federal fair access standard

    - Provides reasonable business-related exceptions to ensure financial institutions can maintain all adequate safety and soundness, profitability, risk assessment, legal, regulatory, and employee and customer safety considerations

    - Provides reasonable regulatory-related exceptions to ensure financial regulators can maintain their responsibilities to safeguard against unsafe or unsound practices or illicit activity

    - Establishes a strong enforcement mechanism for violations of the fair access standard, allowing federal or state-level prudential regulators or Attorneys General to pursue enforcement actions or seek restitution on behalf of harmed parties

    - Requires the federal financial regulators review and, as necessary, reform their intra-agency appellate process to improve transparency and reduce the likelihood of retaliatory behavior towards financial institutions seeking to appeal a regulator's decision

PRONG 2: PERMANENT REPEAL OF REPUTATIONAL RISK

- **PROBLEM**: Regulators have targeted conservatives, oil and gas companies, and the digital asset industry in the past by weaponizing the concept of reputational risk, which they define as <u>ANY</u> actions and circumstances that can cause an organization or other entity to lose credibility with stakeholders, customers, partners, or the general public. This vague and open-ended concept provides regulators with excessive latitude to take politically motivated actions against U.S. individuals and businesses.

- **OUR SOLUTION**: Prevents *regulator-initiated* de-banking by incorporating Chairman Scott's *FIRM Act*, which would statutorily prohibit the use of amorphous reputational risk criteria in examination and supervision.

PRONG 3: TARGETED REFORMS TO EXAMINATION AND SUPERVISION

- **PROBLEM**: Examination and supervision functionally occur in a windowless room with a locked door. Only the regulators have a key. This status quo allows individual examiners to exceed their authority and coerce financial institutions to take positions the institution may not agree with. It is entirely reasonable for Congress to assert its oversight powers to improve examination outcomes.

- **OUR SOLUTION**: Incorporates the Tillis-Warren *Financial Regulators Transparency Act*, which allows (with appropriate classified materials safeguards) select members of Congress to request the Confidential Supervisory Information (CSI) created in an examination process. Functionally, this provides Congress with a key to the examination room, establishing a passive, ongoing disincentive to examiner overreach.

- **PROBLEM**: Regulators are allowed to act as judge, jury, and executioner in the supervision process, and financial institutions have little practical recourse to appeal political or excessively punitive supervisory acts. The lack of a well-functioning appeals channel has allowed certain regulators to act inappropriately, overstep, or abuse the examination process.

- **OUR SOLUTION**: Incorporates Vice President (then Senator) Vance's *Financial Regulators Accountability Act (FRAA)*, which establishes a special Inspector General (IG) within Treasury to receive, review, and report on allegations of financial regulator overreach or abuse during the supervisory, regulatory, or examination processes.

- **PROBLEM**: Since their inception in the 1970s and 1990s, respectively, neither the Currency Transaction Report (CTR) nor Suspicious Activity Report (SAR) trigger thresholds have been adjusted for inflation. These outdated thresholds now force financial institutions to over-file CTRs and SARs, resulting in a significant oversaturation of reporting. This produces questionable results in the meaningful identification of illicit financial activity, while also increasing the likelihood that a customer is de-banked due to standard, non-illicit financial transactions.

- **OUR SOLUTION**: Adjusts the CTR threshold to $45,000 and the relevant SARs thresholds to $4,000 and $10,000, then provides an annual adjustments mechanism based on the Bureau of Economic Analysis's final annual inflation number. This change right-sizes the anti-money laundering (AML) regulatory burden and reduces the chance a customer is de-banked for AML concerns based on arbitrary and outdated caps.