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Application Pending

68 million votes for more banks: how the campaign to politicize bank charters shrinks credit for households

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The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding.

— Louis Brandeis

This paper, in its entirety, can be found at <https://southwestpolicy.com/sppi10>

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SOUTHWEST PUBLIC POLICY INSTITUTE

The Southwest Public Policy Institute (SPPI) is a research institute and think tank dedicated to advancing data-driven solutions that promote economic freedom, public safety, educational opportunity, and personal responsibility.

Unlike traditional think tanks that often preach to the choir, SPPI acts as a “do-tank”, rejecting the echo chamber. We engage diverse audiences by micro-targeting constituents on the issues that matter most, meeting people where they are, not where political ideologies expect them to be.

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SPPI’s work spans nationwide, with a unifying goal: to reinvigorate timeless American principles of liberty, accountability, and community. We believe that respectful dialogue, practical problem-solving, and open exchange—not division—are the keys to a freer and more prosperous future.

We champion innovation at the national, regional, state, and local levels by empowering individuals, encouraging entrepreneurship, and expanding the role of voluntary, community-driven solutions. With one guiding principle—**WE AGREE**—we seek to restore trust in the policymaking process and deliver what public service should always provide: ***better living through better policy.***

EXECUTIVE SUMMARY

Two nonbank consumer and small-business lenders have applications pending before the Office of the Comptroller of the Currency and the Federal Reserve to acquire existing, chartered national banks. Both applicants would move from operating under a patchwork of federal and state laws into the most heavily supervised sector of the American economy. Both would become subject to examination, capital requirements, fair-lending oversight, and continuous engagement with federal regulators.

A number of opportunistic state attorneys general and advocacy organizations have asked federal regulators to deny the applications. The stated objection is not that the applicants fail any statutory criterion. It is that the applicants make loans that those groups don't want consumers to have access to.

That is a policy argument. It belongs in Congress. It is neither a prudential standard nor codified by federal banking law.

Five findings frame this brief

1. America has a shortage of banks. Active U.S. bank charters have fallen from roughly 8,500 in 2008 to roughly 4,500 today. Between 2010 and 2024, fewer than six new banks formed per year. Roughly 68 million Americans live in counties with no community bank headquarters.
2. Rate caps do not lower the price of credit. They reallocate it upward. New research from the Federal Reserve Bank of New York finds that under state usury limits, credit to the riskiest decile of borrowers contracts sharply, with no improvement in delinquency, while credit expands for safer borrowers who were never the intended beneficiaries.
3. This reallocation effect explains why aggregate lending statistics mislead. Advocates in capped states point to rising total loan volume as proof the caps worked. The New York Fed data show that rising aggregate volume is exactly what reallocation produces. Dollar totals can climb while the households the policy was written for lose access entirely.
4. The claim that mainstream institutions will fill the gap has been tested and has failed. SPPI's consumer-emulation research documented what happens when a well-qualified borrower, and then a series of less-qualified ones, actually attempts to obtain small-dollar emergency credit from banks and credit unions. The results were near-uniform denial.
5. The federal banking agencies have already repudiated the method now being urged on them. Between March 2025 and June 2026, the OCC, FDIC, and Federal Reserve eliminated reputation risk as a supervisory factor, codified

that elimination by rule, and stripped the concept from fifteen interagency guidance documents — on the express ground that it had been used to pressure banks away from lawful customers. A denial premised on disapproval of a lawful product would reinstate by adjudication precisely what the agencies just removed by rule.

Recommendation: Regulators should decide these applications on the statutory factors Congress enacted, and on nothing else. If the applicants fail those factors, the applications should be denied. If they satisfy them, an application should not be denied because outside organizations tried to apply political pressure.

LAW

The Bank Holding Company Act specifies what the Federal Reserve is to weigh when a company seeks to acquire a bank: the competitive effects of the transaction; the financial and managerial resources and future prospects of the companies involved; the convenience and needs of the communities to be served; the effectiveness of anti-money-laundering compliance; and the risk to the stability of the United States banking or financial system.¹

That list is not decorative. It is the entirety of the inquiry Congress authorized. Nowhere in it does Congress ask whether a senator, an attorney general, or an advocacy coalition approves of the applicant's annual percentage rates.

The distinction matters because the alternative has been tried. Operation Choke Point used informal regulatory pressure to push banks away from lawful but politically disfavored businesses. Executive Order 14331, *Guaranteeing Fair Banking for All Americans*, cited that episode by name and established that banking decisions “must instead be made on the basis of individualized, objective, and risk-based analyses.”²

The agencies have already acted on this principle

The executive order was not the end of the matter. It began a sequence of concrete supervisory changes, and that sequence is the most important development in this debate since the applications were filed.

The OCC announced in March 2025 that it would stop examining banks for reputation risk and would begin removing the concept from its policy issuances.

The Federal Reserve eliminated reputational risk from its examination programs in June 2025 and proposed codifying that removal in February 2026. In April 2026, the OCC and FDIC published a joint final rule codifying the elimination in their own supervisory programs. In June 2026, all three agencies jointly reissued fifteen interagency guidance documents with references to reputation risk stripped out.³

The agencies stated their reasoning plainly: reputation risk “can be misused by supervisors as a basis to encourage or pressure a bank” to restrict lawful businesses’ access to financial services.⁴ Supervisory decisions, they said, should rest on material financial risks.

The principle cuts both ways. If it is wrong to push a lawful business out of banking on political grounds, it is wrong to keep a qualified applicant out of banking on the same grounds. A denial premised on disapproval of a lawful product is Choke Point at the front door instead of the back — and it would restore through adjudication a standard the three federal banking agencies have spent eighteen months dismantling by rule.

The supervision objection cuts against the objectors

The standing objection to bank-partnership lending, advanced for years by the same organizations now opposing these applications, is that the arrangement obscures who the real lender is and leaves the economically consequential party outside direct prudential supervision. Acquisition eliminates that structure. The applicant becomes the bank. Supervision becomes unified and direct.

In September 2022, the Center for Responsible Lending and the Consumer Bankers Association jointly petitioned the Consumer Financial Protection Bureau to extend supervision over large nonbank personal lenders, arguing that the absence of such a rule “created an unlevel playing field and a large risk to consumers.”⁵

The Bureau agreed. In a January 2025 response, its general counsel wrote that the petitioners’ concerns about an unlevel playing field “have merit,” observing that banks issuing credit cards and nonbanks making payday loans are subject to CFPB supervision while installment and buy-now-pay-later lenders generally are not. The Bureau estimated that nonbank personal lending then encompassed roughly 85 million accounts and more than \$125 billion outstanding.⁶

Opposing the partnership model and its supervised alternative simultaneously

reveals the objection for what it is: opposition to the lending itself.

SHORTAGE

The case for restricting entry rests on an implicit premise: that American consumers have adequate access to institutions willing to serve them. The evidence does not support it.

Household access: The FDIC's most recent published national survey found that 14.2 percent of U.S. households, representing 19.0 million families, were underbanked: they hold an account but rely on nonbank products to meet basic financial needs. An additional 4.2 percent were entirely unbanked.⁷ Philadelphia Fed researchers examining the same survey series find that the barriers are structural rather than preferential — a finding directly at odds with the assumption that displaced borrowers will simply migrate to mainstream institutions.⁸

Physical access: The Federal Reserve Bank of Philadelphia, working with Fed Communities, documented a net loss of 5,413 bank branches nationally between 2019 and 2023. The number of banking deserts grew by 217 census tracts, and the population living in one grew by more than 760,000, to roughly 12.3 million Americans. Majority-Black areas gained banking deserts at 10.1 percent, well above the 6.4 percent national rate.⁹

The composition of those losses matters as much as the total. Banks holding \$10 billion to \$50 billion in assets cut their branch counts by 11 percent, and banks above \$50 billion cut theirs by 12.6 percent. Community banks — those under \$10 billion — *added* 1.1 percent.¹⁰ The institutions retreating from American neighborhoods are the large incumbents. The institutions expanding into them are small. That is an argument for chartering more small institutions, not fewer.

Institutional access: This is the sharpest number. Active bank charters have fallen from approximately 8,500 in 2008 to approximately 4,500 today. From 1995 through 2007, the lowest number of new banks formed in any single year was 93. Across the entire fifteen years from 2010 through 2024, 86 new banks formed in total: an average of fewer than six per year. Roughly 68 million Americans live in a county with no community bank headquarters at all.¹¹

The chartering pipeline tells the same story. The Comptroller of the Currency has

testified that the OCC received and approved more than 1,000 de novo charter applications between 1990 and 2008, and that application volume and approvals fell by roughly 90 percent thereafter. He attributed the collapse not to absent demand but to regulators signaling that charter and deposit-insurance applications would be “indefinitely delayed” and ultimately denied if not withdrawn.¹²

That posture has begun to reverse, and the reversal is accelerating. The OCC received as many charter applications in 2025 as it had in the previous four years combined. In testimony delivered in June 2026, the Comptroller reported that a full-service national bank had opened its doors for the first time in five years, and that the agency had conditionally approved ten more banks in 2026 alone.¹³ The FDIC has moved in the same direction, rescinding its 2024 bank-merger policy statement and issuing a final rule in December 2025 to streamline branch establishment and relocation.¹⁴

The pending acquisitions are part of that reversal. Denying them on non-statutory grounds would signal that the door has been reopened only for applicants whose business models are politically congenial.

PRICE CONTROLS

The objection to these applications is fundamentally an objection to rate exportation: a national bank operating under federal banking law can charge rates permitted by its home state across state lines. The premise underneath is that state rate caps protect the households subject to them.

That premise is now testable, and the most rigorous available test comes from the Federal Reserve Bank of New York.

The New York Fed findings

In December 2025, four economists published *Less for You, More for Me: Credit Reallocation and Rationing Under Usury Limits*, examining three states that enacted 36 percent all-in caps between 2016 and 2022 against seven states that did not. The study used quarterly credit-bureau data on nearly four million households, with household and ZIP-code-by-quarter fixed effects.¹⁵ The authors published two companion summaries in June 2026 that make the mechanism explicit: the caps bind only alternative lenders. Banks and credit unions are exempt.¹⁶ The policy removes the lenders serving high-risk borrowers without obligating anyone else to

replace them.

For the riskiest borrowers, the bottom decile of credit scores, the caps did exactly what standard price theory predicts:

<i>Outcome, bottom decile</i>	<i>Effect after cap</i>
Debt balances	–14.7% of sample mean
Number of open accounts	–19.6% of sample mean
Delinquency	No improvement

The event-study estimates show debt balances falling roughly \$1,000 per borrower immediately after enactment and roughly doubling that decline over the following five quarters. The authors state that these borrowers do not substitute toward mainstream lenders, and that their credit standing did not improve. The caps reduced credit access without reducing credit stress.

The more consequential finding is what happened to everyone else. Credit did not simply disappear. It moved up the risk distribution to borrowers for whom the cap was never binding:

<i>Risk decile</i>	<i>Debt balances</i>	<i>Open accounts</i>
2nd	+1.0%	+5.6%
3rd	+9.3%	+13.8%
4th	+10.8%	+13.5%
5th	+7.6%	+7.8%

Because credit scores correlate positively with income, the authors conclude that usury limits in their sample “may be transferring credit from lower income to higher income individuals.” They describe the result as at odds with the theory of usury limits as a form of social insurance for the vulnerable.

This is not an isolated result. The New York Fed authors situate their findings in a substantial literature reaching the same conclusion about rationing, including work on payday-loan bans, fringe-lending regulation, and rate ceilings in the

United States, Chile, Israel, and Peru.¹⁷

The military evidence

The most direct national test of a 36 percent all-in cap is the Military Lending Act.

In 2015, the Department of Defense extended the MLA's 36 percent APR cap to revolving credit products. Researchers at the Urban Institute examined credit-bureau data on residents of military communities from 2013 through 2021 to determine whether the expansion improved outcomes for the servicemembers most likely to be affected.

It did not. The study found no evidence that the expansion reduced delinquency or collections rates among borrowers with subprime credit scores, and no effect on their credit scores. It found suggestive evidence that consumers with deep subprime scores had less access to credit afterward. And it found that very few subprime borrowers held revolving loans priced anywhere near 36 percent — meaning lenders did not respond to the cap by repricing to just beneath it. The authors concluded that extending the expanded MLA's protections, including the 36 percent cap, to revolving credit for all borrowers “would not be an effective way of improving the credit health of most Americans.”¹⁸

The Urban Institute is not a trade association, an industry-funded institute, or a free-market think tank. Its finding is the same one the New York Fed reached a decade later with different data and a different design.

Why this matters for the aggregate statistics

This is the analytical point most often missed in the policy debate, and it deserves emphasis.

When advocates in capped states report that total small-loan dollar volume rose after a cap took effect, that figure is offered as proof the cap worked. The New York Fed results show it proves nothing of the kind. Rising aggregate volume is what reallocation produces. At the state level, the study found total debt balances fell by only 0.9 percent and accounts by 0.6 percent, economically trivial, because losses at the bottom were offset by gains in the middle.

New Mexico illustrates the trap. House Bill 132 took effect January 1, 2023,

replacing a 175 percent ceiling with a 36 percent all-in cap on loans up to \$10,000. Licensed small-loan companies fell from 531 in March 2022 to 266 by October 2023, a 50 percent decline; roughly 270 remain today.¹⁹ Supporters counter that the state's Financial Institutions Division found New Mexicans saved more than \$50 million in fees and interest in 2023–24 relative to 2022, and that the total inflation-adjusted dollar value of small loans rose 31.7 percent.²⁰

Both sets of numbers can be true simultaneously. That is the entire finding. Half the lenders left; the survivors wrote larger loans to safer borrowers. Fewer, larger loans to better-qualified households will raise total dollar volume and lower average interest paid while the bottom decile is served by no one. Dollar volume is not access. Neither is average price. The relevant question is who is still getting credit, and on that question the aggregate figures are silent.

Survey work in New Mexico following the cap found the same pattern from the borrower's side that the licensing data show from the lender's side.²¹

The Illinois evidence points the same direction. A peer-reviewed study of that state's 36 percent all-in cap found loans to subprime borrowers fell 38 percent, and average loan size to subprime borrowers rose 35 percent. In survey work, only 11 percent of affected borrowers reported improved financial well-being after the cap; 79 percent wanted the option to return to their prior lender.²²

None of this is mysterious once the cost structure of small-dollar lending is understood. Federal Reserve Board research on consumer finance companies documents why a short-duration, small-principal, high-default-risk loan cannot be originated profitably at a 36 percent annualized rate: the fixed costs of underwriting, servicing, and collection do not scale down with loan size.²³ A cap set below the cost of production does not lower the price. It ends the product.

SUBSTITUTION

The standard rejoinder is that banks and credit unions will fill the gap. That claim has been tested directly, using consumer-emulation methodology rather than modeling.

No Loan for You! (February 2023) followed a married homeowner with a full-time job, a mortgage in good standing, no criminal record, and a credit score above 800 as he attempted to obtain an advertised small-dollar loan from three national

banks in metropolitan Albuquerque. All three required opening a checking account first. All three ultimately declined. The process consumed roughly three to four hours per institution and about \$75 in account minimums and fees.²⁴

No Loan for You, Too! (June 2023) extended the test to fifteen credit unions and to a second state. Thirteen of the fifteen credit unions, 86 percent, denied the loan application, did not offer a payday alternative loan, or denied membership outright. Two University of Minnesota undergraduates ran the same protocol against four major lenders in the Minneapolis–Saint Paul metro and obtained none of the advertised products. Notably, the credit unions ran hard credit inquiries; the subject's score fell from above 800 to 706 over the course of the investigation.²⁵

One institution performed well. A single Albuquerque credit union approved the loan at 17 percent, repayable in three installments over 90 days, with funds available immediately. It was a clean, transparent process — and it was the exception. The subject was also already a member of a year's standing, which is precisely the eligibility condition most applicants cannot satisfy at the moment they need the money.

Swipe Right (May 2025) documented the reverse case. After direct applications to seven card issuers produced rejections, incomplete applications, or silence, a comparison-shopping intermediary matched the same consumer to an appropriate product within minutes.²⁶

The credit union counterargument

Advocates in New Mexico now point to National Credit Union Administration data showing that state credit unions increased annual loan originations by roughly 30 percent between December 2022 and December 2025, and argue that this demonstrates successful substitution.²⁷

It demonstrates the opposite, for the same reason the dollar-volume figure does. That number counts all credit union lending — auto loans, mortgages, personal loans, refinancings — to all members. It does not identify who received the loans, and it does not isolate small-dollar emergency credit. A statewide increase in credit union originations is exactly what the New York Fed's reallocation finding predicts: when high-cost lenders exit, remaining lenders extend more credit to borrowers for whom the cap was never binding. The aggregate rises. The bottom decile is not in it.

Two further points. Payday alternative loans are themselves capped, at 28 percent APR since 2010, and are therefore subject to the same pricing constraint that removed the products they were meant to replace. And credit union lending is gated by membership, tenure, and account-relationship requirements that operate as eligibility filters — which is what SPPI’s fieldwork found when it tested them.

The pattern across all three consumer-emulation reports is consistent and, for this debate, decisive: the institutions that policymakers assume will absorb displaced borrowers do not, in practice, serve them. Eligibility criteria buried behind twelve-month account-tenure requirements, direct-deposit thresholds, and membership restrictions are not a substitute for a product that is actually available when a transmission fails on a Tuesday.

Removing a lender does not remove the obligation. It removes the borrower’s option to meet it in a supervised market.

AUTHORITY

The charter objections and the state-level rate-exportation fight are two fronts in one campaign. On the second front, the institutional record is now extensive, and the decisive moment is imminent.

The Tenth Circuit is reconsidering en banc whether a state that opts out of Section 521 of the Depository Institutions Deregulation and Monetary Control Act may apply its interest-rate ceilings to loans made to its residents by state-chartered banks located elsewhere. A divided panel held in November 2025 that it may; the full court granted rehearing on April 2, 2026, vacating that decision. **The en banc court will hear oral argument on August 18, 2026.**²⁸

In the supplemental briefing round completed June 4, 2026, the parties urging the court to reject Colorado’s position included:

- **The Office of the Comptroller of the Currency**, which argued that the panel’s reading would inject uncertainty into the statutory framework, undercut the benefits Congress sought to provide state banks, advantage national banks over state banks contrary to Congress’s codified competitive-equity goals, and “harm consumers by reducing their access to credit across the country.”

- **The Federal Deposit Insurance Corporation**, which warned of “the opt-out exception swallowing the general rule of parity,” and which expressly acknowledged withdrawing its prior contrary position because it no longer reflected the best reading of the statute or the agency’s own historical practice.
- **Twenty-one state attorneys general**, led by Utah and joined by Alabama, Arkansas, Florida, Georgia, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Texas, West Virginia, and Wyoming. Their brief frames the dispute as a threat to the dual banking system, noting that Section 521 states its own purpose as preventing “discrimination against State-chartered insured banks.”
- **The American Bankers Association, Bank Policy Institute, Consumer Bankers Association, America’s Credit Unions, and 52 state bankers’ associations**, jointly.
- **The U.S. Chamber of Commerce**, arguing that no presumption against preemption applies to an express preemption provision.²⁹

The record on the other side is also substantial and should be stated plainly. Eleven states and the District of Columbia filed in support of Colorado on July 13, 2026; the Center for Responsible Lending and the National Consumer Law Center filed on July 21.³⁰ This is a genuinely contested question of statutory interpretation, and the brief does not suggest otherwise.

What warrants attention is the alignment of the agencies. **The two federal banking regulators with direct supervisory responsibility for national banks and state nonmember banks have both concluded that the extraterritorial reading is wrong** — the FDIC reversing its own prior position to say so. Whatever weight one assigns to advocacy coalitions, the agencies Congress charged with administering this framework are not neutral on the question, and they are not on the side the charter objections assume.

A note on the historical record. Iowa is among the twenty-one states supporting the plaintiffs, and Iowa is one of only two longstanding DIDMCA opt-out jurisdictions, the other being Puerto Rico. That a state exercising opt-out authority nonetheless opposes its extraterritorial application is a data point. It is not a decisive one: on July 15, 2026, former Iowa Attorney General Thomas J. Miller filed an amicus brief supporting Colorado, grounded in his four decades

administering Iowa’s consumer credit laws beginning in 1980.³¹ The original understanding of Section 525 is disputed by people with direct knowledge of it. The argument for reversing the panel does not depend on resolving that dispute, and this brief does not rest on it.

The dispute is spreading

Oregon became the fourth jurisdiction to maintain an opt-out, joining Colorado, Iowa, and Puerto Rico. Three trade associations sued to block House Bill 4116, alleging both federal preemption and, in part, a violation of the dormant Commerce Clause, and moved for a preliminary injunction on July 9, 2026. The OCC filed an amicus brief on July 28, 2026, again defending a narrow reading of Section 525.³²

The Commerce Clause dimension deserves more attention than it has received. When a bank in one state originates a loan to a borrower in another, that is a paradigm case of interstate commerce. A regime in which each state may impose its own ceiling on out-of-state originators fragments the national credit market into fifty regulatory silos and, in practice, sets national credit policy without congressional action. The Founders wrote the Commerce Clause to prevent exactly that.³³

Related preemption litigation

Three additional 2026 decisions bear on the framework the objectors are asking regulators to disregard:

- The Second Circuit reaffirmed in May 2026 that the National Bank Act preempts New York’s mortgage escrow-interest statute as applied to national banks; a certiorari petition followed.³⁴
- The Seventh Circuit vacated and remanded the Illinois Interchange Fee Prohibition Act litigation in May 2026 in light of the OCC’s interim final rule and preemption order.³⁵
- A California trial court granted summary judgment against the state’s Department of Financial Protection and Innovation in May 2026, rejecting its “true lender” theory as applied to loans originated by a Utah-chartered bank.³⁶

That last decision matters most here. The “true lender” theory is the legal foundation of the claim that bank-partnership lending is an evasion. A court has now rejected it on a full record — while the organizations advancing it simultaneously oppose the acquisitions that would make the question moot.

The necessary caveat

The *Weiser* record concerns rate exportation by state-chartered banks under DIDMCA. The pending charter applications concern national banks, whose exportation authority derives from the National Bank Act and is not subject to any state opt-out. The two questions are legally distinct. But they are animated by the same underlying policy dispute — whether a single state may set credit terms for transactions originated beyond its borders — and on that question, the institutional weight is not where the charter objections imply it is.

METRIC

There is a deeper problem underneath this entire debate, and SPPI has documented it in two national publications.

Every argument in the charter fight is denominated in APR. The applicants are described by their APRs. Rate caps are written in APR. State ceilings are set in APR. And APR is a poor instrument for the job.

APR is not a rate at all; it is a function of a rate over time. Quoting a loan’s cost in APR is like quoting a speed limit in units of acceleration — technically derived from the underlying quantity, useless for the decision at hand. A five-year auto loan, a revolving credit line that can be paid off at will, a two-week advance, and a thirty-year mortgage are all mandated into the same annualized percentage, and the resulting figures are not comparable in any way a borrower can act on.³⁷

The critique is not novel and not confined to SPPI. Analysts have argued for years that annualizing the cost of a two-week obligation produces a number that describes a hypothetical the borrower will never experience, and that the metric is therefore actively misleading for short-duration credit.³⁸

The consequence is that APR functions as financial charm pricing. Presentation shapes judgment. A borrower anchors on the leftmost digit and never encounters the total repayment figure, which appears, when it appears, buried in closing

disclosures.³⁹

That critique cuts in every direction, and it should. A three-digit APR on a two-week advance overstates the cost the borrower will actually bear; a benign-sounding single-digit APR on a thirty-year mortgage understates it dramatically. Both distortions come from the same metric. A regulatory framework that determines which Americans may borrow, from whom, and at what terms, on the basis of a number that compresses a fourteen-day obligation and a three-decade obligation into a single annualized figure, is not a precision instrument. It is a proxy that has been mistaken for a measurement.

Congress can fix that. Regulators adjudicating individual charter applications cannot.

RECOMMENDATIONS

1. Decide on the statutory factors. The Federal Reserve and the OCC should evaluate the pending applications against 12 U.S.C. § 1842(c) and the applicable chartering and merger standards — capital, management, compliance, safety and soundness, competition, community convenience and needs, and financial stability. Applicants who fail should be denied. Applicants who satisfy them should not be denied for reasons Congress did not authorize.
2. Document the basis for any denial. If an application is denied, the order should identify which statutory factor was not met and why. An unexplained denial following a high-volume comment campaign is indistinguishable from a political one, and will be treated as precedent by every future applicant and every future opponent.
3. Apply the reputation-risk rule to adjudication, not just examination. The agencies have removed reputation risk from supervision by rule and from fifteen interagency guidance documents. That principle should govern the application process as well. Public controversy about an applicant's lawful products is a reputational consideration by another name, and the agencies have already determined it is not a legitimate supervisory basis for restricting access to banking.
4. Treat the entry shortage as the policy problem it is. With active charters down roughly 47 percent since 2008 and 68 million Americans in counties without a

community bank headquarters, the “convenience and needs” factor should be read as Congress wrote it — as a reason to weigh new entry favorably.

5. Resolve the exportation question in Congress, not by proxy. The American Lending Fairness Act would clarify the scope of the DIDMCA opt-out directly.⁴⁰ Whatever one’s view of the merits, resolving the question by statute is preferable to resolving it through the accumulated leverage of adverse comments on unrelated applications — particularly with the Tenth Circuit hearing argument on the same question this month.
6. Reform the disclosure metric. Congress should revisit the Truth in Lending Act’s APR mandate to require prominent, comparable disclosure of total cost of credit alongside the annualized rate. A debate conducted entirely in a unit that misrepresents both short-duration and long-duration obligations will keep producing policy that misses its target.

CONCLUSION

More than a hundred organizations have signed letters urging denial of these applications; dozens more have demanded public hearings and a vote of the full Board.⁴¹ The volume is real. It is also not evidence of anything the Bank Holding Company Act asks about.

The households at issue here are the ones SPPI has spent four years documenting: 19 million underbanked American families, the third of Albuquerque households that do little or no mainstream banking, the borrower whose transmission fails before a Monday shift.

They are not helped when the number of institutions permitted to compete for their business is decided by which coalition assembled the larger comment file. They are not helped by aggregate lending statistics that rise while their own access falls. And they are not helped by a regulatory process in which the operative question shifts from *is this institution qualified* to *do we approve of its customers*.

A rigorous chartering and acquisition process protects the banking system. A political one protects incumbents. Regulators are entirely capable of observing the distinction.

NOTES

- 1 12 U.S.C. § 1842(c). See also Board of Governors of the Federal Reserve System, “Supervisory Policy and Guidance Topics — Applications,” [federalreserve.gov](https://www.federalreserve.gov).
- 2 Executive Order 14331, “Guaranteeing Fair Banking for All Americans,” August 7, 2025, § 1.
- 3 Office of the Comptroller of the Currency, announcement on reputation risk, March 20, 2025; Board of Governors of the Federal Reserve System, announcement on reputational risk in examination programs, June 23, 2025, and request for comment on codification, February 23, 2026; OCC and FDIC, “Agencies Issue Final Rule to Prohibit Use of Reputation Risk by Regulators,” April 7, 2026 (published at 91 Fed. Reg., April 10, 2026); OCC Bulletin 2026-23, “Bank Supervision: Removing References to Reputation Risk,” June 2, 2026; FDIC Financial Institution Letter, “Agencies Remove References to Reputation Risk in Interagency Documents,” June 2, 2026. The NCUA has taken parallel action.
- 4 Joint news release, Federal Deposit Insurance Corporation, Federal Reserve Board, and Office of the Comptroller of the Currency, “Agencies Remove Additional References to Reputation Risk,” June 2, 2026.
- 5 Consumer Bankers Association and Center for Responsible Lending, Petition for Rulemaking to Define Larger Participants in the Market for Personal Loans, submitted to the CFPB, September 15, 2022.
- 6 Consumer Financial Protection Bureau, response to CRL/CBA petition for rulemaking, January 8, 2025. The rulemaking was announced but never completed.
- 7 2023 FDIC National Survey of Unbanked and Underbanked Households, Federal Deposit Insurance Corporation, 2024. The 2025 survey was fielded in June 2025; results had not been published as of this writing.
- 8 “Who Remains Unbanked in the United States and Why?,” Federal Reserve Bank of Philadelphia Working Paper 25-02, 2025.
- 9 “U.S. Bank Branch Closures and Banking Deserts,” Federal Reserve Bank of Philadelphia and Fed Communities, 2024; see also Federal Reserve Bank of Richmond, *Regional Matters*, August 2024, which reports the same national figures. Current tract-level data are available through the Fed Communities Banking Deserts Dashboard.
- 10 Ibid.; see also Federal Reserve Bank of Atlanta, “Who Are the 12 Million People Living in Banking Deserts?,” *Take on Payments*, May 13, 2024, which reports that 66 percent of banking-desert residents are in suburban areas, 20 percent urban, and 14 percent rural.
- 11 Travis Hill, “View from the FDIC: Update on Key Policy Issues,” remarks to the American Bankers Association Washington Summit, April 8, 2025.
- 12 Jonathan V. Gould, remarks on de novo chartering, Blockchain Association Policy Summit, December 8, 2025.
- 13 Office of the Comptroller of the Currency, “Comptroller Gould Testifies on Agency Activities,” June 4, 2026. Reported counts of 2025 applications vary between 14 (de novo charters) and 18 (all charter applications) depending on the category measured; the OCC has consistently characterized 2025 volume as matching the prior four years combined.
- 14 Travis Hill, “Update from the Prudential Regulators: Rightsizing Regulation to Promote American Opportunity,” February 26, 2026; FDIC final rule on establishment and relocation of domestic branches and main offices, December 2025.
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- 17 See the literature reviewed in Chakrabarti et al., *supra* note 15, including Bhutta, Goldin, and Homonoff

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 - 19 New Mexico Regulation and Licensing Department data, compiled by the Online Lenders Alliance, January 4, 2024 (531 licensees in March 2022; 266 in October 2023). Think New Mexico reports 270 licensees remaining as of April 2026; see note 20.
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 - 21 Justin Fisk, “A New Mexico Consumer Survey: Understanding the Impact of the 2023 Rate Cap on Consumers,” Online Lenders Alliance, November 14, 2023.
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 - 23 Lisa Chen and Gregory Elliehausen, “The Cost Structure of Consumer Finance Companies and Its Implications for Interest Rates,” FEDS Notes, Board of Governors of the Federal Reserve System, December 8, 2020.
 - 24 D. Dowd Muska and Patrick M. Brenner, *No Loan for You! Why the War on Specialized Emergency Loans Hurts New Mexico*, Southwest Public Policy Institute, No. 2, February 2023.
 - 25 D. Dowd Muska, Patrick M. Brenner, Jack Radomski, and Brandt Kringlie, *No Loan For You, Too! The Unintended Consequences of Price Controls on Consumer Access to Credit*, Southwest Public Policy Institute, No. 4, June 2023.
 - 26 Patrick M. Brenner, Lucas J. Parker, and Anna Gonzalez, *Swipe Right: How Comparison Shopping Tools and Lead Generators Revolutionize Consumer Access to Products and Services*, Southwest Public Policy Institute, No. 6, May 2025.
 - 27 Think New Mexico commentary, *Santa Fe New Mexican*, April 12, 2026, citing National Credit Union Administration data. Payday alternative loans have been capped at 28 percent APR since 2010; see National Credit Union Administration, “Payday Alternative Loan Rule Will Create More Alternatives for Borrowers,” September 2019.
 - 28 *National Association of Industrial Bankers v. Weiser*, 159 F.4th 694 (10th Cir. 2025), reh’g en banc granted and panel opinion vacated April 2, 2026; en banc oral argument scheduled August 18, 2026. See also Congressional Research Service, Legal Sidebar LSB11433, May 2026.
 - 29 Amicus briefs filed June 4, 2026, in *NAIB v. Weiser* (10th Cir., en banc). The December 16, 2025 round in support of rehearing included substantively similar briefs from the FDIC, the OCC, twenty states led by Utah, and the ABA, BPI, and 52 state bankers associations.
 - 30 Amicus brief of California, Connecticut, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, New York, Washington, and the District of Columbia, filed July 13, 2026; amicus brief of the Center for Responsible Lending and the National Consumer Law Center, filed July 21, 2026.
 - 31 Amicus brief of Thomas J. Miller, former Attorney General of Iowa, filed July 15, 2026, in *NAIB v. Weiser* (10th Cir., en banc).
 - 32 Complaint and motion for preliminary injunction, filed June and July 9, 2026 respectively, in the U.S. District Court for the District of Oregon, challenging Oregon H.B. 4116 (signed April 7, 2026; effective June 5, 2026); OCC amicus brief filed July 28, 2026.
 - 33 See Patrick M. Brenner, “For Heaven’s Sake, Stop It: DIDMCA Opt-Outs Threaten the Commerce Clause,” *American Banker*, 2026.
 - 34 *Cantero v. Bank of America, N.A.*, Nos. 21-400, 21-403 (2d Cir. May 5, 2026); petition for certiorari filed May 22, 2026.
 - 35 Order of the U.S. Court of Appeals for the Seventh Circuit, May 8, 2026, vacating and remanding the

- Illinois Interchange Fee Prohibition Act litigation in light of the OCC's interim final rule and preemption order, April 2026.
- 36 *Opportunity Financial, LLC v. Hewlett*, Los Angeles County Superior Court, Statement of Decision, May 19, 2026 (following tentative ruling of February 24, 2026).
- 37 Patrick M. Brenner, "The Case Against 30-Year Mortgages," *The Wall Street Journal*, October 8, 2025.
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- 39 Patrick M. Brenner, "Mortgage rates just fell below a crucial psychological threshold," *The Washington Post*, March 10, 2026.
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