INSTITUTE FOR
Pension Fund
Integrity

May 12, 2020

To:

The Hon. Mitch McConnell
Senate Majority Leader
The Hon. Chuck Schumer
Senate Minority Leader
The Hon. Mike Crapo
Chair, Senate Banking, Housing, and Urban Affairs Committee
The Hon. Sherrod Brown
Ranking Member, Senate Banking, Housing, and Urban Affairs Committee

The Hon. Nancy Pelosi
Speaker of the House
The Hon. Steny Hoyer
House Majority Leader
The Hon. Kevin McCarthy
House Minority Leader
The Hon. Maxine Waters
Chair, House Financial Services Committee
The Hon. Patrick McHenry
Ranking Member, House Financial Services Committee

Dear Honorable Members of Congress,

Recently, a group of 19 U.S. Senators sent a letter to the Small Business Administration, Treasury Department, and Federal Reserve raising concerns that several major financial institutions may be inclined to withhold support for certain industries through the Paycheck Protection Program and other COVID-19 relief efforts. The industries in question – the energy sector, federal contractors for ICE, and gun manufacturers, among others – operate in good faith and compliance with the law but have been singled out because they are politically contentious to some. This discrimination against entire legitimate sectors of the economy falls well outside the authority of these banks and is an affront to workers and small businesses across the country struggling to recover from this downturn.

We strongly believe that in this time of economic crisis, every resource available in the public and private sectors must be utilized to bring about a robust and widespread recovery. We welcome and applaud the efforts of these Senators to ensure that the financial resources at the disposal of financial institutions are used in an unbiased manner, and that their loan decisions are made based on creditworthiness, not politics.

As advisory board members of the Institute for Pension Fund Integrity, we have worked to confront similar pressures on state and local pensions. Just like these financial institutions, public pension managers have a fiduciary obligation to their beneficiaries, meaning that their investment decisions must be guided first and foremost by the potential for returns and the stability of the fund, not by the political winds of the day. This duty is essential to ensuring the long-term health of these pensions and guaranteeing a stable retirement for America's hard-working public servants. Just as growing pension fund liabilities have led public officials to reconsider their fiduciary priorities, the impact this market crash has had on financial institutions should spark a reconsideration of their obligations as well. Now is the time to support the entire economy - not to pick favorites.

Several banks have cited their operation in the free market as justification for their decisions to provide or not provide credit. While most private companies do have the flexibility to operate as they see fit and do business based on broader political trends, this is not the case for federally chartered and insured financial institutions. Frankly, banks do not operate in the free market - without significant federal backing, they would be unable to do business. The relationship between the banks and the government is symbiotic. Just as the government came to the rescue of big banks in the aftermath of the 2008 financial crisis in order to stabilize the economy, these banks now have an obligation to step up and do their part in this time of economic turmoil. Denying loans to entire industries based on political pressure is an affront to the American taxpayers who have subsidized these institutions. It is especially egregious when it involves money loaned through the Paycheck Protection Program and other COVID-19 relief bills.

Politically disfavored businesses have been the target of these attacks, although the reasons are without merit. For example, six large banks doing business in the U.S. - including giants such as Wells Fargo and Bank of America - recently succumbed to pressure from activist groups by refusing to issue loans to GEO Group and Core Civic, who provide more than 70% of detention bed capacity for the federal government. This single move will deny them access to billions in lending needed to run their operation. These are lawful, U.S.-based companies. Citi and Morgan Stanley announced they would not offer financial support for oil and gas projects in the Arctic. Yet the natural gas sector supports nearly 3 million American jobs; natural gas has also developed the solutions that have brought American greenhouse gas emissions to their lowest level since 1992.

The Community Reinvestment Act denies redlining for any reason and permits the denial of banking services only on the basis of safety and soundness. Individuals are free to invest their money in a variety of ways, including investments particularly devoted to certain environmental, social and governance goals. However, when it comes to banking activity, individuals cannot compel the denial of banking services to others for their own political agenda. The proper recourse for concerned citizens is and remains for them to convince the government to ban activities through the legislative process, not through political intimidation.

What actions can be taken to combat this trend? At the executive level, the SBA and other regulatory agencies addressed in this letter should ensure that financial institutions are limited in their ability to provide loans in a non-fiduciary manner. In the legislature, several Senators have introduced the Financial Discrimination of Industrial Contractors (FDIC) Act, which would revoke the insured status of banks that deny service to otherwise legitimate federal contractors.

Decisions about the regulation or reform of any industry should be made based on sound public policy analysis by elected officials and through the free market decision-making of American consumers. Outside of such broader changes, the investment decisions made by major financial institutions should reflect the creditworthiness of a company – nothing more. As public-facing companies that rely on public support and public trust for their very existence, these banks have an obligation to provide whatever support they can to the country as a whole. It is our hope that they will take heed of the concerns raised by the Senate and re-commit to their fiduciary obligations.

Sincerely,

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