

Congress of the United States
House of Representatives
Washington, DC 20515

August 10, 2017

The Honorable Jeff Sessions
Attorney General
U.S. Department of Justice
Washington, D.C. 20530

The Honorable Janet Yellen
Chair
Federal Reserve Board of Governors

Mr. Keith Noreika
Acting Comptroller
Office of the Comptroller of the Currency

Dear Attorney General Sessions, Chair Yellen and Acting Comptroller Noreika:

Operation Choke Point was an Obama Administration initiative that destroyed legitimate businesses to which that Administration was ideologically opposed (*e.g.*, firearms dealers) by intimidating financial institutions into denying banking services to those businesses. The damage from this initiative lingers, and we request that you take immediate corrective action.

Obama Administration attorneys first proposed Operation Choke Point (OCP) in November 2012. From February 2013 through August 2013, DOJ issued 60 administrative subpoenas to banks doing business with certain types of entities.¹ Affixed to some of these subpoenas, was a list from the Federal Deposit Insurance Corporation and the Comptroller of the Currency (COC) captioned “High Risk Merchants/Activities.” The list included legitimate industries like payday lenders and firearms dealers.²

The Administration anticipated that, as a result of these actions, banks would stop serving lawful businesses in the targeted categories. For example, with regard to payday lenders a 2013 internal DOJ memo read:

Although we recognize the possibility that banks may have therefore decided to stop doing business with legitimate lenders, we do not believe that such decisions

¹ *The FDIC's Role in Operation Choke Point and Supervisory Approach to Institutions that Conducted Business with Merchants Associated with High-Risk Activities*, OFFICE OF INSPECTOR GEN. (Sep. 2015), <https://www.fdicig.gov/reports15/15-008AUD.pdf>.

² *Federal Deposit Insurance Corporation's Involvement in "Operation Choke Point."* COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM 3 (Dec. 8, 2014), <https://oversight.house.gov/wp-content/uploads/2014/12/Staff-Report-FDIC-and-Operation-Choke-Point-12-8-2014.pdf>.

should alter our investigative plans. Solving that problem – if it exists – should be left to legitimate lenders themselves who can, through their own dealings with banks, present sufficient information to the banks to convince them that their business model and lending operations are wholly legitimate.³

In the Obama Justice Department’s view, targeted industries were guilty until proven innocent, and that was fine in its view, because the presumption of guilt was rebuttable. This theory, which underlay Operation Choke Point, turned traditional law enforcement procedure on its head. Ordinarily speaking, law enforcement moves from the specific to the general. A bad actor is identified and then gradually the net widens to capture co-conspirators or a larger criminal enterprise. OCP started by presuming a whole industry guilty until individual merchants prove their innocence.

Oversight by our Committees concluded that DOJ exceeded its legal authority to run Operation Choke Point and that the program inflicted an unacceptable level of damage on legitimate business categories that the Administration nevertheless deemed objectionable.⁴

On June 22, 2017, the Judiciary Committee convened a roundtable discussion with victims of Operation Choke Point to discuss their experiences and the need for remedial action in the new Administration. It featured business owners from across the country representing industries including firearms dealers, payday lenders and amusement game owners. They all had similar stories of longstanding banking relationships suddenly terminated without any evidence of heightened risk or wrongdoing.

One of the participants—a veteran and a former law enforcement professional—described how the bank came to him and said that, the government “came in like a bunch of thugs” and pressured them to stop serving his small firearms business. Without access to banking services, his business faltered. He concluded, on the verge of tears, by stating that there was “no fix” for what happened to him. Another participant, a firearms manufacturer who had been in business over 40 years, described that he held accounts at over twenty financial institutions and within a short period of time all were terminated. Participants from other industries told of losing access to banking services as recently as April 2017. In short, the “de-risking” effects of Operation Choke Point continue to reverberate.

As highly regulated and risk-averse entities, banks may be hesitant to resume providing services to legitimate businesses unfairly targeted by Operation Choke Point absent explicit directives countermanding the Obama Administration’s previous guidance. We would also note that a number of the targeted industries, such as the firearms industry, are already heavily regulated by the federal government. In fact, firearms manufacturers and dealers cannot legally exist without permits granted by the federal government.

³ Memorandum from Michael S. Blume, Director, Consumer Prot. Branch, to Stuart F. Delery, Assistant Attorney Gen., U.S. Dep’t of Justice (Sept. 9, 2013) [HOCR-3PP000335].

⁴ See STAFF OF H.R. COMM. ON THE JUDICIARY, 113TH CONG., REP. ON OPERATION CHOKO POINT (Comm. Print 2014).

On January 28, 2015, following intense Congressional oversight, the FDIC took a positive step, announcing guidance encouraging banks to judge customer relationships on a case-by-case basis rather than “declining to provide banking services to entire categories of customers.”⁵ However, while the FDIC rescinded its “High-Risk Merchant” list, it has never (a) rescinded its general guidance about reputation risks posed by bank customers, or (b) retracted its assertion that the industries it had listed are particularly high-risk. We are concerned and informed that banks have continued to refuse to serve law-abiding members of lawful industries on account of their purported poor reputations.

Accordingly, we request that your respective Departments and agencies issue clear and public formal policy statements repudiating Operation Choke Point and the abuses by financial regulators of the “reputation risk” guidance they developed and promulgated under Operation Choke Point’s auspices. Financial institutions should be given explicit assurance that they may serve these unfairly targeted industries just like any other legitimate businesses. Institutions should also be encouraged to restore long-standing relationships with lawful, targeted industries. Finally, the regulatory agencies should be directed to implement procedures to insure that field-level examiners adhere to this policy, including, if appropriate, by barring the use of “moral suasion” to pressure banks not to serve certain categories of customers.

Because the injury from Operation Choke Point is ongoing, we request that you reply to us with a plan for remedial action by August 31, 2017.

Sincerely,



Bob Goodlatte
Chairman
House Judiciary Committee



Jeb Hensarling
Chairman
House Financial Services Committee



Tom Marino
Chairman
Subcommittee on Regulatory Reform,
Commercial and Antitrust Law



Blaine Luetkemeyer
Chairman
Subcommittee on Financial Institutions and
Consumer Credit

⁵ FED. DEPOSIT INSURANCE CORP., DIVISION OF RISK MANAGEMENT SUPERVISION, STATEMENT ON PROVIDING BANKING SERVICES, <https://www.fdic.gov/news/news/financial/2015/fil15005.pdf> (2015).



Darrell Issa
Chairman
Subcommittee on Courts, Intellectual Property
and the Internet