

Congress of the United States
Washington, DC 20515

October 23, 2014

The Honorable Fred W. Gibson
Acting Inspector General
Federal Deposit Insurance Corporation
3501 Fairfax Drive
Arlington, VA 22226

Dear Acting Inspector General Gibson:

We write to request an immediate investigation into the involvement of the Federal Deposit Insurance Corporation (FDIC) with the Department of Justice (DOJ) program known as Operation Choke Point, and of the FDIC officials and staff involved in any aspect of its creation and/or execution.

By way of background, Operation Choke Point is a DOJ initiative that aims to force businesses, many of which are licensed and legally-operating, out of the financial services space and therefore, out of business. DOJ officials are working in collusion with federal banking regulators, including but perhaps not limited to the FDIC, to apply regulatory pressure to financial institutions that offer banking services to specific industries as opposed to targeting bad actors within a given industry. These include the non-deposit lending industry, pawnbrokers, firearms and ammunition manufacturers and retailers, and tobacco retailers, to name only a few.

After extensive research, the House Oversight and Government Reform Committee issued a report on May 29, 2014, based on documentation provided by DOJ. It is our understanding that the FDIC has been asked to produce similar documentation for the Committee. The findings thus far have shown an egregious abuse of power that merits your full attention. First, internal DOJ memoranda show that DOJ staff who conceived of, approved and/or implemented Operation Choke Point questioned the legal authority on which the program was based. The powers granted to DOJ under the *Financial Institutions Reform, Recovery, and Enforcement Act of 1989* (FIRREA) were intended to address issues that pose substantial risk to financial institutions. FIRREA was not meant to address consumer fraud, yet DOJ staff abused FIRREA authority to address consumer fraud issues while conceding in a memorandum that the "financial institutions we are investigating have not suffered any actual losses." As such, it appears that the FDIC, an organization whose primary mission is to protect the safety and soundness of our nation's financial institutions, has engaged in an operation that will, without question or objection, force legitimate customers from banks, causing not only damage to those customers but also driving legitimate revenue from the banks themselves.

The clear connection between Operation Choke Point and the FDIC's list of "high risk" businesses is troubling. As you may know, a September 17, 2013, presentation by Michael

Benardo, Chief, FDIC's Division of Risk Management Supervision, to the Federal Financial Institutions Examination Council included a list of "high risk merchants and activities" that merit heightened scrutiny. Merchant categories named as high risk and deserving of heightened scrutiny included ammunition sales, coin dealers, firework sales, pay day loans and tobacco sales, among many others. The published House Oversight and Government Reform Committee report showed that the FDIC "provided no explanation or warrant for the designation of particular merchants as 'high risk,'" and failed to show any valid connection between legitimate illegal activities, such as Ponzi schemes, and other activities arbitrarily deemed as "high risk" such as firearm sales and coin dealing. Furthermore, the Committee has produced documents showing that the FDIC worked in close coordination with the Justice Department to discuss investigative approaches and to assist in DOJ investigations. In one account, the FDIC confirmed that it informally loaned at least two examiners to work exclusively on Operation Choke Point. This was done in spite of the fact that the appropriate role of an examiner is to examine financial institutions, not participate in a DOJ campaign of intimidation. It is beyond worrisome that DOJ's radical interpretation and application of FIRREA, which the Committee reported as having "effectively transformed the FDIC guidance into an implicit threat of a federal investigation," has been coordinated through and reinforced by FDIC staff.

This July, FDIC General Counsel Richard J. Osterman testified before the House Financial Services Committee that the FDIC did not engage in pressuring banks to cut ties with certain varieties of businesses, but rather counseled them on an individual, case-by-case basis. When questioned as to whether the subpoenas effectively stopped banks from continuing relationships with certain businesses, Mr. Osterman replied that he did not think that was an accurate picture, stating "the subpoena is asking you for documents. If the bank is operating lawfully and the third party payment processor is acting lawfully there, then you have nothing to be concerned about." Moreover, Mr. Osterman flatly rejected the assertion made by several members of the Financial Services Committee from both parties that the DOJ and FDIC were shutting down legitimate businesses. However, we have obtained correspondence from an FDIC regional director which states that the FDIC condemns relationships with specific industries. In this instance we see it is payday lenders, with the regional director calling them "costly" and saying that they "offer limited utility for consumers" and carry "a high degree of risk." This correspondence went on to state that the FDIC has found "that activities related to payday lending are unacceptable for an insured depository institution." This is in addition to the fact that the DOJ memoranda provided to the House Oversight and Government Reform Committee clearly indicates that specific industries are targeted by Operation Choke Point and with the assistance of FDIC examiners and senior officials. It is clear from these statements that the FDIC has engaged in discrimination against legitimate business. What is more disconcerting is that Congress has received false testimony from a senior FDIC official.

There is no doubt in our minds that FDIC and DOJ officials have abused their authority to advance a political and/or moral agenda. According to DOJ memoranda, Department officials were perfectly aware that Operation Choke Point would force legally-operating businesses out of the financial services space. Included in the internal memoranda obtained by Congress was evidence that senior staff had informed the Attorney General that Operation Choke Point had a detrimental impact on legitimate businesses and that the program was causing banks to exit entire lines of business. Despite this knowledge and admission, and of internal debates over the

legitimacy of the program, Operation Choke Point continues, and with considerable and unapologetic help from the FDIC.

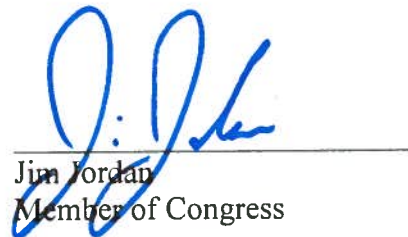
The result of this initiative has been chilling. We understand through conversations with senior FDIC and DOJ officials including Stuart Delery, the now-Acting Associate Attorney General, and former Assistant Attorney General for the Civil Division that more than 50 subpoenas may have been issued to financial institutions serving nondeposit lenders; those 50 subpoenas have produced only one case to date. This information should allow little room to question that an illegal blanket approach toward banking supervision is being employed; this is unacceptable.

This situation merits your full and immediate attention, and we request that you launch a comprehensive investigation on Operation Choke Point and the individuals within FDIC charged with creating and carrying out this unprecedented initiative. We ask that, to the extent possible, you keep Congress informed of your efforts. In the event that we fail to hear from you by November 12, 2014, we request a meeting with you so that Members of Congress can directly express to you our concerns. We appreciate your diligence in this matter and look forward to your prompt response.

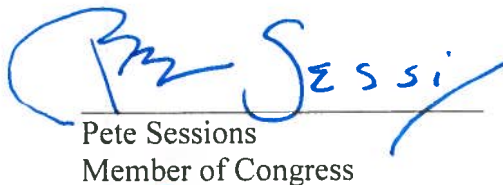
Sincerely,



Blaine Luetkemeyer
Member of Congress



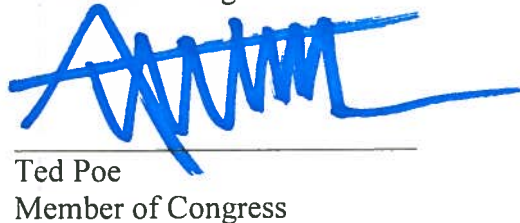
Jim Jordan
Member of Congress



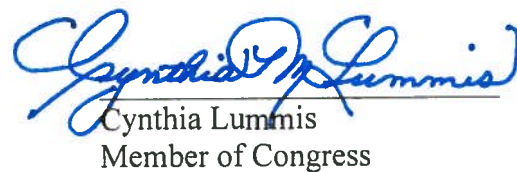
Pete Sessions
Member of Congress



Lynn Westmoreland
Member of Congress



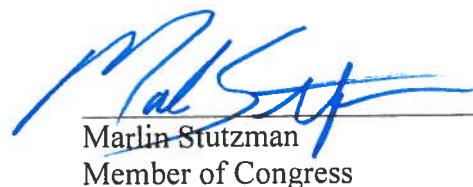
Ted Poe
Member of Congress



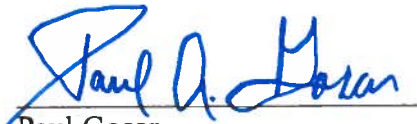
Cynthia Lummis
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Lee Terry
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Marlin Stutzman
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Paul Gosar
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Dennis Ross
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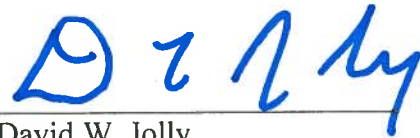
Stevan Pearce
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Tom Cotton
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David Schweikert
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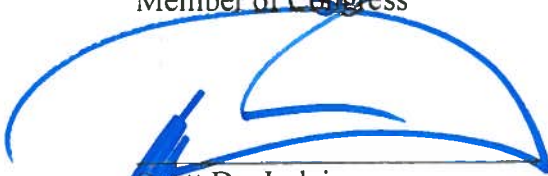
Luke Messer
Member of Congress



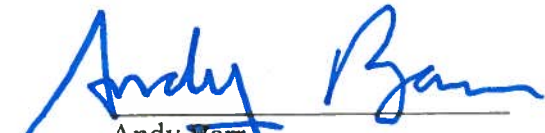
Mick Mulvaney
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Brad R. Wenstrup
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Scott DesJarlais
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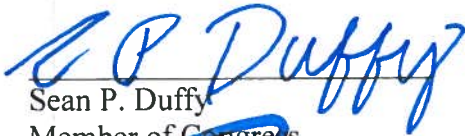
Andy Barr
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Stephen Fincher
Member of Congress



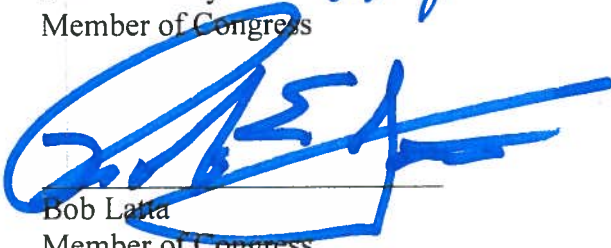
Kenny Marchant
Member of Congress



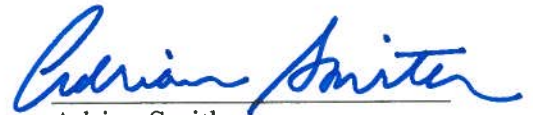
Sean P. Duffy
Member of Congress



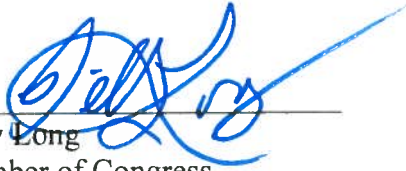
Ann Wagner
Member of Congress



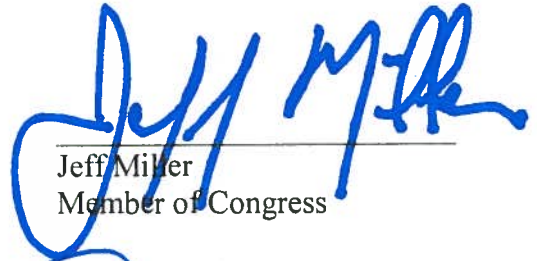
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Adrian Smith
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Billy Long
Member of Congress



Jeff Miller
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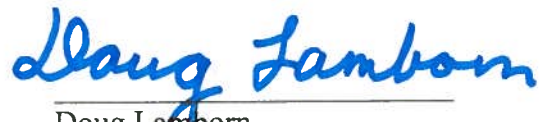
Thomas Massie
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Doug Lamborn
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Tim Griffin
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