



Small Victory in Congressional War Against Operation Chokepoint

Following a meeting between Representative Blaine Luetkemeyer (R-Mo.) and the chairman and vice-chairman of the Federal Deposit Insurance Corporation on Wednesday morning, the FDIC [issued some changes](#) in how it will enforce Operation Chokepoint.



Luetkemeyer, a member of the House Financial Services Committee, and Representative Darrel Issa (R-Calif.) who chairs the House Oversight and Government Reform Committee, have focused on the abuses, intimidation, and blackmail tactics used in the Operation Chokepoint program to shut down retail gun shops, along with payday lenders and other businesses suffering from what the Obama administration calls “reputational” risks.

In what Kelsey Harkness, a journalist at the *Daily Signal*, called “dramatic steps” in the battle to dismantle the program, she said that Luetkemeyer told her in a telephone conversation:

We’re very pleased they’ve acknowledged their wrongdoing and they’ve accept our suggestions to put in place measures to stop this activity.

After reviewing exactly what the FDIC has allegedly agreed to, it must be conceded that those steps are hardly dramatic, but at least they are steps in the right direction.

The FDIC, instead of terminating the continued harassment of banks that lend to businesses in the so-called “reputational risk” category (gun and ammunition dealers, payday lenders, etc.), they are merely softening their approach. Instead of verbally threatening to audit recalcitrant banks that resist pressure from the FDIC to stop lending to them, FDIC will put those threats in writing.

Such written warnings must indicate exactly what law or regulation or rule FDIC believes a bank’s customer is violating before terminating their account. And they must not use the term “reputational risk,” as it appears to paint too broad a brush by including porn shops in with gun and coin dealers, dating services, telemarketing companies, travel clubs, and tobacco sellers. The FDIC says banks must look at each customer and make judgment on a “case-by-case” basis before pulling their oxygen hose.

What is more important than the tweaking of procedures is the dampening of the culture inside the FDIC which, prior to the meeting with Luetkemeyer, was that of a bully, using threats of full-scale audits of banks that fail to shut off financing to these “unsavory” businesses. Luetkemeyer told Harkness:

The FDIC has allowed a culture within their agency to blossom that they believe it’s OK to impose



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their personal opinions and value systems in a regulatory way.

They are not a regulatory police — their job is to enforce the law....

We're pleased that they're working with the [inspector general] so that they can change the culture of what goes on in their agency. But we're not going to take anything off the table until we get this program stopped.

Operation Chokepoint had its genesis long before the *Wall Street Journal* exposed it in the spring of 2013. Back in 2012, Bank of America pulled the plug on its 12-year financial relationship with McMillan Group International, a gun manufacturer located in Phoenix, and with American Spirit Arms in Scottsdale, in what was clearly an attack on guns. As Joe Sirochman, the owner of American Spirit Arms, said:

At first, it was the bigger guys — gun parts manufacturers or high-profile retailers. Now the smaller mom-and-pop shops are being choked out....

They need their case [and credit lines] to buy inventory. Freezing their assets will put them out of business.

Kelly McMillan agreed:

This is an attempt by the federal government to keep people from buying guns and a way for them to combat the Second Amendment rights we have. It's a covert way for them to control our right to manufacture guns and individuals to buy guns.

Representative Darrell Issa started investigating Operation Choke Point, and last May his committee published its report concluding that the program was illegally limiting credit availability to legitimate businesses in order to push a political agenda. The report concluded:

Forceful prosecution of those who defraud American consumers is both responsible and admirable. However, Department of Justice initiatives to combat mass-market consumer fraud must be legitimate exercises of the Department's legal authorities, and must be executed in a manner that does not unfairly harm legitimate merchants and individuals.

Operation Choke Point fails both of these requirements.

The solution isn't, according to Issa, going to involve slight modifications of policies used by the department. Instead the program must be terminated altogether:

In light of the Department's obligation to act within the bounds of the law, and its avowed commitment not to "discourage or inhibit" the lawful conduct of honest merchants, it is necessary [for the department] to disavow and dismantle Operation Choke Point.

Then Issa and his Government Oversight committee looked into one of the department's partners in the crime: the FDIC. In its report in December, it made clear who the targets of Operation Choke Point really are:

The experience of one entry on the list [of "reputational risk" companies] — firearms and ammunitions merchants — effective[ly] traces the downstream influence of the ... list. Regional Officers ... variously "prohibit" payment processing for firearms merchants, characterize loans to firearms dealers as "undesirable," and generally subjecting firearms and ammunition merchants to significantly higher due diligence standards.



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After reviewing the unhappy experiences of several such dealers suffering under the egregious and illegal program, Issa's committee concluded:

Operation Choke Point is little more than government-mandated de-risking. The FDIC, in cooperation with the Justice Department, made sure banks understood — or in their own language, “got the message” — that maintaining relationships with certain disfavored business lines would incur enormous regulatory risk....

Operation Choke Point violates the most fundamental principles of the rule of law and accountable, transparent government.

One government agency enforcing Operation Choke Point that wasn't mentioned in either of Issa's committee's reports is the National Credit Union Administration (NCUA), which is also enforcing the program with extreme prejudice. Mike Shuetz, the owner of Hawkins Guns in Hawkins, Wisconsin, got a call from his credit union last November that they were terminating his relationship with them.

He got mad, took a recorder down to Heritage Credit Union in Hawkins, and began asking questions and recording the answers he got. The regional manager confirmed that the NCUA forced him to close Shuetz's account:

The examiners from NCUA — that's who governs us, it's a federal government agency — came in and did an exam on everything. There [were] about a dozen [examiners] crawling around the building. They were just hammering us.

They came in, looked at our books, looked at everything and said: “Here are some accounts that we feel that we're going to regulate you on.” So they kind of put the screws to us as far as what we could and couldn't do....

We're not really anti-gun as a company, but our hands are tied.

With some modest success in dampening regulatory enthusiasm for Operation Choke Point at the FDIC, Issa and Luetkemeyer might now set their sights on the thugs at the NCUA as part of the dismantling process.

A graduate of an Ivy League school and a former investment advisor, Bob is a regular contributor to The New American magazine and blogs frequently at www.LightFromTheRight.com, primarily on economics and politics.



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