



Written by [Bob Adelman](#) on July 15, 2014

## Pushback Against Operation Choke Point Gains Momentum

The secret initiative that began as Operation Choke Point (OCP) in March 2013 is now beginning to meet not only with massive unfavorable publicity but also congressional pushback. [Three hearings by House committees this week](#) are indicative of the mounting outrage OCP has generated.

Just months into his first term, President Obama launched “Operation Broken Trust” under an executive order, creating the Financial Fraud Enforcement Task Force, seeking to “root out and expose” various investment scams that cropped up at the start of the Great Recession. It has now morphed into a gigantic interagency behemoth involving the Department of Justice, the FBI, the Securities and Exchange Commission, the U.S. Postal Service, the IRS, the U.S. Commodity Futures Trading Commission, and the U.S. Secret Service.

“Mission creep” inevitably set in, and the scope of the investigative attention expanded greatly to include at least 30 separate industries, many having little or nothing to do with financial services, such as ammunition sales, firearms sales, fireworks dealers, coin dealers, escort services, online gambling, and travel clubs, to mention only a few.

These were selected by the task force as being “high” in “reputational” risk, and pressure was brought to bear on banks providing services to them to terminate those banking services under threat of subpoena from the Department of Justice.

That pressure has worked. The Financial Services Centers of American commissioned a survey of its members and learned that 14 of the 61 banking relationships reported by its members have been terminated since November.

Just ask T.R. Liberti, the owner of Discount Ammo-N-Guns in Florida, whose bank closed his accounts in March. Or ask the owner of Black Rifle Armory in Henderson, Nevada, whose accounts were closed until the bank determined if any of his company’s transactions were “suspicious.”

Or ask Kelly McMillan of McMillan Group International, a gun manufacturer in Phoenix, Arizona, about the Bank of America abruptly terminating their 12-year relationship. She saw clearly what was going on: “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.”





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The banks are caught in the middle: wanting to serve their customers while at the same time keeping their regulators happy. It's an impossible situation as noted by Richard Riese, a senior vice-present at the American Bankers Association:

We're being threatened with a regulatory regime that attempts to foist on us the obligation to monitor all types of transactions. All of this is predicated on the notion that the banks are a choke point.

The pushback likely began in earnest when Senator Ted Cruz published his list of "76 Lawless Obama Actions" on May 7 which listed, at No. 8:

Government agencies are engaging in "Operation Choke Point" where the government asks banks to "choke off" access to financial services for customers engaging in conduct the Administration doesn't like, such as "ammunition sales."

This was followed by a demand letter from Darrell Issa, chairman of the House Oversight and Government Reform Committee, to U.S. Attorney General Eric Holder which said, in part:

The extraordinary breadth and depth of [your] Department's dragnet prompts concern that the true goal of Operation Choke Point is not to cut off actual fraudsters' access ... but rather to eliminate [businesses to] which [your] Department objects.

Weeks later Issa's committee published its report about OPC, accusing the program of illegally choking off financing resources to legitimate businesses and claiming that the Department of Justice "lacks adequate legal authority" for its moves. OPC, Issa's committee claims, has "effectively transformed the [original] FDIC guidance into an implicit threat of a federal investigation. Suddenly, doing business with a 'high-risk' merchant is sufficient to trigger a subpoena by the Department of Justice."

The report concluded:

The Department's radical reinterpretation of what constitutes an actionable violation ... fundamentally distorts Congress' intent in enacting the law, and inappropriately demands that bankers act as the moral arbiters and policemen of the commercial world....

It is necessary to disavow and dismantle Operation Choke point.

Hard after that report came a lawsuit filed on June 5 by Community Financial Services Association and Advance America against the FDIC, claiming that it has exceeded its statutory authority, that is actions are "arbitrary and capricious" and "were promulgated without observance of the procedures required by law," while depriving them "of liberty interests without due process of law."

Barely a week later, the United States Consumer Coalition announced a \$5 million media campaign against OCP, claiming that it "is a program created by the Administration to shut down lawful businesses by 'choking off' their access to banking services," which "fundamentally violate the principles upon which this country was founded."

A week later Senator Rand Paul filed an amendment to prevent any funds given either to the FDIC or the Department of Justice to enforce OCP, particularly noting that it would prohibit any action by either department to "discourage the provision or the continuation of credit ... to a manufacturer, dealer, or importer of firearms or ammunition."

On top of that came a bill filed on June 26 by Rep. Blaine Luetkemeyer (R-Mo.) to end Operation Choke Point altogether, saying, "It is time to stop these backdoor attempts by government bureaucrats to



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blackmail and threaten businesses simply because they morally object to entire sectors of our economy.”

On Monday William Isaac, the former chairman of the FDIC, expressed his chagrin at the direction his agency had taken under the Obama administration. Writing at *The Hill*, Issac exclaimed:

Operation Choke Point is one of the most dangerous programs I have experienced in my 45 years of service as a bank regulator, bank attorney and consultant, and board member.

Operating without legal authority and guided by a political agenda, unelected officials at the DOJ are discouraging banks from providing basic banking services ... to lawful businesses simply because they don't like them. Bankers are being cowed into submission by an oppressive regulatory regime.

On Tuesday there will be two hearings on OCP, one by the Oversight and Investigations Subcommittee entitled “The Department of Justice’s ‘Operation Choke Point’” and the other by the House Committee on Financial Services, which will examine Luetkemeyer’s bill with the help of six panelists representing the banking industry.

The relentless onslaught against OCP will continue on Thursday when the House Judiciary Committee holds a hearing entitled “Guilty Until Proven Innocent? A Study of the Propriety and Legal Authority for the Justice Department’s Operation Choke Point.”

With all the negative press and exposure OCP has been getting, the more likely it is that the old expression will be found to be true once again: When combating corruption, sunlight is the best disinfectant.

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