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United States Senate

COMMITTEE ON BANKING, HOUSING, AND
URBAN AFFAIRS

WASHINGTON, DC 20510-6075

October 6, 2014

The Honorable Eric Holder
Attorney General
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Holder:

We write to express our strong concerns regarding “Operation Choke Point” and its impact on merchants, financial institutions, and consumers. Specifically, Operation Choke Point is inappropriately targeting business models not supported by the Administration and is politicizing the payment system and access to credit markets. The result is causing banks and payment processors to deny or terminate loans and restrict access to payment systems for law-abiding and legitimate businesses to avoid unwarranted investigations and legal actions by the Department of Justice (“DOJ”) and Federal financial regulators.

Last summer, news reports surfaced regarding a DOJ-led initiative (named “Operation Choke Point”) with other members of the Financial Fraud Enforcement Task Force (including the Federal Deposit Insurance Corporation (“FDIC”), the Federal Trade Commission (“FTC”), and the Office of the Comptroller of the Currency (“OCC”)) to crack down on mass frauds. As part of Operation Choke Point, rather than initiating cases against specific bad actors, these Federal agencies devised a list of certain “high-risk merchant” categories with the intent of “choking-off” these merchants’ access to payment systems and banking services. This list appears to have been created with no public input, no compliance guidance or metrics for private entities to follow, and with disregard for the legality of a merchant’s operation. Further, the list has been used as a pretext by DOJ to limit essential banking services for industries out of favor by this Administration.

According to constituents who have been affected by Operation Choke Point as well as news reports and documents obtained by Congress, banks and payment processors believed that if they did business with small businesses on that list they would face heightened regulatory scrutiny, including potentially being penalized in banking examinations and subject to subpoenas and enforcement actions by the DOJ. We understand that these concerns have caused law-abiding and legitimate gun store owners and short-term, small-dollar credit lenders to lose access to payment systems and basic banking services. In addition, small and community banks have lost valuable customers merely because their legal businesses are disfavored by Federal agencies, while consumers have lost access to merchants they need and value.

Last month, at the urging of many members of Congress, the Federal financial regulators updated regulatory guidance and retracted the list of “high-risk merchant” categories. This is an encouraging first step. However, it will be important to monitor how this new guidance is implemented at the bank examiner level and in the selection of enforcement actions by the regulators.

It is now imperative that the DOJ also revise its implementation of Operation Choke Point. To date the DOJ has implemented Operation Choke Point by relying on a highly-questionable interpretation of the Financial Institution Reform, Recovery, and Enforcement Act (“FIRREA”) to investigate banks and payment processors and hold them liable for alleged wrong-doings of their merchant customers. The DOJ must focus on combating fraud and stop politicizing its enforcement policies. It should promptly cease seeking to use subpoenas and legal actions to unfairly impose liability on parties not involved in fraud and to put out of business merchants engaged in legal and legitimate commerce that DOJ disfavors.

As members of the Senate Banking Committee, which is responsible for oversight of financial regulation, we have a responsibility to fully understand and review DOJ’s implementation of Operation Choke Point. The Committee has previously requested information about Operation Choke Point. Unfortunately, your June 24th letter to the Senate Banking Committee did not satisfactorily address our concerns. Accordingly, we request that you provide us with the following information:

1. A detailed explanation and guidance on how FIRREA and other laws will be enforced as part of Operation Choke Point and similar initiatives, including how reputational risk concerns will be addressed.
2. Please provide all communications between the DOJ and each Federal financial regulator (including the FDIC, the FTC, and the OCC) concerning the development and implementation of Operation Choke Point and similar initiatives.
3. Please identify the number of referrals or informal “tips” that each Federal financial regulator (including the FDIC, the FTC, and the OCC) has made to the DOJ as a part of Operation Choke Point and similar initiatives or that has resulted in a FIRREA investigation.
4. Please describe the steps the DOJ will take to refocus its implementation of Operation Choke Point in light of the new regulatory guidance.

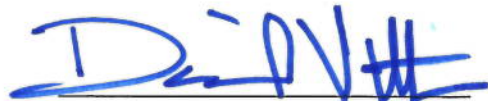
We respectfully request all responsive information be provided to us by November 2, 2014.

Thank you for your cooperation.

Sincerely,



Mike Crapo
Mike Crapo
U.S. Senator




David Vitter
David Vitter
U.S. Senator



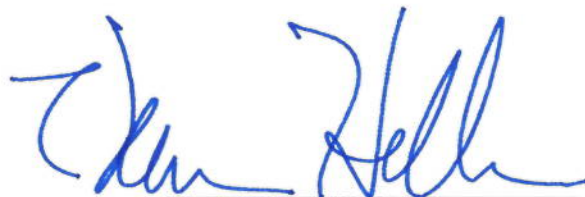
Mike Johanns
Mike Johanns
U.S. Senator



Jerry Moran
Jerry Moran
U.S. Senator



Tom Coburn
Tom Coburn
U.S. Senator



Dean Heller
Dean Heller
U.S. Senator