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United States Senate
COMMITTEE ON BANKING, HOUSING, AND
URBAN AFFAIRS

WASHINGTON, DC 20510-6075

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November 7, 2018

The Honorable Jelena McWilliams
Chairman
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Dear Chairman McWilliams:

Recently released internal Federal Deposit Insurance Corporation (FDIC) documents regarding Operation Choke Point highlight the need for the FDIC to send a clear message that the old culture of Operation Choke Point is over and the need to review how policy has been communicated from the FDIC to regulated institutions. Businesses should not be targeted simply for operating in an industry that a particular administration might disfavor.

During the Obama Administration, we fought against Operation Choke Point, an initiative in which federal agencies devised and relied upon a list of politically disfavored merchant categories with the intent of “choking-off” these merchants’ access to payment systems and banking services. Operation Choke Point is deeply concerning because law-abiding businesses are targeted strictly for operating in an industry that some in the government disfavor. Under fear of retribution, many banks have stopped providing financial services to members of these lawful industries for no reason other than political pressure, which takes the guise of regulatory and enforcement scrutiny.

The Department of Justice has admitted that Operation Choke Point was inappropriate and claims that it has been terminated. In a letter, the DOJ stated that businesses should not be targeted simply for operating in an industry that a particular administration might disfavor.

Recently released internal FDIC documents regarding Operation Choke Point are disturbing. For example, in an internal document, one senior FDIC official said that FDIC staff should use “available means, including verbal recommendations” to encourage banks not to do business with a certain disfavored, but legal, industry. This reinforces the challenges of ending Operation Choke Point and why it is not appropriate for staff at the FDIC to communicate policy through verbal “recommendations.”

MC/jc

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To remedy this, we request that the FDIC review all options available to ensure lawful businesses are able to continue to operate without fear of significant financial consequences. Without such action, banks may believe FDIC staff expects them to continue to deny financial services to legitimate and profitable businesses. In addition, we request the FDIC review how policy is communicated from the FDIC to its regulated institutions more broadly.

There is no place for a political agenda in oversight of the banking system. Operation Choke Point, and its associated culture and Choke Point-like regulatory actions, must end once and for all. This abuse of government power is antithetical to the best interests of the banking industry, the US economy, and the consumers who rely on banking products and services. This should not be a partisan issue: no administration – Republican or Democratic – should be able to use the administrative state to silence industries that they do not like.


We respectfully request your assistance in resolving this situation and look forward to your response. Please respond to the following questions:

- 1) Is it the official position of the FDIC that lawful businesses should not be targeted by the FDIC simply for operating in an industry that a particular administration might disfavor?
- 2) If so, what are you doing to make sure that bank examiners and other FDIC officials are aware of this policy and have communicated it to regulated institutions?
- 3) The Congressional Review Act requires agencies to submit, with certain minor exceptions, all rules to Congress for review. Were there any communications explaining supervisory expectations of “elevated risk” or “high risk” merchants with regulated institutions that would likely qualify as a “rule” under the Congressional Review Act that were not properly submitted to Congress under the Congressional Review Act? As a reminder, under the Congressional Review Act, a rule, by definition, is “the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency.”
- 4) We are concerned that many policies that are communicated to regulated institutions are inconsistent across the FDIC and often done verbally (and secretly). What are you doing to ensure the staff of the FDIC do not communicate policy in a manner inconsistent with the positions of the FDIC Board of Directors?

Sincerely,



Mike Crapo
Chairman

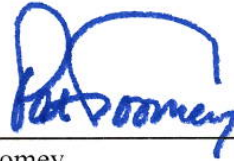


Richard Shelby
United States Senator

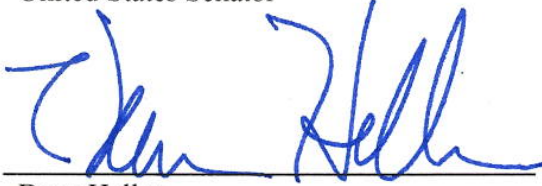
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