



Americans for Financial Reform
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May 21, 2015

Senator
Committee on Banking, Housing and Urban Affairs
U.S. Senate
Washington, DC 20510

Re: Oppose Sen. Crapo amendment 19 to Sen. Shelby regulatory reform bill to prohibit participation in Operation Choke Point

Dear Senator:

On behalf of Americans for Financial Reform, we urge you to oppose Senator Crapo's Amendment 19 to Senator Shelby's regulatory reform bill scheduled for mark-up today, May 21. The amendment would prohibit the banking agencies from implementing or participating in the Department of Justice's Operation Choke Point. It is shocking that the Senate would consider preventing the banking agencies from cooperating when the Justice Department investigates financial institutions that *willingly* participate in and enable fraud.

Operation Choke Point is focused only on banks that help scammers and other illegal activity. Separately, the financial regulators also require financial institutions and payment processors to avoid facilitating illegal or fraudulent conduct by knowingly giving fraudsters access to the payment system. None of these efforts are aimed at curtailing legal businesses, whether the business involves payday lending, pawn brokers, gun sales or any other legal business.

All three Operation Choke Point cases to date have targeted banks that have helped to process transactions despite clear evidence of fraud:

- **CommerceWest Bank** ignored explicit notice from other banks about *fraud schemes targeting the elderly*. The bank allowed one of its clients to use 1.3 million unauthorized remotely created checks to steal tens of millions of dollars from consumers' bank accounts through telemarketing scams, medical benefit discount card scams, and payday loan finder scams. In opening up the new account, the bank *planned for* – and soon saw – half of the payments rejected by other banks.
- **Plaza Bank's** chief operating officer, who was secretly the part-owner of a payment processor, brushed aside warnings from the bank's compliance officer. The bank allowed *fraudsters unfettered access to the bank accounts* of tens of thousands of consumers to conduct internet telemarketing schemes, fraudulent "identity theft protection insurance," and false offers of free credit cards and airline tickets. The bank's COO, who was secretly a part-owner of the payment processor, dismissed concerns about extremely high return rates and complaints from other banks and law enforcement. Management debated whether the lucrative revenues outweighed the risk to the bank from the frauds.

- **Four Oaks Bank & Trust** facilitated illegal payments taken out of consumer accounts for a *Ponzi scheme, a scam operation targeted by the FTC, and illegal and fraudulent payday loans*. The bank ignored extremely high rates of payments rejected as unauthorized, with return rates as high as 70%, and objections from state attorneys general.

Bank regulators' efforts to stop money laundering and payment fraud are not part of DOJ's Operation Choke Point. But enforcement of money laundering and know-your-customer rules has similar benefits. Drug dealers and terrorists win if a bank has loose controls over cash-intensive customers or international money transmission. Similarly, banks that fail to vet their customers or look the other way when they process payments despite clear red flags of fraud or illegal activity permit *scams to flourish and enable criminals to profit from data breaches*.

Payment fraud harms not only consumers but businesses and banks as well, especially small ones. Banks are on the hook when a consumer disputes an unauthorized charge. The customer service costs are substantial as well, especially for small banks. According to NACHA, it *costs a small bank* \$100 to \$500 for each unauthorized payment challenged by its customers, compared to \$5 for a larger bank.

DOJ and bank regulators are not pressuring banks to close the accounts of legal businesses.

DOJ has brought enforcement actions against banks complicit in payment fraud, and has issued subpoenas to other banks that it has reason to suspect might be involved in similar conduct. But there is zero evidence that DOJ has pressured any bank to close the account of a legal operation. Similarly, bank regulators are doing their job by enforcing anti-money laundering laws and requiring financial institutions to be alert to signs that a bank account is being used for illegal activity.

Complaints about banks closing the accounts of check cashers, pawn dealers, money transmitters and others stem from the *2001 Bush Administration USA Patriot Act*, not Operation Choke Point, which began in 2013. In 2006 FiSCA, the trade association of neighborhood financial service providers, testified: "For the past six years banks have been abandoning us - first in a trickle, then continuously accelerating so that now few banks are willing to service us"¹ Also in 2006, the National Pawnbroker Association complained to FinCEN that "Pawn industry members have lost longstanding lines of credit as well as demand deposit relationships in most parts of the country since 2004."² Unfortunately, controls over cash deposits, international money transmitters and know-your-customer requirements are more important than ever.

Legal payday lenders and other legal businesses are not a target.

Internet payday lenders that operate illegally without state licenses may have trouble with banking relationships. Affiliation with a tribe does not make unlicensed lending legal. The Supreme Court made clear in 2014 that tribes must comply with state laws, including license requirements, for off-reservation conduct. But we see no evidence that regulators are pressuring banks to discontinue legal payday operations. However, payday lenders are often cash-intensive businesses and also may be involved in

¹ Gerald Goldman, General Counsel of FiSCA, "Summary Of speech before the U.S. House Committee on Financial Services, Subcomm.on Fin'l Inst'ns & Consumer Credit , Regarding Banking Services to MSBs (June 21, 2006), http://www.fisca.org/Content/NavigationMenu/GovernmentAffairs/TestimonySpeeches/FiSCAHearingOralStmntGldman_6_21_06.pdf.

² Letter from Fran Bishop, President, National Pawnbroker Association to Robert W. Werner, Director, Financial Crimes Enforcement Network (FinCEN) (May 9, 2006), http://www.fincen.gov/statutes_regs/frn/comment_letters/71fr12308_12310/msb_51_bishop.pdf.

international money transmitting, and they could be impacted by individual bank business decisions or by enforcement of the Patriot Act against noncompliant financial institutions.

Gun dealers are not the focus of DOJ or the banking agencies.

Operation Choke Point has nothing to do with gun dealers. Not one of the voluminous DOJ documents produced in the House of Representatives' inquiry about Operation Choke Point mentioned a focus on gun dealers. DOJ's focus is entirely on banks that are complicit in payment fraud. Similarly, gun dealers may be impacted indirectly by Patriot Act enforcement not because they are selling guns but because they may be cash-intensive businesses. Regulators may order a bank or credit union to stop serving cash-heavy businesses until the institution remedies failures in money-laundering efforts. But the idea that agencies are on a moral crusade against gun sales is a pure conspiracy theory.

DOJ's Operation Choke Point and bank regulators' enforcement of the BSA and work against payment fraud protect the public from fraud, terrorism, data breaches, drug dealers and other illegal activity. None of these activities are aimed at lawful businesses. Congress should not hinder these critical federal agency activities to protect the public.

Yours very truly,

Americans for Financial Reform

Following are the partners of Americans for Financial Reform

All the organizations support the overall principles of AFR and are working for an accountable, fair and secure financial system. Not all of these organizations work on all of the issues covered by the coalition or have signed on to every statement.

- A New Way Forward
- AFL-CIO
- AFSCME
- Alliance For Justice
- American Income Life Insurance
- American Sustainable Business Council
- Americans for Democratic Action, Inc
- Americans United for Change
- Campaign for America's Future
- Campaign Money
- Center for Digital Democracy
- Center for Economic and Policy Research
- Center for Economic Progress
- Center for Media and Democracy
- Center for Responsible Lending
- Center for Justice and Democracy
- Center of Concern
- Center for Effective Government
- Change to Win
- Clean Yield Asset Management
- Coastal Enterprises Inc.
- Color of Change
- Common Cause
- Communications Workers of America
- Community Development Transportation Lending Services
- Consumer Action
- Consumer Association Council
- Consumers for Auto Safety and Reliability
- Consumer Federation of America
- Consumer Watchdog
- Consumers Union
- Corporation for Enterprise Development
- CREDO Mobile
- CTW Investment Group
- Demos
- Economic Policy Institute
- Essential Action
- Greenlining Institute
- Good Business International
- HNMA Funding Company
- Home Actions

- Housing Counseling Services
- Home Defender's League
- Information Press
- Institute for Global Communications
- Institute for Policy Studies: Global Economy Project
- International Brotherhood of Teamsters
- Institute of Women's Policy Research
- Krull & Company
- Laborers' International Union of North America
- Lawyers' Committee for Civil Rights Under Law
- Main Street Alliance
- Move On
- NAACP
- NASCAT
- National Association of Consumer Advocates
- National Association of Neighborhoods
- National Community Reinvestment Coalition
- National Consumer Law Center (on behalf of its low-income clients)
- National Consumers League
- National Council of La Raza
- National Council of Women's Organizations
- National Fair Housing Alliance
- National Federation of Community Development Credit Unions
- National Housing Resource Center
- National Housing Trust
- National Housing Trust Community Development Fund
- National NeighborWorks Association
- National Nurses United
- National People's Action
- National Urban League
- Next Step
- OpenTheGovernment.org
- Opportunity Finance Network
- Partners for the Common Good
- PICO National Network
- Progress Now Action
- Progressive States Network
- Poverty and Race Research Action Council
- Public Citizen
- Sargent Shriver Center on Poverty Law
- SEIU
- State Voices
- Taxpayer's for Common Sense
- The Association for Housing and Neighborhood Development
- The Fuel Savers Club
- The Leadership Conference on Civil and Human Rights
- The Seminal
- TICAS

- U.S. Public Interest Research Group
- UNITE HERE
- United Food and Commercial Workers
- United States Student Association
- USAction
- Veris Wealth Partners
- Western States Center
- We the People Now
- Woodstock Institute
- World Privacy Forum
- UNET
- Union Plus
- Unitarian Universalist for a Just Economic Community

List of State and Local Affiliates

- Alaska PIRG
- Arizona PIRG
- Arizona Advocacy Network
- Arizonans For Responsible Lending
- Association for Neighborhood and Housing Development NY
- Audubon Partnership for Economic Development LDC, New York NY
- BAC Funding Consortium Inc., Miami FL
- Beech Capital Venture Corporation, Philadelphia PA
- California PIRG
- California Reinvestment Coalition
- Century Housing Corporation, Culver City CA
- CHANGER NY
- Chautauqua Home Rehabilitation and Improvement Corporation (NY)
- Chicago Community Loan Fund, Chicago IL
- Chicago Community Ventures, Chicago IL
- Chicago Consumer Coalition
- Citizen Potawatomi CDC, Shawnee OK
- Colorado PIRG
- Coalition on Homeless Housing in Ohio
- Community Capital Fund, Bridgeport CT
- Community Capital of Maryland, Baltimore MD
- Community Development Financial Institution of the Tohono O'odham Nation, Sells AZ
- Community Redevelopment Loan and Investment Fund, Atlanta GA
- Community Reinvestment Association of North Carolina
- Community Resource Group, Fayetteville A
- Connecticut PIRG
- Consumer Assistance Council
- Cooper Square Committee (NYC)
- Cooperative Fund of New England, Wilmington NC
- Corporacion de Desarrollo Economico de Ceiba, Ceiba PR
- Delta Foundation, Inc., Greenville MS
- Economic Opportunity Fund (EOF), Philadelphia PA

- Empire Justice Center NY
- Empowering and Strengthening Ohio's People (ESOP), Cleveland OH
- Enterprises, Inc., Berea KY
- Fair Housing Contact Service OH
- Federation of Appalachian Housing
- Fitness and Praise Youth Development, Inc., Baton Rouge LA
- Florida Consumer Action Network
- Florida PIRG
- Funding Partners for Housing Solutions, Ft. Collins CO
- Georgia PIRG
- Grow Iowa Foundation, Greenfield IA
- Homewise, Inc., Santa Fe NM
- Idaho Nevada CDFI, Pocatello ID
- Idaho Chapter, National Association of Social Workers
- Illinois PIRG
- Impact Capital, Seattle WA
- Indiana PIRG
- Iowa PIRG
- Iowa Citizens for Community Improvement
- JobStart Chautauqua, Inc., Mayville NY
- La Casa Federal Credit Union, Newark NJ
- Low Income Investment Fund, San Francisco CA
- Long Island Housing Services NY
- MaineStream Finance, Bangor ME
- Maryland PIRG
- Massachusetts Consumers' Coalition
- MASSPIRG
- Massachusetts Fair Housing Center
- Michigan PIRG
- Midland Community Development Corporation, Midland TX
- Midwest Minnesota Community Development Corporation, Detroit Lakes MN
- Mile High Community Loan Fund, Denver CO
- Missouri PIRG
- Mortgage Recovery Service Center of L.A.
- Montana Community Development Corporation, Missoula MT
- Montana PIRG
- Neighborhood Economic Development Advocacy Project
- New Hampshire PIRG
- New Jersey Community Capital, Trenton NJ
- New Jersey Citizen Action
- New Jersey PIRG
- New Mexico PIRG
- New York PIRG
- New York City Aids Housing Network
- New Yorkers for Responsible Lending
- NOAH Community Development Fund, Inc., Boston MA
- Nonprofit Finance Fund, New York NY
- Nonprofits Assistance Fund, Minneapolis M

- North Carolina PIRG
- Northside Community Development Fund, Pittsburgh PA
- Ohio Capital Corporation for Housing, Columbus OH
- Ohio PIRG
- OligarchyUSA
- Oregon State PIRG
- Our Oregon
- PennPIRG
- Piedmont Housing Alliance, Charlottesville VA
- Michigan PIRG
- Rocky Mountain Peace and Justice Center, CO
- Rhode Island PIRG
- Rural Community Assistance Corporation, West Sacramento CA
- Rural Organizing Project OR
- San Francisco Municipal Transportation Authority
- Seattle Economic Development Fund
- Community Capital Development
- TexPIRG
- The Fair Housing Council of Central New York
- The Loan Fund, Albuquerque NM
- Third Reconstruction Institute NC
- Vermont PIRG
- Village Capital Corporation, Cleveland OH
- Virginia Citizens Consumer Council
- Virginia Poverty Law Center
- War on Poverty - Florida
- WashPIRG
- Westchester Residential Opportunities Inc.
- Wigamig Owners Loan Fund, Inc., Lac du Flambeau WI
- WISPIRG

Small Businesses

- Blu
- Bowden-Gill Environmental
- Community MedPAC
- Diversified Environmental Planning
- Hayden & Craig, PLLC
- Mid City Animal Hospital, Pheonix AZ
- The Holographic Repatterning Institute at Austin
- UNET

