OPERATION CHOKE POINT: **CHOKING OFF CREDIT TO THE GUN INDUSTRY**

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THE OBAMA ADMINISTRATION IS **USING THE FEDERAL DEPOSIT INSURANCE CORPORATION (FDIC)** TO FORCE BANKS TO CANCEL CREDIT FOR AMERICA'S GUN INDUSTRY.

by Dave Kopel

BANKING REGULATIONS being misused to choke off the exercise of Second Amendment rights? Surely such a thing couldn't happen here in the United States of America.

Yet that appears to be a result of the Obama administration's Operation Choke Point and other banking programs now targeting some in the gun industry.

The effort to use banks against firearm businesses is currently carried out by at least two federal entities: Attorney General Eric Holder's Department of Justice (DOJ) and the Federal Deposit Insurance Corporation (FDIC).

The FDIC was created during the New Deal in 1933 to guarantee the security of bank deposits. If you deposit funds in a federally insured bank (i.e., virtually all banks), then your deposit is insured up to $250,000. So if the bank goes out of business, the federal government will give you the money that you had in your bank account.

The purpose of the FDIC is to prevent "runs" on banks, in which people withdraw their money *en masse*, fearing that the bank is about to collapse. A bank run can be a self-fulfilling prophecy, as rapid withdrawals can drive a weak bank into insolvency.

The FDIC has extensive supervisory and examination authority over banks and the many federal laws that banks must follow. To check a bank's financial soundness, the FDIC, since 1979, has used a mostly objective scoring system, known as "CAMELS." The objective criteria consider the bank's capital, earnings, liquidity and so on.

But the Obama FDIC has introduced a new, subjective factor to the criteria, which it calls "reputational risk." Essentially, this means a bad public image.

And what causes "reputational risk"? The FDIC provided some details in a 2011 guidance document for banks: "Managing Risks in Third-Party Payment Processor Relationships." The document warned banks about "merchant categories that have been associated with high-risk activity." These include some things that, by their nature, are inherently fraudulent or are illegal under state and federal laws, such as "Cable Box De-scramblers," "On-line Gambling," and "Ponzi Schemes." Some "risk" categories involve gray areas, such as "Fireworks Sales," which are legal in some states but not others. Or "pornography," which is protected by the First Amendment unless there is a court determination that the material is legally "obscene."

But the large majority of the FDIC's targets involve activities that are legal everywhere, such as "Ammunition Sales," "Firearms Sales," "Coin Dealers," "Dating Services," and "Tobacco Sales."

Plus, if federal regulatory officials want to make life miserable for a particular bank, they can easily do so. Banks are understandably eager to do whatever it takes to stay on the good side of the federal banking bureaucracy. Do you think the FDIC's warning might make risk-averse bankers gun-shy of firearm business clients?

IN A *WALL STREET JOURNAL* OP-ED, FRANK KEATING OF THE AMERICAN BANKERS ASSOCIATION COMPLAINED THAT CHOKE POINT "IS ASKING BANKS TO IDENTIFY CUSTOMERS" WHO ARE "SIMPLY DOING SOMETHING GOVERNMENT OFFICIALS DON'T LIKE. BANKS MUST THEN 'CHOKE OFF' THOSE CUSTOMERS' ACCESS TO FINANCIAL SERVICES, SHUTTING DOWN THEIR ACCOUNTS."

The results seem to be "yes," especially in conjunction with Attorney General Holder's "Operation Choke Point."

DOJ publicly acknowledged this program on March 20, 2013, in a Washington, D.C., speech by Michael Bresnick, who was the executive director of the DOJ's Financial Fraud Enforcement Task Force. Bresnick stated that Choke Point aimed to stop banks from providing services to scammers.

"Sadly, what we've seen is that too many banks allow payment processors to continue to maintain accounts within their institutions, despite the presence of glaring red flags indicative of fraud," Bresnick said.

That's a nice goal. But that's not the whole story about how Choke Point has actually been used.

Let's consider a genuine situation of fraud, as described by a Dec. 7, 2010, press release on the FBI website (http://www.fbi.gov/news/pressrel/press-releases/paydayloanscam_120710). A person gets a phone call from somebody who says that the person is overdue on a loan from a payday lending company. The caller knows the person's birthday, social security number and so on. The caller demands an immediate payment by credit card. The caller is really a credit thief. But there are some naïve people who might have taken a few payday loans in the past, and who might be intimidated into giving out their credit card numbers.

Of course banks and credit card payment processors should not do business with such thieves. The problem is, Choke Point has been operated in a manner that targets not just criminals, but also the law-abiding.

A specific mechanism for the Obama administration's Choke Point threats are the more than 50 subpoenas that have been issued to banks and other financial institutions. As the English essayist Samuel Johnson observed, "Depend upon it, sir, when a man knows he is to be hanged in a fortnight, it concentrates his mind wonderfully." In effect, the subpoena is a threat of potentially imminent execution by the federal regulators.

As for all the other banks, when everyone hears about the subpoenas, word gets out that doing business with "risky" businesses or companies is dangerous. In case any banker doesn't get the message, when the DOJ was issuing subpoenas, the FDIC publicly warned banks that it was intensifying its own scrutiny of banks that did business with "high risk" business customers who use payment processors (for example, firearm dealers who accept credit cards, as well as law-abiding payday lenders).

Although it's difficult for outsiders to understand the full scope of what is happening in a banking relationship (like in a marriage), it appears that the Obama administration banking campaign has resulted in some banks canceling their relationship with firearm businesses. In Miami, for example, Bank United N.A. dumped the gun store Top Gun Firearms Training and Supply when it decided to convert to online, under a new name. The bank's March 12 letter explained that there were no "derogatory reasons for such action," but rather, "your company's line of business" (*Miami New Times*, April 21, 2014).

According to *The Washington Times* (May 18 & 28, 2014), a number of firearm businesses have reported sudden disruptions of their relationships with their banks. The *Times* article specifically cites the following:

Powderhorn Outfitters, of Hyannis, Mass., says that it was turned down for a loan by TD Bank because of involvement in the firearm business. Powderhorn says it had a 20-year relationship with the bank. According to Powderhorn's owner, the bank manager said, "Your credit history is great, but the bank is turning you down because you sell guns" (*Daily Caller*, May 31).

The bank account of Black Rifle Armory, in Henderson, Nev., was frozen in May 2014, as the bank launched a search for suspicious transactions.

Bank of America (BoA) in 2012 ended its 12-year account relationship with McMillan Group International. Kelly McMillan says that BoA told him that the termination was because McMillan had changed from making gun parts (e.g., stocks) to manufacturing firearms. American Spirit Arms, a manufacturer of AR-15 platform rifles, says that its 10-year account with Bank of America was suspended after a surge in sales in December 2012. Joe Sirochman, owner of American Spirit, wrote that a BoA manager told him that he should not be selling guns or parts on the Internet.

BoA, however, says that that any customer whose payment processor income spikes is routinely reviewed. (A major increase in transaction volume, which many firearm businesses experienced in early 2013, can be a sign of financial fraud. But anyone who read a newspaper in 2013 knew that the Obama administration's gun-ban offensive had resulted in a huge increase in gun sales.)

Further, BoA denies that it has an anti-gun policy, and points out its April 2012 deal with firearm manufacturer Freedom Group to participate in the issuance of $250 million of bonds.

While banks' privacy practices usually prevent determining the exact circumstances of any bank's relationship with any particular business, it seems clear that Choke Point is being deployed against lawful businesses. In a *Wall Street Journal* op-ed, Frank Keating of the American Bankers Association complained that Choke Point "is asking banks to identify customers" who are "simply doing something government officials don't like. Banks must then 'choke off' those customers' access to financial services, shutting down their accounts" (April 24).

Or as *The Economist* explained in a June 7 article criticizing Choke Point, "Margins in retail banking are vanishingly thin. The revenue an individual client generates is likely to be dwarfed by the cost of an investigation. So banks have good reason to be supremely cautious in their interpretation of the law, even if it means tossing out blameless clients."

So who is taking a stand against Operation Choke Point and similar abuses?

To start with, small community banks are pushing back. A position paper by Independent Community Bankers Association states that Choke Point "has deployed broad and overly aggressive enforcement tactics that sweep in many legitimate businesses, banks and third-party processors. DOJ should focus its resources on businesses that are actually violating the law." In an April 7, 2014, letter asking that Choke Point be suspended immediately, the association complained that, "The indiscriminate targeting of community banks offering these services [payment processing] also places community banks at a competitive disadvantage with large banks."

Also, the U.S. House Committee on Oversight and Government Reform recently conducted an investigation of Choke Point. The report, released on May 29, found that the DOJ knew that Choke Point's tactics were harming lawfully operated businesses, but DOJ had decided to continue with those tactics. In essence, DOJ shrugged that innocent businesses should just have to bear the burden of proving to their banks that they have not done anything wrong. That's just about impossible to do, once the federal government has warned a bank to drop a customer (http://oversight.house.gov/report/report-dojs-operation-choke-point-secretly-pressured-banks-cut-ties-legal-business/).

This congressional investigation of Choke Point would never have happened if Maryland Democrat Elijah Cummings were chairman of the committee. As the ranking minority member of the committee, Rep. Cummings has staunchly opposed investigation into the Obama administration's firearm-related misdeeds, such as Operations Fast and Furious and Choke Point.

But thanks to the hard work of NRA members in the 2010 and 2012 elections, Darrell Issa, R-Calif., is the committee chairman. Issa has worked tirelessly to uncover what the administration wants to hide. That committee's investigation of Fast and Furious is one of many good examples, as is the investigation into Choke Point.

A new organization called "United States Consumer Coalition" has a website that provides an opportunity for whistleblowers and for victims of Choke Point to report their experiences (usconsumers.org).

In May, the U.S. House of Representatives voted to defund Operation Choke Point. The Senate has not yet acted on that bill. The leader of the defunding effort was Rep. Blaine Luetkemeyer, R-Mo., with his amendment to the appropriations bill for Commerce, Justice, Science and Related Agencies.

Another leader has been Jeb Hensarling, R-Texas, chairman of the House Committee on Financial Services. He has requested reports from the Federal Reserve and other federal financial entities if they are participating in Choke Point or similar projects.

Also, on June 6, the Community Financial Services Association (an association of payday lenders) filed a lawsuit against Choke Point. The case (no. 14-cv-00953) is currently in U.S. District Court for the District of Columbia.

The most important aspect of Choke Point—and about all the banking law abuses—is not whether you're a supporter of firearm stores, coin dealers, fireworks, adult entertainers, sexual orientation activists or payday lenders. The common principle for all is that laws enacted to protect banks and their customers should not be misused by any executive to force banks to injure law-abiding customers disliked by that executive.

And that's what is happening with Operation Choke Point. That it's happening under this administration, unfortunately, is all too consistent with the president's "phone and pen" style of imperial rule. You can help stop it, however, by going to the polls this November and voting in members of Congress who will hold the executive branch accountable for its abuses.

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