

## **Operation Choke Point A Threat to Free Commerce and the Rule of Law**

On behalf of the more than 6,500 community banks represented by ICBA, thank you for convening today's hearing on "The Department of Justice's 'Operation Choke Point'." Community banks nationwide are alarmed by the sweeping scope and aggressive tactics of Operation Choke Point. We welcome this opportunity to submit ICBA's statement for the record.

Operation Choke Point is a Justice Department initiative intended to address consumer fraud by "choking off" access to fraudsters' banking services. Community banks currently dedicate significant energy and resources to monitoring, detection and reporting of fraud and other financial crimes in compliance with the Bank Secrecy Act. Last year alone, depository institutions filed over 600,000 suspicious activity reports to assist federal and local law enforcement in the fight against financial crime.

In the last two years, Choke Point has targeted more than 50 banks and payment processors with subpoenas issued under a very aggressive reading of its authority under the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA). Reputation in their communities is the stock-in-trade of community banks. The mere prospect of enforcement action is daunting enough to lead risk adverse community banks to shut off access to their payment systems to all but the most established, low risk businesses.

All legal forms of business should be allowed to operate freely with access to essential banking services, subject to the discretion of banks, and without excessive pressure or intimidation from law enforcement. Law enforcement should focus on criminals directly, without forcing banks to act as police, and their efforts should be narrowly targeted. ICBA is encouraged that members of Congress on both sides of the aisle have been critical of the aggressive tactics and troubling impact of Operation Choke Point.

At the same time, bank regulators have begun applying unwarranted scrutiny to bank relationships with categories of businesses deemed "high risk" or that supposedly create "reputational risk." These businesses include internet-based businesses, short term lenders, telemarketers, debt collectors, and other lawful businesses. Regulators have questioned long-standing relationships with businesses that have been properly screened by the bank's own risk controls. It is beyond the scope of the supervisory process to assess a bank's reputational risk or to prohibit or discourage community banks from providing these services. Community banks are the best judge of their own reputation risk and have every incentive to safeguard their own reputations through proper screening of customers. They conduct due diligence to assess the

level of risk of each customer relationship and ensure that controls are in place to identify and monitor these relationships on an ongoing basis. ICBA is grateful to Chairman Hensarling for his May 22 letter to the bank regulators questioning their use of reputational risk in prudential supervision. We fully endorse the Chairman's comments in that letter.

### **The End Operation Choke Point Act of 2014 (H.R. 4986)**

ICBA thanks Rep. Luetkemeyer for his leadership in addressing these concerns and specifically for introducing H.R. 4986. This legislation would promote cooperation between banks and law enforcement to enable law enforcement to exercise its responsibility to prosecute illegal wrongdoing directly against the perpetrators of that wrongdoing, instead of taking action that results in cutting off banking services to legal businesses. In addition, H.R. 4986 would rein in DOJ's abusive use of subpoena authority and create a safe harbor for banks serving businesses that meet specific criteria.

ICBA fully supports H.R. 4986 as a response to Operation Choke Point and examiners' recent assessment of "reputational risk." We urge this committee to take up H.R. 4986 as soon as possible.

Thank you again for the opportunity to provide this written statement for the record.