

Congress of the United States

House of Representatives

Washington, DC 20515

August 7, 2014

The Honorable Martin Gruenberg
Chairman
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, D.C. 20429

Dear Chairman Gruenberg:

I write regarding the Federal Deposit Insurance Corporation (FDIC) Financial Institution Letter (FIL) FIL-41-2014. I thank you and your staff for taking the time to address one of the many elements pertaining to the ongoing issue of Operation Choke Point. As I have stated in the past, I appreciate efforts FDIC takes to ensure that bad actors are rooted out of the financial services space, but I also believe investigations must be conducted based on actual evidence and not a preconceived notion surrounding an industry's perceived moral right to exist.

FIL-41-2014 addresses an important issue surrounding the FDIC's use of lists of entire industries deserving of heightened scrutiny. Many of my colleagues and I found the inclusion of legal industries including firearms sales, payday loans, and tobacco sales to be extremely troubling and inappropriate. These lists created confusion and considerable uncertainty for financial institutions and some of their legally-operating, licensed customers. I am pleased that you have taken the first step in ensuring that all of these heightened scrutiny lists generated by FDIC staff are removed from guidance, and request you ensure that similar lists are not used in future presentations by any FDIC personnel.

The removal of these lists is a step in the right direction. At the same time, there is more work to be done on the part of your agency. It is imperative that FDIC leadership ensure all FDIC examiners receive and follow this FIL. Additionally, and most importantly, your examiners must begin to conduct bank examinations on a customer-by-customer basis rather than an industry-by-industry basis as has been done in the recent past.

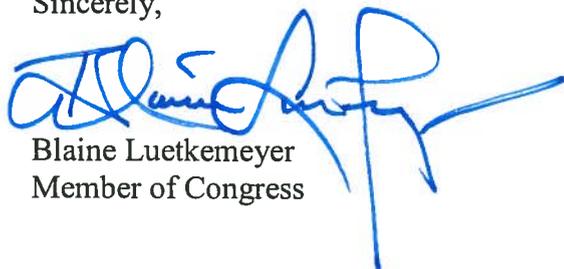
As we learned in the July 17, 2014, hearing before the House Judiciary Subcommittee on Regulatory Reform, Commercial and Antitrust Law, the Department of Justice (DOJ) has used FDIC lists in subpoenas sent to financial institutions issued as part of Operation Choke Point. For that reason, I believe it imperative that you share this FIL with senior DOJ officials and your federal banking agency counterparts to ensure there is opportunity for policy continuity throughout the Executive Branch.

The need for a safe harbor still exists because the chilling effect caused by Operation Choke Point still exists. We must continue to address this issue until a financial institution can

operate without fear of retaliation or threat of subpoena for no wrong-doing. It is my sincere hope that we can work together to ensure that financial institutions regain the comfort necessary to offer services to legally-operating entities.

I will continue to closely monitor this situation and the progress being made on the part of FDIC and look forward to continued progress in resolving this important issue.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Blaine Luetkemeyer', with a long horizontal flourish extending to the right.

Blaine Luetkemeyer
Member of Congress