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Congress of the United States
House of Representatives
Washington, DC 20515

COMMITTEE ON
FINANCIAL SERVICES
FINANCIAL INSTITUTIONS
AND CONSUMER CREDIT
CHAIRMAN
HOUSING AND INSURANCE

COMMITTEE ON
SMALL BUSINESS
VICE CHAIRMAN
AGRICULTURE,
ENERGY AND TRADE
HEALTH AND TECHNOLOGY

October 25, 2018

The Honorable Jerome Powell
Chairman
Federal Reserve Board of Governors
Constitution Ave. NW & 20th St. NW
Washington, D.C. 20245

The Honorable Mick Mulvaney
Acting Director
Bureau of Consumer Financial Protection
1700 G St. NW
Washington, D.C. 20552

The Honorable Randal Quarles
Vice Chair for Supervision
Federal Reserve Board of Governors
Constitution Ave. NW & 20th St. NW
Washington, D.C. 20245

The Honorable Mark McWatters
Chairman
National Credit Union Administration
1775 Duke St.
Alexandria, VA 22314

Dear Chairman Powell, Vice Chairman Quarles, Acting Director Mulvaney and Chairman McWatters:

I write today to express my continued concern surrounding Operation Choke Point, an Obama Administration initiative that sought to divorce licensed, legally operating businesses from the financial services industry. Unfortunately, initiatives such as Operation Choke Point have permitted personal opinion and bias to drive a wedge between legitimate businesses and the financial services they need to survive.

For approximately five years, Congress has been aware of and examined Operation Choke Point and the dangerous trend of de-risking seen throughout the financial services space. Previous documentation obtained by committees in the U.S. House of Representatives have tied Federal Deposit Insurance Corporation (FDIC) leadership to Operation Choke Point, though the extent to which agency officials were involved has only come to light since the October 12, 2018 release of the motion for summary judgment in the case of *Advance America et al. v. Federal Deposit Insurance Corporation*. Officials from the Office of the Comptroller of the Currency (OCC) have categorically denied any knowledge of or participation in Operation Choke Point. The legal documents released October 12th demonstrate that senior OCC officials indeed had knowledge and direct participation in this abusive initiative and, as a result, have blatantly misled Congress.

Senior financial regulators have not only allowed but encouraged this behavior during their tenure. FDIC Washington staff threatened agency regional directors with termination over financial institution engagement with payday lenders. One of those individuals, then-Atlanta Regional Director Thomas Dujenski, discussed the fact that he “literally can not stand payday lending,” going on to describe the activities of the industry as “abusive” and “fundamentally

wrong.”¹ According to the documentation, he reported this and any other actions related to payday lending to Mark Pearce, who serves as the FDIC Director for the Division of Depositor and Consumer Protection. One must question whether or not Mr. Pearce’s division only offers protection to depositors that are attuned to his personal morals and beliefs.

Anthony Lowe, who was at the time the regional director in the FDIC’s Chicago office, instructed his staff to use “all available means, including verbal recommendations, to strongly encourage [banks] to refrain from any activities that provide assistance to the business activities of [payday] lending.” Mr. Lowe now serves as FDIC Ombudsman, supervising the office that serves as “a confidential, neutral, and independent source of information and assistance to anyone affected by the FDIC in its regulatory, resolution, receivership, or asset disposition activities.”² It is undoubtedly a safe assumption that the services offered by the FDIC Office of the Ombudsman extend only to those entities with which the ombudsman has no personal objection.

It is now well documented that the OCC and FDIC engaged with predecessors and the senior staff, many of whom remain in place today, fostered a culture where political opinion and personal belief trumped the agencies missions to protect customers of and promote safety and soundness in the banking system. OCC staff made the conscious decision, in conjunction with leadership at the FDIC, to use “moral suasion” to “suggest strongly that [banks] re-evaluate payday lending.” Comptroller Curry was undoubtedly aware that payday lenders had been specifically targeted, not based on evidence of wrongdoing but rather on a personal determination that a certain industry or product were distasteful. This decision appears to have been coordinated between Deputy Comptroller for Compliance Policy Grovetta Gardineer and FDIC Director for the Division of Depositor and Consumer Protection Mark Pearce.³

Much like the OCC, each of your predecessors spent several years denying any knowledge of or involvement in Operation Choke Point. I fear that, given the evidence that has come to light this month, Operation Choke Point and the de-risking seen throughout the banking sector are systemic problems and not isolated to one or two regulatory agencies. This matter requires an immediate and thorough investigation. For that reason, I urge you to work internally to determine whether or not any member of your respective staffs had any knowledge of or in any way participated in Operation Choke Point or any similar initiative.

¹ Plaintiffs’ Statement of Undisputed Material Facts, *Advance America, Cash Advance Centers, Inc., et al., v. Federal Deposit Insurance Corporation, et al.*, Civil Action 14-953-TNM (United States District Court for the District of Columbia October 12, 2018) [Doc. #199-2]

² <https://www.fdic.gov/regulations/resources/ombudsman/>

³ Plaintiffs’ Statement of Undisputed Material Facts, *Advance America, Cash Advance Centers, Inc., et al., v. Federal Deposit Insurance Corporation, et al.*, Civil Action 14-953-TNM (United States District Court for the District of Columbia October 12, 2018) [Doc. #199-2]

Such a blatant abuse of power should never be tolerated. Members of Congress and the American public have lost confidence in the career bureaucrats at the FDIC and OCC. I appreciate the important role each of you will play in ensuring that confidence in the financial regulatory space is restored, and look forward to discussing the results of your independent investigations in the coming weeks.

Sincerely,



Blaine Luetkemeyer
Chairman
Subcommittee on Financial Institutions and
Consumer Credit
House Financial Services Committee