

October 11, 2017

Rep. Blaine Luetkemeyer
U.S. House of Representatives
Washington, DC 20515

RE: Oppose H.R. 2706 (Luetkemeyer), Financial Institution Consumer Protection Act of 2017, which will restrict efforts to protect consumers and banks from fraud, money-laundering and other illegal activities

Dear: Congressman Luetkemeyer:

The undersigned consumer and civil rights organizations oppose H.R. 2706, the Financial Institution Customer Protection Act of 2017. The bill will hamper the efforts of banking regulators to advise financial institutions of warning signs that their customers are engaging in fraud, money laundering, or other illegal activity, putting consumers and financial institutions at risk of serious financial loss. The bill would also promote spurious litigation against regulators and financial institutions when an account is closed. **This bill is more harmful now than ever in light of the critical importance of blocking access to the payment system by criminals who may use information from the Equifax and other data breaches.**

H.R. 2706 would put needless hurdles in the way of regulators who are working to make financial institutions aware of signs that their customers could be engaging in illegal activity. The bill does not merely apply to direct orders from a federal banking agency to close a bank account – something that rarely if ever happens. Onerous procedures are also triggered by “informal” “requests” and by any other action taken to “restrict or discourage a depository institution from entering into or maintaining a banking relationship with a specific customer or group of customers ...”

This vague and broad trigger could apply any time a regulator warns financial institutions of the signs of potential illegal or fraudulent activity, even if it is unrelated to a particular customer and relates to criminals as a group. The bill would require the agency to justify that it has a “material reason” other than reputational risk for its warning; to provide written justification to the financial institution with “legal authority;” and to issue annual reports to Congress. The bill would impose new, burdensome requirements before an agency could warn a financial institution about red flags of fraudulent conduct or of cash-heavy activity that could be a sign of money laundering, whether the warning relates to a particular customer or criminals as a group.

The bill would frustrate efforts to protect financial institutions. Banks are exposed to risks if their customers engage in payment fraud or otherwise commit criminal activity. Banks by law warrant the legality of payments when the bank serves as an intermediary between payors and payees,¹ and they are also exposed to risks if they overlook clear warning signs of illegal activity. Regulators are doing their job to protect not only the public but also financial institutions by warning them of these risks.

The bill could tip off criminals to sensitive investigations. The bill also requires financial institutions to inform customers of the justification for terminating an account if an agency orders an account or “group” of accounts closed (i.e., all accounts used for criminal activity). Tellingly, this requirement does not

¹ See Testimony of Adam J. Levitin, Professor of Law, Georgetown University Law Center, Before the United States House of Representatives, Judiciary Committee, Subcommittee on Regulatory Reform, Commercial, and Antitrust Law, “Guilty Until Proven Innocent? A Study of the Propriety & Legal Authority for the Justice Department’s Operation Choke Point” at 9-10 (July 17, 2014), http://judiciary.house.gov/_cache/files/f6210f6f-68eb-49b6-b617-167eecdfe3b/levitin-testimony.pdf.

apply if the account was closed based on a threat to national security – in that case, the financial institution is *forbidden* to inform the customer of the reason. Yet sensitive investigations could be underway that do not involve national security – such as widespread fraud against consumers based on the Equifax breach, or money laundering of cash by criminals engaged in domestic drug sales.

The bill would also encourage litigation against regulators and financial institutions any time an institution closes a bank account. Banks close accounts every day for a variety of reasons. The internet has been full of unsubstantiated speculation and conspiracy theories about government overreach that have no basis in fact. At the request of Rep. Luetkemeyer and other members of the House, the Department of Justice Office of Professional Responsibility conducted a review of the allegations that DOJ staff had wrongly forced banks to terminate their relationships with legal businesses. The findings of that inquiry showed conclusively that there was no evidence of misconduct.² A report from the Federal Deposit Insurance Corporation Inspector General also found that the FDIC’s involvement in Operation Choke Point was inconsequential.³ Yet, under the bill, any time that a bank account is closed, the customer could sue, claiming that the regulator “informally” “discouraged” the account and neither the regulator nor the financial institution followed the procedures required.

This bill was originally introduced last year in an effort to curtail the Department of Justice’s Operation Choke Point. Spurious claims were made against DOJ, claiming that the operation was an effort to force banks to close the accounts of customers operating legally. To the contrary, every case that DOJ brought under that operation involved a bank or payment processor that was ***knowingly engaged in scams and other fraudulent activity*** that resulted in millions of dollars drained from consumers’ bank accounts:

- **CommerceWest Bank** ignored explicit notice from other banks about ***fraud schemes targeting the elderly***, allowing its customer to steal tens of millions of dollars from consumers’ bank accounts.
- **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 and allowed ***fraudsters unfettered access to the bank accounts*** of tens of thousands of consumers.
- **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***.
- **Neil Godfrey** pleaded guilty to criminal charges that he used Check Site Inc., a payment processor, to help scammers take millions of dollars from consumers. Purported payday loan websites were actually a ***ruse to harvest bank account information*** that Godfrey used to create fake remotely created checks deposited against consumer accounts. Godfrey admitted that he was an ***expert in finding banks that were willing to ignore the red flags*** raised by these checks and in deceiving other banks.

² Weinsheimer, G. Bradley. “Department of Justice OPR Inquiry Regarding Operation Choke Point,” July 9, 2015. <http://huff.to/1GLapkl>.

³ “The FDIC’s Role in Operation Choke Point and Supervisory Approach to Institutions That Conducted Business with Merchants Associated with High-Risk Activities.” Washington, DC: Federal Deposit Insurance Corporation Office of the Inspector General, September 2015. <https://www.fdicig.gov/reports15%5C15-008AUD.pdf>.

DOJ has now terminated Operation Choke Point. But fraudsters and other criminals are still targeting consumers' bank accounts. We can expect these threats to increase in the future as vast amounts of sensitive personal financial information are now in the hands of criminals.

The Neil Godfrey case above is instructive. Mr. Godfrey was sentenced last summer to 15 months in prison. As the Justice Department explained:

“Godfrey used banks that were willing to facilitate these [fraudulent] transactions and ignore the red flags raised by these transactions. The charges also alleged that Godfrey helped the fraudulent merchants stay off the radar of bank employees and regulators so that the fraud could continue. For example, Godfrey advised merchants how to change the names of their companies and set up the facade of a legitimate company to defeat banks' attempts at due diligence.”

In an email message quoted in the charging documents, Godfrey advised a fraudulent merchant:

“[T]he lesson we have learned is that we must trick the [bank] folk. It means you need to set up some type of website front. What we need to do is set up a legitimate website selling anything you can think of – that is what you get approved on. It is irrelevant if anything is ever sold there – just so it exists. . . . In the mean time we set up false credit card approval etcetera. It is this we use to run the transactions. Yes, there will be a lot of returns, but what we do is send through transactions over the next few weeks that don't have high returns. They stop looking and then we can run the regular stuff. . . . [A]fter several months we junk that company and go to another company.”⁴

Under the bill, a banking regulator could be required to provide a written justification with “legal authority” and “material justification” any time a bank regulator or examiner advises financial institutions of red flags of the type of fraudulent activity that Mr. Godfrey engaged in.

* * *

With escalating data breaches, terrorism threats and internet fraud, we need to encourage, not discourage, efforts to highlight red flags of illegal activity and to deprive criminals of access to the banking system. H.R. 2706 will only frustrate the efforts of federal regulators that to date, have successfully halted numerous mass-market fraud schemes and protected countless consumers from the financial hardship that follows fraud.

The Equifax data breach allowed criminals access to the sensitive personal financial information of 145.5 million people. Now more than ever, financial institutions must be vigilant against criminals who might use that information to defraud Americans. This is not the time to weaken oversight over entities that look the other way when their customers engage in criminal activity.

We urge you to oppose H.R. 2706 other efforts to hinder critical federal agency activities to protect the public.

Yours very truly,

Americans for Financial Reform
Center for Responsible Lending
Consumer Action

⁴ <https://www.justice.gov/opa/pr/california-payment-processing-company-president-and-part-owner-sentenced-prison-fraud-scheme>.

Oppose H.R. 2706 (Luetkemeyer)

Consumer Federation of America

National Association of Consumer Advocates

National Consumer Law Center (on behalf of its low income clients)

New Economy Project

Public Citizen

Woodstock Institute

U.S. PIRG

Cc: Members of the House Financial Services Committee