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## House Bill Aims to End Operation Choke Point

by Kevin Wack

JUN 27, 2014 4:50pm ET

Rep. Blaine Luetkemeyer, R-Mo., has introduced legislation designed to undermine the ongoing Justice Department-led probe known as Operation Choke Point.

The investigation of mass-market fraudsters' use of the payment system has sparked a fierce backlash among bankers and payment processing firms. More than 50 banks and payment processors have received subpoenas as part of the probe.

The department's critics, who include numerous Republicans on Capitol Hill, say the government's pressure on financial institutions has led to many legitimate merchants losing their access to the payment system.

Luetkemeyer's bill, the End Operation Choke Point Act of 2014, would offer legal protection to banks and credit unions as long as their merchant customers meet one of three criteria.

In order for a bank to qualify for the so-called safe harbor, the merchant would have to be licensed to offer the product or service it's selling; be registered as a money transmitting business; or provide a legal opinion that demonstrates the legality of its business operations.

That last provision could help provide cover for banks to do business with online payday lenders that are based offshore or affiliated with Indian tribes, but don't hold licenses in states where their customers live. Online payday lenders have been among the industries hit hardest by Operation Choke Point.

Luetkemeyer's bill would also alter the Justice Department's authority to issue subpoenas under a 1989 law that provides a key legal theory in support of Operation Choke Point. This provision of the bill would rein in "abusive misuse of [Justice Department] subpoena authority," the Missouri lawmaker said Thursday in a news release.

Several weeks ago, Luetkemeyer said that he hoped the legislation would become unnecessary, as he hoped to persuade the federal banking regulators to create a safe harbor for banks. But that hasn't happened, and Luetkemeyer had harsh words Thursday for the banking agencies.

He said in the news release that federal banking regulators are "in cahoots with the Department of Justice" in an effort "to drive legally-operating, licensed and regulated companies out of business."

Luetkemeyer also derided what he called "backdoor attempts by government bureaucrats to blackmail and threaten businesses simply because they morally object to entire sectors of our economy."

His bill drew praise Friday from the Online Lenders Alliance, which is one of the trade groups that have been protesting Operation Choke Point.

"We support the [Justice Department's] efforts to fight fraud, but they should not play politics with a banking system on which so many businesses rely to serve their customers," the group's president, Lisa McGreevy, said in a news release.

The legislation is likely to face resistance from the White House and many Democrats on Capitol Hill. Its introduction follows the Republican-controlled House's passage of an appropriations bill that would bar funds from being used to carry out Operation Choke Point; that measure has stalled in the Democratic-led Senate.

Despite the backlash against Operation Choke Point, the Justice Department shows no signs of backing down. A November 2013 agency memo that was recently made public by the House Oversight Committee stated that four payment processors and one bank were under criminal investigation, and more than 10 banks and payment processors faced civil investigations.

And in a video released Monday, Attorney General Eric Holder said: "In the months ahead, we expect to resolve other investigations involving financial institutions that chose to process transactions even though they knew the transactions were fraudulent, or willfully ignored clear evidence of fraud."



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