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[H.R. 766, Financial Institution Customer Protection Act of 2015](#)

FLOOR SITUATION

On Thursday, February 4, 2016, the House will consider [H.R. 766](#), the Financial Institution Customer Protection Act of 2015, under a [structured rule](#). The bill was introduced on February 5, 2015, by Rep. Blaine Luetkemeyer (R-MO) and referred to the Committee on Financial Services, which ordered the bill reported by a vote of 35 to 19 on July 29, 2015.

SUMMARY

H.R. 766 establishes requirements for the termination of bank accounts to prohibit federal banking regulators from formally or informally suggesting, requesting, or ordering a depository institution to terminate either a specific customer account, or group of customer accounts, except in specific circumstances affecting national security. This provision is designed in an attempt to prevent federal regulators from encouraging banking institutions to close any entity's bank account without due process.

The bill requires the federal banking agencies to issue an annual report to Congress stating the number of customer accounts the agency requested or caused to be closed and the legal authority on which the agency relied.

BACKGROUND

Operation Choke Point (Operation) is a law enforcement initiative launched by the Department of Justice, which has been underway since at least 2012, to combat consumer fraud by "choking off" businesses alleged to have committed fraud from access to the financial system. According to reports, during the Operation, rather than investigating and prosecuting the merchants alleged to have committed fraud, the Justice Department partnered with the FDIC to identify merchants that pose a "high risk" for consumer fraud, reportedly, without regard to whether or not these merchants were operating their businesses legally. In some instances, the merchants identified as "high risk" have seen their accounts terminated by banks seeking to avoid civil and criminal liability.¹

¹ See [House Report 114-402](#) at 2.

On July 28, 2014, FDIC retracted the lists it had circulated to banks warning them of types of merchants likely to engage in high risk activities. According to the FDIC, its previous issuances were primarily designed to advise depository institutions about risks associated with third-party payment processors and inspire appropriate risk management programs, both of which remain continuing concerns. The FDIC further stated that “telemarketing or Internet merchant categories ... associated ... with higher-risk activities,” were never intended to be a primary focus, but to be “illustrative.”²

On December 8, 2014, the Committee on Oversight and Government Reform released a staff report detailing the FDIC’s extensive involvement in the Operation. The Committee found through their investigation that the FDIC targeted legal industries; that senior FDIC policymakers oppose payday lending on personal grounds, and attempted to use FDIC’s supervisory authority to prohibit the practice; and that the FDIC equated legitimate and regulated activities such as coin dealers and firearms and ammunition sales with inherently pernicious or patently illegal activities such as Ponzi schemes, debt consolidation scams, and drug paraphernalia.³

In late 2015, a payday lender trade association brought a lawsuit against federal banking regulators (*Community Financial Services Association of America, Ltd. v. FDIC*) alleging that actions by the banking regulators indirectly caused some banks to close accounts for some payday lenders, thereby, interfering with their protected interests in access to banking services and pursuit of a chosen business. The plaintiff further claims that the informal guidance issued by the federal banking regulators, in regards to the Operation, caused some banks to close accounts of payday lenders in violation of the Administrative Procedure Act (APA) and the Due Process Clause of the Fifth Amendment.⁴

According to the bill sponsor, “This legislation needs to be codified into law so that federal agencies don’t fall into the illegal and abusive practices seen out of the FDIC and Justice Department. I hope this legislation is quickly brought to the floor so we can halt this unconstitutional and unprecedented program and return order and reason to the financial institution examination processes.”⁵

COST

The Congressional Budget Office (CBO) [estimates](#) enacting H.R. 766 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

AMENDMENTS

1. Rep. Brad Sherman (D-CA)—the [amendment](#) clarifies that H.R. 766 does not prevent federal banking regulators from requesting or requiring a financial institution to terminate a relationship with a customer because (1) the customer poses a threat to national security, (2) is engaged in terrorist financing, (3) is doing business with Iran, North Korea, Syria, or another State Sponsor of Terrorism, or (4) is doing business with an entity in any of those countries.

² See CRS Report, [“FDIC Moves to Modify Guidance “Choking” Banking Services for Certain Legitimate Businesses.”](#) August 27, 2015.

³ See House Committee on Oversight and Government Reform Staff Report, [“Federal Deposit Insurance Corporation’s Involvement in “Operation Choke Point.”](#) December 8, 2015.

⁴ See CRS Report, [“Payday Lenders’ Challenge to Banking Regulators Cooperation in “Operation Choke Point” Survives a Motion to Dismiss.”](#) November 19, 2015.

⁵ See Rep. Blaine Luetkemeyer Press Release, [“House Financial Services Committee Passes Luetkemeyer Bill to Thwart Operation Choke Point.”](#) July 30, 2015.

2. Rep. Paul Gosar (R-AZ)—the [amendment](#) requires notice to banking customers if a customer account is terminated at the direction of federal banking regulators.

STAFF CONTACT

For questions or further information please contact [John Huston](#) with the House Republican Policy Committee by email or at 6-5539.