



FEDERAL DEPOSIT INSURANCE CORPORATION

JELENA McWILLIAMS
CHAIRMAN

January 31, 2022

The Honorable Mike Crapo
United States Senate
Washington, D.C. 20510

Dear Senator Crapo:

Thank you for your letter dated January 24, 2022 requesting an update on the steps the Federal Deposit Insurance Corporation (FDIC) has taken to address concerns regarding Operation Choke Point. As I have consistently reiterated during my tenure as FDIC Chairman, lawful businesses should have access to financial services provided such activity is consistent with applicable safety and soundness principles.

I have been deeply invested in transparency and accountability at the FDIC to ensure that our supervised banks can confidently serve their communities without fear of repercussion. I initially outlined my commitment to these principles in my November 15, 2018 letter to you, and repeated my dedication to the idea that “regulatory threats, undue pressure, coercion, and intimidation designed to restrict access to financial services for lawful businesses have no place at this agency.”¹ The FDIC’s position has remained unchanged during my tenure. Institutions are encouraged to “take a risk-based approach in assessing individual customer relationships rather than declining to provide banking services to entire categories of customers.”² Institutions that can “properly manage customer relationships and effectively mitigate risks are neither prohibited nor discouraged from providing services to any category of customer accounts or individual customer operating in compliance with applicable state and federal law.”³

The FDIC also issued a public statement on May 22, 2019, in which we confirmed that “[t]he FDIC encourages insured depository institutions to serve their communities, and it recognizes the importance of the services they provide.... Accordingly, the FDIC encourages institutions to take a risk-based approach in assessing individual customer relationships rather than declining to provide banking services to entire categories of customers without regard to the

¹ Letter from Jelena McWilliams, FDIC Chairman, to Mike Crapo, U.S. Senate, November 15, 2018.

² “Statement on Providing Banking Services,” FIL-05-2015, January 28, 2015, available at <https://www.fdic.gov/news/news/financial/2015/fil15005.html>.

³ *Id.*

risks presented by an individual customer or the financial institution's ability to manage the risk."⁴

The FDIC continues to train all FDIC examiners to adhere to the highest standards of conduct and to respect the rule of law, which specifically includes training on case studies on Operation Choke Point. All examiners have taken this mandatory training, and we will continue to require regular updates to this training for all examiners.

As I have mentioned previously, the FDIC undertook various remedial measures intended to address the supervisory issues that occurred in connection with Operation Choke Point. Those efforts included:

- removing the high-risk merchant list⁵ created in 2011;
- encouraging institutions⁶ to take a risk-based approach in assessing individual customer relationships rather than declining to provide banking services to entire categories of customers;
- clarifying⁷ that financial institutions that can properly manage customer relationships and effectively mitigate risks are neither prohibited nor discouraged from providing services to any category of customer accounts or individual customer operating in compliance with applicable state and federal law;
- putting safeguards in place to prohibit examiners from directing a bank to discontinue serving a disfavored business, including requiring examiners to put all recommendations in writing, to obtain approval from a Regional Director in consultation with counsel, and to articulate a supervisory basis, beyond reputational risk, for the recommendation to terminate an account;⁸ and
- providing clear guidance to our examiners regarding discussions that examiners may have with bank management to address concerns about the use of moral suasion.⁹

Ultimately, it is the responsibility of each bank to prudently manage risk and customer relationships. This includes making decisions about whom to serve consistent with applicable law. However, the FDIC has made it explicitly clear to the institutions that we supervise that they should take a risk-based approach in assessing individual customer relationships rather than declining to provide banking services to entire categories of customers.

⁴ "Statement of the Federal Deposit Insurance Corporation," May 22, 2019, available at <https://www.fdic.gov/news/news/press/2019/pr19040a.pdf>.

⁵ "FDIC Clarifying Official Guidance and Other Information Related to Third-Party Payment Processors," FIL 41-2014, July 28, 2014, available at <https://www.fdic.gov/news/news/financial/2014/fil14041.html>.

⁶ FIL-5-2015, *supra*, Note 2.

⁷ *Id.*

⁸ Regional Director (RD) Memo 2015-1, "Requirements for Account Terminations"; RD Memo 2016-17, "Communicating and Coordinating with Institution Management in Carrying Out Forward-Looking, Risk-Based Supervision; Statement of FDIC Board of Directors on the Development and Communication of Supervisory Recommendations," July 29, 2016, available at <https://www.fdic.gov/about/governance/recommendations.html>; "Corrective Action Closure Memo Regarding OIG's Review of Recommendation 1 from the Operation Choke Point Audit Report" (Report No. AUD-15-008), July 5, 2017, available at <https://www.fdicog.gov/sites/default/files/publications/15-008AUD.pdf>; RD Memo 2017-12, "Supervisory Recommendations, Including Matters Requiring Board Attention."

⁹ RD Memo 2015-5, "Anticipatory Supervision Language Changes in Outstanding Guidance."

At your request, I have also enclosed a copy of the 2018 review of the FDIC's supervisory approach toward banks servicing "high-risk list" merchants completed by an outside law firm.

Thank you again for sharing your concerns. If you or your staff have further questions or comments, please do not hesitate to contact me at (202) 898-6868 or M. Andy Jiminez, Director, Office of Legislative Affairs, at (202) 898-6761.

Sincerely,


Jelena McWilliams

Enclosure