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Choking illegal payments helps everyone

By [Lauren Saunders](#)

What do these illegal schemes have in common?

Scammers took \$160 million from the bank accounts of the elderly. Thieves are selling credit and debit card information of millions of Target customers. A website tricked people who applied for payday loans and used their bank account information to charge them \$35 million for unwanted programs. A bogus debt relief outfit defrauded consumers of \$8 million in illegal fees. HSBC Bank paid a \$1.92 billion penalty for helping terrorists, Iran, and Mexican drug cartels launder money.

Answer: None of the schemes could take place or be profitable without a bank to process the payments or to move money around.

Banks can't always prevent themselves from being used to facilitate illegal conduct. Unfortunately, sometimes, banks look the other way when they see signs of illegal activity in an account that is generating high fees. These scams not only inflict immense damage on the direct victims; they also impact the banking industry and the broader public.

The Department of Justice's (DOJ) Operation Choke Point focuses on banks and payment processors that knowingly choose to process illegal transactions and willfully ignore clear evidence of fraud. The first Choke Point case was brought in January against Four Oaks Bank & Trust. The bank shirked its duty of due diligence and enabled payments for illegal and fraudulent payday loans; an illegal Ponzi scheme; a money laundering operation for illegal internet gambling payments; and a prepaid card marketing scam that made unauthorized debits for a bogus credit line. The bank ignored blatant red flags of illegality, including extremely high rates of payments rejected as unauthorized; false Social Security numbers and vacant lot addresses; offshore companies clearly violating U.S. laws; foreign entities not vetted as required by anti-money laundering rules; hundreds of consumer complaints of fraud; and attorney general warnings of legal violations.

Everyone should be applauding the DOJ for cracking down on such egregious violations of a bank's legal obligations. But I have scarcely heard a single clap. Instead, a chorus of voices has attacked the DOJ and demanded an end to Operation Choke Point and separate but similar efforts by bank regulators.

Such demands are irresponsible and short-sighted. Payment fraud hurts everyone. The FBI estimates that mass-marketing fraud schemes cause tens of billions of dollars of losses each year from millions of individuals and businesses. One recent study by MetLife found that fraud drains \$2.9 billion a year from the savings of senior citizens.

But the harm goes far beyond the immediate victims. After the Target data breach, customers across the country had their accounts frozen and couldn't withdraw cash. People spend millions on identity protection products. Brick-and-mortar retailers and online merchants alike lose business when consumers are afraid to shop. When the scammer's bank processes an unauthorized charge against a consumer's account, the consumer's bank has to deal with the mess. That costs small banks an average of over \$100 per payment and as high as \$500, according to NACHA, the Electronic Payments Association. Banks that are caught originating illegal payments face enforcement actions, private lawsuits, loss of public trust, and even threats to their safety and soundness. And when banks fail to scrutinize where payments are going, they can even put American security at risk.

DOJ's Operation Choke Point focuses solely on illegal activity. Bank regulators are doing their job when they warn banks to be alert to activities that have a high risk of fraud and illegality. Some banks may make their own business decisions to avoid high risk areas that they cannot manage. But banks that do not want to conduct appropriate due diligence in risky areas should leave high-risk customers to banks that will do it right. And remember, complaints that banks are cutting off legal customer long pre-date the 2013 Operation Choke Point; we have been hearing them a decade or more, since the post 9/11 Patriot Act.

So, let's all work together to choke off illegal payments. Everyone is better off when banks know their customers, monitor payments that are returned as unauthorized, and stay alert for signs of suspicious activity. Legal businesses with appropriate controls, even in high risk areas, will be able to find a bank to take their money. It is the scammers who have reason to be worried. And it's the scammers who are laughing all the way to the bank and hoping that Operation Choke Point will be choked.

Saunders is the associate director of the National Consumer Law Center in Washington, DC.

Read more: <http://thehill.com/blogs/ballot-box/211595-choking-illegal-payments-helps-everyone#ixzz3CkQUFQPc>