



# Operation Choke Point: An ATM Industry Update

*Sponsored by the ATMIA US IAD Committee*



# What is Operation Choke Point?

As stated in its July 10, 2014 [memorandum](#) from the Majority Staff of the Financial Services Committee, [Operation Choke Point](#) (OCP) is an initiative kicked off in March 2013 by the Department of Justice (DoJ) Consumer Protection Working Group to stop banks and payment processors from providing financial services to merchants that were suspected of consumer fraud.

The initiative is focused on banks and payment processors because these institutions are the “so-called bottlenecks or choke-points,” for financing merchants from “high-risk” industries. The DoJ has reportedly partnered with financial regulators, including the FDIC, ([Federal Deposit Insurance Corporation](#)), the [Federal Reserve Board](#) and the [Office of the Comptroller of the Currency](#), to identify merchants that pose a “high risk” for consumer fraud. It is now clear that OCP has led and is continuing to cause banks to terminate their relationships with a wide variety of merchants, including some lawful and legitimate businesses such as merchants who own and operate ATMs, the memorandum stated.

[OCP guidelines](#) list potentially high risk merchants and activities including ammunition sales, “as seen on TV,” credit card schemes, credit repair services, drug paraphernalia, escort services, firearms/fireworks sales, gambling, home based charities, pay day loans, pharmaceutical sales, telemarketing and tobacco sales, among others. Some of the red flags associated with OCP include large account fluctuations, consumer complaints, high rates of unauthorized returns or charge backs and/or an abnormal

<b>'RISKY' BUSINESSES</b>		
<b>Federal regulators have increased their scrutiny of banks that do business with “high risk” merchants. According to the Federal Deposit Insurance Corp., merchant categories associated with high-risk activity include, but are not limited to:</b>		
■ Ammunition sales	■ Fireworks sales	■ Payday loans
■ Cable box descramblers	■ Get-rich products	■ Pharmaceutical sales
■ Coin dealers	■ Government grants	■ Ponzi schemes
■ Credit card schemes	■ Home-based charities	■ Pornography
■ Credit repair services	■ Lifetime guarantees	■ Pyramid-type sales
■ Dating services	■ Lifetime memberships	■ Racist materials
■ Debt consolidation scams	■ Lottery sales	■ Surveillance equipment
■ Drug paraphernalia	■ Mailing lists/personal data	■ Telemarketing
■ Escort services	■ Money transfer networks	■ Tobacco sales
■ Firearms sales	■ Online gambling	■ Travel clubs

Source: Federal Deposit Insurance Corp. THE WASHINGTON TIMES

amount of financial institution (FI) to financial institution FI activity.

Under OCP, FIs are instructed to keep a close eye on their current account holders to monitor for these warning signs while performing more in-depth research into future accounts. Enhanced due diligence could include more thorough background checks, authentication of business operations, review of promotional materials, identifying processors and reviewing corporate documentation. After an initial review, account holders will be subject to ongoing monitoring similar to risk assessments now being applied to current customers.

# How are Independent ATM Deployers Affected?

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Although independent ATM deployers (IADs) aren't specifically indicated as targets of OCP, as cash-based payment businesses IADs have had their cash and settlement accounts closed simply because their ATM settlement accounts allegedly meet some of the warning signs FIs have been instructed to look for – specifically significant fluctuation in the amount of funds flowing thru the account from month to month and charge backs.

Indeed, industry partners, associations and sponsor banks have reported an increasing number of account closure letters submitted by IADs from FIs handling settlement accounts. In some cases, they request more information about the business but others are account closure letters. And, in some cases IADs have had their accounts closed with no warning at all. The majority of letters being issued are reportedly from top tier banks.

“Bank account closures are a big problem for ATM businesses,” said Vance Rowland, president of [AOneATM](#), a South Carolina-based ATM operator. “We and a number of our sub-deployers have received account closure letters or due diligence requests. The additional compliance requirements has some banks simply refusing to deal with ATM businesses.”

A Southern Mississippi ATM deployer, had a similar tale to tell – noting how the larger banks refuse to work with his business and some regional banks are charging extra fees to cover the added compliance costs. “The need for multiple banks and multiple accounts is time consuming and a disruption to business,” says Brian Currie, president of [Swipe Payment Technologies](#).

A Texas-based ATM deployer reported that not only were their business accounts closed with no warning but the owner of the business' personal accounts, which he had had for over 15 years, were closed as well.



# What Steps are Being Taken to Combat OCP?

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The [ATM Industry Association](#) (ATMIA), has taken a two-fold approach when it comes to Operation Choke Point. The first is to discuss the issue with Congress – ensuring they understand the full effects OCP has had on legal businesses and pushing for corrective legislation. The second is to educate the U.S. ATM industry and get them to notify their local congressional representatives when instances occur.

ATMIA is also collaborating with the [Electronic Funds Transfer Association](#) (EFTA), the Credit Union National Association (CUNA), the Independent Community Bankers Association (ICBA) and other banking associations to get legislation passed to end OCP.

Fortunately, the industry has found a ready champion in Representative Blaine Luetkemeyer (R-MO). Luetkemeyer has been working to reign in the detrimental effects of OCP – first filing corrective legislation in June 2014. Luetkemeyer also reintroduced the Financial Institution Customer Protection Act ([H.R. 766](#)).

H.R. 766 prohibits a federal banking agency from formally or informally pressuring a FI to terminate an account unless the agency has material reason to do so or the reason is not solely based on reputation risk. Under this rule, agencies can only request or pressure for account closure if they are capable of producing “material reason” that an account holder or group of accounts is posing a threat to national security, is involved in terrorist financing, is an agency / subject to jurisdiction / does business with an entity of specific suspect countries.



*Tente and Helwig met with Rep. Luetkemeyer in February to further discuss the continuing destructive impact of the OCP program. His bill, H.R. 766, passed the House with bipartisan support later that morning.*

ATMIA U.S. Executive Director, David Tente, and ATMIA Executive Board Member and President/CEO of EFTA, Kurt Helwig, met with Rep. Luetkemeyer in February to further discuss the continuing destructive impact of the OCP program.

H.R. 766 passed the House with bipartisan support later that morning and on April 13, 2016 Senator Mike Lee (R-UT) and Senator Ted Cruz (R-TX) introduces a companion bill to H.R. 766 in the Senate. However, the White House has already issued a statement strongly opposing H.R. 766 and said that President Obama would [veto the legislation](#).

“The ATM industry greatly appreciates Rep. Luetkemeyer’s efforts on this matter,” said Tente. “Most legislators don’t understand that ATMs are not a very efficient or effective tool for laundering money. Yet, we see ATM operators losing 20-year-old banking relationships due to threats of additional audits and crushing oversight from regulators.”

Other legislators have also taken up the cause. Rep. Sean Duffy (R-WI), co-chair of the Financial Services Subcommittee on Oversight and Investigations has stated a concern that agencies are using government as a weapon to go after industries and people they do not like. Senator Marco Rubio (R-FL) has introduced legislation to end OCP by defunding the program and prohibiting any incoming U.S. Attorney General from re-launching or implementing similar programs.

Due to Congressional pressure, in January 2015 the FDIC [acknowledged its role](#) in the program and began to address the issue by implementing [new policies and procedures](#) requiring bank examiners to put any recommendation for account termination into writing, indicating what law or regulation the bank or customer has violated, and to have any closure recommendation confirmed / approved by the examiner’s supervisor.



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However, despite the FDIC and other regulatory agencies pulling back on the program, account closures continue to be problematic for U.S. ATM operators.

“It can be hard for downstream auditors and officials to reverse course once the regulatory agencies have given a directive,” said Mike Keller, general counsel at [Cardtronics](#) and chairman of the [ATMIA U.S. Governmental Relations Committee](#).

# Tips to Keep Your Account Open

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Industry experts say a full explanation of your business and transparency with your financial institution is the key to protecting your business.

“The most proactive course for IADs to maintain banking relationships is communication,” said Elizabeth Bohlen, senior vice president, chief payments officer for [Pueblo Bank and Trust](#). “Delivering a full explanation of their business as well as supporting documentation such as business and personal financials and, above all, full disclosure and regular communication can help create better relations and deter suspicion.”

Recommended transparency includes special handling of settlement accounts. IADs should avoid using these accounts for anything other than ATM vault cash and settlement dollar deposits. Interchange and surcharge should be handled separately. Should money other than settlement dollars be deposited or withdrawn, an up-to-date, accurate ledger should be available to help explain these additional uses of the account.

The Independent Community Bankers of America (ICBA) agrees. “ATM deployers can enhance their relationships with community banks by being as transparent as possible,” says ICBA Assistant Vice President of Communications Nicole Swann. “ICBA believes transparency is essential and recommends deployers develop a clear and defined risk model and present it to the bank for consideration.”

Part of this ongoing conversation should include reference to the 2007 Financial Crimes Enforcement Network (FinCEN) [guidance on the definition of ATM owners-operators](#) of ATMs.

The document notes money service businesses (MSB)  must comply with certain recordkeeping and reporting requirements as well as implement anti-money laundering programs. However, the majority of ATM owners-operators fail to qualify as a MSB as they do not take deposits; are unable to transfer funds to third parties, customer accounts or other financial institutions; and do not buy or sell currency.

***The most proactive course to maintain banking relationships is communication. Full disclosure and regular communication can help create better relations and deter suspicion.***

***— Elizabeth Bohlen  
Pueblo Bank and Trust***

Once an IAD receives an account closure letter, it is often too late to begin communication with the FI to regain account access. Experts recommend IADs maintain one or more backup accounts to maintain business as usual in case the main settlement account is lost.

“We work closely with the banks we use and supply our subs with all the compliance documents they are going to need when they receive a request from their bank or credit union,” Rowland says.

Many IADs have had success by turning to smaller regional financial institutions or community banks. Lance Noggle, senior director of advocacy for CUNA also suggests ATM operators check into credit unions as a viable alternative for their business accounts.

“The credit union regulatory agency, the National Credit Union Administration NCUA, is not as aggressive as the bank regulators,” said Noggle. “And credit unions offer commercial loans and business accounts. Their only restriction would be their field of membership. IADs can have a relationship with credit unions through business accounts as long as they fit within the parameters of the credit union’s field of membership (FOM).”

Paul Albright, executive vice president with [Outsource ATM](#), a full-service ATM management company based in Houston, solved his OCP problem by opening an account with one of the community banks he partnera with and developing relationships with a variety of FIs in each area of the country they operate in. “Operation Choke Point has complicated our business and increased the cost of operating because we now have to maintain multiple accounts and lines of credit at a variety of banks,” Albright says.

“We would love to be able to operate with a single bank account but multiple accounts and institutions has become an essential to protecting the business,” Rowland says.

## ***Tips for Dealing with Operation Choke Point***

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- ***Be Open & Upfront about Business Operations***

- Talk to your financial institution: don’t wait until you get an account closure letter or request for information
- Emphasize understanding of cash origins / flow

- ***Avoid Large Cash Fluctuations***

- If unavoidable, provide proper notice

- ***Separate Accounts for ATM Vault Cash & Interchange and Surcharge***

- ***Ask Your Sponsor Bank for a Letter Identifying Your Business as a “Sponsored” Operator***

- ***Have an Alternative Bank Lined Up so Your Current Bank Can’t “Push You Around”***

- ***Be active in your local Chamber of Commerce*** or other civic/commercial clubs and make sure banks in your community realize that how they treat one customer will be communicated throughout the community

## ***What if You are Caught Up in OCP?***

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Those businesses receiving account closure letters can respond with similar information in an attempt to keep the account open or simply select to change accounts. Operators receiving letters requesting additional documentation should speak to their sponsor banks, processors and partners.

“As a Sponsoring Financial Institution, we have provided to a clients’ Settlement Bank a phone call or letter to identify that we do ‘Sponsor’ the IAD/ISO into the Debit Networks and, as such, have done our Bank’s established due diligence on the client,” said Bohlen.

“However, most banks will be looking for a full explanation of the business; supporting documentation such as transaction data; and business and personal financials – essentially full disclosure and follow-up with regular updates and communication with the bank,” Bohlen says.

“Any time a letter is received, whether it be a documentation request or an account closure notice, operators should send a copy of the letter to ATMIA,” advises Keller.

“It is also important to forward a copy of the letter to your local congressman and make certain the representative and their staff are fully aware of the issue. Instances of the effects of OCP are not necessarily well-known or documented because they remain under reported,” says Keller.

## ***Relief is on the Way***

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Thanks to lobbying efforts and the assistance of Congressional representatives, progress is being made in the ongoing battle against Operation Choke Point and its attack on the U.S. ATM industry. ATMIA continues to work in conjunction with EFTA and other organizations to spread awareness of the effects of OCP – and put pressure on Congress to develop and implement legislation stopping the program and others like it from harming legal industries.

ATM operators can help in the fight by submitting bank letters and any other documents/testimonials reflecting the disruptive effects of Operation Choke Point to their Congressional representatives and ATMIA.

“I would highly recommend IADs get involved by joining ATMIA’s [IAD or GRC committees](#) and making regular contributions to the [U.S. Legal Defense Fund](#),” says Tente.