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NEW RISK TO BANKS: THE TARGETED COMPANY

In 2013, the Department of Justice (DOJ), along with the Federal Deposit Insurance Corporation (FDIC) and the Consumer Financial Protection Bureau (CFPB), secretly launched "Operation Choke Point," an initiative aimed at predatory lenders, but one with questionable statutory authority and dubious consultation with Congress. The DOJ is now poised to bring civil and criminal actions against dozens of banks who do business with "Targeted Companies."

Who Are the Targeted Companies?

The DOJ is investigating large and small banks as to whether their dealings with Third Party Payment Processors (TPPPs), Payday Lenders and Short-Term Online Lenders assist those Targeted Companies with illegally effecting automatic withdrawals from consumers' accounts.

Bank Secrecy Act Issues

Under the Bank Secrecy Act, banks are required to maintain anti-money laundering checks and to examine suspicious activity by their own customers and the companies their customers do business with. But the following question arises: Does the mandate to monitor activity that might be related to money laundering also obligate banks to investigate consumer abuses by third parties?

Lenders' Harm to the "Underserved" Community

Payday Lenders and Online Lenders cater to the borrowing community described as underserved by mainstream lending. According to the DOJ, that puts such operations in the category of "predatory lenders" requiring extra scrutiny of the companies and the banks that provide them with banking services.

DOJ'S Harm to the Underserved Community

The position of many congressmen, however, is that Payday Lenders fill a void in providing needed short-term credit to those underserved communities and that the DOJ initiative will destroy that sector of the lending industry.

Last August, 31 members of Congress wrote to the DOJ requesting a congressional briefing on the project, claiming that they did not know its status or its name. Their letter stated "[i]t has come to our attention that the DOJ and the FDIC are leading a joint effort that according to a DOJ official is intended to 'change the structures within the financial system ... choking [online short-term lenders] off from the very air they need to survive.'"

It further stated, "We are especially troubled by reports that the DOJ and FDIC are intimidating some community banks and third party payment processors with threats of heightened regulatory scrutiny unless they cease doing business with online lenders … as a result, many bank and payment processors are terminating relationships with many of their long-term customers who provide underserved consumers with short-term credit options."

Fair Banking Risks

As the operation expands, banks across the country will need expert advice to avoid Fair Banking risk factors. Contact GreenPoint Legal's Fair Banking experts today for assistance in addressing this risk indicator.

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