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(Original Signature of Member)

113TH CONGRESS
2D SESSION

H. R. _____

To amend certain banking statutes in response to Operation Choke Point.

IN THE HOUSE OF REPRESENTATIVES

Mr. LUETKEMEYER introduced the following bill; which was referred to the
Committee on _____

A BILL

To amend certain banking statutes in response to Operation
Choke Point.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “End Operation Choke
5 Point Act of 2014”.

1 **SEC. 2. BUSINESS ACCESS TO INSURED DEPOSITORY INSTI-**
2 **TUTIONS.**

3 (a) IN GENERAL.—The Federal Deposit Insurance
4 Act (12 U.S.C. 1811 et seq.) is amended by adding at
5 the end the following new section:

6 **“SEC. 51. BUSINESS ACCESS TO INSURED DEPOSITORY IN-**
7 **STITUTIONS.**

8 “(a) IN GENERAL.—The Federal banking agencies
9 may not prohibit or otherwise restrict or discourage an
10 insured depository institution from providing any product
11 or service to an entity that demonstrates to the insured
12 depository institution that such entity—

13 “(1) is licensed and authorized to offer such
14 product or service;

15 “(2) is registered as a money transmitting busi-
16 ness under section 5330 of title 31, United States
17 Code, or regulations promulgated under such sec-
18 tion; or

19 “(3) has a reasoned legal opinion that dem-
20 onstrates the legality of the entity’s business under
21 applicable law.

22 “(b) RULE OF CONSTRUCTION.—Nothing in this sec-
23 tion shall be construed to—

24 “(1) require an insured depository institution—

25 “(A) to provide any product or service to
26 any particular entity;

1 “(B) to regularly review the status of any
2 license of an entity; or

3 “(C) to determine the validity or veracity
4 of any reasoned legal opinion obtained under
5 subsection (a)(3); or

6 “(2) imply or require that an insured depository
7 institution may only provide products or services to
8 an entity that has met any of the requirements of
9 paragraphs (1) through (3) of subsection (a).

10 “(c) LIMITATION ON RULEMAKING.—The Federal
11 banking agencies may not issue any guidance under sub-
12 section (a). Any rule implementing subsection (a) shall be
13 promulgated in accordance with section 553 of title 5,
14 United States Code.

15 “(d) REASONED LEGAL OPINION DEFINED.—For
16 purposes of this section, the term ‘reasoned legal opin-
17 ion’—

18 “(1) means a written legal opinion by a State-
19 licensed attorney that addresses the facts of a par-
20 ticular business and the legality of the business’s
21 provision of products or services to customers in the
22 relevant jurisdictions under applicable Federal and
23 State law, tribal ordinances, tribal resolutions, and
24 tribal-State compacts; and

1 “(2) does not include a written legal opinion
2 that recites the facts of a particular business and
3 states a conclusion.”.

4 **SEC. 3. BUSINESS ACCESS TO FEDERAL CREDIT UNIONS.**

5 Title I of the Federal Credit Union Act (12 U.S.C.
6 1751 et seq.) is amended by adding at the end the fol-
7 lowing new section:

8 **“SEC. 132. BUSINESS ACCESS TO INSURED CREDIT UNIONS.**

9 “(a) IN GENERAL.—The Board may not prohibit or
10 otherwise restrict or discourage an insured credit union
11 from providing any product or service to an entity that
12 demonstrates to the insured credit union that such enti-
13 ty—

14 “(1) is licensed and authorized to offer such
15 product or service;

16 “(2) is registered as a money transmitting busi-
17 ness under section 5330 of title 31, United States
18 Code, or regulations promulgated under such sec-
19 tion; and

20 “(3) has a reasoned legal opinion that dem-
21 onstrates the legality of the entity’s business under
22 applicable law.

23 “(b) RULE OF CONSTRUCTION.—Nothing in this sec-
24 tion shall be construed to—

25 “(1) require an insured credit union—

1 “(A) to provide any products or services to
2 any entity;

3 “(B) to regularly review the status of any
4 license of an entity; or

5 “(C) to determine the validity or veracity
6 of any reasoned legal opinion obtained under
7 subsection (a)(3); or

8 “(2) imply or require that an insured credit
9 union may only provide products or services to an
10 entity that has met any of the requirements of para-
11 graphs (1) through (3) of subsection (a).

12 “(c) LIMITATION ON RULEMAKING.—The Board may
13 not issue any guidance under subsection (a). Any rule im-
14 plementing subsection (a) shall be promulgated in accord-
15 ance with section 553 of title 5, United States Code.

16 “(d) REASONED LEGAL OPINION DEFINED.—For
17 purposes of this section, the term ‘reasoned legal opin-
18 ion’—

19 “(1) means a written legal opinion by a State-
20 licensed attorney that addresses the facts of a par-
21 ticular business and the legality of the business’s
22 provision of products or services to customers in the
23 relevant jurisdictions under applicable Federal and
24 State law, tribal ordinances, tribal resolutions, and
25 tribal-State compacts; and

1 “(2) does not include a written legal opinion
2 that recites the facts of a particular business and
3 states a conclusion.”.

4 **SEC. 4. AMENDMENTS TO THE FINANCIAL INSTITUTIONS**
5 **REFORM, RECOVERY, AND ENFORCEMENT**
6 **ACT OF 1989.**

7 Section 951 of the Financial Institutions Reform, Re-
8 covery, and Enforcement Act of 1989 (12 U.S.C. 1833a)
9 is amended—

10 (1) in subsection (c)(2), by inserting “and
11 where such violation or conspiracy to violate is in
12 connection with a violation or conspiracy to violate
13 a section described under paragraph (1)” after “fi-
14 nancial institution”; and

15 (2) in subsection (g)—

16 (A) in the header, by striking “SUB-
17 POENAS” and inserting “INVESTIGATIONS”;

18 (B) in paragraph (1), by amending sub-
19 paragraph (C) to read as follows:

20 “(C) request a court order from a court of
21 competent jurisdiction, to summon witnesses
22 and to require the production of any books, pa-
23 pers, correspondence, memoranda, or other
24 records which the Attorney General deems rel-
25 evant or material to the inquiry, and which

1 shall be issued only if the Attorney General of-
2 fers specific and articulable facts showing that
3 there are reasonable grounds to believe that the
4 information or testimony sought is relevant and
5 material to an ongoing civil proceeding under
6 this section.”;

7 (C) by amending paragraph (2) to read as
8 follows:

9 “(2) ANNUAL REPORT TO CONGRESS ON
10 FIRREA COURT ORDERS.—The Attorney General
11 shall submit a report before January 31 of each
12 year, beginning the first January following the date
13 of enactment of this Act, to the Committee on Fi-
14 nancial Services of the House of Representatives and
15 the Committee on Banking, Housing, and Urban Af-
16 fairs of the Senate, which shall include a detailed de-
17 scription of—

18 “(A) the number of court orders sought by
19 the Attorney General and the number of orders
20 issued;

21 “(B) the recipient of the court orders;

22 “(C) the number of documents requested
23 and received;

1 “(D) the number of witnesses requested to
2 testify and the number who actually testified;
3 and

4 “(E) whether a civil enforcement action
5 was filed and the result of any such enforce-
6 ment action, including settlements that led to
7 the dismissal of charges.”; and

8 (D) by striking paragraph (3).

9 **SEC. 5. REQUIRING COOPERATION TO DETER THE COMMIS-**
10 **SION OF FINANCIAL FRAUD.**

11 Subsection (a) of section 314 of the USA PATRIOT
12 Act (31 U.S.C. 5311 note) is amended—

13 (1) in paragraph (1), by inserting “, the com-
14 mission of financial fraud,” after “terrorist acts”;

15 (2) in paragraph (2)—

16 (A) in subparagraph (B), by striking “;
17 and” and inserting a semicolon;

18 (B) in subparagraph (C), by striking the
19 period at the end and inserting “; and”; and

20 (C) by adding at the end the following new
21 subparagraph:

22 “(D) means of facilitating the identifica-
23 tion of accounts and transactions involving per-
24 sons engaged in committing financial fraud,

1 subject to the limitations described in para-
2 graph (5).”; and

3 (3) in paragraph (5), by striking “shall not be
4 used” and all that follows through the period at the
5 end and inserting the following: “shall not—

6 “(A) be used for any purpose other than
7 identifying and reporting on activities that may
8 involve terrorist acts, financial fraud, or money
9 laundering; and

10 “(B) be construed to require financial in-
11 stitutions to determine or assure compliance of
12 any entity with any Federal, State, or other li-
13 censing requirements.”.

14 **SEC. 6. LIABILITY FOR DISCLOSURES IN REPORTING SUS-**
15 **PICIOUS TRANSACTIONS.**

16 Paragraph (3) of section 5318(g) of title 31, United
17 States Code, is amended—

18 (1) in subparagraph (A), by inserting “, for any
19 underlying activity that is the subject of the disclo-
20 sure,” after “for such disclosure”; and

21 (2) in subparagraph (B)(ii), by striking “civil
22 or” before “criminal”.

1 **SEC. 7. FINANCIAL CRIMES ENFORCEMENT NETWORK**
2 **DATA ACCOUNTABILITY METRICS.**

3 Section 310 of title 31, United States Code, is
4 amended—

5 (1) in subsection (b)(2)(C)—

6 (A) in clause (vi), by striking “; and” and
7 inserting a semicolon;

8 (B) in clause (vii), by striking the period
9 at the end and inserting “; and”; and

10 (C) by adding at the end the following new
11 clause:

12 “(viii) generate feedback and report
13 on the utility of the data access service de-
14 scribed in subparagraph (B) and the infor-
15 mation collected by the service to improve
16 cooperation among data providers and
17 users while reducing regulatory burden and
18 preserving payment system efficiency.”;

19 (2) in subsection (c)—

20 (A) in paragraph (1)(C), by striking “;
21 and” and inserting a semicolon;

22 (B) in paragraph (2)(C), by striking the
23 period at the end and inserting “; and”; and

24 (C) by adding at the end the following new
25 paragraph:

1 “(3) for appropriate metrics to monitor, track,
2 assess, and report on access to information con-
3 tained in the data maintenance system maintained
4 by FinCEN for—

5 “(A) identifying, tracking, and measuring
6 how such information is used and the law en-
7 forcement results obtained as a consequence of
8 that use; and

9 “(B) assuring accountability by law en-
10 forcement agencies for the utility, security, and
11 privacy of such information while reducing un-
12 necessary regulatory burdens.”.