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.

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

SECTION 1. SHORT TITLE.

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

June 26, 2014 (10:16 a.m.)
SEC. 2. BUSINESS ACCESS TO INSURED DEPOSITORY INSTITUTIONS.

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

“SEC. 51. BUSINESS ACCESS TO INSURED DEPOSITORY INSTITUTIONS.

“(a) In general.—The Federal banking agencies may not prohibit or otherwise restrict or discourage an insured depository institution from providing any product or service to an entity that demonstrates to the insured depository institution that such entity—

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

“(2) is registered as a money transmitting business under section 5330 of title 31, United States Code, or regulations promulgated under such section; or

“(3) has a reasoned legal opinion that demonstrates the legality of the entity’s business under applicable law.

“(b) Rule of construction.—Nothing in this section shall be construed to—

“(1) require an insured depository institution—

“(A) to provide any product or service to any particular entity;
“(B) to regularly review the status of any license of an entity; or

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

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

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

“(d) REASONED LEGAL OPINION DEFINED.—For purposes of this section, the term ‘reasoned legal opinion’—

“(1) means a written legal opinion by a State-licensed attorney that addresses the facts of a particular business and the legality of the business’s provision of products or services to customers in the relevant jurisdictions under applicable Federal and State law, tribal ordinances, tribal resolutions, and tribal-State compacts; and
“(2) does not include a written legal opinion that recites the facts of a particular business and states a conclusion.”

SEC. 3. BUSINESS ACCESS TO FEDERAL CREDIT UNIONS.

Title I of the Federal Credit Union Act (12 U.S.C. 1751 et seq.) is amended by adding at the end the following new section:

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

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

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

“(2) is registered as a money transmitting business under section 5330 of title 31, United States Code, or regulations promulgated under such section; and

“(3) has a reasoned legal opinion that demonstrates the legality of the entity’s business under applicable law.

“(b) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to—

“(1) require an insured credit union—
“(A) to provide any products or services to any entity;

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

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

“(2) imply or require that an insured credit union may only provide products or services to an entity that has met any of the requirements of paragraphs (1) through (3) of subsection (a).

“(c) LIMITATION ON RULEMAKING.—The Board may not issue any guidance under subsection (a). Any rule implementing subsection (a) shall be promulgated in accordance with section 553 of title 5, United States Code.

“(d) REASONED LEGAL OPINION DEFINED.—For purposes of this section, the term ‘reasoned legal opinion’—

“(1) means a written legal opinion by a State-licensed attorney that addresses the facts of a particular business and the legality of the business’s provision of products or services to customers in the relevant jurisdictions under applicable Federal and State law, tribal ordinances, tribal resolutions, and tribal-State compacts; and
“(2) does not include a written legal opinion that recites the facts of a particular business and states a conclusion.”.


Section 951 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1833a) is amended—

(1) in subsection (c)(2), by inserting “and where such violation or conspiracy to violate is in connection with a violation or conspiracy to violate a section described under paragraph (1)” after “financial institution”; and

(2) in subsection (g)—

(A) in the header, by striking “SUBPOENAS” and inserting “INVESTIGATIONS”;

(B) in paragraph (1), by amending subparagraph (C) to read as follows:

“(C) request a court order from a court of competent jurisdiction, to summon witnesses and to require the production of any books, papers, correspondence, memoranda, or other records which the Attorney General deems relevant or material to the inquiry, and which
shall be issued only if the Attorney General offers specific and articulable facts showing that there are reasonable grounds to believe that the information or testimony sought is relevant and material to an ongoing civil proceeding under this section.”;

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

“(2) ANNUAL REPORT TO CONGRESS ON FIRREA COURT ORDERS.—The Attorney General shall submit a report before January 31 of each year, beginning the first January following the date of enactment of this Act, to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, which shall include a detailed description of—

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

“(B) the recipient of the court orders;

“(C) the number of documents requested and received;
“(D) the number of witnesses requested to testify and the number who actually testified; and

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

(D) by striking paragraph (3).

**SEC. 5. REQUIRING COOPERATION TO DETER THE COMMISSION OF FINANCIAL FRAUD.**

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

(1) in paragraph (1), by inserting “, the commission of financial fraud,” after “terrorist acts”;

(2) in paragraph (2)—

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

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

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

“(D) means of facilitating the identification of accounts and transactions involving persons engaged in committing financial fraud,
subject to the limitations described in paragraph (5).”; and

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

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

“(B) be construed to require financial institutions to determine or assure compliance of any entity with any Federal, State, or other licensing requirements.”.

SEC. 6. LIABILITY FOR DISCLOSURES IN REPORTING SUSPICIOUS TRANSACTIONS.

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

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

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


SEC. 7. FINANCIAL CRIMES ENFORCEMENT NETWORK

DATA ACCOUNTABILITY METRICS.

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

(1) in subsection (b)(2)(C)—

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

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

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

“(viii) generate feedback and report on the utility of the data access service described in subparagraph (B) and the information collected by the service to improve cooperation among data providers and users while reducing regulatory burden and preserving payment system efficiency.”;

(2) in subsection (c)—

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

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

(C) by adding at the end the following new paragraph:
“(3) for appropriate metrics to monitor, track, assess, and report on access to information contained in the data maintenance system maintained by FinCEN for—

“(A) identifying, tracking, and measuring how such information is used and the law enforcement results obtained as a consequence of that use; and

“(B) assuring accountability by law enforcement agencies for the utility, security, and privacy of such information while reducing unnecessary regulatory burdens.”.