

113TH CONGRESS  
2D SESSION

# H. R. 4986

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

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IN THE HOUSE OF REPRESENTATIVES

JUNE 26, 2014

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

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## 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”.

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

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

1 **“SEC. 51. BUSINESS ACCESS TO INSURED DEPOSITORY IN-**  
2 **STITUTIONS.**

3 “(a) IN GENERAL.—The Federal banking agencies  
4 may not prohibit or otherwise restrict or discourage an  
5 insured depository institution from providing any product  
6 or service to an entity that demonstrates to the insured  
7 depository institution that such entity—

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

10 “(2) is registered as a money transmitting busi-  
11 ness under section 5330 of title 31, United States  
12 Code, or regulations promulgated under such sec-  
13 tion; or

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

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

19 “(1) require an insured depository institution—

20 “(A) to provide any product or service to  
21 any particular entity;

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

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

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

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

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

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

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

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

2 Title I of the Federal Credit Union Act (12 U.S.C.  
3 1751 et seq.) is amended by adding at the end the fol-  
4 lowing new section:

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

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

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

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

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

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

22 “(1) require an insured credit union—

23 “(A) to provide any products or services to  
24 any entity;

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

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

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

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

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

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

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

1 **SEC. 4. AMENDMENTS TO THE FINANCIAL INSTITUTIONS**  
2 **REFORM, RECOVERY, AND ENFORCEMENT**  
3 **ACT OF 1989.**

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

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

12 (2) in subsection (g)—

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

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

17 “(C) request a court order from a court of  
18 competent jurisdiction, to summon witnesses  
19 and to require the production of any books, pa-  
20 pers, correspondence, memoranda, or other  
21 records which the Attorney General deems rel-  
22 evant or material to the inquiry, and which  
23 shall be issued only if the Attorney General of-  
24 fers specific and articulable facts showing that  
25 there are reasonable grounds to believe that the  
26 information or testimony sought is relevant and

1 material to an ongoing civil proceeding under  
2 this section.”;

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

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

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

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

18 “(C) the number of documents requested  
19 and received;

20 “(D) the number of witnesses requested to  
21 testify and the number who actually testified;  
22 and

23 “(E) whether a civil enforcement action  
24 was filed and the result of any such enforce-

1           ment action, including settlements that led to  
2           the dismissal of charges.”; and

3           (D) by striking paragraph (3).

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

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

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

10          (2) in paragraph (2)—

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

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

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

17           “(D) means of facilitating the identifica-  
18 tion of accounts and transactions involving per-  
19 sons engaged in committing financial fraud,  
20 subject to the limitations described in para-  
21 graph (5).”; and

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



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

5           “(B) be construed to require financial in-  
6           stitutions to determine or assure compliance of  
7           any entity with any Federal, State, or other li-  
8           censing requirements.”.

9   **SEC. 6. LIABILITY FOR DISCLOSURES IN REPORTING SUS-**  
10                   **PICIOUS TRANSACTIONS.**

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

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

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

18   **SEC. 7. FINANCIAL CRIMES ENFORCEMENT NETWORK**  
19                   **DATA ACCOUNTABILITY METRICS.**

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

22           (1) in subsection (b)(2)(C)—

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

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

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

5 “(viii) generate feedback and report  
6 on the utility of the data access service de-  
7 scribed in subparagraph (B) and the infor-  
8 mation collected by the service to improve  
9 cooperation among data providers and  
10 users while reducing regulatory burden and  
11 preserving payment system efficiency.”;

12 (2) in subsection (c)—

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

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

17 (C) by adding at the end the following new  
18 paragraph:

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

23 “(A) identifying, tracking, and measuring  
24 how such information is used and the law en-

1 enforcement results obtained as a consequence of  
2 that use; and

3 “(B) assuring accountability by law en-  
4 forcement agencies for the utility, security, and  
5 privacy of such information while reducing un-  
6 necessary regulatory burdens.”.

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