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RSC THE REPUBLICAN STUDY COMMITTEE

H.R. 766—Financial Institution Consumer Protection Act (Rep. Luetkemeyer, R-MO)

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FLOOR SCHEDULE:

Scheduled for consideration on February 4, under a structured rule.

TOPLINE SUMMARY:

H.R. 766 would address Operation Chokepoint and other similar initiatives, to prohibit any federal banking agency from suggesting, requesting, or ordering a depository institution to terminate a customer account or group of accounts, or prohibiting an institution from maintaining a banking relationship with specific customer, unless the agency has a material reason to do so, and that reason is not solely based on risk to reputation.

COST:

The Congressional Budget Office (CBO) estimates that implementing H.R. 766 would have no significant effect on the federal budget.

CONSERVATIVE CONCERNS:

There are no substantive concerns.

- **Expand the Size and Scope of the Federal Government?** No.
- **Encroach into State or Local Authority?** No.
- **Delegate Any Legislative Authority to the Executive Branch?** No.
- **Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** No.

DETAILED SUMMARY AND ANALYSIS:

Operation Chokepoint is a law enforcement initiative launched by the Department of Justice to combat consumer fraud by "choking off" businesses that have supposedly committed consumer fraud from access to the financial system. In lieu of investigating purported fraud, the Justice Department issues subpoenas to financial institutions that provide services to the merchants in question. This serves to cut off relationships between certain businesses and their financial institutions. This operation has, in practice, equated legitimate businesses like firearms dealers with illegal activities.

Section 2 of this legislation would prevent federal banking regulators from requiring or encouraging depository institutions to terminate customer accounts or banking relationships with a specific customer unless the agency has material reason to do so, and that reason is not solely based on risk to reputation. This section would require banking regulators to put any formal or informal request to terminate a relationship in writing. Written requests are required to be shared with financial institutions, but the

institution is not obligated to share the request with the customer. In the case of national security, the institution would be prohibited from sharing the request with the customer.

This section would make accommodations for threats to national security, with the materiality threshold deemed met if a federal agency believes a customer poses a threat to national security. This section would also require banking regulators to issue an annual report to Congress on the number of termination suggestions, and orders given, and the legal authority for such requests.

Section 3 would strike the word "affecting" from the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), and replace the language with "by" or "against," in order to ensure that any broad interpretations of FIRREA are limited, and that they maintain the intent of the statute—to penalize fraud by or against financial institutions.

This section would also require the Department of Justice (DOJ) to take a FIRREA subpoena to a court of competent jurisdiction or to secure the Attorney General or Deputy Attorney General's sign-off, to ensure DOJ oversight.

The Committee Report can be found here.

AMENDMENTS

1. Gosar (R-AZ) – This amendment would require notice to banking customers if an account is terminated at the direction of federal banking regulators.
2. Sherman (D-CA) – This amendment would clarify that this legislation would not prevent federal banking regulators from requesting or requiring a financial institution to end a banking relationship because the customer poses a threat to national security, is engaged in terrorist financing, is doing business with Iran, Syria, North Korea, or another state sponsor of terror, or is doing business with an entity of these countries.

COMMITTEE ACTION:

H.R. 766 was introduced on February 5, 2015 and was referred to the House Committee on Financial Services, where it was reported on July 29, 2015.

ADMINISTRATION POSITION:

A Statement of Administration Policy is not available.

CONSTITUTIONAL AUTHORITY:

According to the sponsor, Congress has the power to enact this legislation pursuant to Article I, Section 8, clause 3; Article I, Section 8, clause 1; and Article I, Section 7, clause 2 of the United States Constitution.

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