

FINANCIAL INSTITUTION CUSTOMER PROTECTION ACT
OF 2017

NOVEMBER 16, 2017.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

Mr. HENSARLING, from the Committee on Financial Services,
submitted the following

R E P O R T

[To accompany H.R. 2706]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 2706) to provide requirements for the appropriate Federal banking agencies when requesting or ordering a depository institution to terminate a specific customer account, to provide for additional requirements related to subpoenas issued under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Financial Institution Customer Protection Act of 2017”.

SEC. 2. REQUIREMENTS FOR DEPOSIT ACCOUNT TERMINATION REQUESTS AND ORDERS.

(a) **TERMINATION REQUESTS OR ORDERS MUST BE VALID.**—

(1) **IN GENERAL.**—An appropriate Federal banking agency may not formally or informally request or order a depository institution to terminate a specific customer account or group of customer accounts or to otherwise restrict or discourage a depository institution from entering into or maintaining a banking relationship with a specific customer or group of customers unless—

(A) the agency has a valid reason for such request or order; and

(B) such reason is not based solely on reputation risk.

(2) **TREATMENT OF NATIONAL SECURITY THREATS.**—If an appropriate Federal banking agency believes a specific customer or group of customers is, or is acting as a conduit for, an entity which—

(A) poses a threat to national security;

(B) is involved in terrorist financing;

(C) is an agency of the Government of Iran, North Korea, Syria, or any country listed from time to time on the State Sponsors of Terrorism list; (D) is located in, or is subject to the jurisdiction of, any country specified in subparagraph (C); or

(E) does business with any entity described in subparagraph (C) or (D), unless the appropriate Federal banking agency determines that the customer or group of customers has used due diligence to avoid doing business with any entity described in subparagraph (C) or (D),

such belief shall satisfy the requirement under paragraph (1).

(b) NOTICE REQUIREMENT.—

(1) IN GENERAL.—If an appropriate Federal banking agency formally or informally requests or orders a depository institution to terminate a specific customer account or a group of customer accounts, the agency shall—

(A) provide such request or order to the institution in writing; and

(B) accompany such request or order with a written justification for why such termination is needed, including any specific laws or regulations the agency believes are being violated by the customer or group of customers, if any.

(2) JUSTIFICATION REQUIREMENT.—A justification described under paragraph (1)(B) may not be based solely on the reputation risk to the depository institution.

(c) CUSTOMER NOTICE.—

(1) NOTICE REQUIRED.—Except as provided under paragraph (2), if an appropriate Federal banking agency orders a depository institution to terminate a specific customer account or a group of customer accounts, the depository institution shall inform the customer or customers of the justification for the customer's account termination described under subsection (b).

(2) NOTICE PROHIBITED IN CASES OF NATIONAL SECURITY.—If an appropriate Federal banking agency requests or orders a depository institution to terminate a specific customer account or a group of customer accounts based on a belief that the customer or customers pose a threat to national security, or are otherwise described under subsection (a)(2), neither the depository institution nor the appropriate Federal banking agency may inform the customer or customers of the justification for the customer's account termination.

(d) REPORTING REQUIREMENT.—Each appropriate Federal banking agency shall issue an annual report to the Congress stating—

(1) the aggregate number of specific customer accounts that the agency requested or ordered a depository institution to terminate during the previous year; and

(2) the legal authority on which the agency relied in making such requests and orders and the frequency on which the agency relied on each such authority.

(e) DEFINITIONS.—For purposes of this section:

(1) APPROPRIATE FEDERAL BANKING AGENCY.—The term “appropriate Federal banking agency” means—

(A) the appropriate Federal banking agency, as defined under section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813); and

(B) the National Credit Union Administration, in the case of an insured credit union.

(2) DEPOSITORY INSTITUTION.—The term “depository institution” means—

(A) a depository institution, as defined under section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813); and

(B) an insured credit union.

PURPOSE AND SUMMARY

Introduced by Representative Blaine Luetkemeyer on May 25, 2017, H.R. 2706, the “Financial Institution Customer Protection Act of 2017”, prohibits a federal banking agency from formally or informally suggesting, requesting, or ordering a depository institution to terminate either a specific customer account, or group of customer accounts, or otherwise restrict or discourage it from entering into or maintaining a banking relationship with a specific customer or group of customers, unless: (1) the agency has a valid reason for doing so, and (2) that reason is not based solely on reputation risk. H.R. 2706 requires a federal banking agency to provide a depository institution written justification of any request to

terminate or restrict a customer account, except in instances of national security.

H.R. 2706 also requires appropriate federal banking agencies to issue an annual report to Congress that describes the number of customer accounts the agency requested or ordered to be closed and the legal authority relied upon by the agency to do so.

BACKGROUND AND NEED FOR LEGISLATION

Operation “Choke Point” is a law enforcement initiative launched by the Department of Justice’s Consumer Protection Branch during President Obama’s Administration to combat consumer fraud by ‘choking off’ businesses alleged to have committed fraud from access to the financial system. Rather than investigate and prosecute the merchants alleged to have committed fraud, the Justice Department subpoenas the institutions that provide financial services to these merchants, which effectively coerces these financial institutions to cease offering the services. The Justice Department has partnered with the Federal Deposit Insurance Corporation (FDIC) to identify merchants that pose a ‘high risk’ for consumer fraud, notwithstanding the fact that these merchants may be operating their businesses legally. In doing so, the FDIC equated legitimate and regulated activities such as coin dealers and firearms and ammunition sales with inherently pernicious or patently illegal activities such as Ponzi schemes, debt consolidation scams, and drug paraphernalia. The legal merchants identified as ‘high risk’ have seen their accounts terminated by banks seeking to avoid civil and criminal liability as well as greater regulatory scrutiny.

The Committee adopted an amendment offered by Rep. Denny Heck that would prevent federal banking agencies from abusing executive power when these regulators attempt to shut off law-abiding businesses’ access to depository institutions by prohibiting appropriate banking agencies from ordering or requesting a depository institution to terminate customer accounts unless the agency has a valid reason for doing so, and that reason is not based solely on reputational risk.

In a letter of support for H.R. 2706 dated June 5, 2017, the Credit Union National Association wrote:

[H.R. 2706] would place certain limits on the Federal government’s Operation Choke Point. While we strongly support the government’s role in ensuring the integrity of financial markets and eliminating fraud, the program’s broad enforcement tactics could create unnecessary risks to consumers and to the economy.

The legislation would limit Federal banking regulators’ ability to discourage or restrict depository institutions from entering into or maintaining a financial services relationship with specific customers unless certain criteria are met.

In a letter of support for H.R. 2706 dated October 10, 2017, the Consumer Bankers Association wrote:

[H.R. 2706] would require federal banking regulatory agencies to establish requirements for the termination of bank accounts and prohibit federal banking regulators from formally or informally suggesting, requesting, or or-

dering a depository institution to terminate a customer account except in circumstances affecting the security of our country or specific illegal activity.

HEARINGS

The Committee on Financial Services' Subcommittee on Financial Institutions held a hearing examining matters relating to H.R. 2706 on July 12, 2017.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on October 11 and 12, 2017 and ordered H.R. 2706 to be reported favorably to the House as amended by a recorded vote of 59 yeas to 1 nays (Record vote no. FC-78), a quorum being present. Before the motion to report was offered, the Committee adopted an amendment in the nature of a substitute offered by Mr. Luetkemeyer, and an amendment to the amendment in the nature of a substitute by Mr. Heck by voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. The sole recorded vote was on a motion by Chairman Hensarling to report the bill favorably to the House as amended. The motion was agreed to by a recorded vote of 59 yeas to 1 nays (Record vote no. FC-78), a quorum being present.

Record vote no. FC-78

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling	X			Ms. Maxine Waters (CA)	X		
Mr. McHenry	X			Mrs. Carolyn B. Maloney (NY) ..	X		
Mr. King	X			Ms. Velázquez	X		
Mr. Royce (CA)	X			Mr. Sherman	X		
Mr. Lucas	X			Mr. Meeks	X		
Mr. Pearce	X			Mr. Capuano	X		
Mr. Posey	X			Mr. Clay	X		
Mr. Luetkemeyer	X			Mr. Lynch		X	
Mr. Huizenga	X			Mr. David Scott (GA)	X		
Mr. Duffy	X			Mr. Al Green (TX)	X		
Mr. Stivers	X			Mr. Cleaver	X		
Mr. Hultgren	X			Ms. Moore	X		
Mr. Ross	X			Mr. Ellison	X		
Mr. Pittenger	X			Mr. Perlmutter	X		
Mrs. Wagner	X			Mr. Himes	X		
Mr. Barr	X			Mr. Foster	X		
Mr. Rothfus	X			Mr. Kildee	X		
Mr. Messer	X			Mr. Delaney	X		
Mr. Tipton	X			Ms. Sinema	X		
Mr. Williams	X			Mrs. Beatty	X		
Mr. Poliquin	X			Mr. Heck	X		
Mrs. Love	X			Mr. Vargas	X		
Mr. Hill	X			Mr. Gottheimer	X		
Mr. Emmer	X			Mr. Gonzalez (TX)	X		
Mr. Zeldin	X			Mr. Crist	X		
Mr. Trott	X			Mr. Kihuen	X		
Mr. Loudermilk	X						
Mr. Mooney (WV)	X						
Mr. MacArthur	X						
Mr. Davidson	X						
Mr. Budd	X						
Mr. Kustoff (TN)	X						
Ms. Tenney	X						
Mr. Hollingsworth	X						

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the findings and recommendations of the Committee based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee states that H.R. 2706 will restore the rule of law by requiring federal banking agencies to justify requests to terminate customer bank accounts maintained by depository institutions and requiring civil subpoenas issued by the Department of Justice in investigations affecting a federally insured financial institution to be supported by facts.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATES

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 31, 2017.

Hon. JEB HENSARLING,
*Chairman, Committee on Financial Services,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2706, the Financial Institution Customer Protection Act of 2017.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Sarah Puro.

Sincerely,

KEITH HALL,
Director.

Enclosure.

H.R. 2706—Financial Institution Customer Protection Act of 2017

H.R. 2706 would prohibit federal banking regulators—the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC), and the Federal Reserve—from requesting or requiring that a depository institution terminate certain customer accounts except in specific circumstances affecting national security.

The bill also would require each federal banking regulator to report annually on the number of requests to terminate customer accounts that any of those agencies has made to a bank.

On the basis of information from the federal banking regulators, CBO expects that the prohibitions in H.R. 2706 would not alter the actions those regulators take under current law. However, the additional reporting requirement in the bill would impose costs on those agencies. Administrative costs incurred by the FDIC, the OCC, and the NCUA are recorded in the budget as an increase in direct spending. CBO estimates that the cost to complete the annual reports would not be significant. Moreover, those agencies are authorized to collect premiums and fees from insured depository institutions to cover administrative expenses. Thus, CBO expects that the net effect on the federal budget would be negligible. Administrative costs to the Federal Reserve are reflected in the federal budget as a reduction in remittances to the Treasury (which are recorded in the budget as revenues). CBO expects that any additional administrative costs to the Federal Reserve under the bill also would be insignificant.

Because enacting H.R. 2706 would affect direct spending and revenues, pay-as-you-go procedures apply.

CBO estimates that enacting H.R. 2706 would not significantly affect net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 2706 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Sarah Puro. The estimate was approved by H. Samuel Papenfuss, Deputy Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995.

The Committee has determined that the bill does not contain Federal mandates on the private sector. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of the section 102(b)(3) of the Congressional Accountability Act.

EARMARK IDENTIFICATION

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the bill and states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

DUPLICATION OF FEDERAL PROGRAMS

In compliance with clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of the bill establishes or reauthorizes: (1) a program of the Federal Government known to be duplicative of another Federal program; (2) a program included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139; or (3) a program related to a program identified in the most recent Catalog of Federal Domestic Assistance, published pursuant to the Federal Program Information Act (Pub. L. No. 95–220, as amended by Pub. L. No. 98–169).

DISCLOSURE OF DIRECTED RULEMAKING

Pursuant to section 3(i) of H. Res. 5, (115th Congress), the following statement is made concerning directed rulemakings: The Committee estimates that the bill requires no directed rulemakings within the meaning of such section.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This Section cites H.R. 2706 as the “Financial Institution Customer Protection Act of 2017”.

Section 2. Requirements for deposit account termination requests and orders

This Section prohibits a federal banking agency from formally or informally suggesting, requesting, or ordering a depository institution to terminate either a specific customer account, or group of customer accounts, or otherwise restrict or discourage it from entering into or maintaining a banking relationship with a specific customer or group of customers, unless: (1) the agency has a valid reason to do so, and (2) the reason is not based solely on reputation risk. The validity requirement is satisfied if a federal banking agency believes that a specific customer or group of customers poses a threat to national security, including any belief that they are involved in terrorist financing.

This section also requires a federal banking agency that requests or orders a depository institution to terminate an account or group of accounts to provide the request or order to the institution in writing and accompany the request or order with a written justification for why such termination is needed, including any specific laws or regulations the agency believes are being violated. Such justification may not be based solely on the reputation risk of the depository institution. Neither the agency nor the institution is required to inform a customer of the justification accompanying the agency’s request for the customer’s account termination. Notice to a customer is prohibited if the federal banking agency requests or orders a depository institution to terminate a customer account (or a group of customer accounts) based upon a belief that customer or those customers pose a threat to national security.

Each appropriate federal banking agency must issue an annual report to Congress stating the aggregate number of specific customer accounts that the agency requested or ordered a depository institution to terminate during the previous year and the legal au-

thority on which the agency relied in making such requests or orders.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

H.R. 2706 does not repeal or amend any section of a statute. Therefore, the Office of Legislative Counsel did not prepare the report contemplated by Clause 3(e)(1)(B) of rule XIII of the House of Representatives.