

COOPERATE WITH LAW ENFORCEMENT AGENCIES AND
WATCH ACT OF 2018

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JUNE 25, 2018.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed
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Mr. HENSARLING, from the Committee on Financial Services,
submitted the following

R E P O R T

[To accompany H.R. 5783]

The Committee on Financial Services, to whom was referred the bill (H.R. 5783) to provide a safe harbor for financial institutions that maintain a customer account at the request of a Federal or State law enforcement agency, 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 “Cooperate with Law Enforcement Agencies and Watch Act of 2018.”

SEC. 2. SAFE HARBOR WITH RESPECT TO KEEP OPEN LETTERS.

(a) **IN GENERAL.**—Subchapter II of chapter 53 of title 31, United States Code, is amended by adding at the end the following:

“§ 5333. Safe harbor with respect to keep open letters

“(a) **IN GENERAL.**—With respect to a customer account of a financial institution, if a Federal, State, Tribal, or local law enforcement agency requests, in writing, the financial institution to keep such account open—

“(1) the financial institution shall not be liable under this subchapter for maintaining such account consistent with the parameters of the request; and

“(2) no Federal or State department or agency may take any adverse supervisory action under this subchapter with respect to the financial institution for maintaining such account consistent with the parameters of the request.

“(b) **RULE OF CONSTRUCTION.**—Nothing in this section may be construed—

“(1) from preventing a Federal or State department or agency from verifying the validity of a written request described under subsection (a) with the Federal, State, Tribal, or local law enforcement agency making the written request; or

“(2) to relieve a financial institution from complying with any reporting requirements, including the reporting of suspicious transactions under section 5318(g).

“(c) LETTER TERMINATION DATE.—For purposes of this section, any written request described under subsection (a) shall include a termination date after which such request shall no longer apply.

(b) CLERICAL AMENDMENT.—The table of contents for chapter 53 of title 31, United States Code, is amended by inserting after the item relating to section 5332 the following:

“5333. Safe harbor with respect to keep open letters.

PURPOSE AND SUMMARY

On May 11, 2018, Representative French Hill introduced H.R. 5783, the “Cooperate with Law Enforcement Agencies and Watch Act”. H.R. 5783 amends Subchapter II of chapter 53 of title 31, United States Code, to provide a safe harbor to financial institutions that keep an account open at the written request of a federal, state, tribal, or law enforcement agency for investigatory purposes. The legislation directs that no federal department or agency may take an adverse supervisory action with respect to the financial institution for keeping such an account open.

BACKGROUND AND NEED FOR LEGISLATION

The goal of H.R. 5783 is to support law enforcement by allowing banks to maintain accounts without fear of being penalized under the Bank Secrecy Act. This bill provides a safe harbor to banks to maintain an account at the written request of law enforcement, so authorities may monitor transactions and build stronger cases against money launderers, terrorist financiers, human traffickers, and any number of other illicit actors moving money through our financial system.

Sometimes financial institutions receive notices from law enforcement agencies, known as “keep open” letters. These “keep open” letters request that the institution keep an account open so that they can track payments and better monitor potential criminal activities. Such requests could come from the Federal Bureau of Investigation, the Drug Enforcement Administration, Department of Homeland Security, Treasury’s Financial Crimes Enforcement Network (FinCEN), local police, or any other law enforcement agency.

If banks help law enforcement and comply with the “keep open” letter request, they face the risk of enforcement actions, as well as fines and penalties from the banking or other regulators if they allow an account to be used for criminal purposes. Law enforcement agencies are supposed to provide a written notice to the financial institution that they requested that the account be kept open, but that is currently not guaranteed. This situation has put financial institutions in a difficult position between wanting to help law enforcement, while also adhering to demands from the prudential regulators.

H.R. 5783 will provide financial institutions with the legal certainty they need to both comply with requests from law enforcement and simultaneously fulfill their obligations to comply with all applicable banking laws and regulations.

HEARINGS

The Committee on Financial Services did not hold a hearing examining matters relating to H.R. 5783.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on June 6, 2018, and ordered H.R. 5783 to be reported favorably to the House as amended by a recorded vote of 55 yeas to 0 nays (recorded vote no. FC-180), 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. Hill 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 55 yeas to 0 nays (Record vote no. FC-180), a quorum being present.

Record vote no. FC-180

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			
Mr. Luetkemeyer	X			Mr. Lynch			
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			
Mr. Poliquin	X			Mr. Heck	X		
Mrs. Love	X			Mr. Vargas			
Mr. Hill	X			Mr. Gottheimer	X		
Mr. Emmer	X			Mr. Gonzalez (TX)	X		
Mr. Zeldin	X			Mr. Crist	X		
Mr. Trott	X			Mr. Kihuen			
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

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that the bill contains no measure that authorizes funding, so no statement of general performance goals and objectives for which any measure authorizes funding is required.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

The Committee has not received an estimate of new budget authority contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to Sec. 402 of the Congressional Budget Act of 1974. In compliance with clause 3(c)(2) of rule XIII of the Rules of the House, the Committee opines that H.R. 5783 will not establish any new budget or entitlement authority or create any tax expenditures.

CONGRESSIONAL BUDGET OFFICE ESTIMATES

The cost estimate prepared by the Director of the Congressional Budget Office pursuant to Sec. 402 of the Congressional Budget Act of 1974 was not submitted timely to the Committee.

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 rule makings: The Committee estimates that the bill requires no directed rule makings within the meaning of such section.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section cites H.R. 5783 as the “Cooperate with Law Enforcement Agencies and Watch Act.”

Section 2. Safe Harbor with Respect to Keep Open Letters

Amends Subchapter II of chapter 53 of title 31, United States Code, by adding Section 5333, titled “Safe Harbor with Respect to Keep Open Letters.”

A financial institution may keep a customer account open if a Federal, State, Tribal, or local law enforcement agency requests, in writing, that the financial institution keep the account open. A financial institution shall not be held liable for maintaining the account consistent with the parameters of the request. No Federal or State department or agency may take any adverse supervisory action against the financial institution for maintaining the account consistent with the parameters of the request.

A Federal or State department or agency is not prevented from verifying the validity of a written request with the Federal, State, Tribal, or Local law enforcement agency making the written request. A financial institution is not relieved from complying with any reporting requirements, including the reporting of suspicious activity reports under section 5318(g).

Any written request from law enforcement shall include a termination date after which the request will no longer apply.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic,

and existing law in which no change is proposed is shown in roman):

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

TITLE 31, UNITED STATES CODE

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SUBTITLE IV—MONEY

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CHAPTER 53—MONETARY TRANSACTIONS

SUBCHAPTER I—CREDIT AND MONETARY EXPANSION

Sec.

5301. Buying obligations of the United States Government.

SUBCHAPTER II—RECORDS AND REPORTS ON MONETARY INSTRUMENTS TRANSACTIONS

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5333. *Safe harbor with respect to keep open letters.*

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SUBCHAPTER II—RECORDS AND REPORTS ON MONETARY INSTRUMENTS TRANSACTIONS

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§ 5333. *Safe harbor with respect to keep open letters*

(a) *IN GENERAL.*—*With respect to a customer account of a financial institution, if a Federal, State, Tribal, or local law enforcement agency requests, in writing, the financial institution to keep such account open—*

(1) *the financial institution shall not be liable under this subchapter for maintaining such account consistent with the parameters of the request; and*

(2) *no Federal or State department or agency may take any adverse supervisory action under this subchapter with respect to the financial institution for maintaining such account consistent with the parameters of the request.*

(b) *RULE OF CONSTRUCTION.*—*Nothing in this section may be construed—*

(1) *from preventing a Federal or State department or agency from verifying the validity of a written request described under subsection (a) with the Federal, State, Tribal, or local law enforcement agency making the written request; or*

(2) *to relieve a financial institution from complying with any reporting requirements, including the reporting of suspicious transactions under section 5318(g).*

(c) LETTER TERMINATION DATE.—For purposes of this section, any written request described under subsection (a) shall include a termination date after which such request shall no longer apply.

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