

FDIC ENFORCEMENT ENHANCEMENT ACT

JULY 16, 2007.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. FRANK of Massachusetts, from the Committee on Financial Services, submitted the following

R E P O R T

[To accompany H.R. 2547]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 2547) to amend the Federal Deposit Insurance Act to prevent misrepresentation about deposit insurance coverage, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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PURPOSE AND SUMMARY

H.R. 2547, the FDIC Enforcement Enhancement Act, gives the Federal Deposit Insurance Corporation (FDIC) authority to enter cease and desist orders against any person or entity that misuses

FDIC's name, logo, abbreviation, or other indicators to falsely represent the nature of the product offered or the FDIC insurance coverage available. The bill allows the FDIC to impose civil monetary liabilities of up to \$1 million per day on any person engaged in such conduct. Additionally, the bill clarifies FDIC authority in seeking injunctive relief against such person in Federal, State and foreign courts.

BACKGROUND AND NEED FOR LEGISLATION

The FDIC has encountered multiple schemes to defraud depositors by actors that fraudulently purport connections to the FDIC. While the FDIC has the authority to directly address any misconduct occurring in state-chartered insured depository institutions—where FDIC is the primary Federal regulator—many of these schemes are perpetrated by persons or entities outside of the deposit insurance system. H.R. 2547 enhances the ability of the FDIC to fight these financial scams by authorizing the FDIC to take action against any person or entity that is fraudulently purporting to be connected to the FDIC.

HEARINGS

No hearings were held on H.R. 2547 in the 110th Congress.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on June 26, 2007, and ordered H.R. 2547, FDIC Enforcement Enhancement Act, reported by a 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. No record votes were taken in conjunction with the consideration of this legislation. A motion by Mr. Frank to report the bill to the House with a favorable recommendation was agreed to by a voice vote.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has held hearings and made findings that are reflected in 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 establishes the following performance related goals and objectives for this legislation:

H.R. 2547 enhances the ability of the FDIC to fight financial scams by authorizing the FDIC to take action against any person or entity that is fraudulently purporting to be connected to the FDIC.

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.

COMMITTEE COST ESTIMATE

The Committee adopts as its own 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 ESTIMATE

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:

JULY 12, 2007.

Hon. BARNEY FRANK,
*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. 2547, the FDIC Enforcement Enhancement Act.

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

Sincerely,

PETER R. ORSZAG.

Enclosure.

H.R. 2547—FDIC Enforcement Enhancement Act

H.R. 2547 would authorize the Federal Deposit Insurance Corporation (FDIC) to take civil action against any person who falsely asserts or suggests that any funds or assets are insured or guaranteed by the agency. Under current law, financial institutions are subject to FDIC sanctions for such false advertising or misrepresentation, and other persons are subject to criminal penalties for the misuse of agency names or titles, which are enforced by the Attorney General of the United States. H.R. 2547 would expand enforcement by making all such practices a violation of deposit insurance laws and allowing the FDIC to issue cessation orders and impose civil penalties of up to \$1 million for each day the violation occurs.

Based on information from the FDIC, CBO estimates that implementing this bill would have no significant effect on the agency's costs, which are funded directly by deposit insurance premiums. Any civil penalties collected as a result of this legislation would increase revenues, but CBO estimates that any such annual collections would be negligible. Thus, we estimate that enacting this bill would have no significant effect on direct spending or revenues.

H.R. 2547 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Kathleen Gramp. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

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

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional Authority of Congress to enact this legislation is provided by Article 1, section 8, clause 1 (relating to the general welfare of the United States) and clause 3 (relating to the power to regulate interstate commerce).

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 section 102(b)(3) of the Congressional Accountability Act.

EARMARK IDENTIFICATION

H.R. 2547 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section establishes the short title of the bill, the “FDIC Enforcement Enhancement Act”.

Section 2. Enforcement against misrepresentations regarding FDIC deposit insurance coverage

This section prohibits false advertising and misuse of FDIC names as well as misrepresentations of insured status. It expands the jurisdiction of the FDIC to cover all persons or entities that misrepresent FDIC coverage. It empowers the FDIC to enter cease and desist orders against such persons or entities and to assign civil money penalties of up to \$1 million a day for each day the violation occurs or continues.

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

FEDERAL DEPOSIT INSURANCE ACT

* * * * *
 SEC. 8. (a) * * * * *
 * * * * *
 (c)(1) * * * * *
 * * * * *

(4) FALSE ADVERTISING OR MISUSE OF NAMES TO INDICATE INSURED STATUS.—**(A) TEMPORARY ORDER.—**

(i) IN GENERAL.—If a notice of charges served under subsection (b)(1) of this section specifies on the basis of particular facts that any person is engaged in conduct described in section 18(a)(4), the Corporation may issue a temporary order requiring—

(I) the immediate cessation of any activity or practice described, which gave rise to the notice of charges; and

(II) affirmative action to prevent any further, or to remedy any existing, violation.

(ii) EFFECT OF ORDER.—Any temporary order issued under this subparagraph shall take effect upon service.

(B) EFFECTIVE PERIOD OF TEMPORARY ORDER.—A temporary order issued under subparagraph (A) shall remain effective and enforceable, pending the completion of an administrative proceeding pursuant to subsection (b)(1) in connection with the notice of charges—

(i) until such time as the Corporation shall dismiss the charges specified in such notice; or

(ii) if a cease-and-desist order is issued against such person, until the effective date of such order.

(C) CIVIL MONEY PENALTIES.—Violations of section 18(a)(4) shall be subject to civil money penalties as set forth in subsection (i) in an amount not to exceed \$1,000,000 for each day during which the violation occurs or continues.

* * * * *

SEC. 18. (a) [INSURANCE LOGO.—] REPRESENTATIONS OF DEPOSIT INSURANCE.—

(1) * * * * *

* * * * *

(3) PENALTIES.—For each day that an insured depository institution continues to violate this subsection or any regulation issued under this subsection, it shall be subject to a penalty of not more than \$100, which the Corporation may recover for its use.

(4) FALSE ADVERTISING, MISUSE OF FDIC NAMES, AND MISREPRESENTATION TO INDICATE INSURED STATUS.—

(A) *PROHIBITION ON FALSE ADVERTISING AND MISUSE OF FDIC NAMES.—No person may—*

(i) use the terms “Federal Deposit”, “Federal Deposit Insurance”, “Federal Deposit Insurance Corporation”, any combination of such terms, or the abbreviation “FDIC” as part of the business name or firm name of any person, including any corporation, partnership, business trust, association, or other business entity; or

(ii) use such terms or any other sign or symbol as part of an advertisement, solicitation, or other document,

to represent, suggest or imply that any deposit liability, obligation, certificate or share is insured or guaranteed by the Federal Deposit Insurance Corporation, if such deposit liability, obligation, certificate, or share is not insured or guaranteed by the Corporation.

(B) *PROHIBITION ON MISREPRESENTATIONS OF INSURED STATUS.—No person may knowingly misrepresent—*

(i) that any deposit liability, obligation, certificate, or share is federally insured, if such deposit liability, obligation, certificate, or share is not insured by the Corporation; or

(ii) the extent to which or the manner in which any deposit liability, obligation, certificate, or share is insured by the Federal Deposit Insurance Corporation, if such deposit liability, obligation, certificate, or share is not insured by the Corporation to the extent or in the manner represented.

(C) *AUTHORITY OF FDIC.—The Corporation shall have—*

(i) jurisdiction over any person that violates this paragraph, or aids or abets the violation of this paragraph; and

(ii) for purposes of enforcing the requirements of this paragraph with regard to any person—

(I) the authority of the Corporation under section 10(c) to conduct investigations; and

(II) the enforcement authority of the Corporation under subsections (b), (c), (d) and (i) of section 8,

as if such person were a state nonmember insured bank.

(D) *OTHER ACTIONS PRESERVED.—No provision of this paragraph shall be construed as barring any action otherwise available, under the laws of the United States or any State, to any Federal or State law enforcement agency or individual.*

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