

114TH CONGRESS
2D SESSION

S. 2790

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.

IN THE SENATE OF THE UNITED STATES

APRIL 13, 2016

Mr. LEE (for Mr. CRUZ (for himself, Mr. LEE, Mr. CRAPO, and Mr. CORNYN)) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

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.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Financial Institution
3 Customer Protection Act of 2016”.

4 **SEC. 2. REQUIREMENTS FOR DEPOSIT ACCOUNT TERMI-**
5 **NATION REQUESTS AND ORDERS.**

6 (a) DEFINITIONS.—In this section—

7 (1) the term “appropriate Federal banking
8 agency”—

9 (A) has the meaning given the term in sec-
10 tion 3 of the Federal Deposit Insurance Act (12
11 U.S.C. 1813); and

12 (B) in the case of an insured credit union,
13 means the National Credit Union Administra-
14 tion;

15 (2) the term “depository institution”—

16 (A) has the meaning given the term in sec-
17 tion 3 of the Federal Deposit Insurance Act (12
18 U.S.C. 1813); and

19 (B) includes an insured credit union; and

20 (3) the term “insured credit union” has the
21 meaning given the term in section 101 of the Fed-
22 eral Credit Union Act (12 U.S.C. 1752).

23 (b) TERMINATION REQUESTS OR ORDERS MUST BE
24 MATERIAL.—

25 (1) IN GENERAL.—The appropriate Federal
26 banking agency may not formally or informally re-

1 quest or order a depository institution to terminate
2 a specific customer account or group of customer ac-
3 counts or to otherwise restrict or discourage a de-
4 pository institution from entering into or maintain-
5 ing a banking relationship with a specific customer
6 or group of customers unless—

7 (A) the agency has a material reason for
8 the request or order; and

9 (B) that reason is not based solely on rep-
10 utation risk to the depository institution.

11 (2) TREATMENT OF NATIONAL SECURITY
12 THREATS.—The appropriate Federal banking agency
13 shall satisfy the requirement under paragraph (1) if
14 the agency believes a specific customer or group of
15 customers is, or is acting as a conduit for, an entity
16 which—

17 (A) poses a threat to national security;

18 (B) is involved in terrorist financing;

19 (C) is an agency of the Government of
20 Iran, North Korea, Syria, or any country listed
21 from time to time on the state sponsor of ter-
22 rorism list;

23 (D) is located in, or is subject to the juris-
24 diction of, any country described in subpara-
25 graph (C); or

1 (E) does business with any entity described
2 in subparagraph (C) or (D), unless the appro-
3 priate Federal banking agency determines that
4 the customer or group of customers has used
5 due diligence to avoid doing business with any
6 entity described in subparagraph (C) or (D).

7 (c) NOTICE REQUIREMENT.—

8 (1) IN GENERAL.—If the appropriate Federal
9 banking agency formally or informally requests or
10 orders a depository institution to terminate a spe-
11 cific customer account or a group of customer ac-
12 counts, the agency shall—

13 (A) provide the request or order to the in-
14 stitution in writing; and

15 (B) include with the request or order a
16 written justification for why the termination is
17 necessary, including any specific laws or regula-
18 tions, if any, the agency believes that the cus-
19 tomer or group of customers are violating.

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

24 (d) CUSTOMER NOTICE.—

1 (1) NOTICE REQUIRED.—Except as provided
2 under paragraph (2), if the appropriate Federal
3 banking agency orders a depository institution to
4 terminate a specific customer account or a group of
5 customer accounts, the depository institution shall
6 inform the customer or customers of the justification
7 for the termination of the account or accounts under
8 subsection (c)(1)(B).

9 (2) NOTICE PROHIBITED IN CASES OF NA-
10 TIONAL SECURITY.—If the appropriate Federal
11 banking agency requests or orders a depository insti-
12 tution to terminate a specific customer account or a
13 group of customer accounts based on a belief that
14 the customer or customers pose a threat to national
15 security, or are otherwise described in subsection
16 (b)(2), neither the depository institution nor the ap-
17 propriate Federal banking agency may inform the
18 customer or customers of the justification for the
19 termination of the account or accounts.

20 (e) REPORTING REQUIREMENT.—Each appropriate
21 Federal banking agency shall issue an annual report to
22 Congress stating—

23 (1) the aggregate number of specific customer
24 accounts that the agency requested or ordered a de-

1 pository institution to terminate during the 1-year
2 period preceding the issuance of the report;

3 (2) the legal authority on which the agency re-
4 lied in making the requests and orders described in
5 paragraph (1); and

6 (3) the frequency with which the agency relied
7 on each authority described in paragraph (2).

8 **SEC. 3. AMENDMENTS TO THE FINANCIAL INSTITUTIONS**
9 **REFORM, RECOVERY, AND ENFORCEMENT**
10 **ACT OF 1989.**

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

14 (1) in subsection (c)(2), by striking “affecting
15 a federally insured financial institution” and insert-
16 ing “against a federally insured financial institution
17 or by a federally insured financial institution against
18 an unaffiliated third person”; and

19 (2) in subsection (g)—

20 (A) in the subsection heading, by striking
21 “SUBPOENAS” and inserting “INVESTIGA-
22 TIONS”; and

23 (B) by amending paragraph (1)(C) to read
24 as follows:

1 “(C) summon witnesses and require the
2 production of any books, papers, correspond-
3 ence, memoranda, or other records which the
4 Attorney General deems relevant or material to
5 the inquiry, if the Attorney General—

6 “(i) requests a court order from a
7 court of competent jurisdiction for such ac-
8 tions and offers specific and articulable
9 facts showing that there are reasonable
10 grounds to believe that the information or
11 testimony sought is relevant and material
12 for conducting an investigation under this
13 section; or

14 “(ii) either personally or through dele-
15 gation no lower than the Deputy Attorney
16 General, issues and signs a subpoena for
17 such actions and such subpoena is sup-
18 ported by specific and articulable facts
19 showing that there are reasonable grounds
20 to believe that the information or testi-
21 mony sought is relevant for conducting an
22 investigation under this section.”.

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