

118TH CONGRESS
1ST SESSION

S. 245

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

FEBRUARY 2, 2023

Mr. CRUZ (for himself, 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 2023”.

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 Board;

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 that—

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 law (including
18 regulation), the agency believes that the cus-
19 tomer or group of customers is 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 in
2 paragraph (2), if the appropriate Federal banking
3 agency orders a depository institution to terminate a
4 specific customer account or a group of customer ac-
5 counts, the depository institution shall inform the
6 customer or customers of the justification for the
7 termination of the account or accounts under sub-
8 section (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)—

15 (A) by inserting a comma after “1341”;
16 and

17 (B) by striking “affecting a federally in-
18 sured financial institution” and inserting
19 “against a federally insured financial institution
20 or by a federally insured financial institution
21 against an unaffiliated third person”; and

22 (2) in subsection (g)—

23 (A) in the subsection heading, by striking
24 “SUBPOENAS” and inserting “INVESTIGA-
25 TIONS”; and

1 (B) by striking paragraph (1)(C) and in-
2 serting the following:

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

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

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

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