

114TH CONGRESS
2D SESSION

S. _____

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

Mr. CRUZ (for himself and Mr. LEE) introduced the following bill; which was read twice and referred to the Committee on _____

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,*

3 **SECTION 1. SHORT TITLE.**

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

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

3 (a) DEFINITIONS.—In this section—

4 (1) the term “appropriate Federal banking
5 agency”—

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

9 (B) in the case of an insured credit union,
10 means the National Credit Union Administra-
11 tion;

12 (2) the term “depository institution”—

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

16 (B) includes an insured credit union; and

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

20 (b) TERMINATION REQUESTS OR ORDERS MUST BE
21 MATERIAL.—

22 (1) IN GENERAL.—The appropriate Federal
23 banking agency may not formally or informally re-
24 quest or order a depository institution to terminate
25 a specific customer account or group of customer ac-
26 counts or to otherwise restrict or discourage a de-

1 depository institution from entering into or maintain-
2 ing a banking relationship with a specific customer
3 or group of customers unless—

4 (A) the agency has a material reason for
5 the request or order; and

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

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

14 (A) poses a threat to national security;

15 (B) is involved in terrorist financing;

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

20 (D) is located in, or is subject to the juris-
21 diction of, any country described in subpara-
22 graph (C); or

23 (E) does business with any entity described
24 in subparagraph (C) or (D), unless the appro-
25 priate Federal banking agency determines that

1 the customer or group of customers has used
2 due diligence to avoid doing business with any
3 entity described in subparagraph (C) or (D).

4 (c) NOTICE REQUIREMENT.—

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

10 (A) provide the request or order to the in-
11 stitution in writing; and

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

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

21 (d) CUSTOMER NOTICE.—

22 (1) NOTICE REQUIRED.—Except as provided
23 under paragraph (2), if the appropriate Federal
24 banking agency orders a depository institution to
25 terminate a specific customer account or a group of

1 customer accounts, the depository institution shall
2 inform the customer or customers of the justification
3 for the termination of the account or accounts under
4 subsection (c)(1)(B).

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

16 (e) REPORTING REQUIREMENT.—Each appropriate
17 Federal banking agency shall issue an annual report to
18 Congress stating—

19 (1) the aggregate number of specific customer
20 accounts that the agency requested or ordered a de-
21 pository institution to terminate during the 1-year
22 period preceding the issuance of the report;

23 (2) the legal authority on which the agency re-
24 lied in making the requests and orders described in
25 paragraph (1); and

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

3 **SEC. 3. AMENDMENTS TO THE FINANCIAL INSTITUTIONS**
4 **REFORM, RECOVERY, AND ENFORCEMENT**
5 **ACT OF 1989.**

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

9 (1) in subsection (c)(2), by striking “affecting
10 a federally insured financial institution” and insert-
11 ing “against a federally insured financial institution
12 or by a federally insured financial institution against
13 an unaffiliated third person”; and

14 (2) in subsection (g)—

15 (A) in the subsection heading, by striking
16 “SUBPOENAS” and inserting “INVESTIGA-
17 TIONS”; and

18 (B) by amending paragraph (1)(C) to read
19 as follows:

20 “(C) summon witnesses and require the
21 production of any books, papers, correspond-
22 ence, memoranda, or other records which the
23 Attorney General deems relevant or material to
24 the inquiry, if the Attorney General—

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

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