

BANKING TRANSPARENCY FOR SANCTIONED PERSONS
ACT OF 2018

SEPTEMBER 26, 2018.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

Mr. HENSARLING, from the Committee on Financial Services,
submitted the following

R E P O R T

[To accompany H.R. 6751]

The Committee on Financial Services, to whom was referred the bill (H.R. 6751) to increase transparency with respect to financial services benefitting state sponsors of terrorism, human rights abusers, and corrupt officials, and for other purposes, 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 “Banking Transparency for Sanctioned Persons Act of 2018”.

SEC. 2. REPORT ON FINANCIAL SERVICES BENEFITTING STATE SPONSORS OF TERRORISM, HUMAN RIGHTS ABUSERS, AND CORRUPT OFFICIALS.

(a) **IN GENERAL.**—Not later than 180 days after the date of the enactment of this Act, and every 180 days thereafter, the Secretary of the Treasury shall issue a report to the Committees on Financial Services and Foreign Affairs of the House of Representatives and the Committees on Banking, Housing, and Urban Affairs and Foreign Relations of the Senate that includes—

(1) a copy of any license issued by the Secretary in the preceding 180 days that authorizes a financial institution to provide financial services benefitting a state sponsor of terrorism; and

(2) a list of any foreign financial institutions that, in the preceding 180 days, knowingly conducted a significant transaction or transactions, directly or indirectly, for a sanctioned person included on the Department of the Treasury’s Specially Designated Nationals And Blocked Persons List who—

(A) is owned or controlled by, or acts on behalf of, the government of a state sponsor of terrorism; or

(B) is designated pursuant to any of the following:

(i) Section 404 of the Russia and Moldova Jackson-Vanik Repeal and Sergei Magnitsky Rule of Law Accountability Act of 2012 (Public Law 112-208).

(ii) Subtitle F of title XII of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114-328, the Global Magnitsky Human Rights Accountability Act).
 (iii) Executive Order 13818.

(b) **FORM OF REPORT.**—The report required under subsection (a) shall be submitted in unclassified form but may contain a classified annex.

SEC. 3. WAIVER.

The Secretary of the Treasury may waive the requirements of section 2 with respect to a foreign financial institution described in paragraph (2) of such section—

(1) upon receiving credible assurances that the foreign financial institution has ceased, or will imminently cease, to knowingly conduct any significant transaction or transactions, directly or indirectly, for a person described in subparagraph (A) or (B) of such paragraph (2); or

(2) upon certifying to the Committees on Financial Services and Foreign Affairs of the House of Representatives and the Committees on Banking, Housing, and Urban Affairs and Foreign Relations of the Senate that the waiver is important to the national interest of the United States, with an explanation of the reasons therefor.

SEC. 4. DEFINITIONS.

For purposes of this Act:

(1) **FINANCIAL INSTITUTION.**—The term “financial institution” means a United States financial institution or a foreign financial institution.

(2) **FOREIGN FINANCIAL INSTITUTION.**—The term “foreign financial institution” has the meaning given that term under section 561.308 of title 31, Code of Federal Regulations.

(3) **KNOWINGLY.**—The term “knowingly” with respect to conduct, a circumstance, or a result, means that a person has actual knowledge, or should have known, of the conduct, the circumstance, or the result.

(4) **UNITED STATES FINANCIAL INSTITUTION.**—The term “United States financial institution” has the meaning given the term “U.S. financial institution” under section 561.309 of title 31, Code of Federal Regulations.

SEC. 5. SUNSET.

The reporting requirement under this Act shall terminate on the date that is the end of the 7-year period beginning on the date of the enactment of this Act.

PURPOSE AND SUMMARY

On September 7, 2018, Representative Mia Love introduced H.R. 6751, the “Banking Transparency for Sanctioned Persons Act of 2018”. This legislation would require the Secretary of the Treasury to submit a semi-annual report to Congress regarding financial services benefitting state sponsors of terrorism and certain sanctioned persons. The Treasury Secretary shall submit the report to Congress in an unclassified form but the report may include a classified annex. This report would include:

- A copy of any license issued by the Secretary that authorizes a financial institution to provide financial services benefitting a state sponsor of terrorism (Iran, North Korea, Syria, and Sudan); and
- A list of any foreign financial institutions that knowingly conducts significant transactions for a person that 1) is owned or controlled, or acting on behalf of, the government of a state sponsor of terrorism; or 2) is sanctioned pursuant to the Sergei Magnitsky Act (Sec. 404 of P.L. 112–208), the Global Magnitsky Act (Subtitle F of title XII of P.L. 114–328), or Executive Order 13818, which provide for U.S. sanctions against human rights abusers and corrupt foreign officials.

The Treasury Secretary may waive this bill’s reporting requirement with respect to a foreign financial institution upon receiving credible assurances that such an institution will no longer conduct significant transactions for the sanctioned persons covered by the

legislation. The Secretary may also waive the requirement upon notifying Congress that a waiver is important to the national interest, with an explanation of the Secretary’s reasoning.

BACKGROUND AND NEED FOR LEGISLATION

Under current law, the Department of the Treasury, through its Office of Foreign Assets Control (OFAC), may issue licenses authorizing U.S. persons to engage in transactions that would otherwise be prohibited. Such prohibitions may be general in nature, such as a country-level embargo, or refer narrowly to sanctioned persons “designated” by Treasury.

Licenses may be issued on a variety of grounds, from humanitarian reasons (e.g. natural disaster relief) to specific foreign policy-related objectives. While the rationale behind particular OFAC licenses may be met with support or opposition, H.R. 6751 simply requires an administration to inform Congress that certain financial services-related licenses have in fact been approved. Without this knowledge, Congress is limited in its ability to oversee an administration’s execution of sanctions, be they related to terrorism, human rights abuses, or corruption.

While U.S. entities are generally prohibited from dealing with any sanctioned person, foreign financial institutions may be able to engage in business with such persons without penalty, provided that the U.S. has not imposed “secondary sanctions” on foreign banks. Given Congress’s interest in understanding sanctioned persons’ ability to access financial services globally, H.R. 6751 requires the Treasury Secretary to list foreign institutions undertaking this business. The reporting requirement also signals to foreign banks that Congress will have insights into their dealings with serious human rights abusers and corrupt officials, which may inform future legislation by answering the following questions:

- Are designated persons evading the consequences of U.S. sanctions?
- Could the U.S. exert diplomatic pressure more effectively to shut off sanctioned persons’ access to financial services abroad?
- Are certain foreign countries undermining U.S. efforts to combat corruption and human rights atrocities, or failing to adhere to their own international obligations (e.g. United Nations Security Council resolutions)?
- If Congress or the Executive branch were to consider secondary sanctions on foreign financial institutions, how should those sanctions be effectively designed, and what might the unintended consequences be, if any?

The sanctioned persons encompassed by H.R. 6751 include those designated for gross violations of human rights and official acts of corruption. Particular examples include:

- Ramzan Kadyrov, head of the Chechen Republic, who has been sanctioned for involvement in extra-judicial killings and disappearances in Russia.
- Aung Kyaw Zaw, a Burmese commander whose subordinates have been implicated in the ethnic cleansing of Burma’s Rohingya minority.

- Felix Ramon Bautista Rosario, a senator from the Dominican Republic who has reportedly engaged in significant acts of corruption in both the Dominican Republic and Haiti.
- Hing Bun Hieng, commander of Cambodia's Prime Minister Bodyguard Unit, who has been involved in multiple attacks on unarmed Cambodians, including an incident where a U.S. citizen received shrapnel wounds.

HEARINGS

The Subcommittee on Monetary Policy and Trade held the following hearings examining matters related to H.R. 6751:

- "Increasing the Effectiveness of Non-Nuclear Sanctions against Iran," April 4, 2017;
- "Restricting North Korea's Access to Finance," July 19, 2017;
- "Evaluating the Effectiveness of U.S. Sanctions Programs," November 30, 2017.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on September 13, 2018 and ordered H.R. 6751 to be reported favorably to the House as amended by a recorded vote of 48 yeas to 0 nays (recorded vote no. FC-201), a quorum being present.

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. An amendment in the nature of a substitute offered by Mrs. Love was adopted by voice vote, as was an amendment offered by Mrs. Waters. A motion by Chairman Hensarling to report the bill favorably to the House as amended was agreed to by a recorded vote of 48 yeas to 0 nays (Record vote no. FC-201), a quorum being present.

Record vote no. FC-201

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling	X			Ms. Maxine Waters (CA)	X		
Mr. McHenry				Mrs. Carolyn B. Maloney (NY)	X		
Mr. King	X			Ms. Velázquez			
Mr. Royce (CA)				Mr. Sherman	X		
Mr. Lucas	X			Mr. Meeks			
Mr. Pearce				Mr. Capuano			
Mr. Posey	X			Mr. Clay			
Mr. Luetkemeyer	X			Mr. Lynch	X		
Mr. Huizenga	X			Mr. David Scott (GA)	X		
Mr. Duffy	X			Mr. Al Green (TX)	X		
Mr. Stivers	X			Mr. Cleaver			
Mr. Hultgren	X			Ms. Moore	X		
Mr. Ross	X			Mr. Ellison			
Mr. Pittenger				Mr. Perlmutter	X		
Mrs. Wagner	X			Mr. Himes	X		
Mr. Barr	X			Mr. Foster	X		
Mr. Rothfus	X			Mr. Kildee	X		
Mr. Messer				Mr. Delaney	X		
Mr. Tipton	X			Ms. Sinema	X		
Mr. Williams	X			Mrs. Beatty	X		
Mr. Poliquin	X			Mr. Heck	X		
Mrs. Love	X			Mr. Vargas	X		
Mr. Hill	X			Mr. Gottheimer			
Mr. Emmer	X			Mr. Gonzalez (TX)	X		
Mr. Zeldin	X			Mr. Crist	X		
Mr. Trott	X			Mr. Kihuen	X		
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. 6751 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. 6751 as the “Banking Transparency for Sanctioned Persons Act of 2018.”

Section 2. Report on financial services benefitting state sponsors of terrorism, human rights abusers, and corrupt officials

Under this section, the Secretary of the Treasury shall, not later than 180 days after enactment, and every 180 days thereafter, submit a report to the Committees on Financial Services and Foreign Affairs of the House, and the Committees on Banking, Housing, and Urban Affairs and Foreign Relations of the Senate, that includes the following:

- A copy of any license issued by the Secretary in the preceding 180 days that authorizes a financial institution to provide financial services benefitting a state sponsor of terrorism; and
- A list of any foreign financial institutions that, in the preceding 180 days, knowingly conducted a significant transaction or transactions, directly or indirectly, for a sanctioned person who (1) is owned or controlled by, or acts on behalf of, the government of a state sponsor of terrorism; or (2) is designated pursuant to Section 404 of the Russia and Moldova Jackson-Vanik Repeal and Sergei Magnitsky Rule of Law Accountability Act of 2012 (P.L. 112–208), Subtitle F of title XII of the National Defense Authorization Act for Fiscal Year 2017 (P.L. 114–328), or Executive Order 13818.

As amended, H.R. 6751 clarifies that this report shall be submitted in unclassified form, but may contain a classified annex.

Section 3. Waiver

The Secretary of the Treasury may waive the reporting requirement under section 2 with respect to a foreign financial institution upon receiving credible assurances that the foreign financial institution has ceased, or will imminently cease, to conduct significant transactions for certain sanctioned persons. Such a waiver may

also be issued by the Secretary upon certifying to the congressional committees listed in section 2 that the waiver is important to the national interest of the United States, with an explanation of the reasons therefor.

Section 4. Definitions

This section specifies definitions for the terms “financial institution,” “foreign financial institution,” “knowingly,” and “United States financial institution.”

Section 5. Sunset

This section stipulates that the legislation’s reporting requirement shall terminate seven years after the date of enactment.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

H.R. 6751 does not repeal or amend any section of a statute. Therefore, the Office of Legislative Counsel did not prepare the report contemplated by clause 3(e)(1)(B) of rule XIII of the House of Representatives.