

BANK SERVICE COMPANY EXAMINATION COORDINATION
ACT OF 2017

NOVEMBER 2, 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. 3626]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 3626) to amend the Bank Service Company Act to provide improvements with respect to State banking agencies, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments (stated in terms of the page and line numbers of the introduced bill) are as follows:

Page 4, line 1, strike “the examination duties” and insert “examinations”.

Page 4, beginning on line 3, strike “, and consult with”.

Page 4, line 8, strike “and”.

Page 4, line 12, strike the period and insert “; and”.

Page 4, after line 12, insert the following:

(F) by adding at the end the following:

“(g) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as granting authority for a State banking agency to examine a bank service company where no such authority exists in State law.”.

PURPOSE AND SUMMARY

On July 28, 2017, Representative Roger Williams introduced H.R. 3626 the “Bank Service Company Examination Act”. The leg-

isolation, as amended, would amend the Bank Service Company Act (BSCA) [P.L. 89–554] to enable the sharing of supervisory information with state banking or supervisory agencies and improve coordination with state banking agencies to avoid the duplication of examination activities, reporting requirements, and requests for information.

BACKGROUND AND NEED FOR LEGISLATION

Technology Service Providers (TSPs)¹ are used by banks to fulfill their day-to-day operations, including loan and deposit taking, payment processing, and assisting with cybersecurity. There are two types of TSPs, those that are separate businesses that partner with banks, and those that are organized by banks to provide services to banks. Federal and state financial regulators are able to examine TSPs for safety and soundness; however cooperative state-federal examination efforts are hampered by ambiguity in the current law when it comes to sharing supervisory information and exam results.

Along with promoting better communication among regulators, it is important to maintain the appropriate level of oversight for new risks to the financial system. The 2017 Annual Report of the Financial Stability Oversight Council (FSOC) notes that financial institutions increasingly rely on technology for greater efficiency and to improve their services.² With greater investment in technology and interconnectedness among platforms, however, is the potential for greater cybersecurity vulnerabilities. As the FSOC report concludes, “if severe enough, a cybersecurity failure could have systemic implications for the financial sector and the U.S. economy more broadly.”³ For this reason, FSOC recommends enhanced coordination to “both reduce potentially conflicting and duplicative regulatory oversight and promote more consistency in cybersecurity.”⁴ Specifically, the report recommends that “Congress pass legislation that . . . encourages coordination among the federal and state regulators in the oversight of [third-party service] providers.”⁵ While access to new financial products and services as well as greater operating efficiency for financial institutions is positive, it is imperative that financial regulators are able to identify emerging risks when they develop. Increased exam coordination and information sharing ensure that no gaps exist where weaknesses can produce risks to the financial system.

CURRENT FEDERAL LAW GOVERNING BANK SERVICE COMPANIES

The Bank Service Company Act (BSCA), originally enacted in 1962, is the primary federal statute that governs TSPs and authorizes federal banking agencies to examine TSPs for the services they provide financial institutions to assess the potential risks they pose

¹ TSPs commonly include money service businesses (MSBs), fintech companies, IT security, and call centers, among others.

² 2017 Annual Report of the Financial Stability Oversight Council. (Dec. 2017). Available at https://www.treasury.gov/initiatives/fsoc/studies-reports/Documents/FSOC_2017_Annual_Report.pdf.

³ *Id.* at 7.

⁴ *Id.* at 9.

⁵ *Id.*

to individual client banks and the broader banking system.⁶ Currently 38 state banking regulators are also able to examine TSPs under the authority of state law, with additional states indicating they may consider legislation; however the BSCA is silent on the ability of state and federal banking regulators to share discoveries from their exams of bank service companies, including TSPs. While the BSCA does not bar state regulators from participating in exams with federal regulators, the law has been interpreted as a barrier to information sharing and regulatory coordination. This has led to frustration from state and federal regulatory authorities over the inability to fully share exam information, which could reveal weaknesses of individual institutions and allow agencies to use their limited resources more effectively.

As the BSCA is silent about the ability to share examination information, Congress should amend the statute so as not to frustrate collaboration amongst financial regulators. Appropriate sharing of regulatory exams allows agencies to use their limited resources more effectively by avoiding duplicative examinations and unnecessary regulatory burden. The effective sharing of regulatory examination results among agencies reveals many of the risks and weaknesses of individual institutions as well as the larger banking system. The legislation, as amended, is explicit that it would amend the BSCA to enhance coordination, and does not grant authority to states where none exists otherwise. H.R. 3626 is smart legislation because the bill seeks to clarify any vagueness in the BSCA. And as the Conference of State Bank Supervisors commented, “State financial regulators have strongly advocated for legislation to enhance state and federal regulators’ ability to share information on banks’ technology vendors and coordinate exams. H.R. 3626 will make both state and federal oversight more efficient and effective and reduce regulatory burden.”

HEARINGS

The Subcommittee on Financial Institutions held a hearing examining matters relating to H.R. 3626 on February 15, 2018.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on July 24, 2018 and ordered H.R. 3626 to be reported favorably as amended by a recorded vote of 56 yeas to 0 nays (recorded vote no. FC-200), a quorum being present. Before the motion to report was offered, the Committee adopted an amendment offered by Mr. Williams by 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. The sole recorded vote was on a motion by Chairman Hensarling to report the bill favorably to the House as amended. The motion was agreed to by a

⁶ 12 U.S.C. 1867(a) permits federal banking agencies to examine a service company that is owned in whole or in part by a bank or multiple banks and 12 U.S.C. 1867(c) permits federal banking agencies to examine TSPs that have contractual obligations with a bank.

⁷ 36 state banking agencies currently have authority under state law to examine TSPs.

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recorded vote of 56 yeas to 0 nays (Record vote no. FC-200), a quorum being present.

Record vote no. FC-200

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling	X			Ms. Maxine Waters (CA)	X		
Mr. McHenry	X			Mrs. Carolyn B. Maloney (NY)	X		
Mr. King	X			Ms. Velázquez			
Mr. Royce (CA)	X			Mr. Sherman	X		
Mr. Lucas	X			Mr. Meeks	X		
Mr. Pearce	X			Mr. Capuano	X		
Mr. Posey	X			Mr. Clay	X		
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	X		
Mr. Hultgren	X			Ms. Moore			
Mr. Ross	X			Mr. Ellison			
Mr. Pittenger	X			Mr. Perlmutter	X		
Mrs. Wagner	X			Mr. Himes	X		
Mr. Barr	X			Mr. Foster	X		
Mr. Rothfus	X			Mr. Kildee	X		
Mr. Messer	X			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	X		
Mr. Emmer	X			Mr. Gonzalez (TX)	X		
Mr. Zeldin	X			Mr. Crist	X		
Mr. Trott	X			Mr. Kihuen			
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

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee states that H.R. 3626 will enhance both state and federal regulators' abilities to coordinate their examinations of Technology Service Providers, in order to help reveal potential risks and weaknesses of individual institutions as well as in the larger banking system.

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 of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATES

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:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 4, 2018.

Hon. JEB HENSARLING,
*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. 3626, the Bank Service Company Examination Coordination Act of 2017.

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

Sincerely,

KEITH HALL,
Director.

Enclosure.

H.R. 3626—Bank Service Company Examination Coordination Act of 2017

H.R. 3626 would require the federal financial regulators, the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), and the Federal Reserve to coordinate with state banking regulators regarding their relation-

ships and examinations of certain companies that banks contract with to perform services.

H.R. 3626 would impose small administrative costs on the federal financial regulators because they would be required to increase their current level of coordination with state banking regulators. Administrative costs to the FDIC and OCC are recorded in the budget as an increase in direct spending. However, those agencies are authorized to collect premiums and fees from the institutions they regulate in order to cover administrative expenses. Thus, the net cost to those agencies would be negligible. Costs incurred by the Federal Reserve reduce remittances to the Treasury, which are recorded in the budget as revenues. Using information from the affected regulators about any additional administrative costs to implement H.R. 3626, CBO estimates that the net budgetary effects would be insignificant over the 2019–2028 period.

Because enacting H.R. 3626 could affect direct spending and revenues; pay-as-you-go procedures apply.

CBO estimates that enacting H.R. 3626 would not significantly increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

H.R. 3626 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA).

If the FDIC and OCC increases fees to offset the costs associated with implementing the bill H.R. 3626 would increase the cost of an existing mandate on private entities required to pay those fees. CBO expects cost of the mandate would be well below the annual threshold for private-sector mandates established in UMRA (\$160 million in 2018, adjusted annually for inflation).

The CBO staff contacts for this estimate are Sarah Puro (for federal costs) and Rachel Austin (for mandates). The estimate was reviewed by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

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. 3626 as the Bank Service Company Examination Coordination Act of 2017.

Section 2. Bank Service Company Act improvements

This section amends the Bank Service Company Act by providing for coordination between state and federal banking agencies in regards to their examinations. Additionally Section 2 provides for reasonable and timely notice to consult with the State banking agency; and “to the fullest extent possible, coordinate and avoid duplication of examination activities, reporting requirements, and requests for information.”

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

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,

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

BANK SERVICE COMPANY ACT

SHORT TITLE AND DEFINITIONS

SECTION 1.

(a) **SHORT TITLE.**—This Act may be cited as the “Bank Service Company Act”.

(b) For the purpose of this Act—

(1) the term “appropriate Federal banking agency” shall have the meaning provided in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q));

(2) *the term “State banking agency” shall have the same meaning given the term “State Bank Supervisor” under section 3 of the Federal Deposit Insurance Act;*

[(2)] (3) the term “bank service company” means—

(A) any corporation—

(i) which is organized to perform services authorized by this Act; and

(ii) all of the capital stock of which is owned by 1 or more insured depository institutions; and

(B) any limited liability company—

(i) which is organized to perform services authorized by this Act; and

(ii) all of the members of which are 1 or more insured depository institutions.

[(3)] (4) the term “Board” means the Board of Governors of the Federal Reserve System;

[(4)] (5) the term “depository institution” means, except when such term appears in connection with the term “insured depository institution”, an insured bank, a savings association, a financial institution subject to examination by the appropriate Federal banking agency or the National Credit Union Administration Board, or a financial institution the accounts or deposits of which are insured or guaranteed under State law and are eligible to be insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration Board;

[(5)] (6) **INSURED DEPOSITORY INSTITUTION.**—The terms “depository institution” and “savings association” have the same meanings as in section 3 of the Federal Deposit Insurance Act;

[(6)] (7) the term “invest” includes any advance of funds to a bank service company, whether by the purchase of stock, the making of a loan, or otherwise, except a payment for rent earned, goods sold and delivered, or services rendered prior to the making of such payment;

[(7)] (8) the term “limited liability company” means any company, partnership, trust, or similar business entity organized under the law of a State (as defined in section 3 of the Federal Deposit Insurance Act) which provides that a member or manager of such company is not personally liable for a debt, obligation, or liability of the company solely by reason of being, or acting as, a member or manager of such company;

[(8)] (9) the term “principal investor” means the insured depository institution that has the largest dollar amount invested in the equity of a bank service company. In any case where two or more insured depository institutions have equal dollar amounts invested in a bank service company, the company shall, prior to commencing operations, select one of the insured depository institutions as its principal investor and shall notify the depository institution’s appropriate Federal banking agency of that choice within 5 business days of its selection; and

[(9)] (10) the terms “State depository institution”, “Federal depository institution”, “State savings association” and “Federal savings association” have the same meanings as in section 3 of the Federal Deposit Insurance Act.

* * * * *

PRIOR APPROVAL FOR INVESTMENTS IN BANK SERVICE COMPANIES

SEC. 5. (a) No insured depository institution shall invest in the capital stock of a bank service company that performs any service under authority of subsection (c), (d), or (e) of section 4 of this Act without prior notice, as determined by the appropriate Federal banking agency, *in consultation with the State banking agency*, for the insured depository institution.

(b) No insured depository institution shall invest in the capital stock of a bank service company that performs any service authorized only under authority of section 4(f) of this Act and no bank service company shall perform any activity authorized only under section 4(f) of this Act without the prior approval of the Board.

(c) In determining whether to approve or deny any application for prior approval or whether to approve or disapprove any notice under this section, the Board or the appropriate Federal banking agency, as the case may be, is authorized to consider the financial and managerial resources and future prospects of any insured depository institution and bank service company involved, including the financial capability of the insured depository institution to make a proposed investment under this Act, and possible adverse effects such as undue concentration of resources, unfair or decreased competition, conflicts of interest, or unsafe or unsound banking practices.

(d) In the event the Board or the appropriate Federal banking agency, as the case may be, fails to act on any application under this section within ninety days of the submission of a complete application to the agency, the application shall be deemed approved.

* * * * *

REGULATION AND EXAMINATION OF BANK SERVICE COMPANIES

SEC. 7. (a) A bank service company shall be subject to examination and regulation by the appropriate Federal banking agency or *State banking agency* of its principal investor to the same extent as its principal investor. The appropriate Federal banking agency of the principal shareholder or principal member of such a bank service company may authorize any other [Federal banking agency that supervises any other shareholder or member] *Federal or State*

banking agency that supervises any other shareholder or member of the bank service company to make such an examination.

(b) A bank service company shall be subject to the provisions of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) as if the bank service company were an insured depository institution. For this purpose, the appropriate Federal banking agency shall be the appropriate Federal banking agency of the principal investor of the bank service company.

(c) Notwithstanding subsection (a) of this section, whenever a depository institution that is regularly examined by an appropriate Federal banking agency or a *State banking agency*, or any subsidiary or affiliate of such a depository institution that is subject to examination by that agency, causes to be performed for itself, by contract or otherwise, any services authorized under this Act, whether on or off its premises—

(1) such performance shall be subject to regulation and examination by [such agency] *such Federal or State agency* to the same extent as if such services were being performed by the depository institution itself on its own premises, and

(2) the depository institution shall notify each [such agency] *such Federal or State agency* of the existence of the service relationship within thirty days after the making of such service contract or the performance of the service, whichever occurs first.

(d) *AVAILABILITY OF INFORMATION.*—*Information obtained pursuant to the regulation and examination of service providers under this section or applicable State law may be furnished by and accessible to Federal and State agencies to the same extent that supervisory information concerning depository institutions is authorized to be furnished to and required to be accessible by Federal and State agencies under section 7(a)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1817(a)(2)) or State law, as applicable.*

(e) *COORDINATION WITH STATE BANKING AGENCIES.*—*Where a State bank is principal shareholder or principal member of a bank service company or where a State bank is any other shareholder or member of the bank service company, the appropriate Federal banking agency, in carrying out examinations authorized by this section, shall—*

(1) *provide reasonable and timely notice to the State banking agency; and*

(2) *to the fullest extent possible, coordinate and avoid duplication of examination activities, reporting requirements, and requests for information.*

[(d)] (f) The Board and the appropriate Federal banking agencies, *in consultation with State banking agencies*, are authorized to issue such regulations and orders as may be necessary to enable them to administer and to carry out the purposes of this Act and to prevent evasions thereof.

(g) *RULE OF CONSTRUCTION.*—*Nothing in this section shall be construed as granting authority for a State banking agency to examine a bank service company where no such authority exists in State law.*