

EMPOWERING FINANCIAL INSTITUTIONS TO FIGHT
HUMAN TRAFFICKING 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

together with

MINORITY VIEWS

[To accompany H.R. 6729]

The Committee on Financial Services, to whom was referred the bill (H.R. 6729) to allow nonprofit organizations to register with the Secretary of the Treasury and share information on activities that may involve human trafficking or money laundering with financial institutions and regulatory authorities, under a safe harbor that offers protections from liability, in order to better identify and report potential human trafficking or money laundering activities, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE AND SUMMARY

On September 6, 2018, Rep. Ann Wagner introduced H.R. 6729, the “Empowering Financial Institutions to Fight Human Trafficking Act,” which would instruct the Secretary of the Treasury to establish a mechanism for nonprofit organizations to qualify for a safe harbor when sharing specific information with financial institutions that facilitates their duties of customer due diligence and the reporting of suspicious activities relating to human trafficking.

Registered nonprofit organizations that share information in compliance with these regulations will receive safe harbor protections in order to protect themselves from retaliation, defamation suits, and other actions.

Under this legislation, the Secretary of the Treasury is given the authority to develop regulations to register nonprofit organizations that meet certain qualifications before qualified to be protected through this mechanism, determine what information may be shared under this protection, which financial institutions may receive information, how financial institutions may share information received through currently regulated and protected information sharing programs, and make the processes outlined in the bill coexistent with current information sharing mechanisms.

BACKGROUND AND NEED FOR LEGISLATION

The goal of H.R. 6729 is to establish a pathway for financial institutions to receive intelligence about human trafficking from nonprofit organizations to aid in the identification of money laundering and other suspicious activity. Human trafficking is recognized by the Treasury Department's Financial Crimes Enforcement Network (FinCEN) as inherently connected to the offense of money laundering by and through the transacting of revenues and profits from the business of exploitation. During the last few years, the connection between human trafficking to the banking industry has received increasing attention, first by the Financial Action Task Force (FATF), and more recently by UN Security Council Resolution 2331.

The International Labor Organization (ILO) estimates that approximately \$150 billion is generated in profit from human trafficking. Modern labor and sex trafficking are intrinsically linked to private sector business and therefore to the banking system. The financial industry has increasingly sought to reduce their exposure to the problem. However, banks still often fall short of information and intelligence about their exposure necessary to make comprehensive assessments.

Oftentimes, however, lack of liability protections is too great a risk factor for those with information to share with our financial institutions. Current methods of providing information through other channels clash against the time sensitive needs of investigators. Without liability protections, outside groups and nongovernmental organizations (NGOs) have uncertain legal exposure to defamation suits by those on which they report, and other potentially dangerous attacks. NGOs serving victims of human trafficking and vulnerable populations have access to critical information useful to and already sought out by the financial services industry in identifying the activities of human traffickers and their criminal associates. NGOs, however, face obstacles in sharing this information with financial institutions due to serious risk of retribution by bad actors. While financial institutions are given safe harbor for performing information sharing roles, NGOs—which lack the resources for extensive court proceedings—are unprotected from defamation suits and other actions brought by those who do not want to see their crimes unveiled.

NGOs are protected when sharing information with law enforcement and do so regularly. However, law enforcement is not properly equipped to be the sole actor responding to money laundering activity. Providing information through intermediaries rather than directly to industry harms time-sensitive delivery and dilutes the information available.

Organizations such as Western Union, MoneyGram, and Liberty Asia support the bill because it provides NGOs with a mechanism to share specific information relating to human trafficking with financial institutions after they qualify for a safe harbor from the Secretary of the Treasury. NGOs include small organizations that do not have the ability to defend themselves against the burden of multiple lawsuits from well-funded adversaries. It is in a NGOs interest to provide the best and most accurate analysis of the available information.

NGOs are currently less willing to provide such information with a financial institution due to concerns with retaliation or civil law suits. NGOs are often the key sources of intelligence for law enforcement as they are the primary points of contact for reports of abuse. NGOs also play a crucial role in fighting human trafficking and the financial flows that derive from it, and they can ensure that essential information, including on who is profiting from the trafficking, reaches financial institutions and authorities as victims are often fearful of reaching out to the authorities themselves.

The bill creates a process where responsible nonprofits that professionally analyze information and create intelligence products that help financial institutions better identify these crimes can share information without worrying about whether sharing this information is going to end their organizations. Criminals who want to shield their activities can use defamation suits and other means of retaliation to hit back at nonprofits that are trying to serve the common good but would crumble under the burden of expensive lawsuits. There is currently nothing stopping a named adversary from filing Freedom of Information Act (FOIA) requests or lawsuits to gain access to the contact information of analysts and identifiable information on sources submitted by nonprofits to a regulator or bank. This legislation solves this problem and empowers the financial industry to do better in protecting the most vulnerable of our society.

HEARINGS

The Committee on Financial Services Subcommittee on Oversight and Investigations held a hearing examining matters relating to H.R. 6729 on January 30, 2018 and the Subcommittee on Terrorism and Illicit Finance held a hearing examining matters relating to H.R. 6729 on March 20, 2018.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on September 13, 2018 and ordered H.R. 6729 to be reported favorably to the House by a recorded vote of 44 yeas to 5 nays (recorded vote no. FC-204), a quorum being present. An amendment in the nature of a substitute offered by Ms. Waters was not agreed to by a 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 fa-

vorably to the House as amended. The motion was agreed to by a recorded vote of 44 yeas to 5 nays (Record vote no. FC-204), a quorum being present.

Record vote no. FC-204

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		X	
Mr. Royce (CA)	X			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							
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. 6729 will protect victims of human trafficking by increasing cooperation among financial institutions and nonprofit organizations regarding sources of information on human trafficking and money laundering by providing a safe harbor for information providers and requiring the Secretary of the Treasury to provide reports to the financial services industry and Congressional committees.

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. 6729 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. 6729 as the “Empowering Financial Institutions to Fight Human Trafficking Act.”

Section 2. Anti-money laundering information providers

This section amends Subchapter II of chapter 53 of title 31, United States Code, by adding Section 5333, “Anti-money laundering information providers.”

Section 5333, “Anti-money laundering information providers,” includes the following:

Not later than the end of the 120-day period beginning on the date of enactment of this section, the Secretary of the Treasury shall issue regulations to allow nonprofit organizations, that the Secretary of the Treasury determines to be qualified, to share information with financial institutions, associations of financial institutions, their regulatory authorities, and law enforcement agencies regarding individuals, entities, organizations, and countries suspected of possible human trafficking or related money laundering activities.

These regulations may include or create procedures for cooperation and information sharing focused on matters specifically related to those benefitting directly and indirectly from human trafficking, the means by which human traffickers transfer funds within the United States and around the world, and the extent to which financial institutions, including depository institutions, asset managers, and insurers in the United States, are unwittingly involved in such

matters or transfers and the extent to which such entities are at risk as a result.

These regulations may also include the means of facilitating the identification of accounts and transactions involving human traffickers and facilitating the exchange of information concerning such accounts and transactions between nonprofit organizations, financial institutions, regulatory authorities, and law enforcement agencies.

These regulations may be made coextensive with the regulations adopted pursuant to other programs, regulated by the Secretary of the Treasury, for sharing information on unlawful activities between financial institutions and establish a registration process overseen by the Secretary of the Treasury that requires a nonprofit organization to demonstrate that they meet certain qualifications that the Secretary of the Treasury determines appropriate, including the establishment of policies and procedures reasonably designed to ensure the prompt identification and correction of inaccurate information.

The Secretary of the Treasury may disqualify nonprofit organizations that do not meet these qualifications, and the Secretary of the Treasury may terminate the registration of a nonprofit organization at any point if the Secretary of the Treasury determines such termination is appropriate and provides sufficient notice of such termination to the applicable nonprofit organization.

A nonprofit organization is required to register with the Secretary of the Treasury before sharing information that will be subject to the safe harbor, and ensure that financial institutions, associations of financial institutions, their regulatory authorities, law enforcement authorities, and any other appropriate entities are made aware of those nonprofit organizations that are registered with the Secretary of the Treasury.

The Secretary of the Treasury shall determine those financial institutions which are eligible to be recipients of information from nonprofit organizations made in compliance with these regulations. Such eligible financial institutions may include those already participating in existing information sharing programs regulated by the Secretary of the Treasury regarding unlawful activity. If a nonprofit organization shares information with a financial institution that is not eligible, such sharing of information shall not be subject to the safe harbor.

These regulations may be coextensive with other regulations governing the sharing of information between financial institutions on suspected unlawful activities, and shall allow financial institutions that receive information in compliance with the regulations to share such information with other financial institutions through existing information sharing programs.

A nonprofit organization, financial institution, association of financial institutions, regulatory authority of a financial institution, or law enforcement agency in compliance with the regulations that transmits or shares information for the purposes of identifying or reporting activities that may involve human trafficking acts or related money laundering activities shall not be liable to any person under any law or regulation of the United States, any constitution, law, or regulation of any State or political subdivision thereof, or under any contract or other legally enforceable agreement (includ-

ing any arbitration agreement), for such disclosure or for any failure to provide notice of such disclosure to the person who is the subject of such disclosure, or any other person identified in the disclosure, except where such transmission or sharing violates this section or regulations issued pursuant to this section.

A nonprofit organization, financial institution, association of financial institutions, regulatory authority of a financial institution, or law enforcement agency that transmits or shares information shall not be required to demonstrate that such transmission or sharing was made on a good faith basis in order to receive the benefit of the safe harbor.

This section may not be construed as requiring a nonprofit organization to comply with the regulations before sharing information with a financial institution, association of financial institutions, regulatory authority of a financial institution, or law enforcement agency.

Beginning 10 months after the date of the enactment of this section, and at least semiannually thereafter, the Secretary of the Treasury shall publish a report containing a detailed analysis identifying patterns of suspicious activity and other investigative insights derived from the regulations issued under this section and investigations conducted by Federal, State, local, and Tribal law enforcement agencies to the extent appropriate, distribute such report to financial institutions, and provide such report upon publication to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

The term ‘nonprofit organization’ means an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code.”

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 (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

TITLE 31, UNITED STATES CODE

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SUBTITLE IV—MONEY

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CHAPTER 53—MONETARY TRANSACTIONS

SUBCHAPTER I—CREDIT AND MONETARY EXPANSION

Sec.						
5301.	Buying obligations of the United States Government.	*	*	*	*	*
5333.	<i>Anti-money laundering information providers.</i>	*	*	*	*	*

SUBCHAPTER II—RECORDS AND REPORTS ON MONETARY INSTRUMENTS TRANSACTIONS

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§ 5333. Anti-money laundering information providers

(a) *COOPERATION AMONG FINANCIAL INSTITUTIONS AND SOURCES OF INFORMATION ON HUMAN TRAFFICKING AND MONEY LAUNDERING.*—

(1) *IN GENERAL.*—Not later than the end of the 120-day period beginning on the date of enactment of this section, the Secretary of the Treasury shall issue regulations to allow nonprofit organizations that the Secretary determines to be qualified to share information with financial institutions, associations of financial institutions, their regulatory authorities, and law enforcement agencies regarding individuals, entities, organizations, and countries suspected of possible human trafficking or related money laundering activities.

(2) *COOPERATION AND INFORMATION SHARING PROCEDURES.*—The regulations required under paragraph (1) may include or create procedures for cooperation and information sharing focused on—

(A) matters specifically related to those benefitting directly and indirectly from human trafficking, the means by which human traffickers transfer funds within the United States and around the world, and the extent to which financial institutions, including depository institutions, asset managers, and insurers in the United States, are unwittingly involved in such matters or transfers and the extent to which such entities are at risk as a result; and

(B) means of facilitating the identification of accounts and transactions involving human traffickers and facilitating the exchange of information concerning such accounts and transactions between nonprofit organizations, financial institutions, regulatory authorities, and law enforcement agencies.

(3) *METHOD OF REGULATION.*—The regulations required under paragraph (1) may—

(A) be made coextensive with the regulations adopted pursuant to other programs, regulated by the Secretary, for sharing information on unlawful activities between financial institutions;

(B) establish a registration process overseen by the Secretary that—

(i) requires a nonprofit organization to demonstrate that they meet certain qualifications that the Secretary

determines appropriate, including the establishment of policies and procedures reasonably designed to ensure the prompt identification and correction of inaccurate information shared under paragraph (1);

(ii) allows the Secretary to disqualify nonprofit organizations that do not meet such qualifications; and

(iii) allows the Secretary to terminate the registration of a nonprofit organization at any point if the Secretary determines such termination is appropriate and provides sufficient notice of such termination to the applicable nonprofit organization;

(C) require a nonprofit organization to register with the Secretary before sharing information that will be subject to the safe harbor provided under subsection (b); and

(D) ensure that financial institutions, associations of financial institutions, their regulatory authorities, law enforcement authorities, and any other appropriate entities are made aware of those nonprofit organizations that are registered with the Secretary.

(4) **RECIPIENTS OF INFORMATION.**—

(A) **IN GENERAL.**—The Secretary shall determine those financial institutions which are eligible to be recipients of information from nonprofit organizations made in compliance with the regulations issued under subsection (a). Such eligible financial institutions may include those already participating in existing information sharing programs regulated by the Secretary regarding unlawful activity.

(B) **NO SAFE HARBOR FOR INFORMATION PROVIDED TO OTHER FINANCIAL INSTITUTIONS.**—If a nonprofit organization shares information with a financial institution that is not eligible under subparagraph (A), such sharing of information shall not be subject to the safe harbor provided under subsection (b).

(5) **INFORMATION SHARING BETWEEN FINANCIAL INSTITUTIONS.**—The regulations adopted pursuant to this section—

(A) may be coextensive with other regulations governing the sharing of information between financial institutions on suspected unlawful activities; and

(B) shall allow financial institutions that receive information in compliance with the regulations issued under subsection (a) to share such information with other financial institutions through existing information sharing programs.

(b) **SAFE HARBOR FOR INFORMATION PROVIDERS.**—

(1) **IN GENERAL.**—A nonprofit organization, financial institution, association of financial institutions, regulatory authority of a financial institution, or law enforcement agency in compliance with the regulations issued under subsection (a) that transmits or shares information described under subsection (a) for the purposes of identifying or reporting activities that may involve human trafficking acts or related money laundering activities shall not be liable to any person under any law or regulation of the United States, any constitution, law, or regulation of any State or political subdivision thereof, or under any contract or other legally enforceable agreement (including any arbi-

tration agreement), for such disclosure or for any failure to provide notice of such disclosure to the person who is the subject of such disclosure, or any other person identified in the disclosure, except where such transmission or sharing violates this section or regulations issued pursuant to this section.

(2) *NO GOOD FAITH REQUIREMENT.*—A nonprofit organization, financial institution, association of financial institutions, regulatory authority of a financial institution, or law enforcement agency that transmits or shares information described under paragraph (1) shall not be required to demonstrate that such transmission or sharing was made on a good faith basis in order to receive the benefit of the safe harbor provided by paragraph (1).

(c) *NON-MANDATORY COMPLIANCE WITH THIS SECTION.*—This section may not be construed as requiring a nonprofit organization to comply with the regulations issued under subsection (a) before sharing information with a financial institution, association of financial institutions, regulatory authority of a financial institution, or law enforcement agency.

(d) *REPORTS TO THE FINANCIAL SERVICES INDUSTRY ON SUSPICIOUS FINANCIAL ACTIVITIES.*—Beginning 10 months after the date of the enactment of this section, and at least semiannually thereafter, the Secretary of the Treasury shall—

(1) publish a report containing a detailed analysis identifying patterns of suspicious activity and other investigative insights derived from the regulations issued under this section and investigations conducted by Federal, State, local, and Tribal law enforcement agencies to the extent appropriate;

(2) distribute such report to financial institutions; and

(3) provide such report upon publication to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(e) *NONPROFIT ORGANIZATION DEFINED.*—For purposes of this section, the term “nonprofit organization” means an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code.

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MINORITY VIEWS

H.R. 6729 is a well-intentioned bill that is aimed at countering human trafficking, a goal that Democrats strongly support. However, we remain concerned that the bill does not strike the right balance with protecting the civil liberties of innocent U.S. citizens.

Designed to support the good work of respected anti-human trafficking nonprofits that combat the involuntary and often transnational trafficking of men, women, and children—the bill gives a federal safe harbor to allow nonprofits to share personally identifiable information (PII) about any person the nonprofit suspects of human trafficking with any financial institution. The financial institution could then close the account, monitor the account, or report the account to authorities. While a safe harbor for nonprofits who provide this information is well-intentioned, in the event of inaccurate information or mistaken identity, a wrongfully accused person would have no recourse to correct the record as the safe harbor would prohibit them from bringing defamation, privacy, or other lawsuits against the nonprofit. This is even more troubling as the nonprofits could share information on any person, even those who have not been arrested, indicted or convicted of a crime. The consequences for a wrongfully accused person could range from account closure to being denied access to the formal banking system. This concern for error in identification is especially heightened for immigrant communities within the US, possibly victimizing them twice, first by the human traffickers that frequently target their communities and then by the financial system which enables them to thrive.

Further compounding this issue is that the bill explicitly states that the Treasury Department may not impose a requirement of “good faith” to the information sharing covered by the safe harbor. By removing the necessity for nonprofits to act in good faith, this bill could encourage the oversharing of information due to a nonprofit’s well-intentioned cautiousness. While most organizations will behave with high standards, this failure to apply good faith will allow less well-intentioned organizations to abuse the system while organizations with weak controls will be less vigilant about errors and errant employees.

Additionally, even if the information that the nonprofit provides is accurate, we believe that nonprofits or financial institutions should work in tandem with law enforcement to avoid the unintended consequence of unknowingly interfering with an ongoing law enforcement investigation.

For these reasons, we oppose H.R. 6729.

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