

Union Calendar No. 447

115TH CONGRESS
2D SESSION

H. R. 4545

[Report No. 115-589]

To amend the Federal Financial Institutions Examination Council Act of 1978 to improve the examination of depository institutions, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 4, 2017

Mr. TIPTON (for himself and Mrs. CAROLYN B. MALONEY of New York) introduced the following bill; which was referred to the Committee on Financial Services

MARCH 6, 2018

Additional sponsors: Mr. HULTGREN, Mr. ZELDIN, Mr. PITTENGER, Mr. GOTTHEIMER, Mr. LUCAS, and Mr. MESSER

MARCH 6, 2018

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

A BILL

To amend the Federal Financial Institutions Examination Council Act of 1978 to improve the examination of depository institutions, 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 Institutions
5 Examination Fairness and Reform Act”.

6 **SEC. 2. AMENDMENT TO DEFINITION OF FINANCIAL INSTI-**
7 **TUTION.**

8 Section 1003(3) of the Federal Financial Institutions
9 Examination Council Act of 1978 (12 U.S.C. 3302(3)) is
10 amended to read as follows:

11 “(3) the term ‘financial institution’—

12 “(A) means a commercial bank, a savings
13 bank, a trust company, a savings association, a
14 building and loan association, a homestead as-
15 sociation, a cooperative bank, or a credit union;
16 and

17 “(B) for purposes of sections 1012, 1013,
18 and 1014, includes a nondepository covered per-
19 son subject to supervision by the Bureau of
20 Consumer Financial Protection under section
21 1024 of the Consumer Financial Protection Act
22 of 2010 (12 U.S.C. 5514).”.

1 **SEC. 3. TIMELINESS OF EXAMINATION REPORTS.**

2 The Federal Financial Institutions Examination
3 Council Act of 1978 (12 U.S.C. 3301 et seq.) is amended
4 by adding at the end the following:

5 **“SEC. 1012. TIMELINESS OF EXAMINATION REPORTS.**

6 “(a) IN GENERAL.—

7 “(1) FINAL EXAMINATION REPORT.—A Federal
8 financial institutions regulatory agency shall provide
9 a final examination report to a financial institution
10 not later than 60 days after the later of—

11 “(A) the exit interview for an examination
12 of the institution; or

13 “(B) the provision of additional informa-
14 tion by the institution relating to the examina-
15 tion.

16 “(2) EXIT INTERVIEW.—If a financial institu-
17 tion is not subject to a resident examiner program,
18 the exit interview shall occur not later than the end
19 of the 9-month period beginning on the commence-
20 ment of the examination, except that such period
21 may be extended by the Federal financial institu-
22 tions regulatory agency by providing written notice
23 to the institution and the Independent Examination
24 Review Director describing with particularity the
25 reasons that a longer period is needed to complete
26 the examination.

1 “(b) EXAMINATION MATERIALS.—Upon the request
2 of a financial institution, the Federal financial institutions
3 regulatory agency shall include with the final report an
4 appendix listing all examination or other factual informa-
5 tion relied upon by the agency in support of a material
6 supervisory determination.”.

7 **SEC. 4. INDEPENDENT EXAMINATION REVIEW DIRECTOR.**

8 The Federal Financial Institutions Examination
9 Council Act of 1978 (12 U.S.C. 3301 et seq.), as amended
10 by section 3, is further amended by adding at the end the
11 following:

12 **“SEC. 1013. OFFICE OF INDEPENDENT EXAMINATION RE-**
13 **VIEW.**

14 “(a) ESTABLISHMENT.—There is established in the
15 Council an Office of Independent Examination Review
16 (the ‘Office’).

17 “(b) HEAD OF OFFICE.—There is established the po-
18 sition of the Independent Examination Review Director
19 (the ‘Director’), as the head of the Office. The Director
20 shall be appointed by the Council and shall be independent
21 from any member agency of the Council.

22 “(c) TERM.—The Director shall serve for a term of
23 5 years, and may be appointed to serve a subsequent 5-
24 year term.

1 “(d) STAFFING.—The Director is authorized to hire
2 staff to support the activities of the Office.

3 “(e) DUTIES.—The Director shall—

4 “(1) receive and, at the Director’s discretion,
5 investigate complaints from financial institutions,
6 their representatives, or another entity acting on be-
7 half of such institutions, concerning examinations,
8 examination practices, or examination reports;

9 “(2) hold meetings, at least once every three
10 months and in locations designed to encourage par-
11 ticipation from all sections of the United States,
12 with financial institutions, their representatives, or
13 another entity acting on behalf of such institutions,
14 to discuss examination procedures, examination
15 practices, or examination policies;

16 “(3) in accordance with subsection (f), review
17 examination procedures of the Federal financial in-
18 stitutions regulatory agencies to ensure that the
19 written examination policies of those agencies are
20 being followed in practice and adhere to the stand-
21 ards for consistency established by the Council;

22 “(4) conduct a continuing and regular review of
23 examination quality assurance for all examination
24 types conducted by the Federal financial institutions
25 regulatory agencies;

1 “(5) adjudicate any supervisory appeal initiated
2 under section 1014; and

3 “(6) report annually to the Committee on Fi-
4 nancial Services of the House of Representatives, the
5 Committee on Banking, Housing, and Urban Affairs
6 of the Senate, and the Council, on the reviews car-
7 ried out pursuant to paragraphs (3) and (4), includ-
8 ing compliance with the requirements set forth in
9 section 1012 regarding timeliness of examination re-
10 ports, and the Council’s recommendations for im-
11 provements in examination procedures, practices,
12 and policies.

13 “(f) STANDARD FOR REVIEWING EXAMINATION PRO-
14 CEDURES.—In conducting reviews pursuant to subsection
15 (e)(4), the Director shall prioritize factors relating to the
16 safety and soundness of the financial system of the United
17 States.

18 “(g) REMOVAL.—If the Director is removed from of-
19 fice, the Council shall communicate in writing the reasons
20 for any such removal to the Committee on Financial Serv-
21 ices of the House of Representatives and the Committee
22 on Banking, Housing, and Urban Affairs of the Senate
23 not later than 30 days before the removal.

1 “(h) CONFIDENTIALITY.—The Director shall keep
2 confidential all meetings with, discussions with, and infor-
3 mation provided by financial institutions.”.

4 **SEC. 5. RIGHT TO INDEPENDENT REVIEW OF MATERIAL SU-**
5 **SUPERVISORY DETERMINATIONS.**

6 The Federal Financial Institutions Examination
7 Council Act of 1978 (12 U.S.C. 3301 et seq.), as amended
8 by section 4, is further amended by adding at the end the
9 following:

10 **“SEC. 1014. RIGHT TO INDEPENDENT REVIEW OF MATERIAL**
11 **SUPERVISORY DETERMINATIONS.**

12 “(a) IN GENERAL.—A financial institution shall have
13 the right to obtain an independent review of a material
14 supervisory determination contained in a final report of
15 examination.

16 “(b) NOTICE.—

17 “(1) TIMING.—A financial institution seeking
18 review of a material supervisory determination under
19 this section shall file a written notice with the Inde-
20 pendent Examination Review Director (the ‘Direc-
21 tor’) within 60 days after receiving the final report
22 of examination that is the subject of such review.

23 “(2) IDENTIFICATION OF DETERMINATION.—

24 The written notice shall identify the material super-
25 visory determination that is the subject of the inde-

1 pendent examination review, and a statement of the
2 reasons why the institution believes that the deter-
3 mination is incorrect or should otherwise be modi-
4 fied.

5 “(3) INFORMATION TO BE PROVIDED TO INSTI-
6 TUTION.—Any information relied upon by the agen-
7 cy in the final report that is not in the possession
8 of the financial institution may be requested by the
9 financial institution and shall be delivered promptly
10 by the agency to the financial institution.

11 “(c) RIGHT TO HEARING.—

12 “(1) IN GENERAL.—The Director shall deter-
13 mine the merits of the appeal on the record or, at
14 the financial institution’s election, shall refer the ap-
15 peal to an Administrative Law Judge to conduct a
16 confidential hearing pursuant to the procedures set
17 forth under sections 556 and 557 of title 5, United
18 States Code, which hearing shall take place not later
19 than 60 days after the petition for review was re-
20 ceived by the Director, and to issue a proposed deci-
21 sion to the Director based upon the record estab-
22 lished at such hearing.

23 “(2) STANDARD OF REVIEW.—In rendering a
24 determination or recommendation under this sub-
25 section, neither the Administrative Law Judge nor

1 the Director shall defer to the opinions of the exam-
2 iner or agency, but shall conduct a de novo review
3 to independently determine the appropriateness of
4 the agency's decision based upon the relevant stat-
5 utes, regulations, and other appropriate guidance, as
6 well as evidence adduced at any hearing.

7 “(d) FINAL DECISION.—A decision by the Director
8 on an independent review under this section shall—

9 “(1) be made not later than 60 days after the
10 record has been closed; and

11 “(2) subject to subsection (e), be deemed a final
12 agency action and shall bind the agency whose su-
13 pervisory determination was the subject of the re-
14 view and the financial institution requesting the re-
15 view.

16 “(e) LIMITED REVIEW BY FFIEC.—

17 “(1) IN GENERAL.—If the agency whose super-
18 visory determination was the subject of the review
19 believes that the Director's decision under subsection
20 (d) would pose an imminent threat to the safety and
21 soundness of the financial institution, such agency
22 may file a written notice seeking review of the Direc-
23 tor's decision with the Council within 10 days of re-
24 ceiving the Director's decision.

1 “(2) STANDARD OF REVIEW.—In making a de-
2 termination under this subsection, the Council shall
3 conduct a review to determine whether there is sub-
4 stantial evidence that the Director’s decision would
5 pose an imminent threat to the safety and soundness
6 of the financial institution.

7 “(3) FINAL DETERMINATION.—A determination
8 by the Council shall—

9 “(A) be made not later than 30 days after
10 the filing of the notice pursuant to paragraph
11 (1); and

12 “(B) be deemed a final agency action and
13 shall bind the agency whose supervisory deter-
14 mination was the subject of the review and the
15 financial institution requesting the review.

16 “(f) RIGHT TO JUDICIAL REVIEW.—A financial insti-
17 tution shall have the right to petition for review of final
18 agency action under this section by filing a Petition for
19 Review within 60 days of the Director’s decision or the
20 Council’s decision in the United States Court of Appeals
21 for the District of Columbia Circuit or the Circuit in which
22 the financial institution is located.

23 “(g) REPORT.—The Director shall report annually to
24 the Committee on Financial Services of the House of Rep-
25 resentatives and the Committee on Banking, Housing, and

1 Urban Affairs of the Senate on actions taken under this
2 section, including the types of issues that the Director has
3 reviewed and the results of those reviews. In no case shall
4 such a report contain information about individual finan-
5 cial institutions or any confidential or privileged informa-
6 tion shared by financial institutions.

7 “(h) RETALIATION PROHIBITED.—A Federal finan-
8 cial institutions regulatory agency may not—

9 “(1) retaliate against a financial institution, in-
10 cluding service providers, or any institution-affiliated
11 party (as defined under section 3 of the Federal De-
12 posit Insurance Act), for exercising appellate rights
13 under this section; or

14 “(2) delay or deny any agency action that
15 would benefit a financial institution or any institu-
16 tion-affiliated party on the basis that an appeal
17 under this section is pending under this section.

18 “(i) RULE OF CONSTRUCTION.—Nothing in this sec-
19 tion may be construed—

20 “(1) to affect the right of a Federal financial
21 institutions regulatory agency to take enforcement
22 or other supervisory actions related to a material su-
23 pervisory determination under review under this sec-
24 tion; or

1 “(2) to prohibit the review under this section of
2 a material supervisory determination with respect to
3 which there is an ongoing enforcement or other su-
4 pervisory action.”.

5 **SEC. 6. ADDITIONAL AMENDMENTS.**

6 (a) RIEGLE COMMUNITY DEVELOPMENT AND REGU-
7 LATORY IMPROVEMENT ACT OF 1994.—Section 309 of the
8 Riegle Community Development and Regulatory Improve-
9 ment Act of 1994 (12 U.S.C. 4806) is amended—

10 (1) in subsection (a), by inserting after “appro-
11 priate Federal banking agency” the following: “, the
12 Bureau of Consumer Financial Protection,”;

13 (2) in subsection (b)—

14 (A) in paragraph (2), by striking “the ap-
15 pellant from retaliation by agency examiners”
16 and inserting “the insured depository institu-
17 tion or insured credit union from retaliation by
18 the agencies referred to in subsection (a)”;

19 (B) by adding at the end the following
20 flush-left text:

21 “For purposes of this subsection and subsection (e), retal-
22 iation includes delaying consideration of, or withholding
23 approval of, any request, notice, or application that other-
24 wise would have been approved, but for the exercise of the
25 institution’s or credit union’s rights under this section.”;

1 (3) in subsection (e)(2)—

2 (A) in subparagraph (B), by striking
3 “and” at the end;

4 (B) in subparagraph (C), by striking the
5 period and inserting “; and”; and

6 (C) by adding at the end the following:

7 “(D) ensure that appropriate safeguards
8 exist for protecting the insured depository insti-
9 tution or insured credit union from retaliation
10 by any agency referred to in subsection (a) for
11 exercising its rights under this subsection.”;
12 and

13 (4) in subsection (f)(1)(A)—

14 (A) in clause (ii), by striking “and” at the
15 end;

16 (B) in clause (iii), by striking “and” at the
17 end; and

18 (C) by adding at the end the following:

19 “(iv) any issue specifically listed in an
20 exam report as a matter requiring atten-
21 tion by the institution’s management or
22 board of directors; and

23 “(v) any suspension or removal of an
24 institution’s status as eligible for expedited
25 processing of applications, requests, no-

1 tices, or filings on the grounds of a super-
2 visory or compliance concern, regardless of
3 whether that concern has been cited as a
4 basis for another material supervisory de-
5 termination or matter requiring attention
6 in an examination report, provided that the
7 conduct at issue did not involve violation of
8 any criminal law; and”.

9 (b) FEDERAL CREDIT UNION ACT.—Section 205(j)
10 of the Federal Credit Union Act (12 U.S.C. 1785(j)) is
11 amended by inserting “the Bureau of Consumer Financial
12 Protection,” before “the Administration” each place such
13 term appears.

14 (c) FEDERAL FINANCIAL INSTITUTIONS EXAMINA-
15 TION COUNCIL ACT OF 1978.—The Federal Financial In-
16 stitutions Examination Council Act of 1978 (12 U.S.C.
17 3301 et seq.) is amended—

18 (1) in section 1003, by amending paragraph (1)
19 to read as follows:

20 “(1) the term ‘Federal financial institutions
21 regulatory agencies’—

22 “(A) means the Office of the Comptroller
23 of the Currency, the Board of Governors of the
24 Federal Reserve System, the Federal Deposit

1 Insurance Corporation, and the National Credit
2 Union Administration; and

3 “(B) for purposes of sections 1012, 1013,
4 and 1014, includes the Bureau of Consumer Fi-
5 nancial Protection;”; and

6 (2) in section 1005, by striking “One-fifth” and
7 inserting “One-fourth”.

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