To improve the examination of depository institutions, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 6, 2012

Mr. Moran (for himself and Mr. Manchin) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To improve the examination of depository institutions, and for other purposes.

Be it enacted by the Senate and House of Representa-

tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Financial Institutions

Examination Fairness and Reform Act”.

SEC. 2. TIMELINESS OF EXAMINATION REPORTS.

The Federal Financial Institutions Examination

Council Act of 1978 (12 U.S.C. 3301 et seq.) is amended

by adding at the end the following:
“SEC. 1012. TIMELINESS OF EXAMINATION REPORTS.

“(a) In General.—

“(1) Final Examination Report.—A Federal financial institutions regulatory agency shall provide a final examination report to a financial institution not later than 60 days after the later of—

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

“(B) the provision of additional information by the institution relating to the examination.

“(2) Exit Interview.—If a financial institution is not subject to a resident examiner program, the exit interview shall occur not later than the end of the 9-month period beginning on the commencement of the examination, except that such period may be extended by the Federal financial institutions regulatory agency by providing written notice to the institution and the Office of Examination Ombudsman describing with particularity the reasons that a longer period is needed to complete the examination.

“(b) Examination Materials.—Upon the request of a financial institution, the Federal financial institutions regulatory agency shall include with the final report under this section an appendix listing all examination or other
factual information relied upon by the agency in support of a material supervisory determination.”.

SEC. 3. EXAMINATION STANDARDS.

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

“SEC. 1013. EXAMINATION STANDARDS.

“(a) In General.—In the examination of financial institutions—

“(1) a commercial loan shall not be placed in non-accrual status solely because the collateral for such loan has deteriorated in value;

“(2) a modified or restructured commercial loan shall be removed from non-accrual status if the borrower demonstrates the ability to perform on such loan over a maximum period of 6 months, except that with respect to loans on a quarterly, semi-annual, or longer repayment schedule such period shall be a maximum of 3 consecutive repayment periods;

“(3) a new appraisal on a performing commercial loan shall not be required unless an advance of new funds is involved;

“(4) in classifying a commercial loan in which there has been deterioration in collateral value,
amount to be classified shall be the portion of the
deficiency relating to the decline in collateral value
and repayment capacity of the borrower.

“(b) WELL CAPITALIZED INSTITUTIONS.—The Fed-
eral financial institutions regulatory agencies may not re-
quire a financial institution that is well capitalized to raise
additional capital in lieu of an action prohibited under
subsection (a).

“(c) CONSISTENT LOAN CLASSIFICATIONS.—The
Federal financial institutions regulatory agencies shall de-
velop and apply identical definitions and reporting require-
ments for non-accrual loans.”.

(b) DEFINITION OF MATERIAL SUPERVISORY DE-
TERMINATION.—Section 309(f)(1)(A) of the Riegle Com-
unity Development and Regulatory Improvement Act of

(1) in clause (ii), by striking “and” at the end;

and

(2) by inserting after clause (iii) the following:

“(iv) any issue specifically listed in an
exam report as a matter requiring atten-
tion by the institution’s management or
board of directors; and”.
SEC. 4. EXAMINATION OMBUDSMAN.

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

“SEC. 1014. OFFICE OF EXAMINATION OMBUDSMAN.

“(a) ESTABLISHMENT.—There is established in the Council an Office of Examination Ombudsman.

“(b) HEAD OF OFFICE.—There is established the position of the Ombudsman, who shall serve as the head of the Office of Examination Ombudsman, and who shall be hired separately by the Council and shall be independent from any member agency of the Council.

“(c) STAFFING.—The Ombudsman is authorized to hire staff to support the activities of the Office of Examination Ombudsman.

“(d) DUTIES.—The Ombudsman shall—

“(1) receive and, at the Ombudsman’s discretion, investigate complaints from financial institutions, their representatives, or another entity acting on behalf of such institutions, concerning examinations, examination practices, or examination reports;

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

“(3) review examination procedures of the Federal financial institutions regulatory agencies to ensure that the written examination policies of those agencies are being followed in practice and adhere to the standards for consistency established by the Council;

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

“(5) process any supervisory appeal initiated under section 1015 or section 309(e) of the Riegle Community Development and Regulatory Improvement Act of 1994; and

“(6) report annually to the Committee on Financial Services of the House of Representatives, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Council, on the reviews carried out pursuant to paragraphs (3) and (4), including compliance with the requirements set forth in section 1012 regarding timeliness of examination reports, and the Council’s recommendations for im-
provements in examination procedures, practices, and policies.

“(e) CONFIDENTIALITY.—The Ombudsman shall keep confidential all meetings, discussions, and information provided by financial institutions.”.

(b) DEFINITION.—Section 1003 of the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3302) is amended—

(1) in paragraph (2), by striking “and” at the end;

(2) in paragraph (3), by adding “and” at the end; and

(3) by adding at the end the following:

“(4) the term ‘Ombudsman’ means the Ombudsman established under section 1014.”.

SEC. 5. RIGHT TO APPEAL BEFORE AN INDEPENDENT ADMINISTRATIVE LAW JUDGE.

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

“SEC. 1015. RIGHT TO APPEAL BEFORE AN INDEPENDENT ADMINISTRATIVE LAW JUDGE.

“(a) In General.—A financial institution shall have the right to appeal a material supervisory determination contained in a final report of examination.
“(b) NOTICE.—

“(1) TIMING.—A financial institution seeking an appeal under this section shall file a written notice with the Ombudsman within 60 days after receiving the final report or examination that is the subject of such appeal.

“(2) IDENTIFICATION OF DETERMINATION.—
The written notice shall identify the material supervisory determination that is the subject of the appeal, and a statement of the reasons why the institution believes that the determination is incorrect or should otherwise be modified.

“(3) INFORMATION TO BE PROVIDED TO INSTITUTION.—Any information relied upon by the agency in the final report that is not in the possession of the financial institution may be requested by the financial institution and shall be delivered promptly by the agency to the financial institution.

“(c) HEARING BEFORE INDEPENDENT ADMINISTRATIVE LAW JUDGE.—

“(1) IN GENERAL.—The Ombudsman shall determine the merits of the appeal on the record, after an opportunity for a hearing before an independent administrative law judge.
“(2) **Hearing Procedures.**—If a hearing is requested by the financial institution, the hearing shall—

“(A) take place not later than 60 days after the notice of the appeal was received by the Ombudsman; and

“(B) be conducted pursuant to the procedures set forth under sections 556 and 557 of title 5, United States Code.

“(3) **Judge Recommendation; Standard of Review.**—In any hearing under this subsection—

“(A) the administrative law judge shall recommend to the Ombudsman what determination should be made; and

“(B) in making such recommendation, the administrative law judge shall not defer to the opinions of the examiner or agency, but shall independently determine the appropriateness of the agency’s decision based upon the relevant statutes, regulations, and other appropriate guidance.

“(d) **Final Decision.**—A decision by the Ombudsman on an appeal under this section shall—

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

“(2) be final agency action, and shall bind the
agency whose supervisory determination was the
subject of the appeal and the financial institution
making the appeal.

“(e) REPORT.—The Ombudsman shall report annu-
ally to the Committee on Financial Services of the House
of Representatives, the Committee on Banking, Housing,
and Urban Affairs of the Senate on actions taken on ap-
peals under this section, including the types of issues that
financial institutions have appealed and the results of
those appeals. In no case shall such a report contain infor-
mation about individual financial institutions or any con-
fidential or privileged information shared by financial in-
stitutions.

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

“(1) retaliate against a financial institution, in-
cluding service providers, or any institution-affiliated
party, for exercising appellate rights under this sec-
tion; or

“(2) delay or deny any agency action that
would benefit a financial institution or any institu-
tion-affiliated party on the basis that an appeal
under this section is pending under this section.”.
SEC. 6. ADDITIONAL AMENDMENTS.

(a) RIEGLE COMMUNITY DEVELOPMENT AND REGULATORY IMPROVEMENT ACT OF 1994.—Section 309 of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4806) is amended—

(1) in subsection (a), by inserting after “appropriate Federal banking agency” the following: “, the Bureau of Consumer Financial Protection,”;

(2) in subsection (b)—

(A) in paragraph (2), by striking “the appellant from retaliation by agency examiners” and inserting “the insured depository institution or insured credit union from retaliation by an agency referred to in subsection (a)”;

(B) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively, and adjusting the margins accordingly;

(C) by striking “In establishing” and inserting the following:

“(1) IN GENERAL.—In establishing”; and

(D) by adding at the end the following:

“(2) RETALIATION.—For purposes of this subsection and subsection (e), retaliation includes delaying consideration of, or withholding approval of, any request, notice, or application that otherwise would have been approved, but for the exercise of the insti-
tuition’s or credit union’s rights under this section.”;

and

(3) in subsection (e)(2)—

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

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

(C) by adding at the end the following:

“(D) ensure that appropriate safeguards exist for protecting the insured depository institution or insured credit union from retaliation by any agency referred to in subsection (a) for exercising its rights under this subsection.”.

(b) **Federal Deposit Insurance Act.**—Section 18(x) of the Federal Deposit Insurance Act (12 U.S.C. 1828(x)) is amended by inserting “the Bureau of Consumer Financial Protection,” before “any Federal banking agency” each place that term appears.

(c) **Federal Credit Union Act.**—Section 205(j) of the Federal Credit Union Act (12 U.S.C. 1785(j)) is amended by inserting “the Bureau of Consumer Financial Protection,” before “the Administration” each place that term appears.
(d) TECHNICAL CORRECTIONS.—The Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3301 et seq.) is amended—

(1) in section 1003(1) (12 U.S.C. 3302(1)), by striking “the Office of Thrift Supervision,”; and

(2) in section 1005 (12 U.S.C. 3304), by striking “One-fifth” and inserting “One-fourth”.

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