

112TH CONGRESS
2D SESSION

S. 2160

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.

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. TIMELINESS OF EXAMINATION REPORTS.**

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

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

2 “(a) IN GENERAL.—

3 “(1) FINAL EXAMINATION REPORT.—A Federal
4 financial institutions regulatory agency shall provide
5 a final examination report to a financial institution
6 not later than 60 days after the later of—

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

9 “(B) the provision of additional informa-
10 tion by the institution relating to the examina-
11 tion.

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

23 “(b) EXAMINATION MATERIALS.—Upon the request
24 of a financial institution, the Federal financial institutions
25 regulatory agency shall include with the final report under
26 this section an appendix listing all examination or other

1 factual information relied upon by the agency in support
2 of a material supervisory determination.”.

3 **SEC. 3. EXAMINATION STANDARDS.**

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

7 **“SEC. 1013. EXAMINATION STANDARDS.**

8 “(a) IN GENERAL.—In the examination of financial
9 institutions—

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

13 “(2) a modified or restructured commercial loan
14 shall be removed from non-accrual status if the bor-
15 rower demonstrates the ability to perform on such
16 loan over a maximum period of 6 months, except
17 that with respect to loans on a quarterly, semi-
18 annual, or longer repayment schedule such period
19 shall be a maximum of 3 consecutive repayment pe-
20 riods;

21 “(3) a new appraisal on a performing commer-
22 cial loan shall not be required unless an advance of
23 new funds is involved;

24 “(4) in classifying a commercial loan in which
25 there has been deterioration in collateral value, the

1 amount to be classified shall be the portion of the
 2 deficiency relating to the decline in collateral value
 3 and repayment capacity of the borrower.

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

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

13 (b) DEFINITION OF MATERIAL SUPERVISORY DE-
 14 TERMINATION.—Section 309(f)(1)(A) of the Riegle Com-
 15 munity Development and Regulatory Improvement Act of
 16 1994 (12 U.S.C. 4806(f)(1)(A)) is amended—

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

18 and

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

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

1 **SEC. 4. EXAMINATION OMBUDSMAN.**

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

5 **“SEC. 1014. OFFICE OF EXAMINATION OMBUDSMAN.**

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

8 “(b) HEAD OF OFFICE.—There is established the po-
9 sition of the Ombudsman, who shall serve as the head of
10 the Office of Examination Ombudsman, and who shall be
11 hired separately by the Council and shall be independent
12 from any member agency of the Council.

13 “(c) STAFFING.—The Ombudsman is authorized to
14 hire staff to support the activities of the Office of Exam-
15 ination Ombudsman.

16 “(d) DUTIES.—The Ombudsman shall—

17 “(1) receive and, at the Ombudsman’s discre-
18 tion, investigate complaints from financial institu-
19 tions, their representatives, or another entity acting
20 on behalf of such institutions, concerning examina-
21 tions, examination practices, or examination reports;

22 “(2) hold meetings, at least once every three
23 months and in locations designed to encourage par-
24 ticipation from all sections of the United States,
25 with financial institutions, their representatives, or
26 another entity acting on behalf of such institutions,

1 to discuss examination procedures, examination
2 practices, or examination policies;

3 “(3) review examination procedures of the Fed-
4 eral financial institutions regulatory agencies to en-
5 sure that the written examination policies of those
6 agencies are being followed in practice and adhere to
7 the standards for consistency established by the
8 Council;

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

13 “(5) process any supervisory appeal initiated
14 under section 1015 or section 309(e) of the Riegle
15 Community Development and Regulatory Improve-
16 ment Act of 1994; and

17 “(6) report annually to the Committee on Fi-
18 nancial Services of the House of Representatives, the
19 Committee on Banking, Housing, and Urban Affairs
20 of the Senate, and the Council, on the reviews car-
21 ried out pursuant to paragraphs (3) and (4), includ-
22 ing compliance with the requirements set forth in
23 section 1012 regarding timeliness of examination re-
24 ports, and the Council’s recommendations for im-

1 provements in examination procedures, practices,
2 and policies.

3 “(e) CONFIDENTIALITY.—The Ombudsman shall
4 keep confidential all meetings, discussions, and informa-
5 tion provided by financial institutions.”.

6 (b) DEFINITION.—Section 1003 of the Federal Fi-
7 nancial Institutions Examination Council Act of 1978 (12
8 U.S.C. 3302) is amended—

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

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

13 (3) by adding at the end the following:

14 “(4) the term ‘Ombudsman’ means the Om-
15 budsman established under section 1014.”.

16 **SEC. 5. RIGHT TO APPEAL BEFORE AN INDEPENDENT AD-**
17 **MINISTRATIVE LAW JUDGE.**

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

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

23 “(a) IN GENERAL.—A financial institution shall have
24 the right to appeal a material supervisory determination
25 contained in a final report of examination.

1 “(b) NOTICE.—

2 “(1) TIMING.—A financial institution seeking
3 an appeal under this section shall file a written no-
4 tice with the Ombudsman within 60 days after re-
5 ceiving the final report or examination that is the
6 subject of such appeal.

7 “(2) IDENTIFICATION OF DETERMINATION.—
8 The written notice shall identify the material super-
9 visory determination that is the subject of the ap-
10 peal, and a statement of the reasons why the institu-
11 tion believes that the determination is incorrect or
12 should otherwise be modified.

13 “(3) INFORMATION TO BE PROVIDED TO INSTI-
14 TUTION.—Any information relied upon by the agen-
15 cy in the final report that is not in the possession
16 of the financial institution may be requested by the
17 financial institution and shall be delivered promptly
18 by the agency to the financial institution.

19 “(c) HEARING BEFORE INDEPENDENT ADMINISTRA-
20 TIVE LAW JUDGE.—

21 “(1) IN GENERAL.—The Ombudsman shall de-
22 termine the merits of the appeal on the record, after
23 an opportunity for a hearing before an independent
24 administrative law judge.

1 “(2) HEARING PROCEDURES.—If a hearing is
2 requested by the financial institution, the hearing
3 shall—

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

7 “(B) be conducted pursuant to the proce-
8 dures set forth under sections 556 and 557 of
9 title 5, United States Code.

10 “(3) JUDGE RECOMMENDATION; STANDARD OF
11 REVIEW.—In any hearing under this subsection—

12 “(A) the administrative law judge shall
13 recommend to the Ombudsman what determina-
14 tion should be made; and

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

22 “(d) FINAL DECISION.—A decision by the Ombuds-
23 man on an appeal under this section shall—

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

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

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

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

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

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

1 **SEC. 6. ADDITIONAL AMENDMENTS.**

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

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

9 (2) in subsection (b)—

10 (A) in paragraph (2), by striking “the ap-
11 pellant from retaliation by agency examiners”
12 and inserting “the insured depository institu-
13 tion or insured credit union from retaliation by
14 an agency referred to in subsection (a)”;

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

18 (C) by striking “In establishing” and in-
19 serting the following:

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

21 (D) by adding at the end the following:

22 “(2) RETALIATION.—For purposes of this sub-
23 section and subsection (e), retaliation includes delay-
24 ing consideration of, or withholding approval of, any
25 request, notice, or application that otherwise would
26 have been approved, but for the exercise of the insti-

1 tution’s or credit union’s rights under this section.”;

2 and

3 (3) in subsection (e)(2)—

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

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

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

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

14 (b) FEDERAL DEPOSIT INSURANCE ACT.—Section
15 18(x) of the Federal Deposit Insurance Act (12 U.S.C.
16 1828(x)) is amended by inserting “the Bureau of Con-
17 sumer Financial Protection,” before “any Federal banking
18 agency” each place that term appears.

19 (c) FEDERAL CREDIT UNION ACT.—Section 205(j)
20 of the Federal Credit Union Act (12 U.S.C. 1785(j)) is
21 amended by inserting “the Bureau of Consumer Financial
22 Protection,” before “the Administration” each place that
23 term appears.

1 (d) TECHNICAL CORRECTIONS.—The Federal Finan-
2 cial Institutions Examination Council Act of 1978 (12
3 U.S.C. 3301 et seq.) is amended—

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

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

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