

115TH CONGRESS
1ST SESSION

S. 2237

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

IN THE SENATE OF THE UNITED STATES

DECEMBER 14, 2017

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 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. 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 Director describing with
20 particularity the reasons that a longer period is
21 needed to complete the examination.

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

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

3 **SEC. 3. INDEPENDENT EXAMINATION REVIEW DIRECTOR.**

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

8 **“SEC. 1013. OFFICE OF INDEPENDENT EXAMINATION RE-**
9 **VIEW.**

10 “(a) ESTABLISHMENT.—There is established in the
11 Council an Office of Independent Examination Review.

12 “(b) HEAD OF OFFICE.—There is established the po-
13 sition of the Independent Examination Review Director,
14 as the head of the Office of Independent Examination Re-
15 view. The Director shall be appointed by the Federal Fi-
16 nancial Institutions Examination Council.

17 “(c) STAFFING.—The Director is authorized to hire
18 staff to support the activities of the Office of Independent
19 Examination Review.

20 “(d) DUTIES.—The Director shall—

21 “(1) receive and, at the discretion of the Direc-
22 tor, investigate complaints from financial institu-
23 tions, their representatives, or another entity acting
24 on behalf of such institutions, concerning examina-
25 tions, examination practices, or examination reports;

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

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

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

18 “(5) adjudicate any supervisory appeal initiated
19 under section 1014; and

20 “(6) report annually to the Committee on Fi-
21 nancial Services of the House of Representatives, the
22 Committee on Banking, Housing, and Urban Affairs
23 of the Senate, and the Council, on the reviews car-
24 ried out pursuant to paragraphs (3) and (4), includ-
25 ing compliance with the requirements set forth in

1 section 1012 regarding timeliness of examination re-
2 ports, and the Council’s recommendations for im-
3 provements in examination procedures, practices,
4 and policies.

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

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

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

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

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

16 “(4) the term ‘Director’ means the Independent
17 Examination Review Director established under sec-
18 tion 1013(a) and (b).”.

19 **SEC. 4. RIGHT TO INDEPENDENT REVIEW OF MATERIAL SU-**
20 **PERVISORY DETERMINATIONS.**

21 The Federal Financial Institutions Examination
22 Council Act of 1978, as amended by sections 2 and 3 of
23 this Act, is further amended by adding at the end the fol-
24 lowing:

1 **“SEC. 1014. RIGHT TO INDEPENDENT REVIEW OF MATERIAL**
2 **SUPERVISORY DETERMINATIONS.**

3 “(a) IN GENERAL.—A financial institution shall have
4 the right to obtain an independent review of a material
5 supervisory determination contained in a final report of
6 examination.

7 “(b) NOTICE.—

8 “(1) TIMING.—A financial institution seeking
9 review of a material supervisory determination under
10 this section shall file a written notice with the Direc-
11 tor within 60 days after receiving the final report of
12 examination that is the subject of such review.

13 “(2) IDENTIFICATION OF DETERMINATION.—
14 The written notice shall identify the material super-
15 visory determination that is the subject of the inde-
16 pendent examination review, and a statement of the
17 reasons why the institution believes that the deter-
18 mination is incorrect or should otherwise be modi-
19 fied.

20 “(3) INFORMATION TO BE PROVIDED TO INSTI-
21 TUTION.—Any information relied upon by the agen-
22 cy in the final report that is not in the possession
23 of the financial institution may be requested by the
24 financial institution and shall be delivered promptly
25 by the agency to the financial institution.

26 “(c) RIGHT TO HEARING.—

1 “(1) IN GENERAL.—The Director shall—

2 “(A) determine the merits of the appeal on
3 the record; or

4 “(B) at the election of the financial institu-
5 tion, refer the appeal to an administrative law
6 judge to conduct a hearing pursuant to the pro-
7 cedures set forth under sections 556 and 557 of
8 title 5, United States Code, which shall take
9 place not later than 60 days after the petition
10 for review is received by the Director.

11 “(2) TIMING OF DECISION.—An administrative
12 law judge conducting a hearing under paragraph
13 (1)(B) shall issue a proposed decision to the Direc-
14 tor based upon the record established at the hearing.

15 “(3) STANDARD OF REVIEW.—In any hearing
16 under this subsection—

17 “(A) neither the administrative law judge
18 nor the Director shall defer to the opinions of
19 the examiner or agency, but shall independently
20 determine the appropriateness of the agency’s
21 decision based upon the relevant statutes, regu-
22 lations, other appropriate guidance, and evi-
23 dence presented at the hearing.

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

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

3 “(2) be deemed final agency action and shall
4 bind the agency whose supervisory determination
5 was the subject of the review and the financial insti-
6 tution requesting the review.

7 “(e) RIGHT TO JUDICIAL REVIEW.—A financial insti-
8 tution shall have the right to petition for review of the
9 decision of the Director under this section by filing a peti-
10 tion for review not later than 60 days after the date on
11 which the decision is made in the United States Court of
12 Appeals for the District of Columbia Circuit or the Circuit
13 in which the financial institution is located.

14 “(f) REPORT.—The Director shall report annually to
15 the Committee on Financial Services of the House of Rep-
16 resentatives, the Committee on Banking, Housing, and
17 Urban Affairs of the Senate on actions taken under this
18 section, including the types of issues that the Director has
19 reviewed and the results of those reviews. In no case shall
20 such a report contain information about individual finan-
21 cial institutions or any confidential or privileged informa-
22 tion shared by financial institutions.

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

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

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

9 **SEC. 5. ADDITIONAL AMENDMENTS.**

10 (a) **REGULATOR APPEALS PROCESS, OMBUDSMAN,**
 11 **AND ALTERNATIVE DISPUTE RESOLUTION.—**

12 (1) **IN GENERAL.—**Section 309 of the Riegle
 13 Community Development and Regulatory Improve-
 14 ment Act of 1994 (12 U.S.C. 4806) is amended—

15 (A) in subsection (a), by inserting after
 16 “appropriate Federal banking agency” the fol-
 17 lowing: “, the Bureau of Consumer Financial
 18 Protection,”;

19 (B) in subsection (b)—

20 (i) by redesignating paragraphs (1)
 21 and (2) as subparagraphs (A) and (B) and
 22 indenting appropriately;

23 (ii) in the matter preceding subpara-
 24 graph (A) (as redesignated), by striking

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

3 (iii) in paragraph (1)(B) (as redesign-
4 nated), by striking “the appellant from re-
5 tialiation by agency examiners” and insert-
6 ing “the insured depository institution or
7 insured credit union from retaliation by an
8 agency referred to in subsection (a)”; and

9 (iv) by adding at the end the fol-
10 lowing:

11 “(2) RETALIATION.—For purposes of this sub-
12 section and subsection (e), retaliation includes delay-
13 ing consideration of, or withholding approval of, any
14 request, notice, or application that otherwise would
15 have been approved, but for the exercise of the insti-
16 tution’s or credit union’s rights under this section.”;

17 (C) in subsection (e)(2)—

18 (i) in subparagraph (B), by striking
19 “and” at the end;

20 (ii) in subparagraph (C), by striking
21 the period and inserting “; and”; and

22 (iii) by adding at the end the fol-
23 lowing:

24 “(D) ensure that appropriate safeguards
25 exist for protecting the insured depository insti-

1 tution or insured credit union from retaliation
2 by any agency referred to in subsection (a) for
3 exercising its rights under this subsection.”;
4 and

5 (D) in subsection (f)(1)(A)

6 (i) in clause (ii), by striking “; and”
7 and inserting a semicolon;

8 (ii) in clause (iii), by striking “; and”
9 and inserting a semicolon; and

10 (iii) by adding at the end the fol-
11 lowing:

12 “(iv) any issue specifically listed in an
13 exam report as a matter requiring atten-
14 tion by the institution’s management or
15 board of directors; and

16 “(v) any suspension or removal of an
17 institution’s status as eligible for expedited
18 processing of applications, requests, no-
19 tices, or filings on the grounds of a super-
20 visory or compliance concern, regardless of
21 whether that concern has been cited as a
22 basis for a material supervisory determina-
23 tion or matter requiring attention in an ex-
24 amination report, provided that the con-

1 duct at issue did not involve violation of
2 any criminal law; and”.

3 (2) EFFECT.—Nothing in this subsection af-
4 fects the authority of an appropriate Federal bank-
5 ing agency or the National Credit Union Adminis-
6 tration Board to take enforcement or other super-
7 visory action.

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

13 (c) FEDERAL FINANCIAL INSTITUTIONS EXAMINA-
14 TION COUNCIL ACT.—The Federal Financial Institutions
15 Examination Council Act of 1978 (12 U.S.C. 3301 et
16 seq.), as amended by sections 2 through 4 of this Act,
17 is further amended—

18 (1) in section 1003 (12 U.S.C. 3302) by strik-
19 ing paragraph (1) and inserting the following:

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) includes the Bureau of Consumer Fi-
4 nancial Protection for purposes of sections
5 1012 through 1014;”; 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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