

113TH CONGRESS
1ST SESSION

H. R. 1483

To amend the Federal Deposit Insurance Act to provide requirements for appropriate Federal banking agencies when using independent consultants in carrying out a consent order, to grant SIGTARP authority to provide oversight of such consultants, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 11, 2013

Ms. WATERS (for herself, Mr. CONYERS, Mr. AL GREEN of Texas, and Mr. CUMMINGS) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To amend the Federal Deposit Insurance Act to provide requirements for appropriate Federal banking agencies when using independent consultants in carrying out a consent order, to grant SIGTARP authority to provide oversight of such consultants, 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 “Stop Outsourcing
5 Banking Enforcement and Examination Act”.

1 **SEC. 2. USE OF CONSULTANTS IN CONSENT ORDERS.**

2 The Federal Deposit Insurance Act (12 U.S.C. 1811)
3 is amended by adding at the end the following:

4 **“SEC. 51. USE OF CONSULTANTS IN CONSENT ORDERS.**

5 “(a) IN GENERAL.—An appropriate Federal banking
6 agency that enters into a consent order with a person reg-
7 ulated by such agency may only use an independent con-
8 sultant in carrying out such order if all of the following
9 requirements are met:

10 “(1) TRANSPARENCY.—No less than two weeks
11 before any activity under the consent order com-
12 mences, the appropriate Federal banking agency
13 shall make the following information available to the
14 public:

15 “(A) The full and unredacted consent
16 agreement resulting from the consent order.

17 “(B) All material information related to
18 any past business relationships of the inde-
19 pendent consultants, regulators, financial insti-
20 tutions, and third party service providers to the
21 order, and their agents and employees, regard-
22 less of their involvement in the execution of the
23 order.

24 “(C) A detailed estimate of engagement
25 costs.

1 “(D) A detailed description of a well-de-
2 fined methodology for fulfilling the consent
3 order.

4 “(2) REPORTING.—The appropriate Federal
5 banking agency shall issue a report to the Congress,
6 not less than once every quarter until the consent
7 order ends, detailing the progress in fulfilling the
8 consent order and the performance of the inde-
9 pendent consultant.

10 “(3) RESTRICTION ON PARTICIPATION.—No
11 independent consultant carrying out a consent order
12 has prior or current work that will be under review
13 in such consent order or a concurrent and substan-
14 tially similar consent order.

15 “(4) RETENTION AND PAYMENT OF CONSULT-
16 ANT.—The independent consultant is hired, and
17 paid, directly by the appropriate Federal banking
18 agency and the appropriate Federal banking agency
19 is to be reimbursed for such expenses by the entity
20 subject to the consent order.

21 “(5) RESTRICTION ON APPLICATION OF PEN-
22 ALTIES TO OTHER ONGOING ENFORCEMENT AC-
23 TIONS.—Any remediation or penalties under the con-
24 sent order will not apply to, or be settled in conjunc-

1 tion with, any other consent order, settlement, or en-
2 forcement action.

3 “(b) PRIVATE RIGHT OF ACTION.—If an independent
4 consultant fails to comply with the contract under which
5 the consultant is assisting the appropriate Federal bank-
6 ing agency in carrying out a consent order which requires
7 financial remediation to a person or class of persons, any
8 person or class of persons aggrieved by such failure may
9 bring a civil action in a court of competent jurisdiction
10 for damages resulting from such violation, and may obtain
11 other appropriate relief, including equitable relief. If the
12 plaintiff prevails in any such action, the court shall award
13 the plaintiff any litigation costs reasonably incurred, to-
14 gether with reasonable attorneys’ fees and reasonable ex-
15 pert witness fees, as determined by the court.

16 “(c) CLAWBACK OF FEES.—

17 “(1) IN GENERAL.—If a court determines that
18 an independent consultant has violated the terms of
19 the contract with the appropriate Federal banking
20 agency or has failed to disclose required conflict of
21 interest information, the independent consultant
22 shall repay the appropriate Federal banking agency
23 all fees received by the consultant during the period
24 of time such violation or failure was occurring.

1 “(2) SAFE HARBOR.—If the independent con-
2 sultant made all reasonable efforts to uncover con-
3 flicts of interest among the consultant’s agents and
4 employees, the consultant shall not be subject to
5 paragraph (1) with respect to a failure to disclose
6 required conflict of interest information.

7 “(d) EMPLOYMENT RESTRICTION.—An employee of
8 an appropriate Federal banking agency that was involved
9 in approving an independent consultant to assist in car-
10 rying out a consent order may not seek employment with,
11 or be employed by, such independent consultant during
12 any period in which such consent order is in effect, any
13 amendment to such consent order is in effect, or any sub-
14 sequent consent order based on the original consent order
15 is in effect.”.

16 **SEC. 3. SIGTARP TO OVERSEE USE OF CONSULTANTS.**

17 (a) IN GENERAL.—Section 121 of the Emergency
18 Economic Stabilization Act of 2008 (12 U.S.C. 5231) is
19 amended—

20 (1) in subsection (c), by adding at the end the
21 following:

22 “(5) In addition, the Special Inspector General
23 shall also have the duties and responsibilities of pro-
24 viding oversight of—

1 “(A) consent orders entered into by an ap-
2 propriate Federal banking agency; and

3 “(B) the performance of independent con-
4 sultants hired by an appropriate Federal bank-
5 ing agency to assist in carrying out such con-
6 sent orders, as described under section 51 of
7 the Federal Deposit Insurance Act.”; and

8 (2) by amending subsection (k) to read as fol-
9 lows:

10 “(k) OVERSIGHT OF CONSENT ORDERS.—

11 “(1) RIGHT OF ACTION RELATED TO CONSENT
12 ORDER MONITORING.—The Special Inspector Gen-
13 eral may bring a civil action in any court of com-
14 petent jurisdiction against an independent consult-
15 ant described under section 51(a) of the Federal De-
16 posit Insurance Act for damages and equitable relief
17 for any violations of the consultant’s duties under
18 the contract under which the consultant is assisting
19 an appropriate Federal banking agency in carrying
20 out a consent order.

21 “(2) WHISTLEBLOWER INCENTIVES AND PRO-
22 TECTION RELATED TO CONSENT ORDER MONI-
23 TORING.—

1 “(A) IN GENERAL.—The Special Inspector
2 General shall establish a whistleblower program
3 under which—

4 “(i) the Special Inspector General
5 pays an award or awards to 1 or more
6 whistleblowers who voluntarily provide
7 original information to the Special Inspec-
8 tor General that leads to the successful en-
9 forcement of a judicial or administrative
10 action brought by the Special Inspector
11 General against an independent consultant
12 described under section 51(a) of the Fed-
13 eral Deposit Insurance Act that results in
14 monetary sanctions exceeding \$1,000,000;
15 and

16 “(ii) the employer of a whistleblower
17 may not discriminate against a whistle-
18 blower in the terms and conditions of em-
19 ployment of the whistleblower because of
20 any lawful act done by the whistleblower.

21 “(B) FORM OF PROGRAM.—To the extent
22 practicable, the whistleblower program estab-
23 lished under this subsection shall be carried out
24 in the same manner as the whistleblower provi-

1 sion under section 21F of the Securities Ex-
2 change Act of 1934 (15 U.S.C. 78u-6).”.

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