

113TH CONGRESS  
1ST SESSION

# H. R. 1553

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

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 15, 2013

Mrs. CAPITO (for herself, Mrs. CAROLYN B. MALONEY of New York, Mr. CARNEY, Mr. HUIZENGA of Michigan, Mr. LUCAS, Mr. PITTENGER, Mr. BARR, Ms. MOORE, Mr. ROSS, Mrs. MCCARTHY of New York, Mr. GARY G. MILLER of California, Mr. WESTMORELAND, Mr. LUETKEMEYER, Mr. HURT, Mrs. WAGNER, Mr. GRIMM, Mr. STIVERS, Mrs. BACHMANN, Mr. FITZPATRICK, Mr. KING of New York, Mr. GARRETT, Mr. FINCHER, Mr. HINOJOSA, Mr. ROYCE, Mr. POSEY, Mr. PEARCE, Mr. DUFFY, and Mr. NEUGEBAUER) introduced the following bill; which was referred to the Committee on Financial Services

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## 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”.

1 **SEC. 2. 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 Office of Examination  
24 Ombudsman describing with particularity the rea-  
25 sons that a longer period is needed to complete the  
26 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. 3. EXAMINATION STANDARDS.**

8       (a) IN GENERAL.—The Federal Financial Institu-  
9 tions Examination Council Act of 1978 is further amended  
10 by adding after section 1012 the following:

11 **“SEC. 1013. EXAMINATION STANDARDS.**

12       “(a) IN GENERAL.—In the examination of financial  
13 institutions—

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

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

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

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

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

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

18          (b) DEFINITION OF MATERIAL SUPERVISORY DE-  
19          TERMINATION.—Section 309(f)(1)(A) of the Riegle Com-  
20          munity Development and Regulatory Improvement Act of  
21          1994 (12 U.S.C. 4806(f)(1)(A)) is amended—

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

23                 and

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

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

5 **SEC. 4. EXAMINATION OMBUDSMAN.**

6 (a) IN GENERAL.—The Federal Financial Institu-  
7 tions Examination Council Act of 1978 is further amended  
8 by adding after section 1013 the following:

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

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

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

17 “(c) STAFFING.—The Ombudsman is authorized to  
18 hire staff to support the activities of the Office of Exam-  
19 ination Ombudsman.

20 “(d) DUTIES.—The Ombudsman shall—

21 “(1) receive and, at the Ombudsman’s discre-  
22 tion, 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) process any supervisory appeal initiated  
19          under section 1015 or section 309(e) of the Riegle  
20          Community Development and Regulatory Improve-  
21          ment Act of 1994; and

22          “(6) report annually to the Committee on Fi-  
23          nancial Services of the House of Representatives, the  
24          Committee on Banking, Housing, and Urban Affairs  
25          of the Senate, and the Council, on the reviews car-

1       ried out pursuant to paragraphs (3) and (4), includ-  
2       ing compliance with the requirements set forth in  
3       section 1012 regarding timeliness of examination re-  
4       ports, and the Council’s recommendations for im-  
5       provements in examination procedures, practices,  
6       and policies.

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

10       (b) DEFINITION.—Section 1003 of the Federal Fi-  
11       nancial Institutions Examination Council Act of 1978 is  
12       amended—

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

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

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

18               “(4) the term ‘Ombudsman’ means the Om-  
19       budsman established under section 1014(a).”.

20       **SEC. 5. RIGHT TO APPEAL BEFORE AN INDEPENDENT AD-**  
21               **MINISTRATIVE LAW JUDGE.**

22       The Federal Financial Institutions Examination  
23       Council Act of 1978 is further amended by adding after  
24       section 1014 the following:

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

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

6 “(b) NOTICE.—

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

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

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

24 “(c) HEARING BEFORE INDEPENDENT ADMINISTRA-  
25 TIVE LAW JUDGE.—

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

5           “(2) HEARING PROCEDURES.—If a hearing is  
6       requested by the financial institution, the hearing  
7       shall—

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

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

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

16          “(A) the administrative law judge shall  
17      recommend to the Ombudsman what determina-  
18      tion should be made; and

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

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

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

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

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

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

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

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

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

1 institution’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 such 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 such  
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), by striking “the Office  
5 of Thrift Supervision,”; and

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

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