

Union Calendar No. 684

114TH CONGRESS
2D SESSION

H. R. 1941

[Report No. 114–874]

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

IN THE HOUSE OF REPRESENTATIVES

APRIL 22, 2015

Mr. WESTMORELAND (for himself, Mrs. CAROLYN B. MALONEY of New York, Mr. HECK of Washington, Mr. FLEISCHMANN, Mr. COOPER, Mr. BARR, Mr. STIVERS, Mr. PITTENGER, Mr. DUFFY, Mr. COFFMAN, Mr. FINCHER, Mr. MESSER, Mr. MULVANEY, Mr. GOSAR, Mr. HILL, Mr. MURPHY of Florida, Mr. FITZPATRICK, Mr. LUCAS, Mrs. WAGNER, Mr. POSEY, Mr. DAVID SCOTT of Georgia, Mr. DESJARLAIS, Mr. WILLIAMS, Mr. DUNCAN of South Carolina, Mr. TIPTON, Mr. GARRETT, Mr. MCHENRY, Mrs. LOVE, Mr. HURT of Virginia, and Mr. KING of New York) introduced the following bill; which was referred to the Committee on Financial Services

DECEMBER 12, 2016

Additional sponsors: Mrs. LUMMIS, Mr. POLIQUIN, Mr. KILMER, Mr. BLUM, Mr. OLSON, Mr. DUNCAN of Tennessee, Mrs. BUSTOS, Ms. DELBENE, Mr. LUETKEMEYER, Mr. BRAT, Mr. ROTHFUS, Mrs. BLACK, Mr. YOHIO, Mr. NUGENT, Mr. JOLLY, Ms. JENKINS of Kansas, Mr. WOODALL, Ms. MOORE, Mr. HUIZENGA of Michigan, Mr. ROYCE, Mr. KLINE, Ms. GRAHAM, Mr. LOEBSACK, Mr. MILLER of Florida, Mr. STEWART, Mr. HULTGREN, Mr. BRIDENSTINE, Mr. QUIGLEY, Mr. BUCHANAN, Mr. ROSS, Mr. MICA, Mr. PEARCE, Mr. FRELINGHUYSEN, Mr. GRAVES of Missouri, Mr. WEBSTER of Florida, Mr. CRAWFORD, Mr. BOUSTANY, Mr. HUDSON, Mr. CONNOLLY, Mr. MCKINLEY, Mr. RUSH, Mr. WALZ, Mr. ASHFORD, Mr. YOUNG of Iowa, and Mr. YOUNG of Alaska

DECEMBER 12, 2016

Committed to the Committee of the Whole House on the State of the Union
and ordered to be printed

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:

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

11 “(a) IN GENERAL.—

12 “(1) FINAL EXAMINATION REPORT.—A Federal
13 financial institutions regulatory agency shall provide
14 a final examination report to a financial institution
15 not later than 60 days after the later of—

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

18 “(B) the provision of additional informa-
19 tion by the institution relating to the examina-
20 tion.

21 “(2) EXIT INTERVIEW.—If a financial institu-
22 tion is not subject to a resident examiner program,
23 the exit interview shall occur not later than the end
24 of the 9-month period beginning on the commence-
25 ment of the examination, except that such period

1 may be extended by the Federal financial institu-
 2 tions regulatory agency by providing written notice
 3 to the institution and the Independent Examination
 4 Review Director describing with particularity the
 5 reasons that a longer period is needed to complete
 6 the examination.

7 “(b) EXAMINATION MATERIALS.—Upon the request
 8 of a financial institution, the Federal financial institutions
 9 regulatory agency shall include with the final report an
 10 appendix listing all examination or other factual informa-
 11 tion relied upon by the agency in support of a material
 12 supervisory determination.”.

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

14 The Federal Financial Institutions Examination
 15 Council Act of 1978 (12 U.S.C. 3301 et seq.), as amended
 16 by section 2, is further amended by adding at the end the
 17 following:

18 **“SEC. 1013. EXAMINATION STANDARDS.**

19 “(a) IN GENERAL.—In the examination of a financial
 20 institution—

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

24 “(2) a modified or restructured commercial loan
 25 shall be removed from non-accrual status if the bor-

1 rower demonstrates the ability to perform on such
2 loan over a maximum period of 6 months, except
3 that with respect to loans on a quarterly, semi-
4 annual, or longer repayment schedule such period
5 shall be a maximum of 3 consecutive repayment pe-
6 riods;

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

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

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

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

1 **SEC. 4. INDEPENDENT EXAMINATION REVIEW DIRECTOR.**

2 The Federal Financial Institutions Examination
3 Council Act of 1978 (12 U.S.C. 3301 et seq.), as amended
4 by section 3, is further amended by adding at the end the
5 following:

6 **“SEC. 1014. OFFICE OF INDEPENDENT EXAMINATION RE-**
7 **VIEW.**

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

11 “(b) HEAD OF OFFICE.—There is established the po-
12 sition of the Independent Examination Review Director
13 (the ‘Director’), as the head of the Office. The Director
14 shall be appointed by the Council and shall be independent
15 from any member agency of the Council.

16 “(c) STAFFING.—The Director is authorized to hire
17 staff to support the activities of the Office.

18 “(d) DUTIES.—The Director shall—

19 “(1) receive and, at the Director’s discretion,
20 investigate complaints from financial institutions,
21 their representatives, or another entity acting on be-
22 half of such institutions, concerning examinations,
23 examination practices, or examination reports;

24 “(2) hold meetings, at least once every three
25 months and in locations designed to encourage par-
26 ticipation from all sections of the United States,

1 with financial institutions, their representatives, or
2 another entity acting on behalf of such institutions,
3 to discuss examination procedures, examination
4 practices, or examination policies;

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

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

15 “(5) adjudicate any supervisory appeal initiated
16 under section 1015; 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 Director shall keep
4 confidential all meetings with, discussions with, and infor-
5 mation provided by financial institutions.”.

6 **SEC. 5. RIGHT TO INDEPENDENT REVIEW OF MATERIAL SU-**
7 **PERVISORY DETERMINATIONS.**

8 The Federal Financial Institutions Examination
9 Council Act of 1978 (12 U.S.C. 3301 et seq.), as amended
10 by section 4, is further amended by adding at the end the
11 following:

12 **“SEC. 1015. RIGHT TO INDEPENDENT REVIEW OF MATERIAL**
13 **SUPERVISORY DETERMINATIONS.**

14 “(a) IN GENERAL.—A financial institution shall have
15 the right to obtain an independent review of a material
16 supervisory determination contained in a final report of
17 examination.

18 “(b) NOTICE.—

19 “(1) TIMING.—A financial institution seeking
20 review of a material supervisory determination under
21 this section shall file a written notice with the Inde-
22 pendent Examination Review Director (the ‘Direc-
23 tor’) within 60 days after receiving the final report
24 of examination that is the subject of such review.

1 “(2) IDENTIFICATION OF DETERMINATION.—

2 The written notice shall identify the material super-
3 visory determination that is the subject of the inde-
4 pendent examination review, and a statement of the
5 reasons why the institution believes that the deter-
6 mination is incorrect or should otherwise be modi-
7 fied.

8 “(3) INFORMATION TO BE PROVIDED TO INSTI-
9 TUTION.—Any information relied upon by the agen-

10 cy in the final report that is not in the possession
11 of the financial institution may be requested by the
12 financial institution and shall be delivered promptly
13 by the agency to the financial institution.

14 “(c) RIGHT TO HEARING.—

15 “(1) IN GENERAL.—The Director shall deter-
16 mine the merits of the appeal on the record or, at
17 the financial institution’s election, shall refer the ap-
18 peal to an Administrative Law Judge to conduct a
19 confidential hearing pursuant to the procedures set
20 forth under sections 556 and 557 of title 5, United
21 States Code, which hearing shall take place not later
22 than 60 days after the petition for review was re-
23 ceived by the Director, and to issue a proposed deci-
24 sion to the Director based upon the record estab-
25 lished at such hearing.

1 “(2) STANDARD OF REVIEW.—In rendering a
2 determination or recommendation under this sub-
3 section, neither the Administrative Law Judge nor
4 the Director shall defer to the opinions of the exam-
5 iner or agency, but shall conduct a de novo review
6 to independently determine the appropriateness of
7 the agency’s decision based upon the relevant stat-
8 utes, regulations, and other appropriate guidance, as
9 well as evidence adduced at any hearing.

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

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

14 “(2) be deemed final agency action and shall
15 bind the agency whose supervisory determination
16 was the subject of the review and the financial insti-
17 tution requesting the review.

18 “(e) RIGHT TO JUDICIAL REVIEW.—A financial insti-
19 tution shall have the right to petition for review of final
20 agency action under this section by filing a Petition for
21 Review within 60 days of the Director’s decision in the
22 United States Court of Appeals for the District of Colum-
23 bia Circuit or the Circuit in which the financial institution
24 is located.

1 “(f) REPORT.—The Director shall report annually to
2 the Committee on Financial Services of the House of Rep-
3 resentatives and the Committee on Banking, Housing, and
4 Urban Affairs of the Senate on actions taken under this
5 section, including the types of issues that the Director has
6 reviewed and the results of those reviews. In no case shall
7 such a report contain information about individual finan-
8 cial institutions or any confidential or privileged informa-
9 tion shared by financial institutions.

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

12 “(1) retaliate against a financial institution, in-
13 cluding service providers, or any institution-affiliated
14 party (as defined under section 3 of the Federal De-
15 posit Insurance Act), for exercising appellate rights
16 under this section; or

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

21 “(h) RULE OF CONSTRUCTION.—Nothing in this sec-
22 tion may be construed—

23 “(1) to affect the right of a Federal financial
24 institutions regulatory agency to take enforcement
25 or other supervisory actions related to a material su-

1 pervisory determination under review under this sec-
 2 tion; or

3 “(2) to prohibit the review under this section of
 4 a material supervisory determination with respect to
 5 which there is an ongoing enforcement or other su-
 6 pervisory action.”.

7 **SEC. 6. ADDITIONAL AMENDMENTS.**

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

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

15 (2) in subsection (b)—

16 (A) in paragraph (2), by striking “the ap-
 17 pellant from retaliation by agency examiners”
 18 and inserting “the insured depository institu-
 19 tion or insured credit union from retaliation by
 20 the agencies referred to in subsection (a)”; and

21 (B) by adding at the end the following
 22 flush-left text:

23 “For purposes of this subsection and subsection (e), retal-
 24 iation includes delaying consideration of, or withholding
 25 approval of, any request, notice, or application that other-

1 wise would have been approved, but for the exercise of the
2 institution's or credit union's rights under this section.”;

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 and

15 (4) in subsection (f)(1)(A)—

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

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

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

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

1 “(v) any suspension or removal of an
2 institution’s status as eligible for expedited
3 processing of applications, requests, no-
4 tices, or filings on the grounds of a super-
5 visory or compliance concern, regardless of
6 whether that concern has been cited as a
7 basis for another material supervisory de-
8 termination or matter requiring attention
9 in an examination report, provided that the
10 conduct at issue did not involve violation of
11 any criminal law; and”.

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

17 (c) FEDERAL FINANCIAL INSTITUTIONS EXAMINA-
18 TION COUNCIL ACT OF 1978.—The Federal Financial In-
19 stitutions Examination Council Act of 1978 (12 U.S.C.
20 3301 et seq.) is amended—

21 (1) in section 1003, by amending paragraph (1)
22 to read as follows:

23 “(1) the term ‘Federal financial institutions
24 regulatory agencies’—

1 “(A) means the Office of the Comptroller
2 of the Currency, the Board of Governors of the
3 Federal Reserve System, the Federal Deposit
4 Insurance Corporation, and the National Credit
5 Union Administration; and

6 “(B) for purposes of sections 1012, 1013,
7 1014, and 1015, includes the Bureau of Con-
8 sumer Financial Protection;” and

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

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