

114TH CONGRESS
1ST SESSION

S. 774

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

MARCH 18, 2015

Mr. MORAN (for himself, Mr. MANCHIN, Mr. DAINES, Ms. AYOTTE, Mr. PORTMAN, and Mrs. CAPITO) 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”.

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 Director describing with
24 particularity the reasons that a longer period is
25 needed to complete the 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. INDEPENDENT EXAMINATION REVIEW DIRECTOR.**

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

12 **“SEC. 1013. OFFICE OF INDEPENDENT EXAMINATION RE-**
13 **VIEW.**

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

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

21 “(c) STAFFING.—The Director is authorized to hire
22 staff to support the activities of the Office of Independent
23 Examination Review.

24 “(d) DUTIES.—The Director shall—

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

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

13 “(3) review examination procedures of the Fed-
14 eral financial institutions regulatory agencies to en-
15 sure that the written examination policies of those
16 agencies are being followed in practice and adhere to
17 the standards for consistency established by the
18 Council;

19 “(4) conduct a continuing and regular program
20 of examination quality assurance for all examination
21 types conducted by the Federal financial institutions
22 regulatory agencies;

23 “(5) adjudicate any supervisory appeal initiated
24 under section 1014; and

1 “(6) report annually to the Committee on Fi-
2 nancial Services of the House of Representatives, the
3 Committee on Banking, Housing, and Urban Affairs
4 of the Senate, and the Council, on the reviews car-
5 ried out pursuant to paragraphs (3) and (4), includ-
6 ing compliance with the requirements set forth in
7 section 1012 regarding timeliness of examination re-
8 ports, and the Council’s recommendations for im-
9 provements in examination procedures, practices,
10 and policies.

11 “(e) CONFIDENTIALITY.—The Director shall keep
12 confidential all meetings, discussions, and information
13 provided by financial institutions.”.

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

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

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

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

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

1 **SEC. 4. RIGHT TO INDEPENDENT REVIEW OF MATERIAL SU-**
2 **PERVISORY DETERMINATIONS.**

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

7 **“SEC. 1014. RIGHT TO INDEPENDENT REVIEW OF MATERIAL**
8 **SUPERVISORY DETERMINATIONS.**

9 “(a) IN GENERAL.—A financial institution shall have
10 the right to obtain an independent review of a material
11 supervisory determination contained in a final report of
12 examination.

13 “(b) NOTICE.—

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

19 “(2) IDENTIFICATION OF DETERMINATION.—

20 The written notice shall identify the material super-
21 visory determination that is the subject of the inde-
22 pendent examination review, and a statement of the
23 reasons why the institution believes that the deter-
24 mination is incorrect or should otherwise be modi-
25 fied.

1 “(3) INFORMATION TO BE PROVIDED TO INSTI-
2 TUTION.—Any information relied upon by the agen-
3 cy in the final report that is not in the possession
4 of the financial institution may be requested by the
5 financial institution and shall be delivered promptly
6 by the agency to the financial institution.

7 “(c) RIGHT TO HEARING.—

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

9 “(A) determine the merits of the appeal on
10 the record; or

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

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

22 “(3) STANDARD OF REVIEW.—In any hearing
23 under this subsection—

24 “(A) neither the administrative law judge
25 nor the Director shall defer to the opinions of

1 the examiner or agency, but shall independently
2 determine the appropriateness of the agency's
3 decision based upon the relevant statutes, regu-
4 lations, other appropriate guidance, evidence
5 presented at the hearing.

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

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

10 “(2) be deemed final agency action and shall
11 bind the agency whose supervisory determination
12 was the subject of the review and the financial insti-
13 tution requesting the review.

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

21 “(f) REPORT.—The Director shall report annually to
22 the Committee on Financial Services of the House of Rep-
23 resentatives, the Committee on Banking, Housing, and
24 Urban Affairs of the Senate on actions taken under this
25 section, including the types of issues that the Director has

1 reviewed and the results of those reviews. In no case shall
 2 such a report contain information about individual finan-
 3 cial institutions or any confidential or privileged informa-
 4 tion shared by financial institutions.

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

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

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

15 **SEC. 5. ADDITIONAL AMENDMENTS.**

16 (a) REGULATOR APPEALS PROCESS, OMBUDSMAN,
 17 AND ALTERNATIVE DISPUTE RESOLUTION.—

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

21 (A) in subsection (a), by inserting after
 22 “appropriate Federal banking agency” the fol-
 23 lowing: “, the Bureau of Consumer Financial
 24 Protection,”;

25 (B) in subsection (b)—

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

4 (ii) in the matter preceding subpara-
5 graph (A) (as redesignated), by striking
6 “In establishing” and inserting “(1) IN
7 GENERAL.—In establishing”;

8 (iii) in paragraph (1)(B) (as redesign-
9 ated), by striking “the appellant from re-
10 taliation by agency examiners” and insert-
11 ing “the insured depository institution or
12 insured credit union from retaliation by an
13 agency referred to in subsection (a)”;

14 (iv) by adding at the end the fol-
15 lowing:

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

22 (C) in subsection (e)(2)—

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

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

3 (iii) by adding at the end the fol-
4 lowing:

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

11 (D) in subsection (f)(1)(A)—

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

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

16 (iii) by adding at the end the fol-
17 lowing:

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

22 “(v) any suspension or removal of an
23 institution’s status as eligible for expedited
24 processing of applications, requests, no-
25 tices, or filings on the grounds of a super-

1 visory or compliance concern, regardless of
2 whether that concern has been cited as a
3 basis for a material supervisory determina-
4 tion or matter requiring attention in an ex-
5 amination report, provided that the con-
6 duct at issue did not involve violation of
7 any criminal law; and”.

8 (2) EFFECT.—Nothing in this subsection af-
9 fects the authority of an appropriate Federal bank-
10 ing agency or the National Credit Union Adminis-
11 tration Board to take enforcement or other super-
12 visory action.

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

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

23 (1) in section 1003 (12 U.S.C. 3302)—

24 (A) by striking paragraph (1) and insert-
25 ing the following:

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

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

8 “(B) includes the Bureau of Consumer Fi-
9 nancial Protection for purposes of sections
10 1012 through 1014;” and

11 (B) in paragraph (3), by striking the semi-
12 colon at the end and inserting a period; and

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

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