

115TH CONGRESS
1ST SESSION

H. R. 4545

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

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 4, 2017

Mr. TIPTON (for himself and Mrs. CAROLYN B. MALONEY of New York) introduced the following bill; which was referred to the Committee on Financial Services

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. AMENDMENT TO DEFINITION OF FINANCIAL INSTI-**
2 **TUTION.**

3 Section 1003(3) of the Federal Financial Institutions
4 Examination Council Act of 1978 (12 U.S.C. 3302(3)) is
5 amended to read as follows:

6 “(3) the term ‘financial institution’—

7 “(A) means a commercial bank, a savings
8 bank, a trust company, a savings association, a
9 building and loan association, a homestead as-
10 sociation, a cooperative bank, or a credit union;
11 and

12 “(B) for purposes of sections 1012, 1013,
13 and 1014, includes a nondepository covered per-
14 son subject to supervision by the Bureau of
15 Consumer Financial Protection under section
16 1024 of the Consumer Financial Protection Act
17 of 2010 (12 U.S.C. 5514).”.

18 **SEC. 3. TIMELINESS OF EXAMINATION REPORTS.**

19 The Federal Financial Institutions Examination
20 Council Act of 1978 (12 U.S.C. 3301 et seq.) is amended
21 by adding at the end the following:

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

23 “(a) IN GENERAL.—

24 “(1) FINAL EXAMINATION REPORT.—A Federal
25 financial institutions regulatory agency shall provide

1 a final examination report to a financial institution
2 not later than 60 days after the later of—

3 “(A) the exit interview for an examination
4 of the institution; or

5 “(B) the provision of additional informa-
6 tion by the institution relating to the examina-
7 tion.

8 “(2) EXIT INTERVIEW.—If a financial institu-
9 tion is not subject to a resident examiner program,
10 the exit interview shall occur not later than the end
11 of the 9-month period beginning on the commence-
12 ment of the examination, except that such period
13 may be extended by the Federal financial institu-
14 tions regulatory agency by providing written notice
15 to the institution and the Independent Examination
16 Review Director describing with particularity the
17 reasons that a longer period is needed to complete
18 the examination.

19 “(b) EXAMINATION MATERIALS.—Upon the request
20 of a financial institution, the Federal financial institutions
21 regulatory agency shall include with the final report an
22 appendix listing all examination or other factual informa-
23 tion relied upon by the agency in support of a material
24 supervisory determination.”.

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. 1013. 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) **TERM.**—The Director shall serve for a term of
17 5 years, and may be appointed to serve a subsequent 5-
18 year term.

19 “(d) **STAFFING.**—The Director is authorized to hire
20 staff to support the activities of the Office.

21 “(e) **DUTIES.**—The Director shall—

22 “(1) receive and, at the Director’s discretion,
23 investigate complaints from financial institutions,
24 their representatives, or another entity acting on be-
25 half of such institutions, concerning examinations,
26 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) in accordance with subsection (f), review
9 examination procedures of the Federal financial in-
10 stitutions regulatory agencies to ensure that the
11 written examination policies of those agencies are
12 being followed in practice and adhere to the stand-
13 ards for consistency established by the Council;

14 “(4) conduct a continuing and regular review of
15 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 “(f) STANDARD FOR REVIEWING EXAMINATION PRO-
6 CEDURES.—In conducting reviews pursuant to subsection
7 (e)(4), the Director shall prioritize factors relating to the
8 safety and soundness of the financial system of the United
9 States.

10 “(g) REMOVAL.—If the Director is removed from of-
11 fice, the Council shall communicate in writing the reasons
12 for any such removal to the Committee on Financial Serv-
13 ices of the House of Representatives and the Committee
14 on Banking, Housing, and Urban Affairs of the Senate
15 not later than 30 days before the removal.

16 “(h) CONFIDENTIALITY.—The Director shall keep
17 confidential all meetings with, discussions with, and infor-
18 mation provided by financial institutions.”.

19 **SEC. 5. RIGHT TO INDEPENDENT REVIEW OF MATERIAL SU-**
20 **PERVISORY DETERMINATIONS.**

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

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 Inde-
11 pendent Examination Review Director (the ‘Direc-
12 tor’) within 60 days after receiving the final report
13 of examination that is the subject of such review.

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

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

1 “(c) RIGHT TO HEARING.—

2 “(1) IN GENERAL.—The Director shall deter-
3 mine the merits of the appeal on the record or, at
4 the financial institution’s election, shall refer the ap-
5 peal to an Administrative Law Judge to conduct a
6 confidential hearing pursuant to the procedures set
7 forth under sections 556 and 557 of title 5, United
8 States Code, which hearing shall take place not later
9 than 60 days after the petition for review was re-
10 ceived by the Director, and to issue a proposed deci-
11 sion to the Director based upon the record estab-
12 lished at such hearing.

13 “(2) STANDARD OF REVIEW.—In rendering a
14 determination or recommendation under this sub-
15 section, neither the Administrative Law Judge nor
16 the Director shall defer to the opinions of the exam-
17 iner or agency, but shall conduct a de novo review
18 to independently determine the appropriateness of
19 the agency’s decision based upon the relevant stat-
20 utes, regulations, and other appropriate guidance, as
21 well as evidence adduced at any hearing.

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

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

1 “(2) subject to subsection (e), be deemed a final
2 agency action and shall bind the agency whose su-
3 pervisory determination was the subject of the re-
4 view and the financial institution requesting the re-
5 view.

6 “(e) LIMITED REVIEW BY FFIEC.—

7 “(1) IN GENERAL.—If the agency whose super-
8 visory determination was the subject of the review
9 believes that the Director’s decision under subsection
10 (d) would pose an imminent threat to the safety and
11 soundness of the financial institution, such agency
12 may file a written notice seeking review of the Direc-
13 tor’s decision with the Council within 10 days of re-
14 ceiving the Director’s decision.

15 “(2) STANDARD OF REVIEW.—In making a de-
16 termination under this subsection, the Council shall
17 conduct a review to determine whether there is sub-
18 stantial evidence that the Director’s decision would
19 pose an imminent threat to the safety and soundness
20 of the financial institution.

21 “(3) FINAL DETERMINATION.—A determination
22 by the Council shall—

23 “(A) be made not later than 30 days after
24 the filing of the notice pursuant to paragraph
25 (1); and

1 “(B) be deemed a final agency action and
2 shall bind the agency whose supervisory deter-
3 mination was the subject of the review and the
4 financial institution requesting the review.

5 “(f) RIGHT TO JUDICIAL REVIEW.—A financial insti-
6 tution shall have the right to petition for review of final
7 agency action under this section by filing a Petition for
8 Review within 60 days of the Director’s decision or the
9 Council’s decision in the United States Court of Appeals
10 for the District of Columbia Circuit or the Circuit in which
11 the financial institution is located.

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

21 “(h) RETALIATION PROHIBITED.—A Federal finan-
22 cial institutions regulatory agency may not—

23 “(1) retaliate against a financial institution, in-
24 cluding service providers, or any institution-affiliated
25 party (as defined under section 3 of the Federal De-

1 posit Insurance Act), for exercising appellate rights
2 under this section; or

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

7 “(i) **RULE OF CONSTRUCTION.**—Nothing in this sec-
8 tion may be construed—

9 “(1) to affect the right of a Federal financial
10 institutions regulatory agency to take enforcement
11 or other supervisory actions related to a material su-
12 pervisory determination under review under this sec-
13 tion; or

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

18 **SEC. 6. ADDITIONAL AMENDMENTS.**

19 (a) **RIEGLE COMMUNITY DEVELOPMENT AND REGU-**
20 **LATORY IMPROVEMENT ACT OF 1994.**—Section 309 of the
21 Riegle Community Development and Regulatory Improve-
22 ment Act of 1994 (12 U.S.C. 4806) is amended—

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

1 (2) in subsection (b)—

2 (A) in paragraph (2), by striking “the ap-
3 pellant from retaliation by agency examiners”
4 and inserting “the insured depository institu-
5 tion or insured credit union from retaliation by
6 the agencies referred to in subsection (a)”; and

7 (B) by adding at the end the following
8 flush-left text:

9 “For purposes of this subsection and subsection (e), retal-
10 iation includes delaying consideration of, or withholding
11 approval of, any request, notice, or application that other-
12 wise would have been approved, but for the exercise of the
13 institution’s or credit union’s rights under this section.”;

14 (3) in subsection (e)(2)—

15 (A) in subparagraph (B), by striking
16 “and” at the end;

17 (B) in subparagraph (C), by striking the
18 period and inserting “; and”; and

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

20 “(D) ensure that appropriate safeguards
21 exist for protecting the insured depository insti-
22 tution or insured credit union from retaliation
23 by any agency referred to in subsection (a) for
24 exercising its rights under this subsection.”;

25 and

1 (4) in subsection (f)(1)(A)—

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

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

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

7 “(iv) any issue specifically listed in an
8 exam report as a matter requiring atten-
9 tion by the institution’s management or
10 board of directors; and

11 “(v) any suspension or removal of an
12 institution’s status as eligible for expedited
13 processing of applications, requests, no-
14 tices, or filings on the grounds of a super-
15 visory or compliance concern, regardless of
16 whether that concern has been cited as a
17 basis for another material supervisory de-
18 termination or matter requiring attention
19 in an examination report, provided that the
20 conduct at issue did not involve violation of
21 any criminal law; and”.

22 (b) FEDERAL CREDIT UNION ACT.—Section 205(j)
23 of the Federal Credit Union Act (12 U.S.C. 1785(j)) is
24 amended by inserting “the Bureau of Consumer Financial

1 Protection,” before “the Administration” each place such
2 term appears.

3 (c) FEDERAL FINANCIAL INSTITUTIONS EXAMINA-
4 TION COUNCIL ACT OF 1978.—The Federal Financial In-
5 stitutions Examination Council Act of 1978 (12 U.S.C.
6 3301 et seq.) is amended—

7 (1) in section 1003, by amending paragraph (1)
8 to read as follows:

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

11 “(A) means the Office of the Comptroller
12 of the Currency, the Board of Governors of the
13 Federal Reserve System, the Federal Deposit
14 Insurance Corporation, and the National Credit
15 Union Administration; and

16 “(B) for purposes of sections 1012, 1013,
17 and 1014, includes the Bureau of Consumer Fi-
18 nancial Protection;” and

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

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