

115TH CONGRESS  
2D SESSION

# H. R. 4545

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IN THE SENATE OF THE UNITED STATES

MARCH 19, 2018

Received; read twice and referred to the Committee on Banking, Housing, and  
Urban Affairs

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## AN ACT

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Financial Institutions  
3 Examination Fairness and Reform Act”.

4 **SEC. 2. AMENDMENT TO DEFINITION OF FINANCIAL INSTI-  
5 TUTION.**

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

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

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

15 “(B) for purposes of sections 1012, 1013,  
16 and 1014, includes a nondepository covered per-  
17 son subject to supervision by the Bureau of  
18 Consumer Financial Protection under section  
19 1024 of the Consumer Financial Protection Act  
20 of 2010 (12 U.S.C. 5514).”.

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

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

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

26 “(a) IN GENERAL.—

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

5                   “(A) the exit interview for an examination  
6 of the institution; or

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

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

21           “(b) EXAMINATION MATERIALS.—Upon the request  
22 of a financial institution, the Federal financial institutions  
23 regulatory agency shall include with the final report an  
24 appendix listing all examination or other factual informa-

1 tion relied upon by the agency in support of a material  
2 supervisory determination.”.

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

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

8 **“SEC. 1013. OFFICE OF INDEPENDENT EXAMINATION RE-**  
9 **VIEW.**

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

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

18 “(c) TERM.—The Director shall serve for a term of  
19 5 years, and may be appointed to serve a subsequent 5-  
20 year term.

21 “(d) STAFFING.—The Director is authorized to hire  
22 staff to support the activities of the Office.

23 “(e) DUTIES.—The Director shall—

24 “(1) receive and, at the Director’s discretion,  
25 investigate complaints from financial institutions,

1 their representatives, or another entity acting on be-  
2 half of such institutions, concerning examinations,  
3 examination practices, or examination reports;

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

11 “(3) in accordance with subsection (f), review  
12 examination procedures of the Federal financial in-  
13 stitutions regulatory agencies to ensure that the  
14 written examination policies of those agencies are  
15 being followed in practice and adhere to the stand-  
16 ards for consistency established by the Council;

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

21 “(5) adjudicate any supervisory appeal initiated  
22 under section 1014; and

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

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

8 “(f) STANDARD FOR REVIEWING EXAMINATION PRO-  
9 CEDURES.—In conducting reviews pursuant to subsection  
10 (e)(4), the Director shall prioritize factors relating to the  
11 safety and soundness of the financial system of the United  
12 States.

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

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

22 **SEC. 5. RIGHT TO INDEPENDENT REVIEW OF MATERIAL SU-**  
23 **PERVISORY DETERMINATIONS.**

24 The Federal Financial Institutions Examination  
25 Council Act of 1978 (12 U.S.C. 3301 et seq.), as amended

1 by section 4, is further amended by adding at the end the  
2 following:

3 **“SEC. 1014. RIGHT TO INDEPENDENT REVIEW OF MATERIAL**  
4 **SUPERVISORY DETERMINATIONS.**

5 “(a) IN GENERAL.—A financial institution shall have  
6 the right to obtain an independent review of a material  
7 supervisory determination contained in a final report of  
8 examination.

9 “(b) NOTICE.—

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

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

23 “(3) INFORMATION TO BE PROVIDED TO INSTI-  
24 TUTION.—Any information relied upon by the agen-  
25 cy in the final report that is not in the possession

1 of the financial institution may be requested by the  
2 financial institution and shall be delivered promptly  
3 by the agency to the financial institution.

4 “(c) RIGHT TO HEARING.—

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

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

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

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

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

10       “(e) LIMITED REVIEW BY FFIEC.—

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

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

1           “(3) FINAL DETERMINATION.—A determination  
2           by the Council shall—

3                   “(A) be made not later than 30 days after  
4           the filing of the notice pursuant to paragraph  
5           (1); and

6                   “(B) be deemed a final agency action and  
7           shall bind the agency whose supervisory deter-  
8           mination was the subject of the review and the  
9           financial institution requesting the review.

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

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

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

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

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

12       “(i) RULE OF CONSTRUCTION.—Nothing in this sec-  
13 tion may be construed—

14               “(1) to affect the right of a Federal financial  
15 institutions regulatory agency to take enforcement  
16 or other supervisory actions related to a material su-  
17 pervisory determination under review under this sec-  
18 tion; or

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

23 **SEC. 6. ADDITIONAL AMENDMENTS.**

24       (a) RIEGLE COMMUNITY DEVELOPMENT AND REGU-  
25 LATORY IMPROVEMENT ACT OF 1994.—Section 309 of the

1 Riegle Community Development and Regulatory Improve-  
2 ment Act of 1994 (12 U.S.C. 4806) is amended—

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

6 (2) in subsection (b)—

7 (A) in paragraph (2), by striking “the ap-  
8 pellant from retaliation by agency examiners”  
9 and inserting “the insured depository institu-  
10 tion or insured credit union from retaliation by  
11 the agencies referred to in subsection (a)”;

12 (B) by adding at the end the following  
13 flush-left text:

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

19 (3) in subsection (e)(2)—

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

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

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

1           “(D) ensure that appropriate safeguards  
2 exist for protecting the insured depository insti-  
3 tution or insured credit union from retaliation  
4 by any agency referred to in subsection (a) for  
5 exercising its rights under this subsection.”;

6 and

7 (4) in subsection (f)(1)(A)—

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

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

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

13           “(iv) any issue specifically listed in an  
14 exam report as a matter requiring atten-  
15 tion by the institution’s management or  
16 board of directors; and

17           “(v) any suspension or removal of an  
18 institution’s status as eligible for expedited  
19 processing of applications, requests, no-  
20 tices, or filings on the grounds of a super-  
21 visory or compliance concern, regardless of  
22 whether that concern has been cited as a  
23 basis for another material supervisory de-  
24 termination or matter requiring attention  
25 in an examination report, provided that the

1                   conduct at issue did not involve violation of  
2                   any criminal law; and”.

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

8           (c) FEDERAL FINANCIAL INSTITUTIONS EXAMINA-  
9 TION COUNCIL ACT OF 1978.—The Federal Financial In-  
10 stitutions Examination Council Act of 1978 (12 U.S.C.  
11 3301 et seq.) is amended—

12                   (1) in section 1003, by amending paragraph (1)  
13                   to read as follows:

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

16                           “(A) means the Office of the Comptroller  
17                           of the Currency, the Board of Governors of the  
18                           Federal Reserve System, the Federal Deposit  
19                           Insurance Corporation, and the National Credit  
20                           Union Administration; and

21                           “(B) for purposes of sections 1012, 1013,  
22                           and 1014, includes the Bureau of Consumer Fi-  
23                           nancial Protection;”; and

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

1 **SEC. 7. REDUCTION OF SURPLUS FUNDS OF FEDERAL RE-**  
2 **SERVE BANKS.**

3 (a) IN GENERAL.—Section 7(a)(3)(A) of the Federal  
4 Reserve Act (12 U.S.C. 289(a)(3)(A)) is amended by  
5 striking “\$7,500,000,000” and inserting  
6 “\$7,324,285,000”.

7 (b) EFFECTIVE DATE.—Subsection (a) shall take ef-  
8 fect on June 1, 2018.

Passed the House of Representatives March 15,  
2018.

Attest:

KAREN L. HAAS,  
*Clerk.*