

# Union Calendar No. 684

114<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 1941

[Report No. 114–874]

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

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## 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. YOHO, 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        improvements 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 supervisory 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)”;

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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**H. R. 1941**

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