

118TH CONGRESS
1ST SESSION

S. 3541

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

DECEMBER 14, 2023

Mr. MORAN (for himself, Mr. MANCHIN, Mr. HAGERTY, and Mr. TILLIS) 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 “Fair Audits and In-
5 spections for Regulators’ Exams 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:

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

2 “(a) IN GENERAL.—

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

7 “(A) the exit interview for an examination
8 of the institution; or

9 “(B) the provision of additional material
10 information by the institution relating to the
11 examination.

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

22 “(b) EXAMINATION MATERIALS.—Upon the request
23 of a financial institution, the Federal financial institutions
24 regulatory agency shall include with the final report an
25 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. 3. INDEPENDENT EXAMINATION REVIEW DIRECTOR.**

4 (a) IN GENERAL.—The Federal Financial Institu-
5 tions Examination Council Act of 1978 (12 U.S.C. 3301
6 et seq.), as amended by section 2 of this Act, is further
7 amended by adding at the end the 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 “(b) HEAD OF OFFICE.—There is established the po-
13 sition of the Independent Examination Review Director,
14 as the head of the Office of Independent Examination Re-
15 view. The Director shall be appointed by the Federal Fi-
16 nancial Institutions Examination Council.

17 “(c) STAFFING.—The Director is authorized to hire
18 staff to support the activities of the Office of Independent
19 Examination Review. One-fourth of the costs and expenses
20 of the Office, including the salaries of its employees, shall
21 be paid by each of the Federal financial institutions regu-
22 latory agencies. Annual assessments for such share shall
23 be levied by the Council based upon its projected budget
24 for the year, and additional assessments may be made dur-
25 ing the year if necessary.

1 “(d) DUTIES.—The Director shall—

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

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

14 “(3) review examination procedures of the Fed-
15 eral financial institutions regulatory agencies to en-
16 sure that the written examination policies of those
17 agencies are being followed in practice and adhere to
18 the standards for consistency, which shall be estab-
19 lished, after notice and opportunity for comment, by
20 the Council not later than 90 days after the date of
21 enactment of this section;

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

1 “(5) adjudicate any supervisory appeal initiated
2 under section 1014; and

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

13 “(e) CONFIDENTIALITY.—The Director shall keep
14 confidential all meetings, discussions, and information
15 provided by financial institutions. The Council shall keep
16 confidential all information and communications ex-
17 changed by a financial institution and the Office of Inde-
18 pendent Examination Review.”.

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

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

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

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

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

5 **SEC. 4. RIGHT TO INDEPENDENT REVIEW OF MATERIAL SU-
6 PERSORY DETERMINATIONS.**

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

11 **“SEC. 1014. RIGHT TO INDEPENDENT REVIEW OF MATERIAL
12 SUPERVISORY DETERMINATIONS.**

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

17 “(b) NOTICE.—

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

23 “(2) IDENTIFICATION OF DETERMINATION.—

24 The written notice shall identify the material super-
25 visory determination that is the subject of the inde-

1 pendent examination review, and a statement of the
2 reasons why the institution believes that the deter-
3 mination is incorrect or should otherwise be modi-
4 fied.

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

11 “(c) RIGHT TO HEARING.—

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

13 “(A) determine the merits of the appeal on
14 the record; or

15 “(B) at the election of the financial institu-
16 tion, refer the appeal to an administrative law
17 judge appointed by the Council to conduct a
18 hearing pursuant to the procedures set forth
19 under sections 556 and 557 of title 5, United
20 States Code, which shall take place not later
21 than 60 days after the petition for review is re-
22 ceived by the Director.

23 “(2) TIMING OF DECISION.—An administrative
24 law judge conducting a hearing under paragraph

1 (1)(B) shall issue a proposed decision to the Direc-
2 tor based upon the record established at the hearing.

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

5 “(A) neither the administrative law judge
6 nor the Director shall defer to the opinions of
7 the examiner or agency, but shall independently
8 determine the appropriateness of the agency’s
9 decision based upon the relevant statutes, regu-
10 lations, other appropriate guidance, and evi-
11 dence presented at the hearing.

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

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

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

20 “(e) RIGHT TO JUDICIAL REVIEW.—A financial insti-
21 tution shall have the right to petition for review of the
22 decision of the Director under this section by filing a peti-
23 tion for review not later than 60 days after the date on
24 which the decision is made in the United States Court of

1 Appeals for the District of Columbia Circuit or the Circuit
2 in which the financial institution is located.

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

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

14 “(1) retaliate against a financial institution, in-
15 cluding service providers, or any institution-affiliated
16 party, for exercising appellate rights under this sec-
17 tion; or

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

22 **SEC. 5. ADDITIONAL AMENDMENTS.**

23 (a) REGULATOR APPEALS PROCESS, OMBUDSMAN,
24 AND ALTERNATIVE DISPUTE RESOLUTION.—

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

4 (A) in subsection (a), by inserting after
5 “appropriate Federal banking agency” the fol-
6 lowing: “, the Bureau of Consumer Financial
7 Protection,”;

8 (B) in subsection (b)—

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

12 (ii) in the matter preceding subpara-
13 graph (A) (as redesignated), by striking
14 “In establishing” and inserting “(1) IN
15 GENERAL.—In establishing”;

16 (iii) in paragraph (1)(B) (as redesi-
17 gnated), by striking “the appellant from re-
18 taliation by agency examiners” and insert-
19 ing “the insured depository institution or
20 insured credit union from retaliation by an
21 agency referred to in subsection (a)”; and

22 (iv) by adding at the end the fol-
23 lowing:

24 “(2) RETALIATION.—For purposes of this sub-
25 section and subsection (e), retaliation includes delay-

1 ing consideration of, or withholding approval of, any
 2 request, notice, or application that otherwise would
 3 have been approved, but for the exercise of the insti-
 4 tution's or credit union's rights under this section.”;

5 (C) in subsection (e)(2)—

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

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

10 (iii) by adding at the end the fol-
 11 lowing:

12 “(D) ensure that appropriate safeguards
 13 exist for protecting the insured depository insti-
 14 tution or insured credit union from retaliation
 15 by any agency referred to in subsection (a) for
 16 exercising its rights under this subsection.”;
 17 and

18 (D) in subsection (f)(1)(A)—

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

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

23 (iii) by adding at the end the fol-
 24 lowing:

1 “(iv) any issue specifically listed in an
2 exam report as a matter requiring atten-
3 tion by the institution’s management or
4 board of directors; and

5 “(v) any suspension or removal of an
6 institution’s status as eligible for expedited
7 processing of applications, requests, no-
8 tices, or filings on the grounds of a super-
9 visory or compliance concern, regardless of
10 whether that concern has been cited as a
11 basis for a material supervisory determina-
12 tion or matter requiring attention in an ex-
13 amination report, provided that the con-
14 duct at issue did not involve violation of
15 any criminal law; and”.

16 (2) EFFECT.—Nothing in this subsection af-
17 fects the authority of an appropriate Federal bank-
18 ing agency or the National Credit Union Adminis-
19 tration Board to take enforcement or other super-
20 visory action.

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

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

6 (1) in section 1003 (12 U.S.C. 3302) by strik-
7 ing paragraph (1) and inserting the following:

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

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

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

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

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