

[DISCUSSION DRAFT]

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

**H. R.** \_\_\_\_\_

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

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IN THE HOUSE OF REPRESENTATIVES

Mr. HILL introduced the following bill; which was referred to the Committee on \_\_\_\_\_

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**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”.

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 material  
14 information by the institution relating to the  
15 examination.

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 President,  
20 by and with the advice and consent of the Senate.

21           “(c) **STAFFING.**—The Director is authorized to hire  
22 staff to support the activities of the Office of Independent  
23 Examination Review. One-fourth of the costs and expenses  
24 of the Office, including the salaries of its employees, shall  
25 be paid by each of the Federal financial institutions regu-

1 latory agencies. Annual assessments for such share shall  
2 be levied by the Council based upon its projected budget  
3 for the year, and additional assessments may be made dur-  
4 ing the year if necessary.

5 “(d) DUTIES.—The Director shall—

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

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

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

1           “(4) conduct a continuing and regular program  
2 of examination quality assurance for all examination  
3 types conducted by the Federal financial institutions  
4 regulatory agencies;

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

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

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

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

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

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

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

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

9 **SEC. 4. RIGHT TO INDEPENDENT REVIEW OF MATERIAL SU-  
10 PERSORY DETERMINATIONS.**

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

15 **“SEC. 1014. RIGHT TO INDEPENDENT REVIEW OF MATERIAL  
16 SUPERVISORY DETERMINATIONS.**

17 “(a) IN GENERAL.—A financial institution shall have  
18 the right to obtain an independent review of a material  
19 supervisory determination contained in a final report of  
20 examination.

21 “(b) NOTICE.—

22 “(1) TIMING.—A financial institution seeking  
23 review of a material supervisory determination under  
24 this section shall file a written notice with the Direc-

1 tor within 60 days after receiving the final report of  
2 examination that is the subject of such review.

3 “(2) IDENTIFICATION OF DETERMINATION.—

4 The written notice shall identify the material super-  
5 visory determination that is the subject of the inde-  
6 pendent examination review, and a statement of the  
7 reasons why the institution believes that the deter-  
8 mination is incorrect or should otherwise be modi-  
9 fied.

10 “(3) INFORMATION TO BE PROVIDED TO INSTI-  
11 TUTION.—Any information relied upon by the agen-

12 cy in the final report that is not in the possession  
13 of the financial institution may be requested by the  
14 financial institution and shall be delivered promptly  
15 by the agency to the financial institution.

16 “(c) RIGHT TO HEARING.—

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

18 “(A) determine the merits of the appeal on  
19 the record; or

20 “(B) at the election of the financial institu-  
21 tion, refer the appeal to an administrative law  
22 judge appointed by the Council to conduct a  
23 hearing pursuant to the procedures set forth  
24 under sections 556 and 557 of title 5, United  
25 States Code, which shall take place not later

1           than 60 days after the petition for review is re-  
2           ceived by the Director.

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

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

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

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

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

20                  “(2) be deemed final agency action and shall  
21                  bind the agency whose supervisory determination  
22                  was the subject of the review and the financial insti-  
23                  tution requesting the review.

24          “(e) RIGHT TO JUDICIAL REVIEW.—A financial insti-  
25          tution shall have the right to petition for review of the



1 decision of the Director under this section by filing a peti-  
2 tion for review not later than 60 days after the date on  
3 which the decision is made in the United States Court of  
4 Appeals for the District of Columbia Circuit or the Circuit  
5 in which the financial institution is located.

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

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

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

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

1 **SEC. 5. ADDITIONAL AMENDMENTS.**

2 (a) REGULATOR APPEALS PROCESS, OMBUDSMAN,  
3 AND ALTERNATIVE DISPUTE RESOLUTION.—

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

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

11 (B) in subsection (b)—

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

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

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

25 (iv) by adding at the end the fol-  
26 lowing:

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

7           (C) in subsection (e)(2)—

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

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

12                (iii) by adding at the end the fol-  
13                lowing:

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

19           and

20           (D) in subsection (f)(1)(A)—

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

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

1 (iii) by adding at the end the fol-  
2 lowing:

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

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

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

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

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

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

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

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

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

17 “(B) includes the Bureau of Consumer Fi-  
18 nancial Protection for purposes of sections  
19 1012 through 1014;” and

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