

.....  
(Original Signature of Member)

114TH CONGRESS  
1ST SESSION

# H. R.

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

---

## IN THE HOUSE OF REPRESENTATIVES

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

---

# 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:

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 informa-  
10 tion by the institution relating to the examina-  
11 tion.

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 Independent Examination  
20 Review Director describing with particularity the  
21 reasons that a longer period is needed to complete  
22 the examination.

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

4 The Federal Financial Institutions Examination  
5 Council Act of 1978 (12 U.S.C. 3301 et seq.), as amended  
6 by section 2, is further amended by adding at the end the  
7 following:

8 **“SEC. 1013. EXAMINATION STANDARDS.**

9 “(a) IN GENERAL.—In the examination of a financial  
10 institution—

11 “(1) a commercial loan shall not be placed in  
12 non-accrual status solely because the collateral for  
13 such loan has deteriorated in value;

14 “(2) a modified or restructured commercial loan  
15 shall be removed from non-accrual status if the bor-  
16 rower demonstrates the ability to perform on such  
17 loan over a maximum period of 6 months, except  
18 that with respect to loans on a quarterly, semi-  
19 annual, or longer repayment schedule such period  
20 shall be a maximum of 3 consecutive repayment pe-  
21 riods;

22 “(3) a new appraisal on a performing commer-  
23 cial loan shall not be required unless an advance of  
24 new funds is involved; and



1           “(b) HEAD OF OFFICE.—There is established the po-  
2 sition of the Independent Examination Review Director  
3 (the ‘Director’), as the head of the Office. The Director  
4 shall be appointed by the Council and shall be independent  
5 from any member agency of the Council.

6           “(c) STAFFING.—The Director is authorized to hire  
7 staff to support the activities of the Office.

8           “(d) DUTIES.—The Director shall—

9               “(1) receive and, at the Director’s discretion,  
10 investigate complaints from financial institutions,  
11 their representatives, or another entity acting on be-  
12 half of such institutions, concerning examinations,  
13 examination practices, or examination reports;

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

21               “(3) review examination procedures of the Fed-  
22 eral financial institutions regulatory agencies to en-  
23 sure that the written examination policies of those  
24 agencies are being followed in practice and adhere to

1 the standards for consistency established by the  
2 Council;

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

7 “(5) adjudicate any supervisory appeal initiated  
8 under section 1015; and

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

19 “(e) 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. 1015. 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) be deemed final agency action and shall  
6 bind the agency whose supervisory determination  
7 was the subject of the review and the financial insti-  
8 tution requesting the review.

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

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

1       “(g) 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       “(h) 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),  
15 retaliation includes delaying consideration of, or with-  
16 holding approval of, any request, notice, or application  
17 that otherwise would have been approved, but for the exer-  
18 cise of the institution’s or credit union’s rights under this  
19 section.”;

20 (3) in subsection (e)(2)—

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

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

25 (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; and

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 1014, and 1015, includes the Bureau of Con-  
23 sumer Financial Protection;”; and

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