

115TH CONGRESS
1ST SESSION

H. R. 4205

To amend the Federal Financial Institutions Examination Council Act of 1978 to establish a three-judge independent examination review panel.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 1, 2017

Mr. ROTHFUS (for himself, Mr. LUETKEMEYER, and Mr. PERLMUTTER) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To amend the Federal Financial Institutions Examination Council Act of 1978 to establish a three-judge independent examination review panel.

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 Institution
5 Examination Responsiveness 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.—With respect to an ex-
13 amination of a financial institution by a Federal fi-
14 nancial institutions regulatory agency, if the finan-
15 cial institution is not subject to a resident examiner
16 program, the exit interview for such examination
17 shall occur not later than the end of the 9-month pe-
18 riod beginning on the commencement of the exam-
19 ination, except that such period may be extended by
20 the Federal financial institutions regulatory agency
21 by providing written notice to the financial institu-
22 tion describing with particularity the reasons that a
23 longer period is needed.

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

1 report an appendix listing all examination or other factual
2 information relied upon by the agency in support of a ma-
3 terial supervisory determination.”.

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

5 (a) IN GENERAL.—The Federal Financial Institu-
6 tions Examination Council Act of 1978 (12 U.S.C. 3301
7 et seq.), as amended by section 2, is further amended by
8 adding at the end the following new section:

9 **“SEC. 1013. INDEPENDENT EXAMINATION REVIEW PANEL.**

10 “(a) IN GENERAL.—

11 “(1) ESTABLISHMENT.—There is established in
12 the executive branch the Independent Examination
13 Review Panel (in this section referred to as the
14 ‘Panel’).

15 “(2) JUDGES.—The Panel shall consist of three
16 judges, appointed as follows:

17 “(A) One judge appointed by the Council
18 with extensive financial institutions regulatory
19 agency experience.

20 “(B) One judge appointed by the Securi-
21 ties and Exchange Commission with legal and
22 public accounting experience.

23 “(C) One judge appointed by the Council,
24 selected from candidates with private sector
25 senior management-level experience with legal

1 or public accounting background and rec-
2 ommended to the Council by a financial institu-
3 tion or a financial institution trade association.

4 “(3) TERMS.—

5 “(A) IN GENERAL.—Each judge appointed
6 to the Panel shall serve for a term of 3 years,
7 except as provided in subparagraph (B). No
8 judge may be appointed to serve more than 2
9 terms.

10 “(B) TERMS OF INITIAL APPOINTEES.—Of
11 the judges first appointed to the Panel—

12 “(i) the judge appointed pursuant to
13 paragraph (2)(A) shall be appointed for a
14 term of 1 year;

15 “(ii) the judge appointed pursuant to
16 paragraph (2)(B) shall be appointed for a
17 term of 2 years; and

18 “(iii) the judge appointed pursuant to
19 paragraph (2)(C) shall be appointed for a
20 term of 3 years.

21 “(4) REQUIREMENTS FOR APPOINTMENT.—An
22 individual appointed under subparagraph (B) or (C)
23 of paragraph (2) shall—

24 “(A) be a licensed attorney and a certified
25 public accountant authorized to practice under

1 the laws of a State, the District of Columbia,
2 the Commonwealth of Puerto Rico, or any other
3 territory or possession of the United States;
4 and

5 “(B) have relevant subject matter edu-
6 cation and work-related experience, including
7 working knowledge of generally accepted ac-
8 counting principles, as determined by the entity
9 making the appointment.

10 “(b) JURISDICTION.—The Panel shall have exclusive
11 jurisdiction of an appeal of a final material supervisory
12 determination of a Federal financial institutions regu-
13 latory agency. The Panel shall determine the merits of the
14 appeal, after an opportunity for a hearing on the record.

15 “(c) STANDARD OF REVIEW.—In an appeal heard by
16 the Panel under this section, the Panel may not defer only
17 to the opinions of an examiner or a Federal financial insti-
18 tutions regulatory agency, but shall independently deter-
19 mine the appropriateness of the Federal financial institu-
20 tions regulatory agency’s decision based upon the relevant
21 statutes, regulations, judicial precedents, and previous de-
22 cisions of the Panel.

23 “(d) NOTICE.—

24 “(1) IN GENERAL.—A financial institution seek-
25 ing an appeal under this section shall file a written

1 notice with the Panel within 30 days after receiving
2 the final material supervisory determination from
3 the agency, or within 270 days after receiving the
4 final examination report, whichever occurs first.

5 “(2) CONTENTS OF NOTICE.—The written no-
6 tice shall identify the final material supervisory de-
7 termination that is the subject of the appeal and a
8 statement of the reasons why the financial institu-
9 tion believes such determination should be modified.

10 “(e) INFORMATION TO BE PROVIDED TO INSTITU-
11 TION PRIOR TO HEARING BEFORE THE PANEL.—Any in-
12 formation relied upon by a Federal financial institutions
13 regulatory agency in a final examination report that is not
14 in the possession of a financial institution requesting an
15 appeal under this section may be requested by the finan-
16 cial institution and, if requested, shall be delivered
17 promptly by the agency to the financial institution.

18 “(f) HEARING.—If a financial institution requests a
19 hearing before the Panel in connection with an appeal by
20 the financial institution under this section, the hearing
21 shall—

22 “(1) take place not later than 60 days after the
23 date on which the notice of the appeal was received
24 by the Panel, except the Panel in its discretion or

1 upon good cause shown may extend the hearing by
2 up to 60 days; and

3 “(2) be conducted pursuant to the procedures
4 set forth under sections 556 and 557 of title 5,
5 United States Code.

6 “(g) DECISION.—A decision by the Panel on an ap-
7 peal under this section shall be made not later than—

8 “(1) 60 days after the date on which the notice
9 of appeal is filed with the Panel; or

10 “(2) 30 days after the date on which a hearing
11 under subsection (f) has concluded, if a hearing is
12 requested by the financial institution.

13 “(h) RIGHT TO JUDICIAL REVIEW.—A financial insti-
14 tution and the Federal financial institution regulatory
15 agency that made the material supervisory determination
16 appealed under this section shall have the right to petition
17 for review of the decision of the Panel under this section
18 by filing a petition for review not later than 60 days after
19 the date on which the decision was made in the United
20 States Court of Appeals for the District of Columbia Cir-
21 cuit or the circuit in which the financial institution is lo-
22 cated.

23 “(i) REPORTS AND PUBLICATION.—

24 “(1) REPORTS.—The Panel shall, within 90
25 days of the end of each calendar year, report final

1 decisions made under subsection (g) during such cal-
2 endar year to the Committee on Banking, Housing,
3 and Urban Affairs of the Senate and the Committee
4 on Financial Services of the House of Representa-
5 tives. Such reports may not contain confidential or
6 privileged information shared by financial institu-
7 tions.

8 “(2) PUBLICATION.—Any report submitted
9 under paragraph (1) shall be made available on the
10 Council’s website in such a manner that such re-
11 ports may serve as precedent for future disputes.

12 “(j) EXPENSES.—

13 “(1) IN GENERAL.—The reasonable costs and
14 expenses incurred by the Panel shall be paid by the
15 Council.

16 “(2) SALARIES.—Compensation for the judges
17 appointed to the Panel under this section shall be
18 determined by the Council and based upon the fair
19 market value of the level of service and time pro-
20 vided considering the training, knowledge, and expe-
21 rience needed to properly and professionally carry
22 out the duties required.

23 “(k) RETALIATION PROHIBITED.—A Federal finan-
24 cial institutions regulatory agency may not—

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

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

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

12 (1) in paragraph (2), by striking “and”;

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

15 (3) by adding at the end the following new
16 paragraph:

17 “(4) the term ‘material supervisory determina-
18 tions’ has the meaning given such term in section
19 309(f) of the Riegle Community Development and
20 Regulatory Improvement Act of 1994 (12 U.S.C.
21 4806(f)).”.

22 **SEC. 4. TIMELINESS OF REQUIRED PERMISSION, REGU-**
23 **LATORY, AND REPORTING GUIDANCE.**

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

1 by section 3, is further amended by adding at the end the
2 following new section:

3 **“SEC. 1014. TIMELINESS OF REQUIRED PERMISSION, REGU-**
4 **LATORY, AND REPORTING GUIDANCE.**

5 “(a) REQUEST FOR PERMISSION OR GUIDANCE.—A
6 financial institution may request a written determination
7 by a Federal financial institutions regulatory agency of—

8 “(1) the agency’s permission to take an action
9 where permission is mandated by regulation;

10 “(2) the agency’s interpretation of a law or reg-
11 ulation; and

12 “(3) the agency’s interpretation of generally ac-
13 cepted accounting principles or accounting objec-
14 tives, standards, and requirements under section 37
15 of the Federal Deposit Insurance Act.

16 “(b) CONTENTS OF REQUEST.—A request made
17 under subsection (a) shall be in writing and contain all
18 the information needed to communicate to the Federal fi-
19 nancial institutions regulatory agency the following:

20 “(1) The nature of the request.

21 “(2) Applicable facts relating to the matter.

22 “(3) Applicable law, regulation, or generally ac-
23 cepted accounting principles relating to the matter.

1 “(4) Discussion relative to the nature of the re-
2 quest summarizing the financial institution’s posi-
3 tion or summary of the request.

4 “(c) RESPONSE TO REQUEST.—A Federal financial
5 institutions regulatory agency receiving a request under
6 subsection (a) shall—

7 “(1) within 60 days of receiving the request—

8 “(A) provide the financial institution mak-
9 ing the request with written notification that
10 the agency received the request and stating
11 whether the request contains the information
12 required under subsection (b); and

13 “(B) if the request does not contain the in-
14 formation required under subsection (b), pro-
15 vide the financial institution with an expla-
16 nation of what information is missing; and

17 “(2) within 120 days of receiving the request,
18 if the request contains the information required
19 under subsection (b), make a determination on the
20 request and provide the financial institution with a
21 written notice of such determination.

22 “(d) APPEAL.—For purposes of section 1013(b), the
23 following actions are deemed a final agency material su-
24 pervisory determination:

1 “(1) Any determination made under subsection
2 (c)(2).

3 “(2) Any failure by a Federal financial institu-
4 tions regulatory agency to comply with a deadline re-
5 quired by this section.

6 “(3) Any determination by a Federal financial
7 institutions regulatory agency under subsection
8 (c)(1)(B) that a request does not contain the infor-
9 mation required under subsection (b).

10 “(e) REPORTS AND PUBLICATION.—Each Federal fi-
11 nancial institutions regulatory agency shall, within 120
12 days after making a determination under subsection
13 (c)(2), publish a summary of the determination, in order
14 to offer guidance to the applicable industry. The summary
15 may not contain confidential or privileged information
16 about the financial institution, financial institution clients,
17 or agency personnel.”.

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