

115TH CONGRESS  
1ST SESSION

# S. 2237

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 SENATE OF THE UNITED STATES

DECEMBER 14, 2017

Mr. MORAN (for himself and Mr. MANCHIN) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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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 “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 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-

tion relied upon by the agency in support of a material supervisory determination.”.

**SEC. 3. INDEPENDENT EXAMINATION REVIEW DIRECTOR.**

(a) IN GENERAL.—The Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3301 et seq.), as amended by section 2 of this Act, is further amended by adding at the end the following:

**“SEC. 1013. OFFICE OF INDEPENDENT EXAMINATION REVIEW.**

“(a) ESTABLISHMENT.—There is established in the Council an Office of Independent Examination Review.

“(b) HEAD OF OFFICE.—There is established the position of the Independent Examination Review Director, as the head of the Office of Independent Examination Review. The Director shall be appointed by the Federal Financial Institutions Examination Council.

“(c) STAFFING.—The Director is authorized to hire staff to support the activities of the Office of Independent Examination Review.

“(d) DUTIES.—The Director shall—

“(1) receive and, at the discretion of the Director, investigate complaints from financial institutions, their representatives, or another entity acting on behalf of such institutions, concerning examinations, examination practices, or examination reports;

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

8           “(3) review examination procedures of the Fed-  
9           eral financial institutions regulatory agencies to en-  
10          sure that the written examination policies of those  
11          agencies are being followed in practice and adhere to  
12          the standards for consistency established by the  
13          Council;

14          “(4) conduct a continuing and regular program  
15          of examination quality assurance for all examination  
16          types conducted by the Federal financial institutions  
17          regulatory agencies;

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

20          “(6) report annually to the Committee on Fi-  
21          nancial Services of the House of Representatives, the  
22          Committee on Banking, Housing, and Urban Affairs  
23          of the Senate, and the Council, on the reviews car-  
24          ried out pursuant to paragraphs (3) and (4), includ-  
25          ing compliance with the requirements set forth in

1 section 1012 regarding timeliness of examination re-  
 2 ports, and the Council’s recommendations for im-  
 3 provements in examination procedures, practices,  
 4 and policies.

5 “(e) CONFIDENTIALITY.—The Director shall keep  
 6 confidential all meetings, discussions, and information  
 7 provided by financial institutions.”.

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

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

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

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

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

19 **SEC. 4. RIGHT TO INDEPENDENT REVIEW OF MATERIAL SU-**  
 20 **PERVISORY DETERMINATIONS.**

21 The Federal Financial Institutions Examination  
 22 Council Act of 1978, as amended by sections 2 and 3 of  
 23 this Act, is further amended by adding at the end the fol-  
 24 lowing:

1 **“SEC. 1014. RIGHT TO INDEPENDENT REVIEW OF MATERIAL**  
2 **SUPERVISORY DETERMINATIONS.**

3 “(a) IN GENERAL.—A financial institution shall have  
4 the right to obtain an independent review of a material  
5 supervisory determination contained in a final report of  
6 examination.

7 “(b) NOTICE.—

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

13 “(2) IDENTIFICATION OF DETERMINATION.—  
14 The written notice shall identify the material super-  
15 visory determination that is the subject of the inde-  
16 pendent examination review, and a statement of the  
17 reasons why the institution believes that the deter-  
18 mination is incorrect or should otherwise be modi-  
19 fied.

20 “(3) INFORMATION TO BE PROVIDED TO INSTI-  
21 TUTION.—Any information relied upon by the agen-  
22 cy in the final report that is not in the possession  
23 of the financial institution may be requested by the  
24 financial institution and shall be delivered promptly  
25 by the agency to the financial institution.

26 “(c) RIGHT TO HEARING.—

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

2 “(A) determine the merits of the appeal on  
3 the record; or

4 “(B) at the election of the financial institu-  
5 tion, refer the appeal to an administrative law  
6 judge to conduct a hearing pursuant to the pro-  
7 cedures set forth under sections 556 and 557 of  
8 title 5, United States Code, which shall take  
9 place not later than 60 days after the petition  
10 for review is received by the Director.

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

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

17 “(A) neither the administrative law judge  
18 nor the Director shall defer to the opinions of  
19 the examiner or agency, but shall independently  
20 determine the appropriateness of the agency’s  
21 decision based upon the relevant statutes, regu-  
22 lations, other appropriate guidance, and evi-  
23 dence presented at the hearing.

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

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

3           “(2) be deemed final agency action and shall  
4       bind the agency whose supervisory determination  
5       was the subject of the review and the financial insti-  
6       tution requesting the review.

7       “(e) RIGHT TO JUDICIAL REVIEW.—A financial insti-  
8       tution shall have the right to petition for review of the  
9       decision of the Director under this section by filing a peti-  
10      tion for review not later than 60 days after the date on  
11      which the decision is made in the United States Court of  
12      Appeals for the District of Columbia Circuit or the Circuit  
13      in which the financial institution is located.

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

23      “(g) 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 **SEC. 5. ADDITIONAL AMENDMENTS.**

10 (a) REGULATOR APPEALS PROCESS, OMBUDSMAN,  
 11 AND ALTERNATIVE DISPUTE RESOLUTION.—

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

15 (A) in subsection (a), by inserting after  
 16 “appropriate Federal banking agency” the fol-  
 17 lowing: “, the Bureau of Consumer Financial  
 18 Protection,”;

19 (B) in subsection (b)—

20 (i) by redesignating paragraphs (1)  
 21 and (2) as subparagraphs (A) and (B) and  
 22 indenting appropriately;

23 (ii) in the matter preceding subpara-  
 24 graph (A) (as redesignated), by striking

1 “In establishing” and inserting “(1) IN  
2 GENERAL.—In establishing”;

3 (iii) in paragraph (1)(B) (as redesign-  
4 nated), by striking “the appellant from re-  
5 taliation by agency examiners” and insert-  
6 ing “the insured depository institution or  
7 insured credit union from retaliation by an  
8 agency referred to in subsection (a)”; and  
9 (iv) by adding at the end the fol-  
10 lowing:

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

17 (C) in subsection (e)(2)—

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

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

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

24 “(D) ensure that appropriate safeguards  
25 exist for protecting the insured depository insti-

1           tution or insured credit union from retaliation  
2           by any agency referred to in subsection (a) for  
3           exercising its rights under this subsection.”;  
4           and

5           (D) in subsection (f)(1)(A)

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

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

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

12          “(iv) any issue specifically listed in an  
13          exam report as a matter requiring atten-  
14          tion by the institution’s management or  
15          board of directors; and

16          “(v) any suspension or removal of an  
17          institution’s status as eligible for expedited  
18          processing of applications, requests, no-  
19          tices, or filings on the grounds of a super-  
20          visory or compliance concern, regardless of  
21          whether that concern has been cited as a  
22          basis for a material supervisory determina-  
23          tion or matter requiring attention in an ex-  
24          amination report, provided that the con-

1                   duct at issue did not involve violation of  
2                   any criminal law; and”.

3                   (2) EFFECT.—Nothing in this subsection af-  
4                   fects the authority of an appropriate Federal bank-  
5                   ing agency or the National Credit Union Adminis-  
6                   tration Board to take enforcement or other super-  
7                   visory action.

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

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

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

20                   “(1) the term ‘Federal financial institutions  
21                   regulatory agencies’—

22                   “(A) means the Office of the Comptroller  
23                   of the Currency, the Board of Governors of the  
24                   Federal Reserve System, the Federal Deposit

1 Insurance Corporation, and the National Credit  
2 Union Administration; and  
3 “(B) includes the Bureau of Consumer Fi-  
4 nancial Protection for purposes of sections  
5 1012 through 1014;”; and  
6 (2) in section 1005 (12 U.S.C. 3304), by strik-  
7 ing “One-fifth” and inserting “One-fourth”.

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