

Comparing the base document H.R.4545, as reported, with H.R.4545, as reported, as amended by  
H.Res.773

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### **Section 1. Short title**

This Act may be cited as the "Financial Institutions Examination Fairness and Reform Act".

### **Sec. 2. Amendment to definition of financial institution**

Section 1003(3) of the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3302(3)) is amended to read as follows:

"(3) the term 'financial institution'—

"(A) means a commercial bank, a savings bank, a trust company, a savings association, a building and loan association, a homestead association, a cooperative bank, or a credit union; and

"(B) for purposes of sections 1012, 1013, and 1014, includes a nondepository covered person subject to supervision by the Bureau of Consumer Financial Protection under section 1024 of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5514)."

### **Sec. 3. Timeliness of examination reports**

The Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3301 et seq.) is amended by adding at the end the following:

#### **"Sec. 1012. Timeliness of examination reports**

"(a) IN GENERAL.—

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

"(A) the exit interview for an examination of the institution; or

"(B) the provision of additional information by the institution relating to the examination.

"(2) EXIT INTERVIEW.— If a financial institution is not subject to a resident examiner program, the exit interview shall occur not later than the end of the 9-month period beginning on the commencement of the examination, except that such period may be extended by the Federal financial institutions regulatory agency by providing written notice to the institution and the Independent Examination Review Director describing with particularity the reasons that a longer period is needed to complete the examination.

"(b) EXAMINATION MATERIALS.— Upon the request of a financial institution, the Federal financial institutions regulatory agency shall include with the final report an appendix listing all examination or other factual information relied upon by the agency in support of a material supervisory determination."

### **Sec. 4. Independent Examination Review Director**

The Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3301 et seq.), as amended by section 3, 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 (the 'Office').

"(b) HEAD OF OFFICE.— There is established the position of the Independent Examination Review Director (the 'Director'), as the head of the Office. The Director shall be appointed by the Council and shall be independent from any member agency of the Council.

"(c) TERM.— The Director shall serve for a term of 5 years, and may be appointed to serve a subsequent 5-year term.

"(d) STAFFING.— The Director is authorized to hire staff to support the activities of the Office.

"(e) DUTIES.— The Director shall—

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

"(2) hold meetings, at least once every three months and in locations designed to encourage participation from all sections of the United States, with financial institutions, their representatives, or another entity acting on behalf of such institutions, to discuss examination procedures, examination practices, or examination policies;

"(3) in accordance with subsection (f), review examination procedures of the Federal financial institutions regulatory agencies to ensure that the written examination policies of those agencies are being followed in practice and adhere to the standards for consistency established by the Council;

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

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

"(6) report annually to the Committee on Financial Services of the House of Representatives, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Council, on the reviews carried out pursuant to paragraphs (3) and (4), including compliance with the requirements set forth in section 1012 regarding timeliness of examination reports, and the Council's recommendations for improvements in examination procedures, practices, and policies.

"(f) STANDARD FOR REVIEWING EXAMINATION PROCEDURES.— In conducting reviews pursuant to subsection (e) (4), the Director shall prioritize factors relating to the safety and soundness of the financial system of the United States.

"(g) REMOVAL.— If the Director is removed from office, the Council shall communicate in writing the reasons for any such removal to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate not later than 30 days before the removal.

"(h) CONFIDENTIALITY.— The Director shall keep confidential all meetings with, discussions with, and information provided by financial institutions."

## **Sec. 5. Right to independent review of material supervisory determinations**

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

### **"Sec. 1014. Right to independent review of material supervisory determinations**

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

"(b) NOTICE.—

"(1) TIMING.— A financial institution seeking review of a material supervisory determination under this section shall file a written notice with the Independent Examination Review Director (the 'Director') within 60 days after receiving the final report of examination that is the subject of such review.

"(2) IDENTIFICATION OF DETERMINATION.— The written notice shall identify the material supervisory determination that is the subject of the independent examination review, and a statement of the reasons why the institution believes that the determination is incorrect or should otherwise be modified.

"(3) INFORMATION TO BE PROVIDED TO INSTITUTION.— Any information relied upon by the agency in the final report that is not in the possession of the financial institution may be requested by the financial institution and shall be delivered promptly by the agency to the financial institution.

"(c) RIGHT TO HEARING.—

"(1) IN GENERAL.— The Director shall determine the merits of the appeal on the record or, at the financial institution's election, shall refer the appeal to an Administrative Law Judge to conduct a confidential hearing pursuant to the procedures set forth under sections 556 and 557 of title 5, United States Code, which hearing shall take place not later than 60 days after the petition for review was received by the Director, and to issue a proposed decision to the Director based upon the record established at such hearing.

"(2) STANDARD OF REVIEW.— In rendering a determination or recommendation under this subsection, neither the Administrative Law Judge nor the Director shall defer to the opinions of the examiner or agency, but shall conduct a de novo review to independently determine the appropriateness of the agency's decision based upon the relevant statutes, regulations, and other appropriate guidance, as well as evidence adduced at any hearing.

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

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

"(2) subject to subsection (e), be deemed a final agency action and shall bind the agency whose supervisory determination was the subject of the review and the financial institution requesting the review.

"(e) LIMITED REVIEW BY FFIEC.—

"(1) IN GENERAL.— If the agency whose supervisory determination was the subject of the review believes that the Director's decision under subsection (d) would pose an imminent threat to the safety and soundness of the financial institution, such agency may file a written notice seeking review of the Director's decision with the Council within 10 days of receiving the Director's decision.

"(2) STANDARD OF REVIEW.— In making a determination under this subsection, the Council shall conduct a review to determine whether there is substantial evidence that the Director's decision would pose an imminent threat to the safety and soundness of the financial institution.

"(3) FINAL DETERMINATION.— A determination by the Council shall—

"(A) be made not later than 30 days after the filing of the notice pursuant to paragraph (1); and

"(B) be deemed a final agency action and shall bind the agency whose supervisory determination was the subject of the review and the financial institution requesting the review.

"(f) RIGHT TO JUDICIAL REVIEW.— A financial institution shall have the right to petition for review of final agency action under this section by filing a Petition for Review within 60 days of the Director's decision or the Council's decision in the United States Court of Appeals for the District of Columbia Circuit or the Circuit in which the financial institution is located.

"(g) REPORT.— The Director shall report annually to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on actions taken under this section, including the types of issues that the Director has reviewed and the results of those reviews. In no case shall such a report contain information about individual financial institutions or any confidential or privileged information shared by financial institutions.

"(h) RETALIATION PROHIBITED.— A Federal financial institutions regulatory agency may not—

"(1) retaliate against a financial institution, including service providers, or any institution-affiliated party (as defined under section 3 of the Federal Deposit Insurance Act), for exercising appellate rights under this section; or

"(2) delay or deny any agency action that would benefit a financial institution or any institution-affiliated party on the basis that an appeal under this section is pending under this section.

"(i) RULE OF CONSTRUCTION.— Nothing in this section may be construed—

"(1) to affect the right of a Federal financial institutions regulatory agency to take enforcement or other supervisory actions related to a material supervisory determination under review under this section; or

"(2) to prohibit the review under this section of a material supervisory determination with respect to which there is an ongoing enforcement or other supervisory action."

**Sec. 6. Additional amendments**

(a) RIEGLE COMMUNITY DEVELOPMENT AND REGULATORY IMPROVEMENT ACT OF 1994.— Section 309 of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4806) is amended—

(1) in subsection (a), by inserting after "appropriate Federal banking agency" the following: ", the Bureau of Consumer Financial Protection,";

(2) in subsection (b)—

(A) in paragraph (2), by striking "the appellant from retaliation by agency examiners" and inserting "the insured depository institution or insured credit union from retaliation by the agencies referred to in subsection (a)"; and

(B) by adding at the end the following flush-left text: For purposes of this subsection and subsection (e), retaliation includes delaying consideration of, or withholding approval of, any request, notice, or application that otherwise would have been approved, but for the exercise of the institution's or credit union's rights under this section.

(3) in subsection (e)(2)—

(A) in subparagraph (B), by striking "and" at the end;

(B) in subparagraph (C), by striking the period and inserting "; and"; and

(C) by adding at the end the following:

"(D) ensure that appropriate safeguards exist for protecting the insured depository institution or insured credit union from retaliation by any agency referred to in subsection (a) for exercising its rights under this subsection."; and

(4) in subsection (f)(1)(A)—

(A) in clause (ii), by striking "and" at the end;

(B) in clause (iii), by striking "and" at the end; and

(C) by adding at the end the following:

"(iv) any issue specifically listed in an exam report as a matter requiring attention by the institution's management or board of directors; and

"(v) any suspension or removal of an institution's status as eligible for expedited processing of applications, requests, notices, or filings on the grounds of a supervisory or compliance concern, regardless of whether that concern has been cited as a basis for another material supervisory determination or matter requiring attention in an examination report, provided that the conduct at issue did not involve violation of any criminal law; and".

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

(c) FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL ACT OF 1978.— The Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3301 et seq.) is amended—

(1) in section 1003, by amending paragraph (1) to read as follows:

"(1) the term 'Federal financial institutions regulatory agencies'—

"(A) means the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the National Credit Union Administration; and

"(B) for purposes of sections 1012, 1013, and 1014, includes the Bureau of Consumer Financial Protection."; and

(2) in section 1005, by striking "One-fifth" and inserting "One-fourth".

***Sec. 7. Reduction of surplus funds of Federal reserve banks***

*(a) IN GENERAL.— Section 7(a)(3)(A) of the Federal Reserve Act (12 U.S.C. 289(a)(3)(A)) is amended by striking "\$7,500,000,000" and inserting "\$7,324,285,000".*

*(b) EFFECTIVE DATE.— Subsection (a) shall take effect on June 1, 2018.*

