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REPORT
114–874

FINANCIAL INSTITUTIONS EXAMINATION FAIRNESS AND REFORM ACT

DECEMBER 12, 2016.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. HENSARLING, from the Committee on Financial Services, submitted the following

R E P O R T

[To accompany H.R. 1941]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 1941) to improve the examination of depository institutions, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE AND SUMMARY

H.R. 1941 amends the Federal Financial Institutions Examination Council Act of 1978 to establish deadlines within which regulatory agencies must hold exit interviews and issue final examination reports to financial institutions. The bill would also provide supervised financial institutions the right to have material supervisory determinations reviewed by a newly created Independent Examination Review Director within the Federal Financial Institutions Examination Council (FFIEC).

BACKGROUND AND NEED FOR LEGISLATION

Section 309 of the Riegle Community Development and Regulatory Improvement Act of 1994 directed the federal regulators of financial institutions to establish an "independent intra-agency appellate process" by which an institution could seek review of certain regulatory determinations, including (1) examination ratings, (2) adequacy of loan loss reserves, and (3) classifications of loans significant to the institution. Collectively, these determinations are known as "material supervisory determinations." Each federal reg-

ulator has instituted its own unique process for appeals of material supervisory determinations.

The Committee has heard testimony that the intra-agency review for appealing material supervisory determinations provides financial institutions with limited opportunities to challenge, that the appeals process is not impartial, and that appealing or opposing exam findings incurs retaliation from regulators.

In testimony before the committee on June 11, 2015, Mercatus Center Senior Research Fellow Hester Peirce stated:

> A robust, objective process for raising concerns about low-quality exams is one way to increase exam quality. H.R. 1941 would establish a new interagency mechanism for examination oversight, including a new appeals process.

An intra-agency appeals process already exists at some financial regulators, but examination concerns remain. In the words of University of Alabama School of Law professor Julie Hill, who extensively researched the appeals processes of four financial regulators, the appeals process is "a dysfunctional and seldom used system." The existing appeals mechanisms do not provide an effective check on bank examiners. As Professor Hill notes, both financial institutions and regulators have an interest in a good examination process:

> "Pursuing unnecessary enforcement actions diverts regulatory attention from pressing problems. If a financial institution expends significant time and effort addressing an erroneous determination, it may prevent the institution from addressing other important matters. Moreover, allowing erroneous [Material Supervisory Determinations] to persist undermines the credibility of the supervisory process."

Professor Hill's finding that appeals are rare is consistent with the strong incentives for financial institutions to defer to the regulators that exercise continuing power over their businesses. Even with anti-retaliation measures in place, it is very difficult to second-guess a regulator. Financial institutions would be more likely to avail themselves of an external, third-party appeals process such as the one set forth in H.R. 1941. Clarifying the interaction between the intra-agency and interagency appeals process would help to ensure that the new process has its desired effect.

HEARINGS

The Committee on Financial Services' Subcommittee on Financial Institutions held a hearing examining matters relating to H.R. 1941 on June 11, 2015.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on July 28, 2015 and July 29, 2015 and considered the bill. An amendment offered by Ms. Maloney was withdrawn. The Committee ordered H.R. 1941 to be reported favorably to the House without amendment by a recorded vote of 45 yeas to 13 nays (recorded vote no. FC–46), a quorum being present.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. The sole recorded vote was on a motion by Chairman Hensarling to report the bill favorably to the House without amendment. The motion was agreed to by a recorded vote of 45 yeas to 13 nays (Record vote no. FC–46), a quorum being present.

Record vote no. FC-46

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling	X			Ms. Waters (CA)		X	
Mr. King (NY)	X			Mrs. Maloney (NY)	X		
Mr. Royce	X			Ms. Velázquez		X	
Mr. Lucas	X			Mr. Sherman	X		
Mr. Garrett	X			Mr. Meeks	X		
Mr. Neugebauer	X			Mr. Capuano		X	
Mr. McHenry	X			Mr. Hinojosa		X	
Mr. Pearce	X			Mr. Clay		X	
Mr. Posey	X			Mr. Lynch		X	
Mr. Fitzpatrick	X			Mr. David Scott (GA)	X		
Mr. Westmoreland	X			Mr. Al Green (TX)		X	
Mr. Luetkemeyer	X			Mr. Cleaver			
Mr. Huizenga (MI)	X			Ms. Moore		X	
Mr. Duffy	X			Mr. Ellison		X	
Mr. Hurt (VA)	X			Mr. Perlmutter		X	
Mr. Stivers	X			Mr. Himes	X		
Mr. Fincher	X			Mr. Carney			
Mr. Stutzman	X			Ms. Sewell (AL)		X	
Mr. Mulvaney	X			Mr. Foster	X		
Mr. Hultgren	X			Mr. Kildee		X	
Mr. Ross	X			Mr. Murphy (FL)	X		
Mr. Pittenger	X			Mr. Delaney	X		
Mrs. Wagner	X			Ms. Sinema	X		
Mr. Barr	X			Mrs. Beatty		X	
Mr. Rothfus	X			Mr. Heck (WA)	X		
Mr. Messer	X			Mr. Vargas	X		
Mr. Schweikert	X						
Mr. Guinta	X						
Mr. Tipton	X						
Mr. Williams	X						
Mr. Poliquin	X						
Mrs. Love	X						
Mr. Hill	X						
Mr. Emmer	X						

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the findings and recommendations of the Committee based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee states that H.R. 1941 will reduce regulatory burden and increase agency accountability by, among other things, establishing stricter deadlines and examination standards for agencies issuing final examination reports.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATES

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, February 11, 2016.

Hon. JEB HENSARLING,
Chairman, Committee on Financial Services,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1941, the Financial Institutions Examination Fairness and Reform Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Kim Cawley and Sarah Puro.

Sincerely,

KEITH HALL.

Enclosure.

H.R. 1941—Financial Institutions Examination Fairness and Reform Act

Summary: H.R. 1941 would establish the Office of Independent Examination Review within the Federal Financial Institutions Examination Council (FFIEC). The council would investigate complaints from financial institutions about examinations, conduct regular reviews of the quality of examinations, and adjudicate appeals of determinations made as part of an examination. The bill also would prohibit financial regulators from classifying certain commercial loans as non-performing and from requiring certain banks to raise more capital to cover the potential losses from those loans.

CBO estimates that enacting H.R. 1941 would increase net direct spending by $192 million and reduce revenues by $40 million over the 2016–2026 period; therefore, pay-as-you-go procedures apply. In total, CBO estimates that enacting H.R. 1941 would increase budget deficits by $232 million over the 2016–2026 period. Implementing H.R. 1941 would not affect spending subject to appropriation.

CBO estimates that enacting the legislation would not increase net direct spending or on-budget deficits by more than $5 billion in any of the four consecutive 10-year periods beginning in 2027.

H.R. 1941 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA).

H.R. 1941 could increase the cost of an existing mandate on private entities required to pay fees. Based on information from the affected agencies, CBO estimates that the incremental cost of the mandate would fall well below the annual threshold for private-sector mandates established in UMRA ($154 million in 2016, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary effects of H.R. 1941 are shown in the following table. The costs of this legislation fall within budget function 370 (commerce and housing credit).

	By fiscal year, in millions of dollars—												
	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2016–2021	2016–2026
CHANGES IN DIRECT SPENDING													
Office Of Independent Examination Review:													
Estimated Budget Authority	0	4	10	11	9	9	9	10	10	10	10	43	92
1Estimated Outlays	0	4	10	11	9	9	9	10	10	10	10	43	92
Other Administrative Costs:													
Estimated Budget Authority	0	1	1	1	1	1	1	1	1	1	1	5	10
Estimated Outlays	0	1	1	1	1	1	1	1	1	1	1	5	10
Prohibitions on Regulatory Actions:													
Estimated Budget Authority	0	2	5	8	9	10	10	11	11	12	12	34	90
Estimated Outlays	0	2	5	8	9	10	10	11	11	12	12	34	90
Total Changes:													
Estimated Budget Authority	0	7	16	20	19	20	20	22	22	23	23	82	192
Estimated Outlays	0	7	16	20	19	20	20	22	22	23	23	82	192
CHANGES IN REVENUES[a]													
Estimated Revenues	0	−1	−3	−4	−4	−4	−4	−5	−5	−5	−5	−16	−40
NET INCREASE IN DEFICITS													
Increase in Deficits	0	8	19	24	23	24	24	27	27	28	28	98	232

[a] Negative numbers denote decreases in revenues.

Basis of estimate: For this estimate, CBO assumes that the bill will be enacted near the end of fiscal year 2016 and that spending will follow historical patterns for similar regulatory activities.

H.R. 1941 would establish a new office, the Office of Independent Examination Review, at FFIEC to investigate complaints from financial institutions related to examinations, to review examination standards to ensure consistency across the agencies, to adjudicate appeals of determinations made as part of an examination, and to conduct a continuing program of quality control and assurance.

FFIEC was established to promote uniformity in supervision of financial institutions; generally, its operating costs are borne by four financial regulatory agencies—the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), and the Federal Reserve System. Under H.R. 1941, a portion of the costs of the office also would be covered by the Consumer Financial Protection Bureau (CFPB).

Three of those regulators—the OCC, the FDIC, and the NCUA—collect fees to offset operating costs. Because of lags between the time costs are incurred by some of the financial regulators and when additional fees would be imposed, not all additional costs resulting from the bill could be recovered within the next 10 years. Costs borne by the CFPB are recorded in the budget as direct spending because the agency has permanent authority to spend amounts transferred from the Federal Reserve System. Finally, costs incurred by the Federal Reserve System to implement the bill would reduce remittances to the Treasury (which are recorded as revenues) and would therefore affect the federal budget by reducing revenues.

Currently, the FFIEC is supported by 15 staff who are employed by the regulatory agencies but assigned to the council.

Direct spending

Office of Independent Examination Review. CBO expects that establishing the Office of Independent Examination Review would require a significant increase in the council's staff. Based on information from FFIEC, CBO estimates that an additional 50 staff positions would be needed to meet the bill's requirements to investigate and resolve appeals and to review examination procedures. CBO expects that it would take several years to reach that new staffing level and that the costs would be spread evenly among the five regulatory agencies.

Based on information from the affected agencies, CBO estimates that establishing the office would cost $202 million over the 2016–2026 period to supply the FFIEC with additional staff and to cover other operating expenses. That amount reflects some savings to the regulators because a portion of the complaints they receive under current law would be handled by FFIEC under the bill. We expect that 80 percent of the net cost, or $162 million, would be spread equally among four financial regulators—the FDIC, OCC, NCUA and CFPB—increasing gross direct spending by that amount.

As noted above, three of those regulators collect fees to offset operating costs, but because there is a lag in the timing of collections, not all costs would be offset over the 2016–2026 period. CBO estimates that over the ten-year period additional fees collected from

financial institutions would total about $70 million. On net, CBO estimates that enacting H.R. 1941 would increase direct spending by $92 million over the 2016–2026 period.

The remaining 20 percent would be charged to the Federal Reserve System; those effects are discussed below under the heading "Revenues."

Other Administrative Costs. The bill also would establish deadlines for the federal banking regulators to complete examination reports. Based on information from those agencies, CBO estimates that they would need to hire additional staff to meet the deadlines established in the bill, at an estimated net cost of about $10 million over the 2016–2026 period.

Prohibitions on Regulatory Action. The bill would prohibit financial regulators from classifying certain commercial loans as nonperforming and from requiring certain banks to raise more capital to cover the potential losses that could stem from those loans. CBO expects that those prohibitions would primarily affect loans for commercial real estate. For institutions with limited or moderate exposure to such loans that otherwise have diversified loan portfolios, such limitations would be unlikely to result in a bank failure where the federal government incurs any costs. However, some banks with holdings that are primarily concentrated in the commercial real estate sector could experience a reduction in their capital reserves, which would lead to a higher probability of a bank failure and would increase the probability of additional federal costs to resolve the liabilities of failed institutions.

Based on a review of information contained in bank reports and on criteria established by federal financial regulations, CBO estimates about 450 federally insured financial institutions have portfolios that are concentrated in commercial real estate. The assets of those banks account for about 40 percent of all bank assets. Any significant downturn in the commercial real estate market could cause instability and losses for the portfolios of those institutions. CBO's baseline for deposit insurance programs includes the probability that some banks will fail in any given year. Although the likelihood of deterioration in the market for commercial real estate is uncertain, the prohibitions in H.R. 1941 on regulation of commercial real estate loans would probably lead to a small increase in the number of banks that fail and require resolution through the FDIC's Deposit Insurance Fund (DIF).

Based on the historical components of bank failures, CBO estimates that there would be about a 10 percent increase in failures for banks with portfolios that hold significant amounts of commercial real estate. Using CBO's baseline projections of losses from the DIF, we estimate that a 10 percent increase in the rate of failure for those banks would cost about $90 million over the 2016–2026 period.

Revenues

The Federal Reserve System remits its profits to the Treasury, and those payments are recorded as revenues in the federal budget. Increasing the costs of operating the Federal Reserve System reduces federal revenues. CBO estimates that the portion of the costs to establish the Office of Independent Examination Review that would be allocated to the Federal Reserve would average about $4

million per year; over the 2016–2026 period, revenues would decline by $40 million.

Pay-As-You-Go Considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays and revenues that are subject to those pay-as-you-go procedures are shown in the following table.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR H.R. 1941, AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON FINANCIAL SERVICES ON JULY 29, 2015

	By fiscal year, in millions of dollars—												
	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2016–2021	2016–2026
NET INCREASE IN THE DEFICIT													
Statutory Pay-As-You-Go Impact	0	8	19	24	23	24	24	27	27	28	28	98	232
Memorandum:													
Changes in Outlays	0	7	16	20	19	20	20	22	22	23	23	82	192
Changes in Revenues[a]	0	−1	−3	−4	−4	−4	−4	−5	−5	−5	−5	−16	−40

[a] Negative numbers denote decreases in revenues.

Increase in long-term direct spending: CBO estimates that enacting the legislation would not increase net direct spending or on-budget deficits by more than $5 billion in any of the four consecutive 10-year periods beginning in 2027.

Estimated impact on state, local, and tribal governments: H.R. 1941 contains no intergovernmental mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimated impact on the private sector: If financial regulators increase fees to offset some of the costs of implementing the new activities of the FFIEC, the bill would increase the cost of an existing mandate on private entities required to pay those fees. Based on information from the affected agencies, CBO estimates that the incremental cost of the mandate would amount to no more than about $25 million over the 2016–2021 period and would fall well below the annual threshold for private-sector mandates established in UMRA ($154 million in 2016, adjusted annually for inflation).

Previous CBO cost estimate: On July 29, 2015, CBO transmitted a cost estimate for S. 1484, the Financial Regulatory Improvement Act of 2015, as ordered reported by the Senate Committee on Banking, Housing, and Urban Affairs on June 2, 2015. Section 104 of S. 1484 would establish the Office of Independent Examination Review. H.R. 1941 contains a provision that would direct the office to adjudicate appeals of determinations made as part of an examination; that provision is not included in Section 104 of S. 1484. CBO's estimate of the cost to establish the office in each bill reflects that difference.

Estimate prepared by: Federal costs: Kim Cawley and Sarah Puro; Impact on state, local, and tribal governments: J'nell Blanco Suchy; Impact on the private sector: Logan Smith.

Estimate approved by: H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of the section 102(b)(3) of the Congressional Accountability Act.

EARMARK IDENTIFICATION

H.R. 1941 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to section 3(g) of H. Res. 5, 114th Cong. (2015), the Committee states that no provision of H.R. 1941 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULEMAKING

Pursuant to section 3(i) of H. Res. 5, 114th Cong. (2015), the Committee states that H.R. 1941 contains no directed rulemaking.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This Section cites H.R. 141 as the "Financial Institutions Examination Fairness and Reform Act".

Section 2. Timeliness of examination reports

This section amends the Federal Financial Institutions Examination Council Act of 1978 to require a federal financial institutions regulatory agency to make a final examination report to a financial institution within 60 days after the later of: (1) the exit interview for an examination of the institution, or (2) the provision of additional information by the institution relating to the examination.

Section 3. Examination standards

The section prescribes examination standards for financial institutions that: prescribe requirements and prohibitions for the treatment of certain commercial loans, prohibit a federal financial institution regulatory agency from requiring a well-capitalized financial

institution to raise additional capital in lieu of certain actions prohibited with respect to such commercial loans, and require federal financial institutions regulatory agencies to develop and apply identical definitions and reporting requirements for non-accrual loans.

Section 4. Independent Examination Review Director

This section establishes in the Federal Financial Institutions Examination Council (FFIEC) the Office of Independent Examination Review, headed by a Director appointed by the FFIEC, but independent from any member agency of the FFIEC.

Section 5. Right to independent review of material supervisory determinations

This section entitles a financial institution to appeal a material supervisory determination contained in a final report of examination; requires the Director to determine the merits of the appeal and grants a financial institution the right to petition for judicial review of the Director's decision. Lastly, this section prohibits a federal financial institutions regulatory agency from retaliating against a financial institution or delaying or denying any agency action that would be benefit a financial institution.

Section 6. Additional amendments

This section amends the Riegle Community Development and Regulatory Improvement Act of 1994 to require the Consumer Financial Protection Bureau to establish an independent intra-agency appellate process in connection with the regulatory appeals process, and safeguards to protect an insure depository institution or insured credit union from retaliation by any federal banking agency for exercising its rights.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL ACT OF 1978

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TITLE X—FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

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DEFINITIONS

SEC. 1003. As used in this title—

[(1) the term "Federal financial institutions regulatory agencies" means the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal

Deposit Insurance Corporation, the Office of Thrift Supervision, and the National Credit Union Administration;]

(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, 1014, and 1015, includes the Bureau of Consumer Financial Protection;

(2) the term "Council" means the Financial Institutions Examination Council; and

(3) the term "financial institution" 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;

* * * * * * *

EXPENSES OF THE COUNCIL

SEC. 1005. [One-fifth] *One-fourth* of the costs and expenses of the Council, including the salaries of its employees, shall be paid by each of the Federal financial institutions regulatory agencies. Annual assessments for such share shall be levied by the Council based upon its projected budget for the year, and additional assessments may be made during the year if necessary.

* * * * * * *

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. 1013. EXAMINATION STANDARDS.

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

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

(2) a modified or restructured commercial loan shall be removed from non-accrual status if the borrower demonstrates the ability to perform on such loan over a maximum period of 6 months, except that with respect to loans on a quarterly, semi-annual, or longer repayment schedule such period shall be a maximum of 3 consecutive repayment periods;

(3) a new appraisal on a performing commercial loan shall not be required unless an advance of new funds is involved; and

(4) in classifying a commercial loan in which there has been deterioration in collateral value, the amount to be classified shall be the portion of the deficiency relating to the decline in collateral value and repayment capacity of the borrower.

(b) WELL CAPITALIZED INSTITUTIONS.—The Federal financial institutions regulatory agencies may not require a financial institution that is well capitalized to raise additional capital in lieu of an action prohibited under subsection (a).

(c) CONSISTENT LOAN CLASSIFICATIONS.—The Federal financial institutions regulatory agencies shall develop and apply identical definitions and reporting requirements for non-accrual loans.

SEC. 1014. 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) STAFFING.—The Director is authorized to hire staff to support the activities of the Office.

(d) 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) 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 1015; and

(6) report annually to the Committee on Financial Services of the House of Representatives, the Committee on Banking, Hous-

ing, 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.

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

SEC. 1015. 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) be deemed 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) 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 in the United States Court of Appeals for the District of Columbia Circuit or the Circuit in which the financial institution is located.

(f) 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.

(g) 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.

(h) 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.

RIEGLE COMMUNITY DEVELOPMENT AND REGULATORY IMPROVEMENT ACT OF 1994

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TITLE III—PAPERWORK REDUCTION AND REGULATORY IMPROVEMENT

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SEC. 309. REGULATORY APPEALS PROCESS, OMBUDSMAN, AND ALTERNATIVE DISPUTE RESOLUTION.

(a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, each appropriate Federal banking agency*, the Bureau of Consumer Financial Protection,* and the National Credit Union Administration Board shall establish an independent intra-agency appellate process. The process shall be available to review material supervisory determinations made at insured depository institutions or at insured credit unions that the agency supervises.

(b) REVIEW PROCESS.—In establishing the independent appellate process under subsection (a), each agency shall ensure that—

(1) any appeal of a material supervisory determination by an insured depository institution or insured credit union is heard and decided expeditiously; and

(2) appropriate safeguards exist for protecting [the appellant from retaliation by agency examiners] *the insured depository institution or insured credit union from retaliation by the agencies referred to in subsection (a) .*

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.

(c) COMMENT PERIOD.—Not later than 90 days after the date of enactment of this Act, each appropriate Federal banking agency and the National Credit Union Administration Board shall provide public notice and opportunity for comment on proposed guidelines for the establishment of an appellate process under this section.

(d) AGENCY OMBUDSMAN.—

(1) ESTABLISHMENT REQUIRED.— Not later than 180 days after the date of enactment of this Act, each Federal banking agency and the National Credit Union Administration Board shall appoint an ombudsman.

(2) DUTIES OF OMBUDSMAN.— The ombudsman appointed in accordance with paragraph (1) for any agency shall—

(A) act as a liaison between the agency and any affected person with respect to any problem such party may have in dealing with the agency resulting from the regulatory activities of the agency; and

(B) assure that safeguards exist to encourage complainants to come forward and preserve confidentiality.

(e) ALTERNATIVE DISPUTE RESOLUTION PILOT PROGRAM.—

(1) IN GENERAL.— Not later than 18 months after the date of enactment of this Act, each Federal banking agency and the National Credit Union Administration Board shall develop and implement a pilot program for using alternative means of dispute resolution of issues in controversy (hereafter in this section referred to as the "alternative dispute resolution program") that is consistent with the requirements of subchapter IV of chapter 5 of title 5, United States Code, if the parties to the dispute, including the agency, agree to such proceeding.

(2) STANDARDS.— An alternative dispute resolution pilot program developed under paragraph (1) shall—

(A) be fair to all interested parties to a dispute;

(B) resolve disputes expeditiously; [and]

(C) be less costly than traditional means of dispute resolution, including litigation[.]*; and*

(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.

(3) INDEPENDENT EVALUATION.— Not later than 18 months after the date on which a pilot program is implemented under paragraph (1), the Administrative Conference of the United States shall submit to the Congress a report containing—

(A) an evaluation of that pilot program;

(B) the extent to which the pilot programs meet the standards established under paragraph (2);

(C) the extent to which parties to disputes were offered alternative means of dispute resolution and the frequency with which the parties, including the agencies, accepted or declined to use such means; and

(D) any recommendations of the Conference to improve the alternative dispute resolution procedures of the Federal banking agencies and the National Credit Union Administration Board.

(4) IMPLEMENTATION OF PROGRAM.— At any time after completion of the evaluation under paragraph (3)(A), any Federal banking agency and the National Credit Union Administration Board may implement an alternative dispute resolution program throughout the agency, taking into account the results of that evaluation.

(5) COORDINATION WITH EXISTING AGENCY ADR PROGRAMS.—

(A) EVALUATION REQUIRED.— If any Federal banking agency or the National Credit Union Administration maintains an alternative dispute resolution program as of the date of enactment of this Act under any other provision of law, the Administrative Conference of the United States shall include such program in the evaluation conducted under paragraph (3)(A).

(B) MULTIPLE ADR PROGRAMS.— No provision of this section shall be construed as precluding any Federal banking agency or the National Credit Union Administration Board from establishing more than 1 alternative means of dispute resolution.

(f) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

(1) MATERIAL SUPERVISORY DETERMINATIONS.— The term "material supervisory determinations"—

(A) includes determinations relating to—

(i) examination ratings;

(ii) the adequacy of loan loss reserve provisions; [and]

(iii) loan classifications on loans that are significant to an institution; [and]

(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) does not include a determination by a Federal banking agency or the National Credit Union Administration Board to appoint a conservator or receiver for an insured

depository institution or a liquidating agent for an insured credit union, as the case may be, or a decision to take action pursuant to section 38 of the Federal Deposit Insurance Act or section 212 of the Federal Credit Union Act, as appropriate.

(2) INDEPENDENT APPELLATE PROCESS.— The term "independent appellate process" means a review by an agency official who does not directly or indirectly report to the agency official who made the material supervisory determination under review.

(3) ALTERNATIVE MEANS OF DISPUTE RESOLUTION.— The term "alternative means of dispute resolution" has the meaning given to such term in section 571 of title 5, United States Code.

(4) ISSUES IN CONTROVERSY.— The term "issues in controversy" means—

(A) any final agency decision involving any claim against an insured depository institution or insured credit union for which the agency has been appointed conservator or receiver or for which a liquidating agent has been appointed, as the case may be;

(B) any final action taken by an agency in the agency's capacity as conservator or receiver for an insured depository institution or by the liquidating agent appointed for an insured credit union; and

(C) any other issue for which the appropriate Federal banking agency or the National Credit Union Administration Board determines that alternative means of dispute resolution would be appropriate.

(g) EFFECT ON OTHER AUTHORITY.—Nothing in this section shall affect the authority of an appropriate Federal banking agency or the National Credit Union Administration Board to take enforcement or supervisory action.

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FEDERAL CREDIT UNION ACT

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TITLE II—SHARE INSURANCE

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REQUIREMENTS GOVERNING INSURED CREDIT UNIONS

SEC. 205. (a) INSURANCE LOGO.—

(1) INSURED CREDIT UNIONS.—

(A) IN GENERAL.— Each insured credit union shall display at each place of business maintained by that credit union a sign or signs relating to the insurance of the share accounts of the institution, in accordance with regulations to be prescribed by the Board.

(B) STATEMENT TO BE INCLUDED.— Each sign required under subparagraph (A) shall include a statement that insured share accounts are backed by the full faith and credit of the United States Government.

(2) REGULATIONS.— The Board shall prescribe regulations to carry out this subsection, including regulations governing the substance of signs required by paragraph (1) and the manner of display or use of such signs.

(3) PENALTIES.— For each day that an insured credit union continues to violate this subsection or any regulation issued under this subsection, it shall be subject to a penalty of not more than $100, which the Board may recover for its use.

(b)(1) Except as provided in paragraph (2), no insured credit union shall, without the prior approval of the Board—

(A) merge or consolidate with any noninsured credit union or institution;

(B) assume liability to pay any member accounts in, or similar liabilities of, any noninsured credit union or institution;

(C) transfer assets to any noninsured credit union or institution in consideration of the assumption of liabilities for any portion of the member accounts in such insured credit union; or

(D) convert into a noninsured credit union or institution.

(2) CONVERSION OF INSURED CREDIT UNIONS TO MUTUAL SAVINGS BANKS.—

(A) IN GENERAL.— Notwithstanding paragraph (1), an insured credit union may convert to a mutual savings bank or savings association (if the savings association is in mutual form), as those terms are defined in section 3 of the Federal Deposit Insurance Act, without the prior approval of the Board, subject to the requirements and procedures set forth in the laws and regulations governing mutual savings banks and savings associations.

(B) CONVERSION PROPOSAL.— A proposal for a conversion described in subparagraph (A) shall first be approved, and a date set for a vote thereon by the members (either at a meeting to be held on that date or by written ballot to be filed on or before that date), by a majority of the directors of the insured credit union. Approval of the proposal for conversion shall be by the affirmative vote of a majority of the members of the insured credit union who vote on the proposal.

(C) NOTICE OF PROPOSAL TO MEMBERS.— An insured credit union that proposes to convert to a mutual savings bank or savings association under subparagraph (A) shall submit notice to each of its members who is eligible to vote on the matter of its intent to convert—

(i) 90 days before the date of the member vote on the conversion;

(ii) 60 days before the date of the member vote on the conversion; and

(iii) 30 days before the date of the member vote on the conversion.

(D) NOTICE OF PROPOSAL TO BOARD.— The Board may require an insured credit union that proposes to convert to a mutual savings bank or savings association under subparagraph (A) to submit a notice to the Board of its intent to convert during the 90-day period preceding the date of the completion of the conversion.

(E) INAPPLICABILITY OF ACT UPON CONVERSION.— Upon completion of a conversion described in subparagraph (A), the credit union shall no longer be subject to any of the provisions of this Act.

(F) LIMIT ON COMPENSATION OF OFFICIALS.—

(i) IN GENERAL.— No director or senior management official of an insured credit union may receive any economic benefit in connection with a conversion of the credit union as described in subparagraph (A), other than—

(I) director fees; and

(II) compensation and other benefits paid to directors or senior management officials of the converted institution in the ordinary course of business.

(ii) SENIOR MANAGEMENT OFFICIAL.— For purposes of this subparagraph, the term "senior management official" means a chief executive officer, an assistant chief executive officer, a chief financial officer, and any other senior executive officer (as defined by the appropriate Federal banking agency pursuant to section 32 (f) of the Federal Deposit Insurance Act).

(G) CONSISTENT RULES.—

(i) IN GENERAL.— Not later than 6 months after the date of enactment of the Credit Union Membership Access Act, the Administration shall promulgate final rules applicable to charter conversions described in this paragraph that are consistent with rules promulgated by other financial regulators, including the Office of the Comptroller of the Currency. The rules required by this clause shall provide that charter conversion by an insured credit union shall be subject to regulation that is no more or less restrictive than that applicable to charter conversions by other financial institutions.

(ii) OVERSIGHT OF MEMBER VOTE.— The member vote concerning charter conversion under this paragraph shall be administered by the Administration, and shall be verified by the Federal or State regulatory agency that would have jurisdiction over the institution after the conversion. If either the Administration or that regulatory agency disapproves of the methods by which the member vote was taken or procedures applicable to the member vote, the member vote shall be taken again, as directed by the Administration or the agency.

(3) Except with the prior written approval of the Board, no insured credit union shall merge or consolidate with any other insured credit union or, either directly or indirectly, acquire the assets of, or assume liability to pay any member accounts in, any other insured credit union.

(c) In granting or withholding approval or consent under subsection (b) of this section, the Board shall consider—

(1) the history, financial condition, and management policies of the credit union;

(2) the adequacy of the credit union's reserves;
(3) the economic advisability of the transaction;
(4) the general character and fitness of the credit union's management;
(5) the convenience and needs of the members to be served by the credit union; and
(6) whether the credit union is a cooperative association organized for the purpose of promoting thrift among its members and creating a source of credit for provident or productive purposes.

(d) PROHIBITION.—
(1) IN GENERAL.— Except with prior written consent of the Board—
(A) any person who has been convicted of any criminal offense involving dishonesty or a breach of trust, or has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such offense, may not—
(i) become, or continue as, an institution-affiliated party with respect to any insured credit union; or
(ii) otherwise participate, directly or indirectly, in the conduct of the affairs of any insured credit union; and
(B) any insured credit union may not permit any person referred to in subparagraph (A) to engage in any conduct or continue any relationship prohibited under such subparagraph.
(2) MINIMUM 10-YEAR PROHIBITION PERIOD FOR CERTAIN OFFENSES.—
(A) IN GENERAL.— If the offense referred to in paragraph (1)(A) in connection with any person referred to in such paragraph is—
(i) an offense under—
(I) section 215, 656, 657, 1005, 1006, 1007, 1008, 1014, 1032, 1344, 1517, 1956, or 1957 of title 18, United States Code; or
(II) section 1341 or 1343 of such title which affects any financial institution (as defined in section 20 of such title); or
(ii) the offense of conspiring to commit any such offense,
the Board may not consent to any exception to the application of paragraph (1) to such person during the 10-year period beginning on the date the conviction or the agreement of the person becomes final.
(B) EXCEPTION BY ORDER OF SENTENCING COURT.—
(i) IN GENERAL.— On motion of the Board, the court in which the conviction or the agreement of a person referred to in subparagraph (A) has been entered may grant an exception to the application of paragraph (1) to such person if granting the exception is in the interest of justice.
(ii) PERIOD FOR FILING.— A motion may be filed under clause (i) at any time during the 10-year period

described in subparagraph (A) with regard to the person on whose behalf such motion is made.

(3) PENALTY.— Whoever knowingly violates paragraph (1) or (2) shall be fined not more than $1,000,000 for each day such prohibition is violated or imprisoned for not more than 5 years, or both.

(e)(1) The Board shall promulgate rules establishing minimum standards with which each insured credit union must comply with respect to the installation, maintenance, and operation of security devices and procedures, reasonable in cost, to discourage robberies, burglaries, and larcenies and to assist in the identification and apprehension of persons who commit such acts.

(2) The rules shall establish the time limits within which insured credit unions shall comply with the standards and shall require the submission of periodic reports with respect to the installation, maintenance, and operation of security devices and procedures.

(3) An insured credit union which violates a rule promulgated pursuant to this subsection shall be subject to a civil penalty which shall not exceed $100 for each day of the violation.

(f)(1) Every insured credit union is authorized to maintain, and make loans with respect to, share draft accounts in accordance with rules and regulations prescribed by the Board. Except as provided in paragraph (2), an insured credit union may pay dividends on share draft accounts and may permit the owners of such share draft accounts to make withdrawals by negotiable or transferable instruments or other orders for the purpose of making transfers to third parties.

(2) Paragraph (1) shall apply only with respect to share draft accounts in which the entire beneficial interest is held by one or more individuals or members or by an organization which is operated primarily for religious, philanthropic, charitable, educational, or other similar purposes and which is not operated for profit, and with respect to deposits of public funds by an officer, employee, or agent of the United States, any State, county, municipality, or political subdivision thereof, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, any territory or possession of the United States, or any political subdivision thereof.

(g)(1) If the applicable rate prescribed in this subsection exceeds the rate an insured credit union would be permitted to charge in the absence of this subsection, such credit union may, notwithstanding any State constitution or statute which is hereby preempted for the purposes of this subsection, take, receive, reserve, and charge on any loan, interest at a rate of not more than 1 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where such insured credit union is located or at the rate allowed by the laws of the State, territory, or district where such credit union is located, whichever may be greater.

(2) If the rate prescribed in paragraph (1) exceeds the rate such credit union would be permitted to charge in the absence of this subsection, and such State fixed rate is thereby preempted by the rate described in paragraph (1), the taking, receiving, reserving, or charging a greater rate than is allowed by paragraph (1), when knowingly done, shall be deemed a forfeiture of the entire interest which the loan carries with it, or which has been agreed to be paid

thereon. If such greater rate of interest has been paid, the person who paid it may recover, in a civil action commenced in a court of appropriate jurisdiction not later than two years after the date of such payment, an amount equal to twice the amount of interest paid from the credit union taking or receiving such interest.

(h) Notwithstanding any other provision of law, the Board may authorize a merger or consolidation of an insured credit union which is insolvent or is in danger of insolvency with any other insured credit union or may authorize an insured credit union to purchase any of the assets of, or assume any of the liabilities of, any other insured credit union which is insolvent or in danger of insolvency if the Board is satisfied that—

(1) an emergency requiring expeditious action exists with respect to such other insured credit union;

(2) other alternatives are not reasonably available; and

(3) the public interest would best be served by approval of such merger, consolidation, purchase, or assumption.

(i)(1) Notwithstanding any other provision of this Act or of State law, the Board may authorize an institution whose deposits or accounts are insured by the Federal Deposit Insurance Corporation to purchase any of the assets of or assume any of the liabilities of an insured credit union which is insolvent or in danger of insolvency, except that prior to exercising this authority the Board must attempt to effect the merger or consolidation of an insured credit union which is insolvent or in danger of insolvency with another insured credit union, as provided in subsection (h).

(2) For purposes of the authority contained in paragraph (1), insured accounts of the credit union may upon consummation of the purchase and assumption be converted to insured deposits or other comparable accounts in the acquiring institution, and the Board and the National Credit Union Share Insurance Fund shall be absolved of any liability to the credit union's members with respect to those accounts.

(j) PRIVILEGES NOT AFFECTED BY DISCLOSURE TO BANKING AGENCY OR SUPERVISOR.—

(1) IN GENERAL.— The submission by any person of any information to *the Bureau of Consumer Financial Protection,* the Administration, any State credit union supervisor, or foreign banking authority for any purpose in the course of any supervisory or regulatory process of such Board, supervisor, or authority shall not be construed as waiving, destroying, or otherwise affecting any privilege such person may claim with respect to such information under Federal or State law as to any person or entity other than such Board, supervisor, or authority.

(2) RULE OF CONSTRUCTION.— No provision of paragraph (1) may be construed as implying or establishing that—

(A) any person waives any privilege applicable to information that is submitted or transferred under any circumstance to which paragraph (1) does not apply; or

(B) any person would waive any privilege applicable to any information by submitting the information to *the Bureau of Consumer Financial Protection,* the Administra-

tion, any State credit union supervisor, or foreign banking authority, but for this subsection.

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