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115TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPORT
115–657

SMALL BANK EXAM CYCLE IMPROVEMENT ACT OF 2018

APRIL 26, 2018.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

R E P O R T

[To accompany H.R. 5076]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 5076) to amend the Federal Deposit Insurance Act to extend the examination cycle for certain insured depository institutions, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Add at the end the following:

SEC. 3. GAO STUDY AND REPORT.

Not later than 2 years after the date of enactment of this Act, the Comptroller General of the United States shall submit a report to the Congress on the effect of extending the examination cycle for qualifying institutions pursuant to section 2 of this Act on the ability of agencies to effectively supervise and protect the safety and soundness of qualifying institutions.

PURPOSE AND SUMMARY

Introduced by Representative Claudia Tenney on February 20, 2018, H.R. 5076, the "Small Bank Exam Cycle Improvement Act of 2018" amends the Federal Deposit Insurance Act (FDIA) to increase the qualifying asset threshold for insured depository institutions eligible for 18-month on-site examination cycles from $1 million to $3 billion.

BACKGROUND AND NEED FOR LEGISLATION

Section 10(d) of the FDIA generally provides that federal banking agencies must conduct a full-scope, on-site examination of each insured depository institution at least once during every 12-month period. As part of the examination process, federal financial regu-

lators rate financial institutions on several criteria, including safety and soundness[1] and their compliance with legal and regulatory requirements. Regulators also calculate capital ratios and classify financial institutions according to the adequacy of their capitalization. If an examination reveals that an institution is not complying with the law or that it is undercapitalized, the regulator will assign the institution unsatisfactory ratings or classifications in the institution's examination report. The institution is then subject to penalties that are authorized or required by law, including restrictions on asset growth, expansion, and other activities.

Community financial institutions argue that their compliance costs have gone up as they attempt to keep up with new regulations and more intrusive examinations. New regulations and higher compliance costs have forced small banks and credit unions to cut back on the services they offer to their customers. As a result, local banks are increasingly unable to provide consumers with the products and services that they need and want. The higher threshold cost of compliance programs has also accelerated the pace of industry consolidation as efficiency concerns drive financial institutions to merge. The Federal Reserve Bank of San Francisco, for example, describes its process for examinations, "During an on-site bank exam, supervisors gather private information, such as details on problem loans, with which to evaluate a bank's financial condition and to monitor its compliance with laws and regulatory policies. A key product of such an exam is a supervisory rating of the bank's overall condition, commonly referred to as a CAMELS rating."

This rating system is used by the three federal banking supervisors (the Federal Reserve, the FDIC, and the OCC) and other financial supervisory agencies to provide a convenient summary of bank conditions at the time of an exam. The acronym "CAMEL" refers to the five components of a bank's condition that are assessed: Capital adequacy, Asset quality, Management, Earnings, and Liquidity. A sixth component, a bank's Sensitivity to market risk, was added in 1997; hence the acronym was changed to CAMELS. Ratings are assigned for each component in addition to the overall rating of a bank's financial condition. The ratings are assigned on a scale from 1 to 5. Banks with ratings of 1 or 2 are considered to present few, if any, supervisory concerns, while banks with ratings of 3, 4, or 5 present moderate to extreme degrees of supervisory concern.

However, paragraph (4) of Section 10(d) of the FDIA provides that certain insured depository institutions may be examined every 18 months. To qualify for this longer examination cycle:

- The institution must be found, at its most recent examination, to be well managed and must earn a 1 (outstanding) or 2 (good) rating under the Uniform Financial Institutions Rating System, commonly referred to as CAMELS;
- The institution must have total assets of less than $500 million;
- The institution must not be currently subject to a formal enforcement proceeding; and

[1] These safety and soundness ratings are known as CAMELS ratings. CAMELS stand for capital adequacy, asset quality, management quality, earnings, liquidity, and sensitivity to market risk.

- The institution must not have undergone a change in control during the previous 12-month period.

Congress raised the threshold for CAMELS 1-rated institutions from $250 million to $500 million in 2006[2], and granted agencies discretion to increase the threshold for 2-rated institutions in 2007.[3] In a 2007 rulemaking raising the 2-rated threshold to $500 million, the federal banking agencies estimated that a total of 6,670 insured depository institutions qualified for the 18-month exam cycle.[4]

In the 114th Congress, H.R. 22, the FAST Act (P.L. 114–94) included Rep. Tipton's legislation, H.R. 1553, the Small Bank Exam Cycle Reform Act of 2015, which President Obama signed into law on December 4, 2015. H.R. 1553 increased from $500 million to $1 billion, the total asset threshold below which an agency may apply an 18-month (rather than a 12-month) on-site examination cycle for an institution with "outstanding" composite ratings, and to raise, from not more than $100 million to not more than $200 million, the total asset threshold below which an agency may apply an 18-month examination cycle to an institution with an "outstanding" or "good" composite rating.

In December 2016, the federal banking agencies issued final rules to implement H.R. 1553 and extend the on-site exam cycle for banks with up to $1 billion in assets from 12 months to 18 months.[5]

H.R. 5076 would raise the asset eligibility threshold for smaller, well-rated financial institutions—those which pose little risk—to qualify for extended exam cycles from $1 billion to $3 billion. As amended by an amendment offered by the Ranking Member, H.R. 5076 also requires the Government Accountability Office to report on the effect of extending the examination cycle.

HEARINGS

The Committee on Financial Services' Subcommittee on Financial Institutions and Consumer Credit held a hearing examining matters relating to H.R. 5076 on April 6, 2017.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on March 21, 2018, and ordered H.R. 5076 to be reported favorably by a recorded vote of 60 yeas to 0 nays (Record vote no. FC–168), a quorum being present. Before the motion to report was offered, the Committee adopted an amendment by Ms. Waters by voice vote.

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 as amended. The motion was agreed to by a

[2] Pub. L. 109–351.
[3] Pub. L. 109–473.
[4] 72 Fed. Reg. 11798 (Apr. 10, 2007).
[5] *https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20161212a1.pdf*

recorded vote of 60 yeas to 0 nays (Record vote no. FC–168), a quorum being present.

Record vote no. FC-168

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling	X			Ms. Maxine Waters (CA)	X		
Mr. McHenry	X			Mrs. Carolyn B. Maloney (NY)	X		
Mr. King	X			Ms. Velázquez	X		
Mr. Royce (CA)	X			Mr. Sherman	X		
Mr. Lucas	X			Mr. Meeks	X		
Mr. Pearce	X			Mr. Capuano	X		
Mr. Posey	X			Mr. Clay	X		
Mr. Luetkemeyer	X			Mr. Lynch	X		
Mr. Huizenga	X			Mr. David Scott (GA)	X		
Mr. Duffy	X			Mr. Al Green (TX)	X		
Mr. Stivers	X			Mr. Cleaver	X		
Mr. Hultgren	X			Ms. Moore	X		
Mr. Ross	X			Mr. Ellison	X		
Mr. Pittenger	X			Mr. Perlmutter	X		
Mrs. Wagner	X			Mr. Himes	X		
Mr. Barr	X			Mr. Foster	X		
Mr. Rothfus	X			Mr. Kildee	X		
Mr. Messer	X			Mr. Delaney	X		
Mr. Tipton	X			Ms. Sinema	X		
Mr. Williams	X			Mrs. Beatty	X		
Mr. Poliquin	X			Mr. Heck	X		
Mrs. Love	X			Mr. Vargas	X		
Mr. Hill	X			Mr. Gottheimer	X		
Mr. Emmer	X			Mr. Gonzalez (TX)	X		
Mr. Zeldin	X			Mr. Crist	X		
Mr. Trott	X			Mr. Kihuen	X		
Mr. Loudermilk	X						
Mr. Mooney (WV)	X						
Mr. MacArthur	X						
Mr. Davidson	X						
Mr. Budd	X						
Mr. Kustoff (TN)	X						
Ms. Tenney	X						
Mr. Hollingsworth	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. 5076 will reduce regulatory burden on well managed smaller depository institutions by permitting a greater number of such institutions to be examined by federal financial regulators once every 18 months instead of once every 12 months.

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.

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, April 5, 2018.

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. 5076, the Small Bank Exam Cycle Improvement Act of 2018.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Sarah Puro.

Sincerely,

KEITH HALL,
Director.

Enclosure.

H.R. 5076—Small Bank Exam Cycle Improvement Act of 2018

H.R. 5076 would amend the Federal Deposit Insurance Act to increase the maximum size of certain financial institutions that are eligible to have on-site bank examinations once every 18 months instead of once every 12 months.

Current information about bank assets indicates that 600 to 700 institutions could qualify for the change in frequency of examina-

tions under H.R. 5076. Using information from the federal banking regulators, CBO expects that bank examiners who now conduct examinations on-site would instead generally examine the affected banks remotely, as would be permitted by the bill. In addition, CBO expects that enacting H.R. 5076 would not affect future costs to resolve failed financial institutions because federal regulators would continue to exercise oversight of the institutions and could impose more frequent examinations of any institution for which they deemed more oversight to be necessary. As a result, CBO estimates that the net budgetary effects of enacting H.R. 5076 would be insignificant.

Enacting H.R. 5076 could affect direct spending by federal agencies that regulate financial institutions; therefore, pay-as-you-go procedures apply. However, CBO estimates that the net effect on direct spending would be insignificant for each year. Enacting the bill would not affect revenues.

CBO estimates that enacting H.R. 5076 would not significantly increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 5076 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Sarah Puro. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995.

The Committee has determined that the bill does not contain Federal mandates on the private sector. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

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

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the bill and states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

DUPLICATION OF FEDERAL PROGRAMS

In compliance with clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision

of the bill establishes or reauthorizes: (1) a program of the Federal Government known to be duplicative of another Federal program; (2) a program included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139; or (3) a program related to a program identified in the most recent Catalog of Federal Domestic Assistance, published pursuant to the Federal Program Information Act (Pub. L. No. 95–220, as amended by Pub. L. No. 98–169).

DISCLOSURE OF DIRECTED RULEMAKING

Pursuant to section 3(i) of H. Res. 5, (115th Congress), the following statement is made concerning directed rulemakings: The Committee estimates that the bill requires no directed rulemakings within the meaning of such section.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section cites H.R. 5076 as the "Small Bank Exam Cycle Improvement Act of 2018."

Section 2. Examination cycle

This section amends the Federal Deposit Insurance Act to increase the asset threshold at which certain institutions qualify for an 18-month examination cycle.

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 italics, and existing law in which no change is proposed is shown in roman):

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 DEPOSIT INSURANCE ACT

* * * * * * *

SEC. 10. (a) The Board of Directors shall administer the affairs of the Corporation fairly and impartially and without discrimination. The Board of Directors of the Corporation shall determine and prescribe the manner in which its obligations shall be incurred and its expenses allowed and paid. The Corporation shall be entitled to the free use of the United States mails in the same manner as the executive departments of the Government. The Corporation with the consent of any Federal Reserve bank or of any board, commission, independent establishment, or executive department of the Government, including any field service thereof, may avail itself of

the use of information, services, and facilities thereof in carrying out the provisions of this Act.

(b) EXAMINATIONS.—

(1) APPOINTMENT OF EXAMINERS AND CLAIMS AGENTS.—The Board of Directors shall appoint examiners and claims agents.

(2) REGULAR EXAMINATIONS.—Any examiner appointed under paragraph (1) shall have power, on behalf of the Corporation, to examine—

(A) any insured State nonmember bank or insured State branch of any foreign bank;

(B) any depository institution which files an application with the Corporation to become an insured depository institution; and

(C) any insured depository institution in default,

whenever the Board of Directors determines an examination of any such depository institution is necessary.

(3) SPECIAL EXAMINATION OF ANY INSURED DEPOSITORY INSTITUTION.—

(A) IN GENERAL.—In addition to the examinations authorized under paragraph (2), any examiner appointed under paragraph (1) shall have power, on behalf of the Corporation, to make any special examination of any insured depository institution or nonbank financial company supervised by the Board of Governors or a bank holding company described in section 165(a) of the Financial Stability Act of 2010, whenever the Board of Directors determines that a special examination of any such depository institution is necessary to determine the condition of such depository institution for insurance purposes, or of such nonbank financial company supervised by the Board of Governors or bank holding company described in section 165(a) of the Financial Stability Act of 2010, for the purpose of implementing its authority to provide for orderly liquidation of any such company under title II of that Act, provided that such authority may not be used with respect to any such company that is in a generally sound condition.

(B) LIMITATION.—Before conducting a special examination of a nonbank financial company supervised by the Board of Governors or a bank holding company described in section 165(a) of the Financial Stability Act of 2010, the Corporation shall review any available and acceptable resolution plan that the company has submitted in accordance with section 165(d) of that Act, consistent with the nonbinding effect of such plan, and available reports of examination, and shall coordinate to the maximum extent practicable with the Board of Governors, in order to minimize duplicative or conflicting examinations.

(4) EXAMINATION OF AFFILIATES.—

(A) IN GENERAL.—In making any examination under paragraph (2) or (3), any examiner appointed under paragraph (1) shall have power, on behalf of the Corporation, to make such examinations of the affairs of any affiliate of any depository institution as may be necessary to disclose fully—

(i) the relationship between such depository institution and any such affiliate; and

(ii) the effect of such relationship on the depository institution.

(B) COMMITMENT BY FOREIGN BANKS TO ALLOW EXAMINATIONS OF AFFILIATES.—No branch or depository institution subsidiary of a foreign bank may become an insured depository institution unless such foreign bank submits a written binding commitment to the Board of Directors to permit any examination of any affiliate of such branch or depository institution subsidiary pursuant to subparagraph (A) to the extent determined by the Board of Directors to be necessary to carry out the purposes of this Act.

(5) EXAMINATION OF INSURED STATE BRANCHES.—The Board of Directors shall—

(A) coordinate examinations of insured State branches of foreign banks with examinations conducted by the Board of Governors of the Federal Reserve System under section 7(c)(1) of the International Banking Act of 1978; and

(B) to the extent possible, participate in any simultaneous examination of the United States operations of a foreign bank requested by the Board under such section.

(6) POWER AND DUTY OF EXAMINERS.—Each examiner appointed under paragraph (1) shall—

(A) have power to make a thorough examination of any insured depository institution or affiliate under paragraph (2), (3), (4), or (5); and

(B) shall make a full and detailed report of condition of any insured depository institution or affiliate examined to the Corporation.

(7) POWER OF CLAIM AGENTS.—Each claim agent appointed under paragraph (1) shall have power to investigate and examine all claims for insured deposits.

(c) In connection with examinations of insured depository institutions and any State nonmember bank, savings association, or other institution making application to become insured depository institutions, and affiliates thereof, or with other types of investigations to determine compliance with applicable law and regulations, the appropriate Federal banking agency, or its designated representatives, are authorized to administer oaths and affirmations, and to examine and and to take and preserve testimony under oath as to any matter in respect to the affairs or ownership of any such bank or institution or affiliate thereof, and to exercise such other powers as are set forth in section 8(n) of this Act.

(d) ANNUAL ON-SITE EXAMINATIONS OF ALL INSURED DEPOSITORY INSTITUTIONS REQUIRED.—

(1) IN GENERAL.—The appropriate Federal banking agency shall, not less than once during each 12-month period, conduct a full-scope, on-site examination of each insured depository institution.

(2) EXAMINATIONS BY CORPORATION.—Paragraph (1) shall not apply during any 12-month period in which the Corporation has conducted a full-scope, on-site examination of the insured depository institution.

(3) STATE EXAMINATIONS ACCEPTABLE.—The examinations required by paragraph (1) may be conducted in alternate 12-month periods, as appropriate, if the appropriate Federal banking agency determines that an examination of the insured depository institution conducted by the State during the intervening 12-month period carries out the purpose of this subsection.

(4) 18-MONTH RULE FOR CERTAIN SMALL INSTITUTIONS.—Paragraphs (1), (2), and (3) shall apply with "18-month" substituted for "12-month" if—

(A) the insured depository institution has total assets of less than [$1,000,000,000] *$3,000,000,000*;

(B) the institution is well capitalized, as defined in section 38;

(C) when the institution was most recently examined, it was found to be well managed, and its composite condition—

(i) was found to be outstanding; or

(ii) was found to be outstanding or good, in the case of an insured depository institution that has total assets of not more than $200,000,000;

(D) the insured institution is not currently subject to a formal enforcement proceeding or order by the Corporation or the appropriate Federal banking agency; and

(E) no person acquired control of the institution during the 12-month period in which a full-scope, on-site examination would be required but for this paragraph.

(5) CERTAIN GOVERNMENT-CONTROLLED INSTITUTIONS EXEMPTED.—Paragraph (1) does not apply to—

(A) any institution for which the Corporation is conservator; or

(B) any bridge depository institution, none of the voting securities of which are owned by a person or agency other than the Corporation.

(6) COORDINATED EXAMINATIONS.—To minimize the disruptive effects of examinations on the operations of insured depository institutions—

(A) each appropriate Federal banking agency shall, to the extent practicable and consistent with principles of safety and soundness and the public interest—

(i) coordinate examinations to be conducted by that agency at an insured depository institution and its affiliates;

(ii) coordinate with the other appropriate Federal banking agencies in the conduct of such examinations;

(iii) work to coordinate with the appropriate State bank supervisor—

(I) the conduct of all examinations made pursuant to this subsection; and

(II) the number, types, and frequency of reports required to be submitted to such agencies and supervisors by insured depository institutions, and the type and amount of information required to be included in such reports; and

(iv) use copies of reports of examinations of insured depository institutions made by any other Federal banking agency or appropriate State bank supervisor to eliminate duplicative requests for information; and

(B) not later than 2 years after the date of enactment of the Riegle Community Development and Regulatory Improvement Act of 1994, the Federal banking agencies shall jointly establish and implement a system for determining which one of the Federal banking agencies or State bank supervisors shall be the lead agency responsible for managing a unified examination of each insured depository institution and its affiliates, as required by this subsection.

(7) SEPARATE EXAMINATIONS PERMITTED.—Notwithstanding paragraph (6), each appropriate Federal banking agency may conduct a separate examination in an emergency or under other exigent circumstances, or when the agency believes that a violation of law may have occurred.

(8) REPORT.—At the time the system provided for in paragraph (6) is established, the Federal banking agencies shall submit a joint report describing the system to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives. Thereafter, the Federal banking agencies shall annually submit a joint report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives regarding the progress of the agencies in implementing the system and indicating areas in which enhancements to the system, including legislature improvements, would be appropriate.

(9) STANDARDS FOR DETERMINING ADEQUACY OF STATE EXAMINATIONS.—The Federal Financial Institutions Examination Council shall issue guidelines establishing standards to be used at the discretion of the appropriate Federal banking agency for purposes of making a determination under paragraph (3).

(10) AGENCIES AUTHORIZED TO INCREASE MAXIMUM ASSET AMOUNT OF INSTITUTIONS FOR CERTAIN PURPOSES.—At any time after the end of the 2-year period beginning on the date of enactment of the Riegle Community Development and Regulatory Improvement Act of 1994, the appropriate Federal banking agency, in the agency's discretion, may increase the maximum amount limitation contained in paragraph (4)(C)(ii), by regulation, from $200,000,000 to an amount not to exceed [$1,000,000,000] *$3,000,000,000* for purposes of such paragraph, if the agency determines that the greater amount would be consistent with the principles of safety and soundness for insured depository institutions.

(e) EXAMINATION FEES.—

(1) REGULAR AND SPECIAL EXAMINATIONS OF DEPOSITORY INSTITUTIONS.—The cost of conducting any regular examination or special examination of any depository institution under subsection (b)(2), (b)(3), or (d) or of any entity described in section 3(q)(2) may be assessed by the Corporation against the institu-

tion or entity to meet the expenses of the Corporation in carrying out such examinations.

(2) EXAMINATION OF AFFILIATES.—The cost of conducting any examination of any affiliate of any insured depository institution under subsection (b)(4) may be assessed by the Corporation against each affiliate which is examined to meet the Corporation's expenses in carrying out such examination.

(3) ASSESSMENT AGAINST DEPOSITORY INSTITUTION IN CASE OF AFFILIATE'S REFUSAL TO PAY.—

(A) IN GENERAL.—Subject to subparagraph (B), if any affiliate of any insured depository institution—

(i) refuses to pay any assessment under paragraph (2); or

(ii) fails to pay any such assessment before the end of the 60-day period beginning on the date the affiliate receives notice of the assessment,

the Corporation may assess such cost against, and collect such cost from, the depository institution.

(B) AFFILIATE OF MORE THAN 1 DEPOSITORY INSTITUTION.—If any affiliate referred to in subparagraph (A) is an affiliate of more than 1 insured depository institution, the assessment under subparagraph (A) may be assessed against the depository institutions in such proportions as the Corporation determines to be appropriate.

(4) CIVIL MONEY PENALTY FOR AFFILIATE'S REFUSAL TO COOPERATE.—

(A) PENALTY IMPOSED.—If any affiliate of any insured depository institution—

(i) refuses to permit an examiner appointed by the Board of Directors under subsection (b)(1) to conduct an examination; or

(ii) refuses to provide any information required to be disclosed in the course of any examination,

the depository institution shall forfeit and pay a penalty of not more than $5,000 for each day that any such refusal continues.

(B) ASSESSMENT AND COLLECTION.—Any penalty imposed under subparagraph (A) shall be assessed and collected by the Corporation in the manner provided in section 8(i)(2).

(5) DEPOSITS OF EXAMINATION ASSESSMENT.—Amounts received by the Corporation under this subsection (other than paragraph (4)) may be deposited in the manner provided in section 13.

(f) PRESERVATION OF AGENCY RECORDS.—

(1) IN GENERAL.—A Federal banking agency may cause any and all records, papers, or documents kept by the agency or in the possession or custody of the agency to be—

(A) photographed or microphotographed or otherwise reproduced upon film; or

(B) preserved in any electronic medium or format which is capable of—

(i) being read or scanned by computer; and

(ii) being reproduced from such electronic medium or format by printing any other form of reproduction of electronically stored data.

(2) TREATMENT AS ORIGINAL RECORDS.—Any photographs, microphotographs, or photographic film or copies thereof described in paragraph (1)(A) or reproduction of electronically stored data described in paragraph (1)(B) shall be deemed to be an original record for all purposes, including introduction in evidence in all State and Federal courts or administrative agencies, and shall be admissible to prove any act, transaction, occurrence, or event therein recorded.

(3) AUTHORITY OF THE FEDERAL BANKING AGENCIES.—Any photographs, microphotographs, or photographic film or copies thereof described in paragraph (1)(A) or reproduction of electronically stored data described in paragraph (1)(B) shall be preserved in such manner as the Federal banking agency shall prescribe, and the original records, papers, or documents may be destroyed or otherwise disposed of as the Federal banking agency may direct.

(g) AUTHORITY TO PRESCRIBE REGULATIONS AND DEFINITIONS.—Except to the extent that authority under this Act is conferred on any of the Federal banking agencies other than the Corporation, the Corporation may—

(1) prescribe regulations to carry out this Act; and

(2) by regulation define terms as necessary to carry out this Act.

(h) COORDINATION OF EXAMINATION AUTHORITY.—

(1) STATE BANK SUPERVISORS OF HOME AND HOST STATES.—

(A) HOME STATE OF BANK.—The appropriate State bank supervisor of the home State of an insured State bank has authority to examine and supervise the bank.

(B) HOST STATE BRANCHES.—The State bank supervisor of the home State of an insured State bank and any State bank supervisor of an appropriate host State shall exercise its respective authority to supervise and examine the branches of the bank in a host State in accordance with the terms of any applicable cooperative agreement between the home State bank supervisor and the State bank supervisor of the relevant host State.

(C) SUPERVISORY FEES.—Except as expressly provided in a cooperative agreement between the State bank supervisors of the home State and any host State of an insured State bank, only the State bank supervisor of the home State of an insured State bank may levy or charge State supervisory fees on the bank.

(2) HOST STATE EXAMINATION.—

(A) IN GENERAL.—With respect to a branch operated in a host State by an out-of-State insured State bank that resulted from an interstate merger transaction approved under section 44, or that was established in such State pursuant to section 5155(g) of the Revised Statutes of the United States, the third undesignated paragraph of section 9 of the Federal Reserve Act or section 18(d)(4) of this Act, the appropriate State bank supervisor of such host State may—

(i) with written notice to the State bank supervisor of the bank's home State and subject to the terms of any applicable cooperative agreement with the State

bank supervisor of such home State, examine such branch for the purpose of determining compliance with host State laws that are applicable pursuant to section 24(j), including those that govern community reinvestment, fair lending, and consumer protection; and

(ii) if expressly permitted under and subject to the terms of a cooperative agreement with the State bank supervisor of the bank's home State or if such out-of-State insured State bank has been determined to be in a troubled condition by either the State bank supervisor of the bank's home State or the bank's appropriate Federal banking agency, participate in the examination of the bank by the State bank supervisor of the bank's home State to ascertain that the activities of the branch in such host State are not conducted in an unsafe or unsound manner.

(B) NOTICE OF DETERMINATION.—

(i) IN GENERAL.—The State bank supervisor of the home State of an insured State bank shall notify the State bank supervisor of each host State of the bank if there has been a final determination that the bank is in a troubled condition.

(ii) TIMING OF NOTICE.—The State bank supervisor of the home State of an insured State bank shall provide notice under clause (i) as soon as is reasonably possible, but in all cases not later than 15 business days after the date on which the State bank supervisor has made such final determination or has received written notification of such final determination.

(3) HOST STATE ENFORCEMENT.—If the State bank supervisor of a host State determines that a branch of an out-of-State insured State bank is violating any law of the host State that is applicable to such branch pursuant to section 24(j), including a law that governs community reinvestment, fair lending, or consumer protection, the State bank supervisor of the host State or, to the extent authorized by the law of the host State, a host State law enforcement officer may, with written notice to the State bank supervisor of the bank's home State and subject to the terms of any applicable cooperative agreement with the State bank supervisor of the bank's home State, undertake such enforcement actions and proceedings as would be permitted under the law of the host State as if the branch were a bank chartered by that host State.

(4) COOPERATIVE AGREEMENT.—

(A) IN GENERAL.—The State bank supervisors from 2 or more States may enter into cooperative agreements to facilitate State regulatory supervision of State banks, including cooperative agreements relating to the coordination of examinations and joint participation in examinations.

(B) DEFINITION.—For purposes of this subsection, the term "cooperative agreement" means a written agreement that is signed by the home State bank supervisor and the host State bank supervisor to facilitate State regulatory supervision of State banks, and includes nationwide or

multi-State cooperative agreements and cooperative agreements solely between the home State and host State.

(C) RULE OF CONSTRUCTION.—Except for State bank supervisors, no provision of this subsection relating to such cooperative agreements shall be construed as limiting in any way the authority of home State and host State law enforcement officers, regulatory supervisors, or other officials that have not signed such cooperative agreements to enforce host State laws that are applicable to a branch of an out-of-State insured State bank located in the host State pursuant to section 24(j).

(5) FEDERAL REGULATORY AUTHORITY.—No provision of this subsection shall be construed as limiting in any way the authority of any Federal banking agency.

(6) STATE TAXATION AUTHORITY NOT AFFECTED.—No provision of this subsection shall be construed as affecting the authority of any State or political subdivision of any State to adopt, apply, or administer any tax or method of taxation to any bank, bank holding company, or foreign bank, or any affiliate of any bank, bank holding company, or foreign bank, to the extent that such tax or tax method is otherwise permissible by or under the Constitution of the United States or other Federal law.

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

(A) HOST STATE, HOME STATE, OUT-OF-STATE BANK.—The terms "host State", "home State", and "out-of-State bank" have the same meanings as in section 44(g).

(B) STATE SUPERVISORY FEES.—The term "State supervisory fees" means assessments, examination fees, branch fees, license fees, and all other fees that are levied or charged by a State bank supervisor directly upon an insured State bank or upon branches of an insured State bank.

(C) TROUBLED CONDITION.—Solely for purposes of paragraph (2)(B), an insured State bank has been determined to be in "troubled condition" if the bank—

(i) has a composite rating, as determined in its most recent report of examination, of 4 or 5 under the Uniform Financial Institutions Ratings System;

(ii) is subject to a proceeding initiated by the Corporation for termination or suspension of deposit insurance; or

(iii) is subject to a proceeding initiated by the State bank supervisor of the bank's home State to vacate, revoke, or terminate the charter of the bank, or to liquidate the bank, or to appoint a receiver for the bank.

(D) FINAL DETERMINATION.—For purposes of paragraph (2)(B), the term "final determination" means the transmittal of a report of examination to the bank or transmittal of official notice of proceedings to the bank.

(i) FLOOD INSURANCE COMPLIANCE BY INSURED DEPOSITORY INSTITUTIONS.—

(1) EXAMINATIONS.—The appropriate Federal banking agency shall, during each scheduled on-site examination required by

this section, determine whether the insured depository institution is complying with the requirements of the national flood insurance program.

(2) REPORT.—

(A) REQUIREMENT.—Not later than 1 year after the date of enactment of the Riegle Community Development and Regulatory Improvement Act of 1994 and biennially thereafter for the next 4 years, each appropriate Federal banking agency shall submit a report to the Congress on compliance by insured depository institutions with the requirements of the national flood insurance program.

(B) CONTENTS.—Each report submitted under this paragraph shall include a description of the methods used to determine compliance, the number of institutions examined during the reporting year, a listing and total number of institutions found not to be in compliance, actions taken to correct incidents of noncompliance, and an analysis of compliance, including a discussion of any trends, patterns, and problems, and recommendations regarding reasonable actions to improve the efficiency of the examinations processes.

(j) CONSULTATION AMONG EXAMINERS.—

(1) IN GENERAL.—Each appropriate Federal banking agency shall take such action as may be necessary to ensure that examiners employed by the agency—

(A) consult on examination activities with respect to any depository institution; and

(B) achieve an agreement and resolve any inconsistencies in the recommendations to be given to such institution as a consequence of any examinations.

(2) EXAMINER-IN-CHARGE.—Each appropriate Federal banking agency shall consider appointing an examiner-in-charge with respect to a depository institution to ensure consultation on examination activities among all of the examiners of that agency involved in examinations of the institution.

(k) ONE-YEAR RESTRICTIONS ON FEDERAL EXAMINERS OF FINANCIAL INSTITUTIONS.—

(1) IN GENERAL.—In addition to other applicable restrictions set forth in title 18, United States Code, the penalties set forth in paragraph (6) of this subsection shall apply to any person who—

(A) was an officer or employee (including any special Government employee) of a Federal banking agency or a Federal reserve bank;

(B) served 2 or more months during the final 12 months of his or her employment with such agency or entity as the senior examiner (or a functionally equivalent position) of a depository institution or depository institution holding company with continuing, broad responsibility for the examination (or inspection) of that depository institution or depository institution holding company on behalf of the relevant agency or Federal reserve bank; and

(C) within 1 year after the termination date of his or her service or employment with such agency or entity, know-

ingly accepts compensation as an employee, officer, director, or consultant from—

(i) such depository institution, any depository institution holding company that controls such depository institution, or any other company that controls such depository institution; or

(ii) such depository institution holding company or any depository institution that is controlled by such depository institution holding company.

(2) DEFINITIONS.—For purposes of this subsection—

(A) the term "depository institution" includes an uninsured branch or agency of a foreign bank, if such branch or agency is located in any State; and

(B) the term "depository institution holding company" includes any foreign bank or company described in section 8(a) of the International Banking Act of 1978.

(3) RULES OF CONSTRUCTION.—For purposes of this subsection, a foreign bank shall be deemed to control any branch or agency of the foreign bank, and a person shall be deemed to act as a consultant for a depository institution, depository institution holding company, or other company, only if such person directly works on matters for, or on behalf of, such depository institution, depository institution holding company, or other company.

(4) REGULATIONS.—

(A) IN GENERAL.—Each Federal banking agency shall prescribe rules or regulations to administer and carry out this subsection, including rules, regulations, or guidelines to define the scope of persons referred to in paragraph (1)(B).

(B) CONSULTATION REQUIRED.—The Federal banking agencies shall consult with each other for the purpose of assuring that the rules and regulations issued by the agencies under subparagraph (A) are, to the extent possible, consistent, comparable, and practicable, taking into account any differences in the supervisory programs utilized by the agencies for the supervision of depository institutions and depository institution holding companies.

(5) WAIVER.—

(A) AGENCY AUTHORITY.—A Federal banking agency may grant a waiver, on a case by case basis, of the restriction imposed by this subsection to any officer or employee (including any special Government employee) of that agency, and the Board of Governors of the Federal Reserve System may grant a waiver of the restriction imposed by this subsection to any officer or employee of a Federal reserve bank, if the head of such agency certifies in writing that granting the waiver would not affect the integrity of the supervisory program of the relevant Federal banking agency.

(B) DEFINITION.—For purposes of this paragraph, the head of an agency is—

(i) the Comptroller of the Currency, in the case of the Office of the Comptroller of the Currency;

(ii) the Chairman of the Board of Governors of the Federal Reserve System, in the case of the Board of Governors of the Federal Reserve System; and

(iii) the Chairperson of the Board of Directors, in the case of the Corporation.

(6) PENALTIES.—

(A) IN GENERAL.—In addition to any other administrative, civil, or criminal remedy or penalty that may otherwise apply, whenever a Federal banking agency determines that a person subject to paragraph (1) has become associated, in the manner described in paragraph (1)(C), with a depository institution, depository institution holding company, or other company for which such agency serves as the appropriate Federal banking agency, the agency shall impose upon such person one or more of the following penalties:

(i) INDUSTRY-WIDE PROHIBITION ORDER.—The Federal banking agency shall serve a written notice or order in accordance with and subject to the provisions of section 8(e)(4) for written notices or orders under paragraph (1) or (2) of section 8(e), upon such person of the intention of the agency—

(I) to remove such person from office or to prohibit such person from further participation in the conduct of the affairs of the depository institution, depository institution holding company, or other company for a period of up to 5 years; and

(II) to prohibit any further participation by such person, in any manner, in the conduct of the affairs of any insured depository institution for a period of up to 5 years.

(ii) CIVIL MONETARY PENALTY.—The Federal banking agency may, in an administrative proceeding or civil action in an appropriate United States district court, impose on such person a civil monetary penalty of not more than $250,000. Any administrative proceeding under this clause shall be conducted in accordance with section 8(i). In lieu of an action by the Federal banking agency under this clause, the Attorney General of the United States may bring a civil action under this clause in the appropriate United States district court.

(B) SCOPE OF PROHIBITION ORDER.—Any person subject to an order issued under subparagraph (A)(i) shall be subject to paragraphs (6) and (7) of section 8(e) in the same manner and to the same extent as a person subject to an order issued under such section.

(C) DEFINITIONS.—Solely for purposes of this paragraph, the "appropriate Federal banking agency" for a company that is not a depository institution or depository institution holding company shall be the Federal banking agency on

whose behalf the person described in paragraph (1) performed the functions described in paragraph (1)(B).

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