

AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 940
OFFERED BY MR. HILL OF ARKANSAS

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Fair Audits and In-
3 spections for Regulators’ Exams Act” or the “FAIR
4 Exams Act”.

5 SEC. 2. TIMELINESS OF EXAMINATIONS AND EXAMINATION
6 REPORTS.

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

10 “SEC. 1012. TIMELINESS OF EXAMINATIONS AND EXAMINA-
11 TION REPORTS.

12 “(a) TIMELINESS OF EXAMINATIONS.—A Federal fi-
13 nancial institutions regulatory agency shall complete any
14 examination of a financial institution within 270 days of
15 commencing the examination, except that such period may
16 be extended by the Federal financial institutions regu-
17 latory agency by providing written notice to the financial

1 institution describing with particularity the reasons that
2 a longer period is needed.

3 “(b) FINAL EXAMINATION REPORT.—A Federal fi-
4 nancial institutions regulatory agency shall provide a final
5 examination report to a financial institution not later than
6 90 days after the later of—

7 “(1) the exit interview for an examination of
8 the institution; or

9 “(2) the provision of additional material infor-
10 mation by the institution relating to the examina-
11 tion.

12 “(c) EXIT INTERVIEW REQUIREMENT.—Within 30
13 days of completing an examination, a Federal financial in-
14 stitutions regulatory agency shall conduct an exit inter-
15 view with the financial institution’s senior management,
16 except that such period may be extended by the Federal
17 financial institutions regulatory agency by providing writ-
18 ten notice to the institution and the Board describing with
19 particularity the reasons that a longer period is needed
20 to complete the exit interview.

21 “(d) EXAMINATION MATERIALS.—Upon the request
22 of a financial institution, the Federal financial institutions
23 regulatory agency shall include with the final report an
24 appendix listing all examination or other factual informa-

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

SEC. 3. TIMELINESS OF REQUIRED PERMISSION, REGULATORY, AND REPORTING GUIDANCE.

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

“SEC. 1013. TIMELINESS OF REQUIRED PERMISSION, REGULATORY, AND REPORTING GUIDANCE.

“(a) REQUEST FOR PERMISSION OR GUIDANCE.— With respect to an action that a financial institution is taking or is intending to take, the financial institution may request a written determination by the applicable Federal financial institutions regulatory agency of—

“(1) the agency’s non-objection to the financial institution conducting a particular activity;

“(2) the agency’s interpretation of a law or regulation; and

“(3) the agency’s interpretation of generally accepted accounting principles or accounting objectives, standards, and requirements.

“(b) CONTENTS OF REQUEST.—A request made under subsection (a) shall be in writing and contain—

“(1) the nature of the request;

1 “(2) applicable facts relating to the matter;

2 “(3) applicable law, regulation, or generally ac-
3 cepted accounting principles relating to the matter;
4 and

5 “(4) a summary of the request.

6 “(c) RESPONSE TO REQUEST.—A Federal financial
7 institutions regulatory agency receiving a request under
8 subsection (a) shall, not later than 30 days after receiving
9 the request—

10 “(1) provide the financial institution making
11 the request with written notification that the agency
12 received the request and stating whether the request
13 contains all of the information required under sub-
14 section (b); and

15 “(2) if the request does not contain all of the
16 information required under subsection (b), provide
17 the financial institution with an explanation of what
18 information is missing.

19 “(d) PROVIDING MISSING INFORMATION.—If a Fed-
20 eral financial institutions regulatory agency informs the
21 financial institution under subsection (c) that the request
22 does not contain all the information required under sub-
23 section (b), the financial institution may provide the miss-
24 ing information to the Federal financial institutions regu-
25 latory agency during the 30-day period beginning on the

1 date the financial institution receives the explanation of
2 the missing information under subsection (c).

3 “(e) DETERMINATION.—A Federal financial institu-
4 tions regulatory agency receiving a request under sub-
5 section (a) shall make a determination on the request and
6 provide the financial institution with a written notice of
7 such determination—

8 “(1) if the initial request contains the informa-
9 tion required under subsection (b), not later than
10 the end of the 60-day period beginning on the date
11 the Federal financial institutions regulatory agency
12 notifies the financial institution of the receipt of the
13 request under subsection (c); or

14 “(2) if the initial request does not contain the
15 information required under subsection (b), but the
16 financial institution provides the missing information
17 during the 30-day period described under subsection
18 (d), not later than the end of the 60-day period be-
19 ginning on the date such missing information is pro-
20 vided; or

21 “(3) if the initial request does not contain the
22 information required under subsection (b), and the
23 financial institution does not provide the missing in-
24 formation during the 30-day period described under

1 subsection (d), not later than the end of the 60-day
2 period beginning on the end of such 30-day period.

3 “(f) REPORTS AND PUBLICATION.—Each Federal fi-
4 nancial institutions regulatory agency shall, within 120
5 days after making a determination under paragraph (5),
6 publish a summary of the determination on the public
7 website of the Federal financial institutions regulatory
8 agency. Each Federal financial institutions regulatory
9 agency shall redact any confidential supervisory informa-
10 tion about the financial institution, any identifying facts
11 about the financial institution, and any sensitive person-
12 ally identifiable information, and anonymize any un-re-
13 dacted information that could, individually or in the aggre-
14 gate, identify the financial institution.”.

15 **SEC. 4. OFFICE OF INDEPENDENT EXAMINATION REVIEW.**

16 (a) IN GENERAL.—The Federal Financial Institu-
17 tions Examination Council Act of 1978 (12 U.S.C. 3301
18 et seq.), as amended by section 3, is further amended by
19 adding at the end the following:

20 **“SEC. 1014. OFFICE OF INDEPENDENT EXAMINATION RE-**
21 **VIEW.**

22 “(a) ESTABLISHMENT.—There is established in the
23 Council an Office of Independent Examination Review
24 (the ‘Office’).

1 “(b) BOARD OF INDEPENDENT EXAMINATION RE-
2 VIEW.—

3 “(1) IN GENERAL.—The head of the Office
4 shall be the Board of Independent Examination Re-
5 view, which shall be comprised of 3 members, ap-
6 pointed by the President, by and with the advice and
7 consent of the Senate.

8 “(2) QUALIFICATIONS.—The President shall
9 appoint the 1 member of the Board from each of the
10 following classes of individuals:

11 “(A) Individuals who have been employed
12 by a Federal financial institutions regulatory
13 agency.

14 “(B) Individuals who—

15 “(i) are a licensed attorney or a cer-
16 tified public accountant authorized to prac-
17 tice under the laws of a State, the District
18 of Columbia, or a territory of the United
19 States;

20 “(ii) have either academic or private
21 sector experience;

22 “(iii) have relevant work-related expe-
23 rience with financial institutions; and

24 “(iv) are not, and were not during the
25 previous 10-year period, employed by a

1 Federal banking agency, a Federal reserve
2 bank, or the National Credit Union Ad-
3 ministration.

4 “(C) Individuals—

5 “(i) with at least 10 years private sec-
6 tor financial services senior management-
7 level experience; and

8 “(ii) recommended by—

9 “(I) an insured depository insti-
10 tution;

11 “(II) an insured credit union; or

12 “(III) a trade association for
13 such institutions or credit unions.

14 “(3) PROHIBITION ON CERTAIN INDIVIDUALS
15 SERVING AS A BOARD MEMBER.—The President may
16 not appoint an individual as a member of the Board
17 if the individual—

18 “(A) is, or was during the previous 2-year
19 period, employed by a Federal financial institu-
20 tions regulatory agency or a Federal reserve
21 bank;

22 “(B) is, or was during the previous 2-year
23 period, employed by a financial institution; or

24 “(C) is reporting, or was reporting in the
25 past 5 years, directly or indirectly to a Federal

1 financial institutions regulatory agency official
2 who makes material supervisory determinations.

3 “(4) CONSULTATION.—In appointing members
4 of the Board, the President shall consult with the
5 Federal financial institutions regulatory agencies
6 and financial institutions.

7 “(5) TERM.—

8 “(A) IN GENERAL.—Each member of the
9 Board shall serve for a term of 3 years.

10 “(B) TERM LIMITATION.—No individual
11 may serve more than 2 full terms on the Board.

12 “(c) STAFFING.—The Board is authorized to hire
13 staff to support the activities of the Office of Independent
14 Examination Review. One-fifth of the costs and expenses
15 of the Office, including the salaries of its employees, shall
16 be paid by each of the Federal financial institutions regu-
17 latory agencies. Annual assessments for such share shall
18 be levied by the Council based upon its projected budget
19 for the year, and additional assessments may be made dur-
20 ing the year if necessary.

21 “(d) DUTIES.—The Board shall—

22 “(1) receive and, at the discretion of the Board,
23 investigate complaints from financial institutions,
24 their representatives, or another entity acting on be-

1 half of such institutions, concerning examinations,
2 examination practices, or examination reports;

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

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

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

19 “(5) carry out an independent review of any su-
20 pervisory appeal initiated under section 1015; and

21 “(6) report annually to the Committee on Fi-
22 nancial Services of the House of Representatives, the
23 Committee on Banking, Housing, and Urban Affairs
24 of the Senate, and the Council, on the reviews car-
25 ried out pursuant to paragraphs (3) and (5), includ-

1 ing compliance with the requirements set forth in
2 section 1013 regarding timeliness of examination re-
3 ports, and the Board’s recommendations for im-
4 provements in examination procedures, practices,
5 and policies.

6 “(e) CONFIDENTIALITY.—The Board and the Council
7 shall keep confidential—

8 “(1) all meetings, discussions, and information
9 provided by financial institutions and Federal finan-
10 cial institutions regulator agencies that involve con-
11 fidential supervisory information or privileged infor-
12 mation;

13 “(2) all information and communications ex-
14 changed between a financial institution and the Of-
15 fice of Independent Examination Review; and

16 “(3) all information and communications ex-
17 changed between a Federal financial institutions reg-
18 ulator agency and the Office of Independent Exam-
19 ination Review.”.

20 (b) DEFINITIONS.—Section 1003 of the Federal Fi-
21 nancial Institutions Examination Council Act of 1978 (12
22 U.S.C. 3302) is amended—

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

25 (2) by adding at the end the following:

1 “(4) the term ‘Board’ means the Board of Inde-
2 pendent Examination Review established under sec-
3 tion 1014(b);

4 “(5) the term ‘material supervisory determina-
5 tion’ has the meaning given such term in section
6 309(c) of the Riegle Community Development and
7 Regulatory Improvement Act of 1994;

8 “(6) the term ‘insured depository institution’
9 has the meaning given that term in section 3 of the
10 Federal Deposit Insurance Act; and

11 “(7) the term ‘insured credit union’ has the
12 meaning given that term in section 101 of the Fed-
13 eral Credit Union Act.”.

14 **SEC. 5. RIGHT TO INDEPENDENT REVIEW OF MATERIAL SU-**
15 **PERVISORY DETERMINATIONS.**

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

20 **“SEC. 1015. RIGHT TO INDEPENDENT REVIEW OF MATERIAL**
21 **SUPERVISORY DETERMINATIONS.**

22 “(a) IN GENERAL.—A financial institution shall have
23 the right to obtain an independent review, as described
24 in this section, of a material supervisory determination
25 contained in a final report of examination.

1 “(b) NOTICE.—

2 “(1) TIMING.—A financial institution seeking
3 review of a material supervisory determination under
4 this section shall file a written notice with the Board
5 within 60 days after receiving the final report of ex-
6 amination that is the subject of such review.

7 “(2) EXTENSION.—The institution may file a
8 written request with the Board for an extension of
9 the 60-day time period described under paragraph
10 (1), which shall state good cause for granting the ex-
11 tension. Such request shall be granted in the sole
12 discretion of the Board.

13 “(3) IDENTIFICATION OF DETERMINATION.—
14 The written notice shall—

15 “(A) identify the material supervisory de-
16 termination that is the subject of the requested
17 independent examination review;

18 “(B) state the reasons why the institution
19 believes that the material supervisory deter-
20 mination is incorrect or should otherwise be
21 modified; and

22 “(C) include—

23 “(i) a clear and complete statement of
24 all relevant facts and issues;

1 “(ii) all arguments that the institution
2 wishes to present; and

3 “(iii) all relevant and material docu-
4 ments in the possession of the institution
5 that the institution wishes to be consid-
6 ered.

7 “(4) INFORMATION MADE AVAILABLE TO INSTI-
8 TUTION.—An institution seeking an appeal of a ma-
9 terial supervisory determination may, not later than
10 7 days after receiving the final examination report,
11 request that the Federal financial institutions regu-
12 latory agency that made the material supervisory de-
13 termination provide the institution with all examina-
14 tion and factual information relied upon by the
15 agency in making the material supervisory deter-
16 mination. The agency shall provide that information
17 to the institution not later than 14 days after receiv-
18 ing the request.

19 “(c) DETERMINATION; RIGHT TO HEARING.—

20 “(1) IN GENERAL.—The Board shall—

21 “(A) determine the merits of the appeal on
22 the record, including whether the material su-
23 pervisory determination being appealed should
24 be upheld, canceled, or modified; or

1 “(B) at the election of the financial institu-
2 tion, conduct a hearing, which shall take place
3 not later than 60 days after the petition for re-
4 view is received by the Board.

5 “(2) RIGHT TO OBTAIN TESTIMONY.—A finan-
6 cial institution electing for a hearing under para-
7 graph (1)(B) shall have the right the obtain testi-
8 mony under oath from agency employees and obtain
9 documents and other evidence at the hearing, or in
10 advance of the hearing, according to procedures in-
11 stituted by the Board consistent with those set forth
12 under sections 556 and 557 of title 5, United States
13 Code.

14 “(3) BASIS OF DECISION.—The Board shall
15 issue a written decision based upon the record of the
16 examination, supplemented by the record established
17 at any hearing.

18 “(4) STANDARD OF REVIEW.—The Board’s re-
19 view of a material supervisory determination being
20 appealed under this subsection shall be de novo, and
21 the Board shall not defer to the opinions of the ex-
22 aminer or agency, but shall independently determine
23 the appropriateness of the agency’s material super-
24 visory determination based upon the relevant stat-

1 utes, regulations, other appropriate guidance, and
2 the evidentiary record.

3 “(d) FINAL DECISION.—A decision by the Board on
4 an independent review under this section shall—

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

7 “(2) be deemed final agency action and shall
8 bind the agency whose supervisory determination
9 was the subject of the review and the financial insti-
10 tution requesting the review.

11 “(e) RIGHT TO JUDICIAL REVIEW.—A financial insti-
12 tution shall have the right to petition for review of a Board
13 determination made under subsection (d) by filing a peti-
14 tion for review not later than 60 days after the date on
15 which the decision is made in the United States Court of
16 Appeals for the District of Columbia Circuit or the Circuit
17 in which the financial institution is located.

18 “(f) REFERRAL OF VIOLATIONS.—If the Board, in
19 carrying out this section, determines that a financial insti-
20 tution has violated a law or regulation, the Board shall
21 refer such determination to the applicable Federal finan-
22 cial institutions regulatory agency.

23 “(g) ANNUAL REPORT.—

24 “(1) IN GENERAL.—The Board shall report an-
25 nually to the Committee on Financial Services of the

1 House of Representatives, the Committee on Bank-
2 ing, Housing, and Urban Affairs of the Senate, and
3 the Council on actions taken under this section, in-
4 cluding the types of issues that the Board has re-
5 viewed and the results of those reviews, including in-
6 formation on each final determination with respect
7 to a material supervisory determination.

8 “(2) CONFIDENTIALITY.—In reporting under
9 paragraph (1), the Board shall redact information
10 about individual financial institutions and any con-
11 fidential or privileged information shared by finan-
12 cial institutions, and shall anonymize any un-re-
13 dacted information that could, in the aggregate,
14 identify a financial institution.

15 “(h) RETALIATION PROHIBITED.—

16 “(1) IN GENERAL.—A Federal financial institu-
17 tions regulatory agency may not—

18 “(A) retaliate against a financial institu-
19 tion, including service providers, or any institu-
20 tion-affiliated party, for exercising appellate
21 rights under this section; or

22 “(B) delay or deny any agency action that
23 would benefit a financial institution or any in-
24 stitution-affiliated party on the basis that an

1 appeal under this section is pending under this
2 section.

3 “(2) RETALIATION.—For purposes of this sub-
4 section, retaliation includes delaying consideration
5 of, or withholding approval of, any request, notice,
6 or application that otherwise would have been ap-
7 proved, but for the exercise of a financial institu-
8 tion’s rights under this section.

9 “(i) RULEMAKING.—The Board shall issue rules to
10 establish procedures for hearings described under this sec-
11 tion, including that—

12 “(1) a financial institution may appear at the
13 hearing personally or through counsel;

14 “(2) a financial institution may provide an oral
15 and written presentation at the hearing;

16 “(3) the Board may ask questions of any per-
17 son participating in the hearing;

18 “(4) the hearing may not involve—

19 “(A) a cross-examination; or

20 “(B) discovery;

21 “(5) the hearing shall not be governed by the
22 Federal Rules of Evidence; and

23 “(6) the Board shall have a verbatim transcript
24 of the hearing prepared.

1 “(j) SAFETY AND SOUNDNESS EXCEPTION.—The ap-
2 peal of a material supervisory determination by a financial
3 institution under this section shall not affect the authority
4 of a Federal financial institutions regulatory agency to en-
5 force the material supervisory determination or to take an
6 action based on such material supervisory determination,
7 if the Federal financial institutions regulatory agency de-
8 termines that such enforcement or action is necessary to
9 ensure the safety and soundness of the financial institu-
10 tion.”.

11 **SEC. 6. ADDITIONAL AMENDMENTS.**

12 (a) REGULATOR APPEALS PROCESS, OMBUDSMAN,
13 AND ALTERNATIVE DISPUTE RESOLUTION.—

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

17 (A) in the heading, by striking “**REGU-**
18 **LATORY APPEALS PROCESS, OMBUDS-**
19 **MAN,**” and inserting “**OMBUDSMAN**”;

20 (B) by striking subsections (a), (b), and
21 (c);

22 (C) by redesignating subsections (d), (e),
23 (f), and (g) as subsections (a), (b), (c), and (d),
24 respectively; and

25 (D) in subsection (b), as so redesignated—

1 (i) in paragraph (2)—

2 (I) in subparagraph (B), by
3 striking “and” at the end;

4 (II) in subparagraph (C), by
5 striking the period and inserting “;
6 and”; and

7 (III) by adding at the end the
8 following:

9 “(D) ensure that appropriate safeguards
10 exist for protecting any party from retaliation
11 by any agency for exercising rights under this
12 subsection.”; and

13 (ii) by adding at the end the fol-
14 lowing:

15 “(6) RETALIATION.—For purposes of this sub-
16 section, retaliation includes delaying consideration
17 of, or withholding approval of, any request, notice,
18 or application that otherwise would have been ap-
19 proved, but for the exercise of a financial institu-
20 tion’s rights under this section.”.

21 (E) in paragraph (1)(A) of subsection (c),
22 as so redesignated—

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

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

3 (iii) by adding at the end the fol-
4 lowing:

5 “(iv) any issue specifically listed in an
6 exam report as a matter requiring atten-
7 tion by the institution’s management or
8 board of directors; and

9 “(v) any suspension or removal of an
10 institution’s status as eligible for expedited
11 processing of applications, requests, no-
12 tices, or filings on the grounds of a super-
13 visory or compliance concern, regardless of
14 whether that concern has been cited as a
15 basis for a material supervisory determina-
16 tion or matter requiring attention in an ex-
17 amination report, provided that the con-
18 duct at issue did not involve violation of
19 any criminal law; and”.

20 (2) EFFECT.—Nothing in this subsection af-
21 fects the authority of an appropriate Federal bank-
22 ing agency or the National Credit Union Adminis-
23 tration Board to take enforcement or other super-
24 visory action.

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

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

11 (1) in section 1003 (12 U.S.C. 3302)—

12 (A) by striking paragraph (1) and insert-
13 ing the following:

14 “(1) the term ‘Federal financial institutions
15 regulatory agencies’—

16 “(A) means the Office of the Comptroller
17 of the Currency, the Board of Governors of the
18 Federal Reserve System, the Federal Deposit
19 Insurance Corporation, and the National Credit
20 Union Administration; and

21 “(B) includes the Bureau of Consumer Fi-
22 nancial Protection for purposes of sections
23 1012 through 1015;”; and

24 (B) in paragraph (3), by striking the semi-
25 colon at the end and inserting “, except that for

1 purposes of sections 1012 through 1015, the
2 term ‘financial institution’ does not include a
3 credit union that is not an insured credit
4 union.”;

5 (2) in section 1004(a)(4) (12 U.S.C. 3303), by
6 striking “Consumer Financial Protection Bureau”
7 and inserting “Bureau of Consumer Financial Pro-
8 tection”; and

9 (3) in section 1005 (12 U.S.C. 3304)—

10 (A) by striking “One-fifth” and inserting
11 “One-fourth”; and

12 (B) by inserting “described under section
13 1003(1)(A)” after “agencies”.

