

Financial Institutions Examination Fairness and Reform Act

House Financial Services Financial Institutions Subcommittee Chairman Shelley Moore Capito (R-WV) and Ranking Member Carolyn Maloney (D-NY) have introduced ABA-supported legislation – [H.R. 3461, the Financial Institutions Examination Fairness and Reform Act](#) – to address widespread concerns with bank examinations. ABA is actively encouraging Members to sign on to the bill as [cosponsors](#).

The bill would ensure that financial institutions receive timely examination reports, including full documentation of the information regulators used to make their determinations, and would clarify certain examination standards. For example, it would restrict the placement of commercial loans in nonaccrual status solely because collateral has deteriorated in value, and would not require new appraisals on commercial loans unless new funds are involved.

H.R. 3461 also would establish an Independent Office of Examination Ombudsman within the Federal Financial Institutions Examination Council (FFIEC), and would create a timely, independent, and fair process for financial institutions to appeal examination decisions free from retaliation from the prudential regulators.

Although no single piece of legislation could deal with the wide range of concerns bankers have about the current supervisory environment, H.R. 3461 takes a major step toward a more balanced and transparent approach regarding how, and on what basis, the regulatory agencies make decisions in the examination process. The following is a quick summary of the major provisions of the Capito-Maloney bill.

(1) **Timely Examination Reports.** Require regulators to provide bankers with timely examination reports and more information about the facts upon which the agency relied in making its examination decisions. Instead of receiving examination reports as long as 10 months after the examination is completed, unless the institution is subject to a resident examination program the regulators would be required to finish an examination within nine months and to provide a final examination report not later than 60 days after the examination exit interview (this could be extended if supplemental material needs to be filed).

(2) **Clear Exam Standards.** Provide clarity and consistency regarding how the regulatory agencies and their examiners treat loans with respect to nonaccrual, appraisal, classification, and capital issues. In particular:

- A commercial loan could not be placed in nonaccrual status solely because the collateral has deteriorated in value.
- A modified or restructured commercial loan would be removed from nonaccrual status if the borrower has a demonstrated ability to perform on such loan over a maximum period of six-months. For loans on a quarterly or longer repayment schedule, the period shall be a maximum of three consecutive repayment periods.
- A new appraisal would not be required on a commercial loan unless an advance of new funds is involved.
- In classifying a commercial loan in which there has been deterioration in collateral value, the amount to be classified would be the portion of the deficiency relating to the decline in

collateral value and repayment capacity of the borrower.

- Well-capitalized institutions would not be required to raise additional capital in excess of what is required by regulation in lieu of actions prohibited or required above.
- The definition of “material supervisory determination” would be modified to include any issue listed in the exam report as a “matter requiring attention” by a bank’s management or board of directors. This is to ensure that an overly narrow interpretation of what constitutes a material supervisory determination does not prevent the appeal of regulatory decisions that would have a significant impact on a bank.
- The appropriate federal financial institutions regulatory agencies would be required to develop and apply identical definitions and reporting requirements for non-accrual loans.

The more precise and understandable loan classification standards that would be put in place by this section would be likely to have an immediate impact on lending capacity. These provisions would help ensure that bank examiners apply the rules in a consistent and uniform manner across the country and help reduce inconsistent examination results that have impaired performing loans and forced banks to withdraw capital from the market. The additional capital would be available for more lending and would allow businesses to grow and create jobs.

(3) Exam Consistency and Quality. Create a new, independent inter-agency Examination Ombudsman within the Federal Financial Institutions Examination Council (FFIEC) to ensure the consistency and quality of all examinations. Currently there is no FFIEC Ombudsman. The Examination Ombudsman would investigate complaints from banks about examinations; review the examination procedures of the agencies to ensure that written policies are being followed consistently in the field; conduct a regular program of examination quality assurance for all types of examinations conducted by the regulatory agencies; process supervisory appeals (see below) and report annually to Congress on these issues.

(4) Expedited Appeal of Examination Decisions. Institute an expedited process for banks to appeal examination decisions without fear of reprisals.

- A bank would have the right to appeal a material supervisory determination by filing a written notice with the Examination Ombudsman within 60 days after receiving a final examination report.
- A hearing would be held before a specialized Administrative Law Judge (ALJ) that is an independent entity not subject to control by the agency no later than 60 days after the notice is received by the Ombudsman.
- The ALJ would make a recommendation to the Ombudsman based upon an independent review of the appropriateness of the agency’s decision in light of the relevant statutes, regulations and other appropriate guidance.
- A final decision by the Ombudsman on an appeal is due not later than 60 days after the hearing record has been closed, and it binds the agency and the bank making the appeal.

(5) Retaliation Prohibited. Specifically prohibit regulatory agencies from retaliating against a bank, including its service providers and any institution-affiliated party. Further, an agency could not delay or deny action that would benefit the bank or any institution-affiliated party on the basis that an appeal is pending.