



H.R. 4545: Financial Institutions Examination Fairness and Reform Act (Rep. Tipton, R-CO)

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FLOOR SCHEDULE:

Expected to be considered March 15, 2018, under a [structured rule](#).

The rule would consider as adopted an [amendment](#) that is meant to offset the cost of the bill.

The rule makes in order one amendment that is described below.

The rule also provides for consideration of H.R. 1116, the TAILOR Act of 2017, and H.R. 4263, the Regulation A+ Improvement Act of 2017.

TOPLINE SUMMARY:

[H.R. 4545](#) would establish an Office of Independent Examination Review to review material supervisory determinations by financial regulatory agencies if requested by a financial institution.

COST:

The [Congressional Budget Office](#) (CBO) estimates that enacting “H.R. 4545 would increase net direct spending by \$82 million and reduce revenues by \$41 million over the 2018-2027 period. In total, CBO estimates, enacting H.R. 4545 would increase budget deficits by \$123 million over the 2018-2027 period. Implementing H.R. 4545 would not affect spending subject to appropriation.”

The rule considers as adopted an [amendment](#) that would reduce the limitation on the Federal Reserve Surplus Fund by \$ 175,715,000 (from \$7.5 billion to \$ 7,324,285,000). Any amounts of the Surplus Fund that exceed the limit are required to be transferred to the General Fund of the Treasury. This amendment is meant to offset the cost of the bill. However, some conservatives may be concerned that transfers from the Federal Reserve Surplus Fund can be considered a budget gimmick. According to the [Committee for a Responsible Federal Budget](#), this type of transfer “results in one-time savings on paper but no actual change in the amount of revenue the Treasury would receive over the long term.” [Section 5111](#) of the FY 2018 Budget Resolution prohibits the use of the Federal Reserve Surplus Fund from being counted as an offset in the House of Representatives.

CONSERVATIVE CONCERNS:

- **Expand the Size and Scope of the Federal Government?** The bill would establish an Office of Independent Examination Review to adjudicate appeals of supervisory decisions by financial regulatory agencies.
- **Encroach into State or Local Authority?** No.

- **Delegate Any Legislative Authority to the Executive Branch?** No.
- **Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** No.

DETAILED SUMMARY AND ANALYSIS:

H.R. 4545 would require a financial regulatory agency to provide a final examination report within 60 days of the exit interview for an examination of a financial institution or the provision of additional information to the agency by the financial institution relating to the examination.

The bill would establish an Office of Independent Examination Review within the Federal Financial Institutions Examination Council (FFIEC). The Director of the Office would be appointed by the FFIEC to a five year term. The Office would be required to receive and investigate complaints from financial institutions regarding examinations and examination practices. The Office would also be required to hold regular meetings designed to encourage discussion by financial institutions regarding examination procedures.

The Office would further be required to adjudicate supervisory appeals. The term “material supervisory determination” is defined in [current law](#) as determinations relating to examination ratings; the adequacy of loan loss reserve provisions; and loan classifications on loans that are significant to an institution. The bill would ensure the right of a financial institution to obtain an independent review of a material supervisory determination. A financial institution seeking a review would be required to submit a request to the Director of the Office of Independent Examination Review within 6 days of receiving a final report of examination. The Director would be required to determine the merits of the appeal. The financial institution would be able to request that the appeal be referred to an Administrative Law Judge to issue a proposed decision to the Director. In making a decision or recommendation, the Director or Administrative Law Judge would be prohibited from deferring to the opinions of the financial regulatory agency, and would instead be required to conduct a *de novo* review to independently determine the appropriateness of the agency’s decision. The Director would be required to issue a decision within 60 days after the record has been closed.

If a financial regulatory agency believes the Director’s decision would “pose an imminent threat to the safety and soundness of the financial institution,” the agency may request that the FFIEC review the decision. The FFIEC would be required to make a final determination within 30 days.

The bill would ensure the right of a financial institution to petition for review of a final determination by filing a Petition for Review with the U.S. Court of Appeals for the District of Columbia or the Circuit in which the financial institution is located.

The bill would prohibit a financial regulatory agency from retaliating against a financial institution for exercising its rights under the bill.

AMENDMENTS:

1. [Waters \(D-CA\)](#): Would limit the bill’s review process to only be available to community financial institutions with \$10 billion or less in consolidated assets.

COMMITTEE ACTION:

H.R. 4545 was introduced on December 4, 2017, and referred to the House Financial Services Committee. The Committee marked up and reported the bill on December 13, 2017, by a 50 - 10 vote.

ADMINISTRATION POSITION:

No Statement of Administration Policy is available at this time.

CONSTITUTIONAL AUTHORITY:

“Congress has the power to enact this legislation pursuant to the following: Article I, Section 8, Clause 3: “The Congress shall have power . . . To regulate commerce with foreign nations, and among the several states, and with the Indian tribes.””

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