



March 8, 2018

Dear Senator,

On behalf of Americans for Financial Reform, we urge you to vote against Moran amendment 2140, adding “The Financial Institutions Examination Fairness Act” to S 2155.¹ “Examination fairness” may sound innocuous, but make no mistake – this is radical legislation that would put unprecedented new limits on the powers of bank examiners. The impact of this legislation in weakening bank supervision would be especially great at the nation’s largest banks. Its effect would be to substantially increase the risk of systemic problems, and of unfair and predatory treatment of consumers.

The “Examination Fairness Act” would grant banks the right to appeal any supervisory determination made by any bank regulatory agency, including the Consumer Financial Protection Bureau (CFPB), to a new “Office of Independent Examination Review” that is outside of any regulatory agency. Upon appeal by a supervised bank, this new office would be required to undertake a de novo review of the agency’s supervisory decision. No deference to the initial examination findings or the supervisory agency’s judgment would be required in this review.

This new appeals process is an addition to formal appeals processes and ombudsmen already present at the banking agencies. The agencies affected by this legislation—including the CFPB, FDIC, OCC, Federal Reserve, and National Credit Union Administration—each already have an agency ombudsman and an intra-agency formal review and appeals process. In addition, banks are already free to bring a court challenge to any formal regulatory enforcement action.

By layering an entirely new de novo appeals process on top of existing processes, this bill would greatly increase the ability of banks to resist supervisory oversight and ignore or delay changes called for by supervisors. The impact would be most pronounced at the largest banks, who can receive dozens or hundreds of material findings from every examination. The ability to appeal every one of those material supervisory findings, or just to threaten to appeal them, would create an enormous new barrier to effective supervision of big banks.

The bank examination process has been the first line of regulatory defense against threats to bank safety and soundness since at least the 1930s. The “Examination Fairness Act” would create unprecedented new barriers to the effectiveness of bank examiners by empowering banks to delay, resist, or overturn their decisions. In a practical sense, this would make bank regulation even weaker than it was before the 2008 crisis. It would be harmful to effective regulatory oversight in areas ranging from basic safety and soundness supervision to enforcement of key consumer protections that make our financial markets fairer.

¹ Americans for Financial Reform is an unprecedented coalition of more than 200 national, state and local groups who have come together to reform the financial industry. Members of our coalition include consumer, civil rights, investor, retiree, community, labor, faith based and business groups. A list of coalition members is available at <http://ourfinancialsecurity.org/about/our-coalition/>

The “Examination Fairness Act” thus goes beyond overturning post-financial crisis regulations to make bank oversight even weaker than it was prior to 2008. As we reach the 10th anniversary of the greatest financial crisis in American history, it should be obvious that this is completely the wrong direction for Congress to take. Since the crisis, fresh scandals like those at Wells Fargo have continued to remind us that we need effective supervision to prevent pervasive and harmful abuse of consumers.

We urge you to reject this legislation by voting against Moran Amendment 2140 to S 2155.

Thank you for your attention to this matter. For more information please contact AFR’s Policy Director, Marcus Stanley, at marcus@ourfinancialsecurity.org or 202-466-3672.

Sincerely,

Americans for Financial Reform