

MILLER (712) 001
MOORE (KS)

F:\M\W\FS111\HR3126\AMDT2E_001.XML

[Mr. Donnelly of
Indiana; Mr. Foster
of Illinois; Mr.
Perlmutter of
Colorado; Mr.
Maffei of New
York; Ms. Kosmas
of Florida; Mr.
Peters of Michigan;
Mr. Green of
Texas; Mr.
Dreihaus of
Ohio; Mr. Clavel
of Missouri; Mr.
Carson of Indiana
Mr. Foster
of Illinois,
Mr. Hinzsd,
Ms. Greier

AMENDMENT TO THE DISCUSSION DRAFT OF
SEPTEMBER 25, 2009 [H.R. 3126]
OFFERED BY MR. MILLER OF NORTH CAROLINA
AND MR. MOORE OF KANSAS

Page 13, after line 2, insert the following new para-
graph and redesignate subsequent paragraphs accord-
ingly:

1 (21) INSURED CREDIT UNION.—The term “in-
2 sured credit union” has the same meaning as in sec-
3 tion 101 of the National Credit Union Act.

Page 37, after line 15, insert the following new
clause and redesignate the subsequent clause accordingly:

4 “(i) LIMITATION ON CERTAIN FEES.—
5 The Agency shall not assess examination
6 fees on an institution referred to in section
7 123(a), or an institution whose examina-
8 tion responsibilities have been delegated to
9 an appropriate agency, pursuant to section
10 122(c)(9).”

Page 54, line 7, strike “The” and insert “Except as
provided under section 123, the”.

Page 54, line 8, strike “, or require reports from,”.

Page 55, after line 17, insert the following new paragraph and redesignate subsequent paragraphs accordingly:

1 (4) REPORTS.—The Director may require re-
2 ports from a covered person for purposes of ensuring
3 compliance with the requirements of this title, the
4 enumerated consumers laws, and any regulation pre-
5 scribed by the Director under this title or pursuant
6 to the authorities transferred under subtitles F and
7 H, and enforcing compliance with such require-
8 ments, and enforcing compliance with such require-
9 ments.

Page 58, after line 8, insert the following new paragraph:

10 (9) DELEGATION.—
11 (A) IN GENERAL.—The Director may dele-
12 gate the examination authorities of the Agency
13 under this title to any appropriate agency, as
14 defined in section 123, for any insured depository
15 institution or insured credit union that is
16 not subject to section 123 upon a petition by an
17 appropriate agency.

1 (B) STANDARD FOR DELEGATION.—The
2 Director shall provide such delegation if, in the
3 Director's sole discretion, the Director deter-
4 mines that—

5 (i) the delegation is consistent with
6 the public interest;

7 (ii) the appropriate agency is capable
8 of enforcing compliance with this Act, and
9 with any regulation prescribed under this
10 Act; and

11 (iii) such capability is comparable to
12 or superior to the capability of the Agency,
13 in terms of expertise, demonstrated com-
14 mitment, and overall effectiveness, in en-
15 forcing such compliance.

16 (C) EFFECT OF DELEGATION.—The in-
17 sured depository institution or insured credit
18 union shall be subject to the examination pro-
19 cess described in section 123(b).

20 (D) NO EFFECT ON ENFORCEMENT.—The
21 Director's delegation authority under this para-
22 graph shall not apply to the Director's enforce-
23 ment responsibilities under subsection (e).

Page 58, line 12, after "other than" insert "section
123 and".

Page 59, after line 23, insert the following new paragraph:

1 (4) INSTITUTIONS SUBJECT TO SPECIAL EXAM-
2 INATION AND ENFORCEMENT PROCEDURES.—This
3 subsection shall not apply to institutions subject to
4 section 123.

Page 60, after line 23, insert the following new section and renumber subsequent sections accordingly:

5 **SEC. 123. EXAMINATION AND ENFORCEMENT FOR SMALL**
6 **BANKS, THRIFTS, AND CREDIT UNIONS.**

7 (a) SCOPE OF INSTITUTIONS SUBJECT TO THIS SEC-
8 TION.—

9 (1) INSTITUTIONS COVERED.—This section
10 shall apply to—

11 (A) any insured depository institution with
12 total assets of \$10,000,000,000 or less; or

13 (B) any insured credit union with total as-
14 sets of \$1,500,000,000 or less.

15 (2) APPROPRIATE AGENCY.—For purposes of
16 this title, the term “appropriate agency” means—

17 (A) in the case of an insured depository in-
18 stitution, the appropriate Federal banking
19 agency as such term is defined in section 3 of
20 the Federal Deposit Insurance Act;

1 (B) in the case of an insured credit union,
2 the National Credit Union Administration.

3 (b) EXAMINATIONS.—

4 (1) IN GENERAL.—The appropriate agency
5 shall on a periodic basis examine, or require reports
6 from, an institution referred to in subsection (a) for
7 purposes of ensuring compliance with the require-
8 ments of this title, the enumerated consumer laws,
9 and any regulation prescribed by the Director under
10 this title or pursuant to the authorities transferred
11 under subtitles F and H, and enforcing compliance
12 with such requirements.

13 (2) AGENCY ROLE IN EXAMINATIONS.—

14 (A) The appropriate agency shall provide
15 all reports, records, and documentation related
16 to the examination process to the Agency on a
17 timely and ongoing basis.

18 (B) The Director and Agency may, at its
19 discretion, include an examiner on any examina-
20 tion conducted under paragraph (1). The ap-
21 propriate agency shall involve such Agency ex-
22 aminer in the entire examination process, in-
23 cluding setting the scope of an examination,
24 participating in the examination, and providing

1 input on the examination report, matters re-
2 quiring attention and examination ratings.

3 (c) ENFORCEMENT.—

4 (1) IN GENERAL.—Notwithstanding any other
5 provision of this title other than this subsection, the
6 appropriate agency shall have primary authority to
7 enforce violations identified at institutions referred
8 to in subsection (a) of any of the requirements of
9 this title, the enumerated consumers laws, and any
10 regulation prescribed by the Director under this title
11 or pursuant to the authorities transferred under
12 subtitles F and H.

13 (2) COORDINATION WITH APPROPRIATE AGEN-
14 CY.—

15 (A) REFERRAL.—

16 (i) IN GENERAL.—The Agency may
17 recommend in writing to the appropriate
18 agency that the appropriate agency initiate
19 an enforcement proceeding to the extent
20 the appropriate agency is authorized by
21 that Federal law or by this title.

22 (ii) EXPLANATION.—Any rec-
23 ommendation under clause (i) shall be ac-
24 companied by a written explanation of the

1 concerns giving rise to the recommenda-
2 tion.

3 (B) BACKSTOP ENFORCEMENT AUTHORITY
4 OF AGENCY.—If the appropriate agency does
5 not, before the end of the 120-day period begin-
6 ning on the date on which the appropriate
7 agency receives a recommendation under sub-
8 paragraph (A), initiate an enforcement pro-
9 ceeding, the Agency may initiate an enforce-
10 ment proceeding as permitted by Federal law.

11 (d) ACTIONS ARISING OUT OF CONSUMER COM-
12 PLAINT SYSTEM.—Notwithstanding any provision of this
13 section, if through the consumer complaint system admin-
14 istered by the Agency under section 115 (c) (3), the Direc-
15 tor has reasonable cause to believe that an institution re-
16 ferred to in subsection (a) demonstrates noncompliance
17 with any provision of this title, the enumerated consumer
18 laws, or any regulation prescribed by the Director under
19 this title or pursuant to the authorities transferred under
20 subtitles F and H, the Director may directly investigate
21 such institution for such noncompliance and take any ac-
22 tion permitted under subtitle E that the Director deems
23 appropriate.

24 (e) REMOVAL OF APPROPRIATE AGENCY FOR PAR-
25 TICULAR INSTITUTION.—

1 (1) HEIGHTENED SUPERVISION.—The Direc-
2 tor—

3 (A) may provide notice to an appropriate
4 agency that the Director is considering issuing
5 a removal order under paragraph (2); and

6 (B) shall have an Agency examiner partici-
7 pate in the examination process under sub-
8 section (b) for at least 1 examination cycle.

9 (2) REMOVAL BY ORDER.—If, after the comple-
10 tion of at least 1 examination cycle following the
11 provision of notice to an appropriate agency under
12 paragraph (1), the Director determines in writing
13 that the appropriate agency has failed to adequately
14 conduct consumer compliance examinations or bring
15 appropriate enforcement actions against an institu-
16 tion referred to in subsection (a), the Director may
17 order the removal of the appropriate agency from its
18 responsibilities under this section for such institu-
19 tion.

20 (3) AGENCY AUTHORITY UPON REMOVAL.—
21 Upon removal pursuant to paragraph (2), the Agen-
22 cy shall examine and enforce against such institution
23 as if the institution were subject to section 122.

24 (4) EFFECTIVE DATE.—An order under para-
25 graph (2) shall take effect 30 days after a deter-

1 mination by the Secretary of the Treasury pursuant
2 to paragraphs (5) and (6).

3 (5) AUTOMATIC APPEAL.—An order issued by
4 the Director pursuant to paragraph (2) shall be
5 automatically appealed to the Secretary.

6 (6) DECISION BY THE SECRETARY OF THE
7 TREASURY.—

8 (A) DETERMINATION.—The order issued
9 pursuant to paragraph (1) shall be deemed af-
10 firmed unless the Secretary of the Treasury de-
11 nies the determination of the Director within
12 120 days of the issuance of the order pursuant
13 to paragraph (2).

14 (B) RULE OF CONSTRUCTION.—Nothing in
15 subparagraph (A) shall be construed as prohib-
16 iting the Secretary of the Treasury from mak-
17 ing a determination to either affirm or deny an
18 order issued pursuant to paragraph (2) prior to
19 the passage of the time period in subparagraph
20 (A).

21 (7) REGULATIONS.—By the transfer date, the
22 Secretary shall issue regulations that establish the
23 standards the Director shall apply in making a de-
24 termination to remove an appropriate agency and
25 the process, procedures, and standards for an ap-

1 peal. Such standards shall require the Director to
2 consider at least the following in issuing an order re-
3 moving an appropriate agency for an institution re-
4 ferred to in subsection (a)(1):

5 (A) Reports of examination of such institu-
6 tion.

7 (B) Any enforcement actions taken by an
8 appropriate agency against such institution and
9 the results of those actions.

10 (C) Consumer complaints issued against
11 such institution.

12 (D) Actions taken by State attorneys gen-
13 eral and private rights of action against such
14 institution.

15 (f) POLICIES AND PROCEDURES.—Within 180 days
16 after the designated transfer date, the Agency and the ap-
17 propriate agency shall develop policies and procedures for
18 implementing this section.

19 (g) ASSESSMENTS.—

20 (1) LIMITATION ON CERTAIN FEES.—The Agen-
21 cy shall not assess examination fees on an institution
22 referred to in subsection (a).

23 (2) RULE OF CONSTRUCTION.—No provision of
24 this section shall be construed as preventing the ap-
25 propriate agency from assessing fees on an institu-

1 tion referred to in paragraph (1) to meet the appro-
2 priate agency's expenses for carrying out such exam-
3 ination and supervision responsibilities pursuant to
4 this section 123.



