

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—119th Cong., 1st Sess.

S. 875

To curtail the political weaponization of Federal banking agencies by eliminating reputational risk as a component of the supervision of depository institutions.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended
to be proposed by Mr. SCOTT of South Carolina

Viz:

1 Strike all after the enacting clause and insert the fol-
2 lowing:

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Financial Integrity and
5 Regulation Management Act” or the “FIRM Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) the primary objective of financial regulation
9 and supervision by the Federal banking agencies is
10 to promote safety and soundness of depository insti-
11 tutions;

1 (2) all federally legal businesses and law-abid-
2 ing citizens regardless of political ideology should
3 have equal opportunity to obtain financial services
4 and should not face unlawful discrimination in ob-
5 taining such services;

6 (3) financial service providers are private enti-
7 ties entitled to provide services to whichever cus-
8 tomers they so choose, provided that those decisions
9 do not violate the law;

10 (4) financial service providers should strive to
11 ensure that all business decisions are based on fac-
12 tors free from unlawful prejudice or political influ-
13 ence;

14 (5) the use of reputational risk in supervisory
15 frameworks encourages Federal banking agencies to
16 regulate depository institutions based on the subjec-
17 tive view of negative publicity and provides cover for
18 the agencies to implement their own political agenda
19 unrelated to the safety and soundness of a deposit-
20 tory institution;

21 (6) Federal banking agencies have in fact used
22 reputational risk to limit access of federally legal
23 businesses and law-abiding citizens to financial serv-
24 ices in 2018 when the Federal Deposit Insurance
25 Corporation acknowledged that the agency used

1 reputational risk reviews to limit access to financial
2 services by certain industries, commonly known as
3 “Operation Choke Point”;

4 (7) reputational risk does not appear in any
5 statute and is an unnecessary and improper use of
6 supervisory authority that does not contribute to the
7 safety and soundness of the financial system.

8 **SEC. 3. DEFINITIONS.**

9 In this Act:

10 (1) DEPOSITORY INSTITUTION.—The term “de-
11 pository institution”—

12 (A) has the meaning given the term in sec-
13 tion 3 of the Federal Deposit Insurance Act (12
14 U.S.C. 1813); and

15 (B) includes an insured credit union.

16 (2) FEDERAL BANKING AGENCY.—The term
17 “Federal banking agency”—

18 (A) has the meaning given the term in sec-
19 tion 3 of the Federal Deposit Insurance Act (12
20 U.S.C. 1813); and

21 (B) includes—

22 (i) the National Credit Union Admin-
23 istration; and

24 (ii) the Bureau of Consumer Financial
25 Protection.

1 (3) INSURED CREDIT UNION.—The term “in-
2 sured credit union” has the meaning given the term
3 in section 101 of the Federal Credit Union Act (12
4 U.S.C. 1752).

5 (4) REPUTATIONAL RISK.—The term
6 “reputational risk” means the potential that nega-
7 tive publicity or negative public opinion regarding an
8 institution’s business practices, whether true or not,
9 will cause a decline in confidence in the institution
10 or a decline in the customer base, costly litigation,
11 or revenue reductions or otherwise adversely impact
12 the depository institution.

13 **SEC. 4. REMOVAL OF REPUTATIONAL RISK AS A CONSIDER-**
14 **ATION IN THE SUPERVISION OF DEPOSITORY**
15 **INSTITUTIONS.**

16 Each Federal banking agency shall remove from any
17 guidance, rule, examination manual, or similar document
18 established by the agency any reference to reputational
19 risk, or any term substantially similar, regarding the su-
20 pervision of depository institutions such that reputational
21 risk, or any term substantially similar, is no longer taken
22 into consideration by the Federal banking agency when
23 examining and supervising a depository institution.

1 **SEC. 5. PROHIBITION.**

2 No Federal banking agency may engage in any activ-
3 ity concerning or related to the regulation, supervision, or
4 examination, of the reputational risk, or any term sub-
5 stantially similar, or the management thereof, of a deposi-
6 tory institution, including—

7 (1) establishing any rule, regulation, require-
8 ment, standard, or supervisory expectation con-
9 cerning or related to the reputational risk, or any
10 term substantially similar, or the management there-
11 of, of a depository institution whether binding or
12 not;

13 (2) conducting any examination, assessment,
14 data collection, or other supervisory exercise con-
15 cerning or related to reputational risk, or any term
16 substantially similar, or the management thereof, of
17 a depository institution;

18 (3) issuing any examination finding, supervisory
19 criticism, or other supervisory or examination com-
20 munication concerning or related to reputational
21 risk, or any term substantially similar, or the man-
22 agement thereof, of a depository institution;

23 (4) making any supervisory ratings decision or
24 determination that is based, in whole or in part, on
25 any matter concerning or related to reputational

1 risk, or any term substantially similar, or the man-
2 agement thereof, of a depository institution; and

3 (5) taking any formal or informal enforcement
4 action that is based, in whole or in part, on any
5 matter concerning or related to reputational risk, or
6 any term substantially similar, or the management
7 thereof, of a depository institution.

8 **SEC. 6. TAKING ACCOUNT OF INSTITUTIONS WITH LOW**
9 **OPERATIONAL RISK.**

10 (a) TAILORING REGULATION TO BUSINESS MODEL
11 AND RISK.—

12 (1) DEFINITIONS.—In this subsection—

13 (A) the term “Federal financial institu-
14 tions regulatory agency” means the Office of
15 the Comptroller of the Currency, the Board of
16 Governors of the Federal Reserve System, the
17 Federal Deposit Insurance Corporation, the Na-
18 tional Credit Union Administration, and the
19 Bureau of Consumer Financial Protection; and

20 (B) the term “regulatory action”—

21 (i) means any proposed, interim, or
22 final rule or regulation; and

23 (ii) does not include any action taken
24 by a Federal financial institutions regu-
25 latory agency that is solely applicable to an

1 individual institution, including an enforce-
2 ment action or order.

3 (2) CONSIDERATION AND TAILORING.—For any
4 regulatory action occurring after the date of enact-
5 ment of this Act, each Federal financial institutions
6 regulatory agency shall—

7 (A) take into consideration the risk profile
8 and business models of each type of institution
9 or class of institutions subject to the regulatory
10 action; and

11 (B) tailor the regulatory action applicable
12 to an institution, or type of institution, in a
13 manner that limits the regulatory impact, in-
14 cluding cost, human resource allocation, and
15 other burdens, on the institution or type of in-
16 stitution as is appropriate for the risk profile
17 and business model involved.

18 (3) FACTORS TO CONSIDER.—In carrying out
19 the requirements of paragraph (2), each Federal fi-
20 nancial institutions regulatory agency shall con-
21 sider—

22 (A) the aggregate impact of all applicable
23 regulatory action on the ability of institutions
24 to flexibly serve their customers and local mar-

1 which this Act is introduced in the Senate
2 and ending on the date of enactment of
3 this Act; and

4 (ii) apply the requirements of this
5 subsection to the regulations described in
6 clause (i).

7 (B) REVISION.—Any regulation revised
8 under subparagraph (A) shall be revised not
9 later than 3 years after the date of enactment
10 of this Act.

11 (6) REPORTS TO CONGRESS.—Not later than 1
12 year after the date of enactment of this Act and an-
13 nually thereafter, each Federal financial institutions
14 regulatory agency shall submit to the Committee on
15 Banking, Housing, and Urban Affairs of the Senate
16 and the Committee on Financial Services of the
17 House of Representatives a report on the specific ac-
18 tions taken to tailor the regulatory actions of the
19 Federal financial institutions regulatory agency pur-
20 suant to the requirements of this subsection.

21 (b) SHORT-FORM CALL REPORTS FOR ALL BANKS
22 ELIGIBLE FOR THE COMMUNITY BANK LEVERAGE
23 RATIO.—The appropriate Federal banking agencies, as
24 defined in section 3 of the Federal Deposit Insurance Act
25 (12 U.S.C. 1813), shall promulgate regulations estab-

1 lishing a reduced reporting requirement for all banks eligi-
2 ble for the Community Bank Leverage Ratio, as defined
3 in section 201(a) of the Economic Growth, Regulatory Re-
4 lief, and Consumer Protection Act (12 U.S.C. 5371 note),
5 when making the first and third report of condition of a
6 year as required by section 7(a) of the Federal Deposit
7 Insurance Act (12 U.S.C. 1817(a)).

8 (c) REPORT TO CONGRESS ON MODERNIZATION OF
9 SUPERVISION.—Not later than 18 months after the date
10 of enactment of this Act, the appropriate Federal banking
11 agencies, as defined in section 3 of the Federal Deposit
12 Insurance Act (12 U.S.C. 1813), in consultation with
13 State bank supervisors, shall submit to the Committee on
14 Banking, Housing, and Urban Affairs of the Senate and
15 the Committee on Financial Services of the House of Rep-
16 resentatives a report on the modernization of bank super-
17 vision, including the following factors:

18 (1) Changing bank business models.

19 (2) Examiner workforce and training.

20 (3) The structure of supervisory activities with-
21 in banking agencies.

22 (4) Improving bank-supervisor communication
23 and collaboration.

24 (5) The use of supervisory technology.

1 (6) Supervisory factors uniquely applicable to
2 community banks.

3 (7) Changes in statutes necessary to achieve
4 more effective supervision.

5 **SEC. 7. REPORTS.**

6 Not later than 180 days after the date of enactment
7 of this Act, each Federal banking agency shall submit to
8 the Committee on Banking, Housing, and Urban Affairs
9 of the Senate and the Committee on Financial Services
10 of the House of Representatives a report that—

11 (1) confirms implementation of this Act; and

12 (2) describes any changes made to internal poli-
13 cies as a result of this Act.