

103<sup>D</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 2955

To stimulate the economy by encouraging bank and thrift institution lending to small- and medium-sized businesses and to consumers by reducing and standardizing the leverage limit capital standard for safe and sound depository institutions, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

AUGUST 6, 1993

Mr. KENNEDY introduced the following bill; which was referred to the  
Committee on Banking, Finance and Urban Affairs

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## A BILL

To stimulate the economy by encouraging bank and thrift institution lending to small- and medium-sized businesses and to consumers by reducing and standardizing the leverage limit capital standard for safe and sound depository institutions, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Business and  
5 Consumer Lending Stimulus Act”.

1 **SEC. 2. REDUCTION AND STANDARDIZATION OF LEVERAGE**  
2 **LIMIT CAPITAL STANDARD APPLICABLE TO**  
3 **QUALIFIED DEPOSITORY INSTITUTIONS.**

4 (a) IN GENERAL.—In the case of any adequately cap-  
5 italized insured depository institution, the appropriate  
6 Federal banking agency may not impose or enforce, during  
7 the 18-month period beginning on the date of the enact-  
8 ment of this Act, any leverage limit with respect to such  
9 depository institution which requires a ratio of tangible  
10 equity to total assets greater than 3 percent.

11 (b) EXCEPTION.—Subsection (a) shall not apply with  
12 respect to an insured depository institution which the ap-  
13 propriate Federal banking agency determines—

- 14 (1) lacks sufficient loan loss reserves; or  
15 (2) is operating in an unsafe or unsound man-  
16 ner.

17 (c) DEFINITIONS.—For purposes of this section—

18 (1) ADEQUATELY CAPITALIZED.—Subject to  
19 subsection (d), the term “adequately capitalized”  
20 has the meaning given to such term in section  
21 38(b)(1)(B) of the Federal Deposit Insurance Act,  
22 as implemented by each appropriate Federal banking  
23 agency by regulation.

24 (2) APPROPRIATE FEDERAL BANKING AGEN-  
25 CY.—The term “appropriate Federal banking agen-

1 cy” has the meaning given to such term in section  
2 3(q) of the Federal Deposit Insurance Act.

3 (3) INSURED DEPOSITORY INSTITUTION.—The  
4 term “insured depository institution” has the mean-  
5 ing given such term in section 3(c)(2) of the Federal  
6 Deposit Insurance Act.

7 (4) LEVERAGE LIMIT.—The term “leverage  
8 limit” means the capital standard relating to the  
9 minimum ratio of tangible capital to total assets es-  
10 tablished by the appropriate Federal banking agency  
11 pursuant to section 38(c)(1)(A)(i) of the Federal  
12 Deposit Insurance Act.

13 (d) DETERMINATION OF ADEQUACY OF CAPITAL.—  
14 Any determination by any appropriate Federal banking  
15 agency with regard to the capital adequacy of any insured  
16 depository institution for purposes of this Act shall be  
17 made without regard to any requirement in section 38 of  
18 the Federal Deposit Insurance Act, or any regulation pre-  
19 scribed under such section, relating to a leverage limit.

20 **SEC. 3. REGULATION OF REAL ESTATE LENDING.**

21 Subsection (o) of section 18 of the Federal Deposit  
22 Insurance Act (12 U.S.C. 1828(o)) (as added by section  
23 304 of the Federal Insurance Corporation Improvement  
24 Act of 1991) is amended—

1 (1) by redesignating paragraph (4) as para-  
2 graph (5); and

3 (2) by inserting new paragraph (4) as follows:

4 “(4) CONSIDERATION OF IMPACT OF STAND-  
5 ARDS.—In prescribing standards under paragraph  
6 (1), the appropriate Federal banking agencies shall,  
7 consistent with safety and soundness,—

8 “(A) consider the impact that such stand-  
9 ards have on the availability of credit for small  
10 business, residential, and agricultural purposes,  
11 and on low- and moderate-income communities;  
12 and

13 “(B) minimize the negative impact that  
14 these standards have on the availability of cred-  
15 it for such purposes and in such areas.”.

16 **SEC. 4. REAL ESTATE APPRAISAL AMENDMENT.**

17 Section 1122 of the Financial Institutions Reform,  
18 Recovery, and Enforcement Act of 1989 (12 U.S.C. 3351)  
19 is amended—

20 (1) by redesignating subsections (b), (c), (d),  
21 and (e) as subsections (c), (d), (e), and (f), respec-  
22 tively;

23 (2) by adding the following new subsection (b):

24 “(b) RECIPROCITY.—The Appraisal Subcommittee  
25 shall encourage the States to develop reciprocity agree-

1 ments among the States so as to readily authorize apprais-  
2 ers licensed or certified in 1 State and in good standing  
3 with such State's appraiser certifying or licensing agency  
4 to perform appraisals in any other State to the same ex-  
5 tent as appraisers certified or licensed by such other  
6 State."'; and

7           (3) by adding at the end of subsection (a)(3)  
8           the following new sentence: "A State appraiser cer-  
9           tifying or licensing agency shall not impose excessive  
10          fees or burdensome requirements for temporary  
11          practice under this subsection, as determined by the  
12          Appraisal Subcommittee.".

13 **SEC. 5. REPORT ON CAPITAL STANDARDS AND THEIR IM-**  
14 **PACT ON THE ECONOMY.**

15           (a) STUDY.—

16           (1) IN GENERAL.—Before the end of the 90-day  
17          period beginning on the date of the enactment of  
18          this Act, the Secretary of the Treasury, after con-  
19          sultation with the Federal banking agencies, shall  
20          report to the Committee on Banking, Finance and  
21          Urban Affairs of the House of Representatives and  
22          the Committee on Banking, Housing, and Urban Af-  
23          fairs of the Senate on the effect that the implemen-  
24          tation of risk based capital standards, including the  
25          Basle international capital standards, is having on—

1 (A) the safety and soundness of insured  
2 depository institutions;

3 (B) the availability of credit, particularly  
4 to individuals and small businesses; and

5 (C) economic growth.

6 (2) RECOMMENDATIONS.—The report shall con-  
7 tain any recommendations with respect to capital  
8 standards that the Secretary of the Treasury may  
9 determine to be appropriate.

10 (b) DEFINITIONS.—For purposes of this section, the  
11 terms “Federal banking agency” and “insured depository  
12 institution” have the same meanings as in section 3 of  
13 the Federal Deposit Insurance Act.

14 **SEC. 6. REGULATORY APPEALS PROCESS.**

15 (a) IN GENERAL.—Before the end of the 180-day pe-  
16 riod beginning on the date of the enactment of this Act,  
17 each appropriate Federal banking agency and the Na-  
18 tional Credit Union Administration shall establish an inde-  
19 pendent appellate process within the agency which shall  
20 be responsible for reviewing material supervisory deter-  
21 minations made at insured depository institutions or credit  
22 unions supervised by the agency.

23 (b) REVIEW PROCESS.—In establishing the independ-  
24 ent appellate process required under subsection (a), each

1 agency referred to in such subsection shall take such ac-  
2 tion as may be appropriate to ensure that—

3 (1) any appeal of a supervisory determination  
4 from any insured depository institution or credit  
5 union, or any officer, director, employee or other  
6 representative of any insured depository institution  
7 or credit union, be heard and decided expeditiously;

8 (2) appropriate safeguards exist for protecting  
9 the appellant from retaliation by agency examiners;  
10 and

11 (3) the ruling agency officer have the authority,  
12 where appropriate and as justice so requires, to stay  
13 the supervisory determination pending completion of  
14 the appellate process.

15 (c) APPEALS BY BORROWERS.—

16 (1) IN GENERAL.—The appeals process estab-  
17 lished pursuant to subsection (a) shall provide for an  
18 appeal of the cancellation of a loan, a reduction in  
19 or the cancellation of a line of credit, or a change  
20 in any terms or condition of a loan or other exten-  
21 sion of credit which is substantially adverse to the  
22 borrower or recipient by any borrower or recipient of  
23 credit from an insured depository institution who  
24 was in full compliance with the terms of the loan or  
25 extension of credit at the time of such action.

1           (2) AGENCY REQUEST TO LENDER OR CREDI-  
2           TOR.—In reviewing any appeal, the appropriate Fed-  
3           eral banking agency may only request a lender or  
4           other creditor to state the reasons for, or a reconsid-  
5           eration of, the decision to take any action described  
6           in paragraph (1).

7           (d) COMMENT PERIOD.—Each agency referred to in  
8           subsection (a) shall provide public notice and opportunity  
9           for comment on proposed guidelines for an appellate proc-  
10          ess not later than 90 days after enactment of this Act.

11          (e) DEFINITIONS.—For purposes of this section—

12           (1) AGENCY.—The term “agency” means the  
13           appropriate Federal banking agency and the Na-  
14           tional Credit Union Administration.

15           (2) INSURED DEPOSITORY INSTITUTION; AP-  
16           PROPRIATE FEDERAL BANKING AGENCY.—The terms  
17           “insured depository institution” and “appropriate  
18           Federal banking agency” have the meanings given to  
19           such terms in section 3 of the Federal Deposit In-  
20           surance Act.

21           (3) MATERIAL SUPERVISORY DETERMINA-  
22           TION.—The term “material supervisory determina-  
23           tion” includes determinations relating to ratings on  
24           examinations of insured depository institutions, the  
25           adequacy of loan loss reserve provisions by such in-

1       stitutions, and loan classifications on loans signifi-  
2       cant to the institution.

3               (4) SMALL BUSINESS.—The term “small busi-  
4       ness” has the meaning given to such term by the  
5       Administrator of the Small Business Administration.

6       **SEC. 7. STERILE RESERVES STUDIES.**

7               (a) FEDERAL RESERVE STUDY.—Before the end of  
8       the 90-day period beginning on the date of the enactment  
9       of this Act, the Board of Governors of the Federal Reserve  
10      System, in consultation with the Federal Deposit Insur-  
11      ance Corporation, shall study and report to Congress on—

12              (1) the necessity, for monetary policy purposes,  
13      of continuing to require insured depository institu-  
14      tions to maintain sterile reserves;

15              (2) the appropriateness of paying insured de-  
16      pository institutions with a market rate of interest  
17      on sterile reserves, or in the alternative, providing  
18      payment of this interest into the appropriate deposit  
19      insurance fund;

20              (3) the monetary impact that the failure to pay  
21      interest on sterile reserves has had on insured depos-  
22      itory institutions, including an estimate of the total  
23      dollar amount of interest and potential income lost  
24      by insured depository institutions;

1           (4) the degree to which the failure to pay inter-  
2           est on sterile reserves has impacted upon economic  
3           growth; and

4           (5) the impact that failure to pay interest on  
5           sterile reserves has had on the ability of the banking  
6           industry to compete with nonbanking providers of fi-  
7           nancial services and with foreign banks.

8           (b) BUDGETARY IMPACT STUDY.—No later than 90  
9           days after enactment of this Act, the Office of Manage-  
10          ment and Budget and the Congressional Budget Office,  
11          in consultation with the Senate and House Committees on  
12          the Budget, shall jointly study and report to Congress on  
13          the budgetary impact of—

14                 (1) paying insured depository institutions a  
15                 market rate of interest on sterile reserves; and

16                 (2) paying such interest into the respective de-  
17                 posit insurance funds.

18           (c) DEFINITION.—For purposes of this section, the  
19           term “insured depository institution” has the same mean-  
20           ing as in section 3 of the Federal Deposit Insurance Act.

21           **SEC. 8. CREDIT CARD ACCOUNTS RECEIVABLE SALES.**

22           Section 11(e) of the Federal Deposit Insurance Act  
23           (12 U.S.C. 1821(e)) is amended by adding at the end the  
24           following new paragraphs:

1           “(14) SELLING CREDIT CARD ACCOUNTS RE-  
2           CEIVABLE.—

3           “(A) NOTIFICATION REQUIRED.—An  
4           undercapitalized insured depository institution  
5           (as defined in section 38) shall notify the Cor-  
6           poration in writing before entering into an  
7           agreement to sell credit card accounts receiv-  
8           able.

9           “(B) WAIVER BY CORPORATION.—The  
10          Corporation may at any time, in the Corpora-  
11          tion’s sole discretion and upon such terms as  
12          the Corporation may prescribe, waive the Cor-  
13          poration’s right to repudiate an agreement to  
14          sell credit card accounts receivable if the Cor-  
15          poration—

16                 “(i) determines that the waiver is in  
17                 the best interests of the affected deposit  
18                 insurance fund; and

19                 “(ii) provides a written waiver to the  
20                 selling institution.

21          “(C) EFFECT OF WAIVER ON SUCCES-  
22          SORS.—

23                 “(i) IN GENERAL.—If, under subpara-  
24                 graph (B), the Corporation has waived its

1 right to repudiate an agreement to sell  
2 credit card accounts receivable—

3 “(I) any provision of the agree-  
4 ment that restricts solicitation of a  
5 credit card customer of the selling in-  
6 stitution, or the use of a credit card  
7 customer list of the institution, shall  
8 bind any receiver or conservator of the  
9 institution; and

10 “(II) the Corporation shall re-  
11 quire any acquirer of the selling insti-  
12 tution, or of substantially all of the  
13 selling institution’s assets or liabil-  
14 ities, to agree to be bound by a provi-  
15 sion described in subclause (I) as if  
16 the acquirer were the selling institu-  
17 tion.

18 “(ii) EXCEPTION.—Clause (i)(II) shall  
19 not be applied so as to—

20 “(I) restrict the acquirer’s au-  
21 thority to offer any product or service  
22 to any person identified without using  
23 a list of the selling institution’s cus-  
24 tomers in violation of the agreement;

1                   “(II) require the acquirer to re-  
2                   strict any preexisting relationship be-  
3                   tween the acquirer and a customer; or

4                   “(III) apply to any transaction in  
5                   which the acquirer acquires only in-  
6                   sured deposits.

7                   “(D) WAIVER NOT ACTIONABLE.—The  
8                   Corporation shall not be liable, in any capacity,  
9                   to any person for damages resulting from  
10                  waiving or failing to waive the Corporation’s  
11                  right under this section to repudiate any con-  
12                  tract or lease, including an agreement to sell  
13                  credit card accounts receivable. No court may  
14                  issue an order affecting any such waiver or fail-  
15                  ure to waive.

16                  “(E) OTHER AUTHORITY NOT AF-  
17                  FECTED.—This paragraph shall not be con-  
18                  strued as limiting any other authority of the  
19                  Corporation to waive the Corporation’s right  
20                  under this section to repudiate an agreement or  
21                  lease.

22                  “(15) CERTAIN CREDIT CARD CUSTOMER LISTS  
23                  PROTECTED.—

24                  “(A) IN GENERAL.—If any insured depository  
25                  institution sells credit card accounts receiv-

1           able under an agreement negotiated at arm's  
2           length that provides for the sale of the institu-  
3           tion's credit card customer list, the Corporation  
4           shall prohibit any party to a transaction with  
5           respect to the institution under this section or  
6           section 13 from using the list except as per-  
7           mitted under the agreement.

8           “(B) FRAUDULENT TRANSACTIONS EX-  
9           CLUDED.—Subparagraph (A) shall not be con-  
10          strued as limiting the Corporation's authority  
11          to repudiate any agreement entered into with  
12          the intent to hinder, delay, or defraud the insti-  
13          tution, the institution's creditors, or the Cor-  
14          poration.”.

15 **SEC. 9. COORDINATED EXAMINATIONS.**

16          Section 10(d) of the Federal Deposit Insurance Act  
17          (12 U.S.C. 1820(d)) (as amended by section 301 of this  
18          Act) is amended by adding at the end the following new  
19          paragraph:

20               “(7) COORDINATED EXAMINATIONS.—Each ap-  
21          propriate Federal banking agency shall, to the ex-  
22          tent practicable—

23                       “(A) coordinate all examinations to be con-  
24                       ducted by that agency at an insured depository  
25                       institution; and

1           “(B) work with other appropriate Federal  
2           banking agencies and appropriate State bank  
3           supervisors to coordinate examinations to be  
4           conducted at an insured depository institution,  
5           so as to minimize the disruptive effects of such ex-  
6           aminations on the operations of the institution.”.

7   **SEC. 10. STREAMLINED LENDING PROCESS FOR CONSUMER**  
8           **BENEFIT.**

9           (a) FEDERAL RESERVE STUDY.—Before the end of  
10          the 1-year period beginning on the date of the enactment  
11          of this Act, the Board of Governors of the Federal Reserve  
12          System and the Secretary of Housing and Urban Develop-  
13          ment shall jointly conduct a study and report to Congress  
14          on ways to streamline the credit-granting process.

15          (b) FOCUS.—In carrying out subsection (a), the  
16          Board of Governors of the Federal Reserve System and  
17          the Secretary of Housing and Urban Development shall—

18                  (1) identify ways to streamline the home mort-  
19                  gage, small business and consumer lending processes  
20                  so as to—

21                          (A) reduce consumer inconvenience, cost  
22                          and time delays; and

23                          (B) minimize cost and burdens on insured  
24                  depository institutions and credit unions with-

1 out compromising the effectiveness of any provi-  
2 sion of law relating to consumer protection;

3 (2) take such regulatory action, as appropriate,  
4 to meet the objectives of paragraph (1); and

5 (3) provide Congress with legislative rec-  
6 ommendations on changes necessary to carry out the  
7 purposes of this section.

8 (c) COMMENT.—In carrying out the objectives of this  
9 section, the Board shall solicit comments from other Fed-  
10 eral banking agencies, consumer groups, insured deposi-  
11 tory institutions, credit unions, and other interested par-  
12 ties.

13 (d) DEFINITION.—For purposes of this section, the  
14 term “insured depository institution” has the meaning  
15 given to such term in section 3 of the Federal Deposit  
16 Insurance Act.

17 **SEC. 11. REPORTING ON LOANS TO SMALL BUSINESSES, MI-**  
18 **NORITY-OWNED BUSINESSES, AND START-UP**  
19 **ENTERPRISES.**

20 Section 122 of the Federal Deposit Insurance Cor-  
21 poration Improvement Act of 1991 (12 U.S.C. 1817 nt.)  
22 is amended by adding at the end the following new sub-  
23 section:

24 “(d) REPORTS ON LOANS TO SMALL BUSINESSES,  
25 MINORITY-OWNED BUSINESSES, AND START-UP BUSI-

1 NESSES.—The information required to be submitted by in-  
2 sured depository institutions under subsection (a) shall in-  
3 clude the following for the period covered by the report:

4 “(1) The total number of loans the principal on  
5 which does not exceed \$1,000,000.

6 “(2) The total number of loans to small busi-  
7 nesses (as defined in regulations prescribed by the  
8 Administrator of the Small Business Administra-  
9 tion).

10 “(3) The total number of loans to minority-  
11 owned businesses (as defined in section 21A(r)(4)(A)  
12 of the Federal Home Loan Bank Act).

13 “(4) The total number of loans to businesses  
14 which have been incorporated, or otherwise been in  
15 existence, for less than 2 years.”.

16 **SEC. 12. ACCELERATING THE EFFECTIVE DATE OF THE SIS-**  
17 **TER THRIFT EXEMPTION FOR WELL CAPITAL-**  
18 **IZED INSTITUTIONS.**

19 Section 11(a)(2) of the Home Owners’ Loan Act (12  
20 U.S.C. 1468(a)(2)) is amended by adding at the end the  
21 following new subparagraph:

22 “(C) TRANSITION RULE FOR WELL CAPITAL-  
23 IZED SAVINGS ASSOCIATIONS.—

24 “(i) IN GENERAL.—Effective on and after  
25 the date of enactment of this bill, every savings

1 association that is well capitalized (as defined  
2 in section 38 of the Federal Deposit Insurance  
3 Act) without including goodwill in calculating  
4 core capital shall be treated as a bank for pur-  
5 poses of section 23A(d)(1) and section 23B of  
6 the Federal Reserve Act.

7 “(ii) LIABILITY OF COMMONLY CON-  
8 TROLLED DEPOSITORY INSTITUTIONS.—Any  
9 savings association that engages under clause  
10 (i) in a transaction that would not otherwise be  
11 permissible under this subsection, and any af-  
12 filiated insured bank that is commonly con-  
13 trolled (as defined in section 5(e)(9) of the Fed-  
14 eral Deposit Insurance Act), shall be subject to  
15 subsection (e) of section 5 of the Federal De-  
16 posit Insurance Act as if paragraph (6) of that  
17 subsection did not apply.”.

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