

111TH CONGRESS
2^D SESSION

H. R. 5159

To provide for a safe, accountable, fair, and efficient banking system, and
for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 28, 2010

Mr. MILLER of North Carolina (for himself, Mr. CHANDLER, Mr. COHEN, Mr. ELLISON, and Mr. SHERMAN) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To provide for a safe, accountable, fair, and efficient banking
system, 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 “Safe, Accountable,
5 Fair, and Efficient Banking Act of 2010” or the “SAFE
6 Banking Act of 2010”.

7 **SEC. 2. DEFINITIONS.**

8 (a) IN GENERAL.—As used in this Act, the following
9 definitions shall apply:

1 (1) APPROPRIATE FEDERAL REGULATOR.—The
2 term “appropriate Federal regulator” means—

3 (A) the Board of Governors of the Federal
4 Reserve System (in this Act referred to as the
5 “Board”);

6 (B) the Comptroller General of the United
7 States (in this Act referred to as the “Comp-
8 troller”); or

9 (C) the Federal Deposit Insurance Cor-
10 poration (in this Act referred to as the “Cor-
11 poration”).

12 (2) AVERAGE TOTAL CONSOLIDATED ASSETS.—
13 the term “average total consolidated assets” has the
14 same meaning as in part 225 of title 12, Code of
15 Federal Regulations, as in effect on the date of en-
16 actment of this Act, or any successor thereto.

17 (3) FDIC-ASSESSED DEPOSITS.—The term
18 “FDIC-assessed deposits” means the assessment
19 base, as computed under part 327 of title 12, Code
20 of Federal Regulations, as in effect on the date of
21 enactment of this Act, or any successor thereto.

22 (4) FINANCIAL COMPANY.—The term “financial
23 company” means any nonbank financial company
24 that is supervised by the Board.

1 (5) LIABILITIES.—The term “liabilities” equals
2 a financial company’s total assets less tier 1 capital.

3 (6) NONDEPOSIT LIABILITIES.—The term
4 “nondeposit liabilities” means the total assets of a
5 bank holding company, less tier 1 capital, less
6 FDIC-assessed deposits.

7 (7) TIER 1 CAPITAL.—The term “tier 1 capital”
8 has the same meaning as in part 225 of title 12,
9 Code of Federal Regulations, as in effect on the date
10 of enactment of this Act, or any successor thereto.

11 (b) NONBANK FINANCIAL COMPANY DEFINITIONS.—
12 For purposes of this Act the following definitions shall
13 apply:

14 (1) FOREIGN NONBANK FINANCIAL COMPANY.—
15 The term “foreign nonbank financial company”
16 means a company (other than a company that is, or
17 is treated in the United States, as a bank holding
18 company or a subsidiary thereof) that is—

19 (A) incorporated or organized in a country
20 other than the United States; and

21 (B) substantially engaged in, including
22 through a branch in the United States, activi-
23 ties in the United States that are financial in
24 nature (as defined in section 4(k) of the Bank
25 Holding Company Act of 1956).

1 (2) U.S. NONBANK FINANCIAL COMPANY.—The
2 term “U.S. nonbank financial company” means a
3 company (other than a bank holding company or a
4 subsidiary thereof) that is—

5 (A) incorporated or organized under the
6 laws of the United States or any State; and

7 (B) substantially engaged in activities in
8 the United States that are financial in nature
9 (as defined in section 4(k) of the Bank Holding
10 Company Act of 1956).

11 (3) NONBANK FINANCIAL COMPANY.—The term
12 “nonbank financial company” means a U.S.
13 nonbank financial company and a foreign nonbank
14 financial company.

15 **SEC. 3. DEPOSIT CONCENTRATION LIMIT.**

16 Section 3(d) of the Bank Holding Company Act of
17 1956 (12 U.S.C. 1842(d)) is amended—

18 (1) in paragraph (2), by striking subparagraph
19 (A) and inserting the following:

20 “(A) NATIONWIDE CONCENTRATION LIM-
21 ITS.—No bank holding company may hold more
22 than 10 percent of the total amount of deposits
23 of insured depository institutions in the United
24 States.”; and

1 (2) by striking paragraph (5) and inserting the
2 following:

3 “(5) ENFORCED COMPLIANCE.—The Board
4 shall require any bank holding company having a de-
5 posit concentration in violation of this subsection to
6 sell or otherwise transfer assets to unaffiliated firms
7 to bring the company into compliance with this sub-
8 section.”.

9 **SEC. 4. LEVERAGE RATIO AND SIZE REQUIREMENTS FOR**
10 **BANK HOLDING COMPANIES.**

11 The Bank Holding Company Act of 1956 (12 U.S.C.
12 1841 et seq.) is amended by inserting after section 5 the
13 following new section:

14 **“SEC. 5A. LIMITS ON LEVERAGE AND SIZE.**

15 “(a) LEVERAGE RATIO REQUIREMENTS FOR BANK
16 HOLDING COMPANIES AND FINANCIAL COMPANIES.—

17 “(1) LEVERAGE RATIO.—No bank holding com-
18 pany or financial company may maintain tier 1 cap-
19 ital in an amount equal to less than 6 percent of av-
20 erage total consolidated assets.

21 “(2) BALANCE SHEET LEVERAGE RATIO.—No
22 bank holding company or financial company may
23 maintain less than 6 percent of tier 1 capital for all
24 outstanding balance sheet liabilities, as determined

1 under section 13(m) of the Securities Exchange Act
2 of 1934 (15 U.S.C. 78m(m)).

3 “(3) EXEMPTIONS.—

4 “(A) IN GENERAL.—The Board may ad-
5 just the leverage ratio requirements provided in
6 paragraph (1) or (2), for any class of institu-
7 tions, based upon the size or activity of such
8 class of institutions. No adjustment made under
9 this subparagraph may allow an institution to
10 carry less capital than provided in paragraph
11 (1) or (2).

12 “(B) ADJUSTMENTS.—Consistent with this
13 subsection, the Board may adjust, by rule, the
14 definitions of the terms ‘leverage ratio’ and
15 ‘balance sheet leverage ratio’ to harmonize such
16 ratios with official international agreements re-
17 garding capital standards, only if the Board de-
18 termines that the international capital stand-
19 ards are commensurate with the credit, market,
20 operational, or other risks posed by the bank
21 holding companies or financial companies to
22 which the international agreements regarding
23 capital standards apply.

24 “(C) AUTHORITY OF OTHER REGU-
25 LATORS.—

1 “(i) IN GENERAL.—The appropriate
2 Federal regulator may, in a manner con-
3 sistent with this subsection, grant any
4 bank holding company an emergency tem-
5 porary exemption from the ratio require-
6 ments provided in paragraph (1) or (2),
7 where necessary to prevent an imminent
8 threat to the financial stability of the
9 United States.

10 “(ii) PUBLICATION REQUIRED.—Any
11 exemption granted under this subpara-
12 graph shall be published in the Federal
13 Register within a reasonable period after
14 the date on which such exemption is grant-
15 ed, not to exceed 90 days, and such publi-
16 cation shall provide—

17 “(I) the name of the bank hold-
18 ing company or financial company
19 being granted an exemption;

20 “(II) the reason for the exemp-
21 tion; and

22 “(III) the plan of the appropriate
23 Federal regulator detailing the man-
24 ner by which the bank holding com-

1 pany shall be brought into compliance
2 with paragraphs (1) and (2).

3 “(4) LEVERAGE RATIO REQUIREMENTS FOR OP-
4 ERATING SUBSIDIARIES OF BANK HOLDING COMPA-
5 NIES AND FINANCIAL COMPANIES.—Notwithstanding
6 any other provision of law applicable to insured de-
7 pository institutions, the Board shall, within 1 year
8 of the date of enactment of the SAFE Banking Act
9 of 2010, promulgate regulations establishing a lever-
10 age ratio and a balance sheet leverage ratio, in a
11 manner consistent with paragraphs (1) and (2), for
12 all operating subsidiaries of bank holding companies
13 and financial companies.

14 “(5) PROMPT CORRECTIVE ACTION.—

15 “(A) AUTHORITIES.—The Board shall re-
16 quire any bank holding company or financial
17 company that is in violation of paragraph (1) or
18 (2) to raise capital, sell or otherwise transfer
19 assets or off-balance sheet items to unaffiliated
20 firms, or impose conditions on the manner in
21 which the bank holding company conducts 1 or
22 more activities to bring the company into com-
23 pliance with paragraphs (1) and (2).

24 “(B) CORRECTIVE ACTION PLAN.—The
25 Board shall, not later than 60 days after deter-

1 mining that a bank holding company or finan-
2 cial company is in violation of paragraph (1) or
3 (2), present to the members of the Committee
4 on Banking, Housing, and Urban Affairs of the
5 Senate and the Committee on Financial Serv-
6 ices of the House of Representatives a plan de-
7 tailing the manner by which the bank holding
8 company or financial company shall be brought
9 into compliance with the applicable provision of
10 law.

11 “(C) REPORTS TO THE CONGRESS.—

12 “(i) WRITTEN REPORTS.—The Board
13 shall provide to the members of the Com-
14 mittee on Banking, Housing, and Urban
15 Affairs of the Senate and the Committee
16 on Financial Services of the House of Rep-
17 resentatives periodic reports for each 60-
18 day period during which a corrective action
19 plan required by subparagraph (B) has not
20 been fulfilled.

21 “(ii) TESTIMONY.—The Board shall
22 provide testimony to the Committee on
23 Banking, Housing, and Urban Affairs of
24 the Senate and the Committee on Finan-
25 cial Services of the House of Representa-

1 tives for each 90-day period that a correc-
2 tive action plan required by subparagraph
3 (B) has not been fulfilled.

4 “(b) LIMITS ON NONDEPOSIT LIABILITIES FOR
5 BANK HOLDING COMPANIES AND FINANCIAL COMPA-
6 NIES.—

7 “(1) BANK HOLDING COMPANIES.—

8 “(A) LIMIT ON NONDEPOSIT LIABILITIES
9 FOR BANK HOLDING COMPANIES.—No bank
10 holding company may possess nondeposit liabil-
11 ities exceeding 2 percent of the annual gross
12 domestic product of the United States.

13 “(B) DETERMINATION OF GROSS DOMES-
14 TIC PRODUCT.—The annual gross domestic
15 product of the United States shall be deter-
16 mined for purposes of subparagraph (A) using
17 the average of such product over the 16 cal-
18 endar quarters, as calculated by the Bureau of
19 Economic Analysis of the Department of Com-
20 merce, most recently completed as of the time
21 of the determination.

22 “(C) OFF-BALANCE-SHEET LIABILITIES.—
23 The computation of the limit under this para-
24 graph shall take into account off-balance-sheet
25 liabilities.

1 “(D) TREATMENT OF INSURANCE COMPA-
2 NIES.—Notwithstanding the liability limit es-
3 tablished in this section, the Board may set a
4 separate liability limit with respect to certain
5 bank holding companies primarily engaged in
6 the business of insurance, as the Board deems
7 necessary in order to provide for consistent and
8 equitable treatment of such institutions. In es-
9 tablishing such separate liability limits for in-
10 surance companies, for any insurance company
11 with any subsidiary regulated by a State insur-
12 ance regulator, the Board shall consult the ap-
13 propriate State insurance regulator.

14 “(E) TREATMENT OF FOREIGN DEPOS-
15 ITS.—Notwithstanding the definition of the
16 term ‘nondeposit liabilities’ established in this
17 section, the Board may exclude from its calcula-
18 tion of nondeposit liabilities any foreign and
19 other deposits not covered by the definition of
20 the term ‘FDIC-assessed deposits’, if the Board
21 deems such action necessary to ensure the con-
22 sistent and equitable treatment of institutions
23 with international operations.

24 “(2) FINANCIAL COMPANIES.—

1 “(A) LIMIT ON NONDEPOSIT LIABILITIES
2 FOR FINANCIAL COMPANIES.—No financial
3 company may possess nondeposit liabilities ex-
4 ceeding 3 percent of the annual gross domestic
5 product of the United States.

6 “(B) DETERMINATION OF GROSS DOMES-
7 TIC PRODUCT.—The annual gross domestic
8 product of the United States shall be deter-
9 mined for purposes of subparagraph (A) using
10 the average of such product over the 16 cal-
11 endar quarters, as calculated by the Bureau of
12 Economic Analysis of the Department of Com-
13 merce, most recently completed as of the time
14 of the determination.

15 “(C) OFF-BALANCE-SHEET LIABILITIES.—
16 The computation of the limit under this para-
17 graph shall take into account off-balance-sheet
18 liabilities.

19 “(D) TREATMENT OF INSURANCE COMPA-
20 NIES.—Notwithstanding the liability limit es-
21 tablished by this paragraph, the Board may set
22 a separate liability limit with respect to insur-
23 ance companies or other financial companies, as
24 the Board determines necessary in order to pro-
25 vide for consistent and equitable treatment of

1 such institutions. In establishing such separate
2 liability limits for insurance companies, for any
3 insurance company with any subsidiary regu-
4 lated by a State insurance regulator, the Board
5 shall consult with the appropriate State insur-
6 ance regulator.

7 “(E) TREATMENT OF FOREIGN DEPOS-
8 ITS.—Notwithstanding the definition of the
9 term ‘nondeposit liabilities’ established in this
10 section, the Board may exclude from its calcula-
11 tion of nondeposit liabilities any foreign and
12 other deposits not covered by the definition of
13 the term ‘FDIC-assessed deposits’, if the Board
14 deems such action necessary to ensure the con-
15 sistent and equitable treatment of institutions
16 with international operations.

17 “(3) PROMPT CORRECTIVE ACTION.—

18 “(A) AUTHORITIES.—The Board shall re-
19 quire any bank holding company or financial
20 company that is in violation of a provision of
21 paragraph (1) or (2), as applicable, to sell or
22 otherwise transfer assets or off-balance-sheet
23 items to unaffiliated firms, to terminate 1 or
24 more activities, or to impose conditions on the
25 manner in which the bank holding company or

1 financial company conducts 1 or more activities
2 to bring the company into compliance with
3 paragraphs (1) or (2), as applicable.

4 “(B) CORRECTIVE ACTION PLAN.—The
5 Board shall, not later than 60 days after deter-
6 mining that a bank holding company or finan-
7 cial company is in violation of paragraph (1) or
8 (2), present to the members of the Committee
9 on Banking, Housing, and Urban Affairs of the
10 Senate and the Committee on Financial Serv-
11 ices of the House of Representatives a plan de-
12 tailing the manner by which the bank holding
13 company or financial company shall be brought
14 into compliance with the applicable provision.

15 “(C) REPORTS TO THE CONGRESS.—

16 “(i) WRITTEN REPORTS.—The Board
17 shall provide to the members of the Com-
18 mittee on Banking, Housing, and Urban
19 Affairs of the Senate and the Committee
20 on Financial Services of the House of Rep-
21 resentatives periodic reports for each 60-
22 day period during which a corrective action
23 plan required by subparagraph (B) has not
24 been fulfilled.

1 “(ii) TESTIMONY.—The Board shall
2 provide testimony to the Committee on
3 Banking, Housing, and Urban Affairs of
4 the Senate and the Committee on Finan-
5 cial Services of the House of Representa-
6 tives for each 120-day period during which
7 a corrective action plan required by sub-
8 paragraph (B) has not been fulfilled.

9 “(c) DEFINITIONS.—As used in this section, the fol-
10 lowing definitions shall apply:

11 “(1) APPROPRIATE FEDERAL REGULATOR.—
12 The term ‘appropriate Federal regulator’ means—

13 “(A) the Board of Governors of the Fed-
14 eral Reserve System (in this Act referred to as
15 the ‘Board’);

16 “(B) the Comptroller General of the
17 United States (in this Act referred to as the
18 ‘Comptroller’); or

19 “(C) the Federal Deposit Insurance Cor-
20 poration (in this Act referred to as the ‘Cor-
21 poration’).

22 “(2) AVERAGE TOTAL CONSOLIDATED AS-
23 SETS.—The term ‘average total consolidated assets’
24 has the same meaning as in part 225 of title 12,

1 Code of Federal Regulations, as in effect on the date
2 of enactment of this Act, or any successor thereto.

3 “(3) FDIC-ASSESSED DEPOSITS.—The term
4 ‘FDIC-assessed deposits’ means the assessment
5 base, as computed under part 327 of title 12, Code
6 of Federal Regulations, as in effect on the date of
7 enactment of this Act, or any successor thereto.

8 “(4) FINANCIAL COMPANY.—The term ‘finan-
9 cial company’ means any nonbank financial company
10 that is supervised by the Board.

11 “(5) LIABILITIES.—The term ‘liabilities’ equals
12 a financial company’s total assets less tier 1 capital.

13 “(6) NONDEPOSIT LIABILITIES.—The term
14 ‘nondeposit liabilities’ means the total assets of a
15 bank holding company, less tier 1 capital, less
16 FDIC-assessed deposits.

17 “(7) FOREIGN NONBANK FINANCIAL COM-
18 PANY.—The term ‘foreign nonbank financial com-
19 pany’ means a company (other than a company that
20 is, or is treated in the United States, as a bank
21 holding company or a subsidiary thereof) that is—

22 “(A) incorporated or organized in a coun-
23 try other than the United States; and

24 “(B) substantially engaged in, including
25 through a branch in the United States, activi-

1 ties in the United States that are financial in
2 nature (as defined in section 4(k) of the Bank
3 Holding Company Act of 1956).

4 “(8) U.S. NONBANK FINANCIAL COMPANY.—
5 The term ‘U.S. nonbank financial company’ means
6 a company (other than a bank holding company or
7 a subsidiary thereof) that is—

8 “(A) incorporated or organized under the
9 laws of the United States or any State; and

10 “(B) substantially engaged in activities in
11 the United States that are financial in nature
12 (as defined in section 4(k) of the Bank Holding
13 Company Act of 1956).

14 “(9) NONBANK FINANCIAL COMPANY.—The
15 term ‘nonbank financial company’ means a U.S.
16 nonbank financial company and a foreign nonbank
17 financial company.

18 “(10) TIER 1 CAPITAL.—The term ‘tier 1 cap-
19 ital’ has the same meaning as in part 225 of title
20 12, Code of Federal Regulations, as in effect on the
21 date of enactment of this section, or any successor
22 thereto.”.

1 **SEC. 5. CAPITAL ASSESSMENT PROGRAM.**

2 The Bank Holding Company Act of 1956 (12 U.S.C.
3 1841 et seq.) is amended by inserting after section 7 the
4 following new section:

5 **“SEC. 7A. CAPITAL ASSESSMENT PROGRAM.**

6 “(a) ANNUAL ASSESSMENTS.—Beginning 1 year
7 after the date of enactment of the SAFE Banking Act
8 of 2010, and annually thereafter, the Board shall conduct
9 a capital assessment to estimate losses, revenues, and re-
10 serve needs for bank holding companies and financial com-
11 panies.

12 “(b) REPORTS.—The Board shall provide a report on
13 the results of the capital assessment program under this
14 section to the Secretary, the members of the Committee
15 on Banking, Housing, and Urban Affairs of the Senate,
16 and the members of the Committee on Financial Services
17 of the House of Representatives.”.

18 **SEC. 6. AMENDMENT TO THE SECURITIES AND EXCHANGE**
19 **ACT.**

20 Section 13 of the Securities Exchange Act of 1934
21 (15 U.S.C. 78m) is amended by adding at the end the
22 following new subsection:

23 “(m) STANDARD BALANCE SHEET CALCULATION
24 FOR REPORTS.—

25 “(1) ESTABLISHMENT OF STANDARD BALANCE
26 SHEET REPORTING.—Not later than 1 year after the

1 date of enactment of the SAFE Banking Act of
2 2010, the Commission, or a standard setter des-
3 ignated by and under the oversight of the Commis-
4 sion, shall issue a rule requiring that each issuer of
5 securities required to file reports under this section
6 record all of its assets and liabilities on its balance
7 sheets. The recorded amount of assets and liabilities
8 shall reflect a reasonable assessment by the issuer of
9 the most likely outcomes, given currently available
10 information. Such issuers shall record all financings
11 of assets for which the issuer has more than minimal
12 economic risks or rewards.

13 “(2) EXCLUSION FOR INDETERMINATE LIABIL-
14 ITIES.—If an issuer required to file reports under
15 this section cannot determine the amount of a par-
16 ticular liability, for purposes of paragraph (1), such
17 issuer may exclude that liability from its balance
18 sheet only if it discloses an explanation of—

19 “(A) the nature of the liability and pur-
20 pose for incurring it;

21 “(B) the most likely and maximum loss
22 that the issuer could incur from the liability;

23 “(C) whether there is any recourse to the
24 issuer by another party and, if so, under what
25 conditions such recourse could occur; and

1 “(D) whether the issuer has any con-
2 tinuing involvement with an asset financed by
3 the liability or any beneficial interest therein.

4 “(3) RULEMAKING.—The Commission shall
5 promulgate rules to ensure compliance with this sub-
6 section, including enforcement by the Commission
7 and civil liability under the Securities Act of 1933
8 and this title.”.

9 **SEC. 7. EFFECTIVE DATE.**

10 (a) IN GENERAL.—This Act and the amendments
11 made by this Act shall take effect upon the date of enact-
12 ment of this Act.

13 (b) ALLOWANCE FOR BANK HOLDING COMPANIES
14 AND FINANCIAL COMPANIES NOT IN COMPLIANCE AT
15 DATE OF ENACTMENT.—Any institution that is in viola-
16 tion of—

17 (1) the deposit concentration limit in section
18 3(d)(2)(A) of the Bank Holding Act of 1956, as
19 amended by this Act, as of the date of enactment of
20 this Act, shall bring itself into compliance with that
21 limit not later than 1 year after the date of enact-
22 ment of this Act;

23 (2) the leverage ratios in section 5A of the
24 Bank Holding Act of 1956, as amended by this Act,
25 as of the date of enactment of this Act, shall bring

1 itself into compliance with those ratios, not later
2 than 1 year after the date of enactment of this Act;
3 and

4 (3) the limits on nondeposit liabilities in section
5 7A of the Bank Holding Company Act of 1956, as
6 added by this Act, as of the date of enactment of
7 this Act, shall bring itself into compliance with those
8 limits, not later than 3 years after the date of enact-
9 ment of this Act.

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