

103^D CONGRESS
1ST SESSION

S. 1151

To facilitate the flow of credit to small business by easing certain regulatory burdens on depository institutions, to require analysis of such burdens and their effectiveness, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 24 (legislative day, JUNE 22), 1993

Mr. DOLE (for himself and Mr. D'AMATO) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To facilitate the flow of credit to small business by easing certain regulatory burdens on depository institutions, to require analysis of such burdens and their effectiveness, 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 "Credit Crunch Relief
5 Act of 1993".

1 **SEC. 2. EXEMPTION FROM LOAN DOCUMENTATION REVIEW.**

2 Section 10 of the Federal Deposit Insurance Act (12
3 U.S.C. 1820) is amended by adding at the end the follow-
4 ing new subsection:

5 “(h) EXEMPTION FROM LOAN DOCUMENTATION RE-
6 VIEW.—

7 “(1) DEFINITIONS.—For purposes of this sub-
8 section—

9 “(A) the term ‘adequately capitalized’ has
10 the same meaning as in section 38;

11 “(B) the term ‘eligible depository institu-
12 tion’ means a depository institution that—

13 “(i) is adequately capitalized; and

14 “(ii) has a CAMEL or MACRO com-
15 posite rating of 1 or 2 under the Uniform
16 Financial Institutions Rating System as of
17 the most recent examination of such insti-
18 tution by the appropriate Federal banking
19 agency;

20 “(C) the term ‘small business’ has the
21 meaning given to such term by the Adminis-
22 trator of the Small Business Administration;

23 “(D) the term ‘small farm’ has the mean-
24 ing given to such term by the Secretary of Agri-
25 culture; and

1 “(E) the term ‘qualifying loan’ means a
2 loan to a small business or a small farm that
3 is identified by an eligible depository institution
4 under paragraph (3) and that otherwise meets
5 the requirements of this subsection.

6 “(2) EXEMPTION.—Except to the extent pro-
7 vided by an order or regulation of an appropriate
8 Federal banking agency, a depository institution ex-
9 aminer may not consider the adequacy of the docu-
10 mentation accompanying the extension of qualifying
11 loans by an eligible depository institution in making
12 any examination or evaluation of the institution
13 under this section. Qualifying loans shall be evalu-
14 ated by the appropriate Federal banking agency
15 solely on the performance of such loans.

16 “(3) QUALIFYING LOANS.—An eligible deposi-
17 tory institution may identify a portion of its port-
18 folio of loans to small businesses or to small farms,
19 in writing, as qualifying loans for purposes of the ex-
20 emption provided in paragraph (2).

21 “(4) LIMITATIONS.—

22 “(A) LOAN TYPES AND AMOUNTS.—A loan
23 may not be considered to be a qualifying loan
24 if—

1 “(i) inclusion of the loan in the total
2 number of qualifying loans identified by an
3 eligible depository institution would result
4 in an aggregate value of all qualifying
5 loans made by that institution equal to
6 more than 40 percent of the total capital
7 of the institution;

8 “(ii) the loan amount is more than
9 the lesser of—

10 “(I) \$900,000; or

11 “(II) 5 percent of the total cap-
12 ital of the eligible depository institu-
13 tion; or

14 “(iii) the borrower is an executive offi-
15 cer, director, or principal shareholder of
16 such institution.

17 “(B) ADJUSTMENTS.—Each appropriate
18 Federal banking agency may adjust the limita-
19 tions set forth in subparagraph (A), to permit
20 eligible depository institutions to make addi-
21 tional qualifying loans, consistent with preserv-
22 ing the safety and soundness of such institu-
23 tions, in order to further promote credit avail-
24 ability.

1 “(5) INTERNAL DOCUMENTATION.—An eligible
2 depository institution shall—

3 “(A) maintain an aggregate list or ac-
4 counting segregation of its qualifying loans
5 which includes the current performance status
6 of each such loan; and

7 “(B) fully evaluate and maintain an inter-
8 nal record of the collectibility of each qualifying
9 loan in determining the adequacy of its allow-
10 ance for loan and lease losses or general valu-
11 ation allowance attributable to such loan.

12 “(6) LOSS OF ELIGIBILITY.—A depository insti-
13 tution may not identify any new qualifying loans (in-
14 cluding loan renewals) for purposes of the exemption
15 provided in paragraph (2) at any time during which
16 it fails to meet the eligibility requirements of this
17 subsection.”.

18 **SEC. 3. PRESIDENTIAL REVIEW AND AUTHORITY TO SUS-**

19 **PEND.**

20 (a) IN GENERAL.—Not later than 30 days after the
21 date of enactment of this Act, the President shall conduct
22 a thorough review and evaluation of all statutory and reg-
23 ulatory provisions affecting insured depository institu-
24 tions. This review shall include an analysis of—

25 (1) the purposes of the provision;

1 (2) the effectiveness of the provision in achiev-
2 ing such purposes;

3 (3) whether any other provision provides an al-
4 ternative or duplicative means of achieving those
5 purposes;

6 (4) the cost imposed by compliance with the
7 provisions upon insured depository institutions and
8 consumers; and

9 (5) the relationship between the provision, its
10 compliance costs, and the availability of credit in the
11 United States.

12 (b) **AUTHORITY TO SUSPEND.**—If the President
13 makes a determination described in subsection (c), the
14 President may, by executive order, suspend the applicabil-
15 ity of—

16 (1) any Federal law affecting insured depository
17 institutions or depository institution holding compa-
18 nies (or any portion thereof); and

19 (2) any regulation or guideline promulgated by
20 any of the Federal banking agencies (or any portion
21 thereof).

22 (c) **DETERMINATION.**—The President may not sus-
23 pend the applicability of any law, regulation, or guideline
24 under subsection (b) unless the President determines
25 that—

1 (1) the Federal law, regulation, or guideline has
2 accomplished its goal and the law, regulation, or
3 guideline is therefore no longer necessary;

4 (2) the law, regulation, or guideline is not as ef-
5 fective in achieving its intended purpose as other
6 available alternatives that would impose lesser costs
7 on financial institutions, their customers, or the
8 economy;

9 (3) the cost of compliance with the law, regula-
10 tion, or guideline outweighs the potential benefits
11 sought to be accomplished by the law, regulation, or
12 guideline; or

13 (4) the law, regulation, or guideline has a nega-
14 tive impact on the availability of credit in the United
15 States which outweighs the benefits sought to be ac-
16 complished by the law, regulation, or guideline.

17 (d) PUBLICATION AND EFFECTIVE DATE.—A Presi-
18 dential order issued pursuant to this section shall be pub-
19 lished in the Federal Register, and shall become effective
20 30 days after such publication, unless the President, for
21 good cause, determines that a shorter period is necessary
22 and in the public interest.

23 (e) CONSULTATION.—Prior to making a determina-
24 tion under subsection (b) that a law, regulation, or guide-
25 line is to be suspended, the President shall consult with

1 the Secretary of the Treasury, the Chairperson of the Fed-
2 eral Deposit Insurance Corporation, the Chairman of the
3 Board of Governors of the Federal Reserve System, the
4 Comptroller of the Currency, and the Director of the Of-
5 fice of Thrift Supervision.

6 (f) NOTIFICATION.—The President shall notify the
7 Committee on Banking, Housing, and Urban Affairs of
8 the Senate and the Committee on Banking, Finance and
9 Urban Affairs of the House of Representatives prior to
10 issuing any order under subsection (b).

11 (g) RESTRICTION.—Nothing in this section author-
12 izes the President to suspend any law, regulation, or
13 guideline—

14 (1) that is necessary for the safe and sound op-
15 eration of insured depository institutions; or

16 (2) that—

17 (A) prohibits discrimination in the provi-
18 sion of financial services based on race, sex, na-
19 tional origin, marital status, or age;

20 (B) relates directly to the conduct of mon-
21 etary policy; or

22 (C) pertains to an enforcement proceeding
23 or supervisory action with respect to a particu-
24 lar institution or party.

1 (h) SUNSET.—The authority of the President to sus-
2 pend any law, regulation, or guideline under this section
3 shall terminate on January 1, 1997.

4 (i) INCORPORATED DEFINITIONS.—For purposes of
5 this section, the terms “Federal banking agencies” and
6 “insured depository institution” have the same meanings
7 as in section 3 of the Federal Deposit Insurance Act.

8 **SEC. 4. NEW FEDERAL BANKING REGULATIONS SUBJECT**
9 **TO REGULATORY IMPACT ANALYSIS.**

10 (a) REGULATORY IMPACT ANALYSIS.—

11 (1) IN GENERAL.—No new regulation shall be
12 promulgated by an appropriate Federal banking
13 agency until such agency has conducted a regulatory
14 impact analysis and concluded that the benefits of
15 the proposed regulation outweigh the costs of imple-
16 menting and complying with the regulation, includ-
17 ing the particular benefits and costs of compliance
18 with the proposed regulation for small banks.

19 (2) NEW REGULATIONS.—For purposes of this
20 subsection, a regulation shall be considered to be
21 “new” if it is promulgated, modified, amended, or
22 reissued on or after the date of enactment of this
23 Act.

24 (b) COSTS.—In reviewing the costs of implementing
25 and complying with a proposed regulation under sub-

1 section (a), the appropriate Federal banking agency shall
2 consider the impact of the proposed regulation on—

3 (1) the national economy (including the poten-
4 tial for job creation);

5 (2) consumers;

6 (3) small businesses;

7 (4) small banks (including administrative and
8 personnel costs);

9 (5) other users of financial services; and

10 (6) new paperwork and documentation require-
11 ments.

12 (c) BENEFITS.—In reviewing the benefits of a pro-
13 posed regulation under subsection (a), the appropriate
14 Federal banking agency shall consider the benefits of the
15 proposed regulation to—

16 (1) the public;

17 (2) taxpayers; and

18 (3) the overall safety and soundness of the Na-
19 tion's banking system.

20 (d) EASING BURDEN ON SMALL BANKS.—In con-
21 ducting the regulatory impact analysis under subsection
22 (a), the appropriate Federal banking agency shall consider
23 including in the proposed regulation a provision that eases
24 the regulatory burden on small banks, including special
25 compliance provisions.

1 (e) ESTIMATE REQUIRED.—The regulatory impact
2 analysis required by subsection (a) shall include an esti-
3 mate of the number of small banks and small businesses
4 that will be affected by the regulation.

5 (f) DEFINITIONS.—For the purposes of this section,
6 the following definitions shall apply:

7 (1) INCORPORATED DEFINITIONS.—The terms
8 “appropriate Federal banking agency” and “bank”,
9 have the same meanings as in section 3 of the Fed-
10 eral Deposit Insurance Act.

11 (2) REGULATORY IMPACT ANALYSIS.—The term
12 “regulatory impact analysis” means a review of the
13 potential costs and benefits of a proposed regulation,
14 and in particular, the costs to small banks and their
15 customers.

16 (3) SMALL BANK.—The term “small bank”
17 means a bank or savings association with total as-
18 sets of not more than \$400,000,000.

19 **SEC. 5. PRESUMPTION OF COMPLIANCE WITH COMMUNITY**
20 **REINVESTMENT ACT.**

21 Section 804 of the Community Reinvestment Act of
22 1977 (12 U.S.C. 2903) is amended by adding at the end
23 the following new subsection:

24 “(c) SAFE HARBOR PROVISION.—

1 “(1) PRESUMPTION OF COMPLIANCE.—In the
2 evaluation of an application for a deposit facility by
3 a regulated financial institution that has received a
4 rating of ‘Satisfactory’ or ‘Outstanding’ in the most
5 recent written evaluation of its record under section
6 807(b), the institution shall be entitled to a pre-
7 sumption, rebuttable by clear and convincing evi-
8 dence, that it is meeting the credit needs of the en-
9 tire community and is otherwise in compliance with
10 the requirements of this title.

11 “(2) RESOLUTION OF DISPUTES.—The appro-
12 priate Federal financial supervisory agency shall re-
13 solve any disputed evaluation of compliance with this
14 title not later than 30 days after the dispute
15 arises.”.

16 **SEC. 6. EXTENSION OF EFFECTIVE DATE.**

17 Section 132 of the Federal Deposit Insurance Cor-
18 poration Improvement Act of 1991 (12 U.S.C. 1831p-1
19 note) is amended—

20 (1) in subsection (b), by striking “August 1,
21 1993” and inserting “January 1, 1996”; and

22 (2) by amending subsection (c) to read as fol-
23 lows:

1 “(c) EFFECTIVE DATE.—The amendment made by
2 subsection (a) shall become effective on January 1,
3 1996.”.

4 **SEC. 7. CONSUMER SURVEYS AND REPORT.**

5 (a) SURVEYS.—Not later than 6 months after the
6 date of enactment of this Act, each of the Federal banking
7 agencies (as defined in section 3 of the Federal Deposit
8 Insurance Act) shall conduct a statistically valid survey
9 of financial services consumers to determine the general
10 public awareness of, perceived benefits to consumers of,
11 and cost effectiveness of the Federal banking laws under
12 which the agency operates that are intended for the pro-
13 tection of such consumers, including, but not limited to—

- 14 (1) the Expedited Funds Availability Act;
15 (2) the Truth in Lending Act;
16 (3) the Truth in Savings Act;
17 (4) the Real Estate Settlement Procedures Act
18 of 1974;
19 (5) the Home Mortgage Disclosure Act of 1975;
20 (6) the Fair Credit Reporting Act;
21 (7) the Equal Credit Opportunity Act;
22 (8) the Community Reinvestment Act of 1977;
23 (9) the Home Equity Loan Consumer Protec-
24 tion Act;

1 (10) the Fair Credit and Charge Card Disclo-
2 sure Act; and

3 (11) the rules and regulations promulgated
4 under those Acts.

5 (b) REPORT.—Not later than 30 days after comple-
6 tion of its survey under subsection (a), each of the Federal
7 banking agencies shall submit a report of the results of
8 its survey to the Committee on Banking, Housing, and
9 Urban Affairs of the Senate and the Committee on Bank-
10 ing, Finance and Urban Affairs of the House of Rep-
11 resentatives.

○