

111TH CONGRESS  
2D SESSION

# S. 3241

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

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IN THE SENATE OF THE UNITED STATES

APRIL 21, 2010

Mr. BROWN of Ohio (for himself, Mr. KAUFMAN, Mr. CASEY, Mr. MERKLEY,  
Mr. WHITEHOUSE, and Mr. HARKIN) introduced the following bill; which  
was read twice and referred to the Committee on Banking, Housing, and  
Urban Affairs

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## 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—

1           (1) the term “appropriate Federal regulator”  
2 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) the term “average total consolidated assets”  
13 has the same meaning as in part 225 of title 12,  
14 Code of Federal Regulations, as in effect on the date  
15 of enactment of this Act, or any successor thereto;

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

21           (4) the term “financial company” means any  
22 nonbank financial company that is supervised by the  
23 Board;

24           (5) the term “liabilities” equals a financial com-  
25 pany’s total assets less tier 1 capital;

1           (6) the term “nondeposit liabilities” means the  
2 total assets of a bank holding company, less tier 1  
3 capital, less FDIC-assessed deposits; and

4           (7) the term “tier 1 capital” has the same  
5 meaning as in part 225 of title 12, Code of Federal  
6 Regulations, as in effect on the date of enactment of  
7 this Act, or any successor thereto.

8 (b) NONBANK FINANCIAL COMPANY DEFINITIONS.—

9           (1) FOREIGN NONBANK FINANCIAL COMPANY.—

10 The term “foreign nonbank financial company”  
11 means a company (other than a company that is, or  
12 is treated in the United States, as a bank holding  
13 company or a subsidiary thereof) that is—

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

16           (B) substantially engaged in, including  
17 through a branch in the United States, activi-  
18 ties in the United States that are financial in  
19 nature (as defined in section 4(k) of the Bank  
20 Holding Company Act of 1956).

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

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

3 (B) substantially engaged in activities in  
4 the United States that are financial in nature  
5 (as defined in section 4(k) of the Bank Holding  
6 Company Act of 1956).

7 (3) NONBANK FINANCIAL COMPANY.—The term  
8 “nonbank financial company” means a U.S.  
9 nonbank financial company and a foreign nonbank  
10 financial company.

11 **SEC. 3. DEPOSIT CONCENTRATION LIMIT.**

12 Section 3(d) of the Bank Holding Company Act of  
13 1956 (12 U.S.C. 1842(d)) is amended—

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

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

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

23 “(5) ENFORCED COMPLIANCE.—The Board  
24 shall require any bank holding company having a de-  
25 posit concentration in violation of this subsection to

1 sell or otherwise transfer assets to unaffiliated firms  
2 to bring the company into compliance with this sub-  
3 section.”.

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

6 The Bank Holding Company Act of 1956 (12 U.S.C.  
7 1841 et seq.) is amended by inserting after section 5 the  
8 following:

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

10 “(a) **LEVERAGE RATIO REQUIREMENTS FOR BANK**  
11 **HOLDING COMPANIES AND FINANCIAL COMPANIES.—**

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

16 “(2) **BALANCE SHEET LEVERAGE RATIO.—**No  
17 bank holding company or financial company may  
18 maintain less than 6 percent of tier 1 capital for all  
19 outstanding balance sheet liabilities, as determined  
20 under section 13(m) of the Securities Exchange Act  
21 of 1934 (15 U.S.C. 78m(m)).

22 “(3) **EXEMPTIONS.—**

23 “(A) **IN GENERAL.—**The Board may ad-  
24 just the leverage ratio requirements provided in  
25 paragraph (1) or (2), for any class of institu-

1 tions, based upon the size or activity of such  
2 class of institutions. No adjustment made under  
3 this subparagraph may allow an institution to  
4 carry less capital than provided in paragraph  
5 (1) or (2).

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

18 “(C) AUTHORITY OF OTHER REGU-  
19 LATORS.—

20 “(i) IN GENERAL.—The appropriate  
21 Federal regulator may, in a manner con-  
22 sistent with this subsection, grant any  
23 bank holding company an emergency tem-  
24 porary exemption from the ratio require-  
25 ments provided in paragraph (1) or (2),

1 where necessary to prevent an imminent  
2 threat to the financial stability of the  
3 United States.

4 “(ii) PUBLICATION REQUIRED.—Any  
5 exemption granted under this subpara-  
6 graph shall be published in the Federal  
7 Register within a reasonable period after  
8 the date on which such exemption is grant-  
9 ed, not to exceed 90 days, and such publi-  
10 cation shall provide—

11 “(I) the name of the bank hold-  
12 ing company or financial company  
13 being granted an exemption;

14 “(II) the reason for the exemp-  
15 tion; and

16 “(III) the plan of the appropriate  
17 Federal regulator detailing the man-  
18 ner by which the bank holding com-  
19 pany shall be brought into compliance  
20 with paragraphs (1) and (2).

21 “(4) LEVERAGE RATIO REQUIREMENTS FOR OP-  
22 ERATING SUBSIDIARIES OF BANK HOLDING COMPA-  
23 NIES AND FINANCIAL COMPANIES.—Notwithstanding  
24 any other provision of law applicable to insured de-  
25 pository institutions, the Board shall, within 1 year

1 of the date of enactment of the SAFE Banking Act  
2 of 2010, promulgate regulations establishing a lever-  
3 age ratio and a balance sheet leverage ratio, in a  
4 manner consistent with paragraphs (1) and (2), for  
5 all operating subsidiaries of bank holding companies  
6 and financial companies.

7 “(5) PROMPT CORRECTIVE ACTION.—

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

17 “(B) CORRECTIVE ACTION PLAN.—The  
18 Board shall, not later than 60 days after deter-  
19 mining that a bank holding company or finan-  
20 cial company is in violation of paragraph (1) or  
21 (2), present to the members of the Committee  
22 on Banking, Housing, and Urban Affairs of the  
23 Senate and the Committee on Financial Serv-  
24 ices of the House of Representatives a plan de-  
25 tailing the manner by which the bank holding



1 company or financial company shall be brought  
2 into compliance with the applicable provision of  
3 law.

4 “(C) REPORTS TO CONGRESS.—

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

14 “(ii) TESTIMONY.—The Board shall  
15 provide testimony to the Committee on  
16 Banking, Housing, and Urban Affairs of  
17 the Senate and the Committee on Finan-  
18 cial Services of the House of Representa-  
19 tives for each 90-day period that a correc-  
20 tive action plan required by subparagraph  
21 (B) has not been fulfilled.

22 “(b) LIMITS ON NONDEPOSIT LIABILITIES FOR  
23 BANK HOLDING COMPANIES AND FINANCIAL COMPA-  
24 NIES.—

25 “(1) BANK HOLDING COMPANIES.—

1           “(A) LIMIT ON NONDEPOSIT LIABILITIES  
2 FOR BANK HOLDING COMPANIES.—No bank  
3 holding company may possess nondeposit liabil-  
4 ities exceeding 2 percent of the annual gross  
5 domestic 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 in this section, the Board may set a  
22 separate liability limit with respect to certain  
23 bank holding companies primarily engaged in  
24 the business of insurance, as the Board deems  
25 necessary in order to provide for consistent and

1 equitable treatment of such institutions. In es-  
2 tablishing such separate liability limits for in-  
3 surance companies, for any insurance company  
4 with any subsidiary regulated by a State insur-  
5 ance regulator, the Board shall consult the ap-  
6 propriate State insurance 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 “(2) FINANCIAL COMPANIES.—

18 “(A) LIMIT ON NONDEPOSIT LIABILITIES  
19 FOR FINANCIAL COMPANIES.—No financial  
20 company may possess nondeposit liabilities ex-  
21 ceeding 3 percent of the annual gross domestic  
22 product of the United States.

23 “(B) DETERMINATION OF GROSS DOMES-  
24 TIC PRODUCT.—The annual gross domestic  
25 product of the United States shall be deter-

1           mined for purposes of subparagraph (A) using  
2           the average of such product over the 16 cal-  
3           endar quarters, as calculated by the Bureau of  
4           Economic Analysis of the Department of Com-  
5           merce, most recently completed as of the time  
6           of the determination.

7           “(C) OFF-BALANCE-SHEET LIABILITIES.—  
8           The computation of the limit under this para-  
9           graph shall take into account off-balance-sheet  
10          liabilities.

11          “(D) TREATMENT OF INSURANCE COMPA-  
12          NIES.—Notwithstanding the liability limit es-  
13          tablished by this paragraph, the Board may set  
14          a separate liability limit with respect to insur-  
15          ance companies or other financial companies, as  
16          the Board determines necessary in order to pro-  
17          vide for consistent and equitable treatment of  
18          such institutions. In establishing such separate  
19          liability limits for insurance companies, for any  
20          insurance company with any subsidiary regu-  
21          lated by a State insurance regulator, the Board  
22          shall consult with the appropriate State insur-  
23          ance regulator.

24          “(E) TREATMENT OF FOREIGN DEPOS-  
25          ITS.—Notwithstanding the definition of the

1 term ‘nondeposit liabilities’ established in this  
2 section, the Board may exclude from its calcula-  
3 tion of nondeposit liabilities any foreign and  
4 other deposits not covered by the definition of  
5 the term ‘FDIC-assessed deposits’, if the Board  
6 deems such action necessary to ensure the con-  
7 sistent and equitable treatment of institutions  
8 with international operations.

9 “(3) PROMPT CORRECTIVE ACTION.—

10 “(A) AUTHORITIES.—The Board shall re-  
11 quire any bank holding company or financial  
12 company that is in violation of a provision of  
13 paragraph (1) or (2), as applicable, to sell or  
14 otherwise transfer assets or off-balance-sheet  
15 items to unaffiliated firms, to terminate 1 or  
16 more activities, or to impose conditions on the  
17 manner in which the bank holding company or  
18 financial company conducts 1 or more activities  
19 to bring the company into compliance with  
20 paragraphs (1) or (2), as applicable.

21 “(B) CORRECTIVE ACTION PLAN.—The  
22 Board shall, not later than 60 days after deter-  
23 mining that a bank holding company or finan-  
24 cial company is in violation of paragraph (1) or  
25 (2), present to the members of the Committee

1 on Banking, Housing, and Urban Affairs of the  
2 Senate and the Committee on Financial Serv-  
3 ices of the House of Representatives a plan de-  
4 tailing the manner by which the bank holding  
5 company or financial company shall be brought  
6 into compliance with the applicable provision.

7 “(C) REPORTS TO CONGRESS.—

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

17 “(ii) TESTIMONY.—The Board shall  
18 provide testimony to the Committee on  
19 Banking, Housing, and Urban Affairs of  
20 the Senate and the Committee on Finan-  
21 cial Services of the House of Representa-  
22 tives for each 120-day period during which  
23 a corrective action plan required by sub-  
24 paragraph (B) has not been fulfilled.

25 “(c) DEFINITIONS.—As used in this section—

1           “(1) the term ‘appropriate Federal regulator’  
2 means—

3           “(A) the Board of Governors of the Fed-  
4 eral Reserve System (in this Act referred to as  
5 the ‘Board’);

6           “(B) the Comptroller General of the  
7 United States (in this Act referred to as the  
8 ‘Comptroller’); or

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

12           “(2) the term ‘average total consolidated assets’  
13 has the same meaning as in part 225 of title 12,  
14 Code of Federal Regulations, as in effect on the date  
15 of enactment of this Act, or any successor thereto;

16           “(3) the term ‘FDIC-assessed deposits’ means  
17 the assessment base, as computed under part 327 of  
18 title 12, Code of Federal Regulations, as in effect on  
19 the date of enactment of this Act, or any successor  
20 thereto;

21           “(4) the term ‘financial company’ means any  
22 nonbank financial company that is supervised by the  
23 Board;

24           “(5) the term ‘liabilities’ equals a financial com-  
25 pany’s total assets less tier 1 capital;

1           “(6) the term ‘nondeposit liabilities’ means the  
2 total assets of a bank holding company, less tier 1  
3 capital, less FDIC-assessed deposits;

4           “(7) the term ‘foreign nonbank financial com-  
5 pany’ means a company (other than a company that  
6 is, or is treated in the United States, as a bank  
7 holding company or a subsidiary thereof) that is—

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

10                   “(B) substantially engaged in, including  
11 through a branch in the United States, activi-  
12 ties in the United States that are financial in  
13 nature (as defined in section 4(k) of the Bank  
14 Holding Company Act of 1956);

15           “(8) the term ‘U.S. nonbank financial company’  
16 means a company (other than a bank holding com-  
17 pany or a subsidiary thereof) that is—

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

20                   “(B) substantially engaged in activities in  
21 the United States that are financial in nature  
22 (as defined in section 4(k) of the Bank Holding  
23 Company Act of 1956);



1           “(9) the term ‘nonbank financial company’  
2 means a U.S. nonbank financial company and a for-  
3 eign nonbank financial company; and

4           “(10) the term ‘tier 1 capital’ has the same  
5 meaning as in part 225 of title 12, Code of Federal  
6 Regulations, as in effect on the date of enactment of  
7 this section, or any successor thereto.”.

8 **SEC. 5. CAPITAL ASSESSMENT PROGRAM.**

9           The Bank Holding Company Act of 1956 (12 U.S.C.  
10 1841 et seq.) is amended by inserting after section 7 the  
11 following new section:

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

13           “(a) ANNUAL ASSESSMENTS.—Beginning 1 year  
14 after the date of enactment of the SAFE Banking Act  
15 of 2010, and annually thereafter, the Board shall conduct  
16 a capital assessment to estimate losses, revenues, and re-  
17 serve needs for bank holding companies and financial com-  
18 panies.

19           “(b) REPORTS.—The Board shall provide a report on  
20 the results of the capital assessment program under this  
21 section to the Secretary, the members of the Committee  
22 on Banking, Housing, and Urban Affairs of the Senate,  
23 and the members of the Committee on Financial Services  
24 of the House of Representatives.”.

1 **SEC. 6. AMENDMENT TO THE SECURITIES AND EXCHANGE**  
2 **ACT.**

3 Section 13 of the Securities Exchange Act of 1934  
4 (15 U.S.C. 78m) is amended by adding at the end the  
5 following new subsection:

6 “(m) **STANDARD BALANCE SHEET CALCULATION**  
7 **FOR REPORTS.**—

8 “(1) **ESTABLISHMENT OF STANDARD BALANCE**  
9 **SHEET REPORTING.**—Not later than 1 year after the  
10 date of enactment of the SAFE Banking Act of  
11 2010, the Commission, or a standard setter des-  
12 ignated by and under the oversight of the Commis-  
13 sion, shall issue a rule requiring that each issuer of  
14 securities required to file reports under this section  
15 record all of its assets and liabilities on its balance  
16 sheets. The recorded amount of assets and liabilities  
17 shall reflect a reasonable assessment by the issuer of  
18 the most likely outcomes, given currently available  
19 information. Such issuers shall record all financings  
20 of assets for which the issuer has more than minimal  
21 economic risks or rewards.

22 “(2) **EXCLUSION FOR INDETERMINATE LIABIL-**  
23 **ITIES.**—If an issuer required to file reports under  
24 this section cannot determine the amount of a par-  
25 ticular liability, for purposes of paragraph (1), such

1 issuer may exclude that liability from its balance  
2 sheet only if it discloses an explanation of—

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

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

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

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

13 “(3) RULEMAKING.—The Commission shall  
14 promulgate rules to ensure compliance with this sub-  
15 section, including enforcement by the Commission  
16 and civil liability under the Securities Act of 1933  
17 and this title.”.

18 **SEC. 7. EFFECTIVE DATE.**

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

22 (b) ALLOWANCE FOR BANK HOLDING COMPANIES  
23 AND FINANCIAL COMPANIES NOT IN COMPLIANCE AT  
24 DATE OF ENACTMENT.—Any institution that is in viola-  
25 tion of—

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

7           (2) the leverage ratios in section 5A of the  
8           Bank Holding Act of 1956, as amended by this Act,  
9           as of the date of enactment of this Act, shall bring  
10          itself into compliance with those ratios, not later  
11          than 1 year after the date of enactment of this Act;  
12          and

13          (3) the limits on nondeposit liabilities in section  
14          7A of the Bank Holding Company Act of 1956, as  
15          added by this Act, as of the date of enactment of  
16          this Act, shall bring itself into compliance with those  
17          limits, not later than 3 years after the date of enact-  
18          ment of this Act.

○