

117TH CONGRESS  
2D SESSION

# S. 3562

To amend the Federal Deposit Insurance Act to ensure that certain custodial deposits of well capitalized insured depository institutions are not considered to be funds obtained by or through deposit brokers, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 2, 2022

Mr. SCOTT of South Carolina (for himself and Ms. HASSAN) 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 amend the Federal Deposit Insurance Act to ensure that certain custodial deposits of well capitalized insured depository institutions are not considered to be funds obtained by or through deposit brokers, 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 “Minority Depository  
5 Institution and Community Bank Deposit Access Act of  
6 2022”.

1 **SEC. 2. LIMITED EXCEPTION FOR CUSTODIAL DEPOSITS.**

2 (a) IN GENERAL.—Section 29 of the Federal Deposit  
3 Insurance Act (12 U.S.C. 1831f) is amended by adding  
4 at the end the following:

5 “(j) LIMITED EXCEPTION FOR CUSTODIAL DEPOS-  
6 ITS.—

7 “(1) IN GENERAL.—Custodial deposits of an el-  
8 igible institution shall not be considered to be funds  
9 obtained, directly or indirectly, by or through a de-  
10 posit broker to the extent that the total amount of  
11 such custodial deposits does not exceed an amount  
12 equal to 10 percent of the total liabilities of the eligi-  
13 ble institution.

14 “(2) DEFINITIONS.—In this subsection:

15 “(A) CUSTODIAL DEPOSIT.—The term  
16 ‘custodial deposit’ means a deposit that would  
17 otherwise be considered to be obtained, directly  
18 or indirectly, by or through a deposit broker, if  
19 the deposit is deposited at 1 or more insured  
20 depository institutions, for the purpose of pro-  
21 viding or maintaining deposit insurance for the  
22 benefit of a third party, by or through any of  
23 the following, each acting in a formal custodial  
24 or fiduciary capacity for the benefit of a third  
25 party:

1           “(i) An insured depository institution  
2           serving as agent, trustee, or custodian.

3           “(ii) A trust entity controlled by an  
4           insured depository institution serving as  
5           agent, trustee, or custodian.

6           “(iii) A State-chartered trust company  
7           serving as agent, trustee, or custodian.

8           “(iv) A plan administrator or invest-  
9           ment advisor, acting in a formal custodial  
10          or fiduciary capacity for the benefit of a  
11          plan, as defined in section 3 of the Em-  
12          ployee Retirement Income Security Act of  
13          1974 (29 U.S.C. 1002).

14          “(B) ELIGIBLE INSTITUTION.—The term  
15          ‘eligible institution’ means an insured depository  
16          institution that accepts custodial deposits,  
17          that were not deposited at the insured depository  
18          institution in return for fees paid by the  
19          insured depository institution pursuant to an  
20          agreement with a third party, if the insured de-  
21          pository institution—

22                 “(i)(I) has less than \$5,000,000,000  
23                 in total assets as reported on the consoli-  
24                 dated report of condition and income as re-

1 ported quarterly to the appropriate Federal  
2 banking agency; or

3 “(II)(aa) is a community development  
4 financial institution, as defined in section  
5 103 of the Community Development Bank-  
6 ing and Financial Institutions Act of 1994  
7 (12 U.S.C. 4702); or

8 “(bb) is a minority depository institu-  
9 tion, as defined in section 308 of the Fi-  
10 nancial Institutions Reform, Recovery, and  
11 Enforcement Act of 1989 (12 U.S.C. 1463  
12 note);

13 “(ii)(I) when most recently examined  
14 under section 10(d) was found to have a  
15 composite condition of outstanding or  
16 good; and

17 “(II) is well capitalized; or

18 “(iii) has obtained a waiver pursuant  
19 to subsection (c).

20 “(C) PLAN ADMINISTRATOR.—The term  
21 ‘plan administrator’ has the meaning given the  
22 term ‘administrator’ in section 3 of the Em-  
23 ployee Retirement Income Security Act of 1974  
24 (29 U.S.C. 1002).

1           “(D) WELL CAPITALIZED.—The term ‘well  
2           capitalized’ has the meaning given the term in  
3           section 38(b).”.

4           (b) INTEREST RATE RESTRICTION.—Section 29 of  
5 the Federal Deposit Insurance Act (12 U.S.C. 1831f) is  
6 amended by striking subsection (e) and inserting the fol-  
7 lowing:

8           “(e) RESTRICTION ON INTEREST RATE PAID.—

9           “(1) DEFINITIONS.—In this subsection—

10           “(A) the terms ‘custodial deposit’, ‘eligible  
11           institution’, and ‘well capitalized’ have the  
12           meanings given those terms in subsection (j);  
13           and

14           “(B) the term ‘covered insured depository  
15           institution’ means an insured depository institu-  
16           tion that—

17           “(i) under subsection (c) or (d), ac-  
18           cepts funds obtained, directly or indirectly,  
19           by or through a deposit broker; or

20           “(ii) while acting as an eligible insti-  
21           tution under subsection (j), accepts custo-  
22           dial deposits while not well capitalized.

23           “(2) PROHIBITION.—A covered insured deposi-  
24           tory institution may not pay a rate of interest on  
25           funds that, under subsection (c) or (d), are obtained,

1 directly or indirectly, by or through a deposit broker  
 2 or on custodial deposits that are accepted while not  
 3 well capitalized that, at the time the funds or custo-  
 4 dial deposits are accepted, significantly exceeds the  
 5 limit set forth in paragraph (3).

6 “(3) LIMIT ON INTEREST RATES.—The limit on  
 7 the rate of interest referred to in paragraph (2) shall  
 8 be not greater than—

9 “(A) the rate paid on deposits of similar  
 10 maturity in the normal market area of the cov-  
 11 ered insured depository institution for deposits  
 12 accepted in the normal market area of the cov-  
 13 ered insured depository institution; or

14 “(B) the national rate paid on deposits of  
 15 comparable maturity, as established by the Cor-  
 16 poration, for deposits accepted outside the nor-  
 17 mal market area of the covered insured deposi-  
 18 tory institution.”.

19 **SEC. 3. COMMUNITY DEVELOPMENT REVOLVING LOAN**  
 20 **FUND FOR CREDIT UNIONS.**

21 Section 130 of the Federal Credit Union Act (12  
 22 U.S.C. 1772c-1) is amended by striking subsection (c)  
 23 and inserting the following:

24 “(c) LOANS.—

1           “(1) IN GENERAL.—The Board may require  
2           that any loans made from the Fund be matched by  
3           increased shares in the borrower credit union.

4           “(2) ELIGIBILITY.—Only low-income credit  
5           unions and minority depository institutions that are  
6           federally insured credit unions are eligible for loans  
7           made from the Fund.”.

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