

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

# S. 1728

To provide regulatory capital guidelines for treatment of real estate assets sold with limited recourse by depository institutions.

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## IN THE SENATE OF THE UNITED STATES

NOVEMBER 19 (legislative day, NOVEMBER 2), 1993

Mr. BRYAN (for himself and Mr. DOMENICI) 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 regulatory capital guidelines for treatment of real estate assets sold with limited recourse by depository institutions.

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 “Commercial Mortgage  
5 Capital Availability Act of 1993”.

1 **SEC. 2. INSURED DEPOSITORY INSTITUTION CAPITAL RE-**  
2 **QUIREMENTS FOR TRANSFERS OF MORT-**  
3 **GAGE LOANS.**

4 (a) ACCOUNTING PRINCIPLES.—The accounting prin-  
5 ciples applicable to the transfer of a mortgage loan with  
6 recourse contained in reports or statements required to be  
7 filed with Federal banking agencies by a qualified insured  
8 depository institution shall be consistent with generally ac-  
9 cepted accounting principles.

10 (b) CAPITAL AND RESERVE REQUIREMENTS.—With  
11 respect to the transfer of a mortgage loan with recourse  
12 that is a sale under generally accepted accounting prin-  
13 ciples, each qualified insured depository institution shall—

14 (1) establish and maintain a reserve equal to an  
15 amount sufficient to meet the reasonable estimated  
16 liability of the institution under the recourse ar-  
17 rangement; and

18 (2) treat as an asset (for purposes of applicable  
19 capital standards and other capital measures, includ-  
20 ing risk-based capital requirements) only the maxi-  
21 mum amount at risk under the recourse arrange-  
22 ment.

23 (c) QUALIFIED INSTITUTIONS CRITERIA.—An in-  
24 sured depository institution is a qualified insured depository  
25 institution for purposes of this section if, without re-

1 gard to the accounting principles or capital requirements  
2 referred to in subsections (a) and (b), the institution is—

3 (1) well capitalized; or

4 (2) with the approval, by regulation or order, of  
5 the appropriate Federal banking agency, adequately  
6 capitalized.

7 (d) AGGREGATE AMOUNT OF RECOURSE.—The total  
8 outstanding amount at risk with respect to transfers of  
9 mortgage loans under subsections (a) and (b) (together  
10 with the amount at risk under any provisions of law sub-  
11 stantially similar to subsections (a) and (b)) shall not ex-  
12 ceed—

13 (1) 15 percent of the risk-based capital of the  
14 institution; or

15 (2) such greater amount, as established by the  
16 appropriate Federal banking agency by regulation or  
17 order.

18 (e) INSTITUTIONS THAT CEASE TO BE QUALIFIED  
19 OR EXCEED AGGREGATE LIMITS.—If an insured depository  
20 institution ceases to be a qualified insured depository  
21 institution or exceeds the limits under subsection (d), this  
22 section shall remain applicable to any transfer of mortgage  
23 loans that occurred during the time that the institution  
24 was qualified and did not exceed such limit.

1 (f) PROMPT CORRECTIVE ACTION NOT AFFECTED.—  
2 The capital of an insured depository institution shall be  
3 computed without regard to this section in determining  
4 whether the institution is adequately capitalized,  
5 undercapitalized, significantly undercapitalized, or criti-  
6 cally undercapitalized under section 38 of the Federal De-  
7 posit Insurance Act.

8 (g) REGULATIONS REQUIRED.—Not later than 180  
9 days after the date of the enactment of this Act, each ap-  
10 propriate Federal banking agency shall promulgate final  
11 regulations implementing this section.

12 (h) ALTERNATIVE SYSTEM PERMITTED.—

13 (1) IN GENERAL.—This section shall not apply  
14 if, at the discretion of the appropriate Federal bank-  
15 ing agency, the regulations of the agency provide  
16 that the aggregate amount of capital and reserves  
17 required with respect to the transfer of mortgage  
18 loans with recourse does not exceed the aggregate  
19 amount of capital and reserves that would be re-  
20 quired under subsection (b).

21 (2) EXISTING TRANSACTIONS NOT AF-  
22 FECTED.—Notwithstanding paragraph (1), this sec-  
23 tion shall remain in effect with respect to transfers  
24 of mortgage loans with recourse by qualified insured

1 depository institutions occurring before the effective  
2 date of regulations referred to in paragraph (1).

3 (i) DEFINITIONS.—For purposes of this section—

4 (1) the term “adequately capitalized” has the  
5 same meaning as in section 28(b) of the Federal De-  
6 posit Insurance Act;

7 (2) the term “appropriate Federal banking  
8 agency” has the same meaning as in section 3 of the  
9 Federal Deposit Insurance Act;

10 (3) the term “capital standards” has the same  
11 meaning as in section 38(c) of the Federal Deposit  
12 Insurance Act;

13 (4) the term “Federal banking agencies” has  
14 the same meaning as in section 3 of the Federal  
15 Deposit Insurance Act;

16 (5) the term “insured depository institution”  
17 has the same meaning as in section 3 of the Federal  
18 Deposit Insurance Act;

19 (6) the term “other capital measures” has the  
20 same meaning as in section 38(c) of the Federal  
21 Deposit Insurance Act;

22 (7) the term “recourse” has the meaning given  
23 to such term under generally accepted accounting  
24 principles;

25 (8) the term “mortgage loan” means—

1           (A) a note or certificate of interest or par-  
2           ticipation in a note (including any rights de-  
3           signed to assure servicing of, or the timeliness  
4           of receipt by the holders of such notes, certifi-  
5           cates, or participation of amounts payable  
6           under such notes, certificates or participation)  
7           that is principally secured by an interest in real  
8           property; or

9           (B) a security (as such term is defined in  
10          section 8 of the Securities Exchange Act of  
11          1934) that is secured by one or more notes de-  
12          scribed in subparagraph (A) or certificates of  
13          interest or participation in such notes (with or  
14          without recourse to issuers thereof) and that,  
15          by its terms, provides for payments of principal  
16          in relation to payments, or reasonable projec-  
17          tions of payments, on notes described in sub-  
18          paragraph (A) or certificates of interest or par-  
19          ticipation in such notes; and

20          (9) the term “well capitalized” has the same  
21          meaning as in section 38(b) of the Federal Deposit  
22          Insurance Act.

1 **SEC. 3. AMENDMENT TO DEFINITION OF MORTGAGE RE-**  
2 **LATED SECURITY.**

3 Section 3(a)(41)(A)(i) of the Securities Exchange Act  
4 of 1934 (15 U.S.C. 78c(a)(41)(A)(i)) is amended by in-  
5 serting before the semicolon “, or on one or more parcels  
6 of real estate upon which is located one or more commer-  
7 cial structures”.

8 **SEC. 4. AUTHORITY TO EXEMPT COMMERCIAL MORTGAGE**  
9 **RELATED SECURITIES TRANSACTIONS FROM**  
10 **PROHIBITED TRANSACTION RULES.**

11 The Secretary of Labor, in consultation with the Sec-  
12 retary of the Treasury, shall exempt, either uncondition-  
13 ally or on stated terms and conditions, transactions involv-  
14 ing commercial mortgage related securities (as such term  
15 is defined in section 3(a)(41) of the Securities Exchange  
16 Act of 1934, as amended by section 3 of this Act) from—

17 (1) the restrictions of sections 406(a) and  
18 407(a) of the Employee Retirement Income Security  
19 Act of 1974; and

20 (2) the taxes imposed under section 4975 of the  
21 Internal Revenue Code of 1986.

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