

103D CONGRESS  
1ST SESSION

# H. R. 3642

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

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## IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 22, 1993

Mr. FRANK of Massachusetts (for himself, Mr. BAKER of Louisiana, Mr. MORAN, Mr. LEACH, Mr. FLAKE, Mr. MCCOLLUM, and Mr. LAROCO) introduced the following bill; which was referred jointly to the Committees on Banking, Finance and Urban Affairs, and Energy and Commerce

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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 DEFINED.—An in-  
24 sured depository institution is a qualified insured deposi-  
25 tory 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) the amount which is equal to 15 percent of  
14 the risk-based capital of the 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 deposi-  
20 tory 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 at a time when the institution was  
24 qualified and had not exceeded 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 less than well capitalized.

5 (g) REGULATIONS REQUIRED.—Before the end of the  
6 180-day period beginning on the date of the enactment  
7 of this Act, each appropriate Federal banking agency shall  
8 prescribe final regulations implementing this section.

9 (h) ALTERNATIVE SYSTEM PERMITTED.—

10 (1) IN GENERAL.—At the discretion of the ap-  
11 propriate Federal banking agency, this section shall  
12 not apply if the regulations of the agency provide  
13 that the aggregate amount of capital and reserves  
14 required with respect to the transfer of mortgage  
15 loans with recourse does not exceed the aggregate  
16 amount of capital and reserves that would be re-  
17 quired under subsection (b).

18 (2) EXISTING TRANSACTIONS NOT AF-  
19 FECTED.—Notwithstanding paragraph (1), this sec-  
20 tion shall remain in effect with respect to transfers  
21 of mortgage loans with recourse by qualified insured  
22 depository institutions occurring before the effective  
23 date of regulations referred to in paragraph (1).

24 (i) DEFINITIONS.—The following definitions apply  
25 for purposes of this section:

1           (1) ADEQUATELY CAPITALIZED.—The term  
2           “adequately capitalized” has the same meaning as in  
3           section 38(b) of the Federal Deposit Insurance Act.

4           (2) APPROPRIATE FEDERAL BANKING AGEN-  
5           CY.—The term “appropriate Federal banking agen-  
6           cy” has the same meaning as in section 3 of the  
7           Federal Deposit Insurance Act.

8           (3) CAPITAL STANDARDS.—The term “capital  
9           standards” has the same meaning as in section  
10          38(c) of the Federal Deposit Insurance Act.

11          (4) FEDERAL BANKING AGENCIES.—The term  
12          “Federal banking agencies” has the same meaning  
13          as in section 3 of the Federal Deposit Insurance  
14          Act.

15          (5) INSURED DEPOSITORY INSTITUTION.—The  
16          term “insured depository institution” has the same  
17          meaning as in section 3 of the Federal Deposit In-  
18          surance Act.

19          (6) OTHER CAPITAL MEASURES.—The term  
20          “other capital measures” has the same meaning as  
21          in section 38(c) of the Federal Deposit Insurance  
22          Act.

23          (7) RECOURSE.—The term “recourse” has the  
24          meaning given to such term under generally accept-  
25          ed accounting principles.

1           (8) MORTGAGE LOAN.—The term “mortgage  
2    loan” means any—

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

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

22          (9) WELL CAPITALIZED.—The term “well cap-  
23          italized” has the same meaning as in section 38(b)  
24          of the Federal Deposit 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 1 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.

1 **SEC. 5. PROVISIONS TO SAFEGUARD THE INTEGRITY OF**  
2 **THE SECURITIZATION PROCESS, AND THE**  
3 **SAFETY AND SOUNDNESS OF FEDERALLY IN-**  
4 **SURED INSTITUTIONS.**

5 (a) COMPLIANCE WITH SECURITIES REGULA-  
6 TIONS.—Any security relying on the provisions of this Act  
7 shall comply with all rules and regulations of Federal secu-  
8 rities laws applicable thereto, as determined taking into  
9 account the provisions of this Act, including all provisions  
10 relating to required disclosure to investors, registrations,  
11 reporting and compliance, and all anti-fraud provisions.

12 (b) TREATMENT OF BANK ISSUED OR PURCHASED  
13 MORTGAGE BACKED SECURITIES FOR PURPOSES OF MIN-  
14 IMUM CAPITAL REQUIREMENTS.—

15 (1) MORTGAGES HELD BY BANK TO BACK SE-  
16 CURITIES.—If an issue of securities backed by mort-  
17 gage loans represents a liability on the balance sheet  
18 of an insured depository institution and the assets  
19 backing such obligation represent assets on the bal-  
20 ance sheet of such institution, the institution shall  
21 maintain minimum adequate capital with regard to  
22 such assets as prescribed by all applicable rules and  
23 regulations of the banking agencies with supervisory  
24 and examination authority over such institution, as  
25 determined taking into account the provisions of this  
26 Act.



1           (2) SECURITIES HELD BY BANK.—If an insured  
2       depository institution purchases a mortgage-related  
3       security to which the provisions of this Act apply,  
4       the institution shall maintain minimum adequate  
5       capital with respect to such security and all other  
6       assets as prescribed by all applicable rules and regu-  
7       lations of the banking agencies with supervisory and  
8       examination authority over such institution, as de-  
9       termined taking into account the provisions of this  
10      Act.

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