

111TH CONGRESS
2D SESSION

H. R. 6317

To amend Federal law, including the Internal Revenue Code of 1986, to reform and encourage investment in commercial real estate, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 29, 2010

Mr. BRADY of Texas introduced the following bill; which was referred to the Committee on Financial Services, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend Federal law, including the Internal Revenue Code of 1986, to reform and encourage investment in commercial real estate, 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 “Investment in Com-
5 mercial Real Estate Act of 2010”.

6 **SEC. 2. SERVICER SAFE HARBOR.**

7 (a) SAFE HARBOR.—

1 (1) LOAN MODIFICATIONS AND WORKOUT
2 PLANS.—Notwithstanding any other provision of
3 law, and notwithstanding any investment contract
4 between a servicer and a securitization vehicle or in-
5 vestor, a servicer shall not be liable for entering into
6 a loan modification or workout plan with respect to
7 any commercial mortgage loan that meets all of the
8 criteria set forth in paragraph (2)(B) to—

9 (A) any person, based on that person's
10 ownership of a commercial mortgage loan or
11 any interest in a pool of commercial mortgage
12 loans or in securities that distribute payments
13 out of the principal, interest and other pay-
14 ments in loans on the pool;

15 (B) any person who is obligated to make
16 payments determined in reference to any loan
17 or any interest referred to in subparagraph (A);
18 or

19 (C) any person that insures any loan or
20 any interest referred to in subparagraph (A)
21 under any law or regulation of the United
22 States or any law or regulation of any State or
23 political subdivision of any State.

24 (2) ABILITY TO MODIFY MORTGAGES.—

1 (A) ABILITY.—Notwithstanding any other
2 provision of law, and notwithstanding any in-
3 vestment contract between a servicer and a
4 securitization vehicle or investor, a servicer—

5 (i) shall not be limited in the ability
6 to modify mortgages, the number of mort-
7 gages that can be modified, the frequency
8 of loan modifications, or the range of per-
9 missible modifications; and

10 (ii) shall not be obligated to repur-
11 chase loans from or otherwise make pay-
12 ments to the securitization vehicle on ac-
13 count of a modification, workout, or other
14 loss mitigation plan for a commercial mort-
15 gage or a class of commercial mortgages
16 that constitute a part or all of the mort-
17 gages in the securitization vehicle,
18 if any mortgage so modified meets all of the cri-
19 teria set forth in subparagraph (B).

20 (B) CRITERIA.—The criteria under this
21 subparagraph with respect to a mortgage are as
22 follows:

23 (i) Default on the payment of such
24 mortgage has occurred or is reasonably
25 foreseeable.

1 (ii) The property securing such mort-
2 gage is occupied by the mortgagor of such
3 mortgage.

4 (iii) The servicer reasonably and in
5 good faith believes that the anticipated re-
6 covery on the principal outstanding obliga-
7 tion of the mortgage under the particular
8 modification or workout plan or other loss
9 mitigation action will exceed, on a net
10 present value basis, the anticipated recov-
11 ery on the principal outstanding obligation
12 of the mortgage to be realized through
13 foreclosure.

14 (3) APPLICABILITY.—This subsection shall
15 apply only with respect to modifications, workouts,
16 and other loss mitigation plans initiated before Jan-
17 uary 1, 2012.

18 (b) DEFINITION OF SECURITIZATION VEHICLES.—

19 For purposes of this section, the term “securitization vehi-
20 cle” means a trust, corporation, partnership, limited liabil-
21 ity entity, special purpose entity, or other structure that—

22 (1) is the issuer, or is created by the issuer, of
23 mortgage pass-through certificates, participation cer-
24 tificates, mortgage-backed securities, or other similar

1 securities backed by a pool of assets that includes
 2 commercial mortgage loans; and

3 (2) holds such mortgages.

4 **SEC. 3. RECOVERY PERIOD FOR RESIDENTIAL RENTAL**
 5 **PROPERTY AND NONRESIDENTIAL REAL**
 6 **PROPERTY.**

7 (a) IN GENERAL.—The table in subsection (c) of sec-
 8 tion 168 of the Internal Revenue Code of 1986 (specifying
 9 applicable recovery period) is amended—

10 (1) by striking “27.5 years” and inserting “20
 11 years”, and

12 (2) by striking “39 years” and inserting “20
 13 years”.

14 (b) DEPRECIATION RULES FOR RESIDENTIAL RENT-
 15 AL PROPERTY AND NON-RESIDENTIAL REAL PROPERTY
 16 FOR PURPOSES OF EARNINGS AND PROFITS.—Paragraph
 17 (3) of section 312(k) of the Internal Revenue Code of
 18 1986 (relating to exception for tangible property) is
 19 amended by adding at the end the following new subpara-
 20 graph:

21 “(C) TREATMENT OF RESIDENTIAL RENT-
 22 AL PROPERTY AND NONRESIDENTIAL REAL
 23 PROPERTY.—In the case of any residential rent-
 24 al property or nonresidential real property
 25 (within the meaning of section 168(c)), the ad-

1 justment to earnings and profits for deprecia-
 2 tion for any taxable year shall be determined
 3 under the alternative depreciation method
 4 (within the meaning of section 168(g)(2)), ex-
 5 cept that the recovery period shall be 20
 6 years.”.

7 (c) CONFORMING AMENDMENT.—Subparagraph (A)
 8 of section 312(k)(3) of the Internal Revenue Code of 1986
 9 is amended by striking “subparagraph (B),” and inserting
 10 “subparagraphs (B) and (C),”.

11 (d) EFFECTIVE DATE.—The amendments made by
 12 subsection (a) shall apply to property placed in service on
 13 or after the date of the enactment of this Act.

14 **SEC. 4. NET OPERATING LOSS CARRYBACK INCREASED TO**
 15 **5 YEARS.**

16 (a) IN GENERAL.—Clause (i) of section 172(b)(1)(A)
 17 of the Internal Revenue Code of 1986 (relating to years
 18 to which loss may be carried) is amended by striking “2
 19 years” and inserting “5 years”.

20 (b) ALTERNATIVE MINIMUM TAX.—Subclause (II) of
 21 section 56(d)(1)(A)(i) of such Code is amended by striking
 22 “90 percent of”.

23 (c) CONFORMING AMENDMENTS.—

1 (1) Section 172(b)(1) of such Code is amended
 2 by striking subparagraphs (F), (G), (H), (I), and
 3 (J).

4 (2) Section 56(d)(1)(A) of such Code is amend-
 5 ed—

6 (A) in clause (i)(I) thereof by striking
 7 “(other than the deduction described in clause
 8 (ii)(I))”, and

9 (B) by amending clause (ii) to read as fol-
 10 lows:

11 “(ii) alternative minimum taxable in-
 12 come determined without regard to such
 13 deduction and the deduction under section
 14 199 reduced by the amount determined
 15 under clause (i),”.

16 (3) Section 56(d) of such Code is amended by
 17 striking paragraph (3).

18 (d) EFFECTIVE DATE.—The amendments made by
 19 this section shall apply to taxable years ending after the
 20 date of the enactment of this Act.

21 **SEC. 5. DYNAMIC PROVISIONING OF INVESTMENT AND**
 22 **LOAN LOSS RESERVES.**

23 (a) IMPLEMENTATION REQUIREMENT.—The Federal
 24 banking agencies shall implement a system of dynamic
 25 provisioning for investment and loan loss reserves (here-

1 after in this section referred to as the “dynamic reserve
2 system”) that meets the requirements of this section and
3 is applicable to all depository institutions before January
4 1, 2011.

5 (b) TOTAL PROVISIONING.—For each depository in-
6 stitution during any accounting period, the total provision
7 for investment and loan loss reserves shall equal the sum
8 of—

9 (1) the general provision for investment and
10 loan loss reserves, as determined under subsection
11 (c); and

12 (2) the specific provision for investment and
13 loan loss reserves, as determined under subsection
14 (d).

15 (c) GENERAL PROVISION.—

16 (1) CATEGORIES.—The Board of Governors of
17 the Federal Reserve System shall establish major
18 categories of loans and investment to be used by de-
19 pository institutions for purposes of the dynamic re-
20 serve system.

21 (2) PUBLICATION OF AVERAGE HISTORICAL
22 SPECIFIC LOSSES AND WRITE-DOWNS.—

23 (A) IN GENERAL.—For each major cat-
24 egory established pursuant to paragraph (1),
25 the Board shall calculate and publish the aver-

1 age historical specific losses and write-downs as
2 a percentage of total loans and investments
3 over a period determined by the Board.

4 (B) LIMITS ON PERIOD.—The period de-
5 termined by the Board under subparagraph (A)
6 may not be less than 10 years and shall include
7 at least 1 full business cycle.

8 (3) MINIMUM PERCENTAGE.—For each major
9 category established pursuant to paragraph (1), the
10 Board shall establish a minimum percentage that
11 shall be the larger of—

12 (A) the average historical specific losses
13 and write-downs, in such category, as a percent-
14 age of total loans and investments, in such cat-
15 egory, of all United States depository institu-
16 tions over the period determined by the Board;
17 or

18 (B) a percentage determined by the Board.

19 (4) PROVISION.—

20 (A) IN GENERAL.—During each accounting
21 period, each depository institution shall make a
22 general provision to the investment and loan
23 loss reserves of the institution for each major
24 category established pursuant to paragraph (1).

1 (B) MEASURE OF PROVISION.—The gen-
2 eral provision to the investment and loan loss
3 reserves of a depository institution under sub-
4 paragraph (A) for each major category shall
5 consist of the sum of—

6 (i) the product of—

7 (I) the total amount of the loans
8 and investment in such category in
9 such depository institution at the be-
10 ginning of the accounting period; and

11 (II) the average historical specific
12 credit losses and write-downs in such
13 category as a percentage of total loans
14 and investments in such category of
15 all depository institutions over the pe-
16 riod determined by the Board minus
17 the amount of any specific provisions
18 made by such depository institution
19 during such accounting period with
20 respect to such category; and

21 (ii) the product of—

22 (I) the difference between the
23 total amount of the loans and invest-
24 ment in such category in such deposi-
25 tory institution at the end of the ac-

1 counting period and the total amount
2 of the loans and investment in such
3 category in such depository institution
4 at the beginning of the accounting pe-
5 riod; and

6 (II) the minimum percentage de-
7 termined by the Board under para-
8 graph (3) for such category.

9 (d) SPECIFIC PROVISIONS FOR GENERAL CAT-
10 EGORIES OF INVESTMENTS AND LOANS.—

11 (1) ESTABLISHMENT OF CATEGORIES.—The
12 Board shall establish the general categories of in-
13 vestments and loans for all depository institutions.

14 (2) CALCULATION OF HISTORICAL SPECIFIC
15 PROVISIONS AND AVERAGE AMONG OF CREDIT
16 LOSSES.—The Board shall calculate, publish and
17 make available to the public—

18 (A) the average historical specific provi-
19 sions for each category of investment and loans
20 in all depository institutions over a period of
21 such number of years as the Board may deter-
22 mine to be appropriate, subject to paragraph
23 (3); and

24 (B) the average historical amount of credit
25 losses and write-downs for each major category

1 of investment and loans in all depository insti-
2 tutions over a period of such number of years
3 as the Board may determine to be appropriate,
4 subject to paragraph (3).

5 (3) PERIOD OF YEARS SHALL ENCOMPASS BUSI-
6 NESS CYCLE.—The period of years determined under
7 subparagraphs (A) and (B) of paragraph (2) shall
8 be of such duration as to at least comprise a com-
9 plete business cycle.

10 (e) OTHER REQUIREMENTS AND AUTHORITY.—The
11 Board may establish a cap on the accumulation of general
12 provision for investment and loan losses at any depository
13 institution expressed as percent of total investment and
14 loans at such depository institution.

15 (f) BASEL ACCORD SUPERSEDES THIS SECTION.—
16 If the Basel Committee on Banking Supervision agrees
17 upon an alternative method for dynamic provisioning be-
18 fore December 31, 2010, the Board may implement such
19 an agreement in lieu of implementing the requirements of
20 subsections (c) and (d).

21 (g) DEFINITIONS.—For purposes of this section, the
22 following definitions shall apply:

23 (1) BOARD.—The term “Board” means the
24 Board of Governors of the Federal Reserve System.

1 (2) OTHER BANKING DEFINITIONS.—The terms
2 “depository institution” and “Federal banking agen-
3 cies” have the same meaning as in section 3 of the
4 Federal Deposit Insurance Act.

5 **SEC. 6. REPORT TO THE CONGRESS ON NON-RENEWALS OF**
6 **COMMERCIAL MORTGAGE LOANS.**

7 (a) IN GENERAL.—Each qualified financial institu-
8 tion shall, before the end of the 30-day period beginning
9 at the end of each calendar quarter beginning after the
10 date of the enactment of this Act, submit to the Board
11 with respect to such calendar quarter the aggregate
12 amount of permanent commercial mortgage loans that—

13 (1) matured during the quarter, but did not
14 fully amortize;

15 (2) were current prior to maturity;

16 (3) had adequate cash flows from the mort-
17 gaged properties to continue paying interest and
18 principal payments in a timely manner if such loans
19 were renewed on substantially the same terms and
20 conditions; and

21 (4) as a result of a suggestion or urging of, or
22 a requirement by, a Federal regulator that the insti-
23 tution reduce its exposure to commercial mortgage
24 loans or the determination by the institution to re-

1 quire a reduction in the loan-to-value ratio upon any
2 renewal of such loans, either—

3 (A) were not renewed at maturity under
4 substantially the same terms and conditions; or

5 (B) were renewed at a lower principal bal-
6 ance.

7 (b) PUBLICATION OF REPORT.—

8 (1) IN GENERAL.—Not later than 60 days after
9 the end of each calendar quarter for which informa-
10 tion is submitted pursuant to subsection (a), the
11 Board shall publish a report of the—

12 (A) the total amount of all permanent
13 commercial mortgage loans described in sub-
14 section (a) reported to the Board under such
15 subsection with respect to such quarter; and

16 (B) the ratio, expressed as a percentage,
17 which such loans in each of the following cat-
18 egories bear to the average permanent amount
19 of all commercial mortgage loans outstanding in
20 each such category:

21 (i) The United States as a whole.

22 (ii) Each State (as defined in section
23 3 of the Federal Deposit Insurance Act).

24 (iii) Each type of qualified financial
25 institution.

1 (iv) Each depository institution hold-
2 ing company (as determined on a consoli-
3 dated basis).

4 (v) Each qualified financial institution
5 that is not controlled by or under common
6 control with a depository institution hold-
7 ing company.

8 (2) REPORT TO THE CONGRESS.—Each report
9 published under paragraph (1) shall be submitted by
10 the Board to the Committee on Financial Services of
11 the House of Representatives, the Committee on
12 Banking, Housing, and Urban Affairs of the Senate,
13 and the Joint Economic Committee of the Congress
14 by the time of such publication.

15 (3) PUBLIC AVAILABILITY.—Each report pub-
16 lished under paragraph (1) shall be publicly avail-
17 able on the website maintained by the Board.

18 (c) DEFINITIONS.—For purposes of this section, the
19 following definitions shall apply:

20 (1) INCORPORATED DEFINITIONS.—

21 (A) SECTION 5.—The terms “Board” and
22 “depository institution” have the same meaning
23 as in section 5.

24 (B) DEPOSITORY INSTITUTION HOLDING
25 COMPANY; SUBSIDIARY.—The terms “depository

1 institution holding company” and “subsidiary”
2 have the same meanings as in section 3(w) of
3 the Federal Deposit Insurance Act.

4 (2) QUALIFIED FINANCIAL INSTITUTION.—The
5 term “qualified financial institution” means any de-
6 pository institution and any subsidiary of a deposi-
7 tory institution or a depository institution holding
8 company that makes permanent commercial mort-
9 gage loans or holds permanent commercial mortgage
10 loans, directly or indirectly.

11 (3) STATE.—The term “State” has the same
12 meaning as in section 3 of the Federal Deposit In-
13 surance Act.

14 (d) SUNSET.—This section shall not apply after
15 March 31, 2013.

16 **SEC. 7. STUDY ABOUT FEDERAL REGULATORS.**

17 (a) IN GENERAL.—The Secretary of the Treasury
18 shall conduct a study to determine—

19 (1) whether Federal banking agencies (as de-
20 fined in section 5) and the Securities and Exchange
21 Commission may have exacerbated both—

22 (A) the excessive expansion of commercial
23 mortgage credit on overly generous terms that
24 contributed to a commercial real estate price
25 bubble between 2004 and 2007; and

1 (B) the rapid contraction in the availability
2 of commercial mortgage credit on reasonable
3 terms after the commercial real estate price
4 bubble burst through pro-cyclical evaluations of
5 the value of collateral by appraisers, depository
6 institutions and other financial institutions, and
7 Federal banking agencies and the Securities
8 and Exchange Commission;

9 (2) whether modifications in formulation and
10 use of appraisals by appraisers, depository institu-
11 tions and other financial institutions, and Federal
12 banking agencies and the Securities and Exchange
13 Commission, including providing greater weight to
14 the cash flows associated with mortgaged properties,
15 along with any other modifications in regulatory
16 practices by Federal banking agencies and the Secu-
17 rities and Exchange Commission, that the Secretary
18 may deem appropriate would reduce this pro-cyclical
19 bias and provide a more even flow of commercial
20 mortgage credit on reasonable terms throughout the
21 business cycle; and

22 (3) what, if any, changes to—

23 (A) Federal laws or regulations; and

24 (B) State laws or regulations,

1 would be necessary to accomplish these modifica-
2 tions.

3 (b) SUBMITTAL TO THE CONGRESS.—A report on the
4 study required under subsection (a) shall be submitted by
5 the Secretary of the Treasury to the Committee on Finan-
6 cial Services of the House of Representatives, the Com-
7 mittee on Banking, Housing, and Urban Affairs of the
8 Senate, and the Joint Economic Committee of the Con-
9 gress before the end of the 6-month period beginning on
10 the date of the enactment of this Act.

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