

111TH CONGRESS
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H. R. 5816

To establish a commercial real estate credit guarantee program to empower community banks and other lenders to make loans while stabilizing the value of small denomination commercial real estate assets, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 22, 2010

Mr. MINNICK (for himself, Mr. SHULER, Mr. SIMPSON, Ms. KOSMAS, Mr. LATOURETTE, Mr. HEINRICH, and Mr. MARSHALL) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To establish a commercial real estate credit guarantee program to empower community banks and other lenders to make loans while stabilizing the value of small denomination commercial real estate assets, 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 “Commercial Real Es-
5 tate Stabilization Act of 2010”.

1 **SEC. 2. OVERSIGHT BOARD.**

2 (a) IN GENERAL.—There is hereby established the
3 Oversight Board (hereinafter in this Act referred to as the
4 “Board”) to provide advice to the Secretary of the Treas-
5 ury (hereinafter in this Act referred to as the “Secretary”)
6 with regard to the implementation, operation, and over-
7 sight related to, and in accordance with, the Commercial
8 Real Estate Credit Guarantee Program established under
9 section 3. The Board is hereby charged particularly in ad-
10 vising the Secretary with regard to the development of ap-
11 propriate underwriting guidelines and credit risk assess-
12 ments in connection with the Program, subject to the pro-
13 visions of section 3(e)(4), and is further charged with the
14 design and operation of the Program in such ways as to
15 encourage both participation by eligible institutions as well
16 as the prompt displacement of the Program by private
17 market interests.

18 (b) MEMBERSHIP.—The Board shall consist of the
19 following 9 members:

20 (1) The Secretary.

21 (2) The Chairman of the Board of Governors of
22 the Federal Reserve System.

23 (3) The Chairman of the Securities Exchange
24 Commission.

25 (4) The Chairperson of the Federal Deposit In-
26 surance Corporation.

1 (5) The Director of the Federal Housing Fi-
2 nance Agency.

3 (6) Four members to be appointed by the Presi-
4 dent, from among individuals who have comprehen-
5 sive and practical experience in the financial indus-
6 try.

7 (c) REPORTS.—Not later than the end of the 3-month
8 period beginning on the date of the enactment of this Act,
9 and quarterly thereafter, the Board shall issue reports to
10 the Secretary, the Committee on Financial Services of the
11 House of Representatives, and the Committee on Banking,
12 Housing, and Urban Affairs of the Senate on—

13 (1) the Program; and

14 (2) the current state of the credit system in the
15 United States with respect to commercial lending,
16 including small business and commercial real estate
17 lending.

18 (d) TERMINATION.—The Board shall terminate on
19 the date that is the end of the 1-month period following
20 the program termination date.

21 **SEC. 3. COMMERCIAL REAL ESTATE CREDIT GUARANTEE**
22 **PROGRAM.**

23 (a) IN GENERAL.—The Secretary shall establish a
24 Commercial Real Estate Credit Guarantee Program (here-

1 in after in this Act referred to as the “Program”) in ac-
2 cordance with this section.

3 (b) APPLICATION PROCESS.—

4 (1) IN GENERAL.—A sponsor may apply to have
5 a credit instrument guaranteed under the Program
6 by submitting an application to the Secretary in
7 such form and manner as the Secretary may require.

8 (2) APPLICATIONS APPROVED IN ORDER OF RE-
9 CEIPT.—The Secretary shall approve applications
10 submitted pursuant to paragraph (1) by a sponsor
11 for a guarantee of an eligible credit instrument in
12 the order they are received by the Secretary, as long
13 as the guarantees issued under the Program do not
14 relate to credit instruments having an aggregate, cu-
15 mulative principal balance in excess of
16 \$25,000,000,000 (exclusive of interest).

17 (3) FIFTY PERCENT OF PROGRAM TO BE USED
18 FOR SMALL- AND MID-SIZED INSTITUTIONS.—Not-
19 withstanding paragraph (2), not less than 50 per-
20 cent of the credit instruments guaranteed under the
21 Program, by principal balance, shall be for credit in-
22 struments created by eligible institutions specified in
23 subparagraph (A) of the definition of eligible institu-
24 tion, as of the credit instrument issuance date. No
25 more than 50 percent of the credit instruments

1 guaranteed under the Program, by principal balance,
2 shall be for credit instruments created by eligible in-
3 stitutions specified in subparagraph (B) of the defi-
4 nition of eligible institution, as of the credit instru-
5 ment issuance date.

6 (4) GUARANTEE FEE.—In exchange for receiv-
7 ing a credit guarantee under the Program, the re-
8 lated issuer shall pay to the Secretary an up-front
9 or periodic guarantee fee at the rate specified by the
10 Secretary with respect to that specific credit guar-
11 antee. Each guarantee fee shall be at least 200 basis
12 points per annum, and shall be the sum of the fol-
13 lowing three components:

14 (A) The risk component, which shall be no
15 less than 100 basis points per annum, 100
16 basis points per annum being that level used by
17 the risk assessment entities in determining the
18 investment grade status of the related credit in-
19 strument (or portion thereof) to be covered by
20 the guarantee; the Board may, or the Secretary
21 may, increase the risk component above such
22 100 basis point per annum level with respect to
23 any individual credit guarantee, in their discre-
24 tion.

1 (B) An overhead component, which shall
2 be no less than zero, and which shall be deter-
3 mined by the Secretary as being the amount
4 (expressed in basis points per annum) which, in
5 the aggregate when assessed across the Pro-
6 gram, will be at least sufficient to fund in full
7 the reasonably estimable costs to the govern-
8 ment of staffing and administering the Pro-
9 gram, including without limitation, the costs of
10 the Board, the costs of processing applications,
11 the costs (including the costs of the risk assess-
12 ment entities involved) of developing the under-
13 writing guidelines described in subsection (f)
14 and the costs of legal, accounting and other
15 professional advisors as may be retained by the
16 Board.

17 (C) The market component, which shall be
18 no less than zero, and which shall be deter-
19 mined by the Board, with respect to any indi-
20 vidual credit guarantee, as being an amount
21 (expressed in basis points per annum) which,
22 when added to the other two components of the
23 guarantee fee, will encourage the participation
24 of the private market in the provision of credit

1 as an alternative to the guarantees provided
2 under the Program.

3 (c) GENERAL PROGRAM DETAILS.—

4 (1) CREDIT GUARANTEE.—

5 (A) IN GENERAL.—With respect to a credit
6 instrument that is approved for the Program
7 under subsection (b), the Secretary shall guar-
8 antee payments of interest and principal on
9 such credit instrument.

10 (B) CREDIT INSTRUMENT DEFINED.—The
11 term “credit instrument”, as used in this Act,
12 means each and all of the following: a mortgage
13 loan or a participation therein, a bond or cer-
14 tificate backed by one or more mortgage loans
15 or participation interests therein, a guarantee
16 other than a guarantee issued under the Pro-
17 gram, or any other lending arrangement (in-
18 cluding aggregation facilities) approved by the
19 Secretary upon recommendation of the Board,
20 provided that the ultimate collateral for any
21 such credit instrument is commercial real estate
22 described in subsection (d). In no event shall a
23 credit instrument be eligible for a guarantee
24 under the Program if such credit instrument

1 was issued prior to the effective date of this
2 Act.

3 (C) RECOVERIES.—The payment by the
4 Secretary under a guarantee shall not discharge
5 the liability of the related issuer with respect to
6 the defaulted payment, and the Secretary shall
7 be fully subrogated to the rights of the owner
8 of the credit instrument to receive the full
9 amount of such defaulted payment from the re-
10 lated issuer, and shall be entitled to receive
11 such amounts from such issuer, subject to the
12 availability of funds thereof.

13 (D) SUNSET.—No credit instrument shall
14 be eligible for a guarantee under the Program
15 if such credit instrument is issued after the ear-
16 lier to occur of—

17 (i) the date that is the end of the 3-
18 year period beginning on the date on which
19 the first guarantee is issued under the
20 Program; and

21 (ii) the date on which the Board has
22 delivered a certification to the Secretary
23 that the commercial real estate credit mar-
24 ket has recovered to such an extent that
25 the Program is no longer necessary.

1 (2) **TIMESPAN OF GUARANTEE.**—A credit in-
2 strument guarantee under the Program shall expire
3 at the end of the 10-year period beginning on the
4 date on which the credit instrument is issued.

5 (3) **USE OF PROFITS.**—All profits made from
6 the Program shall be used for deficit reduction.

7 (d) **ISSUE REQUIREMENTS.**—In order to be an eligi-
8 ble credit instrument for purposes of the Program, the
9 credit instrument must be a performing commercial real
10 estate loan, or be backed by one or more performing com-
11 mercial real estate loans which, in either case, at the time
12 of the issuance of such credit instrument, are performing
13 commercial real estate loans—

14 (1) where each loan is either—

15 (A) newly originated, including a new loan
16 on a commercial property which was REO; or

17 (B) a refinancing of an existing loan made
18 by the same borrower;

19 (2) for which payments of interest and principal
20 are not past due;

21 (3) which has a loan term of 10 years or less,
22 and which amortizes over its terms;

23 (4) which was originated within the past 180
24 days (or other similar time period, to be determined
25 by the Board based on the applicable asset class)

1 preceding the issuance date of such credit instru-
2 ment; and

3 (5) which complies with such other require-
4 ments as the Board may specify to ensure that the
5 Program is not used in a manner that was not in-
6 tended.

7 (e) ADDITIONAL REQUIREMENTS.—A loan relating to
8 a credit instrument, as described in subsection (d), shall
9 meet the following criteria:

10 (1) LOAN ORIGINATORS.—Such loan shall have
11 been originated by an eligible institution as defined
12 in section 5.

13 (2) MAXIMUM AMOUNT.—The principal amount
14 of such loan must be \$10,000,000 or less.

15 (3) NO REQUIREMENT FOR OWNER-OCCUPIED
16 PROPERTY.—Such a loan may be with respect to ei-
17 ther owner-occupied or nonowner-occupied commer-
18 cial real estate.

19 (4) RISK ASSESSMENTS AND UNDERWRITING
20 GUIDELINES.—

21 (A) RISK ASSESSMENT.—No guarantee
22 shall be issued under the Program unless the
23 application submitted to the Secretary dem-
24 onstrates that the guarantee fees associated
25 with such guarantee, based upon the credit risk

1 associated with the related credit instrument,
2 shall create reserves sufficient, with regard to
3 that individual credit instrument, to meet the
4 anticipated claims by paying for any related
5 losses and to ensure that the Secretary and the
6 taxpayers are fully protected, based on 2 risk-
7 assessment analyses conducted by 2 inde-
8 pendent third-party risk assessment entities.

9 (B) Each such risk assessment shall be
10 conducted by an independent third party ap-
11 proved by the Board. With respect to bonds or
12 certificates backed by pools of commercial real
13 estate assets, or aggregation facilities relating
14 to such assets, such third party may be any na-
15 tionally recognized statistical rating organiza-
16 tion approved by the Board, or any other third-
17 party entity which, upon application to the
18 Board and approval by the Board, has a de-
19 monstrable expertise in the assessment of credit
20 risk involving pools of commercial real estate
21 assets. With respect to individual commercial
22 real estate loans, such third party may be any
23 entity, including any nationally recognized sta-
24 tistical rating organization, which, upon appli-
25 cation to the Board and approval by the Board,

1 has a demonstrable expertise in the assessment
2 of credit risk involving individual commercial
3 real estate assets.

4 (C) No guarantee shall be issued under the
5 Program unless each of the related independent
6 third-party risk assessment entities shall have
7 concluded in writing that the related risk to the
8 Secretary, after taking into account the reserves
9 created by the related guarantee fee, the Sec-
10 retary's subrogation rights, and the credit char-
11 acteristics of the related credit instrument, is
12 not less than investment grade, where the term
13 "investment grade" shall have its generally un-
14 derstood meaning in the context of the fixed-in-
15 come investments rated by nationally recognized
16 statistical rating organizations. No guarantee
17 shall be issued under the Program covering a
18 portion or tranche of any credit instrument.
19 Such investment grade risk assessment shall be
20 required on a guarantee-by-guarantee basis,
21 and shall not take into account the "cross-
22 collateralization" resulting from Program-wide
23 reserves as may be accounted for by the Sec-
24 retary relating to the Program as a whole.

1 (D) Any third-party risk assessment entity
2 shall be independent of the issuer, sponsor,
3 placement agent, arranger, or underwriter (if
4 any) of the related credit instrument. In ap-
5 proving third-party risk assessment entities, the
6 Board shall, to the maximum extent practicable
7 ensure the inclusion and utilization of minority,
8 women-, and veteran-owned businesses. The
9 cost of each risk assessment shall be paid by
10 the related issuer or the related sponsor, and
11 shall in no event be a cost borne by the Sec-
12 retary or by the Board.

13 (E) All risk assessments shall be evaluated
14 on the basis of the underlying credit instru-
15 ments, the level of the guarantee fee and the
16 Secretary's subrogation rights, but shall not
17 take into account the credit support provided by
18 the guarantee itself.

19 (f) UNDERWRITING GUIDELINES.—The Board shall,
20 within 60 days of the effective date of this Act, issue
21 standardized underwriting guidelines for participation in
22 the Program for credit instruments which are individual
23 commercial mortgage loans.

24 (1) Such guidelines shall seek to—

1 (A) make the Program a profitable invest-
2 ment for the Government;

3 (B) provide a safety net for more conserv-
4 ative borrowers; and

5 (C) promote the reestablishment of the pri-
6 vate credit market for commercial real estate.

7 (2) Such guidelines shall be developed with the
8 assistance of not fewer than 3 independent risk as-
9 sessment entities approved by the Board, which shall
10 have each concluded that bonds or certificates
11 backed by pools containing performing commercial
12 real estate loans meeting such underwriting guide-
13 lines would be rated at least investment grade if the
14 risk of the related guarantee fee were 100 basis
15 points per annum.

16 (g) RISK RETENTION.—The Board shall, within 60
17 days of the effective date of this Act, by regulation, require
18 the related issuer or sponsor or a third-party purchaser
19 that has specifically negotiated for the purchase of such
20 economic interest and has conducted due diligence on such
21 loan or pool of loans, in each case to retain an economic
22 interest in a portion of the credit risk for each loan or
23 pool of loans as prescribed in section 941(b) of the Dodd-
24 Frank Wall Street Reform and Consumer Protection Act.
25 For the avoidance of doubt, the forms of such economic

1 interest shall include, but are not limited to, subordinated
2 excess interest strips, subordinated principal, and subordi-
3 nated securities. Such regulations shall further provide
4 that the owner of such economic interest not directly or
5 indirectly hedge or otherwise transfer the required credit
6 risk, and shall specify the minimum duration of the risk
7 retention required under this subsection.

8 (h) REPORTING.—

9 (1) IN GENERAL.—Not later than the end of
10 the 180-day period beginning on the date of the en-
11 actment of this Act, and quarterly thereafter, the
12 Secretary shall issue a report to the Congress con-
13 taining a review of credit instruments being guaran-
14 teed under the Program and information on the
15 loans and properties backing such credit instru-
16 ments, including the number of loans and properties,
17 the value of the loans and properties, and informa-
18 tion on the performance of the loans and properties.

19 (2) PUBLIC AVAILABILITY.—The Secretary
20 shall make all reports made under paragraph (1)
21 available to the public, including on a Web site.

22 (i) STATUS OF GUARANTIES.—All guarantees issued
23 pursuant to this section shall constitute general obliga-
24 tions of the United States, for which the full faith and
25 credit of the United States is pledged. All such guarantees

1 shall be treated as “loan guarantees” under section 502(3)
2 of the Federal Credit Reform Act of 1990.

3 **SEC. 4. FUNDING.**

4 (a) IN GENERAL.—There is hereby authorized to be
5 appropriated, out of funds in the Treasury not otherwise
6 appropriated, in addition to such amounts as may be nec-
7 essary for the reasonable costs of administering the Pro-
8 gram, such sum as may be necessary to issue guarantees
9 of credit instruments having an aggregate, cumulative
10 principal balance not in excess of \$25,000,000,000, as de-
11 termined in a manner consistent with the Federal Credit
12 Reform Act of 1990.

13 (b) GUARANTEES NOT UNDER TARP.—The guaran-
14 tees provided for hereunder are established as a separate
15 and distinct program from the guarantees described in
16 section 102 of the Emergency Economic Stabilization Act
17 of 2008. No eligible institution, sponsor, or issuer shall
18 be considered a recipient of the Troubled Asset Relief Pro-
19 gram solely by virtue of participation in the Program.

20 (c) PROGRAM UTILIZATION TO BE ENCOURAGED.—

21 (1) The Congress finds that, with respect to the
22 smaller insured depository institutions, the lingering
23 financial crisis and lack of liquidity and leverage in
24 the commercial real estate market has resulted in a
25 substantial number of small bank failures, with the

1 result that the FDIC and its Deposit Insurance
2 Fund have absorbed many of the resulting losses.
3 The Congress has concluded that the Program es-
4 tablished under this Act is, under certain cir-
5 cumstances, a preferred approach to this problem, as
6 opposed to continued reliance on the FDIC's resolu-
7 tion authority, which was never intended to provide
8 liquidity and leverage to the commercial real estate
9 markets.

10 (2) The Congress further finds that the utiliza-
11 tion of this Program by smaller depository institu-
12 tions may be inhibited due to concerns that the cred-
13 it issuance transactions contemplated by this Act
14 may, under current rules and regulations governing
15 loss recognition, regulatory capital, and related ac-
16 counting matters, result in unfavorable regulatory
17 accounting treatment to such institutions, notwith-
18 standing the other benefits accruing to such institu-
19 tions, the commercial real estate markets and the
20 economy at large by the utilization of this Program.
21 In addition, the Congress specifically finds that the
22 requirements of FAS 166/167 shall not be applicable
23 to the Program, provided that any assets or liabil-
24 ities created by the issuance of securities under the

1 Program shall be reasonably and adequately dis-
2 closed.

3 (3) Consequently, it is the intent of the Con-
4 gress that this Program be utilized when such utili-
5 zation otherwise proves beneficial, and that, in such
6 cases, utilization not be unduly inhibited by concerns
7 related to potential unfavorable regulatory account-
8 ing treatment. In furtherance of such Congressional
9 intent, the Board is directed to confer with the
10 Chairperson of the FDIC, representatives of the
11 Conference of State Banking Supervisors, represent-
12 atives of the Financial Accounting Standards Board,
13 and representatives of the community banking in-
14 dustry, with the result that the FDIC shall issue,
15 within 60 days of the enactment of this Act, such
16 rules and regulations as are consistent with such
17 Congressional intent stated herein.

18 (4) Additionally, in order to ensure that State
19 foreclosure laws do not contravene the mechanics
20 and operational efficiency of this Program, all loans
21 backing bonds issued under this Program shall be
22 subject to an expedited Federal court foreclosure
23 process should such loans default. The underlying
24 documentation need not specify foreclosure remedies,
25 and in furtherance of the Congressional intent de-

1 scribed above, such foreclosure action instituted in
2 Federal court shall be subject to removal to State
3 court. No such foreclosure action shall be stayed as
4 a result of the bankruptcy of the related borrower.

5 **SEC. 5. OTHER DEFINITIONS.**

6 For purposes of this Act:

7 (1) BOARD.—The term “Board” means the
8 Oversight Board established under section 2.

9 (2) COST.—The term “cost” has the meaning
10 given such term under section 502(5)(A) of the Fed-
11 eral Credit Reform Act of 1990, as amended.

12 (3) EFFECTIVE DATE.—The term “effective
13 date” shall mean the date on which the provision of
14 this Act becomes law.

15 (4) ELIGIBLE INSTITUTION.—The term “eligi-
16 ble institution” means, for purposes of this Act, ei-
17 ther—

18 (A)(i) any insured depository institution,
19 which—

20 (I) is not controlled by a bank holding
21 company or savings and loan holding com-
22 pany that is also an eligible institution;

23 (II) has total assets of equal to or less
24 than \$10,000,000,000, as reported in the
25 call report as of the end of the fourth

1 quarter of the most recently ended year for
2 such fourth-quarter call report is available;
3 and

4 (III) is not directly or indirectly con-
5 trolled by any company or other entity that
6 has total consolidated assets of more than
7 \$10,000,000,000, as so reported;

8 (ii) any bank holding company which has
9 total assets of equal to or less than
10 \$10,000,000,000;

11 (iii) any savings and loan holding company
12 which has total assets of equal to or less than
13 \$10,000,000; or

14 (B) any entity not described in subpara-
15 graph (A) above and which the Board has not
16 determined is ineligible to participate in the
17 Program.

18 (5) INSURED DEPOSITORY INSTITUTION.—The
19 term “insured depository institution” has the mean-
20 ing given such term under section 3(c)(2) of the
21 Federal Deposit Insurance Act (12 U.S.C.
22 1813(c)(2)).

23 (6) ISSUER.—The term “issuer” means ei-
24 ther—

1 (A) with respect to a credit instrument
2 which is an individual mortgage loan or a par-
3 ticipation interest in an individual mortgage
4 loan (including a new loan on a commercial
5 property which was REO or a refinancing of an
6 existing loan made by the same borrower), or a
7 guarantee of an individual mortgage loan, the
8 related borrower; or

9 (B) with respect to a credit instrument
10 which is a bond or certificate, or with respect
11 to a guarantee relating to a pool of mortgage
12 loans, participation interests in mortgage loans
13 (including a new loan on a commercial property
14 which was REO or a refinancing of an existing
15 loan made by the same borrower), a “special
16 purpose vehicle” entity (such as a trust or lim-
17 ited liability company) that issues such a credit
18 instrument;

19 in each case that is guaranteed under the Program.

20 (7) PROGRAM.—The term “Program” means
21 the commercial real estate credit guarantee program
22 established under section 3.

23 (8) REO.—The term “REO” means, with re-
24 spect to an eligible institution, any real property to
25 which such eligible institution holds title pursuant to

1 foreclosure, a deed of lieu of foreclosure, assignment,
2 conveyance, or any other action in connection with
3 a mortgage made, held, insured, guaranteed, or
4 securitized by such eligible institution.

5 (9) SPONSOR.—The term “Sponsor” “” means,
6 in the case of a securitization or aggregation ar-
7 rangement, an entity that—

8 (A) securitizes commercial real estate loans
9 and that has met the Board’s expertise require-
10 ments for participation in the Program, pro-
11 vided that the Sponsor’s management expertise
12 and previous bond performance will be strongly
13 considered as part of the Sponsor’s approval
14 process;

15 (B) forms an issuer; and

16 (C) creates the credit instruments issued
17 by the issuer under the Program (and the spon-
18 sor described herein may also be an eligible in-
19 stitution with respect to the related loans).

20 (10) PROGRAM TERMINATION DATE.—The term
21 “program termination date” means the date on
22 which the last credit instrument has been paid in
23 full (disregarding for this purpose any amounts

- 1 owed to the Secretary on account of the Secretary's
- 2 subrogation rights).

○