

Union Calendar No. 462

114TH CONGRESS
2^D SESSION

H. R. 4166

[Report No. 114–596]

To amend the Securities Exchange Act of 1934 to provide specific credit risk retention requirements to certain qualifying collateralized loan obligations.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 3, 2015

Mr. BARR (for himself and Mr. DAVID SCOTT of Georgia) introduced the following bill; which was referred to the Committee on Financial Services

MAY 26, 2016

Additional sponsors: Mr. FOSTER, Mr. GUINTA, Mr. HUIZENGA of Michigan, Mrs. WAGNER, Mr. MARCHANT, Mr. STIVERS, Mr. MCHENRY, Mr. FITZPATRICK, Mr. LUETKEMEYER, Mr. CARNEY, and Mr. HILL

MAY 26, 2016

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on December 3, 2015]

A BILL

To amend the Securities Exchange Act of 1934 to provide specific credit risk retention requirements to certain qualifying collateralized loan obligations.

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 “Expanding Proven Fi-*
5 *nancing for American Employers Act”.*

6 **SEC. 2. RISK RETENTION REQUIREMENT FOR QUALIFIED**
7 **COLLATERALIZED LOAN OBLIGATIONS.**

8 *Section 15G(e) of the Securities Exchange Act of 1934*
9 *(15 U.S.C. 780–11(e)) is amended by inserting after para-*
10 *graph (6) the following new paragraphs:*

11 *“(7) REQUIREMENTS FOR QUALIFIED*
12 *COLLATERALIZED LOAN OBLIGATIONS.—*

13 *“(A) RISK RETENTION REQUIREMENT.—*

14 *Notwithstanding any other provision of this sec-*
15 *tion, as of the effective date set forth in sub-*
16 *section (i)(2), the risk retention requirement for*
17 *qualified collateralized loan obligations may be*
18 *met by the purchase and, during the applicable*
19 *duration of risk retention specified by the rules*
20 *of the Federal banking agencies under subsection*
21 *(c)(1)(C)(ii), holding (without hedging or other-*
22 *wise transferring the credit risk), of the value of*
23 *no less than five percent of the equity distributed*
24 *among each of the higher tranches of the issuance*
25 *with no less than 3.5 percent retained as equity*

1 *of the collateralized loan obligation by the man-*
2 *ager of the qualified collateralized loan obliga-*
3 *tion or one or more of the majority-owned affili-*
4 *ates of the manager or its knowledgeable employ-*
5 *ees and other employees.*

6 “(B) *QUALIFIED COLLATERALIZED LOAN*
7 *OBLIGATIONS.—For purposes of this paragraph,*
8 *a qualified collateralized loan obligation is a*
9 *collateralized loan obligation that meets all of the*
10 *following requirements:*

11 “(i) *ASSET QUALITY PROTECTIONS.—*
12 *The collateralized loan obligation shall—*

13 “(I) *have at least 100 percent of*
14 *its assets comprised of senior secured*
15 *loans and cash equivalents;*

16 “(II) *have 100 percent of its loan*
17 *assets issued by companies;*

18 “(III) *have no assets that are*
19 *asset-backed securities or derivatives,*
20 *except that this limitation shall not*
21 *prohibit a qualified collateralized loan*
22 *obligation from acquiring a loan par-*
23 *ticipation or any interest related to or*
24 *in a letter of credit, or entering into*

1 *derivative transactions to hedge inter-*
2 *est rate or currency rate mismatches;*

3 *“(IV) not purchase assets in de-*
4 *fault, margin stock, or equity convert-*
5 *ible securities;*

6 *“(V) acquire only loans held or*
7 *acquired by three or more investors or*
8 *lenders unaffiliated with the manager;*

9 *“(VI) hold only loans to borrowers*
10 *whose financial statements are subject*
11 *to an annual audit from an inde-*
12 *pendent, accredited accounting firm;*

13 *“(VII) have no more than 60 per-*
14 *cent of its assets comprised of covenant*
15 *lite loans, except that each asset shall*
16 *require the disclosure of unaudited fi-*
17 *nancial statements quarterly within 45*
18 *days of the end of the quarter and au-*
19 *dated financial statements annually*
20 *within 90 days of the end of the fiscal*
21 *year; and*

22 *“(VIII) at the time of purchase of*
23 *any asset, comply with the require-*
24 *ments of subclauses (I) and (VII) and*
25 *clause (ii) of this subparagraph, or, if*

1 *not in compliance with any such re-*
2 *quirement, maintain or improve the*
3 *level of compliance after giving effect to*
4 *such purchase.*

5 “(ii) *ASSET PORTFOLIO PROTEC-*
6 *TIONS.—*

7 “(I) *No more than 3.5 percent of*
8 *the assets of the collateralized loan obli-*
9 *gation may relate to any single bor-*
10 *rower.*

11 “(II) *No more than 15 percent of*
12 *the assets of the collateralized loan obli-*
13 *gation may relate to any single indus-*
14 *try.*

15 “(iii) *STRUCTURAL PROTECTIONS.—*

16 “(I) *The collateralized loan obli-*
17 *gation’s equity shall be at least 8 per-*
18 *cent of the value of its assets.*

19 “(II) *The governing transaction*
20 *documents of the collateralized loan ob-*
21 *ligation specify over-collateralization*
22 *and interest coverage tests, and if any*
23 *such test falls below the required level*
24 *specified for the collateralized loan ob-*
25 *ligation in such documents, available*

1 *interest collections (and if necessary,*
2 *available principal collections) must be*
3 *applied to repay the collateralized loan*
4 *obligation’s debt in order of seniority*
5 *until compliance with the applicable*
6 *test is restored.*

7 “(iv) *REQUIREMENT TO MAINTAIN*
8 *ALIGNMENT OF MANAGER AND INVESTOR IN-*
9 *TERESTS.—*

10 “(I) *The collateralized loan obli-*
11 *gation shall be an open market*
12 *collateralized loan obligation.*

13 “(II) *The holders of the equity of*
14 *the collateralized loan obligation (ex-*
15 *cluding the risk retention equity held*
16 *as required by subparagraph (A)) shall*
17 *have the right to remove by vote the*
18 *manager for cause.*

19 “(III) *A majority of the man-*
20 *ager’s fees, including any incentive fee,*
21 *shall be subordinated to payments then*
22 *due in relation to the collateralized*
23 *loan obligation’s debt securities.*

24 “(IV) *The manager’s discre-*
25 *tionary sales of assets on behalf of the*

1 *issuer of the collateralized loan obliga-*
2 *tion shall be limited each year to not*
3 *more than 30 percent of the principal*
4 *amount of the assets of the*
5 *collateralized loan obligation (other*
6 *than sales of defaulted or credit-dete-*
7 *riorated, credit-risk, or credit-improved*
8 *loans).*

9 *“(V) The risk retention equity re-*
10 *quirement set forth in subparagraph*
11 *(A) is met.*

12 *“(VI) All holders of collateralized*
13 *loan obligation securities that are U.S.*
14 *persons within the meaning of Regula-*
15 *tion S (17 C.F.R. 230; 249) under the*
16 *Securities Act of 1933, are qualified*
17 *investors.*

18 *“(v) REGULATORY OVERSIGHT RE-*
19 *QUIREMENTS.—*

20 *“(I) The manager of the*
21 *collateralized loan obligation shall be*
22 *registered with the Commission as an*
23 *investment adviser under section 203*
24 *of the Investment Advisers Act of 1940*
25 *(15 U.S.C. 80b–3).*

1 “(II) All purchases and sales of
2 the assets of the collateralized loan obli-
3 gation shall be conducted on an arm’s-
4 length basis and in compliance with
5 any applicable provisions of the Invest-
6 ment Advisers Act of 1940.

7 “(vi) REQUIREMENTS RELATING TO
8 TRANSPARENCY AND DISCLOSURE.—A
9 monthly report shall be made available to
10 holders of debt securities of the collateralized
11 loan obligation, which includes information
12 regarding—

13 “(I) a list of assets of the
14 collateralized loan obligation, includ-
15 ing, with respect to each asset, the obli-
16 gor name; the CUSIP (or security
17 identifier) if applicable, the interest
18 rate and maturity date, the type of
19 asset, and the market price for each
20 asset where available;

21 “(II) with respect to the portfolio
22 of assets, the aggregate principal bal-
23 ance and aggregate adjusted collateral
24 principal amount (adjusted as required
25 by the collateralized loan obligation

1 governing transaction documents) and
2 the percentage of such aggregate ad-
3 justed collateral principal represented
4 by each asset;

5 “(III) information relating to
6 each applicable over-collateralization
7 test and interest coverage test and the
8 level of compliance in relation to each
9 test;

10 “(IV) all purchases, repayments,
11 and sales of assets; and

12 “(V) the identity of each defaulted
13 asset as defined in the related trans-
14 action documents.

15 “(8) *DEFINITIONS FOR PURPOSES OF PARA-*
16 *GRAPH (7).*—For purposes of paragraph (7), the fol-
17 *lowing definitions apply:*

18 “(A) *BALANCE SHEET COLLATERALIZED*
19 *LOAN OBLIGATION.*—The term ‘balance sheet
20 collateralized loan obligation’ means a
21 collateralized loan obligation—

22 “(i) whose assets consist predominantly
23 of loans originated and transferred to the
24 collateralized loan obligation by one or
25 more of its affiliates other than in—

1 “(I) open market transactions;
2 “(II) from an open market
3 collateralized loan obligation; or
4 “(III) from a collateralized loan
5 obligation in existence as of the effec-
6 tive date of this paragraph that is not
7 a balance sheet collateralized loan obli-
8 gation; and

9 “(ii) the assets and liabilities of which
10 are, immediately after issuance of its asset-
11 backed securities in a securitization trans-
12 action, included under generally accepted
13 accounting principles in the consolidated
14 balance sheet of one or more of its affiliates.

15 “(B) COLLATERALIZED LOAN OBLIGA-
16 TION.—The term ‘collateralized loan obligation’
17 means any issuing entity of an asset-backed se-
18 curity, as defined in section 3(a)(79) of the Secu-
19 rities Exchange Act of 1934 (15 U.S.C.
20 78c(a)(79)), that is comprised primarily of com-
21 mercial loans.

22 “(C) COVENANT LITE LOAN.—The term ‘cov-
23 enant lite loan’ means, at the time the
24 collateralized loan obligation enters into a com-

1 *mitment to acquire such loan, a loan for which*
2 *the underlying instruments neither—*

3 *“(i) require the obligor to comply with*
4 *any maintenance covenant; nor*

5 *“(ii) contain a cross-default provision*
6 *to a financing facility of the obligor that re-*
7 *quires the obligor to comply with a mainte-*
8 *nance covenant (including one that may*
9 *apply only upon the funding of such other*
10 *loan or financing facility); except that if*
11 *such loan is pari passu with another loan*
12 *of the obligor that would not be a covenant*
13 *lite loan under the criteria in this clause,*
14 *such loan shall be deemed not to be a cov-*
15 *enant lite loan. For purposes of this clause,*
16 *the term ‘pari passu’ means treated equally*
17 *and without preference.*

18 *“(D) EQUITY.—The term ‘equity’ means the*
19 *most junior class of securities issued by the*
20 *collateralized loan obligation (excluding any*
21 *non-economic security such as the issuer’s com-*
22 *mon stock) and any additional class(es) of secu-*
23 *rities junior to the collateralized loan obliga-*
24 *tion’s debt securities.*

1 “(E) *MANAGER.*—*The term ‘manager’*
2 *means an investment manager that is respon-*
3 *sible for managing a collateralized loan obliga-*
4 *tion under the collateralized loan obligation’s*
5 *governing transaction documents.*

6 “(F) *OPEN MARKET COLLATERALIZED LOAN*
7 *OBLIGATION.*—*The term ‘open market*
8 *collateralized loan obligation’ means a*
9 *collateralized loan obligation—*

10 *“(i) whose assets consist predominantly*
11 *of senior, secured syndicated loans acquired*
12 *by such collateralized loan obligation di-*
13 *rectly from the sellers thereof in an open*
14 *market transaction or from another*
15 *collateralized loan obligation and of tem-*
16 *porary investments;*

17 *“(ii) that is managed by a manager;*
18 *and*

19 *“(iii) that is not a balance sheet*
20 *collateralized loan obligation.*

21 “(G) *OPEN MARKET TRANSACTION.*—*The*
22 *term ‘open market transaction’ means—*

23 *“(i) either an initial loan syndication*
24 *transaction or a secondary market trans-*
25 *action in which a seller offers senior, se-*

1 *cured syndicated loans to prospective pur-*
2 *chasers in the loan market on market terms*
3 *on an arm’s length basis, which prospective*
4 *purchasers include, but are not limited to,*
5 *entities that are not affiliated with the sell-*
6 *er; or*

7 “(ii) *a reverse inquiry from a prospec-*
8 *tive purchaser of a senior, secured syn-*
9 *dicated loan through a dealer in the loan*
10 *market to purchase a senior, secured syn-*
11 *dicated loan to be sourced by the dealer in*
12 *the loan market.*

13 “(H) *QUALIFIED INVESTOR.—The term*
14 *‘qualified investor’ means—*

15 “(i) *with respect to securities that re-*
16 *quire the payment of principal and interest,*
17 *an investor that is a qualified purchaser,*
18 *within the meaning of section 3(c)(7) of the*
19 *Investment Company Act of 1940 (15*
20 *U.S.C. 80a–3(c)(7)) or an entity owned ex-*
21 *clusively by one or more qualified pur-*
22 *chasers; or*

23 “(ii) *with respect to securities that do*
24 *not require the payment of principal and*
25 *interest—*

1 “(I) if the qualified collateralized
2 loan obligation relies on such section
3 for its exclusion from the definition of
4 investment company under the Invest-
5 ment Company Act of 1940—

6 “(aa) a qualified purchaser;

7 “(bb) a knowledgeable em-
8 ployee, within the meaning of
9 Rule 3c-5 promulgated under the
10 Investment Company Act of 1940;
11 or

12 “(cc) an entity owned exclu-
13 sively by such a qualified pur-
14 chaser or knowledgeable employee;
15 or

16 “(II) if the qualified collateralized
17 loan obligation relies on Rule 3a-7
18 promulgated under the Investment
19 Company Act of 1940 for its exclusion
20 from the definition of investment com-
21 pany under that Act and such securi-
22 ties are not fixed-income securities, as
23 defined in such rule—

24 “(aa) a qualified institu-
25 tional buyer, within the meaning

1 *of Rule 144A under the Securities*
2 *Act of 1933;*

3 *“(bb) a person (other than*
4 *any rating organization rating*
5 *the issuer’s securities) involved in*
6 *the organization or operation of*
7 *the issuer or an affiliate of such a*
8 *person, as defined in Rule 405*
9 *under the Securities Act of 1933;*
10 *or*

11 *“(cc) any entity in which all*
12 *of the equity owners are such*
13 *qualified institutional buyers as*
14 *described in item (aa) or persons*
15 *described in item (bb).”.*

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