

113TH CONGRESS
2D SESSION

H. R. 5461

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 17 (legislative day, SEPTEMBER 16), 2014

Received; read twice and referred to the Committee on Banking, Housing, and
Urban Affairs

AN ACT

To clarify the application of certain leverage and risk-based requirements under the Dodd-Frank Wall Street Reform and Consumer Protection Act, to improve upon the definitions provided for points and fees in connection with a mortgage transaction, 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. TABLE OF CONTENTS.**

4 The table of contents for this Act is as follows:

Sec. 1. Table of contents.

TITLE I—INSURANCE CAPITAL STANDARDS

Sec. 101. Short title.

Sec. 102. Clarification of application of leverage and risk-based capital require-
 ments.

TITLE II—COLLATERALIZED LOAN OBLIGATIONS

Sec. 201. Short title.

Sec. 202. Rules of construction relating to collateralized loan obligations.

TITLE III—DEFINITION OF POINTS AND FEES IN MORTGAGE
 TRANSACTIONS

Sec. 301. Short title.

Sec. 302. Definition of points and fees.

Sec. 303. Rulemaking.

TITLE IV—BUSINESS RISK MITIGATION AND PRICE
 STABILIZATION

Sec. 401. Short title.

Sec. 402. Margin requirements.

Sec. 403. Implementation.

5 **TITLE I—INSURANCE CAPITAL**
 6 **STANDARDS**

7 **SEC. 101. SHORT TITLE.**

8 This title may be cited as the “Insurance Capital
 9 Standards Clarification Act of 2014”.

10 **SEC. 102. CLARIFICATION OF APPLICATION OF LEVERAGE**
 11 **AND RISK-BASED CAPITAL REQUIREMENTS.**

12 Section 171 of the Dodd-Frank Wall Street Reform
 13 and Consumer Protection Act (12 U.S.C. 5371) is amend-
 14 ed—

1 (1) in subsection (a), by adding at the end the
2 following:

3 “(4) BUSINESS OF INSURANCE.—The term
4 ‘business of insurance’ has the same meaning as in
5 section 1002(3).

6 “(5) PERSON REGULATED BY A STATE INSUR-
7 ANCE REGULATOR.—The term ‘person regulated by
8 a State insurance regulator’ has the same meaning
9 as in section 1002(22).

10 “(6) REGULATED FOREIGN SUBSIDIARY AND
11 REGULATED FOREIGN AFFILIATE.—The terms ‘regu-
12 lated foreign subsidiary’ and ‘regulated foreign affil-
13 iate’ mean a person engaged in the business of in-
14 surance in a foreign country that is regulated by a
15 foreign insurance regulatory authority that is a
16 member of the International Association of Insur-
17 ance Supervisors or other comparable foreign insur-
18 ance regulatory authority as determined by the
19 Board of Governors following consultation with the
20 State insurance regulators, including the lead State
21 insurance commissioner (or similar State official) of
22 the insurance holding company system as deter-
23 mined by the procedures within the Financial Anal-
24 ysis Handbook adopted by the National Association
25 of Insurance Commissioners, where the person, or

1 its principal United States insurance affiliate, has
2 its principal place of business or is domiciled, but
3 only to the extent that—

4 “(A) such person acts in its capacity as a
5 regulated insurance entity; and

6 “(B) the Board of Governors does not de-
7 termine that the capital requirements in a spe-
8 cific foreign jurisdiction are inadequate.

9 “(7) CAPACITY AS A REGULATED INSURANCE
10 ENTITY.—The term ‘capacity as a regulated insur-
11 ance entity’—

12 “(A) includes any action or activity under-
13 taken by a person regulated by a State insur-
14 ance regulator or a regulated foreign subsidiary
15 or regulated foreign affiliate of such person, as
16 those actions relate to the provision of insur-
17 ance, or other activities necessary to engage in
18 the business of insurance; and

19 “(B) does not include any action or activ-
20 ity, including any financial activity, that is not
21 regulated by a State insurance regulator or a
22 foreign agency or authority and subject to State
23 insurance capital requirements or, in the case of
24 a regulated foreign subsidiary or regulated for-

1 eign affiliate, capital requirements imposed by a
2 foreign insurance regulatory authority.”; and

3 (2) by adding at the end the following new sub-
4 section:

5 “(c) CLARIFICATION.—

6 “(1) IN GENERAL.—In establishing the min-
7 imum leverage capital requirements and minimum
8 risk-based capital requirements on a consolidated
9 basis for a depository institution holding company or
10 a nonbank financial company supervised by the
11 Board of Governors as required under paragraphs
12 (1) and (2) of subsection (b), the appropriate Fed-
13 eral banking agencies shall not be required to in-
14 clude, for any purpose of this section (including in
15 any determination of consolidation), a person regu-
16 lated by a State insurance regulator or a regulated
17 foreign subsidiary or a regulated foreign affiliate of
18 such person engaged in the business of insurance, to
19 the extent that such person acts in its capacity as
20 a regulated insurance entity.

21 “(2) RULE OF CONSTRUCTION ON BOARD’S AU-
22 THORITY.—This subsection shall not be construed to
23 prohibit, modify, limit, or otherwise supersede any
24 other provision of Federal law that provides the
25 Board of Governors authority to issue regulations

1 and orders relating to capital requirements for de-
2 pository institution holding companies or nonbank fi-
3 nancial companies supervised by the Board of Gov-
4 ernors.

5 “(3) RULE OF CONSTRUCTION ON ACCOUNTING
6 PRINCIPLES.—

7 “(A) IN GENERAL.—A depository institu-
8 tion holding company or nonbank financial com-
9 pany supervised by the Board of Governors of
10 the Federal Reserve that is also a person regu-
11 lated by a State insurance regulator that is en-
12 gaged in the business of insurance that files fi-
13 nancial statements with a State insurance regu-
14 lator or the National Association of Insurance
15 Commissioners utilizing only Statutory Ac-
16 counting Principles in accordance with State
17 law, shall not be required by the Board under
18 the authority of this section or the authority of
19 the Home Owners’ Loan Act to prepare such fi-
20 nancial statements in accordance with Generally
21 Accepted Accounting Principles.

22 “(B) PRESERVATION OF AUTHORITY.—
23 Nothing in subparagraph (A) shall limit the au-
24 thority of the Board under any other applicable
25 provision of law to conduct any regulatory or

1 supervisory activity of a depository institution
 2 holding company or non-bank financial com-
 3 pany supervised by the Board of Governors, in-
 4 cluding the collection or reporting of any infor-
 5 mation on an entity or group-wide basis. Noth-
 6 ing in this paragraph shall excuse the Board
 7 from its obligations to comply with section
 8 161(a) of the Dodd-Frank Wall Street Reform
 9 and Consumer Protection Act (12 U.S.C.
 10 5361(a)) and section 10(b)(2) of the Home
 11 Owners’ Loan Act (12 U.S.C. 1467a(b)(2)), as
 12 appropriate.”.

13 **TITLE II—COLLATERALIZED** 14 **LOAN OBLIGATIONS**

15 **SEC. 201. SHORT TITLE.**

16 This title may be cited as the “Restoring Proven Fi-
 17 nancing for American Employers Act”.

18 **SEC. 202. RULES OF CONSTRUCTION RELATING TO** 19 **COLLATERALIZED LOAN OBLIGATIONS.**

20 Section 13(g) of the Bank Holding Company Act of
 21 1956 (12 U.S.C. 1851(g)) is amended by adding at the
 22 end the following new paragraphs:

23 “(4) COLLATERALIZED LOAN OBLIGATIONS.—

24 “(A) INAPPLICABILITY TO CERTAIN

25 COLLATERALIZED LOAN OBLIGATIONS.—Noth-

ing in this section shall be construed to require the divestiture, prior to July 21, 2017, of any debt securities of collateralized loan obligations, if such debt securities were issued before January 31, 2014.

“(B) OWNERSHIP INTEREST WITH RESPECT TO COLLATERALIZED LOAN OBLIGATIONS.—A banking entity shall not be considered to have an ownership interest in a collateralized loan obligation because it acquires, has acquired, or retains a debt security in such collateralized loan obligation if the debt security has no indicia of ownership other than the right of the banking entity to participate in the removal for cause, or in the selection of a replacement after removal for cause or resignation, of an investment manager or investment adviser of the collateralized loan obligation.

“(C) DEFINITIONS.—For purposes of this paragraph:

“(i) COLLATERALIZED LOAN OBLIGATION.—The term ‘collateralized loan obligation’ means any issuing entity of an asset-backed security, as defined in section 3(a)(77) of the Securities Exchange Act of

1 1934 (15 U.S.C. 78c(a)(77)), that is com-
2 prised primarily of commercial loans.

3 “(ii) REMOVAL FOR CAUSE.—An in-
4 vestment manager or investment adviser
5 shall be deemed to be removed ‘for cause’
6 if the investment manager or investment
7 adviser is removed as a result of—

8 “(I) a breach of a material term
9 of the applicable management or advi-
10 sory agreement or the agreement gov-
11 erning the collateralized loan obliga-
12 tion;

13 “(II) the inability of the invest-
14 ment manager or investment adviser
15 to continue to perform its obligations
16 under any such agreement;

17 “(III) any other action or inac-
18 tion by the investment manager or in-
19 vestment adviser that has or could
20 reasonably be expected to have a ma-
21 terially adverse effect on the
22 collateralized loan obligation, if the in-
23 vestment manager or investment ad-
24 viser fails to cure or take reasonable

1 steps to cure such effect within a rea-
 2 sonable time; or

3 “(IV) a comparable event or cir-
 4 cumstance that threatens, or could
 5 reasonably be expected to threaten,
 6 the interests of holders of the debt se-
 7 curities.”.

8 **TITLE III—DEFINITION OF** 9 **POINTS AND FEES IN MORT-** 10 **GAGE TRANSACTIONS**

11 **SEC. 301. SHORT TITLE.**

12 This title may be cited as the “Mortgage Choice Act
 13 of 2014”.

14 **SEC. 302. DEFINITION OF POINTS AND FEES.**

15 (a) AMENDMENT TO SECTION 103 OF TILA.—Sec-
 16 tion 103(bb)(4) of the Truth in Lending Act (15 U.S.C.
 17 1602(bb)(4)) is amended—

18 (1) by striking “paragraph (1)(B)” and insert-
 19 ing “paragraph (1)(A) and section 129C”;

20 (2) in subparagraph (C)—

21 (A) by inserting “and insurance” after
 22 “taxes”;

23 (B) in clause (ii), by inserting “, except as
 24 retained by a creditor or its affiliate as a result
 25 of their participation in an affiliated business

1 arrangement (as defined in section 2(7) of the
2 Real Estate Settlement Procedures Act of 1974
3 (12 U.S.C. 2602(7))” after “compensation”;
4 and

5 (C) by striking clause (iii) and inserting
6 the following:

7 “(iii) the charge is—

8 “(I) a bona fide third-party
9 charge not retained by the mortgage
10 originator, creditor, or an affiliate of
11 the creditor or mortgage originator; or

12 “(II) a charge set forth in section
13 106(e)(1);” and

14 (3) in subparagraph (D)—

15 (A) by striking “accident,”; and

16 (B) by striking “or any payments” and in-
17 serting “and any payments”.

18 (b) AMENDMENT TO SECTION 129C OF TILA.—Sec-
19 tion 129C of the Truth in Lending Act (15 U.S.C. 1639c)
20 is amended—

21 (1) in subsection (a)(5)(C), by striking “103”
22 and all that follows through “or mortgage origi-
23 nator)” and inserting “103(bb)(4)”;

1 (2) in subsection (b)(2)(C)(i), by striking “103”
 2 and all that follows through “or mortgage origi-
 3 nator)” and inserting “103(bb)(4)”.

4 **SEC. 303. RULEMAKING.**

5 Not later than the end of the 90-day period beginning
 6 on the date of the enactment of this Act, the Bureau of
 7 Consumer Financial Protection shall issue final regula-
 8 tions to carry out the amendments made by this Act, and
 9 such regulations shall be effective upon issuance.

10 **TITLE IV—BUSINESS RISK MITI-**
 11 **GATION AND PRICE STA-**
 12 **BILIZATION**

13 **SEC. 401. SHORT TITLE.**

14 This title may be cited as the “Business Risk Mitiga-
 15 tion and Price Stabilization Act of 2014”.

16 **SEC. 402. MARGIN REQUIREMENTS.**

17 (a) COMMODITY EXCHANGE ACT AMENDMENT.—
 18 Section 4s(e) of the Commodity Exchange Act (7 U.S.C.
 19 6s(e)), as added by section 731 of the Dodd-Frank Wall
 20 Street Reform and Consumer Protection Act, is amended
 21 by adding at the end the following new paragraph:

22 “(4) APPLICABILITY WITH RESPECT TO
 23 COUNTERPARTIES.—The requirements of paragraphs
 24 (2)(A)(ii) and (2)(B)(ii), including the initial and
 25 variation margin requirements imposed by rules

1 adopted pursuant to paragraphs (2)(A)(ii) and
 2 (2)(B)(ii), shall not apply to a swap in which a
 3 counterparty qualifies for an exception under section
 4 2(h)(7)(A), or an exemption issued under section
 5 4(c)(1) from the requirements of section 2(h)(1)(A)
 6 for cooperative entities as defined in such exemption,
 7 or satisfies the criteria in section 2(h)(7)(D).”.

8 (b) SECURITIES EXCHANGE ACT AMENDMENT.—
 9 Section 15F(e) of the Securities Exchange Act of 1934
 10 (15 U.S.C. 78o–10(e)), as added by section 764(a) of the
 11 Dodd-Frank Wall Street Reform and Consumer Protec-
 12 tion Act, is amended by adding at the end the following
 13 new paragraph:

14 “(4) APPLICABILITY WITH RESPECT TO
 15 COUNTERPARTIES.—The requirements of paragraphs
 16 (2)(A)(ii) and (2)(B)(ii) shall not apply to a secu-
 17 rity-based swap in which a counterparty qualifies for
 18 an exception under section 3C(g)(1) or satisfies the
 19 criteria in section 3C(g)(4).”.

20 **SEC. 403. IMPLEMENTATION.**

21 The amendments made by this title to the Commodity
 22 Exchange Act shall be implemented—

23 (1) without regard to—

24 (A) chapter 35 of title 44, United States
 25 Code; and

1 (B) the notice and comment provisions of
2 section 553 of title 5, United States Code;
3 (2) through the promulgation of an interim
4 final rule, pursuant to which public comment will be
5 sought before a final rule is issued; and
6 (3) such that paragraph (1) shall apply solely
7 to changes to rules and regulations, or proposed
8 rules and regulations, that are limited to and di-
9 rectly a consequence of such amendments.

Passed the House of Representatives September 16,
2014.

Attest:

KAREN L. HAAS,
Clerk.