

114TH CONGRESS  
1ST SESSION

# H. R. 4166

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

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## 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

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## 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  
9 1934 (15 U.S.C. 780–11(e)) is amended by inserting after  
10 paragraph 6 the following new paragraphs:

1           “(7) REQUIREMENTS FOR QUALIFIED  
2 COLLATERALIZED LOAN OBLIGATIONS.—

3           “(A) RISK RETENTION REQUIREMENT.—

4           Notwithstanding any other provision of this sec-  
5 tion, as of the effective date set forth in sub-  
6 section (i)(2), the risk retention requirement for  
7 qualified collateralized loan obligations may be  
8 met by the purchase and, during the applicable  
9 duration of risk retention specified by the rules  
10 of the Federal banking agencies under sub-  
11 section (c)(1)(C)(ii), holding (without hedging  
12 or otherwise transferring the credit risk), of no  
13 less than five percent of the equity of the  
14 collateralized loan obligation by the manager of  
15 the qualified collateralized loan obligation or  
16 one or more of the majority-owned affiliates of  
17 the manager or its knowledgeable employees  
18 and other employees.

19           “(B) QUALIFIED COLLATERALIZED LOAN  
20 OBLIGATIONS.—For purposes of this paragraph,  
21 a qualified collateralized loan obligation is a  
22 collateralized loan obligation that meets all of  
23 the following requirements:

24           “(i) ASSET QUALITY PROTECTIONS.—

25           The collateralized loan obligation shall—

1           “(I) have at least 90 percent of  
2           its assets comprised of senior secured  
3           loans and cash equivalents;

4           “(II) have 100 percent of its loan  
5           assets issued by companies;

6           “(III) have no assets that are  
7           asset-backed securities or derivatives,  
8           except that this limitation shall not  
9           prohibit a qualified collateralized loan  
10          obligation from acquiring a loan par-  
11          ticipation or any interest related to or  
12          in a letter of credit, or entering into  
13          derivative transactions to hedge inter-  
14          est rate or currency rate mismatches;

15          “(IV) not purchase assets in de-  
16          fault, margin stock, or equity convert-  
17          ible securities;

18          “(V) acquire only loans held or  
19          acquired by three or more investors or  
20          lenders unaffiliated with the manager;

21          “(VI) hold only loans to bor-  
22          rowers whose financial statements are  
23          subject to an annual audit from an  
24          independent, accredited accounting  
25          firm;

1           “(VII) have no more than 60  
2 percent of its assets comprised of cov-  
3 enant lite loans; and

4           “(VIII) at the time of purchase  
5 of any asset, comply with the require-  
6 ments of subclauses (I) and (VII) and  
7 clause (ii) of this subparagraph, or, if  
8 not in compliance with any such re-  
9 quirement, maintain or improve the  
10 level of compliance after giving effect  
11 to such purchase.

12           “(ii) ASSET PORTFOLIO PROTEC-  
13 TIONS.—

14           “(I) No more than 3.5 percent of  
15 the assets of the collateralized loan  
16 obligation may relate to any single  
17 borrower.

18           “(II) No more than 15 percent of  
19 the assets of the collateralized loan  
20 obligation may relate to any single in-  
21 dustry.

22           “(iii) STRUCTURAL PROTECTIONS.—

23           “(I) The collateralized loan obli-  
24 gation’s equity shall be at least 8 per-  
25 cent of the value of its assets.

1           “(II) The governing transaction  
2 documents of the collateralized loan  
3 obligation specify over-collateralization  
4 and interest coverage tests, and if any  
5 such test falls below the required level  
6 specified for the collateralized loan ob-  
7 ligation in such documents, available  
8 interest collections (and if necessary,  
9 available principal collections) must be  
10 applied to repay the collateralized loan  
11 obligation’s debt in order of seniority  
12 until compliance with the applicable  
13 test is restored.

14           “(iv) REQUIREMENT TO MAINTAIN  
15 ALIGNMENT OF MANAGER AND INVESTOR  
16 INTERESTS.—

17           “(I) The collateralized loan obli-  
18 gation shall be an open market  
19 collateralized loan obligation.

20           “(II) The holders of the equity of  
21 the collateralized loan obligation (ex-  
22 cluding the risk retention equity held  
23 as required by subparagraph (A))  
24 shall have the right to remove by vote  
25 the manager for cause.

1           “(III) A majority of the man-  
2           ager’s fees, including any incentive  
3           fee, shall be subordinated to payments  
4           then due in relation to the  
5           collateralized loan obligation’s debt se-  
6           curities.

7           “(IV) The manager’s discre-  
8           tionary sales of assets on behalf of the  
9           issuer of the collateralized loan obliga-  
10          tion shall be limited each year to not  
11          more than 30 percent of the principal  
12          amount of the assets of the  
13          collateralized loan obligation (other  
14          than sales of defaulted or credit-dete-  
15          riorated, credit-risk, or credit-im-  
16          proved loans).

17          “(V) The risk retention equity  
18          requirement set forth in subparagraph  
19          (A) is met.

20          “(VI) All holders of collateralized  
21          loan obligation securities that are  
22          U.S. persons within the meaning of  
23          Regulation S (17 C.F.R. 230; 249)  
24          under the Securities Act of 1933, are  
25          qualified investors.

1                   “(v) REGULATORY OVERSIGHT RE-  
2                   QUIREMENTS.—

3                   “(I) The manager of the  
4                   collateralized loan obligation shall be  
5                   registered with the Commission as an  
6                   investment adviser under section 203  
7                   of the Investment Advisers Act of  
8                   1940 (15 U.S.C. 80b–3).

9                   “(II) All purchases and sales of  
10                  the assets of the collateralized loan  
11                  obligation shall be conducted on an  
12                  arm’s-length basis and in compliance  
13                  with any applicable provisions of the  
14                  Investment Advisers Act of 1940.

15                  “(vi) REQUIREMENTS RELATING TO  
16                  TRANSPARENCY AND DISCLOSURE.—A  
17                  monthly report shall be made available to  
18                  holders of debt securities of the  
19                  collateralized loan obligation, which in-  
20                  cludes information regarding—

21                  “(I) a list of assets of the  
22                  collateralized loan obligation, includ-  
23                  ing, with respect to each asset, the ob-  
24                  ligor name; the CUSIP (or security  
25                  identifier) if applicable, the interest

1 rate and maturity date, the type of  
2 asset, and the market price for each  
3 asset where available;

4 “(II) with respect to the portfolio  
5 of assets, the aggregate principal bal-  
6 ance and aggregate adjusted collateral  
7 principal amount (adjusted as re-  
8 quired by the collateralized loan obli-  
9 gation governing transaction docu-  
10 ments) and the percentage of such ag-  
11 gregate adjusted collateral principal  
12 represented by each asset;

13 “(III) information relating to  
14 each applicable over-collateralization  
15 test and interest coverage test and the  
16 level of compliance in relation to each  
17 test;

18 “(IV) all purchases, repayments,  
19 and sales of assets; and

20 “(V) the identity of each de-  
21 faulted asset as defined in the related  
22 transaction documents.

23 “(8) DEFINITIONS FOR PURPOSES OF PARA-  
24 GRAPH (7).—For purposes of paragraph (7), the fol-  
25 lowing definitions apply:



1           “(A) BALANCE SHEET COLLATERALIZED  
2 LOAN OBLIGATION.—The term ‘balance sheet  
3 collateralized loan obligation’ means a  
4 collateralized loan obligation—

5           “(i) whose assets consist predomi-  
6 nantly of loans originated and transferred  
7 to the collateralized loan obligation by one  
8 or more of its affiliates other than in—

9           “(I) open market transactions;

10           “(II) from an open market  
11 collateralized loan obligation; or

12           “(III) from a collateralized loan  
13 obligation in existence as of the effec-  
14 tive date of this paragraph that is not  
15 a balance sheet collateralized loan ob-  
16 ligation; and

17           “(ii) the assets and liabilities of which  
18 are, immediately after issuance of its asset-  
19 backed securities in a securitization trans-  
20 action, included under generally accepted  
21 accounting principles in the consolidated  
22 balance sheet of one or more of its affili-  
23 ates.

24           “(B) COLLATERALIZED LOAN OBLIGA-  
25 TION.—The term ‘collateralized loan obligation’

1 means any issuing entity of an asset-backed se-  
2 curity, as defined in section 3(a)(79) of the Se-  
3 curities Exchange Act of 1934 (15 U.S.C.  
4 78c(a)(79)), that is comprised primarily of com-  
5 mercial loans.

6 “(C) COVENANT LITE LOAN.—The term  
7 ‘covenant lite loan’ means, at the time the  
8 collateralized loan obligation enters into a com-  
9 mitment to acquire such loan, a loan for which  
10 the underlying instruments neither—

11 “(i) require the obligor to comply with  
12 any maintenance covenant; nor

13 “(ii) contain a cross-default provision  
14 to a financing facility of the obligor that  
15 requires the obligor to comply with a main-  
16 tenance covenant (including one that may  
17 apply only upon the funding of such other  
18 loan or financing facility); except that if  
19 such loan is pari passu with another loan  
20 of the obligor that would not be a covenant  
21 lite loan under the criteria in this clause,  
22 such loan shall be deemed not to be a cov-  
23 enant lite loan. For purposes of this  
24 clause, the term ‘pari passu’ means treated  
25 equally and without preference.

1           “(D) EQUITY.—The term ‘equity’ means  
2 the most junior class of securities issued by the  
3 collateralized loan obligation (excluding any  
4 non-economic security such as the issuer’s com-  
5 mon stock) and any additional class(es) of secu-  
6 rities junior to the collateralized loan obliga-  
7 tion’s debt securities.

8           “(E) MANAGER.—The term ‘manager’  
9 means an investment manager that is respon-  
10 sible for managing a collateralized loan obliga-  
11 tion under the collateralized loan obligation’s  
12 governing transaction documents.

13           “(F) OPEN MARKET COLLATERALIZED  
14 LOAN OBLIGATION.—The term ‘open market  
15 collateralized loan obligation’ means a  
16 collateralized loan obligation—

17                   “(i) whose assets consist predomi-  
18 nantly of senior, secured syndicated loans  
19 acquired by such collateralized loan obliga-  
20 tion directly from the sellers thereof in an  
21 open market transaction or from another  
22 collateralized loan obligation and of tem-  
23 porary investments;

24                   “(ii) that is managed by a manager;  
25 and

1           “(iii) that is not a balance sheet  
2 collateralized loan obligation.

3           “(G) OPEN MARKET TRANSACTION.—The  
4 term ‘open market transaction’ means—

5           “(i) either an initial loan syndication  
6 transaction or a secondary market trans-  
7 action in which a seller offers senior, se-  
8 cured syndicated loans to prospective pur-  
9 chasers in the loan market on market  
10 terms on an arm’s length basis, which pro-  
11 spective purchasers include, but are not  
12 limited to, entities that are not affiliated  
13 with the seller; or

14           “(ii) a reverse inquiry from a prospec-  
15 tive purchaser of a senior, secured syn-  
16 dicated loan through a dealer in the loan  
17 market to purchase a senior, secured syn-  
18 dicated loan to be sourced by the dealer in  
19 the loan market.

20           “(H) QUALIFIED INVESTOR.—The term  
21 ‘qualified investor’ means—

22           “(i) with respect to securities that re-  
23 quire the payment of principal and inter-  
24 est, an investor that is a qualified pur-  
25 chaser, within the meaning of section

1 3(c)(7) of the Investment Company Act of  
2 1940 (15 U.S.C. 80a-3(c)(7)) or an entity  
3 owned exclusively by one or more qualified  
4 purchasers; or

5 “(ii) with respect to securities that do  
6 not require the payment of principal and  
7 interest—

8 “(I) if the qualified collateralized  
9 loan obligation relies on such section  
10 for its exclusion from the definition of  
11 investment company under the Invest-  
12 ment Company Act of 1940—

13 “(aa) a qualified purchaser;

14 “(bb) a knowledgeable em-  
15 ployee, within the meaning of  
16 Rule 3c-5 promulgated under the  
17 Investment Company Act of  
18 1940; or

19 “(cc) an entity owned exclu-  
20 sively by such a qualified pur-  
21 chaser or knowledgeable em-  
22 ployee; or

23 “(II) if the qualified  
24 collateralized loan obligation relies on  
25 Rule 3a-7 promulgated under the In-

1 vestment Company Act of 1940 for its  
2 exclusion from the definition of invest-  
3 ment company under that Act and  
4 such securities are not fixed-income  
5 securities, as defined in such rule—

6 “(aa) a qualified institu-  
7 tional buyer, within the meaning  
8 of Rule 144A under the Securi-  
9 ties Act of 1933;

10 “(bb) a person (other than  
11 any rating organization rating  
12 the issuer’s securities) involved in  
13 the organization or operation of  
14 the issuer or an affiliate of such  
15 a person, as defined in Rule 405  
16 under the Securities Act of 1933;  
17 or

18 “(cc) any entity in which all  
19 of the equity owners are such  
20 qualified institutional buyers as  
21 described in item (aa) or persons  
22 described in item (bb).”.

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