

[DISCUSSION DRAFT]

117<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**H. R.** \_\_\_\_\_

To amend the Securities Exchange Act of 1934 to establish a Credit Rating Agency Assignment Board to assign qualified nationally recognized statistical rating organizations to issue credit ratings with respect to corporate issuers and issuers of asset-backed securities, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

M. \_\_\_\_\_ introduced the following bill; which was referred to the Committee on \_\_\_\_\_

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**A BILL**

To amend the Securities Exchange Act of 1934 to establish a Credit Rating Agency Assignment Board to assign qualified nationally recognized statistical rating organizations to issue credit ratings with respect to corporate issuers and issuers of asset-backed securities, 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 Credit  
5 Rating Reform Act”.

1 **SEC. 2. CREDIT RATING ASSIGNMENTS FOR CORPORATE**  
2 **ISSUERS AND ISSUERS OF ASSET-BACKED SE-**  
3 **CURITIES.**

4 (a) IN GENERAL.—Section 15E of the Securities Ex-  
5 change Act of 1934 (15 U.S.C. 78o–7) is amended by add-  
6 ing at the end the following:

7 “(w) CREDIT RATING ASSIGNMENTS FOR COR-  
8 PORATE ISSUERS AND ISSUERS OF ASSET-BACKED SECURITIES.—

9 RITIES.—  
10 “(1) DEFINITIONS.—In this subsection:

11 “(A) BOARD.—The term ‘Board’ means  
12 the Credit Rating Agency Board established  
13 under paragraph (2).

14 “(B) QUALIFIED NATIONALLY RECOG-  
15 NIZED STATISTICAL RATING ORGANIZATION.—  
16 The term ‘qualified nationally recognized statis-  
17 tical rating organization’ means a nationally  
18 recognized statistical rating organization that  
19 the Board determines, under paragraph (3)(B),  
20 to be qualified to issue credit ratings with re-  
21 spect to corporate issuers and issuers of asset-  
22 backed securities.

23 “(2) CREDIT RATING AGENCY BOARD.—

24 “(A) IN GENERAL.—Not later than 180  
25 days after the date of enactment of this sub-  
26 section, the Commission shall—

1           “(i) establish a nonprofit corporation  
2           to be known as the ‘Credit Rating Agency  
3           Board’, which shall be a self-regulatory or-  
4           ganization;

5           “(ii) subject to subparagraph (C), se-  
6           lect the initial members of the Board; and

7           “(iii) establish a schedule to ensure  
8           that the Board begins assigning qualified  
9           nationally recognized statistical rating or-  
10          ganizations to provide credit ratings not  
11          later than 1 year after the selection of the  
12          members of the Board.

13          “(B) SCHEDULE.—The schedule estab-  
14          lished under subparagraph (A)(iii) shall pre-  
15          scribe when—

16               “(i) the Board will conduct a study of  
17               the securitization and ratings process and  
18               provide recommendations to the Commis-  
19               sion;

20               “(ii) the Commission will issue rules  
21               and regulations under this section;

22               “(iii) the Board may issue rules under  
23               this subsection; and

24               “(iv) the Board will—

1                   “(I) begin accepting applications  
2                   to select qualified national recognized  
3                   statistical rating organizations; and

4                   “(II) begin assigning qualified  
5                   national recognized statistical rating  
6                   organizations to provide credit rat-  
7                   ings.

8                   “(C) MEMBERSHIP.—

9                   “(i) IN GENERAL.—The Board shall  
10                  initially be composed of an odd number of  
11                  members, with the total numerical mem-  
12                  bership of the Board to be determined by  
13                  the Commission.

14                  “(ii) SPECIFICATIONS.—Of the mem-  
15                  bers initially selected to serve on the  
16                  Board—

17                         “(I) not less than a majority of  
18                         the members shall be representatives  
19                         of the investor industry who do not  
20                         represent issuers;

21                         “(II) not less than 1 member  
22                         should be a representative of the  
23                         issuer industry;

1                   “(III) not less than 1 member  
2                   should be a representative of the cred-  
3                   it rating agency industry; and

4                   “(IV) not less than 1 member  
5                   should be an independent member.

6                   “(iii) TERMS.—Initial members shall  
7                   be appointed by the Commission for a term  
8                   of 4 years.

9                   “(iv) NOMINATION AND ELECTION OF  
10                  MEMBERS.—

11                  “(I) IN GENERAL.—Prior to the  
12                  expiration of the terms of office of the  
13                  initial members, the Commission shall  
14                  establish fair procedures for the nomi-  
15                  nation and election of future members  
16                  of the Board.

17                  “(II) MODIFICATIONS OF THE  
18                  BOARD.—Prior to the expiration of  
19                  the terms of office of the initial mem-  
20                  bers, the Commission—

21                         “(aa) may increase the size  
22                         of the board to a larger odd num-  
23                         ber and adjust the length of fu-  
24                         ture terms; and

1                   “(bb) shall retain the com-  
2                   position of members described in  
3                   clause (ii).

4                   “(v) RULEMAKING AUTHORITY.—The  
5                   Commission shall, if the Commission deter-  
6                   mines necessary and appropriate, issue fur-  
7                   ther rules and regulations on the composi-  
8                   tion of the membership of the Board and  
9                   the responsibilities of the members.

10                  “(D) OTHER AUTHORITIES OF THE  
11                  BOARD.—The Board shall have the authority to  
12                  levy fees on qualified nationally recognized sta-  
13                  tistical rating organization applicants, and peri-  
14                  odically from qualified nationally recognized  
15                  statistical rating organizations as necessary to  
16                  fund expenses of the Board.

17                  “(E) REGULATION OF THE BOARD.—The  
18                  Commission may regulate the activities of the  
19                  Board, and issue any further regulations with  
20                  respect to the Board that the Commission de-  
21                  termines necessary, not in contravention with  
22                  the intent of this section.

23                  “(3) BOARD SELECTION OF QUALIFIED NATION-  
24                  ALLY RECOGNIZED STATISTICAL RATING ORGANIZA-  
25                  TION.—

1 “(A) APPLICATION.—

2 “(i) IN GENERAL.—A nationally rec-  
3 ognized statistical rating organization may  
4 submit an application to the Board, in  
5 such form and manner as the Board may  
6 require, to become a qualified nationally  
7 recognized statistical rating organization  
8 with respect to corporate issuers and  
9 issuers of asset-backed securities.

10 “(ii) CONTENTS.—An application sub-  
11 mitted under clause (i) shall contain—

12 “(I) information regarding the  
13 institutional and technical capacity of  
14 the nationally recognized statistical  
15 rating organization to issue credit rat-  
16 ings;

17 “(II) information on whether the  
18 nationally recognized statistical rating  
19 organization has been exempted by  
20 the Commission from any require-  
21 ments under any other provision of  
22 this section; and

23 “(III) any additional information  
24 the Board may require.

1 “(iii) REJECTION OF APPLICATIONS.—

2 The Board may reject an application sub-  
3 mitted under this paragraph if the nation-  
4 ally recognized statistical rating organiza-  
5 tion has been exempted by the Commission  
6 from any requirements under any other  
7 provision of this section.

8 “(B) SELECTION.—The Board shall select  
9 qualified national recognized statistical rating  
10 organizations from among the nationally recog-  
11 nized statistical rating organizations that sub-  
12 mit applications under subparagraph (A).

13 “(C) RETENTION OF STATUS AND OBLIGA-  
14 TIONS AFTER SELECTION.—An entity selected  
15 as a qualified nationally recognized statistical  
16 rating organization shall retain its status and  
17 obligations under the law as a nationally recog-  
18 nized statistical rating organization, and noth-  
19 ing in this subsection grants authority to the  
20 Commission or the Board to exempt qualified  
21 nationally recognized statistical rating organiza-  
22 tions from obligations or requirements other-  
23 wise imposed by Federal law on nationally rec-  
24 ognized statistical rating organizations.



1           “(4) REQUESTING AN INITIAL CREDIT RAT-  
2           ING.—

3           “(A) IN GENERAL.—A corporate issuer or  
4           an issuer of an asset-backed security who seeks  
5           an initial credit rating—

6           “(i) may not request a credit rating  
7           from a nationally recognized statistical rat-  
8           ing organization; and

9           “(ii) shall submit a request for a cred-  
10          it rating to the Board, in such form and  
11          manner as the Board may prescribe.

12          “(B) RIGHT TO REQUEST UP TO THREE  
13          CREDIT RATINGS.—A corporate issuer or an  
14          issuer of an asset-backed security who submits  
15          a request to the Board for an initial credit rat-  
16          ing may request up to three ratings from Board  
17          with respect to a security.

18          “(C) NO PROHIBITION ON ADDITIONAL  
19          CREDIT RATINGS.—Nothing in this subsection  
20          may be construed to prohibit an issuer who has  
21          already received an initial credit rating with re-  
22          spect to a security in the manner described  
23          under subparagraph (A) from requesting addi-  
24          tional credit ratings with respect to the same  
25          security directly from a nationally recognized

1 statistical rating organization, so long as a pro-  
2 spectus with respect to the security has been  
3 filed with the Commission.

4 “(D) NO PROHIBITION ON INDEPENDENT  
5 RATINGS OFFERED BY NATIONALLY RECOG-  
6 NIZED STATISTICAL RATING ORGANIZATIONS.—  
7 Nothing in this subsection may be construed to  
8 prohibit a nationally recognized statistical rat-  
9 ing organization from independently providing a  
10 credit rating with respect to a security before  
11 an initial credit rating is issued in the manner  
12 described under subparagraph (A), if—

13 “(i) the nationally recognized statis-  
14 tical rating organization does not enter  
15 into a contract with the issuer of the secu-  
16 rity to provide the credit rating;

17 “(ii) the nationally recognized statis-  
18 tical rating organization is not paid by the  
19 issuer of the security to provide the credit  
20 rating; and

21 “(iii) a prospectus with respect to the  
22 security has been filed with the Commis-  
23 sion.

24 “(5) ASSIGNMENT OF RATING DUTIES.—

1           “(A) IN GENERAL.—For each request re-  
2           ceived by the Board under paragraph (4), the  
3           Board shall select a qualified nationally recog-  
4           nized statistical rating organization (or, if more  
5           than one rating is requested for a security, a  
6           separate qualified nationally recognized statis-  
7           tical rating organization for each such request)  
8           to provide the credit rating to the corporate  
9           issuer or issuer of an asset-backed security.

10           “(B) METHOD OF SELECTION.—

11           “(i) IN GENERAL.—The Board shall—

12                   “(I) evaluate the selection meth-  
13                   ods of either a lottery or blind rotat-  
14                   ing assignment system, incorporating  
15                   the factors described in clause (ii), to  
16                   reduce the conflicts of interest that  
17                   exist under the issuer-pays model; and

18                   “(II) prescribe and publish the  
19                   selection method to be used under  
20                   subparagraph (A).

21           “(ii) CONSIDERATION.—In evaluating  
22           a selection method described in clause  
23           (i)(I), the Board shall consider—

24                   “(I) the information submitted  
25                   by the qualified nationally recognized

1 statistical rating organization under  
2 paragraph (3)(A)(ii) regarding the in-  
3 stitutional and technical capacity of  
4 the qualified nationally recognized sta-  
5 tistical rating organization to issue  
6 credit ratings;

7 “(II) evaluations conducted  
8 under paragraph (7);

9 “(III) formal feedback from insti-  
10 tutional investors; and

11 “(IV) information from sub-  
12 clauses (I) and (II) to implement a  
13 mechanism which increases or de-  
14 creases assignments based on past  
15 performance.

16 “(iii) PROHIBITION.—The Board, in  
17 choosing a selection method, may not use  
18 a method that would allow for the sollicita-  
19 tion or consideration of the preferred na-  
20 tional recognized statistical rating organi-  
21 zations of the corporate issuer or issuer of  
22 an asset-backed security.

23 “(iv) ADJUSTMENT OF PROCESS.—  
24 The Board shall issue rules describing the

1 process by which the Board can modify the  
2 assignment process described in clause (i).

3 “(C) RIGHT OF REFUSAL.—

4 “(i) REFUSAL.—A qualified nationally  
5 recognized statistical rating organization  
6 selected under subparagraph (A) may  
7 refuse to accept a selection for a particular  
8 request by—

9 “(I) notifying the Board of such  
10 refusal; and

11 “(II) submitting to the Board a  
12 written explanation of the refusal.

13 “(ii) SELECTION.—Upon receipt of a  
14 notification under clause (i), the Board  
15 shall make an additional selection under  
16 subparagraph (A).

17 “(iii) INSPECTION REPORTS.—The  
18 Board shall annually submit any expla-  
19 nations of refusals received under clause  
20 (i)(II) to the Commission, and such ex-  
21 planatory submissions shall be published in  
22 the annual inspection reports required  
23 under subsection (p)(3)(C).

24 “(6) DISCLAIMER REQUIRED.—Each credit rat-  
25 ing issued under this subsection shall include, in

1 writing, the following disclaimer: ‘This credit rating  
2 has not been evaluated, approved, or certified by the  
3 Government of the United States or by a Federal  
4 agency.’.

5 “(7) EVALUATION OF PERFORMANCE.—

6 “(A) IN GENERAL.—The Board shall pre-  
7 scribe rules by which the Board will evaluate  
8 the performance of each qualified nationally  
9 recognized statistical rating organization, in-  
10 cluding rules that require, at a minimum, an  
11 annual evaluation of each qualified nationally  
12 recognized statistical rating organization.

13 “(B) CONSIDERATIONS.—The Board, in  
14 conducting an evaluation under subparagraph  
15 (A), shall consider—

16 “(i) the results of the annual exam-  
17 ination conducted under subsection (p)(3);

18 “(ii) surveillance of credit ratings con-  
19 ducted by the qualified nationally recog-  
20 nized statistical rating organization after  
21 the credit ratings are issued, including—

22 “(I) how the rated instruments  
23 perform;

24 “(II) the accuracy of the ratings  
25 provided by the qualified nationally

1 recognized statistical rating organiza-  
2 tion as compared to the other nation-  
3 ally recognized statistical rating orga-  
4 nizations; and

5 “(III) the effectiveness of the  
6 methodologies used by the qualified  
7 nationally recognized statistical rating  
8 organization; and

9 “(iii) any additional factors the Board  
10 determines to be relevant.

11 “(C) REQUEST FOR REEVALUATION.—Sub-  
12 ject to rules prescribed by the Board, and not  
13 more frequently than once a year, a qualified  
14 nationally recognized statistical rating organiza-  
15 tion may request that the Board conduct an up-  
16 dated evaluation under this paragraph with re-  
17 spect to a year for which the Board has already  
18 evaluated the qualified nationally recognized  
19 statistical rating organization under this para-  
20 graph.

21 “(D) DISCLOSURE.—The Board shall  
22 make the evaluations conducted under this  
23 paragraph available to Congress.

24 “(8) RATING FEES CHARGED TO ISSUERS.—

1           “(A) LIMITED TO REASONABLE FEES.—A  
2           qualified nationally recognized statistical rating  
3           organization shall charge each corporate issuer  
4           and issuer of an asset-backed security a reason-  
5           able fee.

6           “(B) REASONABLE FEE.—The Board shall  
7           issue regulations to define the term ‘reasonable  
8           fee’ for purposes of subparagraph (A).

9           “(9) MATERIAL CHANGE IN CIRCUMSTANCES.—  
10          If the Board determines that it is necessary or ap-  
11          propriate in the public interest or for the protection  
12          of investors, the Board may issue regulations requir-  
13          ing that a corporate issuer or issuer of an asset-  
14          backed security that has received a credit rating  
15          under this subsection request a revised credit rating  
16          each time the issuer experiences a material change  
17          in circumstances, as defined by the Board.

18          “(10) CONFLICTS.—

19                 “(A) MEMBERS OR EMPLOYEES OF THE  
20                 BOARD.—

21                         “(i) LOAN OF MONEY OR SECURITIES  
22                         PROHIBITED.—

23                                 “(I) IN GENERAL.—A member or  
24                                 employee of the Board shall not ac-  
25                                 cept any loan of money or securities,



1 or anything above nominal value, from  
2 any nationally recognized statistical  
3 rating organization, issuer, or inves-  
4 tor.

5 “(II) EXCEPTION.—The prohibi-  
6 tion in subclause (I) shall not apply to  
7 a loan made in the context of dis-  
8 closed, routine banking and brokerage  
9 agreements, or a loan that is clearly  
10 motivated by a personal or family re-  
11 lationship.

12 “(ii) EMPLOYMENT NEGOTIATIONS  
13 PROHIBITION.—A member or employee of  
14 the Board may not engage in employment  
15 negotiations with any nationally recognized  
16 statistical rating organization, issuer, or  
17 investor, unless the member or employee—

18 “(I) discloses to the Board the  
19 negotiations immediately upon initi-  
20 ation of the negotiations; and

21 “(II) recuses themselves from all  
22 proceedings concerning the entity in-  
23 volved in the negotiations until termi-  
24 nation of negotiations or until termi-  
25 nation of the member or employee’s

1 employment by the Board, if an offer  
2 of employment is accepted.

3 “(B) CREDIT ANALYSTS.—

4 “(i) IN GENERAL.—A credit analyst of  
5 a qualified nationally recognized statistical  
6 rating organization shall not accept any  
7 loan of money or securities, or anything  
8 above nominal value, from any issuer or in-  
9 vestor.

10 “(ii) EXCEPTION.—The prohibition  
11 described in clause (i) does not apply to a  
12 loan made in the context of disclosed, rou-  
13 tine banking and brokerage agreements, or  
14 a loan that is clearly motivated by a per-  
15 sonal or family relationship.

16 “(11) EVALUATION OF CREDIT RATING AGENCY  
17 BOARD.—Not later than 5 years after the date that  
18 the Board begins assigning qualified nationally re-  
19 cognized statistical rating organizations to provide  
20 credit ratings, the Commission shall submit to Con-  
21 gress a report that provides recommendations of—

22 “(A) the continuation of the Board;

23 “(B) any modification to the procedures of  
24 the Board; and

1                   “(C) modifications to the provisions in this  
2                   subsection.”.

3           (b)           CONFORMING           AMENDMENT.—Section  
4 3(a)(62)(A)(iii) of the Securities Exchange Act of 1934  
5 (15 U.S.C. 78c(a)(62)(A)(iii)) is amended by inserting  
6 “subject to subsection (w) of section 15E,” before “cor-  
7 porate”.