114TH CONGRESS 2d Session } HOUSE OF REPRESENTATIVES { REPORT 114–596

EXPANDING PROVEN FINANCING FOR AMERICAN EMPLOYERS ACT

MAY 26, 2016.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HENSARLING, from the Committee on Financial Services, submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany H.R. 4166]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 4166) to amend the Securities Exchange Act of 1934 to provide specific credit risk retention requirements to certain qualifying collateralized loan obligations, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Expanding Proven Financing for American Employers Act".

SEC. 2. RISK RETENTION REQUIREMENT FOR QUALIFIED COLLATERALIZED LOAN OBLIGATIONS.

Section 15G(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–11(e)) is amended by inserting after paragraph (6) the following new paragraphs:

"(7) REQUIREMENTS FOR QUALIFIED COLLATERALIZED LOAN OBLIGATIONS.—

"(A) RISK RETENTION REQUIREMENT.—Notwithstanding any other provision of this section, as of the effective date set forth in subsection (i)(2), the risk retention requirement for qualified collateralized loan obligations may be met by the purchase and, during the applicable duration of risk retention specified by the rules of the Federal banking agencies under subsection (c)(1)(C)(ii), holding (without hedging or otherwise transferring the credit risk), of the value of no less than five percent of the equity distributed among each of the higher tranches of the issuance with no less than 3.5

59–006

percent retained as equity of the collateralized loan obligation by the manager of the qualified collateralized loan obligation or one or more of the majority-owned affiliates of the manager or its knowledgeable employees and other employees.

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

"(i) ASSET QUALITY PROTECTIONS.—The collateralized loan obligation shall—

"(I) have at least 100 percent of its assets comprised of senior secured loans and cash equivalents;

"(II) have 100 percent of its loan assets issued by companies;

"(III) have no assets that are asset-backed securities or derivatives, except that this limitation shall not prohibit a qualified collateralized loan obligation from acquiring a loan participation or any interest related to or in a letter of credit, or entering into derivative transactions to hedge interest rate or currency rate mismatches;

"(IV) not purchase assets in default, margin stock, or equity convertible securities;

"(V) acquire only loans held or acquired by three or more investors or lenders unaffiliated with the manager;

"(VI) hold only loans to borrowers whose financial statements are subject to an annual audit from an independent, accredited accounting firm;

"(VII) have no more than 60 percent of its assets comprised of covenant lite loans, except that each asset shall require the disclosure of unaudited financial statements quarterly within 45 days of the end of the quarter and audited financial statements annually within 90 days of the end of the fiscal year; and

"(VIII) at the time of purchase of any asset, comply with the requirements of subclauses (I) and (VII) and clause (ii) of this subparagraph, or, if not in compliance with any such requirement, maintain or improve the level of compliance after giving effect to such purchase.

"(ii) ASSET PORTFOLIO PROTECTIONS.—

"(I) No more than 3.5 percent of the assets of the collateralized loan obligation may relate to any single borrower.

"(II) No more than 15 percent of the assets of the collateralized loan obligation may relate to any single industry.

"(iii) STRUCTURAL PROTECTIONS.—

"(I) The collateralized loan obligation's equity shall be at least 8 percent of the value of its assets.

"(II) The governing transaction documents of the collateralized loan obligation specify over-collateralization and interest coverage tests, and if any such test falls below the required level specified for the collateralized loan obligation in such documents, available interest collections (and if necessary, available principal collections) must be applied to repay the collateralized loan obligation's debt in order of seniority until compliance with the applicable test is restored.

"(iv) REQUIREMENT TO MAINTAIN ALIGNMENT OF MANAGER AND INVESTOR INTERESTS.—

"(I) The collateralized loan obligation shall be an open market collateralized loan obligation.

"(II) The holders of the equity of the collateralized loan obligation (excluding the risk retention equity held as required by subparagraph (A)) shall have the right to remove by vote the manager for cause.

"(III) A majority of the manager's fees, including any incentive fee, shall be subordinated to payments then due in relation to the collateralized loan obligation's debt securities.

"(IV) The manager's discretionary sales of assets on behalf of the issuer of the collateralized loan obligation shall be limited each year to not more than 30 percent of the principal amount of the assets of the collateralized loan obligation (other than sales of defaulted or credit-deteriorated, credit-risk, or credit-improved loans).

"(V) The risk retention equity requirement set forth in subparagraph (A) is met.

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

"(v) REGULATORY OVERSIGHT REQUIREMENTS.—

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

"(II) All purchases and sales of the assets of the collateralized loan obligation shall be conducted on an arm's-length basis and in compliance with any applicable provisions of the Investment Advisers Act of 1940.

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

"(I) a list of assets of the collateralized loan obligation, including, with respect to each asset, the obligor name; the CUSIP (or security identifier) if applicable, the interest rate and maturity date, the type of asset, and the market price for each asset where available;

"(II) with respect to the portfolio of assets, the aggregate principal balance and aggregate adjusted collateral principal amount (adjusted as required by the collateralized loan obligation governing transaction documents) and the percentage of such aggregate adjusted collateral principal represented by each asset;

"(III) information relating to each applicable over-collateralization test and interest coverage test and the level of compliance in relation to each test;

"(IV) all purchases, repayments, and sales of assets; and

"(V) the identity of each defaulted asset as defined in the related transaction documents.

"(8) DEFINITIONS FOR PURPOSES OF PARAGRAPH (7).—For purposes of paragraph (7), the following definitions apply:

"(A) BALANCE SHEET COLLATERALIZED LOAN OBLIGATION.—The term 'balance sheet collateralized loan obligation' means a collateralized loan obligation—

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

"(I) open market transactions;

"(II) from an open market collateralized loan obligation; or

"(III) from a collateralized loan obligation in existence as of the effective date of this paragraph that is not a balance sheet collateralized loan obligation; and

"(ii) the assets and liabilities of which are, immediately after issuance of its asset-backed securities in a securitization transaction, included under generally accepted accounting principles in the consolidated balance sheet of one or more of its affiliates.

"(B) COLLATERALIZED LOAN OBLIGATION.—The term 'collateralized loan obligation' means any issuing entity of an asset-backed security, as defined in section 3(a)(79) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(79)), that is comprised primarily of commercial loans.

"(C) COVENANT LITE LOAN.—The term 'covenant lite loan' means, at the time the collateralized loan obligation enters into a commitment to acquire such loan, a loan for which the underlying instruments neither—

"(i) require the obligor to comply with any maintenance covenant; nor

"(ii) contain a cross-default provision to a financing facility of the obligor that requires the obligor to comply with a maintenance covenant (including one that may apply only upon the funding of such other loan or financing facility); except that if such loan is pari passu with another loan of the obligor that would not be a covenant lite loan under the criteria in this clause, such loan shall be deemed not to be a covenant lite loan. For purposes of this clause, the term 'pari passu' means treated equally and without preference.

"(D) EQUITY.—The term 'equity' means the most junior class of securities issued by the collateralized loan obligation (excluding any non-economic security such as the issuer's common stock) and any additional class(es) of securities junior to the collateralized loan obligation's debt securities.

"(E) MANAGER.—The term 'manager' means an investment manager that is responsible for managing a collateralized loan obligation under the collateralized loan obligation's governing transaction documents.

"(F) OPEN MARKET COLLATERALIZED LOAN OBLIGATION.—The term 'open market collateralized loan obligation' means a collateralized loan obligation—

"(i) whose assets consist predominantly of senior, secured syndicated loans acquired by such collateralized loan obligation directly from the sellers thereof in an open market transaction or from another collateralized loan obligation and of temporary investments;

"(ii) that is managed by a manager; and

"(iii) that is not a balance sheet collateralized loan obligation.

"(G) OPEN MARKET TRANSACTION.—The term 'open market transaction' means—

"(i) either an initial loan syndication transaction or a secondary market transaction in which a seller offers senior, secured syndicated loans to prospective purchasers in the loan market on market terms on an arm's length basis, which prospective purchasers include, but are not limited to, entities that are not affiliated with the seller; or

"(ii) a reverse inquiry from a prospective purchaser of a senior, secured syndicated loan through a dealer in the loan market to purchase a senior, secured syndicated loan to be sourced by the dealer in the loan market.

"(H) QUALIFIED INVESTOR.—The term 'qualified investor' means—

"(i) with respect to securities that require the payment of principal and interest, an investor that is a qualified purchaser, within the meaning of section 3(c)(7) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(c)(7)) or an entity owned exclusively by one or more qualified purchasers; or

"(ii) with respect to securities that do not require the payment of principal and interest—

"(I) if the qualified collateralized loan obligation relies on such section for its exclusion from the definition of investment company under the Investment Company Act of 1940—

"(aa) a qualified purchaser;

"(bb) a knowledgeable employee, within the meaning of Rule 3c–5 promulgated under the Investment Company Act of 1940; or

"(cc) an entity owned exclusively by such a qualified purchaser or knowledgeable employee; or

"(II) if the qualified collateralized loan obligation relies on Rule 3a–7 promulgated under the Investment Company Act of 1940 for its exclusion from the definition of investment company under that Act and such securities are not fixed-income securities, as defined in such rule—

"(aa) a qualified institutional buyer, within the meaning of Rule 144A under the Securities Act of 1933;

"(bb) a person (other than any rating organization rating the issuer's securities) involved in the organization or operation of the issuer or an affiliate of such a person, as defined in Rule 405 under the Securities Act of 1933; or

"(cc) any entity in which all of the equity owners are such qualified institutional buyers as described in item (aa) or persons described in item (bb).".

PURPOSE AND SUMMARY

Introduced by Representatives Andy Barr and David Scott of Georgia on December 3, 2015, H.R. 4166, the Expanding Proven Financing for American Employers Act, amends the risk retention requirements contained in Section 941 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) for managers that organize collateralized loan obligations ("CLOs") that are "qualified collateralized loan obligations" or "QCLOs." The bill establishes objective and substantive criteria to qualify as a QCLO and defines the types of investors who would be eligible to purchase the QCLO.

BACKGROUND AND NEED FOR LEGISLATION

Section 941 (Regulation of Credit Risk Retention) of the Dodd-Frank Act aims to align the interests of securitizers and investors in asset-backed securities by requiring securitizers to retain no less than 5 percent of the credit risk in assets they sell into a securitization. Section 941 is premised on a view that requiring securitizers to retain some credit risk—or "skin in the game"—and forcing them to bear losses if a borrower defaults incentivizes securitizers to better monitor the quality of bundled loans. The Dodd-Frank Act required the SEC, the federal banking agencies, the Department of Housing and Urban Development, and the Federal Housing Finance Agency (collectively, the "Agencies") to jointly prescribe rules implementing the risk retention requirement (the "Final Rules"). The Final Rules do not provide an exemption for QCLOs despite the fact that many market participants had requested such an exemption during the comment period.

Consequently, QCLOs are subject to risk retention requirements that are extremely detrimental to the $4 trillion corporate loan market. Specifically, banks and non-bank lenders provide nearly $4 trillion in syndicated loan and loan commitments to companies. Some of these companies that utilize QCLOs for financing are blue chip investment grade companies like IBM, UPS, McDonalds and Microsoft. It is important to note that CLOs represent a critical, steady, and proven source of financing; they are not complicated derivatives.

Despite these facts, the Agencies refused to apply risk retention requirements to CLOs in an appropriately tailored way. When the rules become effective in December 2016, they will significantly impair the CLO market and, as a result, make credit more expensive or unavailable to borrowers. As noted in testimony before the Capital Markets and Government Sponsored Enterprises Subcommittee by Meredith Coffey, the Executive Vice President of the Loan Syndications and Trading Association, the risk retention rules have already negatively impacted the markets. In 2014, U.S. CLO formation equaled $124 billion; CLOs were not structured to comply with the risk retention rule, which was not finalized. However, in anticipation of the Final Rules becoming effective, in mid-2015, investors started to ask managers to make their new CLOs compliant with the new risk retention rules. Complying with the burdensome new rules had a direct impact on the number of CLOs issued, which declined by 20% from 2014 levels. This represents a direct impact on the amount of available financing for companies.

Unfortunately, the Agencies' Final Rules also inappropriately pick "winners" and "losers" among CLO managers. Only the large CLO managers have the capital to retain the risk pursuant to the Final Rules, whereas smaller CLO managers would struggle.

Specifically, there are three problems with the Agencies' Final Rules:

(1) They are inconsistent with Section 941 of the Dodd-Frank Act's plain language because they deem the buyer of assets—i.e., the CLO manager—to be the securitizer that is subject to risk retention requirements, rather than the originating seller;

(2) The Agencies required securitizers to retain 5% of the full amount of any securitization rather than 5% of the credit risk. The reality is that the credit risk is concentrated in the first loss position—indeed, that is why it is called the first loss position—so holding equity equivalent to 5% of the full securitization is far more than 5% of the credit risk; and

(3) As a practical economic matter, it is challenging for open market CLO managers to purchase and retain 5% of the notes of the CLOs they manage. It is simply too much money. Requiring a CLO manager to purchase and retain 5% of every new CLO is akin to requiring a mutual fund manager to buy $5 of Apple stock for every $100 of Apple stock it buys, as a fiduciary, for the benefit of its investors. The mutual fund manager would quickly run out of money and would no longer be able to offer mutual funds to its investors. The same is true with CLO managers.

H.R. 4166 corrects the regulators' failure to adopt risk retention requirements that are appropriately tailored to a products' risk. As noted previously, the current risk retention requirements would severely limit available credit to companies, which, in some cases, is necessary to pay for expenses such as employees' payroll. H.R. 4166 is consistent with the policy objectives of Section 941 of the Dodd-Frank Act, because it requires managers to hold 5% of the credit risk of assets (rather than their fair value). Additionally, H.R. 4166 mandates that QCLOs adhere to a number of best practices.

According to testimony received by the Subcommittee on Capital Markets, as of January 2016, "CLOs provided more than $420 billion in financing to U.S. non-investment grade companies like Del Monte, Chrysler and United Continental Airlines. All told, more than 1,200 companies—employing more than six million people—receive financing from CLOs." On February 16, 2016, Moody's published a report noting that U.S. non-investment grade companies will have a record amount of debt coming due through 2020. This debt will need to be refinanced or the companies could face a credit crunch; by tailoring risk retention rules for QCLOs, H.R. 4166 will ensure the continued availability of credit.

CLOs have been a stable, safe and proven source of financing for U.S. companies for 20 years. CLOs survived the worst financial crisis since the Great Depression with extremely low default and loss rates. Moreover, they continue to provide over $400 billion in financing to U.S. companies. Unfortunately, risk retention has the potential to decimate this important market. This diminution of the CLO market will either reduce financing for companies or raise their financing costs. Fortunately, the QCLO category established by H.R. 4166 represents a commonsense solution that would implement risk retention requirements consistent with the goals of the Dodd-Frank Act, and ensure that such requirements are appropriately tailored to the risks associated with a QCLO. In conclusion, H.R. 4166 permits the CLO market to function efficiently and provide financing to the 1,200 American companies that rely upon a vibrant secondary market for corporate loans.

HEARINGS

The Committee on Financial Services' Subcommittee on Capital Markets and Government Sponsored Enterprises held a hearing examining matters relating to H.R. 4166 on February 24, 2016.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on March 2, 2016, and ordered H.R. 4166 to be reported favorably to the House as amended by a recorded vote of 42 yeas to 15 nays (recorded vote no. FC–99), a quorum being present. An amendment offered by Mr. Foster (no. 1) was agreed to by voice vote. A second amendment offered by Mr. Foster (no. 2) was withdrawn.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. The sole record vote in Committee was a motion by Chairman Hensarling to report the bill favorably to the House as amended. That motion was agreed to by a recorded vote of 42 yeas to 15 nays (Record vote no. FC–99), a quorum being present.

Record vote no. FC-99

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling	X			Ms. Waters (CA)		X	
Mr. King (NY)	X			Mrs. Maloney (NY)		X	
Mr. Royce	X			Ms. Velázquez		X	
Mr. Lucas	X			Mr. Sherman	X		
Mr. Garrett	X			Mr. Meeks	X		
Mr. Neugebauer	X			Mr. Capuano		X	
Mr. McHenry	X			Mr. Hinojosa			
Mr. Pearce	X			Mr. Clay		X	
Mr. Posey	X			Mr. Lynch		X	
Mr. Fitzpatrick	X			Mr. David Scott (GA)	X		
Mr. Westmoreland				Mr. Al Green (TX)		X	
Mr. Luetkemeyer	X			Mr. Cleaver		X	
Mr. Huizenga (MI)	X			Ms. Moore		X	
Mr. Duffy	X			Mr. Ellison		X	
Mr. Hurt (VA)	X			Mr. Perlmutter		X	
Mr. Stivers	X			Mr. Himes	X		
Mr. Fincher	X			Mr. Carney	X		
Mr. Stutzman	X			Ms. Sewell (AL)	X		
Mr. Mulvaney				Mr. Foster	X		
Mr. Hultgren	X			Mr. Kildee		X	
Mr. Ross	X			Mr. Murphy (FL)		X	
Mr. Pittenger	X			Mr. Delaney	X		
Mrs. Wagner	X			Ms. Sinema	X		
Mr. Barr	X			Mrs. Beatty		X	
Mr. Rothfus	X			Mr. Heck (WA)		X	
Mr. Messer	X			Mr. Vargas	X		
Mr. Schweikert	X						
Mr. Guinta	X						
Mr. Tipton	X						
Mr. Williams	X						
Mr. Poliquin	X						
Mrs. Love	X						
Mr. Hill	X						
Mr. Emmer	X						

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the findings and recommendations of the committee based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee states that H.R. 4166 will reduce regulatory burden and increase access to capital by amending the Dodd-Frank Act's risk retention requirements for managers that organize "qualified collateralized loan obligations," so that they are appropriately tailored to such products' risks.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATES

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 23, 2016.

Hon. JEB HENSARLING,
Chairman, Committee on Financial Services,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4166, the Expanding Proven Financing for American Employers Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Stephen Rabent.

Sincerely,

KEITH HALL.

Enclosure.

H.R. 4166—Expanding Proven Financing for American Employers Act

H.R. 4166 would modify the regulatory standards that govern the sales of securities that are backed by a pool of financial assets. Under current law, the federal banking agencies—the Federal Reserve, the Office of the Comptroller of the Currency (OCC), and the Federal Deposit Insurance Corporation (FDIC)—and the Securities and Exchange Commission (SEC) require firms that issue asset-backed securities to retain an economic interest in a portion of the credit risk stemming from those assets, a feature known as risk retention. This bill would allow firms to meet some of those requirements by retaining a financial interest in certain qualified collateralized loan obligations (a type of debt security), including assets primarily backed by commercial loans.

Implementing H.R. 4166 would require the SEC and the federal banking agencies to revise current regulations concerning exemptions to risk-retention requirements. Based on information from those four agencies, CBO estimates that the costs of revising the regulations would not be significant. The SEC is authorized to collect fees sufficient to offset its annual appropriation; therefore, CBO estimates that the net effect on discretionary spending would be negligible, assuming appropriations actions consistent with that authority.

Costs incurred by the FDIC and the OCC are recorded in the budget as increases in direct spending. Those two agencies are authorized to collect premiums and fees from insured depository institutions to cover administrative expenses. CBO expects that they would do so to recover any costs associated with amending current regulations under the bill. Costs to the Federal Reserve System are reflected on the federal budget as a reduction in remittances to the Treasury (which are recorded in the budget as revenues). Because enacting H.R. 4166 would affect direct spending and revenues, pay-as-you-go procedures apply. However, CBO estimates that the net effects would be insignificant for each year. CBO estimates that enacting H.R. 4166 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

H.R. 4166 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

If the SEC, FDIC, or OCC increase fees to offset the costs of implementing the bill, H.R. 4166 would increase the cost of an existing mandate on private entities required to pay those fees. Based on information from the affected agencies, CBO estimates that the incremental cost of the mandate, if imposed, would be minimal and would fall well below the annual threshold for private-sector mandates established in UMRA ($154 million in 2016, adjusted annually for inflation).

The CBO staff contact for this estimate is Stephen Rabent. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of the section 102(b)(3) of the Congressional Accountability Act.

EARMARK IDENTIFICATION

H.R. 4166 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to section 3(g) of H. Res. 5, 114th Cong. (2015), the Committee states that no provision of H.R. 4166 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULEMAKING

Pursuant to section 3(i) of H. Res. 5, 114th Cong. (2015), the Committee states that H.R. 4166 contains no directed rulemaking.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1: Short title

This section cites H.R. 4166 as the "Expanding Proven Financing for American Employers Act."

Section 2: Risk retention requirement for qualified collateralized loan obligations

This section amends Section 15G(e) of the Securities Exchange Act of 1934 relating to risk retention requirements for managers that organize "qualified collateralized loan obligations." Specifically, this section modifies the risk retention requirement from 5% of the "fair value" of any collateralized loan obligation (CLO) to 5% of the equity of a qualified collateralized loan obligation (QCLO).

This section also establishes QCLOs as a subset of CLOs. Specifically, QCLOs must satisfy six criteria relating to: (1) Quality of assets—for example, at least 90% of the assets must be senior secured loans and cash equivalents; (2) portfolio diversification; (3) minimum capital structure requirements; (4) alignment of manger

and investor interests; (5) reporting and disclosure obligations; and (6) manager regulation.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics and existing law in which no change is proposed is shown in roman):

SECURITIES EXCHANGE ACT OF 1934

TITLE I—REGULATION OF SECURITIES EXCHANGES

* * * * * * *

SEC. 15G. CREDIT RISK RETENTION.

(a) DEFINITIONS.—In this section—

(1) the term "Federal banking agencies" means the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation;

(2) the term "insured depository institution" has the same meaning as in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c));

(3) the term "securitizer" means—

(A) an issuer of an asset-backed security; or

(B) a person who organizes and initiates an asset-backed securities transaction by selling or transferring assets, either directly or indirectly, including through an affiliate, to the issuer; and

(4) the term "originator" means a person who—

(A) through the extension of credit or otherwise, creates a financial asset that collateralizes an asset-backed security; and

(B) sells an asset directly or indirectly to a securitizer.

(b) REGULATIONS REQUIRED.—

(1) IN GENERAL.—Not later than 270 days after the date of enactment of this section, the Federal banking agencies and the Commission shall jointly prescribe regulations to require any securitizer to retain an economic interest in a portion of the credit risk for any asset that the securitizer, through the issuance of an asset-backed security, transfers, sells, or conveys to a third party.

(2) RESIDENTIAL MORTGAGES.—Not later than 270 days after the date of the enactment of this section, the Federal banking agencies, the Commission, the Secretary of Housing and Urban Development, and the Federal Housing Finance Agency, shall jointly prescribe regulations to require any securitizer to retain an economic interest in a portion of the credit risk for any residential mortgage asset that the securitizer, through the issuance of an asset-backed security, transfers, sells, or conveys to a third party.

(c) STANDARDS FOR REGULATIONS.—

(1) STANDARDS.—The regulations prescribed under subsection (b) shall—

(A) prohibit a securitizer from directly or indirectly hedging or otherwise transferring the credit risk that the securitizer is required to retain with respect to an asset;

(B) require a securitizer to retain—

(i) not less than 5 percent of the credit risk for any asset—

(I) that is not a qualified residential mortgage that is transferred, sold, or conveyed through the issuance of an asset-backed security by the securitizer; or

(II) that is a qualified residential mortgage that is transferred, sold, or conveyed through the issuance of an asset-backed security by the securitizer, if 1 or more of the assets that collateralize the asset-backed security are not qualified residential mortgages; or

(ii) less than 5 percent of the credit risk for an asset that is not a qualified residential mortgage that is transferred, sold, or conveyed through the issuance of an asset-backed security by the securitizer, if the originator of the asset meets the underwriting standards prescribed under paragraph (2)(B);

(C) specify—

(i) the permissible forms of risk retention for purposes of this section;

(ii) the minimum duration of the risk retention required under this section; and

(iii) that a securitizer is not required to retain any part of the credit risk for an asset that is transferred, sold or conveyed through the issuance of an asset-backed security by the securitizer, if all of the assets that collateralize the asset-backed security are qualified residential mortgages;

(D) apply, regardless of whether the securitizer is an insured depository institution;

(E) with respect to a commercial mortgage, specify the permissible types, forms, and amounts of risk retention that would meet the requirements of subparagraph (B), which in the determination of the Federal banking agencies and the Commission may include—

(i) retention of a specified amount or percentage of the total credit risk of the asset;

(ii) retention of the first-loss position by a third-party purchaser that specifically negotiates for the purchase of such first loss position, holds adequate financial resources to back losses, provides due diligence on all individual assets in the pool before the issuance of the asset-backed securities, and meets the same standards for risk retention as the Federal banking agencies and the Commission require of the securitizer;

(iii) a determination by the Federal banking agencies and the Commission that the underwriting standards and controls for the asset are adequate; and

(iv) provision of adequate representations and warranties and related enforcement mechanisms; and

(F) establish appropriate standards for retention of an economic interest with respect to collateralized debt obligations, securities collateralized by collateralized debt obligations, and similar instruments collateralized by other asset-backed securities; and

(G) provide for—

(i) a total or partial exemption of any securitization, as may be appropriate in the public interest and for the protection of investors;

(ii) a total or partial exemption for the securitization of an asset issued or guaranteed by the United States, or an agency of the United States, as the Federal banking agencies and the Commission jointly determine appropriate in the public interest and for the protection of investors, except that, for purposes of this clause, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation are not agencies of the United States;

(iii) a total or partial exemption for any asset-backed security that is a security issued or guaranteed by any State of the United States, or by any political subdivision of a State or territory, or by any public instrumentality of a State or territory that is exempt from the registration requirements of the Securities Act of 1933 by reason of section 3(a)(2) of that Act (15 U.S.C. 77c(a)(2)), or a security defined as a qualified scholarship funding bond in section 150(d)(2) of the Internal Revenue Code of 1986, as may be appropriate in the public interest and for the protection of investors; and

(iv) the allocation of risk retention obligations between a securitizer and an originator in the case of a securitizer that purchases assets from an originator, as the Federal banking agencies and the Commission jointly determine appropriate.

(2) ASSET CLASSES.—

(A) ASSET CLASSES.—The regulations prescribed under subsection (b) shall establish asset classes with separate rules for securitizers of different classes of assets, including residential mortgages, commercial mortgages, commercial loans, auto loans, and any other class of assets that the Federal banking agencies and the Commission deem appropriate.

(B) CONTENTS.—For each asset class established under subparagraph (A), the regulations prescribed under subsection (b) shall include underwriting standards established by the Federal banking agencies that specify the terms, conditions, and characteristics of a loan within the asset class that indicate a low credit risk with respect to the loan.

(d) ORIGINATORS.—In determining how to allocate risk retention obligations between a securitizer and an originator under subsection (c)(1)(E)(iv), the Federal banking agencies and the Commission shall—

(1) reduce the percentage of risk retention obligations required of the securitizer by the percentage of risk retention obligations required of the originator; and

(2) consider—

(A) whether the assets sold to the securitizer have terms, conditions, and characteristics that reflect low credit risk;

(B) whether the form or volume of transactions in securitization markets creates incentives for imprudent origination of the type of loan or asset to be sold to the securitizer; and

(C) the potential impact of the risk retention obligations on the access of consumers and businesses to credit on reasonable terms, which may not include the transfer of credit risk to a third party.

(e) EXEMPTIONS, EXCEPTIONS, AND ADJUSTMENTS.—

(1) IN GENERAL.—The Federal banking agencies and the Commission may jointly adopt or issue exemptions, exceptions, or adjustments to the rules issued under this section, including exemptions, exceptions, or adjustments for classes of institutions or assets relating to the risk retention requirement and the prohibition on hedging under subsection (c)(1).

(2) APPLICABLE STANDARDS.—Any exemption, exception, or adjustment adopted or issued by the Federal banking agencies and the Commission under this paragraph shall—

(A) help ensure high quality underwriting standards for the securitizers and originators of assets that are securitized or available for securitization; and

(B) encourage appropriate risk management practices by the securitizers and originators of assets, improve the access of consumers and businesses to credit on reasonable terms, or otherwise be in the public interest and for the protection of investors.

(3) CERTAIN INSTITUTIONS AND PROGRAMS EXEMPT.—

(A) FARM CREDIT SYSTEM INSTITUTIONS.—Notwithstanding any other provision of this section, the requirements of this section shall not apply to any loan or other financial asset made, insured, guaranteed, or purchased by any institution that is subject to the supervision of the Farm Credit Administration, including the Federal Agricultural Mortgage Corporation.

(B) OTHER FEDERAL PROGRAMS.—This section shall not apply to any residential, multifamily, or health care facility mortgage loan asset, or securitization based directly or indirectly on such an asset, which is insured or guaranteed by the United States or an agency of the United States. For purposes of this subsection, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Federal home loan banks shall not be considered an agency of the United States.

(4) EXEMPTION FOR QUALIFIED RESIDENTIAL MORTGAGES.—

(A) IN GENERAL.—The Federal banking agencies, the Commission, the Secretary of Housing and Urban Development, and the Director of the Federal Housing Finance Agency shall jointly issue regulations to exempt qualified

residential mortgages from the risk retention requirements of this subsection.

(B) QUALIFIED RESIDENTIAL MORTGAGE.—The Federal banking agencies, the Commission, the Secretary of Housing and Urban Development, and the Director of the Federal Housing Finance Agency shall jointly define the term "qualified residential mortgage" for purposes of this subsection, taking into consideration underwriting and product features that historical loan performance data indicate result in a lower risk of default, such as—

(i) documentation and verification of the financial resources relied upon to qualify the mortgagor;

(ii) standards with respect to—

(I) the residual income of the mortgagor after all monthly obligations;

(II) the ratio of the housing payments of the mortgagor to the monthly income of the mortgagor;

(III) the ratio of total monthly installment payments of the mortgagor to the income of the mortgagor;

(iii) mitigating the potential for payment shock on adjustable rate mortgages through product features and underwriting standards;

(iv) mortgage guarantee insurance or other types of insurance or credit enhancement obtained at the time of origination, to the extent such insurance or credit enhancement reduces the risk of default; and

(v) prohibiting or restricting the use of balloon payments, negative amortization, prepayment penalties, interest-only payments, and other features that have been demonstrated to exhibit a higher risk of borrower default.

(C) LIMITATION ON DEFINITION.—The Federal banking agencies, the Commission, the Secretary of Housing and Urban Development, and the Director of the Federal Housing Finance Agency in defining the term "qualified residential mortgage", as required by subparagraph (B), shall define that term to be no broader than the definition "qualified mortgage" as the term is defined under section 129C(c)(2) of the Truth in Lending Act, as amended by the Consumer Financial Protection Act of 2010, and regulations adopted thereunder.

(5) CONDITION FOR QUALIFIED RESIDENTIAL MORTGAGE EXEMPTION.—The regulations issued under paragraph (4) shall provide that an asset-backed security that is collateralized by tranches of other asset-backed securities shall not be exempt from the risk retention requirements of this subsection.

(6) CERTIFICATION.—The Commission shall require an issuer to certify, for each issuance of an asset-backed security collateralized exclusively by qualified residential mortgages, that the issuer has evaluated the effectiveness of the internal supervisory controls of the issuer with respect to the process for ensuring that all assets that collateralize the asset-backed security are qualified residential mortgages.

(7) REQUIREMENTS FOR QUALIFIED COLLATERALIZED LOAN OBLIGATIONS.—

(A) RISK RETENTION REQUIREMENT.—Notwithstanding any other provision of this section, as of the effective date set forth in subsection (i)(2), the risk retention requirement for qualified collateralized loan obligations may be met by the purchase and, during the applicable duration of risk retention specified by the rules of the Federal banking agencies under subsection (c)(1)(C)(ii), holding (without hedging or otherwise transferring the credit risk), of the value of no less than five percent of the equity distributed among each of the higher tranches of the issuance with no less than 3.5 percent retained as equity of the collateralized loan obligation by the manager of the qualified collateralized loan obligation or one or more of the majority-owned affiliates of the manager or its knowledgeable employees and other employees.

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

(i) ASSET QUALITY PROTECTIONS.—The collateralized loan obligation shall—

(I) have at least 100 percent of its assets comprised of senior secured loans and cash equivalents;

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

(III) have no assets that are asset-backed securities or derivatives, except that this limitation shall not prohibit a qualified collateralized loan obligation from acquiring a loan participation or any interest related to or in a letter of credit, or entering into derivative transactions to hedge interest rate or currency rate mismatches;

(IV) not purchase assets in default, margin stock, or equity convertible securities;

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

(VI) hold only loans to borrowers whose financial statements are subject to an annual audit from an independent, accredited accounting firm;

(VII) have no more than 60 percent of its assets comprised of covenant lite loans, except that each asset shall require the disclosure of unaudited financial statements quarterly within 45 days of the end of the quarter and audited financial statements annually within 90 days of the end of the fiscal year; and

(VIII) at the time of purchase of any asset, comply with the requirements of subclauses (I) and (VII) and clause (ii) of this subparagraph, or, if not in compliance with any such requirement,

maintain or improve the level of compliance after giving effect to such purchase.

(ii) ASSET PORTFOLIO PROTECTIONS.—

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

(II) No more than 15 percent of the assets of the collateralized loan obligation may relate to any single industry.

(iii) STRUCTURAL PROTECTIONS.—

(I) The collateralized loan obligation's equity shall be at least 8 percent of the value of its assets.

(II) The governing transaction documents of the collateralized loan obligation specify over-collateralization and interest coverage tests, and if any such test falls below the required level specified for the collateralized loan obligation in such documents, available interest collections (and if necessary, available principal collections) must be applied to repay the collateralized loan obligation's debt in order of seniority until compliance with the applicable test is restored.

(iv) REQUIREMENT TO MAINTAIN ALIGNMENT OF MANAGER AND INVESTOR INTERESTS.—

(I) The collateralized loan obligation shall be an open market collateralized loan obligation.

(II) The holders of the equity of the collateralized loan obligation (excluding the risk retention equity held as required by subparagraph (A)) shall have the right to remove by vote the manager for cause.

(III) A majority of the manager's fees, including any incentive fee, shall be subordinated to payments then due in relation to the collateralized loan obligation's debt securities.

(IV) The manager's discretionary sales of assets on behalf of the issuer of the collateralized loan obligation shall be limited each year to not more than 30 percent of the principal amount of the assets of the collateralized loan obligation (other than sales of defaulted or credit-deteriorated, credit-risk, or credit-improved loans).

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

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

(v) REGULATORY OVERSIGHT REQUIREMENTS.—

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

(II) All purchases and sales of the assets of the collateralized loan obligation shall be conducted on an arm's-length basis and in compliance with

any applicable provisions of the Investment Advisers Act of 1940.

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

(I) a list of assets of the collateralized loan obligation, including, with respect to each asset, the obligor name; the CUSIP (or security identifier) if applicable, the interest rate and maturity date, the type of asset, and the market price for each asset where available;

(II) with respect to the portfolio of assets, the aggregate principal balance and aggregate adjusted collateral principal amount (adjusted as required by the collateralized loan obligation governing transaction documents) and the percentage of such aggregate adjusted collateral principal represented by each asset;

(III) information relating to each applicable over-collateralization test and interest coverage test and the level of compliance in relation to each test;

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

(V) the identity of each defaulted asset as defined in the related transaction documents.

(8) DEFINITIONS FOR PURPOSES OF PARAGRAPH (7).—For purposes of paragraph (7), the following definitions apply:

(A) BALANCE SHEET COLLATERALIZED LOAN OBLIGATION.—The term "balance sheet collateralized loan obligation" means a collateralized loan obligation—

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

(I) open market transactions;

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

(III) from a collateralized loan obligation in existence as of the effective date of this paragraph that is not a balance sheet collateralized loan obligation; and

(ii) the assets and liabilities of which are, immediately after issuance of its asset-backed securities in a securitization transaction, included under generally accepted accounting principles in the consolidated balance sheet of one or more of its affiliates.

(B) COLLATERALIZED LOAN OBLIGATION.—The term "collateralized loan obligation" means any issuing entity of an asset-backed security, as defined in section 3(a)(79) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(79)), that is comprised primarily of commercial loans.

(C) COVENANT LITE LOAN.—The term "covenant lite loan" means, at the time the collateralized loan obligation enters

into a commitment to acquire such loan, a loan for which the underlying instruments neither—

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

(ii) contain a cross-default provision to a financing facility of the obligor that requires the obligor to comply with a maintenance covenant (including one that may apply only upon the funding of such other loan or financing facility); except that if such loan is pari passu with another loan of the obligor that would not be a covenant lite loan under the criteria in this clause, such loan shall be deemed not to be a covenant lite loan. For purposes of this clause, the term "pari passu" means treated equally and without preference.

(D) EQUITY.—The term "equity" means the most junior class of securities issued by the collateralized loan obligation (excluding any non-economic security such as the issuer's common stock) and any additional class(es) of securities junior to the collateralized loan obligation's debt securities.

(E) MANAGER.—The term "manager" means an investment manager that is responsible for managing a collateralized loan obligation under the collateralized loan obligation's governing transaction documents.

(F) OPEN MARKET COLLATERALIZED LOAN OBLIGATION.—The term "open market collateralized loan obligation" means a collateralized loan obligation—

(i) whose assets consist predominantly of senior, secured syndicated loans acquired by such collateralized loan obligation directly from the sellers thereof in an open market transaction or from another collateralized loan obligation and of temporary investments;

(ii) that is managed by a manager; and

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

(G) OPEN MARKET TRANSACTION.—The term "open market transaction" means—

(i) either an initial loan syndication transaction or a secondary market transaction in which a seller offers senior, secured syndicated loans to prospective purchasers in the loan market on market terms on an arm's length basis, which prospective purchasers include, but are not limited to, entities that are not affiliated with the seller; or

(ii) a reverse inquiry from a prospective purchaser of a senior, secured syndicated loan through a dealer in the loan market to purchase a senior, secured syndicated loan to be sourced by the dealer in the loan market.

(H) QUALIFIED INVESTOR.—The term "qualified investor" means—

(i) with respect to securities that require the payment of principal and interest, an investor that is a qualified purchaser, within the meaning of section 3(c)(7) of the Investment Company Act of 1940 (15 U.S.C. 80a–

3(c)(7)) or an entity owned exclusively by one or more qualified purchasers; or

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

(I) if the qualified collateralized loan obligation relies on such section for its exclusion from the definition of investment company under the Investment Company Act of 1940—

(aa) a qualified purchaser;

(bb) a knowledgeable employee, within the meaning of Rule 3c–5 promulgated under the Investment Company Act of 1940; or

(cc) an entity owned exclusively by such a qualified purchaser or knowledgeable employee; or

(II) if the qualified collateralized loan obligation relies on Rule 3a–7 promulgated under the Investment Company Act of 1940 for its exclusion from the definition of investment company under that Act and such securities are not fixed-income securities, as defined in such rule—

(aa) a qualified institutional buyer, within the meaning of Rule 144A under the Securities Act of 1933;

(bb) a person (other than any rating organization rating the issuer's securities) involved in the organization or operation of the issuer or an affiliate of such a person, as defined in Rule 405 under the Securities Act of 1933; or

(cc) any entity in which all of the equity owners are such qualified institutional buyers as described in item (aa) or persons described in item (bb).

(f) ENFORCEMENT.—The regulations issued under this section shall be enforced by—

(1) the appropriate Federal banking agency, with respect to any securitizer that is an insured depository institution; and

(2) the Commission, with respect to any securitizer that is not an insured depository institution.

(g) AUTHORITY OF COMMISSION.—The authority of the Commission under this section shall be in addition to the authority of the Commission to otherwise enforce the securities laws.

(h) AUTHORITY TO COORDINATE ON RULEMAKING.—The Chairperson of the Financial Stability Oversight Council shall coordinate all joint rulemaking required under this section.

(i) EFFECTIVE DATE OF REGULATIONS.—The regulations issued under this section shall become effective—

(1) with respect to securitizers and originators of asset-backed securities backed by residential mortgages, 1 year after the date on which final rules under this section are published in the Federal Register; and

(2) with respect to securitizers and originators of all other classes of asset-backed securities, 2 years after the date on

which final rules under this section are published in the Federal Register.

* * * * * * *

MINORITY VIEWS

H.R. 4166, the so-called "Expanding Proven Financing for American Employers Act," creates an exemption from the credit risk retention, or "skin in the game," requirements of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (or "Dodd-Frank;" P.L. 111–203) by creating a new category of "qualified collateralized loan obligations," or QCLOs, with no underwriting standards and little risk retention.

The Minority recalls that the 2008 crisis was caused—in large part—by mortgage companies that originated loans to borrowers that had no ability to repay. These companies were able to charge high upfront fees for these doomed-to-fail mortgages and then, with the help of securitizers, pass the risk of default off to unwitting investors. To address this problematic "originate to distribute" model, Dodd-Frank required securitizers to retain an economic interest in the credit risk of the mortgages and other assets they securitize alongside investors. By retaining this risk, the securitizer becomes more concerned with the quality of the underlying loans because its money is also at stake.

While the 2008 crisis primarily related to residential mortgages, Congress recognized that all classes of asset-backed securities, including collateralized loan obligations (CLOs), were subject to the same misalignment of incentives Rather than only endeavoring to narrowly address the last crisis, Congress passed the Dodd-Frank Act to prevent and mitigate systemic risk that may lead to future crises, and therefore provided for risk retention requirements for all classes of assets.

However, H.R. 4166 would diminish the risk retention provisions in Dodd-Frank by providing a carve-out for certain CLOs, which are typically comprised of loans to riskier companies. We note that CLOs are often used to finance private equity takeovers of companies through "leveraged buyouts." Trade associations representing the CLO industry advocated for the QCLO exemption contemplated in H.R. 4166 during the financial regulators' comment period on the proposed, and reproposed, implementing rules. The regulators rejected those comments, noting that the leveraged loan market may be getting overheated, and that "characteristics of the leveraged loan market pose potential systemic risks similar to those observed in the residential mortgage market," before the 2008 crisis.

Specifically, H.R. 4166 provides that managers of QCLOs would only be required to retain 5 percent of the equity tranche, or the riskiest tranche, of the CLO (with the optionality for the manager to hold onto 1.5 percent of that 5 percent elsewhere along the securitization chain; i.e., not in the riskiest tranche). This proposal stands in contrast to regulators' final credit risk retention rule, which requires that securitizers retain 5 percent of the *aggregate credit risk of the securitization*—not just 5 percent of the equity

tranche. By way of example, if the equity tranche was 8 percent of the entire securitization, CLO managers would only be required to retain 0.4 percent of the aggregate credit risk. If H.R. 4166 is adopted, the credit risk requirements in Dodd-Frank would be rendered largely meaningless for CLOs, as information from industry and regulators has stated that nearly all existing CLOs issued in recent years would meet the parameters to be considered a QCLO under the bill.

Finally, the Minority notes that the Federal Reserve, the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation have in recent years expressed strong concerns with what they see as deteriorating underwriting standards in leveraged lending. Additionally, the Democratic witnesses at the hearing where H.R. 4166 was considered stated that this legislation does not offer substantial structural protections to justify the exemption, and further stipulated that the final risk retention rule already offers an exemption for certain high-quality commercial loans.

For the foregoing reasons, the Minority opposes H.R. 4166.

MAXINE WATERS.
KEITH ELLISON.
RUBÉN HINOJOSA.