

115TH CONGRESS  
1ST SESSION

# H. R. 3772

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

SEPTEMBER 14, 2017

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 se-  
13    curities of the collateralized loan obligation with  
14    the value of not less than 5 percent of the eq-  
15    uity of the collateralized loan obligation by the  
16    manager of the qualified collateralized loan obli-  
17    gation or one or more of the majority-owned af-  
18    filiates of the manager or its knowledgeable em-  
19    ployees and other employees; provided, that of  
20    that amount, 70 percent shall be held in the  
21    form of equity securities and the remainder  
22    shall be held ratably in securities of all other  
23    tranches of the securitization.

24           “(B)   QUALIFIED   COLLATERALIZED   LOAN  
25    OBLIGATIONS.—For purposes of this paragraph,

1 a qualified collateralized loan obligation is a  
2 collateralized loan obligation that meets all of  
3 the following requirements:

4 “(i) ASSET QUALITY PROTECTIONS.—

5 The collateralized loan obligation shall—

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

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

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

20 “(IV) not purchase assets in de-  
21 fault, margin stock, or equity convert-  
22 ible securities;

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

1           “(VI) hold only loans to bor-  
2           rowers whose financial statements are  
3           subject to an annual audit from an  
4           independent, accredited accounting  
5           firm;

6           “(VII) have no more than 60  
7           percent of its assets comprised of cov-  
8           enant lite loans, except that each  
9           asset shall require the disclosure of  
10          unaudited financial statements quar-  
11          terly within 60 days of the end of the  
12          quarter and audited financial state-  
13          ments annually within 120 days of the  
14          end of the fiscal year; and

15          “(VIII) at the time of purchase  
16          of any asset, comply with the require-  
17          ments of subclauses (I) and (VII) and  
18          clause (ii) of this subparagraph, or, if  
19          not in compliance with any such re-  
20          quirement, maintain or improve the  
21          level of compliance after giving effect  
22          to such purchase.

23          “(ii) ASSET PORTFOLIO PROTEC-  
24          TIONS.—

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

5           “(II) No more than 15 percent of  
6           the assets of the collateralized loan  
7           obligation may relate to any single in-  
8           dustry.

9           “(iii) STRUCTURAL PROTECTIONS.—

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

13           “(II) The governing transaction  
14           documents of the collateralized loan  
15           obligation specify over-collateralization  
16           and interest coverage tests, and if any  
17           such test falls below the required level  
18           specified for the collateralized loan ob-  
19           ligation in such documents, available  
20           interest collections (and if necessary,  
21           available principal collections) must be  
22           applied to repay the collateralized loan  
23           obligation’s debt in order of seniority  
24           until compliance with the applicable  
25           test is restored.

1                   “(iv) REQUIREMENT TO MAINTAIN  
2 ALIGNMENT OF MANAGER AND INVESTOR  
3 INTERESTS.—

4                   “(I) The collateralized loan obli-  
5 gation shall be an open market  
6 collateralized loan obligation.

7                   “(II) The holders of the equity of  
8 the collateralized loan obligation (ex-  
9 cluding the risk retention equity held  
10 as required by subparagraph (A))  
11 shall have the right to remove by vote  
12 the manager for cause.

13                   “(III) A majority of the man-  
14 ager’s fees, including any incentive  
15 fee, shall be subordinated to payments  
16 then due in relation to the  
17 collateralized loan obligation’s debt se-  
18 curities.

19                   “(IV) The manager’s discre-  
20 tionary sales of assets on behalf of the  
21 issuer of the collateralized loan obliga-  
22 tion shall be limited each year to not  
23 more than 30 percent of the principal  
24 amount of the assets of the  
25 collateralized loan obligation (other

1 than sales of defaulted or credit-dete-  
2 riorated, credit-risk, or credit-im-  
3 proved loans).

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

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

13 “(v) REGULATORY OVERSIGHT RE-  
14 QUIREMENTS.—

15 “(I) The manager of the  
16 collateralized loan obligation shall be  
17 registered with the Commission as an  
18 investment adviser under section 203  
19 of the Investment Advisers Act of  
20 1940 (15 U.S.C. 80b–3).

21 “(II) All purchases and sales of  
22 the assets of the collateralized loan  
23 obligation shall be conducted on an  
24 arm’s-length basis and in compliance

1 with any applicable provisions of the  
2 Investment Advisers Act of 1940.

3 “(vi) REQUIREMENTS RELATING TO  
4 TRANSPARENCY AND DISCLOSURE.—A  
5 monthly report shall be made available to  
6 holders of debt securities of the  
7 collateralized loan obligation, which in-  
8 cludes information regarding—

9 “(I) a list of assets of the  
10 collateralized loan obligation, includ-  
11 ing, with respect to each asset, the ob-  
12 ligor name; the CUSIP (or security  
13 identifier) if applicable, the interest  
14 rate and maturity date, the type of  
15 asset, and the market price for each  
16 asset where available;

17 “(II) with respect to the portfolio  
18 of assets, the aggregate principal bal-  
19 ance and aggregate adjusted collateral  
20 principal amount (adjusted as re-  
21 quired by the collateralized loan obli-  
22 gation governing transaction docu-  
23 ments) and the percentage of such ag-  
24 gregate adjusted collateral principal  
25 represented by each asset;



1                   “(III) information relating to  
2                   each applicable over-collateralization  
3                   test and interest coverage test and the  
4                   level of compliance in relation to each  
5                   test;

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

8                   “(V) the identity of each de-  
9                   faulted asset as defined in the related  
10                  transaction documents.

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

14                  “(A) BALANCE SHEET COLLATERALIZED  
15                  LOAN OBLIGATION.—The term ‘balance sheet  
16                  collateralized loan obligation’ means a  
17                  collateralized loan obligation—

18                  “(i) whose assets consist predomi-  
19                  nantly of loans originated and transferred  
20                  to the collateralized loan obligation by one  
21                  or more of its affiliates other than in—

22                  “(I) open market transactions;

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

1                   “(III) from a collateralized loan  
2                   obligation in existence as of the effec-  
3                   tive date of this paragraph that is not  
4                   a balance sheet collateralized loan ob-  
5                   ligation; and

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

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

20                  “(C) COVENANT LITE LOAN.—The term  
21                  ‘covenant lite loan’ means, at the time the  
22                  collateralized loan obligation enters into a com-  
23                  mitment to acquire such loan, a loan for which  
24                  the underlying instruments neither—

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

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

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

23          “(E) MANAGER.—The term ‘manager’  
24          means an investment manager that is respon-  
25          sible for managing a collateralized loan obliga-

1           tion under the collateralized loan obligation’s  
2           governing transaction documents.

3           “(F) OPEN MARKET COLLATERALIZED  
4           LOAN OBLIGATION.—The term ‘open market  
5           collateralized loan obligation’ means a  
6           collateralized loan obligation—

7                   “(i) whose assets consist predomi-  
8                   nantly of senior, secured syndicated loans  
9                   acquired by such collateralized loan obliga-  
10                  tion directly from the sellers thereof in an  
11                  open market transaction or from another  
12                  collateralized loan obligation and of tem-  
13                  porary investments;

14                   “(ii) that is managed by a manager;  
15                  and

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

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

20                   “(i) either an initial loan syndication  
21                   transaction or a secondary market trans-  
22                   action in which a seller offers senior, se-  
23                   cured syndicated loans to prospective pur-  
24                   chasers in the loan market on market  
25                   terms on an arm’s length basis, which pro-

1            prospective purchasers include, but are not  
2            limited to, entities that are not affiliated  
3            with the seller; or

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

10           “(H) QUALIFIED INVESTOR.—The term  
11           ‘qualified investor’ means—

12           “(i) with respect to securities that re-  
13           quire the payment of principal and inter-  
14           est, an investor that is a qualified pur-  
15           chaser, within the meaning of section  
16           3(c)(7) of the Investment Company Act of  
17           1940 (15 U.S.C. 80a-3(c)(7)) or an entity  
18           owned exclusively by one or more qualified  
19           purchasers; or

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

23           “(I) if the qualified collateralized  
24           loan obligation relies on such section  
25           for its exclusion from the definition of

1 investment company under the Invest-  
2 ment Company Act of 1940—

3 “(aa) a qualified purchaser;

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

9 “(cc) an entity owned exclu-  
10 sively by such a qualified pur-  
11 chaser or knowledgeable em-  
12 ployee; or

13 “(II) if the qualified collatera-  
14 lized loan obligation relies on Rule  
15 3a-7 promulgated under the Invest-  
16 ment Company Act of 1940 for its ex-  
17 clusion from the definition of invest-  
18 ment company under that Act and  
19 such securities are not fixed-income  
20 securities, as defined in such rule—

21 “(aa) a qualified institution-  
22 al buyer, within the meaning of  
23 Rule 144A under the Securities  
24 Act of 1933;

1           “(bb) a person (other than  
2 any rating organization rating  
3 the issuer’s securities) involved in  
4 the organization or operation of  
5 the issuer or an affiliate of such  
6 a person, as defined in Rule 405  
7 under the Securities Act of 1933;  
8 or  
9           “(cc) any entity in which all  
10 of the equity owners are such  
11 qualified institutional buyers as  
12 described in item (aa) or persons  
13 described in item (bb).”.

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