

113TH CONGRESS  
2D SESSION

# H. R. 5461

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

---

## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 15, 2014

Mr. BARR (for himself, Mr. GARY G. MILLER of California, Mr. HUIZENGA of Michigan, and Mr. DAVID SCOTT of Georgia) introduced the following bill; which was referred to the Committee on Financial Services, and in addition to the Committee on Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

---

## A BILL

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

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. TABLE OF CONTENTS.**

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

Sec. 1. Table of contents.

## TITLE I—INSURANCE CAPITAL STANDARDS

Sec. 101. Short title.

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

## TITLE II—COLLATERALIZED LOAN OBLIGATIONS

Sec. 201. Short title.

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

## TITLE III—DEFINITION OF POINTS AND FEES IN MORTGAGE TRANSACTIONS

Sec. 301. Short title.

Sec. 302. Definition of points and fees.

Sec. 303. Rulemaking.

## TITLE IV—BUSINESS RISK MITIGATION AND PRICE STABILIZATION

Sec. 401. Short title.

Sec. 402. Margin requirements.

Sec. 403. Implementation.

1     **TITLE I—INSURANCE CAPITAL**  
 2                                     **STANDARDS**

3     **SEC. 101. SHORT TITLE.**

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

6     **SEC. 102. CLARIFICATION OF APPLICATION OF LEVERAGE**  
 7                                     **AND RISK-BASED CAPITAL REQUIREMENTS.**

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

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

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

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

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

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

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

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

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

14          “(B) does not include any action or activ-  
15          ity, including any financial activity, that is not  
16          regulated by a State insurance regulator or a  
17          foreign agency or authority and subject to State  
18          insurance capital requirements or, in the case of  
19          a regulated foreign subsidiary or regulated for-  
20          eign affiliate, capital requirements imposed by a  
21          foreign insurance regulatory authority.”; and

22          (2) by adding at the end the following new sub-  
23          section:

24          “(c) CLARIFICATION.—

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

16          “(2) RULE OF CONSTRUCTION ON BOARD’S AU-  
17          THORITY.—This subsection shall not be construed to  
18          prohibit, modify, limit, or otherwise supersede any  
19          other provision of Federal law that provides the  
20          Board of Governors authority to issue regulations  
21          and orders relating to capital requirements for de-  
22          pository institution holding companies or nonbank fi-  
23          nancial companies supervised by the Board of Gov-  
24          ernors.

1           “(3) RULE OF CONSTRUCTION ON ACCOUNTING  
2 PRINCIPLES.—

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

18           “(B) PRESERVATION OF AUTHORITY.—  
19 Nothing in subparagraph (A) shall limit the au-  
20 thority of the Board under any other applicable  
21 provision of law to conduct any regulatory or  
22 supervisory activity of a depository institution  
23 holding company or non-bank financial com-  
24 pany supervised by the Board of Governors, in-  
25 cluding the collection or reporting of any infor-

1           mation on an entity or group-wide basis. Noth-  
 2           ing in this paragraph shall excuse the Board  
 3           from its obligations to comply with section  
 4           161(a) of the Dodd-Frank Wall Street Reform  
 5           and Consumer Protection Act (12 U.S.C.  
 6           5361(a)) and section 10(b)(2) of the Home  
 7           Owners’ Loan Act (12 U.S.C. 1467a(b)(2)), as  
 8           appropriate.”.

## 9           **TITLE II—COLLATERALIZED** 10           **LOAN OBLIGATIONS**

### 11   **SEC. 201. SHORT TITLE.**

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

### 14   **SEC. 202. RULES OF CONSTRUCTION RELATING TO** 15           **COLLATERALIZED LOAN OBLIGATIONS.**

16           Section 13(g) of the Bank Holding Company Act of  
 17           1956 (12 U.S.C. 1851(g)) is amended by adding at the  
 18           end the following new paragraphs:

19           “(4) COLLATERALIZED LOAN OBLIGATIONS.—

20           “(A) INAPPLICABILITY TO CERTAIN  
 21           COLLATERALIZED LOAN OBLIGATIONS.—Noth-  
 22           ing in this section shall be construed to require  
 23           the divestiture, prior to July 21, 2017, of any  
 24           debt securities of collateralized loan obligations,

1 if such debt securities were issued before Janu-  
2 ary 31, 2014.

3 “(B) OWNERSHIP INTEREST WITH RE-  
4 SPECT TO COLLATERALIZED LOAN OBLIGA-  
5 TIONS.—A banking entity shall not be consid-  
6 ered to have an ownership interest in a  
7 collateralized loan obligation because it ac-  
8 quires, has acquired, or retains a debt security  
9 in such collateralized loan obligation if the debt  
10 security has no indicia of ownership other than  
11 the right of the banking entity to participate in  
12 the removal for cause, or in the selection of a  
13 replacement after removal for cause or resigna-  
14 tion, of an investment manager or investment  
15 adviser of the collateralized loan obligation.

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

18 “(i) COLLATERALIZED LOAN OBLIGA-  
19 TION.—The term ‘collateralized loan obli-  
20 gation’ means any issuing entity of an  
21 asset-backed security, as defined in section  
22 3(a)(77) of the Securities Exchange Act of  
23 1934 (15 U.S.C. 78c(a)(77)), that is com-  
24 prised primarily of commercial loans.



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

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

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

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

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

6 **TITLE           III—DEFINITION           OF**  
7 **POINTS AND FEES IN MORT-**  
8 **GAGE TRANSACTIONS**

9 **SEC. 301. SHORT TITLE.**

10           This title may be cited as the “Mortgage Choice Act  
11 of 2014”.

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

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

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

18                   (2) in subparagraph (C)—

19                           (A) by inserting “and insurance” after  
20                           “taxes”;

21                           (B) in clause (ii), by inserting “, except as  
22                           retained by a creditor or its affiliate as a result  
23                           of their participation in an affiliated business  
24                           arrangement (as defined in section 2(7) of the  
25                           Real Estate Settlement Procedures Act of 1974

1 (12 U.S.C. 2602(7))” after “compensation”;  
2 and

3 (C) by striking clause (iii) and inserting  
4 the following:

5 “(iii) the charge is—

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

10 “(II) a charge set forth in section  
11 106(e)(1);”; and

12 (3) in subparagraph (D)—

13 (A) by striking “accident,”; and

14 (B) by striking “or any payments” and in-  
15 serting “and any payments”.

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

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

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

1 **SEC. 303. RULEMAKING.**

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

7 **TITLE IV—BUSINESS RISK MITI-**  
8 **GATION AND PRICE STA-**  
9 **BILIZATION**

10 **SEC. 401. SHORT TITLE.**

11 This title may be cited as the “Business Risk Mitiga-  
12 tion and Price Stabilization Act of 2013”.

13 **SEC. 402. MARGIN REQUIREMENTS.**

14 (a) COMMODITY EXCHANGE ACT AMENDMENT.—  
15 Section 4s(e) of the Commodity Exchange Act (7 U.S.C.  
16 6s(e)), as added by section 731 of the Dodd-Frank Wall  
17 Street Reform and Consumer Protection Act, is amended  
18 by adding at the end the following new paragraph:

19 “(4) APPLICABILITY WITH RESPECT TO  
20 COUNTERPARTIES.—The requirements of paragraphs  
21 (2)(A)(ii) and (2)(B)(ii), including the initial and  
22 variation margin requirements imposed by rules  
23 adopted pursuant to paragraphs (2)(A)(ii) and  
24 (2)(B)(ii), shall not apply to a swap in which a  
25 counterparty qualifies for an exception under section  
26 2(h)(7)(A), or an exemption issued under section

1 4(c)(1) from the requirements of section 2(h)(1)(A)  
2 for cooperative entities as defined in such exemption,  
3 or satisfies the criteria in section 2(h)(7)(D).”.

4 (b) SECURITIES EXCHANGE ACT AMENDMENT.—  
5 Section 15F(e) of the Securities Exchange Act of 1934  
6 (15 U.S.C. 78o–10(e)), as added by section 764(a) of the  
7 Dodd-Frank Wall Street Reform and Consumer Protec-  
8 tion Act, is amended by adding at the end the following  
9 new paragraph:

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

16 **SEC. 403. IMPLEMENTATION.**

17 The amendments made by this title to the Commodity  
18 Exchange Act shall be implemented—

19 (1) without regard to—

20 (A) chapter 35 of title 44, United States  
21 Code; and

22 (B) the notice and comment provisions of  
23 section 553 of title 5, United States Code;

1           (2) through the promulgation of an interim  
2           final rule, pursuant to which public comment will be  
3           sought before a final rule is issued; and

4           (3) such that paragraph (1) shall apply solely  
5           to changes to rules and regulations, or proposed  
6           rules and regulations, that are limited to and di-  
7           rectly a consequence of such amendments.

○