

114TH CONGRESS  
2D SESSION

# H. R. 6487

To require Fannie Mae and Freddie Mac to engage in credit risk transfer transactions, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

DECEMBER 8, 2016

Mr. ROYCE (for himself and Ms. MOORE) introduced the following bill; which was referred to the Committee on Financial Services, and in addition to the Committees on Agriculture, and Ways and Means, 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

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## A BILL

To require Fannie Mae and Freddie Mac to engage in credit risk transfer transactions, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Taxpayer Protections  
5 and Market Access for Mortgage Finance Act of 2016”.

6 **SEC. 2. CREDIT RISK-TRANSFER TRANSACTIONS.**

7 (a) **REQUIREMENT FOR ENTERPRISES.**—Subpart A  
8 of part 2 of subtitle A of the Federal Housing Enterprises

1 Financial Safety and Soundness Act of 1992 (12 U.S.C.  
2 4541 et seq.) is amended by adding at the end the fol-  
3 lowing new section:

4 **“SEC. 1328. ENTERPRISE CREDIT RISK-TRANSFER TRANS-**  
5 **ACTIONS.**

6 “(a) REQUIREMENT.—Not later than 12 months  
7 after the date of enactment of this Act, the Director shall,  
8 after taking into consideration market conditions and the  
9 safety and soundness of the enterprises, establish guide-  
10 lines requiring that each enterprise engage in significant  
11 and increasing credit risk-transfer transactions.

12 “(b) CONSIDERATIONS.—In establishing the guide-  
13 lines under subsection (a), the Director shall—

14 “(1) seek to promote a deep, broad market for  
15 a variety of structures that together insulate the tax-  
16 payer from losses, minimize ongoing risks to the en-  
17 terprises, remain stable through the economic cycle,  
18 maintain adequate access to the secondary market  
19 for lenders of all sizes, and promote credit for bor-  
20 rowers in all communities;

21 “(2) continue and seek to increase the amount  
22 and types of risk-transfer transactions that the en-  
23 terprises engaged in during the previous year with  
24 the goal that the risk transferred by an enterprise  
25 by all credit risk-transfer transactions shall be at

1 least 400 basis points of risk in total, starting from  
2 the first dollar of credit loss among all the different  
3 credit risk-transfer structures;

4 “(3) continue and seek to increase front-end  
5 risk transfer transactions; and

6 “(4) continue and seek to increase transactions  
7 in which the first loss position is transferred or  
8 shared and through structures that are scalable and  
9 transparent.

10 “(c) GUARANTEE FEES.—The enterprises shall set  
11 and publish guarantee fees, including up-front delivery  
12 fees and loan level price adjustments, commensurate with  
13 the enterprises’ reduced credit risk resulting from any new  
14 risk-transfer transaction.

15 “(d) APA COMPLIANCE.—The guidelines required  
16 under subsection (a) shall be issued and made available  
17 to the public pursuant to section 553 of title 5, United  
18 States Code.

19 “(e) COMPENSATION.—The Director shall adjust in-  
20 dividual and corporate scorecards used in determining  
21 compensation for relevant enterprise employees to align  
22 with the considerations of subsection (b).

23 “(f) EXEMPTION FROM COMMODITY EXCHANGE ACT;  
24 CONSULTATION.—

1           “(1) EXEMPTION.—A swap (as such term is de-  
2           fined in section 1a of the Commodity Exchange Act  
3           (7 U.S.C. 1a)) entered into for the purpose of trans-  
4           ferring or sharing credit risk in connection with a  
5           risk-transfer transaction shall not be deemed to be  
6           a commodity interest (as such term is defined in sec-  
7           tion 1.3(yy) of the regulations of the Commodity Fu-  
8           tures Trading Commission (17 C.F.R. 1.3(yy))), and  
9           no swap counterparty or other person sponsoring or  
10          arranging a risk-transfer transaction shall be  
11          deemed to be a commodity pool operator (as such  
12          term is defined in section 1.3(cc) of such regula-  
13          tions), solely by virtue of entering into or sponsoring  
14          or arranging such a swap in connection with such  
15          transaction.

16          “(2) PRIOR CONSULTATION REQUIREMENT.—  
17          Before the execution of a risk-transfer transaction  
18          that would be exempt from the Commodity Ex-  
19          change Act pursuant to paragraph (1), the Director  
20          shall consult with the Commodity Futures Trading  
21          Commission.

22          “(g) REPORT.—The Director shall submit a report,  
23          not later than October 30 of each year, to the Committee  
24          on Financial Services of the House of Representatives and  
25          the Committee on Banking, Housing, and Urban Affairs

1 of the Senate, on the activities of each enterprise in meet-  
2 ing the guidelines established under subsection (a) and  
3 any obstacles the Director has determined have impeded  
4 the ability of the enterprises to meet such guidelines.

5 “(h) DEFINITIONS.—For purposes of this section, the  
6 following definitions shall apply:

7 “(1) CREDIT RISK.—The term ‘credit risk’  
8 means, with respect to a residential mortgage loan  
9 held or guaranteed, or intended to be held or guar-  
10 anteed, by an enterprise or any security backed by  
11 residential mortgage loans held or guaranteed by the  
12 enterprise, the risk of loss to the enterprise that  
13 could result from a mortgagor’s failure to repay any  
14 such loan in accordance with its terms.

15 “(2) FIRST LOSS.—The term ‘first-loss’ means  
16 the risk of loss for an enterprise on a mortgage loan  
17 or security backed by residential mortgage loans, be-  
18 ginning with the first dollar of loss.

19 “(3) FRONT-END RISK TRANSFER.—The term  
20 ‘front-end risk transfer’ means, with respect to a  
21 residential mortgage loan or any security backed by  
22 residential mortgage loans, a risk transfer or risk  
23 share that occurs before or simultaneous with the  
24 acquisition of such loan or security by an enterprise.

1           “(4) GUARANTEE FEE.—The term ‘guarantee  
2 fee’ has the meaning given such term in section  
3 1327(a) (12 U.S.C. 4547(a)).

4           “(5) RISK-TRANSFER TRANSACTION.—The term  
5 ‘risk-transfer transaction’ means any transaction  
6 that provides for—

7                   “(A) the sale, disposition, retention, or  
8 transfer within the private sector of credit risk  
9 on any single-family residential mortgage loan  
10 or a pool of such loans that back securities on  
11 which the enterprise guarantees the timely pay-  
12 ment of principal and interest; or

13                   “(B) the retention by the private sector of  
14 any such credit risk in connection with the sale  
15 of any such loan or security to an enterprise.”.

16           (b) CONFORMING AMENDMENT TO COMMODITY EX-  
17 CHANGE ACT.—Paragraph (10) of section 1a of the Com-  
18 modity Exchange Act (7 U.S.C. 1a(10)) is amended by  
19 adding at the end the following new subparagraph:

20                   “(C) RULE OF CONSTRUCTION.—A swap  
21 (as such term is defined in section 1a) entered  
22 into for the purpose of transferring or sharing  
23 credit risk in connection with a risk-transfer  
24 transaction shall not be considered to be a com-  
25 modity interest (as such term is defined in sec-

1           tion 1.3(yy) of title 17, Code of Federal Regula-  
2           tions), and no swap counterparty or other per-  
3           son sponsoring or arranging a risk-transfer  
4           transaction shall be considered to be a com-  
5           modity pool operator (as such term is defined  
6           in section 1.3(cc) of such title), solely by virtue  
7           of entering into or sponsoring or arranging  
8           such a swap in connection with such trans-  
9           action.”.

10       (c) CONFORMING AMENDMENTS TO EXISTING  
11 LAWS.—

12           (1) INVESTMENT COMPANY ACT OF 1940.—Sec-  
13           tion 3(c)(5) of the Investment Company Act of 1940  
14           (15 U.S.C. 80a–3(c)(5)) is amended by inserting be-  
15           fore the period the following: “, including notes,  
16           bonds, other evidences of indebtedness, certificates,  
17           securities, and other interests, that are a risk-trans-  
18           fer transaction (as such term is defined in section  
19           1328(h) of the Federal Housing Enterprises Finan-  
20           cial Safety and Soundness Act of 1992)”.

21           (2) ASSET AND INCOME TEST CLARIFICATION  
22           FOR ENTERPRISE RISK-TRANSFER TRANSACTIONS.—  
23           The Internal Revenue Code of 1986 is amended—

24                   (A) in subparagraph (B) of section  
25                   856(c)(3) (26 U.S.C. 856(c)(3)(B)), by insert-

1 ing before the semicolon at the end the fol-  
2 lowing “, and gross income resulting from par-  
3 ticipation in any transaction, including notes,  
4 bonds, other evidences of indebtedness, certifi-  
5 cates, securities, and other interests, that are  
6 risk-transfer transactions (as such term is de-  
7 fined in section 1328(h) of the Federal Housing  
8 Enterprises Financial Safety and Soundness  
9 Act of 1992)”; and

10 (B) in subparagraph (B) of section  
11 856(c)(5) (26 U.S.C. 856(c)(5)(B)), by insert-  
12 ing before the period at the end of the first sen-  
13 tence the following: “, and participation in any  
14 transaction, including notes, bonds, other evi-  
15 dences of indebtedness, certificates, securities,  
16 and other interests, that are risk-transfer trans-  
17 actions (as such term is defined in section  
18 1328(h) of the Federal Housing Enterprises Fi-  
19 nancial Safety and Soundness Act of 1992)”.

20 **SEC. 3. PILOT PROGRAM FOR SMALL LENDER RISK TRANS-**  
21 **FER.**

22 Not later than one year after the date of the enact-  
23 ment of this Act, the Director of the Federal Housing Fi-  
24 nance Agency shall require each enterprise to establish a  
25 pilot program under which the enterprise shall annually



1 engage, for each of the next 5 consecutive years, in at least  
2 one front-end risk sharing transaction for which both bank  
3 and non-bank mortgage originators having under  
4 \$10,000,000,000 in assets are eligible participants.

5 **SEC. 4. PILOT PROGRAM FOR MORTGAGE INSURANCE RISK**  
6 **TRANSFER.**

7 (a) IN GENERAL.—Not later than one year after the  
8 date of the enactment of this Act, the Director of the Fed-  
9 eral Housing Finance Agency shall require the enterprises  
10 jointly to establish a pilot program to increase the amount  
11 of risk that is transferred by the enterprises using private  
12 mortgage insurance.

13 (b) PROGRAM REQUIREMENTS.—The pilot program  
14 established pursuant to subsection (a) shall meet the fol-  
15 lowing requirements:

16 (1) DURATION.—The pilot program shall have  
17 a duration of 5 years.

18 (2) AMOUNT OF MORTGAGE PURCHASES.—

19 (A) IN GENERAL.—Except as provided in  
20 subparagraph (B), in each year the enterprises  
21 shall purchase under the pilot program suffi-  
22 cient qualifying loans or pools of qualifying  
23 loans such that the aggregate unpaid principal  
24 balance of all qualifying loans or loan pools pur-

1           chased or issued by both enterprises is not less  
2           than \$50,000,000,000.

3           (B) EXCEPTION.—The amount of quali-  
4           fying loans that the enterprises are required to  
5           purchase each year under paragraph (1) may be  
6           reduced if the Director and the Secretary of the  
7           Treasury jointly—

8                   (i) make a determination that such a  
9                   reduction is necessary to prevent an ad-  
10                  verse impact to the housing market; and

11                   (ii) submit to the Congress a report  
12                  describing the justification for the deter-  
13                  mination referred to in clause (i).

14           (3) SELECTION OF MORTGAGE INSURANCE.—  
15           For each transaction under the pilot program involv-  
16           ing a qualifying loan, the loan originator shall select  
17           an eligible mortgage insurance provider or providers,  
18           consistent with existing market practice.

19           (4) MORTGAGE INSURANCE PREMIUMS.—Mort-  
20           gage insurance premiums applicable to qualifying  
21           loans purchased by the enterprises under the pilot  
22           program shall be subject to requirements and limita-  
23           tions under State laws.

24           (5) GUARANTEE FEES.—The enterprises shall  
25           set and publish guarantee fees, including up-front

1 delivery fees and loan level price adjustments, com-  
2 mensurate with the enterprises' reduced credit risk  
3 resulting from any new risk-transfer transaction  
4 under the pilot program.

5 (c) REPORT.—Not later than the conclusion of the  
6 fifth year of the pilot program, the Director shall submit  
7 a report to the Congress that assesses the extent to which  
8 the pilot program under this section has—

9 (1) transferred credit risk from the Federal  
10 Government to the private sector;

11 (2) resulted in reduced guarantee fees for mort-  
12 gage originators; and

13 (3) produced benefits or costs for borrowers  
14 under qualifying loans under the program.

15 (d) EXTENSION OF PROGRAM.—Based on the assess-  
16 ments in the report required under subsection (c), the Di-  
17 rector may extend the program beyond its fifth year of  
18 operation if the Director determines that such extension  
19 would be in the public interest.

20 (e) MITIGATING COUNTERPARTY RISK.—Nothing in  
21 this section shall prevent the Director from establishing  
22 additional requirements on participants in the pilot pro-  
23 gram necessary to mitigate counterparty risk to the enter-  
24 prises comparably with other credit risk-transfer struc-  
25 tures.

1 (f) DEFINITIONS.—For purposes of this section, the  
2 following definitions shall apply:

3 (1) DIRECTOR.—The term “Director” means  
4 the Director of the Federal Housing Finance Agen-  
5 cy.

6 (2) ELIGIBLE MORTGAGE INSURANCE PRO-  
7 VIDER.—The term “eligible mortgage insurance pro-  
8 vider” means a company that—

9 (A) is regulated as a mortgage guaranty  
10 insurance company by its State of domicile;

11 (B) provides qualifying mortgage insur-  
12 ance; and

13 (C) satisfies—

14 (i)(I) minimum requirements estab-  
15 lished or recognized by the Director, pur-  
16 suant to public notice and comment, with  
17 respect to capital, leverage, and reserve re-  
18 quirements, or

19 (II) Private Mortgage Insurer Eligi-  
20 bility Requirements published by the enter-  
21 prises on April 17, 2015; and

22 (ii) any additional requirements added  
23 by subsection (e) of this section.

24 (3) ENTERPRISE.—The term “enterprise” has  
25 the meaning given such term in section 1303 of the

1 Federal Housing Enterprises Financial Safety and  
2 Soundness Act of 1992 (12 U.S.C. 4502).

3 (4) QUALIFYING LOAN.—The term “qualifying  
4 loan” means a first mortgage loan that—

5 (A) is secured by a one-to-four family resi-  
6 dence; and

7 (B) is subject to qualifying mortgage in-  
8 surance.

9 (5) QUALIFYING MORTGAGE INSURANCE.—The  
10 term “qualifying mortgage insurance” means, with  
11 respect to a qualifying loan, primary mortgage guar-  
12 anty insurance for such qualifying loan that—

13 (A) is placed at the time the qualifying  
14 loan is originated;

15 (B) guarantees or insures that portion of  
16 the unpaid principal balance of the qualifying  
17 loan that is in excess of 50 percent of the value  
18 of the property securing the mortgage; and

19 (C) is provided by an eligible mortgage in-  
20 surance provider.

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