

115TH CONGRESS
1ST SESSION

H. R. 3556

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

IN THE HOUSE OF REPRESENTATIVES

JULY 28, 2017

Mr. ROYCE of California (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 Ways and Means, and 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 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 2017”.

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 increasing, and varied credit risk-transfer transactions,
12 with an emphasis on front-end transactions.

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

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

22 “(2) continue and seek to increase the amount
23 of credit risk transferred to the private sector and
24 the types of risk-transfer transactions that the en-
25 terprises engaged in each year with the goal that the

1 risk transferred by an enterprise by all credit risk-
2 transfer transactions shall be at least 400 basis
3 points of risk in total, starting from the first dollar
4 of credit loss among all the different credit risk-
5 transfer structures;

6 “(3) continue and seek to increase front-end
7 risk transfer transactions, including those done at
8 the time of origination; and

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

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

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

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

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

15 “(g) REPORT.—The Director shall submit a report,
16 not later than October 30 of each year, to the Committee
17 on Financial Services of the House of Representatives and
18 the Committee on Banking, Housing, and Urban Affairs
19 of the Senate, on the activities of each enterprise in meet-
20 ing the guidelines established under subsection (a) and
21 any obstacles the Director has determined have impeded
22 the ability of the enterprises to meet such guidelines.

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

1 “(1) CREDIT RISK.—The term ‘credit risk’
2 means, with respect to a mortgage loan on a one- to
3 four-family residential property that is held or guar-
4 anteed, or intended to be held or guaranteed, by an
5 enterprise or any security backed by such residential
6 mortgage loans held or guaranteed by the enterprise,
7 the risk of loss to the enterprise that could result
8 from a mortgagor’s failure to repay any such loan
9 in accordance with its terms.

10 “(2) FIRST LOSS.—The term ‘first-loss’ means
11 the risk of loss for an enterprise on a mortgage loan
12 on a one- to four-family residential property or a se-
13 curity backed by such residential mortgage loans, be-
14 ginning with the first dollar of loss.

15 “(3) FRONT-END RISK TRANSFER.—The term
16 ‘front-end risk transfer’ means, with respect to a
17 mortgage loan on a one- to four-family residential
18 property or any security backed by such residential
19 mortgage loans, a risk transfer or risk share that oc-
20 curs before or simultaneous with the acquisition of
21 such loan or security by an enterprise.

22 “(4) GUARANTEE FEE.—The term ‘guarantee
23 fee’ has the meaning given such term in section
24 1327(a) (12 U.S.C. 4547(a)).

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

4 “(A) the sale, disposition, retention, or
 5 transfer within the private sector of credit risk
 6 on any residential mortgage loan on a one- to
 7 four-family residential property or a pool of
 8 such residential mortgage loans that back secu-
 9 rities on which the enterprise guarantees the
 10 timely payment of principal and interest; or

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

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

18 “(C) RULE OF CONSTRUCTION.—A swap
 19 (as such term is defined in section 1a) entered
 20 into for the purpose of transferring or sharing
 21 credit risk in connection with a risk-transfer
 22 transaction shall not be considered to be a com-
 23 modity interest (as such term is defined in sec-
 24 tion 1.3(yy) of title 17, Code of Federal Regula-
 25 tions), and no swap counterparty or other per-

son sponsoring or arranging a risk-transfer transaction shall be considered to be a commodity pool operator (as such term is defined in section 1.3(cc) of such title), solely by virtue of entering into or sponsoring or arranging such a swap in connection with such transaction.”.

(c) CONFORMING AMENDMENTS TO EXISTING LAWS.—

(1) INVESTMENT COMPANY ACT OF 1940.—Section 3(c)(5) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(c)(5)) is amended by inserting before the period the following: “, including notes, bonds, other evidences of indebtedness, certificates, securities, and other interests, issued in connection with or otherwise related to a risk-transfer transaction (as such term is defined in section 1328(h) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992)”.

(2) ASSET AND INCOME TEST CLARIFICATION FOR ENTERPRISE RISK-TRANSFER TRANSACTIONS.—

The Internal Revenue Code of 1986 is amended—

(A) in each of paragraphs (2)(B) and (3)(B) of section 856(c) (26 U.S.C. 856(c)), by inserting before the semicolon at the end the

following “, and gross income resulting from participation in any transaction, including notes, bonds, other evidences of indebtedness, certificates, securities, and other interests, that are risk-transfer transactions (as such term is defined in section 1328(h) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992)”; and

(B) in subparagraph (B) of section 856(c)(5) (26 U.S.C. 856(c)(5)(B)), by inserting before the period at the end of the first sentence the following: “, and participation in any transaction, including notes, bonds, other evidences of indebtedness, certificates, securities, and other interests, that are risk-transfer transactions (as such term is defined in section 1328(h) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992)”.

SEC. 3. PILOT PROGRAM FOR SMALL LENDER RISK TRANSFER.

(a) IN GENERAL.—Not later than one year after the date of the enactment of this Act, the Director of the Federal Housing Finance Agency shall require each enterprise (as such term is defined in section 1303 of the Federal Housing Enterprises Financial Safety and Soundness Act

1 of 1992 (12 U.S.C. 4502)) to establish a pilot program
2 under which the enterprise shall annually engage, for each
3 of the next 5 consecutive years, in at least one front-end
4 risk-transfer transaction for which at least 75 percent of
5 the credit risk transferred is transferred to bank or non-
6 bank mortgage originators having under \$10,000,000,000
7 in assets.

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

12 (1) transferred credit risk from the Federal
13 Government to mortgage originators; and

14 (2) resulted in increased participation in credit
15 risk-transfer transactions by bank or non-bank
16 mortgage originators having under \$10,000,000,000
17 in assets.

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

1 **SEC. 4. PILOT PROGRAM FOR MORTGAGE INSURANCE RISK**
2 **TRANSFER.**

3 (a) IN GENERAL.—Not later than one year after the
4 date of the enactment of this Act, the Director shall re-
5 quire each enterprise to establish a pilot program to in-
6 crease the amount of risk that is shared by the enterprise
7 using private mortgage insurance.

8 (b) PROGRAM REQUIREMENTS.—Each pilot program
9 established pursuant to subsection (a) shall meet the fol-
10 lowing requirements:

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

13 (2) AMOUNT OF MORTGAGE PURCHASES.—

14 (A) IN GENERAL.—Except as provided in
15 subparagraph (B), in each year each enterprise
16 shall purchase under its pilot program sufficient
17 qualifying loans or pools of qualifying loans
18 such that the aggregate unpaid principal bal-
19 ance of all qualifying loans or loan pools pur-
20 chased by the enterprise is not less than
21 \$25,000,000,000.

22 (B) EXCEPTION.—The amount of quali-
23 fying loans that each enterprise is required to
24 purchase each year under paragraph (1) may be
25 reduced if the Director and the Secretary of the
26 Treasury jointly—

1 (i) make a determination that such a
2 reduction is necessary to prevent an ad-
3 verse impact to the housing market; and

4 (ii) submit to the Congress a report
5 describing the justification for the deter-
6 mination referred to in clause (i).

7 (3) SELECTION OF MORTGAGE INSURANCE.—
8 For each transaction under the pilot program involv-
9 ing a qualifying loan, the loan originator shall select
10 an eligible mortgage insurance provider or providers,
11 consistent with existing market practice.

12 (4) MORTGAGE INSURANCE PREMIUMS.—Mort-
13 gage insurance premiums applicable to qualifying
14 loans purchased by an enterprise under the pilot
15 program shall be subject to requirements and limita-
16 tions under applicable State laws.

17 (5) GUARANTEE FEES.—Each enterprise shall
18 set and publish guarantee fees, including up-front
19 delivery fees and loan level price adjustments, com-
20 mensurate with the enterprise's reduced credit risk
21 resulting from any new risk-transfer transaction
22 under the pilot program.

23 (c) REPORT.—Not later than the conclusion of the
24 fifth year of the pilot program, the Director shall submit

1 a report to the Congress that assesses the extent to which
2 the pilot program under this section has—

3 (1) transferred credit risk from the enterprises
4 to the private sector;

5 (2) resulted in reduced guarantee fees for mort-
6 gage originators; and

7 (3) produced benefits or costs for borrowers
8 under qualifying loans under the program.

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

14 (e) MITIGATING COUNTERPARTY RISK.—Nothing in
15 this section shall prevent the Director from establishing
16 additional requirements on participants in the pilot pro-
17 gram necessary to mitigate counterparty risk to the enter-
18 prises comparable to other credit risk-transfer structures.

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

21 (1) DIRECTOR.—The term “Director” means
22 the Director of the Federal Housing Finance Agen-
23 cy.

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

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

6 (B) provides qualifying mortgage insur-
7 ance; and

8 (C) satisfies—

9 (i)(I) minimum requirements estab-
10 lished or recognized by the Director, pur-
11 suant to public notice and comment, with
12 respect to capital, leverage, and reserve re-
13 quirements; or

14 (II) Private Mortgage Insurer Eligi-
15 bility Requirements published by the enter-
16 prises on April 17, 2015; and

17 (ii) any additional requirements added
18 by subsection (e) of this section.

19 (3) ENTERPRISE.—The term “enterprise” has
20 the meaning given such term in section 1303 of the
21 Federal Housing Enterprises Financial Safety and
22 Soundness Act of 1992 (12 U.S.C. 4502).

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

1 (A) is secured by a one- to four-family res-
2 idence; and

3 (B) is subject to qualifying mortgage in-
4 surance.

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

9 (A) is placed at the time the qualifying
10 loan is originated;

11 (B) guarantees or insures that portion of
12 the unpaid principal balance of the qualifying
13 loan that is in excess of 50 percent of the value
14 of the property securing the mortgage; and

15 (C) is provided by an eligible mortgage in-
16 surance provider.

17 **SEC. 5. RULE OF CONSTRUCTION.**

18 Nothing in this Act or the amendments made by this
19 Act shall be affected solely by termination of the con-
20 servatorship of an enterprise pursuant to section 1367 of
21 the Federal Housing Enterprises Financial Safety and
22 Soundness Act of 1992 (12 U.S.C. 4617).

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