

S.L.C.


AMENDMENT NO. _____ Calendar No. _____

Purpose: To provide for a study of the asset-backed securitization process and for residential mortgage underwriting standards.

IN THE SENATE OF THE UNITED STATES—111th Cong., 2d Sess.

S. 3217

To promote the financial stability of the United States by improving accountability and transparency in the financial system, to end “too big to fail”, to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

Referred to the Committee on _____ and
 ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. CORKER

Viz:

1 On page 1045, strike line 12 and all that follows
 2 through “**SEC. 942.**” on page 1052, line 3, and insert the
 3 following:

4 (b) STUDY ON RISK RETENTION.—

5 (1) STUDY.—

6 (A) IN GENERAL.—The Board of Gov-
 7 ernors, in coordination and consultation with

1 the Comptroller of the Currency, the Corpora-
2 tion, the Federal Housing Finance Agency, and
3 the Commission, shall conduct a study of the
4 asset-backed securitization process.

5 (B) ISSUES TO BE STUDIED.—In con-
6 ducting the study under subparagraph (A), the
7 Board of Governors shall evaluate—

8 (i) the separate and combined impact
9 of—

10 (I) requiring loan originators or
11 securitizers to retain an economic in-
12 terest in a portion of the credit risk
13 for any asset that the securitizer,
14 through the issuance of an asset-
15 backed security, transfers, sells, or
16 conveys to a third party; including—

17 (aa) whether existing risk
18 retention requirements such as
19 contractual representations and
20 warranties, and statutory and
21 regulatory underwriting and con-
22 sumer protection requirements
23 are sufficient to ensure the long-
24 term accountability of originators
25 for loans they originate; and

1 (bb) methodologies for es-
2 tablishing additional statutory
3 credit risk retention require-
4 ments;

5 (II) the Financial Accounting
6 Statements 166 and 167 issued by the
7 Financial Accounting Standards
8 Board, as well as any other state-
9 ments issued before or after the date
10 of enactment of this section the Fed-
11 eral banking agencies determine to be
12 relevant;

13 (ii) the impact of the factors described
14 under subsection (i) of this section on—

15 (I) different classes of assets,
16 such as residential mortgages, com-
17 mercial mortgages, commercial loans,
18 auto loans, and other classes of as-
19 sets;

20 (II) loan originators;

21 (III) securitizers;

22 (IV) access of consumers and
23 businesses to credit on reasonable
24 terms.

1 (2) REPORT.—Not later than 18 months after
2 the date of enactment of this section, the Board of
3 Governors shall submit to Congress a report on the
4 study conducted under paragraph (1). Such report
5 shall include statutory and regulatory recommenda-
6 tions for eliminating any negative impacts on the
7 continued viability of the asset-backed securitization
8 markets and on the availability of credit for new
9 lending identified by the study conducted under
10 paragraph (1).

11 **SEC. 942. RESIDENTIAL MORTGAGE UNDERWRITING**
12 **STANDARDS.**

13 (a) STANDARDS ESTABLISHED.—Notwithstanding
14 any other provision of this Act or any other provision of
15 Federal, State, or local law, the Federal banking agencies,
16 in consultation with the Federal Housing Finance Agency
17 and the Department of Housing and Urban Development,
18 shall jointly establish specific minimum standards for
19 mortgage underwriting, including—

20 (1) a requirement that the mortgagee verify
21 and document the income and assets relied upon to
22 qualify the mortgagor on the residential mortgage,
23 including the previous employment and credit his-
24 tory of the mortgagor;

25 (2) a down payment requirement that—

1 (A) is equal to not less than 5 percent of
2 the purchase price of the property securing the
3 residential mortgage; and

4 (B) in the case of a first lien residential
5 mortgage loan with an initial loan to value ratio
6 that is more than 80 percent and not more
7 than 95 percent, includes a requirement for
8 credit enhancements, as defined by the Federal
9 banking agencies, until the loan to value ratio
10 of the residential mortgage loan amortizes to a
11 value that is less than 80 percent of the pur-
12 chase price;

13 (3) a method for determining the ability of the
14 mortgagor to repay the residential mortgage that is
15 based on factors including—

16 (A) all terms of the residential mortgage,
17 including principal payments that fully amortize
18 the balance of the residential mortgage over the
19 term of the residential mortgage; and

20 (B) the debt to income ratio of the mort-
21 gator; and

22 (4) any other specific standards the Federal
23 banking agencies jointly determine are appropriate
24 to ensure prudent underwriting of residential mort-
25 gages.

1 (b) UPDATES TO STANDARDS.—The Federal banking
2 agencies, in consultation with the Federal Housing Fi-
3 nance Agency and the Department of Housing and Urban
4 Development—

5 (1) shall review the standards established under
6 this section not less frequently than every 5 years;
7 and

8 (2) based on the review under paragraph (1),
9 may revise the standards established under this sec-
10 tion, as the Federal banking agencies, in consulta-
11 tion with the Federal Housing Finance Agency and
12 the Department of Housing and Urban Develop-
13 ment, determine to be necessary.

14 (c) COMPLIANCE.—It shall be a violation of Federal
15 law—

16 (1) for any mortgage loan originator to fail to
17 comply with the minimum standards for mortgage
18 underwriting established under subsection (a) in
19 originating a residential mortgage loan;

20 (2) for any company to maintain an extension
21 of credit on a revolving basis to any person to fund
22 a residential mortgage loan, unless the company rea-
23 sonably determines that the residential mortgage
24 loan funded by such credit was subject to under-
25 writing standards no less stringent than the min-

1 imum standards for mortgage underwriting estab-
2 lished under subsection (a); or

3 (3) for any company to purchase, fund by as-
4 signment, or guarantee a residential mortgage loan,
5 unless the company reasonably determines that the
6 residential mortgage loan was subject to under-
7 writing standards no less stringent than the min-
8 imum standards for mortgage underwriting estab-
9 lished under subsection (a).

10 (d) IMPLEMENTATION.—

11 (1) REGULATIONS REQUIRED.—The Federal
12 banking agencies, in consultation with the Federal
13 Housing Finance Agency, shall issue regulations to
14 implement subsections (a) and (c), which shall take
15 effect not later than 270 days after the date of en-
16 actment of this Act.

17 (2) REPORT REQUIRED.—If the Federal bank-
18 ing agencies have not issued final regulations under
19 subsections (a) and (c) before the date that is 270
20 days after the date of enactment of this Act, the
21 Federal banking agencies shall jointly submit to the
22 Committee on Banking, Housing, and Urban Affairs
23 of the Senate and the Committee on Financial Serv-
24 ices of the House of Representatives a report that—

1 (A) explains why final regulations have not
2 been issued under subsections (a) and (e); and

3 (B) provides a timeline for the issuance of
4 final regulations under subsections (a) and (e).

5 (e) ENFORCEMENT.—Compliance with the rules
6 issued under this section shall be enforced by—

7 (1) the primary financial regulatory agency of
8 an entity, with respect to an entity subject to the ju-
9 risdiction of a primary financial regulatory agency,
10 in accordance with the statutes governing the juris-
11 diction of the primary financial regulatory agency
12 over the entity and as if the action of the primary
13 financial regulatory agency were taken under such
14 statutes; and

15 (2) the Bureau, with respect to a company that
16 is not subject to the jurisdiction of a primary finan-
17 cial regulatory agency.

18 (f) EXEMPTIONS FOR CERTAIN NONPROFIT MORT-
19 GAGE LOAN ORIGINATORS.—

20 (1) IN GENERAL.—Not later than 180 days
21 after the date of enactment of this Act, the Federal
22 banking agencies, in consultation with the Secretary
23 of Housing and Urban Development and the Sec-
24 retary of the Treasury, may jointly issue rules to ex-
25 empt from the requirements under subsection (a)(2),

1 mortgage loan originators that are exempt from tax-
2 ation under section 501(c)(3) of the Internal Rev-
3 enue Code of 1986.

4 (2) DETERMINING FACTORS.—The Federal
5 banking agencies shall ensure that—

6 (A) the lending activities of a mortgage
7 loan originator that receives an exemption
8 under this subsection do not threaten the safety
9 and soundness of the banking system of the
10 United States; and

11 (B) a mortgage loan originator that re-
12 ceives an exemption under this subsection—

13 (i) is not compensated based on the
14 number or value of residential mortgage
15 loan applications accepted, offered, or ne-
16 gotiated by the mortgage loan originator;

17 (ii) does not offer residential mort-
18 gage loans that have an interest rate
19 greater than zero percent;

20 (iii) does not gain a monetary profit
21 from any residential mortgage product or
22 service provided;

23 (iv) has the primary purpose of serv-
24 ing low income housing needs;

1 (v) has not been specifically prohib-
2 ited, by statute, from receiving Federal
3 funding; and

4 (vi) meets any other requirements
5 that the Federal banking agencies jointly
6 determine are appropriate for ensuring
7 that a mortgage loan originator that re-
8 ceives an exemption under this subsection
9 does not threaten the safety and soundness
10 of the banking system of the United
11 States.

12 (3) REPORTS REQUIRED.—Before the issuance
13 of final rules under subsection (a), and annually
14 thereafter, the Federal banking agencies shall jointly
15 submit to the Committee on Banking, Housing, and
16 Urban Affairs of the Senate and the Committee on
17 Financial Services of the House of Representatives
18 a report that—

19 (A) identifies the mortgage loan origina-
20 tors that receive an exemption under this sub-
21 section; and

22 (B) for each mortgage loan originator
23 identified under subparagraph (A), the ration-
24 ale for providing an exemption.

1 (4) UPDATES TO EXEMPTIONS.—The Federal
2 banking agencies, in consultation with the Secretary
3 of Housing and Urban Development and the Sec-
4 retary of the Treasury—

5 (A) shall review the exemptions established
6 under this subsection not less frequently than
7 every 2 years; and

8 (B) based on the review under subpara-
9 graph (A), may revise the standards established
10 under this subsection, as the Federal banking
11 agencies, in consultation with the Secretary of
12 Housing and Urban Development and the Sec-
13 retary of the Treasury, determine to be nec-
14 essary.

15 (g) RULES OF CONSTRUCTION.—Nothing in this sec-
16 tion may be construed to permit—

17 (1) the Federal National Mortgage Association
18 or the Federal Home Loan Mortgage Corporation to
19 make or guarantee a residential mortgage loan that
20 does not meet the minimum underwriting standards
21 established under this section; or

22 (2) the Federal banking agencies to issue an ex-
23 emption under subsection (f) that is not on a case-
24 by-case basis.

1 (h) DEFINITIONS.—In this section, the following defi-
2 nitions shall apply:

3 (1) COMPANY.—The term “company”—

4 (A) has the same meaning as in section
5 2(b) of the Bank Holding Company Act of
6 1956 (12 U.S.C. 1841(b)); and

7 (B) includes a sole proprietorship.

8 (2) MORTGAGE LOAN ORIGINATOR.—The term
9 “mortgage loan originator” means any company that
10 takes residential mortgage loan applications and of-
11 fers or negotiates terms of residential mortgage
12 loans.

13 (3) RESIDENTIAL MORTGAGE LOAN.—The term
14 “residential mortgage loan”—

15 (A) means any extension of credit pri-
16 marily for personal, family, or household use
17 that is secured by a mortgage, deed of trust, or
18 other equivalent security interest in a dwelling
19 or residential real estate upon which is con-
20 structed or intended to be constructed a dwell-
21 ing; and

22 (B) does not include a mortgage loan for
23 which mortgage insurance is provided by the
24 Department of Veterans Affairs, ~~the Federal~~

1 ~~Housing Administration~~, or the Rural Housing
2 Administration.

3 (4) EXTENSION OF CREDIT; DWELLING.—The
4 terms “extension of credit” and “dwelling” shall
5 have the same meaning as in section 103 of the
6 Truth in Lending Act (15 U.S.C. 1602).

7 **SEC. 943. STUDY ON FEDERAL HOUSING ADMINISTRATION**
8 **UNDERWRITING STANDARDS.**

9 (a) STUDY.—

10 (1) IN GENERAL.—The Comptroller General of
11 the United States shall conduct a study evaluating
12 whether the underwriting criteria used by the Fed-
13 eral Housing Administration are sufficient to ensure
14 the solvency of the Mutual Mortgage Insurance
15 Fund of the Federal Housing Administration and
16 the safety and soundness of the banking system of
17 the United States.

18 (2) ISSUES TO BE STUDIED.—In conducting the
19 study under paragraph (1), the Comptroller General
20 shall evaluate—

21 (A) down payment requirements for Fed-
22 eral Housing Administration borrowers;

23 (B) default rates of mortgages insured by
24 the Federal Housing Administration;

1 (C) characteristics of Federal Housing Ad-
2 ministration borrowers who are most likely to
3 default;

4 (D) taxpayer exposure to losses incurred
5 by the Federal Housing Administration;

6 (E) the impact of the market share of the
7 Federal Housing Administration on efforts to
8 sustain a viable private mortgage market; and

9 (F) any other factors that Comptroller
10 General determines are appropriate.

11 (b) REPORT.—Not later than 6 months after the date
12 of enactment of this Act, the Comptroller General shall
13 submit to Congress a report on the study conducted under
14 subsection (a) that includes recommendations for statu-
15 tory improvements to be made to the underwriting criteria
16 used by the Federal Housing Administration, to ensure
17 the solvency of the Mutual Mortgage Insurance Fund of
18 the Federal Housing Administration and the safety and
19 soundness of the banking system of the United States.

20 **SEC. 944.**