II

113TH CONGRESS
1ST SESSION

S. 1813

To establish a program to provide guarantees for debt issued by or on behalf of State catastrophe insurance programs to assist in the financial recovery from earthquakes and earthquake-related events.

IN THE SENATE OF THE UNITED STATES

DECEMBER 12 (legislative day, DECEMBER 11), 2013

Mrs. FEINSTEIN (for herself and Mrs. BOXER) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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A BILL

To establish a program to provide guarantees for debt issued by or on behalf of State catastrophe insurance programs to assist in the financial recovery from earthquakes and earthquake-related events.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Earthquake Insurance Affordability Act of 2013".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds the following:

(1) Major earthquakes are likely in the United States. For example, the United States Geological Survey predicts that there is a 99.7 percent chance that a magnitude 6.7 earthquake will strike in California in the next 30 years and that there is a 46 percent chance that a magnitude 7.5 earthquake will strike in California in the next 30 years. Earthquakes can be caused by volcanic or tectonic events and result in destructive shaking of the earth, fires, landslides, volcanic eruptions, and tsunamis.

(2) Despite the known risk of earthquakes, relatively few homeowners have earthquake insurance. For example, in California, 88 percent of homes insured for fire do not have earthquake insurance. In the event of a catastrophic earthquake, the lack of homeowner earthquake-insurance coverage will slow recovery, create economic hardship, and increase the risk of mortgage and other credit defaults and ad-

versely affect the banking system of the United States.

(3) It is important that States improve the affordability, availability, and quality of earthquake insurance so that more homeowners will purchase coverage. For example, California has created the California Earthquake Authority to provide earthquake insurance to homeowners through private-sector insurers.

(4) It is a proper role of the Federal Government to help prepare and protect its citizens from catastrophes such as earthquakes and to facilitate consumer protection, victim assistance, and individual and community recovery, including financial recovery.

(b) PURPOSES.—The purposes of this Act are to establish a program—

(1) to promote the availability of private capital to provide liquidity and capacity to State earthquake insurance programs; and

(2) to expedite the payment of claims under State earthquake insurance programs and better assist the financial recovery from significant earthquakes by authorizing the Secretary of the Treasury to guarantee debt for such purposes.

SEC. 3. DEFINITIONS.

In this Act, the following definitions shall apply:

(1) COMMITMENT TO GUARANTEE.—The term ''commitment to guarantee'' means a commitment to make debt guarantees to an eligible State program pursuant to section 5.

(2) ELIGIBLE STATE PROGRAM.—The term ''eligible State program'' means a State program that, pursuant to section 4, is eligible to receive a debt guarantee under this Act.

(3) INSURED LOSS.—The term ''insured loss'' means any loss resulting from an earthquake or earthquake-related event that is determined by an eligible State program to be covered by insurance made available under that eligible State program.

(4) QUALIFYING ASSETS.—The term ''qualifying assets'' means the policyholder surplus of the eligible State program as stated in the most recent quarterly financial statement filed by the program with the domiciliary regulator of the program in the last quarter ending prior to an insured-loss triggering event or events.

(5) RESIDENTIAL PROPERTY INSURANCE.—The term ''residential property insurance'' means insurance coverage for—

(A) individually owned residential structures of not more than 4 dwelling units, individually owned condominium units, or individually owned mobile homes, and their contents, located in a State and used exclusively for residential purposes or a tenant's policy written to include personal contents of a residential unit located in the State, but shall not include—

(i) insurance for real property or its contents used for any commercial, industrial, or business purpose, except a structure of not more than 4 dwelling units rented for individual residential purposes; or

(ii) a policy that does not include any of the perils insured against in a standard fire policy or any earthquake policy; or

(B) commercial residential property, which includes property owned by a condominium association or its members, property owned by a cooperative association, or an apartment building.

(6) SECRETARY.—The term ''Secretary'' means the Secretary of the Treasury.

(7) STATE.—The term "State" means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the United States Virgin Islands, American Samoa, and any other territory or possession of the United States.

SEC. 4. ELIGIBLE STATE PROGRAMS.

(a) ELIGIBLE STATE PROGRAMS.—A State program shall be considered an eligible State program for purposes of this Act if the State program or other State entity authorized to make such determinations certifies to the Secretary, in accordance with the procedures established under subsection (b), that the State program complies with the following requirements:

(1) STATE PROGRAM DESIGN.—The State program—

(A) shall be established and authorized by State law as an earthquake insurance program that offers residential property insurance coverage for insured losses to property, contents, and additional living expenses; and

(B) may not require insurers to pool resources to provide property insurance coverage for earthquakes.

(2) OPERATION.—

(A) PUBLIC OFFICIALS.—A majority of the members of the governing body of the State program shall be public officials or appointed by public officials.

(B) STATE FINANCIAL INTEREST.—The State shall have a financial interest in the State program.

(C) REPAYMENT OF APPROPRIATED AMOUNTS.—If the State has at any time appropriated amounts from the State program's funds for any purpose other than payments for losses insured under the State program, or payments made in connection with any of the State program's authorized activities, the State shall have returned such amounts to the State fund, together with interest on such amounts.

(3) TAX STATUS.—The State program shall have received from the Secretary (or the Secretary's designee) a written determination, within the meaning of section 6110(b) of the Internal Revenue Code of 1986, that the State program either—

(A) constitutes an "integral part" of the State that has created it; or

(B) is otherwise exempt from Federal income taxation.

(4) EARNINGS.—The State program may not provide for any distribution of any part of any net profits of the State program to any insurer that participates in the State program.

(5) LOSS PREVENTION AND MITIGATION.—

(A) MITIGATION OF LOSSES.—The State program shall include provisions designed to encourage and support programs to mitigate losses for which the State insurance program was established to provide insurance.

(B) OPERATIONAL REQUIREMENTS.—The State program shall operate in a State—

(i) that has in effect and enforces, or within which the appropriate local governments have in effect and enforce, nationally recognized building, seismic-design, and safety codes and consensus-based standards; and

(ii) that has taken actions to establish an insurance rate structure that takes into account measures to mitigate insured losses.

(6) Requirements regarding coverage.—The State program—

(A) may not, except for charges or assessments related to post-event financing or bonding, involve cross-subsidization between any separate property-and-casualty insurance lines offered under the State program pursuant to paragraph (1);

(B) shall be subject to a requirement under State law that for earthquake insurance coverage made available under the State insurance program the premium rates charged on such insurance—

(i) shall be actuarially sound;

(ii) may not be excessive, inadequate, or unfairly discriminatory;

(iii) shall be established based on the best available scientific information for assessing the risk of earthquake frequency, severity, and loss; and

(iv) shall incorporate, and may not in the aggregate be less than, the sum of the modeled expected loss, risk financing costs, loss adjustment expense, and any other expenses necessary to operate the State program; and

(C) shall make available to all qualifying policyholders insurance coverage and mitigation services on a basis that is not unfairly discriminatory.

(b) ANNUAL CERTIFICATION.—The Secretary shall establish procedures for initial certification and annual recertification of a State program as an eligible State program.

SEC. 5. ESTABLISHMENT OF DEBT-GUARANTEE PROGRAM.

(a) AUTHORITY OF SECRETARY.—The Secretary is authorized and shall have the powers and authorities necessary—

(1) to guarantee, and to enter into commitments to guarantee, holders of debt against loss of principal or interest, or both, on any debt issued by eligible State programs for purposes of this Act; and

(2) to certify and recertify State catastrophe insurance programs that cover earthquake peril to become or remain eligible for the benefits of such a debt-guarantee program.

(b) LIMIT ON OUTSTANDING DEBT GUARANTEES.—The aggregate amount of debt covered by the Secretary's guarantees and commitments to guarantee for all eligible

State programs outstanding at any time shall not exceed $3,000,000,000, including interest.

(c) FUNDING.—

(1) APPROPRIATION OF FEDERAL PAYMENTS.—Subject to subsection (b), there are hereby appropriated, out of funds in the Treasury not otherwise appropriated, such sums as may be necessary to satisfy debt guarantee commitments extended to eligible State programs under this Act.

(2) CERTIFICATION FEE.—Upon certification or recertification as an eligible State program under section 4, a State program shall be charged a certification fee that the Secretary determines, at the time of certification or recertification, is sufficient to cover—

(A) applicable administrative costs arising from the certification or recertification, including all pre-certification costs and a proportional share of the costs arising from the administration of the program established under this Act, but in any event not to exceed one-half of 1 percent per annum of the aggregate principal amount of the debt for which the eligible State program is issued a guarantee commitment; and

(B) any probable losses on the aggregate principal amount of the debt for which the eligible State program is issued a guarantee commitment.

(3) RULE OF CONSTRUCTION.—Any funds expended or obligated by the Secretary for the payment of administrative expenses for conduct of the debt-guarantee program authorized by this Act shall be deemed appropriated at the time of such expenditure or obligation from the certification and recertification fees collected pursuant to paragraph (2).

(d) CONDITIONS FOR GUARANTEE ELIGIBILITY.—A debt guarantee under this section may be made only if the Secretary has issued a commitment to guarantee to a certified, eligible State program. The commitment to guarantee shall be in force for a period of 3 years from its initial issuance and may be extended by the Secretary for 1 year on each annual anniversary of the issuance of the commitment to guarantee. The commitment to guarantee and each extension of such commitment may be issued by the Secretary only if—

(1) the eligible State program submits to the Secretary a report setting forth, in such form and including such information as the Secretary shall re-

quire, how the eligible State program plans to repay guarantee-eligible debt it may incur;

(2) based on the eligible State program's report submitted pursuant to paragraph (1), the Secretary determines there is reasonable assurance that the eligible State program can meet its repayment obligation under such debt, by considering relevant criteria including—

(A) par amount of debt to be issued;

(B) use of debt proceeds;

(C) proposed debt structure;

(D) term of debt outstanding;

(E) ratio of premium income to expected debt service;

(F) review of recent quarterly financial statements; and

(G) review of any recent credit rating provided by a nationally recognized statistical rating organization, as defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a));

(3) the eligible State program enters into an agreement with the Secretary, as the Secretary shall require, that the eligible State program—

(A) will not use Federal funds of any kind or from any Federal source (including any disaster or other financial assistance, loan proceeds, and any other assistance or subsidy) to repay the debt;

(B) will, to the extent prudent, use any authority or capacity to surcharge policyholders or policies of coverage to contribute to repaying the debt guaranteed under this subsection; and

(C) will apply annually, except in years in which the debt is being repaid, an amount not less than 2 percent of the debt subject to the agreement toward a combination of—

(i) mitigation initiatives; and

(ii) public education regarding the risks of earthquakes and earthquake-related events;

(4) the commitment to guarantee specifies and requires the payment of the fees for debt guarantee coverage; and

(5) the maximum term of the debt specified in the commitment to guarantee does not exceed 30 years.

(e) MANDATORY ASSISTANCE FOR ELIGIBLE STATE PROGRAMS.—The Secretary shall, upon the request of an eligible State program and pursuant to a commitment to guarantee issued under subsection (d), provide a guarantee under subsection (f) for the eligible State program in the amount requested by the eligible State program.

(f) CATASTROPHE DEBT GUARANTEE.—A debt guarantee under this subsection for an eligible State program shall be subject to the following requirements:

(1) PRECONDITIONS.—The eligible State program shall demonstrate to the satisfaction of the Secretary that insured losses to the eligible State program arising from the event or events covered by the commitment to guarantee are likely to exceed 80 percent of the eligible State program's qualifying assets available to pay claims, as calculated on the date of the event and based on the eligible State program's most recent quarterly financial statement filed with its domiciliary regulator.

(2) USE OF FUNDS.—Proceeds of debt guaranteed under this section shall be used only to pay the costs of issuing debt and of securing or providing claim-payment capacity for paying the insured losses and loss adjustment expenses incurred by an eligible State program. Such amounts shall not be used for any other purpose.

(3) LIMIT ON GUARANTEE FOR EVENTS RELATING TO A SINGLE EARTHQUAKE.—The amount of a debt guarantee that an eligible State program receives to secure or provide claim-payment capacity for paying the insured losses and loss adjustment expenses from all events relating to a single earthquake may not be greater than $1,500,000,000.

SEC. 6. EFFECT OF GUARANTEE.

The issuance of any guarantee by the Secretary under this Act shall be conclusive evidence that—

(1) the guarantee has been properly obtained;

(2) the underlying debt qualified for such guarantee; and

(3) the guarantee is valid, legal, and enforceable.

SEC. 7. ASSESSMENT AT TIME OF GUARANTEE.

If the Secretary determines that the fees collected under section 5(c)(2) will not cover applicable administrative costs for, and probable losses on, a guaranteed obligation, the Secretary shall charge and collect a fee for each guarantee issued in an amount that the Secretary determines, at the time of issuance of the guarantee, is sufficient to cover such costs and probable losses.

SEC. 8. PAYMENT OF LOSSES.

(a) PAYMENT BY SECRETARY.—

(1) IN GENERAL.—The Secretary shall pay to the duly appointed paying agent or trustee (in this section referred to as the ''Fiscal Agent'') for an eligible State program that portion of the principal and interest on any debt guaranteed under this Act that becomes due for payment but is unpaid by the eligible State program as a result of the eligible State program having provided insufficient funds to the Fiscal Agent to make the payment.

(2) TIME OF PAYMENT.—The Secretary shall make a payment described in paragraph (1) on the later of—

(A) the date on which the principal or interest becomes due for payment; or

(B) the first business day after the date on which the Secretary receives notice that the eligible State program has failed to provide sufficient funds to the Fiscal Agent to make the payment.

(3) SUBROGATION OF RIGHTS.—Upon making a payment under this subsection, the Secretary shall be subrogated to all the rights of the ultimate recipient of the payment.

(4) RECOVERY FROM ELIGIBLE STATE PROGRAM.—The Secretary shall be entitled to recover

from an eligible State program the amount of any payments made by the Secretary pursuant to any guarantee entered into under this Act.

(b) ROLE OF THE ATTORNEY GENERAL.—The Attorney General shall take such action as may be appropriate to enforce any right accruing, and to collect any and all sums owing, to the United States as a result of the issuance of any guarantee under this Act.

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to preclude any forbearance for the benefit of the eligible State program which may be agreed upon by the parties to the guaranteed debt and approved by the Secretary, provided that budget authority for any resulting cost, as such term is defined under the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.), is available.

(d) RIGHT OF THE SECRETARY.—Notwithstanding any other provision of law relating to the acquisition, handling, or disposal of property by the United States, the Secretary shall have the right in the discretion of the Secretary to complete, recondition, reconstruct, renovate, repair, maintain, operate, or sell any property acquired by the Secretary pursuant to the provisions of this Act.

SEC. 9. FULL FAITH AND CREDIT.

The full faith and credit of the United States is pledged to the payment of all guarantees issued under this Act with respect to principal and interest.

SEC. 10. BUDGETARY IMPACT; COSTS.

For purposes of section 502(5) of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a(5)), the cost of guarantees to be issued under this Act shall be calculated by adjusting the discount rate in section 502(5)(E) of such Act for market risk.

SEC. 11. REGULATIONS.

The Secretary shall issue any regulations necessary to carry out the debt-guarantee program established under this Act.

SEC. 12. REPORTS.

(a) IN GENERAL.—Not later than 12 months after the date on which the Secretary issues a guarantee under section 5 for debt issued by an eligible State program, and annually thereafter, the eligible State program shall submit to the Secretary and to Congress a report, in a form prescribed by the Secretary, that contains the information required under subsection (b).

(b) CONTENTS.—A report under this section shall describe, with respect to the reporting year—

(1) the benefits that the eligible State program derived from the debt-guarantee; and

(2) the manner in which the eligible State program applied 2 percent of the guarantee amount for the purposes described in section 5(d)(3)(C).

(c) LIMITATION.—To the extent practicable, the Secretary shall limit the information required to be included in a report under this section to information that is otherwise publicly available.

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