

113TH CONGRESS
1ST SESSION

S. 1106

To improve the accuracy of mortgage underwriting used by Federal mortgage agencies by ensuring that energy costs are included in the underwriting process, to reduce the amount of energy consumed by homes, to facilitate the creation of energy efficiency retrofit and construction jobs, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 6, 2013

Mr. BENNET (for himself and Mr. ISAKSON) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To improve the accuracy of mortgage underwriting used by Federal mortgage agencies by ensuring that energy costs are included in the underwriting process, to reduce the amount of energy consumed by homes, to facilitate the creation of energy efficiency retrofit and construction jobs, 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 “Sensible Accounting
5 to Value Energy Act of 2013”.

1 **SEC. 2. DEFINITIONS.**

2 In this Act, the following definitions shall apply:

3 (1) COVERED AGENCY.—The term “covered
4 agency”—

5 (A) means—

6 (i) an executive agency, as that term
7 is defined in section 102 of title 31, United
8 States Code; and

9 (ii) any other agency of the Federal
10 Government; and

11 (B) includes any enterprise, as that term is
12 defined under section 1303 of the Federal
13 Housing Enterprises Financial Safety and
14 Soundness Act of 1992 (12 U.S.C. 4502).

15 (2) COVERED LOAN.—The term “covered loan”
16 means a loan secured by a home that is issued, in-
17 sured, purchased, or securitized by a covered agency.

18 (3) HOMEOWNER.—The term “homeowner”
19 means the mortgagor under a covered loan.

20 (4) MORTGAGEE.—The term “mortgagee”
21 means—

22 (A) an original lender under a covered loan
23 or the holder of a covered loan at the time at
24 which that mortgage transaction is con-
25 summated;

1 (B) any affiliate, agent, subsidiary, suc-
2 cessor, or assignee of an original lender under
3 a covered loan or the holder of a covered loan
4 at the time at which that mortgage transaction
5 is consummated;

6 (C) any servicer of a covered loan; and

7 (D) any subsequent purchaser, trustee, or
8 transferee of any covered loan issued by an
9 original lender.

10 (5) SECRETARY.—The term “Secretary” means
11 the Secretary of Housing and Urban Development.

12 (6) SERVICER.—The term “servicer” means the
13 person or entity responsible for the servicing of a
14 covered loan, including the person or entity who
15 makes or holds a covered loan if that person or enti-
16 ty also services the covered loan.

17 (7) SERVICING.—The term “servicing” has the
18 meaning given the term in section 6(i) of the Real
19 Estate Settlement Procedures Act of 1974 (12
20 U.S.C. 2605(i)).

21 **SEC. 3. FINDINGS AND PURPOSES.**

22 (a) FINDINGS.—Congress finds that—

23 (1) energy costs for homeowners are a signifi-
24 cant and increasing portion of their household budg-
25 ets;

1 (2) household energy use can vary substantially
2 depending on the efficiency and characteristics of
3 the house;

4 (3) expected energy cost savings are important
5 to the value of the house;

6 (4) the current test for loan affordability used
7 by most covered agencies, commonly known as the
8 “debt-to-income” test, is inadequate because it does
9 not take into account the expected energy cost sav-
10 ings for the homeowner of an energy efficient home;
11 and

12 (5) another loan limitation, commonly known as
13 the “loan-to-value” test, is tied to the appraisal,
14 which often does not adjust for efficiency features of
15 houses.

16 (b) PURPOSES.—The purposes of this Act are to—

17 (1) improve the accuracy of mortgage under-
18 writing by Federal mortgage agencies by ensuring
19 that energy cost savings are included in the under-
20 writing process as described below, and thus to re-
21 duce the amount of energy consumed by homes and
22 to facilitate the creation of energy efficiency retrofit
23 and construction jobs;

24 (2) require a covered agency to include the ex-
25 pected energy cost savings of a homeowner as a reg-

1 ular expense in the tests, such as the debt-to-income
2 test, used to determine the ability of the loan appli-
3 cant to afford the cost of homeownership for all loan
4 programs; and

5 (3) require a covered agency to include the
6 value home buyers place on the energy efficiency of
7 a house in tests used to compare the mortgage
8 amount to home value, taking precautions to avoid
9 double-counting and to support safe and sound lend-
10 ing.

11 **SEC. 4. ENHANCED ENERGY EFFICIENCY UNDERWRITING**
12 **CRITERIA.**

13 (a) IN GENERAL.—Not later than 1 year after the
14 date of enactment of this Act, the Secretary shall, in con-
15 sultation with the advisory group established in section
16 7(b), develop and issue guidelines for a covered agency to
17 implement enhanced loan eligibility requirements, for use
18 when testing the ability of a loan applicant to repay a cov-
19 ered loan, that account for the expected energy cost sav-
20 ings for a loan applicant at a subject property, in the man-
21 ner set forth in subsections (b) and (c).

22 (b) REQUIREMENTS TO ACCOUNT FOR ENERGY COST
23 SAVINGS.—The enhanced loan eligibility requirements
24 under subsection (a) shall require that, for all covered
25 loans for which an energy efficiency report is voluntarily

1 provided to the mortgagee by the mortgagor, the covered
2 agency and the mortgagee shall take into consideration the
3 estimated energy cost savings expected for the owner of
4 the subject property in determining whether the loan ap-
5 plicant has sufficient income to service the mortgage debt
6 plus other regular expenses. To the extent that a covered
7 agency uses a test such as a debt-to-income test that in-
8 cludes certain regular expenses, such as hazard insurance
9 and property taxes, the expected energy cost savings shall
10 be included as an offset to these expenses. Energy costs
11 to be assessed include the cost of electricity, natural gas,
12 oil, and any other fuel regularly used to supply energy to
13 the subject property.

14 (c) DETERMINATION OF ESTIMATED ENERGY COST
15 SAVINGS.—

16 (1) IN GENERAL.—The guidelines to be issued
17 under subsection (a) shall include instructions for
18 the covered agency to calculate estimated energy
19 cost savings using—

20 (A) the energy efficiency report;

21 (B) an estimate of baseline average energy
22 costs; and

23 (C) additional sources of information as
24 determined by the Secretary.

1 (2) REPORT REQUIREMENTS.—For the pur-
2 poses of paragraph (1), an energy efficiency report
3 shall—

4 (A) estimate the expected energy cost sav-
5 ings specific to the subject property, based on
6 specific information about the property;

7 (B) be prepared in accordance with the
8 guidelines to be issued under subsection (a);
9 and

10 (C) be prepared—

11 (i) in accordance with the Residential
12 Energy Service Network’s Home Energy
13 Rating System (commonly known as
14 “HERS”) by an individual certified by the
15 Residential Energy Service Network, un-
16 less the Secretary finds that the use of
17 HERS does not further the purposes of
18 this Act; or

19 (ii) by other methods approved by the
20 Secretary, in consultation with the Sec-
21 retary of Energy and the advisory group
22 established in section 7(b), for use under
23 this Act, which shall include a third-party
24 quality assurance procedure.

1 (3) USE BY APPRAISER.—If an energy effi-
2 ciency report is used under subsection (b), the en-
3 ergy efficiency report shall be provided to the ap-
4 praiser to estimate the energy efficiency of the sub-
5 ject property and for potential adjustments for en-
6 ergy efficiency.

7 (d) REQUIRED DISCLOSURE TO CONSUMER FOR A
8 HOME WITH AN ENERGY EFFICIENCY REPORT.—If an
9 energy efficiency report is used under subsection (b), the
10 guidelines to be issued under subsection (a) shall require
11 the mortgagee to—

12 (1) inform the loan applicant of the expected
13 energy costs as estimated in the energy efficiency re-
14 port, in a manner and at a time as prescribed by the
15 Secretary, and if practicable, in the documents deliv-
16 ered at the time of loan application; and

17 (2) include the energy efficiency report in the
18 documentation for the loan provided to the borrower.

19 (e) REQUIRED DISCLOSURE TO CONSUMER FOR A
20 HOME WITHOUT AN ENERGY EFFICIENCY REPORT.—If
21 an energy efficiency report is not used under subsection
22 (b), the guidelines to be issued under subsection (a) shall
23 require the mortgagee to inform the loan applicant in a
24 manner and at a time as prescribed by the Secretary, and

1 if practicable, in the documents delivered at the time of
2 loan application of—

3 (1) typical energy cost savings that would be
4 possible from a cost-effective energy upgrade of a
5 home of the size and in the region of the subject
6 property;

7 (2) the impact the typical energy cost savings
8 would have on monthly ownership costs of a typical
9 home;

10 (3) the impact on the size of a mortgage that
11 could be obtained if the typical energy cost savings
12 were reflected in an energy efficiency report; and

13 (4) resources for improving the energy effi-
14 ciency of a home.

15 (f) LIMITATIONS.—A covered agency shall not—

16 (1) modify existing underwriting criteria or
17 adopt new underwriting criteria that intentionally
18 negate or reduce the impact of the requirements or
19 resulting benefits that are set forth or otherwise de-
20 rived from the enhanced loan eligibility requirements
21 required under this section; or

22 (2) impose greater buy back requirements, cred-
23 it overlays, insurance requirements, including private
24 mortgage insurance, or any other material costs, im-
25 pediments, or penalties on covered loans merely be-

1 cause the loan uses an energy efficiency report or
2 the enhanced loan eligibility requirements required
3 under this section.

4 (g) **APPLICABILITY AND IMPLEMENTATION DATE.**—

5 Not later than 3 years after the date of enactment of this
6 Act, and before December 31, 2016, the enhanced loan
7 eligibility requirements required under this section shall
8 be implemented by each covered agency to—

9 (1) apply to any covered loan for the sale, or
10 refinancing of any loan for the sale, of any home;

11 (2) be available on any residential real property
12 (including individual units of condominiums and co-
13 operatives) that qualifies for a covered loan; and

14 (3) provide prospective mortgagees with suffi-
15 cient guidance and applicable tools to implement the
16 required underwriting methods.

17 **SEC. 5. ENHANCED ENERGY EFFICIENCY UNDERWRITING**
18 **VALUATION GUIDELINES.**

19 (a) **IN GENERAL.**—Not later than 1 year after the
20 date of enactment of this Act, the Secretary shall—

21 (1) in consultation with the Federal Financial
22 Institutions Examination Council and the advisory
23 group established in section 7(b), develop and issue
24 guidelines for a covered agency to determine the
25 maximum permitted loan amount based on the value

1 of the property for all covered loans made on prop-
2 erties with an energy efficiency report that meets the
3 requirements of section 4(c)(2); and

4 (2) in consultation with the Secretary of En-
5 ergy, issue guidelines for a covered agency to deter-
6 mine the estimated energy savings under subsection
7 (c) for properties with an energy efficiency report.

8 (b) REQUIREMENTS.—The enhanced energy effi-
9 ciency underwriting valuation guidelines required under
10 subsection (a) shall include—

11 (1) a requirement that if an energy efficiency
12 report that meets the requirements of section 4(c)(2)
13 is voluntarily provided to the mortgagee, such report
14 shall be used by the mortgagee or covered agency to
15 determine the estimated energy savings of the sub-
16 ject property; and

17 (2) a requirement that the estimated energy
18 savings of the subject property be added to the ap-
19 praised value of the subject property by a mortgagee
20 or covered agency for the purpose of determining the
21 loan-to-value ratio of the subject property, unless the
22 appraisal includes the value of the overall energy ef-
23 ficiency of the subject property, using methods to be
24 established under the guidelines issued under sub-
25 section (a).

1 (c) DETERMINATION OF ESTIMATED ENERGY SAV-
2 INGS.—

3 (1) AMOUNT OF ENERGY SAVINGS.—The
4 amount of estimated energy savings shall be deter-
5 mined by calculating the difference between the esti-
6 mated energy costs for the average comparable
7 houses, as determined in guidelines to be issued
8 under subsection (a), and the estimated energy costs
9 for the subject property based upon the energy effi-
10 ciency report.

11 (2) DURATION OF ENERGY SAVINGS.—The du-
12 ration of the estimated energy savings shall be based
13 upon the estimated life of the applicable equipment,
14 consistent with the rating system used to produce
15 the energy efficiency report.

16 (3) PRESENT VALUE OF ENERGY SAVINGS.—
17 The present value of the future savings shall be dis-
18 counted using the average interest rate on conven-
19 tional 30-year mortgages, in the manner directed by
20 guidelines issued under subsection (a).

21 (d) ENSURING CONSIDERATION OF ENERGY EFFI-
22 CIENT FEATURES.—Section 1110 of the Financial Institu-
23 tions Reform, Recovery, and Enforcement Act of 1989 (12
24 U.S.C. 3339) is amended—

1 (1) in paragraph (2), by striking “; and” and
2 inserting a semicolon; and

3 (2) in paragraph (3), by striking the period at
4 the end and inserting “; and” and inserting after
5 paragraph (3) the following:

6 “(4) that State certified and licensed appraisers
7 have timely access, whenever practicable, to informa-
8 tion from the property owner and the lender that
9 may be relevant in developing an opinion of value re-
10 garding the energy- and water-saving improvements
11 or features of a property, such as—

12 “(A) labels or ratings of buildings;

13 “(B) installed appliances, measures, sys-
14 tems or technologies;

15 “(C) blueprints;

16 “(D) construction costs;

17 “(E) financial or other incentives regard-
18 ing energy- and water-efficient components and
19 systems installed in a property;

20 “(F) utility bills;

21 “(G) energy consumption and benchmark-
22 ing data; and

23 “(H) third-party verifications or represen-
24 tations of energy and water efficiency perform-
25 ance of a property, observing all financial pri-

1 vacy requirements adhered to by certified and
2 licensed appraisers, including section 501 of the
3 Gramm-Leach-Bliley Act (15 U.S.C. 6801).

4 Unless a property owner consents to a lender, an ap-
5 praiser, in carrying out the requirements of para-
6 graph (4), shall not have access to the commercial
7 or financial information of the owner that is privi-
8 leged or confidential.”.

9 (e) TRANSACTIONS REQUIRING STATE CERTIFIED
10 APPRAISERS.—Section 1113 of the Financial Institutions
11 Reform, Recovery, and Enforcement Act of 1989 (12
12 U.S.C. 3342) is amended—

13 (1) in paragraph (1), by inserting before the
14 semicolon the following: “, or any real property on
15 which the appraiser makes adjustments using an en-
16 ergy efficiency report”; and

17 (2) in paragraph (2), by inserting after “atypi-
18 cal” the following: “, or an appraisal on which the
19 appraiser makes adjustments using an energy effi-
20 ciency report.”.

21 (f) PROTECTIONS.—

22 (1) AUTHORITY TO IMPOSE LIMITATIONS.—The
23 guidelines to be issued under subsection (a) shall in-
24 clude such limitations and conditions as determined
25 by the Secretary to be necessary to protect against

1 meaningful under or over valuation of energy cost
2 savings or duplicative counting of energy efficiency
3 features or energy cost savings in the valuation of
4 any subject property that is used to determine a
5 loan amount.

6 (2) ADDITIONAL AUTHORITY.—At the end of
7 the 7-year period following the implementation of
8 enhanced eligibility and underwriting valuation re-
9 quirements under this Act, the Secretary may mod-
10 ify or apply additional exceptions to the approach
11 described in subsection (b), where the Secretary
12 finds that the unadjusted appraisal will reflect an
13 accurate market value of the efficiency of the subject
14 property or that a modified approach will better re-
15 flect an accurate market value.

16 (g) APPLICABILITY AND IMPLEMENTATION DATE.—
17 Not later than 3 years after the date of enactment of this
18 Act, and before December 31, 2016, each covered agency
19 shall implement the guidelines required under this section,
20 which shall—

21 (1) apply to any covered loan for the sale, or
22 refinancing of any loan for the sale, of any home;
23 and

1 (2) be available on any residential real property,
2 including individual units of condominiums and co-
3 operatives, that qualifies for a covered loan.

4 **SEC. 6. MONITORING.**

5 Not later than 1 year after the date on which the
6 enhanced eligibility and underwriting valuation require-
7 ments are implemented under this Act, and every year
8 thereafter, each covered agency with relevant activity shall
9 issue and make available to the public a report that—

10 (1) enumerates the number of covered loans of
11 the agency for which there was an energy efficiency
12 report, and that used energy efficiency appraisal
13 guidelines and enhanced loan eligibility require-
14 ments; and

15 (2) includes the default rates and rates of fore-
16 closures for each category of loans.

17 **SEC. 7. RULEMAKING.**

18 (a) IN GENERAL.—The Secretary shall prescribe reg-
19 ulations to carry out this Act, in consultation with the Sec-
20 retary of Energy and the advisory group established in
21 subsection (b), which may contain such classifications, dif-
22 ferentiations, or other provisions, and may provide for
23 such proper implementation and appropriate treatment of
24 different types of transactions, as the Secretary deter-
25 mines are necessary or proper to effectuate the purposes

1 of this Act, to prevent circumvention or evasion thereof,
2 or to facilitate compliance therewith.

3 (b) ADVISORY GROUP.—To assist in carrying out this
4 Act, the Secretary shall establish an advisory group, con-
5 sisting of individuals representing the interests of—

6 (1) mortgage lenders;

7 (2) appraisers;

8 (3) energy raters and residential energy con-
9 sumption experts;

10 (4) energy efficiency organizations;

11 (5) real estate agents;

12 (6) home builders and remodelers;

13 (7) State energy officials; and

14 (8) others as determined by the Secretary.

15 **SEC. 8. ADDITIONAL STUDY.**

16 (a) IN GENERAL.—Not later than 18 months after
17 the date of enactment of this Act, the Secretary shall re-
18 convene the advisory group established in section 7(b), in
19 addition to water and locational efficiency experts, to ad-
20 vise the Secretary on the implementation of the enhanced
21 energy efficiency underwriting criteria established in sec-
22 tions 4 and 5.

23 (b) RECOMMENDATIONS.—The advisory group estab-
24 lished in section 7(b) shall provide recommendations to the
25 Secretary on any revisions or additions to the enhanced

1 energy efficiency underwriting criteria deemed necessary
2 by the group, which may include alternate methods to bet-
3 ter account for home energy costs and additional factors
4 to account for substantial and regular costs of homeowner-
5 ship such as location-based transportation costs and water
6 costs. The Secretary shall forward any legislative rec-
7 ommendations from the advisory group to Congress for
8 its consideration.

○