

111TH CONGRESS
1ST SESSION

H. R. 4014

To establish a program to provide guarantees for debt issued by State catastrophe insurance programs to assist in financial recovery from natural catastrophes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 4, 2009

Ms. LORETTA SANCHEZ of California introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To establish a program to provide guarantees for debt issued by State catastrophe insurance programs to assist in financial recovery from natural catastrophes.

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 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Catastrophe Obligation Guarantee Act of 2009”.

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

- Sec. 1. Short title.
- Sec. 2. Congressional findings.
- Sec. 3. Establishment of debt guarantee program.
- Sec. 4. Eligible State programs.

Sec. 5. Catastrophic debt guarantees.

Sec. 6. Effect of guarantee.

Sec. 7. Maximum limitation on outstanding guarantees under program.

Sec. 8. Payment of losses.

Sec. 9. Funding for payments of guarantees.

Sec. 10. Definitions.

1 **SEC. 2. CONGRESSIONAL FINDINGS.**

2 The Congress finds that—

3 (1) the United States needs to take action, and
4 support actions taken by States, to be better pre-
5 pared for and better protected from natural catas-
6 trophes;

7 (2) the hurricane seasons of 2004, 2005, and
8 2008 were startling reminders of both the human
9 and economic devastation that natural catastrophes
10 can cause;

11 (3) if the deadly 1900 Galveston hurricane were
12 to occur again, it could cause over \$36,000,000,000
13 in insured losses;

14 (4) if the 1906 San Francisco earthquake and
15 fire were to occur again, it could cause over
16 \$400,000,000,000 in insured losses;

17 (5) if a Category 5 hurricane were to hit
18 Miami, it could cause over \$50,000,000,000 in in-
19 sured loss;

20 (6) if the 1938 Long Island Express Hurricane
21 were to occur again, it could cause over
22 \$30,000,000,000 in insured losses, and if a hurri-

1 cane that powerful were to hit Manhattan directly it
2 could cause over \$150,000,000,000 in insured losses
3 and cause irreparable harm to our Nation's econ-
4 omy;

5 (7) the inability of private insurers to build ade-
6 quate capital in a short amount of time and the re-
7 sulting lack of sufficient insurance capacity threaten
8 to increase the number of uninsured residential
9 properties, which, in turn, will increase the risk of
10 mortgage and other credit defaults and increase the
11 strain on the Nation's banking system;

12 (8) it is appropriate that efforts to improve in-
13 surance availability be designed and implemented at
14 the State level, but even active and experienced
15 State catastrophe insurance programs struggle with
16 issues of capital adequacy and financial strength;

17 (9) some States have acted to ensure the con-
18 tinued availability or affordability, or both, of resi-
19 dential property insurance for their residents;

20 (10) while State catastrophe insurance pro-
21 grams may be well designed and adequate to cover
22 insured losses from most natural disasters, a small
23 but significant number of catastrophic events are
24 likely to exceed the combined financial capacity of

1 such State programs and the local insurance mar-
2 kets;

3 (11) the Government Accountability Office has
4 found that, of the approximately \$90 billion in Fed-
5 eral emergency appropriations in the wake of the
6 2005 hurricanes, approximately \$26 billion was used
7 by the Federal Emergency Management Agency, the
8 Small Business Administration, and the Department
9 of Housing and Urban Development to make pay-
10 ments to homeowners or renters who lacked ade-
11 quate insurance; and

12 (12) the recent and historic turmoil in the fi-
13 nancial markets calls into question the ability of
14 even the most creditworthy State catastrophe insur-
15 ance programs to secure adequate financing fol-
16 lowing a catastrophic event.

17 **SEC. 3. ESTABLISHMENT OF DEBT GUARANTEE PROGRAM.**

18 The Secretary of the Treasury shall carry out a pro-
19 gram under this Act to guarantee, and to enter into com-
20 mitments to guarantee, holders of debt obligations issued
21 by eligible State programs against loss of principal or in-
22 terest on such obligations, or both.

23 **SEC. 4. ELIGIBLE STATE PROGRAMS.**

24 (a) REQUIREMENTS.—A State program shall be con-
25 sidered an “eligible State program” for purposes of this

1 Act only if the State program, or other State entity au-
2 thorized to make such determinations, certifies to the Sec-
3 retary, in accordance with the procedures established pur-
4 suant to subsection (b), that the State program complies
5 with the following requirements:

6 (1) PROGRAM DESIGN.—The State program
7 shall be established and authorized by State law—

8 (A) as an insurance program that—

9 (i) offers residential property insur-
10 ance coverage for insured losses to prop-
11 erty, contents, and additional living ex-
12 penses; and

13 (ii) is not a State program that re-
14 quires insurers to pool resources to provide
15 property insurance coverage for covered
16 perils; or

17 (B) as a reinsurance program that—

18 (i) is designed to improve private in-
19 surance markets; and

20 (ii) offers residential property insur-
21 ance coverage for insured losses to prop-
22 erty, contents, and additional living ex-
23 penses because of a finding by the State
24 insurance commissioner or other State en-
25 tity authorized to make such a determina-

1 tion that such State program is necessary
2 in order to provide for the continued avail-
3 ability of such insurance coverage for all
4 residents of the State.

5 (2) PROGRAM OPERATION.—The State program
6 shall meet the following requirements:

7 (A) GOVERNING BODY.—A majority of the
8 members of the governing body of the State
9 program shall be public officials or appointed
10 by public officials.

11 (B) FINANCIAL INTEREST.—The State
12 shall have a financial interest in the State pro-
13 gram.

14 (C) PROGRAM FUNDS.—If the State has at
15 any time appropriated amounts from the State
16 program's funds for any purpose other than
17 payments for losses insured under the State
18 program, or payments made in connection with
19 any of the State program's authorized activi-
20 ties, the State shall have returned such
21 amounts to the State fund, together with inter-
22 est on such amounts.

23 (3) TAX STATUS.—The State program shall
24 have received from the Secretary (or the Secretary's
25 designee) a written determination, within the mean-

1 ing of section 6110(b) of the Internal Revenue Code
2 of 1986, that the State program—

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

5 (B) is otherwise exempt from Federal in-
6 come taxation.

7 (4) COVERED PERILS.—

8 (A) IN GENERAL.—The State program
9 shall insure or reinsure losses that are proxi-
10 mately caused by any of the following perils:

11 (i) Earthquakes.

12 (ii) Perils ensuing from earthquakes,
13 including fire and tsunamis.

14 (iii) Tropical cyclones having max-
15 imum sustained winds of at least 74 miles
16 per hour, including hurricanes and ty-
17 phoons.

18 (iv) Tornadoes.

19 (v) Volcanic eruptions.

20 (vi) Catastrophic winter storms.

21 (vii) Hail.

22 (viii) Any other natural catastrophe
23 (not including any flood) insured or rein-
24 sured under the State program.

1 (B) AUTHORITY OF SECRETARY TO DE-
2 FINE.—The Secretary shall, by regulation, de-
3 fine the natural catastrophe perils under this
4 subsection.

5 (5) PREVENTION AND MITIGATION.—The State
6 program shall include provisions designed to encour-
7 age and support programs to mitigate losses from
8 natural catastrophes for which the State insurance
9 or reinsurance program was established to provide
10 insurance coverage.

11 (6) ACTUARIAL PREMIUM RATES.—The State
12 program shall be subject to a requirement under
13 State law that, for any insurance coverage made
14 available under the State insurance program or for
15 any reinsurance coverage for such insurance cov-
16 erage made available under the State reinsurance
17 program, the premium rates charged shall be actu-
18 arially sound or actuarially indicated.

19 (b) CERTIFICATION AND RECERTIFICATION.—The
20 Secretary shall establish procedures for initial certification
21 and annual recertification of State programs as eligible
22 State programs.

23 **SEC. 5. CATASTROPHIC DEBT GUARANTEES.**

24 (a) ELIGIBILITY FOR GUARANTEE.—A guarantee
25 under the program under this Act of the debt of an eligible

1 State program may be issued only if the Secretary has
2 issued a commitment to guarantee such debt to such eligi-
3 ble State program. The commitment to guarantee shall
4 have a duration of three years and may be extended by
5 the Secretary for a period of one year on each annual an-
6 niversary of the issuance of the commitment to guarantee.
7 The commitment to guarantee and each extension of such
8 commitment may be issued by the Secretary only if the
9 Secretary determines, based on information provided by
10 the eligible State program that the Secretary shall require,
11 that there is reasonable assurance that the eligible State
12 program can meet its repayment obligation under the
13 debt.

14 (b) REQUIRED AMOUNT OF INSURED LOSSES.—The
15 Secretary may not issue a guarantee under the program
16 under this Act for any debt obligations of an eligible State
17 program unless the eligible State program demonstrates
18 to the satisfaction of the Secretary that insured losses to
19 the eligible State program that arise from the event or
20 events of covered perils and that are covered by the com-
21 mitment to guarantee are likely to exceed the cash re-
22 sources of the eligible State program available on the date
23 of the occurrence of the event.

24 (c) LIMITATION ON AMOUNT OF GUARANTEES.—

1 (1) IN GENERAL.—Except as provided in para-
2 graph (2), the aggregate principal amount of debt of
3 an eligible State program guaranteed following an
4 event or events referred to in subsection (a) may not
5 exceed the amount by which the insured losses ex-
6 pected to be sustained by the State program as a re-
7 sult of such event or events exceed 80 percent of the
8 qualifying assets of the eligible State program as
9 stated in the most recent quarterly financial state-
10 ment filed with its domiciliary regulator before the
11 occurrence of event or events.

12 (2) STATE PROGRAMS NOT FILING QUARTERLY
13 STATEMENTS.—In the case of any eligible State pro-
14 gram that is not required to file quarterly financial
15 statements with its domiciliary regulator, the aggre-
16 gate principal amount of debt guaranteed may not
17 exceed the amount by which insured losses sustained
18 by the State program as a result of such event or
19 events exceed 80 percent of the unrestricted net as-
20 sets as stated in the annual financial statement for
21 the program’s fiscal year ending immediately prior
22 to the event or events.

23 (d) USE OF FUNDS.—Amounts of debt of an eligible
24 State program that are guaranteed under this section shall
25 be used only to pay the insured losses and loss adjustment

1 expenses incurred by the eligible State program. Such
2 amounts shall not be used for any other purpose.

3 **SEC. 6. EFFECT OF GUARANTEE.**

4 (a) IN GENERAL.—The issuance of any guarantee
5 under the program under this Act by the Secretary shall
6 be conclusive evidence that—

- 7 (1) the guarantee has been properly obtained;
8 (2) the underlying debt qualified for such guar-
9 antee; and
10 (3) the guarantee is valid, legal, and enforce-
11 able.

12 (b) FULL FAITH AND CREDIT.—The full faith and
13 credit of the United States is pledged to the payment of
14 all guarantees issued under the program under this Act
15 with respect to principal and interest of the debt guaran-
16 teed.

17 **SEC. 7. MAXIMUM LIMITATION ON OUTSTANDING GUARAN-**
18 **TEES UNDER PROGRAM.**

19 The aggregate principal amount of debt obligations
20 for which guarantees under the program under this Act
21 are outstanding may not at any time exceed—

- 22 (1) with respect to eligible State programs that
23 cover earthquake perils, \$5,000,000,000; and
24 (2) with respect to eligible State programs that
25 cover all other perils, \$20,000,000,000.

1 **SEC. 8. PAYMENT OF LOSSES.**

2 (a) IN GENERAL.—If any portion of the principal of
3 or interest on any debt obligation guaranteed under this
4 Act becomes due for payment but is unpaid by the eligible
5 State program issuing such obligation as a result of such
6 program having provided insufficient funds to the duly ap-
7 pointed paying agent or trustee (in this section referred
8 to as the “fiscal agent”) for the eligible State program,
9 the Secretary shall pay to the fiscal agent an amount equal
10 to such portion.

11 (b) TIMING.—The Secretary shall make such pay-
12 ments on the later of—

13 (1) the date such principal or interest becomes
14 due for payment; or

15 (2) the first business day after the day on
16 which the Secretary receives notice, in such form
17 and manner as the Secretary may require, of failure
18 by the eligible State program to provide sufficient
19 funds to the fiscal agent to make such payments.

20 (c) SUBROGATION.—Upon making such payment, the
21 Secretary shall be subrogated to all the rights of the ulti-
22 mate recipient of the payment. The Secretary shall be en-
23 titled to recover from the eligible State program the
24 amount of any payments made pursuant to any guarantee
25 entered into under this Act.

1 (d) **ROLE OF THE ATTORNEY GENERAL.**—The Attor-
2 ney General will take such action as may be appropriate
3 to enforce any right accruing to the United States as a
4 result of the issuance of any guarantee under this Act.

5 (e) **FORBEARANCE.**—Nothing in this section may be
6 construed to preclude any forbearance for the benefit of
7 the eligible State program that is agreed to by the parties
8 to any debt obligation guaranteed under this Act and is
9 approved by the Secretary, subject to the availability of
10 budget authority for any resulting costs (as such term is
11 defined in section 502 of the Federal Credit Reform Act
12 of 1990 (2 U.S.C. 661a)).

13 (f) **AUTHORITY OF SECRETARY.**—Notwithstanding
14 any other provision of law relating to the acquisition, han-
15 dling, or disposal of property by the United States, the
16 Secretary may, in the discretion of the Secretary, com-
17 plete, recondition, reconstruct, renovate, repair, maintain,
18 operate, or sell any property acquired by the Secretary
19 pursuant to the provisions of this Act.

20 **SEC. 9. FUNDING FOR PAYMENTS OF GUARANTEES.**

21 (a) **APPROPRIATIONS.**—There are hereby appro-
22 priated, out of funds in the Treasury not otherwise appro-
23 priated, such sums as may be necessary to satisfy debt
24 guarantee commitments extended to eligible State pro-
25 grams under this Act and for the payment of administra-

1 tive expenses for conduct of the guarantee program au-
2 thorized by this Act.

3 (b) BUDGETARY IMPACT.—For purposes of section
4 502(5) of the Federal Credit Reform Act of 1990 (2
5 U.S.C. 661a(5)), the cost of guarantees issued under this
6 Act shall be calculated by adjusting the discount rate in
7 section 502(5)(E) of such Act for government risk.

8 **SEC. 10. DEFINITIONS.**

9 In this Act, the following definitions shall apply:

10 (1) COMMITMENT TO GUARANTEE.—The term
11 “commitment to guarantee” means a commitment to
12 make debt guarantees to an eligible State program,
13 pursuant to subsection 5(a).

14 (2) COVERED PERILS.—The term “covered
15 peril” means a natural catastrophe peril specified in
16 section 4(a)(4).

17 (3) INSURED LOSS.—The term “insured loss”
18 means any loss resulting from a covered peril that
19 is determined by an eligible State program as being
20 covered by insurance or reinsurance made available
21 under that eligible State program.

22 (4) QUALIFYING ASSETS.—The term “quali-
23 fying assets” means, with respect to an eligible State
24 program, the policyholder surplus of the State pro-
25 gram as stated in the most recent quarterly financial

1 statement filed by the program with the domiciliary
2 regulator of the program for the last quarter ending
3 before the event or events.

4 (5) RESIDENTIAL PROPERTY INSURANCE.—The
5 term “residential property insurance” means, with
6 respect to an eligible State program, the following
7 types of insurance coverage:

8 (A) INDIVIDUALLY OWNED RESIDENTIAL
9 STRUCTURES.—

10 (i) IN GENERAL.—(I) Insurance cov-
11 erage for individually owned residential
12 structures of not more than 4 dwelling
13 units, individually owned condominium
14 units, or individually owned mobile homes,
15 and the contents of any such units or
16 homes, that are—

17 (aa) located in the State;

18 and

19 (bb) used exclusively for res-
20 idential purposes; or

21 (II) a tenant’s policy written to in-
22 clude personal contents of a residential
23 unit located in the State.

24 (ii) EXCLUSIONS.—Such term shall
25 not include—

1 (I) insurance for real property or
2 its contents used for any commercial,
3 industrial, or business purpose, except
4 a structure of not more than 4 dwell-
5 ing units rented for individual resi-
6 dential purposes; and

7 (II) a policy that does not include
8 any of the perils insured against in a
9 standard fire policy or any of the per-
10 ils enumerated in section 4(a)(4).

11 (B) COMMERCIAL RESIDENTIAL PROP-
12 erties.—Insurance coverage for commercial
13 residential properties, including properties
14 owned by a condominium association or its
15 members, properties owned by a cooperative as-
16 sociation, and apartment buildings.

17 (6) SECRETARY.—The term “Secretary” means
18 the Secretary of the Treasury.

○