

112TH CONGRESS
1ST SESSION

H. R. 1755

To enable Federal and State chartered banks and thrifts to meet the credit needs of the Nation's home builders, and to provide liquidity and ensure stable credit for meeting the Nation's need for new homes.

IN THE HOUSE OF REPRESENTATIVES

MAY 5, 2011

Mr. GARY G. MILLER of California (for himself, Mr. MILLER of North Carolina, Mr. TIBERI, Mr. ROSS of Florida, Mr. HANNA, Mr. WILSON of South Carolina, Mrs. BLACK, Mr. ROKITA, Mr. JONES, Mr. MARCHANT, Mr. STEARNS, Mr. SAM JOHNSON of Texas, Mr. RIBBLE, Mr. LUETKEMEYER, Mr. DUNCAN of Tennessee, Mr. MANZULLO, Mr. MULVANEY, Mr. BACA, Mrs. McMORRIS RODGERS, Mr. CALVERT, Mr. PRICE of North Carolina, Mr. KISSELL, Mr. SIRES, Mr. PIERLUISI, Mr. SCHRADER, Mr. RIGELL, Mr. MILLER of Florida, Mr. GOWDY, Mr. GENE GREEN of Texas, Mr. AL GREEN of Texas, and Mr. DOGGETT) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To enable Federal and State chartered banks and thrifts to meet the credit needs of the Nation's home builders, and to provide liquidity and ensure stable credit for meeting the Nation's need for new homes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Home Construction
3 Lending Regulatory Improvement Act of 2011”.

4 **SEC. 2. PURPOSE.**

5 It is the purpose of this Act to—

6 (1) immediately provide authority and guidance
7 that Federal and State bank regulators can use to
8 ensure that Federal and State chartered banks and
9 thrifts that provide financing to America’s home
10 builders are permitted to make loans, provide ongoing
11 liquidity, and ensure stable financing to such
12 home builders; and

13 (2) enable Federal and State chartered banks
14 and thrifts to provide initial and ongoing credit to
15 America’s home builders to aid in restoring liquidity
16 to the home building sector and to restore vitality to
17 the United States residential housing market.

18 **SEC. 3. COORDINATED RULEMAKING.**

19 (a) INITIATION OF PROCEEDINGS.—Not later than
20 90 days after the enactment of this Act, the appropriate
21 Federal banking agencies shall initiate a coordinated rule-
22 making with respect to financial institutions under their
23 respective jurisdictions that make real estate loans to
24 home builders. Such rulemaking shall provide for the fol-
25 lowing:

1 (1) ELIMINATION OF THE 100 PERCENT OF
2 BANK CAPITAL MEASUREMENT.—

3 (A) LOAN ORIGINATION.—If any qualified
4 financial institution is holding real estate loans
5 in its lending portfolio that in the aggregate
6 represent 100 percent or more of its total cap-
7 ital, the appropriate Federal banking agency
8 shall not prohibit any such institution from con-
9 tinuing to make such loans to home builders.

10 (B) LENDING DECISIONS.—The appro-
11 priate Federal banking agency shall not prevent
12 a qualified financial institution from making a
13 real estate loan to a home builder that has a
14 viable project.

15 (C) QUALIFIED FINANCIAL INSTITUTION
16 DEFINED.—For purposes of this paragraph, the
17 term “qualified financial institution” means a
18 financial institution that received, in the most
19 recent examination of the institution, a
20 CAMEL composite rating of 1, 2, or 3 under
21 the Uniform Financial Institutions Rating Sys-
22 tem.

23 (2) REALISTIC MARKET BASED APPRAISALS.—

24 (A) VALUATION STANDARD.—The appro-
25 priate Federal banking agency shall require

1 that entities used by financial institutions to as-
2 sess the value of collateral, with respect to a
3 real estate loan, associated with any viable
4 project in such institution's lending portfolio
5 utilize an as completed valuation to make such
6 an assessment.

7 (B) ARMS LENGTH TRANSACTIONS.—The
8 appropriate Federal banking agency shall re-
9 quire that entities used by financial institutions
10 to assess or review underwriting standards and
11 collateral values for real estate loans made by
12 such institutions after the date of the enact-
13 ment of this Act use comparable sales involving
14 arms length transactions to make such an as-
15 sessment or review.

16 (3) PROHIBITION ON COMPELLING LENDERS TO
17 CALL OR CURTAIL LOANS IN GOOD STANDING.—

18 (A) HOME BUILDERS IN GOOD STAND-
19 ING.—The appropriate Federal banking agency
20 shall not compel a financial institution to call or
21 curtail a real estate loan of a home builder that
22 is in good standing.

23 (B) MAXIMUM MARKET VALUATION.—

24 (i) IN GENERAL.—The appropriate
25 Federal banking agency shall, in the case

1 that a home builder is in good standing on
2 a real estate loan but the home builder's
3 collateral, with respect to that loan, has
4 decreased in value based on an as com-
5 pleted valuation, permit a financial institu-
6 tion to work with such home builder to re-
7 alize the maximum current market valu-
8 ation of such collateral using workout
9 methods or other appropriate means.

10 (ii) PERIOD OF WORKOUT METH-
11 ODS.—Workout methods may be utilized
12 up to a 24-month period following the
13 issuance of final regulations under sub-
14 section (c). In no case shall any real estate
15 loan be required to be charged off until the
16 financial institution holding such loan has
17 worked in good faith to exhaust all work-
18 out methods or other appropriate means.

19 (C) RECLASSIFICATION OF LOANS.—The
20 appropriate Federal banking agency shall not
21 require a financial institution to reclassify any
22 real estate loan in this paragraph on such insti-
23 tution's balance sheet, unless there is a signifi-
24 cant reason under Financial Accounting Stand-

1 ards Board Accounting Standards Codification
2 310–10–35–55 or 310–10–35–57.

3 (4) WAITING PERIOD.—If the enactment of
4 paragraphs 2 or 3 of this subsection helps to im-
5 prove a financial institution’s CAMEL composite
6 rating under the Uniform Financial Institutions
7 Rating System from a 4 or 5 to a 1, 2, or 3 in such
8 institution’s next examination that begins after the
9 date that final regulations are issued pursuant to
10 subsection (c), such institution’s improved rating
11 shall take effect no earlier than 24 months after
12 such rating was received.

13 (b) COORDINATION, CONSISTENCY, AND COM-
14 PARABILITY.—Each of the agencies with authorities re-
15 ferred to in subsection (a) shall consult and coordinate
16 with the other such agencies and authorities for the pur-
17 pose of assuring, to the extent possible, that the regula-
18 tions by each such agency and authority are consistent
19 and comparable with those prescribed by the other such
20 agencies and authorities.

21 (c) DEADLINE.—Not later than 6 months after the
22 enactment of this Act, each of the agencies with authori-
23 ties referred to in subsection (a) shall issue final regula-
24 tions to implement rules issued under this Act.

1 (d) AGENCY AUTHORITY.—The rules issued under
2 this Act shall be enforced by the appropriate Federal
3 banking agencies with respect to financial institutions
4 under their respective jurisdictions.

5 (e) EFFECT ON STATE LAW.—The rules issued under
6 this Act shall not supercede the law of any State except
7 to the extent that such law is inconsistent with such rule,
8 and then only to the extent of the inconsistency.

9 **SEC. 4. DEFINITIONS.**

10 In this Act:

11 (1) APPROPRIATE FEDERAL BANKING AGEN-
12 CY.—The term “appropriate Federal banking agen-
13 cy” has the same meaning as is given such term in
14 section 3(q) of the Federal Deposit Insurance Act
15 (12 U.S.C. 1813(q)).

16 (2) ARMS LENGTH TRANSACTION.—

17 (A) IN GENERAL.—The term “arms length
18 transaction” means a negotiated real estate
19 transaction between a buyer and seller in which
20 such buyer and seller act independently of each
21 other.

22 (B) TRANSACTIONS EXCLUDED.—Such
23 term shall not include any transaction involving
24 a short sale or foreclosed property or any other
25 distressed real property.

1 (3) AS COMPLETED VALUATION.—The term “as
2 completed valuation” means the estimated market
3 value of collateral after the full completion and ab-
4 sorption of the development and construction associ-
5 ated with the highest and best use of the collateral.

6 (4) FINANCIAL INSTITUTION.—The term “fi-
7 nancial institution” means an entity regulated by,
8 and under the supervision of, any appropriate Fed-
9 eral banking agency.

10 (5) GOOD STANDING.—The term “good stand-
11 ing” means making payments on a real estate loan
12 in accordance with the agreement of such loan.

13 (6) REAL ESTATE LOAN.—The term “real es-
14 tate loan” means any indebtedness (secured by a mort-
15 gage, deed of trust, or other equivalent consensual
16 security interest on real property) acquired for the
17 purpose of purchasing or improving real property,
18 including indebtedness acquired for—

19 (A) land acquisition;

20 (B) land development; and

21 (C) residential construction projects.

22 (7) TOTAL CAPITAL.—The term “total capital”
23 means the total risk-based capital of a financial in-
24 stitution as reported periodically by such institution
25 in the Federal Financial Institutions Examination

1 Council's Call Report or Thrift Financial Reports,
2 as applicable.

3 (8) VIABLE PROJECT.—The term “viable
4 project” means a real estate project that a financial
5 institution has determined continues to have a rea-
6 sonable prospect of reaching completion and sale.

7 (9) WORKOUT METHODS.—The term “workout
8 methods” means techniques to prevent a real estate
9 loan defaulting, including workout assistance, loan
10 modifications, loan write downs, and flexibility on re-
11 appraisal methods.

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