

112TH CONGRESS
2D SESSION

S. 2078

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 SENATE OF THE UNITED STATES

FEBRUARY 7, 2012

Mr. MENENDEZ introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Home Building Lend-
5 ing Improvement Act of 2012”.

6 **SEC. 2. PURPOSE.**

7 It is the purpose of this Act to—

1 (1) immediately provide authority and guidance
2 that Federal and State bank regulators can use to
3 ensure that Federal and State chartered banks and
4 thrifts that provide financing to America’s home
5 builders are permitted to make loans, provide ongoing
6 liquidity, and ensure stable financing; and

7 (2) enable Federal and State chartered banks
8 and thrifts to provide initial and ongoing credit in
9 a sound manner to America’s home builders to aid
10 in restoring liquidity and vitality to the housing
11 market.

12 **SEC. 3. COORDINATED RULEMAKING.**

13 (a) INITIATION OF PROCEEDINGS.—Not later than 3
14 months after the date of enactment of this Act, the appropriate
15 Federal banking agencies shall each initiate guidance
16 or rulemaking with respect to financial institutions
17 under their respective jurisdictions that make real estate
18 loans to home builders. Such guidance or rulemaking shall
19 provide for the following:

20 (1) ADJUSTMENT OF THE 100 PERCENT OF
21 BANK CAPITAL MEASUREMENT.—

22 (A) LOAN ORIGINATION.—Notwithstanding
23 any other provision of law, the measurement of
24 construction loans that triggers additional scrutiny
25 on real estate loans in the lending portfolio

1 of any qualified financial institution shall be
2 125 percent of bank capital. The Federal bank-
3 ing agencies shall not treat the 125 percent
4 measurement as a hard cap beyond which loans
5 cannot be made, but shall consider other rel-
6 evant factors besides the concentration of such
7 loans, such as whether the financial institution
8 has in place effective risk management practices
9 that are appropriate for the level and nature of
10 the risk of such loans.

11 (B) LENDING DECISIONS.—The appro-
12 priate Federal banking agency shall not prevent
13 a qualified financial institution from making a
14 real estate loan to a home builder in good
15 standing that is secured by a viable project, un-
16 less there is a legitimate supervisory or ac-
17 counting reason to do so.

18 (2) PROHIBITION ON COMPELLING LENDERS TO
19 CALL LOANS IN GOOD STANDING.—

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

25 (B) WORKOUT ACTIVITIES.—

1 (i) IN GENERAL.—In any case in
2 which a home builder is in good standing
3 on a real estate loan, but the collateral of
4 the home builder with respect to that loan
5 has decreased in value, based on a pro-
6 jected valuation of a project as completed,
7 the appropriate Federal banking agency
8 shall permit a financial institution to en-
9 gage in workout activities with such home
10 builder to improve the prospects for repay-
11 ment of principal and interest in a manner
12 that is consistent with safe and sound
13 banking principles and the need for credit
14 for home building.

15 (ii) PERIOD OF WORKOUT ACTIVI-
16 TIES.—Workout activities authorized under
17 clause (i) may be utilized during the 24-
18 month period following the date of
19 issuance of final guidance or regulations
20 under subsection (c).

21 (iii) EFFECTS.—No real estate loan
22 may be required to be charged off during
23 the period established in clause (ii) until
24 the appropriate Federal banking agency
25 has determined that—

1 (I) the financial institution hold-
2 ing such loan has worked in good
3 faith to consider reasonable workout
4 activities and has adequately provided
5 for any impairment in such loan; or

6 (II) the financial institution has
7 not considered reasonable workout ac-
8 tivities in a timely manner.

9 (C) RECLASSIFICATION OF LOANS.—The
10 appropriate Federal banking agency shall not
11 require a financial institution to reclassify any
12 real estate loan to a homebuilder in good stand-
13 ing on the balance sheet of such institution, un-
14 less there is a legitimate supervisory or ac-
15 counting reason to do so.

16 (3) NO WAITING PERIOD.—If the provisions of
17 paragraph (2) help to improve the CAMEL com-
18 posite rating of a financial institution under the
19 Uniform Financial Institutions Rating System from
20 3, 4, or 5 to 1 or 2 in the next occurring examina-
21 tion of such institution that begins after the date on
22 which final guidance or regulations are issued pursu-
23 ant to subsection (c), such improved rating shall
24 take effect immediately after the date on which such
25 rating was received.

1 (b) COORDINATION, CONSISTENCY, AND COM-
2 PARABILITY.—Each Federal banking agency shall consult
3 and coordinate with the other Federal banking agencies
4 for the purpose of assuring, to the extent possible, that
5 the guidance or regulations by each such agency and such
6 authorities are consistent and comparable with those pre-
7 scribed by the other such agencies and authorities.

8 (c) DEADLINE.—Each Federal banking agency shall
9 issue final guidance or regulations to implement this Act
10 not later than the earlier of—

11 (1) 6 months after the date of enactment of
12 this Act; or

13 (2) 3 months after such guidance or regulations
14 are proposed.

15 (d) AGENCY AUTHORITY.—The guidance and regula-
16 tions issued under this Act shall be enforced by the appro-
17 priate Federal banking agencies.

18 (e) EFFECT ON STATE LAW.—The guidance and reg-
19 ulations issued under this Act shall not supersede the law
20 of any State, except to the extent that such law is incon-
21 sistent with such rule, and then only to the extent of the
22 inconsistency.

23 **SEC. 4. DEFINITIONS.**

24 In this Act, the following definitions shall apply:

1 (1) APPROPRIATE FEDERAL BANKING AGENCY;
2 FEDERAL BANKING AGENCY.—The terms “appro-
3 priate Federal banking agency” and “Federal bank-
4 ing agency” have the same meanings as in section
5 3 of the Federal Deposit Insurance Act (12 U.S.C.
6 1813).

7 (2) FINANCIAL INSTITUTION.—The term “fi-
8 nancial institution” means an entity regulated by,
9 and under the supervision of, any Federal banking
10 agency.

11 (3) GOOD STANDING.—The term “good stand-
12 ing” means the borrower has made all payments on
13 a real estate loan and any other extensions of credit
14 to the borrower or any affiliated entities in accord-
15 ance with the agreements for such loans.

16 (4) REAL ESTATE LOAN.—The term “real es-
17 tate loan” means any indebtedness secured by a
18 mortgage, deed of trust, or other equivalent consen-
19 sual security interest on real property, for—

20 (A) land acquisition for residential con-
21 struction projects;

22 (B) land development for residential con-
23 struction projects; or

24 (C) residential construction projects.

1 (5) TOTAL CAPITAL.—The term “total capital”
2 means the total risk-based capital of a financial in-
3 stitution as reported periodically by such institution
4 in the Call Report or Thrift Financial Reports of the
5 Federal Financial Institutions Examination Council,
6 as applicable.

7 (6) VIABLE PROJECT.—The term “viable
8 project” means a real estate project that continues
9 to have a reasonable prospect of reaching completion
10 and sale within a reasonable timeframe, and at a
11 market price that provides for the orderly and timely
12 repayment of the real estate loan.

13 (7) WORKOUT ACTIVITIES.—The term “workout
14 activities” means techniques to prevent default on a
15 real estate loan, including a renewal or extension of
16 loan terms, extension of additional credit, restruc-
17 turing, loan write downs, or flexibility on using re-
18 appraisal methods that still provide credible value
19 conclusions.

20 (8) QUALIFIED FINANCIAL INSTITUTION DE-
21 FINED.—For purposes of this paragraph, the term
22 “qualified financial institution” means a financial in-
23 stitution that received, in the most recent examina-
24 tion of the institution, a CAMEL composite rating

- 1 of 1 or 2 under the Uniform Financial Institutions
- 2 Rating System.

