

113TH CONGRESS  
1ST SESSION

# H. R. 1255

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.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 19, 2013

Mr. GARY G. MILLER of California (for himself and Mrs. McCARTHY of New York) introduced the following bill; which was referred to the Committee on Financial Services

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## 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 Construction  
5 Lending Regulatory Improvement Act of 2013”.

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 to such  
7           home builders; and

8           (2) enable Federal and State chartered banks  
9           and thrifts to provide initial and ongoing credit to  
10          America's home builders to aid in restoring liquidity  
11          to the home building sector and to restore vitality to  
12          the United States residential housing market.

13 **SEC. 3. COORDINATED RULEMAKING.**

14          (a) INITIATION OF PROCEEDINGS.—Not later than  
15          90 days after the enactment of this Act, the appropriate  
16          Federal banking agencies shall initiate a coordinated rule-  
17          making with respect to financial institutions under their  
18          respective jurisdictions that make real estate loans to  
19          home builders. Such rulemaking shall provide for the fol-  
20          lowing:

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

23                       (A) LOAN ORIGINATION.—If any qualified  
24                       financial institution is holding real estate loans  
25                       in its lending portfolio that in the aggregate

1 represent 100 percent or more of its total cap-  
2 ital, the appropriate Federal banking agency  
3 shall not prohibit any such institution from con-  
4 tinuing to make such loans to home builders.

5 (B) LENDING DECISIONS.—The appro-  
6 priate Federal banking agency shall not prevent  
7 a qualified financial institution from making a  
8 real estate loan to a home builder that has a  
9 viable project.

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

18 (2) REALISTIC MARKET BASED APPRAISALS.—

19 (A) VALUATION STANDARD.—The appro-  
20 priate Federal banking agency shall require  
21 that entities used by financial institutions to as-  
22 sess the value of collateral, with respect to a  
23 real estate loan, associated with any viable  
24 project in such institution’s lending portfolio

1           utilize an as completed valuation to make such  
2           an assessment.

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

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

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

19           (B) MAXIMUM MARKET VALUATION.—

20           (i) IN GENERAL.—The appropriate  
21           Federal banking agency shall, in the case  
22           that a home builder is in good standing on  
23           a real estate loan but the home builder's  
24           collateral, with respect to that loan, has  
25           decreased in value based on an as com-

1           pleted valuation, permit a financial institu-  
2           tion to work with such home builder to re-  
3           alize the maximum current market valu-  
4           ation of such collateral using workout  
5           methods or other appropriate means.

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

15          (C) RECLASSIFICATION OF LOANS.—The  
16          appropriate Federal banking agency shall not  
17          require a financial institution to reclassify any  
18          real estate loan in this paragraph on such insti-  
19          tution's balance sheet, unless there is a signifi-  
20          cant reason under Financial Accounting Stand-  
21          ards Board Accounting Standards Codification  
22          310-10-35-55 or 310-10-35-57.

23          (4) WAITING PERIOD.—If the enactment of  
24          paragraphs 2 or 3 of this subsection helps to im-  
25          prove a financial institution's CAMEL composite

1 rating under the Uniform Financial Institutions  
2 Rating System from a 4 or 5 to a 1, 2, or 3 in such  
3 institution's next examination that begins after the  
4 date that final regulations are issued pursuant to  
5 subsection (c), such institution's improved rating  
6 shall take effect no earlier than 24 months after  
7 such rating was received.

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

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

20 (d) AGENCY AUTHORITY.—The rules issued under  
21 this Act shall be enforced by the appropriate Federal  
22 banking agencies with respect to financial institutions  
23 under their respective jurisdictions.

24 (e) EFFECT ON STATE LAW.—The rules issued under  
25 this Act shall not supercede the law of any State except

1 to the extent that such law is inconsistent with such rule,  
2 and then only to the extent of the inconsistency.

3 **SEC. 4. DEFINITIONS.**

4 In this Act:

5 (1) APPROPRIATE FEDERAL BANKING AGEN-  
6 CY.—The term “appropriate Federal banking agen-  
7 cy” has the same meaning as is given such term in  
8 section 3(q) of the Federal Deposit Insurance Act  
9 (12 U.S.C. 1813(q)).

10 (2) ARMS LENGTH TRANSACTION.—

11 (A) IN GENERAL.—The term “arms length  
12 transaction” means a negotiated real estate  
13 transaction between a buyer and seller in which  
14 such buyer and seller act independently of each  
15 other.

16 (B) TRANSACTIONS EXCLUDED.—Such  
17 term shall not include any transaction involving  
18 a short sale or foreclosed property or any other  
19 distressed real property.

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

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

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

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

14                   (A) land acquisition;

15                   (B) land development; and

16                   (C) residential construction projects.

17           (7) TOTAL CAPITAL.—The term “total capital”  
18       means the total risk-based capital of a financial in-  
19       stitution as reported periodically by such institution  
20       in the Federal Financial Institutions Examination  
21       Council’s Call Report or Thrift Financial Reports,  
22       as applicable.

23           (8) VIABLE PROJECT.—The term “viable  
24       project” means a real estate project that a financial

1 institution has determined continues to have a rea-  
2 sonable prospect of reaching completion and sale.

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

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