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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

OCTOBER 19, 2011

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 2011”.

1 **SEC. 2. DEFINITIONS.**

2 As used in this Act, the following definitions shall
3 apply:

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

6 (A) means—

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

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

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

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

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

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

23 (A) an original lender under a covered loan
24 or the holder of a covered loan at the time at
25 which that mortgage transaction is con-
26 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 servicing of a cov-
14 ered loan (including the person or entity who makes
15 or holds such a loan if such person or entity also
16 services the 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 size and efficiency of the house;

3 (3) expected energy costs are important to the
4 value of the house;

5 (4) the current test for loan affordability used
6 by most covered agencies, commonly called the “debt
7 to income” test, is inadequate because it does not
8 assess the expected energy costs for the homeowner;
9 and

10 (5) another loan limitation, commonly called the
11 “loan to value” test, is tied to the appraisal, which
12 often does not adjust for efficiency features of
13 houses.

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

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

22 (2) to require covered agencies to include the
23 expected energy utility costs of a homeowner as a
24 regular expense in the tests, such as the debt to in-
25 come test, used to determine the ability of the loan

1 applicant to afford the cost of homeownership for all
2 loan programs;

3 (3) to require covered agencies to include the
4 value of energy savings with the appraised home
5 value in the loan to value metric so that loan
6 amounts can reflect the value home buyers place on
7 the energy efficiency of a house, taking precautions
8 to avoid double-counting and to support safe and
9 sound lending; and

10 (4) to direct the covered agencies to make the
11 necessary credit policy decisions to adjust the max-
12 imum permitted debt amounts or debt to income ra-
13 tios for eligibility to accommodate inclusion of ex-
14 pected energy costs.

15 **SEC. 4. ENHANCED ENERGY EFFICIENCY UNDERWRITING**
16 **CRITERIA.**

17 (a) IN GENERAL.—Not later than 1 year after the
18 date of enactment of this Act, the Secretary shall develop
19 and issue guidelines for all covered agencies to implement
20 enhanced loan eligibility requirements, for use when test-
21 ing the ability of a loan applicant to repay a covered loan,
22 that account for the expected costs of energy for a loan
23 applicant at the subject property, in the manner set forth
24 in subsections (b) and (c).

1 (b) REQUIREMENTS TO ACCOUNT FOR ENERGY
2 COSTS.—The enhanced loan eligibility requirements re-
3 quired under subsection (a) shall include a requirement
4 that for all covered loans, the covered agency and the
5 mortgagee shall take into consideration the estimated en-
6 ergy costs expected for the owner of the subject property
7 in determining whether the loan applicant has sufficient
8 income to service the mortgage debt plus other regular ex-
9 penses. To the extent that a covered agency uses a test
10 such as a debt-to-income test that includes certain regular
11 expenses, such as hazard insurance and property taxes,
12 the expected energy costs shall be included as such an ex-
13 pense, and the maximum permitted amounts or ratios for
14 eligibility shall be adjusted to accommodate the average
15 expected energy costs. Energy costs to be assessed include
16 the cost of electricity, natural gas, oil, and any other fuel
17 regularly used to supply energy to the subject property.

18 (c) DETERMINATION OF ESTIMATED ENERGY
19 COSTS.—

20 (1) IN GENERAL.—The regulations to be issued
21 by the Secretary under subsection (a) shall include
22 instructions for the covered agency to calculate esti-
23 mated energy costs, using the following approach:

24 (A) If no energy efficiency report for the
25 subject property, as described under paragraph

1 (2), is provided to the mortgagee, then the
2 mortgagee shall determine the estimated energy
3 costs for the subject property based upon the
4 size of the subject property and an average per
5 square foot energy cost for properties of that
6 building type in that region. The most current
7 version of the Residential Energy Consumption
8 Survey of the Energy Information Administra-
9 tion, as such survey is authorized under section
10 205(k) of the Department of Energy Organiza-
11 tion Act (42 U.S.C. 7135(k)), may be used as
12 the basis for the average per square foot energy
13 cost, or the Secretary may approve use of an-
14 other source.

15 (B) If an energy efficiency report is pro-
16 vided to the mortgagee, then the findings in
17 such report shall be used in determining the es-
18 timated energy costs of the subject property,
19 and shall be provided to the appraiser for use
20 in estimating the energy efficiency of the house
21 and potential adjustments for energy efficiency.

22 (C) Additional sources of information may
23 be incorporated into the method for deter-
24 mining expected energy costs, as determined by
25 the Secretary.

1 (2) REPORT REQUIREMENTS.—In order for an
2 energy efficiency report to be valid and acceptable
3 for the purposes of paragraph (1)(B), such report
4 shall—

5 (A) estimate the expected energy costs spe-
6 cific to the subject property, based on specific
7 information about the property;

8 (B) be prepared in accordance with rules
9 and guidelines to be issued by the Secretary
10 under subsection (a); and

11 (C) be prepared—

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

19 (ii) by other methods approved by the
20 Secretary, in consultation with the Sec-
21 retary of Energy and other stakeholders,
22 including State energy offices, for use
23 under this Act, which in all cases shall in-
24 clude a third-party quality assurance pro-
25 cedure.

1 (d) REQUIRED DISCLOSURE TO CONSUMER.—If an
2 energy efficiency report is used under subsection
3 (c)(1)(B), the rules to be issued by the Secretary under
4 subsection (a) shall require the mortgagee to—

5 (1) inform the loan applicant of the expected
6 energy costs as estimated in the report, in a manner
7 and at a time as prescribed by the Secretary, and
8 if practicable, in the documents delivered at the time
9 of loan application; and

10 (2) include such report in the documentation
11 for the loan provided to the borrower.

12 (e) LIMITATIONS.—A covered agency shall not—

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

19 (2) impose greater buy back requirements, cred-
20 it overlays, insurance requirements, including private
21 mortgage insurance, or any other material costs, im-
22 pediments, or penalties on covered loans merely be-
23 cause the loan uses an energy efficiency report or
24 the enhanced loan eligibility requirements required
25 under this section.

1 (f) APPLICABILITY AND IMPLEMENTATION DATE.—

2 Not later than 3 years after the date of enactment of this
3 Act, and before January 1, 2015, the enhanced loan eligi-
4 bility requirements required under this section shall be im-
5 plemented by each covered agency to—

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

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

11 (3) provide prospective mortgagees with suffi-
12 cient guidance and applicable tools to implement the
13 required underwriting methods.

14 **SEC. 5. ENHANCED ENERGY EFFICIENCY UNDERWRITING**
15 **VALUATION GUIDELINES.**

16 (a) IN GENERAL.—Not later than 1 year after the
17 date of enactment of this Act, the Secretary of Housing
18 and Urban Development shall, in consultation with the
19 Federal Financial Institutions Examination Council, de-
20 velop and issue guidelines for how covered agencies shall
21 determine the maximum permitted loan amount based on
22 the value of the property for all covered loans made on
23 properties with an energy efficiency report as defined in
24 section 4(c)(2). In addition, the Secretary of Housing and
25 Urban Development shall, in consultation with the Sec-

1 retary of Energy, within one year of enactment of this Act,
2 issue regulations for covered agencies to determine the es-
3 timated energy savings for properties with an energy effi-
4 ciency report as required by subsection (c).

5 (b) REQUIREMENTS.—The enhanced energy effi-
6 ciency underwriting valuation guidelines required under
7 subsection (a) shall include the following:

8 (1) A requirement that if an energy efficiency
9 report that meets the requirements of section 4(c)(2)
10 is provided to the mortgagee, then such report shall
11 be used by the mortgagee or covered agency to de-
12 termine the estimated energy savings of the subject
13 property.

14 (2) A requirement that the estimated energy
15 savings of the subject property be added by a mort-
16 gagee or covered agency to the appraised value for
17 the purpose of determining the loan-to-value ratio of
18 the subject property, unless the appraisal indicates
19 it includes the value of the overall energy efficiency
20 of the property, using methods to be established by
21 the Secretary of Housing and Urban Development in
22 regulations required under subsection (a).

23 (c) DETERMINATION OF ESTIMATED ENERGY SAV-
24 INGS.—The amount of estimated energy savings shall be
25 determined by calculating the difference between the esti-

1 mated energy costs for the average comparable house, as
2 determined in rules to be issued by the Secretary of Hous-
3 ing and Urban Development under subsection (a), and the
4 estimated energy costs for the subject property, using the
5 energy efficiency report, as determined under section
6 4(c)(2). The period of the savings shall be based upon the
7 estimated life of the applicable equipment, consistent with
8 the rating system used to produce the energy report in
9 section 4(c)(2). The present value of the future savings
10 shall be discounted using the average interest rate on con-
11 ventional 30-year mortgages, in the manner directed by
12 guidelines issued by the Secretary of Housing and Urban
13 Development under subsection (a).

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

18 (1) in paragraph (3), by striking the period at
19 the end and inserting “; and”; and

20 (2) by adding at the end the following:

21 “(4) that State-certified appraisers have timely
22 access, whenever practicable, to information from
23 the lender relevant to an appraisal of the energy and
24 water efficiency or conserving improvements or fea-
25 tures of a property, such as labels or ratings of

1 buildings and installed appliances, blueprints, con-
2 struction costs, incentives regarding energy- and
3 water-efficient components and systems installed in
4 a property, and third-party verifications or represen-
5 tations of energy and water efficiency performance
6 of a property, observing all financial privacy require-
7 ments adhered to by certified and licensed apprais-
8 ers, including section 501 of the Gramm-Leach-Blie-
9 ley Act (15 U.S.C. 6801), unless the property owner
10 consents to the lender, an appraiser shall not have
11 access to the commercial or financial information of
12 the owner that is privileged or confidential.”.

13 (e) TRANSACTIONS REQUIRING STATE CERTIFIED
14 APPRAISERS.—Section 1113 of the Financial Institutions
15 Reform, Recovery, and Enforcement Act of 1989 (12
16 U.S.C. 3342), as amended by section 1473(e)(2) of the
17 Dodd-Frank Wall Street Reform and Consumer Protec-
18 tion Act of 2010, is amended—

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

23 (2) in paragraph (2) by inserting after “atypi-
24 cal” the following: “, or an appraisal on which the

1 appraiser makes adjustments using an energy effi-
2 ciency report.”.

3 (f) PROTECTIONS.—

4 (1) AUTHORITY TO IMPOSE LIMITATIONS.—The
5 guidelines to be issued under subsection (a) shall in-
6 clude such limitations and conditions determined by
7 the Secretary to be necessary to protect against
8 meaningful under or over valuation of energy sav-
9 ings or duplicative counting of energy efficiency fea-
10 tures or energy savings in the valuation of any sub-
11 ject property used to determine a loan amount.

12 (2) ADDITIONAL AUTHORITY.—At the end of
13 the 7-year period following the implementation of
14 the program established under this Act, the Sec-
15 retary may modify or apply additional exceptions to
16 the approach described in subsection (b), where the
17 Secretary finds that the unadjusted appraisal will re-
18 flect an accurate market value of the efficiency of
19 the subject property.

20 (g) APPLICABILITY AND IMPLEMENTATION DATE.—

21 Each covered agency shall, within 3 years after the date
22 of enactment of this Act, and before January 1, 2015, im-
23 plement the guidelines required under this section, which
24 shall—

1 (1) apply to any covered loan for the sale, or
2 refinancing of any loan for the sale, of any home;
3 and

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

7 **SEC. 6. MONITORING.**

8 Not later than 1 year after the date on which the
9 enhanced eligibility and underwriting valuation require-
10 ments are implemented under this Act, and each year
11 thereafter, each covered agency with relevant activity shall
12 issue and make available to the public a report that enu-
13 merates the number of covered loans of each such agency
14 that used enhanced loan eligibility requirements, for which
15 there was an energy efficiency report, and that used en-
16 hanced energy efficiency appraisal guidelines. Such report
17 shall include the default rates and rates of foreclosures
18 for each category of loan.

19 **SEC. 7. RULEMAKING.**

20 The Secretary shall prescribe regulations to carry out
21 this Act, in consultation with the Secretary of Energy and
22 stakeholders, including State energy offices. Such regula-
23 tions may contain such classifications, differentiations, or
24 other provisions, and may provide for such proper imple-
25 mentation and appropriate treatment of different types of

1 transactions, as in the judgment of the Secretary are nec-
2 essary or proper to effectuate the purposes of this Act,
3 to prevent circumvention or evasion thereof, or to facilitate
4 compliance therewith.

5 **SEC. 8. ADDITIONAL STUDY.**

6 Not later than 18 months after the date of enactment
7 of this Act, the Secretary shall establish an advisory group
8 with the purpose of advising the Secretary on the imple-
9 mentation of the enhanced energy efficiency underwriting
10 criteria established in sections 4 and 5. The advisory
11 group shall provide recommendations to the Secretary on
12 any revisions or additions to the enhanced energy effi-
13 ciency underwriting criteria deemed necessary by the
14 group, which may include additional factors to account for
15 substantial and regular costs of homeownership such as
16 location-based transportation costs and water costs. The
17 Secretary shall forward any legislative recommendations
18 from the advisory group to Congress for its consideration.

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