

112TH CONGRESS
1ST SESSION

S. 637

To establish a program to provide guarantees for debt issued by or on behalf of State catastrophe insurance programs to assist in the financial recovery from earthquakes, earthquake-induced landslides, volcanic eruptions, and tsunamis.

IN THE SENATE OF THE UNITED STATES

MARCH 17, 2011

Mrs. FEINSTEIN (for herself and Mrs. BOXER) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To establish a program to provide guarantees for debt issued by or on behalf of State catastrophe insurance programs to assist in the financial recovery from earthquakes, earthquake-induced landslides, volcanic eruptions, and tsunamis.

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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Earthquake Insurance Affordability Act”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings and purposes.
- Sec. 3. Definitions.
- Sec. 4. Eligible State programs.
- Sec. 5. Establishment of debt-guarantee program.
- Sec. 6. Effect of guarantee.
- Sec. 7. Assessment at time of guarantee.
- Sec. 8. Payment of losses.
- Sec. 9. Full faith and credit.
- Sec. 10. Budgetary impact; costs.
- Sec. 11. Regulations.

1 **SEC. 2. FINDINGS AND PURPOSES.**

2 (a) FINDINGS.—Congress finds the following:

3 (1) Major earthquakes are likely in the United
 4 States. For example, the United States Geological
 5 Survey predicts that there is a 99.7 percent chance
 6 that a magnitude 6.7 earthquake will strike in Cali-
 7 fornia in the next 30 years and that there is a 46
 8 percent chance that a magnitude 7.5 earthquake will
 9 strike in California in the next 30 years. Earth-
 10 quakes can be caused by volcanic or tectonic events
 11 and result in destructive shaking of the earth, fires,
 12 landslides, volcanic eruptions, and tsunamis.

13 (2) Despite the known risk of earthquakes, rel-
 14 atively few homeowners have earthquake insurance.
 15 For example, in California, 88 percent of homes in-
 16 sured for fire do not have earthquake insurance. In
 17 the event of a catastrophic earthquake, the lack of
 18 homeowner earthquake-insurance coverage will slow
 19 recovery, create economic hardship, and increase the

1 risk of mortgage and other credit defaults and ad-
2 versely affect the Nation's banking system.

3 (3) It is important that States improve the af-
4 fordability, availability, and quality of earthquake in-
5 surance so that more homeowners will purchase cov-
6 erage. For example, California has created the Cali-
7 fornia Earthquake Authority to provide earthquake
8 insurance to homeowners through private-sector in-
9 surers.

10 (4) It is a proper role of the Federal Govern-
11 ment to help prepare and protect its citizens from
12 catastrophes such as earthquakes and to facilitate
13 consumer protection, victim assistance, and indi-
14 vidual and community recovery, including financial
15 recovery.

16 (b) PURPOSES.—The purposes of this Act are to es-
17 tablish a program—

18 (1) to promote the availability of private capital
19 to provide liquidity and capacity to State earthquake
20 insurance programs; and

21 (2) to expedite the payment of claims under
22 State earthquake insurance programs and better as-
23 sist the financial recovery from significant earth-
24 quakes by authorizing the Secretary of the Treasury
25 to guarantee debt for such purposes.

1 **SEC. 3. DEFINITIONS.**

2 In this Act, the following definitions shall apply:

3 (1) **COMMITMENT TO GUARANTEE.**—The term
4 “commitment to guarantee” means a commitment to
5 make debt guarantees to an eligible State program
6 pursuant to section 5.

7 (2) **ELIGIBLE STATE PROGRAM.**—The term “eli-
8 gible State program” means a State program that,
9 pursuant to section 4, is eligible to receive a debt
10 guarantee under this Act.

11 (3) **INSURED LOSS.**—The term “insured loss”
12 means any loss resulting from an earthquake, an
13 earthquake-related event, or fire following an earth-
14 quake that is determined by an eligible State pro-
15 gram as being covered by insurance made available
16 under that eligible State program.

17 (4) **QUALIFYING ASSETS.**—The term “quali-
18 fying assets” means the policyholder surplus of the
19 eligible State program as stated in the most recent
20 quarterly financial statement filed by the program
21 with the domiciliary regulator of the program in the
22 last quarter ending prior to an insured-loss trig-
23 gering event or events.

24 (5) **RESIDENTIAL PROPERTY INSURANCE.**—The
25 term “residential property insurance” means insur-
26 ance coverage for—

1 (A) individually owned residential struc-
2 tures of not more than 4 dwelling units, individ-
3 ually owned condominium units, or individually
4 owned mobile homes, and their contents, located
5 in a State and used exclusively for residential
6 purposes or a tenant’s policy written to include
7 personal contents of a residential unit located in
8 the State, but shall not include—

9 (i) insurance for real property or its
10 contents used for any commercial, indus-
11 trial, or business purpose, except a struc-
12 ture of not more than 4 dwelling units
13 rented for individual residential purposes;
14 or

15 (ii) a policy that does not include any
16 of the perils insured against in a standard
17 fire policy or any earthquake policy; or

18 (B) commercial residential property, which
19 includes property owned by a condominium as-
20 sociation or its members, property owned by a
21 cooperative association, or an apartment build-
22 ing.

23 (6) SECRETARY.—The term “Secretary” means
24 the Secretary of the Treasury.

1 (7) STATE.—The term “State” means each of
2 the several States of the United States, the District
3 of Columbia, the Commonwealth of Puerto Rico, the
4 Commonwealth of the Northern Mariana Islands,
5 Guam, the United States Virgin Islands, American
6 Samoa, and any other territory or possession of the
7 United States.

8 **SEC. 4. ELIGIBLE STATE PROGRAMS.**

9 (a) ELIGIBLE STATE PROGRAMS.—A State program
10 shall be considered an eligible State program for purposes
11 of this Act if the State program or other State entity au-
12 thorized to make such determinations certifies to the Sec-
13 retary, in accordance with the procedures established
14 under subsection (b), that the State program complies
15 with the following requirements:

16 (1) STATE PROGRAM DESIGN.—The State pro-
17 gram is established and authorized by State law as
18 an earthquake insurance program that offers resi-
19 dential property insurance coverage for insured
20 losses to property, contents, and additional living ex-
21 penses, and which is not a State program that re-
22 quires insurers to pool resources to provide property
23 insurance coverage for earthquakes.

24 (2) OPERATION.—The State program shall
25 meet the following requirements:

1 (A) A majority of the members of the gov-
2 erning body of the State program shall be pub-
3 lic officials or appointed by public officials.

4 (B) The State shall have a financial inter-
5 est in the State program.

6 (C) If the State has at any time appro-
7 priated amounts from the State program's
8 funds for any purpose other than payments for
9 losses insured under the State program, or pay-
10 ments made in connection with any of the State
11 program's authorized activities, the State shall
12 have returned such amounts to the State fund,
13 together with interest on such amounts.

14 (3) TAX STATUS.—The State program shall
15 have received from the Secretary (or the Secretary's
16 designee) a written determination, within the mean-
17 ing of section 6110(b) of the Internal Revenue Code
18 of 1986, that the State program either—

19 (A) constitutes an “integral part” of the
20 State that has created it; or

21 (B) is otherwise exempt from Federal in-
22 come taxation.

23 (4) EARNINGS.—The State program may not
24 provide for any distribution of any part of any net

1 profits of the State program to any insurer that par-
2 ticipates in the State program.

3 (5) LOSS PREVENTION AND MITIGATION.—

4 (A) MITIGATION OF LOSSES.—The State
5 program shall include provisions designed to en-
6 courage and support programs to mitigate
7 losses for which the State insurance program
8 was established to provide insurance.

9 (B) OPERATIONAL REQUIREMENTS.—The
10 State program shall operate in a State that—

11 (i) has in effect and enforces, or the
12 appropriate local governments within the
13 State have in effect and enforce, nationally
14 recognized building, seismic-design, and
15 safety codes and consensus-based stand-
16 ards; and

17 (ii) has taken actions to establish an
18 insurance rate structure that takes into ac-
19 count measures to mitigate insured losses.

20 (6) REQUIREMENTS REGARDING COVERAGE.—

21 The State program—

22 (A) may not, except for charges or assess-
23 ments related to post-event financing or bond-
24 ing, involve cross-subsidization between any
25 separate property-and-casualty insurance lines

1 offered under the State program pursuant to
2 paragraph (1);

3 (B) shall be subject to a requirement
4 under State law that for earthquake insurance
5 coverage made available under the State insur-
6 ance program the premium rates charged on
7 such insurance shall be actuarially sound; and

8 (C) shall make available to all qualifying
9 policyholders insurance coverage and mitigation
10 services on a basis that is not unfairly discrimi-
11 natory.

12 (b) ANNUAL CERTIFICATION.—The Secretary shall
13 establish procedures for initial certification and annual re-
14 certification as an eligible State program.

15 **SEC. 5. ESTABLISHMENT OF DEBT-GUARANTEE PROGRAM.**

16 (a) AUTHORITY OF SECRETARY.—The Secretary is
17 authorized and shall have the powers and authorities nec-
18 essary—

19 (1) to guarantee, and to enter into commit-
20 ments to guarantee, holders of debt against loss of
21 principal or interest, or both, on any debt issued by
22 eligible State programs for purposes of this Act; and

23 (2) to certify and recertify State catastrophe in-
24 surance programs that cover earthquake peril to be-

1 come or remain eligible for the benefits of such a
2 debt-guarantee program.

3 (b) LIMIT ON OUTSTANDING DEBT GUARANTEE.—

4 The aggregate amount of debt covered by the Secretary's
5 guarantees and commitments to guarantee for all eligible
6 State programs outstanding at any time shall not exceed
7 \$5,000,000,000, including interest.

8 (c) FUNDING.—

9 (1) APPROPRIATION OF FEDERAL PAYMENTS.—

10 Subject to subsection (b), there are hereby appro-
11 priated, out of funds in the Treasury not otherwise
12 appropriated, such sums as may be necessary to sat-
13 isfy debt guarantee commitments extended to eligible
14 State programs under this Act.

15 (2) CERTIFICATION FEE.—Upon certification or
16 recertification as an eligible State program under
17 section 4(a) or 4(b), a State program shall be
18 charged a certification fee sufficient in the judge-
19 ment of the Secretary at the time of certification to
20 cover—

21 (A) applicable administrative costs arising
22 from each certification or recertification, includ-
23 ing all pre-certification costs and a proportional
24 share of the costs arising from the administra-
25 tion of the program established under this Act,

1 but in any event not to exceed one-half of 1
2 percent annum of the aggregate principal
3 amount of the debt for which the eligible State
4 program is issued a guarantee commitment;
5 and

6 (B) any probable losses on the aggregate
7 principal amount of the debt for which the eligi-
8 ble State program is issued a guarantee com-
9 mitment.

10 (3) RULE OF CONSTRUCTION.—Any funds ex-
11 pended or obligated by the Secretary for the pay-
12 ment of administrative expenses for conduct of the
13 debt-guarantee program authorized by this Act shall
14 be deemed appropriated at the time of such expendi-
15 ture or obligation from the certification and recer-
16 tification fees collected pursuant to paragraph (2).

17 (d) CONDITIONS FOR GUARANTEE ELIGIBILITY.—A
18 debt guarantee under this section may be made only if
19 the Secretary has issued a commitment to guarantee to
20 a certified, eligible State program. The commitment to
21 guarantee shall be in force for a period of 3 years from
22 its initial issuance and may be extended by the Secretary
23 for 1 year on each annual anniversary of the issuance of
24 the commitment to guarantee. The commitment to guar-
25 antee and each extension of such commitment may be

1 issued by the Secretary only if the following requirements
2 are satisfied:

3 (1) The eligible State program submits to the
4 Secretary a report setting forth, in such form and
5 including such information as the Secretary shall re-
6 quire, how the eligible State program plans to repay
7 guarantee-eligible debt it may incur.

8 (2) Based on the eligible State program's report
9 submitted pursuant to paragraph (1), the Secretary
10 determines there is reasonable assurance that the el-
11 igible State program can meet its repayment obliga-
12 tion under such debt.

13 (3) The eligible State program enters into an
14 agreement with the Secretary, as the Secretary shall
15 require, that the eligible State program will not use
16 Federal funds of any kind or from any Federal
17 source (including any disaster or other financial as-
18 sistance, loan proceeds, and any other assistance or
19 subsidy) to repay the debt.

20 (4) The commitment to guarantee shall specify
21 and require the payment of the fees for debt guar-
22 antee coverage.

23 (5) The maximum term of the debt specified in
24 a commitment issued under this section may not ex-
25 ceed 30 years.

1 (e) MANDATORY ASSISTANCE FOR ELIGIBLE STATE
2 PROGRAMS.—The Secretary shall upon the request of an
3 eligible State program and pursuant to a commitment to
4 guarantee issued under subsection (d), provide a guar-
5 antee under subsection (f) for such eligible State program
6 in the amount requested by such eligible State program,
7 subject to the limitation under subsection (f)(2).

8 (f) CATASTROPHE DEBT GUARANTEE.—A debt guar-
9 antee under this subsection for an eligible State program
10 shall be subject to the following requirements:

11 (1) PRECONDITIONS.—The eligible State pro-
12 gram shows to the satisfaction of the Secretary that
13 insured losses to the eligible State program arising
14 from the event or events covered by the commitment
15 to guarantee are likely to exceed 80 percent of the
16 eligible State program’s qualifying assets available to
17 pay claims, as calculated on the date of the event
18 and based on the eligible State program’s most re-
19 cent quarterly financial statement filed with its
20 domiciliary regulator.

21 (2) USE OF FUNDS.—Proceeds of debt guaran-
22 teed under this section shall be used only to pay the
23 costs of issuing debt and of securing or providing
24 claim-payment capacity for paying the insured losses
25 and loss adjustment expenses incurred by an eligible

1 State program. Such amounts shall not be used for
2 any other purpose.

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

4 The issuance of any guarantee by the Secretary
5 under this Act shall be conclusive evidence that—

6 (1) the guarantee has been properly obtained;

7 (2) the underlying debt qualified for such guar-
8 antee; and

9 (3) the guarantee is valid, legal, and enforce-
10 able.

11 **SEC. 7. ASSESSMENT AT TIME OF GUARANTEE.**

12 To extent not satisfied by the fees collected under sec-
13 tion 5(c)(2), the Secretary shall charge and collect fees
14 for each guarantee issued in amounts sufficient in the
15 judgement of the Secretary at the time of issuance of the
16 guarantee to cover applicable administrative costs and
17 probable losses on the guaranteed obligations.

18 **SEC. 8. PAYMENT OF LOSSES.**

19 (a) IN GENERAL.—The Secretary agrees to pay to
20 the duly appointed paying agent or trustee (in this section
21 referred to as the “Fiscal Agent”) for the eligible State
22 program that portion of the principal and interest on any
23 debt guaranteed under this Act that shall become due to
24 payment but shall be unpaid by the eligible State program
25 as a result of such program having provided insufficient

1 funds to the Fiscal Agent to make such payments. The
2 Secretary shall make such payments on the date such
3 principal or interest becomes due for payment or on the
4 business day next following the day on which the Secretary
5 shall receive notice of failure on the part of the eligible
6 State program to provide sufficient funds to the Fiscal
7 Agent to make such payments, whichever is later. Upon
8 making such payment, the Secretary shall be subrogated
9 to all the rights of the ultimate recipient of the payment.
10 The Secretary shall be entitled to recover from the eligible
11 State program the amount of any payments made pursu-
12 ant to any guarantee entered into under this Act.

13 (b) ROLE OF THE ATTORNEY GENERAL.—The Attor-
14 ney General shall take such action as may be appropriate
15 to enforce any right accruing, and to collect any and all
16 sums owing, to the United States as a result of the
17 issuance of any guarantee under this Act.

18 (c) RULE OF CONSTRUCTION.—Nothing in this sec-
19 tion shall be construed to preclude any forbearance for the
20 benefit of the eligible State program which may be agreed
21 upon by the parties to the guaranteed debt and approved
22 by the Secretary, provided that budget authority for any
23 resulting cost, as such term is defined under the Federal
24 Credit Reform Act of 1990, is available.

1 (d) RIGHT OF THE SECRETARY.—Notwithstanding
2 any other provision of law relating to the acquisition, han-
3 dling, or disposal of property by the United States, the
4 Secretary shall have the right in the discretion of the Sec-
5 retary to complete, recondition, reconstruct, renovate, re-
6 pair, maintain, operate, or sell any property acquired by
7 the Secretary pursuant to the provisions of this Act.

8 **SEC. 9. FULL FAITH AND CREDIT.**

9 The full faith and credit of the United States is
10 pledged to the payment of all guarantees issued under this
11 Act with respect to principal and interest.

12 **SEC. 10. BUDGETARY IMPACT; COSTS.**

13 For purposes of section 502(5) of the Federal Credit
14 Reform Act of 1990, the cost of guarantees to be issued
15 under this Act shall be calculated by adjusting the dis-
16 count rate in section 502(5)(E) of such Act for market
17 risk.

18 **SEC. 11. REGULATIONS.**

19 The Secretary shall issue any regulations necessary
20 to carry out the debt-guarantee program established under
21 this Act.

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