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111TH CONGRESS
1ST SESSION

H. R. 4014

To establish a program to provide guarantees for debt issued by State catastrophe insurance programs to assist in financial recovery from natural catastrophes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 4, 2009

Ms. LORETTA SANCHEZ of California introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To establish a program to provide guarantees for debt issued by State catastrophe insurance programs to assist in financial recovery from natural catastrophes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

(a) SHORT TITLE.—This Act may be cited as the "Catastrophe Obligation Guarantee Act of 2009".

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

Sec. 1. Short title.
Sec. 2. Congressional findings.
Sec. 3. Establishment of debt guarantee program.
Sec. 4. Eligible State programs.

Sec. 5. Catastrophic debt guarantees.
Sec. 6. Effect of guarantee.
Sec. 7. Maximum limitation on outstanding guarantees under program.
Sec. 8. Payment of losses.
Sec. 9. Funding for payments of guarantees.
Sec. 10. Definitions.

SEC. 2. CONGRESSIONAL FINDINGS.

The Congress finds that—

(1) the United States needs to take action, and support actions taken by States, to be better prepared for and better protected from natural catastrophes;

(2) the hurricane seasons of 2004, 2005, and 2008 were startling reminders of both the human and economic devastation that natural catastrophes can cause;

(3) if the deadly 1900 Galveston hurricane were to occur again, it could cause over $36,000,000,000 in insured losses;

(4) if the 1906 San Francisco earthquake and fire were to occur again, it could cause over $400,000,000,000 in insured losses;

(5) if a Category 5 hurricane were to hit Miami, it could cause over $50,000,000,000 in insured loss;

(6) if the 1938 Long Island Express Hurricane were to occur again, it could cause over $30,000,000,000 in insured losses, and if a hurri-

cane that powerful were to hit Manhattan directly it could cause over $150,000,000,000 in insured losses and cause irreparable harm to our Nation's economy;

(7) the inability of private insurers to build adequate capital in a short amount of time and the resulting lack of sufficient insurance capacity threaten to increase the number of uninsured residential properties, which, in turn, will increase the risk of mortgage and other credit defaults and increase the strain on the Nation's banking system;

(8) it is appropriate that efforts to improve insurance availability be designed and implemented at the State level, but even active and experienced State catastrophe insurance programs struggle with issues of capital adequacy and financial strength;

(9) some States have acted to ensure the continued availability or affordability, or both, of residential property insurance for their residents;

(10) while State catastrophe insurance programs may be well designed and adequate to cover insured losses from most natural disasters, a small but significant number of catastrophic events are likely to exceed the combined financial capacity of

such State programs and the local insurance markets;

(11) the Government Accountability Office has found that, of the approximately $90 billion in Federal emergency appropriations in the wake of the 2005 hurricanes, approximately $26 billion was used by the Federal Emergency Management Agency, the Small Business Administration, and the Department of Housing and Urban Development to make payments to homeowners or renters who lacked adequate insurance; and

(12) the recent and historic turmoil in the financial markets calls into question the ability of even the most creditworthy State catastrophe insurance programs to secure adequate financing following a catastrophic event.

SEC. 3. ESTABLISHMENT OF DEBT GUARANTEE PROGRAM.

The Secretary of the Treasury shall carry out a program under this Act to guarantee, and to enter into commitments to guarantee, holders of debt obligations issued by eligible State programs against loss of principal or interest on such obligations, or both.

SEC. 4. ELIGIBLE STATE PROGRAMS.

(a) REQUIREMENTS.—A State program shall be considered an ''eligible State program'' for purposes of this

Act only if the State program, or other State entity authorized to make such determinations, certifies to the Secretary, in accordance with the procedures established pursuant to subsection (b), that the State program complies with the following requirements:

(1) PROGRAM DESIGN.—The State program shall be established and authorized by State law—

(A) as an insurance program that—

(i) offers residential property insurance coverage for insured losses to property, contents, and additional living expenses; and

(ii) is not a State program that requires insurers to pool resources to provide property insurance coverage for covered perils; or

(B) as a reinsurance program that—

(i) is designed to improve private insurance markets; and

(ii) offers residential property insurance coverage for insured losses to property, contents, and additional living expenses because of a finding by the State insurance commissioner or other State entity authorized to make such a determination that such State program is necessary in order to provide for the continued availability of such insurance coverage for all residents of the State.

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

(A) GOVERNING BODY.—A majority of the members of the governing body of the State program shall be public officials or appointed by public officials.

(B) FINANCIAL INTEREST.—The State shall have a financial interest in the State program.

(C) PROGRAM FUNDS.—If the State has at any time appropriated amounts from the State program's funds for any purpose other than payments for losses insured under the State program, or payments made in connection with any of the State program's authorized activities, the State shall have returned such amounts to the State fund, together with interest on such amounts.

(3) TAX STATUS.—The State program shall have received from the Secretary (or the Secretary's designee) a written determination, within the mean-

ing of section 6110(b) of the Internal Revenue Code of 1986, that the State program—

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

(B) is otherwise exempt from Federal income taxation.

(4) COVERED PERILS.—

(A) IN GENERAL.—The State program shall insure or reinsure losses that are proximately caused by any of the following perils:

(i) Earthquakes.

(ii) Perils ensuing from earthquakes, including fire and tsunamis.

(iii) Tropical cyclones having maximum sustained winds of at least 74 miles per hour, including hurricanes and typhoons.

(iv) Tornadoes.

(v) Volcanic eruptions.

(vi) Catastrophic winter storms.

(vii) Hail.

(viii) Any other natural catastrophe (not including any flood) insured or reinsured under the State program.

(B) AUTHORITY OF SECRETARY TO DEFINE.—The Secretary shall, by regulation, define the natural catastrophe perils under this subsection.

(5) PREVENTION AND MITIGATION.—The State program shall include provisions designed to encourage and support programs to mitigate losses from natural catastrophes for which the State insurance or reinsurance program was established to provide insurance coverage.

(6) ACTUARIAL PREMIUM RATES.—The State program shall be subject to a requirement under State law that, for any insurance coverage made available under the State insurance program or for any reinsurance coverage for such insurance coverage made available under the State reinsurance program, the premium rates charged shall be actuarially sound or actuarially indicated.

(b) CERTIFICATION AND RECERTIFICATION.—The Secretary shall establish procedures for initial certification and annual recertification of State programs as eligible State programs.

SEC. 5. CATASTROPHIC DEBT GUARANTEES.

(a) ELIGIBILITY FOR GUARANTEE.—A guarantee under the program under this Act of the debt of an eligible

State program may be issued only if the Secretary has issued a commitment to guarantee such debt to such eligible State program. The commitment to guarantee shall have a duration of three years and may be extended by the Secretary for a period of one year on each annual anniversary of the issuance of the commitment to guarantee. The commitment to guarantee and each extension of such commitment may be issued by the Secretary only if the Secretary determines, based on information provided by the eligible State program that the Secretary shall require, that there is reasonable assurance that the eligible State program can meet its repayment obligation under the debt.

(b) REQUIRED AMOUNT OF INSURED LOSSES.—The Secretary may not issue a guarantee under the program under this Act for any debt obligations of an eligible State program unless the eligible State program demonstrates to the satisfaction of the Secretary that insured losses to the eligible State program that arise from the event or events of covered perils and that are covered by the commitment to guarantee are likely to exceed the cash resources of the eligible State program available on the date of the occurrence of the event.

(c) LIMITATION ON AMOUNT OF GUARANTEES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the aggregate principal amount of debt of an eligible State program guaranteed following an event or events referred to in subsection (a) may not exceed the amount by which the insured losses expected to be sustained by the State program as a result of such event or events exceed 80 percent of the qualifying assets of the eligible State program as stated in the most recent quarterly financial statement filed with its domiciliary regulator before the occurrence of event or events.

(2) STATE PROGRAMS NOT FILING QUARTERLY STATEMENTS.—In the case of any eligible State program that is not required to file quarterly financial statements with its domiciliary regulator, the aggregate principal amount of debt guaranteed may not exceed the amount by which insured losses sustained by the State program as a result of such event or events exceed 80 percent of the unrestricted net assets as stated in the annual financial statement for the program's fiscal year ending immediately prior to the event or events.

(d) USE OF FUNDS.—Amounts of debt of an eligible State program that are guaranteed under this section shall be used only to pay the insured losses and loss adjustment expenses incurred by the eligible State program. Such amounts shall not be used for any other purpose.

SEC. 6. EFFECT OF GUARANTEE.

(a) IN GENERAL.—The issuance of any guarantee under the program under this Act by the Secretary shall be conclusive evidence that—

(1) the guarantee has been properly obtained;

(2) the underlying debt qualified for such guarantee; and

(3) the guarantee is valid, legal, and enforceable.

(b) FULL FAITH AND CREDIT.—The full faith and credit of the United States is pledged to the payment of all guarantees issued under the program under this Act with respect to principal and interest of the debt guaranteed.

SEC. 7. MAXIMUM LIMITATION ON OUTSTANDING GUARANTEES UNDER PROGRAM.

The aggregate principal amount of debt obligations for which guarantees under the program under this Act are outstanding may not at any time exceed—

(1) with respect to eligible State programs that cover earthquake perils, $5,000,000,000; and

(2) with respect to eligible State programs that cover all other perils, $20,000,000,000.

SEC. 8. PAYMENT OF LOSSES.

(a) IN GENERAL.—If any portion of the principal of or interest on any debt obligation guaranteed under this Act becomes due for payment but is unpaid by the eligible State program issuing such obligation as a result of such program having provided insufficient funds to the duly appointed paying agent or trustee (in this section referred to as the "fiscal agent") for the eligible State program, the Secretary shall pay to the fiscal agent an amount equal to such portion.

(b) TIMING.—The Secretary shall make such payments on the later of—

(1) the date such principal or interest becomes due for payment; or

(2) the first business day after the day on which the Secretary receives notice, in such form and manner as the Secretary may require, of failure by the eligible State program to provide sufficient funds to the fiscal agent to make such payments.

(c) SUBROGATION.—Upon making such payment, the Secretary shall be subrogated to all the rights of the ultimate recipient of the payment. The Secretary shall be entitled to recover from the eligible State program the amount of any payments made pursuant to any guarantee entered into under this Act.

(d) ROLE OF THE ATTORNEY GENERAL.—The Attorney General will take such action as may be appropriate to enforce any right accruing to the United States as a result of the issuance of any guarantee under this Act.

(e) FORBEARANCE.—Nothing in this section may be construed to preclude any forbearance for the benefit of the eligible State program that is agreed to by the parties to any debt obligation guaranteed under this Act and is approved by the Secretary, subject to the availability of budget authority for any resulting costs (as such term is defined in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a)).

(f) AUTHORITY OF SECRETARY.—Notwithstanding any other provision of law relating to the acquisition, handling, or disposal of property by the United States, the Secretary may, in the discretion of the Secretary, complete, recondition, reconstruct, renovate, repair, maintain, operate, or sell any property acquired by the Secretary pursuant to the provisions of this Act.

SEC. 9. FUNDING FOR PAYMENTS OF GUARANTEES.

(a) APPROPRIATIONS.—There are hereby appropriated, out of funds in the Treasury not otherwise appropriated, such sums as may be necessary to satisfy debt guarantee commitments extended to eligible State programs under this Act and for the payment of administrative expenses for conduct of the guarantee program authorized by this Act.

(b) BUDGETARY IMPACT.—For purposes of section 502(5) of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a(5)), the cost of guarantees issued under this Act shall be calculated by adjusting the discount rate in section 502(5)(E) of such Act for government risk.

SEC. 10. DEFINITIONS.

In this Act, the following definitions shall apply:

(1) COMMITMENT TO GUARANTEE.—The term ''commitment to guarantee'' means a commitment to make debt guarantees to an eligible State program, pursuant to subsection 5(a).

(2) COVERED PERILS.—The term ''covered peril'' means a natural catastrophe peril specified in section 4(a)(4).

(3) INSURED LOSS.—The term ''insured loss'' means any loss resulting from a covered peril that is determined by an eligible State program as being covered by insurance or reinsurance made available under that eligible State program.

(4) QUALIFYING ASSETS.—The term ''qualifying assets'' means, with respect to an eligible State program, the policyholder surplus of the State program as stated in the most recent quarterly financial

statement filed by the program with the domiciliary regulator of the program for the last quarter ending before the event or events.

(5) RESIDENTIAL PROPERTY INSURANCE.—The term ''residential property insurance'' means, with respect to an eligible State program, the following types of insurance coverage:

(A) INDIVIDUALLY OWNED RESIDENTIAL STRUCTURES.—

(i) IN GENERAL.—(I) Insurance coverage for individually owned residential structures of not more than 4 dwelling units, individually owned condominium units, or individually owned mobile homes, and the contents of any such units or homes, that are—

(aa) located in the State; and

(bb) used exclusively for residential purposes; or

(II) a tenant's policy written to include personal contents of a residential unit located in the State.

(ii) EXCLUSIONS.—Such term shall not include—

(I) insurance for real property or its contents used for any commercial, industrial, or business purpose, except a structure of not more than 4 dwelling units rented for individual residential purposes; and

(II) a policy that does not include any of the perils insured against in a standard fire policy or any of the perils enumerated in section 4(a)(4).

(B) COMMERCIAL RESIDENTIAL PROPERTIES.—Insurance coverage for commercial residential properties, including properties owned by a condominium association or its members, properties owned by a cooperative association, and apartment buildings.

(6) SECRETARY.—The term ''Secretary'' means the Secretary of the Treasury.

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