

113TH CONGRESS  
1ST SESSION

# S. 1813

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 and earthquake-related events.

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## IN THE SENATE OF THE UNITED STATES

DECEMBER 12 (legislative day, DECEMBER 11), 2013

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

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## 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 and earthquake-related events.

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 of 2013”.

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.
- Sec. 12. Reports.

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  
 20 risk of mortgage and other credit defaults and ad-

1       versely affect the banking system of the United  
2       States.

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 or  
13 earthquake-related event that is determined by an el-  
14 igible State program to be covered by insurance  
15 made available under that eligible State program.

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

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

18                       (A) shall be established and authorized by  
 19                       State law as an earthquake insurance program  
 20                       that offers residential property insurance cov-  
 21                       erage for insured losses to property, contents,  
 22                       and additional living expenses; and

23                       (B) may not require insurers to pool re-  
 24                       sources to provide property insurance coverage  
 25                       for earthquakes.

1 (2) OPERATION.—

2 (A) PUBLIC OFFICIALS.—A majority of the  
3 members of the governing body of the State  
4 program shall be public officials or appointed  
5 by public officials.

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

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

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

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

1 (B) is otherwise exempt from Federal in-  
2 come taxation.

3 (4) EARNINGS.—The State program may not  
4 provide for any distribution of any part of any net  
5 profits of the State program to any insurer that par-  
6 ticipates in the State program.

7 (5) LOSS PREVENTION AND MITIGATION.—

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

13 (B) OPERATIONAL REQUIREMENTS.—The  
14 State program shall operate in a State—

15 (i) that has in effect and enforces, or  
16 within which the appropriate local govern-  
17 ments have in effect and enforce, nation-  
18 ally recognized building, seismic-design,  
19 and safety codes and consensus-based  
20 standards; and

21 (ii) that has taken actions to establish  
22 an insurance rate structure that takes into  
23 account measures to mitigate insured  
24 losses.

1 (6) REQUIREMENTS REGARDING COVERAGE.—

2 The State program—

3 (A) may not, except for charges or assess-  
4 ments related to post-event financing or bond-  
5 ing, involve cross-subsidization between any  
6 separate property-and-casualty insurance lines  
7 offered under the State program pursuant to  
8 paragraph (1);

9 (B) shall be subject to a requirement  
10 under State law that for earthquake insurance  
11 coverage made available under the State insur-  
12 ance program the premium rates charged on  
13 such insurance—

14 (i) shall be actuarially sound;

15 (ii) may not be excessive, inadequate,  
16 or unfairly discriminatory;

17 (iii) shall be established based on the  
18 best available scientific information for as-  
19 sessing the risk of earthquake frequency,  
20 severity, and loss; and

21 (iv) shall incorporate, and may not in  
22 the aggregate be less than, the sum of the  
23 modeled expected loss, risk financing costs,  
24 loss adjustment expense, and any other ex-

1                   penses necessary to operate the State pro-  
2                   gram; and

3                   (C) shall make available to all qualifying  
4                   policyholders insurance coverage and mitigation  
5                   services on a basis that is not unfairly discrimi-  
6                   natory.

7           (b) ANNUAL CERTIFICATION.—The Secretary shall  
8           establish procedures for initial certification and annual re-  
9           certification of a State program as an eligible State pro-  
10          gram.

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

12          (a) AUTHORITY OF SECRETARY.—The Secretary is  
13          authorized and shall have the powers and authorities nec-  
14          essary—

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

19               (2) to certify and recertify State catastrophe in-  
20               surance programs that cover earthquake peril to be-  
21               come or remain eligible for the benefits of such a  
22               debt-guarantee program.

23          (b) LIMIT ON OUTSTANDING DEBT GUARANTEES.—  
24          The aggregate amount of debt covered by the Secretary's  
25          guarantees and commitments to guarantee for all eligible

1 State programs outstanding at any time shall not exceed  
2 \$3,000,000,000, including interest.

3 (c) FUNDING.—

4 (1) APPROPRIATION OF FEDERAL PAYMENTS.—

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

10 (2) CERTIFICATION FEE.—Upon certification or  
11 recertification as an eligible State program under  
12 section 4, a State program shall be charged a certifi-  
13 cation fee that the Secretary determines, at the time  
14 of certification or recertification, is sufficient to  
15 cover—

16 (A) applicable administrative costs arising  
17 from the certification or recertification, includ-  
18 ing all pre-certification costs and a proportional  
19 share of the costs arising from the administra-  
20 tion of the program established under this Act,  
21 but in any event not to exceed one-half of 1  
22 percent per annum of the aggregate principal  
23 amount of the debt for which the eligible State  
24 program is issued a guarantee commitment;  
25 and

1           (B) any probable losses on the aggregate  
2           principal amount of the debt for which the eligi-  
3           ble State program is issued a guarantee com-  
4           mitment.

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

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

22               (1) the eligible State program submits to the  
23               Secretary a report setting forth, in such form and  
24               including such information as the Secretary shall re-

1       quire, how the eligible State program plans to repay  
2       guarantee-eligible debt it may incur;

3           (2) based on the eligible State program's report  
4       submitted pursuant to paragraph (1), the Secretary  
5       determines there is reasonable assurance that the el-  
6       igible State program can meet its repayment obliga-  
7       tion under such debt, by considering relevant criteria  
8       including—

9           (A) par amount of debt to be issued;

10          (B) use of debt proceeds;

11          (C) proposed debt structure;

12          (D) term of debt outstanding;

13          (E) ratio of premium income to expected  
14       debt service;

15          (F) review of recent quarterly financial  
16       statements; and

17          (G) review of any recent credit rating pro-  
18       vided by a nationally recognized statistical rat-  
19       ing organization, as defined in section 3(a) of  
20       the Securities Exchange Act of 1934 (15  
21       U.S.C. 78c(a));

22       (3) the eligible State program enters into an  
23       agreement with the Secretary, as the Secretary shall  
24       require, that the eligible State program—

1 (A) will not use Federal funds of any kind  
2 or from any Federal source (including any dis-  
3 aster or other financial assistance, loan pro-  
4 ceeds, and any other assistance or subsidy) to  
5 repay the debt;

6 (B) will, to the extent prudent, use any au-  
7 thority or capacity to surcharge policyholders or  
8 policies of coverage to contribute to repaying  
9 the debt guaranteed under this subsection; and

10 (C) will apply annually, except in years in  
11 which the debt is being repaid, an amount not  
12 less than 2 percent of the debt subject to the  
13 agreement toward a combination of—

14 (i) mitigation initiatives; and

15 (ii) public education regarding the  
16 risks of earthquakes and earthquake-re-  
17 lated events;

18 (4) the commitment to guarantee specifies and  
19 requires the payment of the fees for debt guarantee  
20 coverage; and

21 (5) the maximum term of the debt specified in  
22 the commitment to guarantee does not exceed 30  
23 years.

24 (e) MANDATORY ASSISTANCE FOR ELIGIBLE STATE  
25 PROGRAMS.—The Secretary shall, upon the request of an

1 eligible State program and pursuant to a commitment to  
2 guarantee issued under subsection (d), provide a guar-  
3 antee under subsection (f) for the eligible State program  
4 in the amount requested by the eligible State program.

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

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

18 (2) USE OF FUNDS.—Proceeds of debt guaran-  
19 teed under this section shall be used only to pay the  
20 costs of issuing debt and of securing or providing  
21 claim-payment capacity for paying the insured losses  
22 and loss adjustment expenses incurred by an eligible  
23 State program. Such amounts shall not be used for  
24 any other purpose.

1           (3) LIMIT ON GUARANTEE FOR EVENTS RELAT-  
2           ING TO A SINGLE EARTHQUAKE.—The amount of a  
3           debt guarantee that an eligible State program re-  
4           ceives to secure or provide claim-payment capacity  
5           for paying the insured losses and loss adjustment ex-  
6           penses from all events relating to a single earth-  
7           quake may not be greater than \$1,500,000,000.

8 **SEC. 6. EFFECT OF GUARANTEE.**

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

- 11           (1) the guarantee has been properly obtained;  
12           (2) the underlying debt qualified for such guar-  
13          antee; and  
14           (3) the guarantee is valid, legal, and enforce-  
15          able.

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

17          If the Secretary determines that the fees collected  
18          under section 5(c)(2) will not cover applicable administra-  
19          tive costs for, and probable losses on, a guaranteed obliga-  
20          tion, the Secretary shall charge and collect a fee for each  
21          guarantee issued in an amount that the Secretary deter-  
22          mines, at the time of issuance of the guarantee, is suffi-  
23          cient to cover such costs and probable losses.

24 **SEC. 8. PAYMENT OF LOSSES.**

25          (a) PAYMENT BY SECRETARY.—

1           (1) IN GENERAL.—The Secretary shall pay to  
2           the duly appointed paying agent or trustee (in this  
3           section referred to as the “Fiscal Agent”) for an eli-  
4           gible State program that portion of the principal and  
5           interest on any debt guaranteed under this Act that  
6           becomes due for payment but is unpaid by the eligi-  
7           ble State program as a result of the eligible State  
8           program having provided insufficient funds to the  
9           Fiscal Agent to make the payment.

10           (2) TIME OF PAYMENT.—The Secretary shall  
11           make a payment described in paragraph (1) on the  
12           later of—

13                   (A) the date on which the principal or in-  
14                   terest becomes due for payment; or

15                   (B) the first business day after the date on  
16                   which the Secretary receives notice that the eli-  
17                   gible State program has failed to provide suffi-  
18                   cient funds to the Fiscal Agent to make the  
19                   payment.

20           (3) SUBROGATION OF RIGHTS.—Upon making a  
21           payment under this subsection, the Secretary shall  
22           be subrogated to all the rights of the ultimate recipi-  
23           ent of the payment.

24           (4) RECOVERY FROM ELIGIBLE STATE PRO-  
25           GRAM.—The Secretary shall be entitled to recover

1 from an eligible State program the amount of any  
2 payments made by the Secretary pursuant to any  
3 guarantee entered into under this Act.

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

9 (c) RULE OF CONSTRUCTION.—Nothing in this sec-  
10 tion shall be construed to preclude any forbearance for the  
11 benefit of the eligible State program which may be agreed  
12 upon by the parties to the guaranteed debt and approved  
13 by the Secretary, provided that budget authority for any  
14 resulting cost, as such term is defined under the Federal  
15 Credit Reform Act of 1990 (2 U.S.C. 661 et seq.), is avail-  
16 able.

17 (d) RIGHT OF THE SECRETARY.—Notwithstanding  
18 any other provision of law relating to the acquisition, han-  
19 dling, or disposal of property by the United States, the  
20 Secretary shall have the right in the discretion of the Sec-  
21 retary to complete, recondition, reconstruct, renovate, re-  
22 pair, maintain, operate, or sell any property acquired by  
23 the Secretary pursuant to the provisions of this Act.

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

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

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

6 For purposes of section 502(5) of the Federal Credit  
7 Reform Act of 1990 (2 U.S.C. 661a(5)), the cost of guar-  
8 antees to be issued under this Act shall be calculated by  
9 adjusting the discount rate in section 502(5)(E) of such  
10 Act for market risk.

11 **SEC. 11. REGULATIONS.**

12 The Secretary shall issue any regulations necessary  
13 to carry out the debt-guarantee program established under  
14 this Act.

15 **SEC. 12. REPORTS.**

16 (a) IN GENERAL.—Not later than 12 months after  
17 the date on which the Secretary issues a guarantee under  
18 section 5 for debt issued by an eligible State program, and  
19 annually thereafter, the eligible State program shall sub-  
20 mit to the Secretary and to Congress a report, in a form  
21 prescribed by the Secretary, that contains the information  
22 required under subsection (b).

23 (b) CONTENTS.—A report under this section shall de-  
24 scribe, with respect to the reporting year—

25 (1) the benefits that the eligible State program  
26 derived from the debt-guarantee; and

1           (2) the manner in which the eligible State pro-  
2           gram applied 2 percent of the guarantee amount for  
3           the purposes described in section 5(d)(3)(C).

4           (c) LIMITATION.—To the extent practicable, the Sec-  
5           retary shall limit the information required to be included  
6           in a report under this section to information that is other-  
7           wise publicly available.

○