111TH CONGRESS
1ST SESSION

S. 886

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

IN THE SENATE OF THE UNITED STATES

APRIL 23, 2009

Mr. NELSON of Florida 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 State catastrophe insurance programs to assist in the 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; TABLE OF CONTENTS.

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

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

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) the United States has a history of catastrophic natural disasters including earthquakes, hurricanes, tornadoes, fires, and volcanic eruptions;

(2) the United States needs to take and support State actions to be better prepared for and better protected from catastrophes;

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

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

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

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

(7) if the 1938 ''Long Island Express'' hurricane were to occur again it could cause over

$30,000,000,000 in insured loss, and if a hurricane that powerful were to hit Manhattan directly, it could cause over $150,000,000,000 in insured loss and cause irreparable harm to our Nation's economy;

(8) 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 their strain on the Nation's banking system;

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

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

(11) 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;

(12) today's historic financial-market turmoil calls into question the ability of even the most creditworthy State programs to secure adequate financing following a catastrophic event;

(13) making available Federal guarantees to enhance the capability of eligible State programs to issue debt will minimize the exposure of State and Federal taxpayers who otherwise may bear the consequences of underfunded programs or under-insured communities following catastrophic events, especially during today's historic market turmoil; and

(14) it is the proper role of the Federal Government to prepare for and protect its citizens from catastrophes and to facilitate consumer protection, victim assistance, and recovery, including financial recovery.

(b) PURPOSES.—The purposes of this Act are to establish a program—

(1) to promote the availability of private capital to provide liquidity and capacity to State catastrophe insurance programs; and

(2) to expedite the payment of claims under State catastrophe insurance programs and better as-

sist the financial recovery from significant natural catastrophes by authorizing the Secretary of the Treasury to guarantee debt for such purposes.

SEC. 3. ESTABLISHMENT OF DEBT GUARANTEE PROGRAM.

(a) AUTHORITY OF SECRETARY.—The Secretary is authorized and shall have the powers and authorities necessary to guarantee, and to enter into commitments to guarantee, holders of debt against loss of principal or interest, or both, on any such debt issued by eligible State programs for purposes of this Act, provided that the total principal amount of debt obligations guaranteed by the Secretary—

(1) for eligible State programs that cover earthquake peril shall not exceed $5,000,000,000; and

(2) for eligible State programs that cover all other perils shall not exceed $20,000,000,000.

(b) FUNDING.—

(1) FEDERAL PAYMENTS.—Subject to paragraphs (1) and (2) of subsection (a), 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.

(2) ADMINISTRATIVE EXPENSES.—Any funds expended or obligated by the Secretary for the pay-

ment of administrative expenses for conduct of the guarantee program authorized by this Act shall be deemed appropriated at the time of such expenditure or obligation.

(c) CONDITIONS FOR GUARANTEE ELIGIBILITY.—A debt guarantee under this section may be made only if the Secretary has issued a commitment to guarantee to an eligible State program. The commitment to guarantee shall be for a period of 3 years and may be extended by the Secretary for a period of 1 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 following requirements are satisfied:

(1) The eligible State program submits to the Secretary a report setting forth, in such form and including such information as the Secretary shall require, how the eligible State program plans to repay the debt.

(2) Based upon the eligible State program's report submitted pursuant to paragraph (1), the Secretary determines there is reasonable assurance that the eligible State program can meet its repayment obligation under the debt.

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

(4) The commitment to guarantee shall specify the fees for debt guarantee coverage.

(5) The maximum term of the debt that shall be specified in a commitment issued under this section may not exceed 30 years.

(d) MANDATORY ASSISTANCE FOR ELIGIBLE STATE PROGRAMS.—The Secretary shall upon the request of an eligible State program and pursuant to a commitment to guarantee issued under subsection (c), provide a guarantee under subsection (e) for such eligible State program in the amount requested by such eligible State program, subject to the limitation under subsection (e)(2).

(e) CATASTROPHIC DEBT GUARANTEE.—A debt guarantee under this subsection for an eligible State program shall be subject to the following requirements:

(1) PRECONDITIONS.—The eligible State program shows to the satisfaction of the Secretary that insured losses in the State to the eligible State pro-

gram arising from the event or events covered by the commitment to guarantee are likely to exceed the eligible State program's available cash resources, as calculated on the date of the event.

(2) AMOUNT.—The aggregate principal amount of the debt guaranteed following an event or events referred to in paragraph (1) 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 the domiciliary regulator of the program prior to the event or events, except that, for eligible State programs that are not required to file such quarterly financial statements, the aggregate principal amount of the 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.

(3) USE OF FUNDS.—Amounts of debt guaranteed under this section shall be used only to pay the

costs of issuing debt and to pay the insured losses and loss adjustment expenses incurred by an eligible State program. Such amounts shall not be used for any other purpose.

SEC. 4. EFFECT OF GUARANTEE.

The issuance of any guarantee by the Secretary under this Act 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.

SEC. 5. ELIGIBLE STATE PROGRAMS.

(a) ELIGIBLE STATE PROGRAMS.—A State program shall be considered an ‘‘eligible State program’’ for purposes of this Act if the State program or the other State entity authorized to make such determinations certifies to the Secretary, in accordance with the procedures established under subsection (b), that the State program complies with the following requirements:

(1) STATE PROGRAM DESIGN.—The State program is established and authorized by State law—

(A) as an insurance program that offers residential property insurance coverage for insured losses to property, contents, and additional living expenses, and which 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 is designed to improve private insurance markets and that 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) OPERATION.—The State program shall meet the following requirements:

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

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

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

(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) FOR STATE PROGRAMS.—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 THE SECRETARY TO DEFINE.—The Secretary shall, by regulation, define the natural catastrophe perils under this subsection.

(5) EARNINGS.—The State program may not provide for any distribution of any part of any net profits of the State program to any insurer that participates in the State program.

(6) PREVENTION AND MITIGATION.—

(A) MITIGATION OF LOSSES.—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.

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

(i) has in effect and enforces, or the appropriate local governments within the State have in effect and enforce, nationally recognized model building, fire, and safety codes and consensus-based standards that offer risk responsive resistance that is substantially equivalent to or greater than the resistance to earthquakes or high winds; and

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

(7) REQUIREMENTS REGARDING COVERAGE.—The State program—

(A) may not, except for charges or assessments related to post-event financing or bonding, involve cross-subsidization between any separate property and casualty insurance lines covered under the State program pursuant to paragraph (1);

(B) 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; and

(C) shall make available to all qualifying policyholders insurance or reinsurance coverage, as applicable, and mitigation services on a basis that is not unfairly discriminatory.

(b) ANNUAL CERTIFICATION.—The Secretary shall establish procedures for initial certification and annual recertification as an eligible State program.

SEC. 6. FULL FAITH AND CREDIT.

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

SEC. 7. FEES FOR GUARANTEES; AMOUNT; COLLECTION.

The Secretary shall charge and collect fees for each guarantee in amounts specified in the commitment to guarantee, which shall be in amounts sufficient in the judgment of the Secretary st the time of issuance of the commitment to guarantee to cover applicable administrative costs and probable losses on the guaranteed obligations covered by the commitment to guarantee, but in any event not to exceed one-half of 1 per centum per annum of the outstanding indebtedness covered by each guarantee.

SEC. 8. PAYMENT OF LOSSES.

(a) IN GENERAL.—The Secretary agrees to pay to the duly appointed paying agent or trustee (in this section referred to as the "Fiscal Agent") for the eligible State program that portion of the principal and interest on any debt guaranteed under this Act that shall become due for payment but shall be unpaid by the eligible State program as a result of such program having provided insufficient funds to the Fiscal Agent to make such payments. The Secretary shall make such payments on the date such principal or interest becomes due for payment or on the business day next following the day on which the Secretary shall receive notice of failure on the part of the eligible State program to provide sufficient funds to the Fiscal Agent to make such payments, whichever is later. 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.

(b) ROLE OF THE ATTORNEY GENERAL.—The Attorney General shall 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.

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

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

SEC. 9. BUDGETARY IMPACT.

(a) COSTS.—For purposes of section 502(5) of the Federal Credit Reform Act of 1990, the cost of guarantees to be issued under this Act shall be calculated by adjusting the discount rate in section 502(5)(E) of such Act for market risk.

(b) SCORING.—For purposes of the Budget Scoring Rules of the Senate and the House of Representatives, the cost of the guarantees to be issued under this Act shall be no greater than the discounted cost calculated under subsection (a) reduced by all projected fees and other income under this Act.

SEC. 10. REGULATIONS.

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

SEC. 11. 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 3(c).

(2) COVERED PERILS.—The term ''covered perils'' means 1 or more of the natural catastrophe perils enumerated in section 5(a)(4).

(3) DISASTER AREA.—The term ''disaster area'' means a geographical area, with respect to which—

(A) an event of a covered peril specified in section 5(a)(4) has occurred; and

(B) a declaration that a disaster exists as a result of the occurrence of such peril has been made by the President of the United States.

(4) ELIGIBLE STATE PROGRAM.—The term ''eligible State program'' means a State program that,

pursuant to section 5, is eligible to receive a debt guarantee under this Act.

(5) 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.

(6) QUALIFYING ASSETS.—The term "qualifying assets" means the policyholder surplus of the eligible State program as stated in the most recent quarterly financial statement filed by the program with the domiciliary regulator of the program in the last quarter ending prior to the event or events.

(7) RESIDENTIAL PROPERTY INSURANCE.—The term "residential property insurance" means insurance coverage for—

(A) individually owned residential structures of not more than 4 dwelling units, individually owned condominium units, or individually owned mobile homes, and their contents, located in the State and used exclusively for residential purposes or a tenant's policy written to include personal contents of a residential unit located in the State, but 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; or

(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 5(a)(4); or

(B) commercial residential property, which includes property owned by a condominium association or its members, property owned by a cooperative association, or an apartment building.

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

(9) STATE.—The term ''State'' means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the United States Virgin Islands, American Samoa, and any other territory or possession of the United States.

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