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

Mr. BENNET introduced the following bill; which was read twice and referred to the Committee on ____________________

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.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Sensible Accounting to Value Energy Act of 2013”.

**SEC. 2. DEFINITIONS.**

In this Act, the following definitions shall apply:

1. (1) COVERED AGENCY.—The term “covered agency”—
   
   (A) means—
   
   (i) an executive agency, as that term is defined in section 102 of title 31, United States Code; and
   
   (ii) any other agency of the Federal Government; and
   
   (B) includes any enterprise, as that term is defined under section 1303 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4502).

2. (2) COVERED LOAN.—The term “covered loan” means a loan secured by a home that is issued, insured, purchased, or securitized by a covered agency.

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

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

   (A) an original lender under a covered loan or the holder of a covered loan at the time at which that mortgage transaction is consummated;
(B) any affiliate, agent, subsidiary, successor, or assignee of an original lender under a covered loan or the holder of a covered loan at the time at which that mortgage transaction is consummated;

(C) any servicer of a covered loan; and

(D) any subsequent purchaser, trustee, or transferee of any covered loan issued by an original lender.

(5) SECRETARY.—The term “Secretary” means the Secretary of Housing and Urban Development.

(6) SERVICER.—The term “servicer” means the person or entity responsible for the servicing of a covered loan, including the person or entity who makes or holds a covered loan if that person or entity also services the covered loan.

(7) SERVICING.—The term “servicing” has the meaning given the term in section 6(i) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2605(i)).

SEC. 3. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) energy costs for homeowners are a significant and increasing portion of their household budgets;
(2) household energy use can vary substantially depending on the efficiency and characteristics of the house;

(3) expected energy cost savings are important to the value of the house;

(4) the current test for loan affordability used by most covered agencies, commonly known as the “debt-to-income” test, is inadequate because it does not take into account the expected energy cost savings for the homeowner of an energy efficient home; and

(5) another loan limitation, commonly known as the “loan-to-value” test, is tied to the appraisal, which often does not adjust for efficiency features of houses.

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

(1) improve the accuracy of mortgage underwriting by Federal mortgage agencies by ensuring that energy cost savings are included in the underwriting process as described below, and thus to reduce the amount of energy consumed by homes and to facilitate the creation of energy efficiency retrofit and construction jobs;

(2) require a covered agency to include the expected energy cost savings of a homeowner as a reg-
ular expense in the tests, such as the debt-to-income test, used to determine the ability of the loan applicant to afford the cost of homeownership for all loan programs; and

(3) require a covered agency to include the value home buyers place on the energy efficiency of a house in tests used to compare the mortgage amount to home value, taking precautions to avoid double-counting and to support safe and sound lending.

SEC. 4. ENHANCED ENERGY EFFICIENCY UNDERWRITING CRITERIA.

(a) In General.—Not later than 1 year after the date of enactment of this Act, the Secretary shall, in consultation with the advisory group established in section 7(b), develop and issue guidelines for a covered agency to implement enhanced loan eligibility requirements, for use when testing the ability of a loan applicant to repay a covered loan, that account for the expected energy cost savings for a loan applicant at a subject property, in the manner set forth in subsections (b) and (c).

(b) Requirements to Account for Energy Cost Savings.—The enhanced loan eligibility requirements under subsection (a) shall require that, for all covered loans for which an energy efficiency report is voluntarily
provided to the mortgagee by the mortgagor, the covered
agency and the mortgagee shall take into consideration the
estimated energy cost savings expected for the owner of
the subject property in determining whether the loan ap-
plicant has sufficient income to service the mortgage debt
plus other regular expenses. To the extent that a covered
agency uses a test such as a debt-to-income test that in-
cludes certain regular expenses, such as hazard insurance
and property taxes, the expected energy cost savings shall
be included as an offset to these expenses. Energy costs
to be assessed include the cost of electricity, natural gas,
oil, and any other fuel regularly used to supply energy to
the subject property.

(e) Determination of Estimated Energy Cost
Savings.—

(1) In General.—The guidelines to be issued
under subsection (a) shall include instructions for
the covered agency to calculate estimated energy
cost savings using—

(A) the energy efficiency report;

(B) an estimate of baseline average energy
costs; and

(C) additional sources of information as
determined by the Secretary.
(2) REPORT REQUIREMENTS.—For the purposes of paragraph (1), an energy efficiency report shall—

(A) estimate the expected energy cost savings specific to the subject property, based on specific information about the property;

(B) be prepared in accordance with the guidelines to be issued under subsection (a); and

(C) be prepared—

(i) in accordance with the Residential Energy Service Network’s Home Energy Rating System (commonly known as “HERS”) by an individual certified by the Residential Energy Service Network, unless the Secretary finds that the use of HERS does not further the purposes of this Act; or

(ii) by other methods approved by the Secretary, in consultation with the Secretary of Energy and the advisory group established in section 7(b), for use under this Act, which shall include a third-party quality assurance procedure.
(3) Use by Appraiser.—If an energy efficiency report is used under subsection (b), the energy efficiency report shall be provided to the appraiser to estimate the energy efficiency of the subject property and for potential adjustments for energy efficiency.

(d) Required Disclosure to Consumer for a Home With an Energy Efficiency Report.—If an energy efficiency report is used under subsection (b), the guidelines to be issued under subsection (a) shall require the mortgagee to—

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

(2) include the energy efficiency report in the documentation for the loan provided to the borrower.

(e) Required Disclosure to Consumer for a Home Without an Energy Efficiency Report.—If an energy efficiency report is not used under subsection (b), the guidelines to be issued under subsection (a) shall require the mortgagee to inform the loan applicant in a manner and at a time as prescribed by the Secretary, and
if practicable, in the documents delivered at the time of
loan application of—

(1) typical energy cost savings that would be
possible from a cost-effective energy upgrade of a
home of the size and in the region of the subject
property;

(2) the impact the typical energy cost savings
would have on monthly ownership costs of a typical
home;

(3) the impact on the size of a mortgage that
could be obtained if the typical energy cost savings
were reflected in an energy efficiency report; and

(4) resources for improving the energy effi-
ciency of a home.

(f) LIMITATIONS.—A covered agency shall not—

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

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

(g) APPLICABILITY AND IMPLEMENTATION DATE.—Not later than 3 years after the date of enactment of this Act, and before December 31, 2016, the enhanced loan eligibility requirements required under this section shall be implemented by each covered agency to—

1. apply to any covered loan for the sale, or refinancing of any loan for the sale, of any home;

2. be available on any residential real property (including individual units of condominiums and cooperatives) that qualifies for a covered loan; and

3. provide prospective mortgagees with sufficient guidance and applicable tools to implement the required underwriting methods.

SEC. 5. ENHANCED ENERGY EFFICIENCY UNDERWRITING VALUATION GUIDELINES.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary shall—

1. in consultation with the Federal Financial Institutions Examination Council and the advisory group established in section 7(b), develop and issue guidelines for a covered agency to determine the maximum permitted loan amount based on the value
of the property for all covered loans made on properties with an energy efficiency report that meets the requirements of section 4(c)(2); and

(2) in consultation with the Secretary of Energy, issue guidelines for a covered agency to determine the estimated energy savings under subsection (c) for properties with an energy efficiency report.

(b) REQUIREMENTS.—The enhanced energy efficiency underwriting valuation guidelines required under subsection (a) shall include—

(1) a requirement that if an energy efficiency report that meets the requirements of section 4(c)(2) is voluntarily provided to the mortgagee, such report shall be used by the mortgagee or covered agency to determine the estimated energy savings of the subject property; and

(2) a requirement that the estimated energy savings of the subject property be added to the appraised value of the subject property by a mortgagee or covered agency for the purpose of determining the loan-to-value ratio of the subject property, unless the appraisal includes the value of the overall energy efficiency of the subject property, using methods to be established under the guidelines issued under subsection (a).
(c) Determination of Estimated Energy Savings.—

(1) Amount of Energy Savings.—The amount of estimated energy savings shall be determined by calculating the difference between the estimated energy costs for the average comparable houses, as determined in guidelines to be issued under subsection (a), and the estimated energy costs for the subject property based upon the energy efficiency report.

(2) Duration of Energy Savings.—The duration of the estimated energy savings shall be based upon the estimated life of the applicable equipment, consistent with the rating system used to produce the energy efficiency report.

(3) Present Value of Energy Savings.—The present value of the future savings shall be discounted using the average interest rate on conventional 30-year mortgages, in the manner directed by guidelines issued under subsection (a).

(d) Ensuring Consideration of Energy Efficient Features.—Section 1110 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3339) is amended—
(1) in paragraph (2), by striking "; and" and inserting a semicolon; and

(2) in paragraph (3), by striking the period at the end and inserting "; and" and inserting after paragraph (3) the following:

"(4) that State certified and licensed appraisers have timely access, whenever practicable, to information from the property owner and the lender that may be relevant in developing an opinion of value regarding the energy- and water-saving improvements or features of a property, such as—

"(A) labels or ratings of buildings;

"(B) installed appliances, measures, systems or technologies;

"(C) blueprints;

"(D) construction costs;

"(E) financial or other incentives regarding energy- and water-efficient components and systems installed in a property;

"(F) utility bills;

"(G) energy consumption and benchmarking data; and

"(H) third-party verifications or representations of energy and water efficiency performance of a property, observing all financial pri-
vacy requirements adhered to by certified and
licensed appraisers, including section 501 of the

Unless a property owner consents to a lender, an ap-
praiser, in carrying out the requirements of para-
graph (4), shall not have access to the commercial
or financial information of the owner that is privi-
leged or confidential.”.

(e) TRANSACTIONS REQUIRING STATE CERTIFIED
APPRAISERS.—Section 1113 of the Financial Institutions
Reform, Recovery, and Enforcement Act of 1989 (12
U.S.C. 3342) is amended—

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

(2) in paragraph (2), by inserting after “atypi-
cal” the following: “, or an appraisal on which the
appraiser makes adjustments using an energy effi-
ciency report.”.

(f) PROTECTIONS.—

(1) AUTHORITY TO IMPOSE LIMITATIONS.—The
guidelines to be issued under subsection (a) shall in-
clude such limitations and conditions as determined
by the Secretary to be necessary to protect against
meaningful under or over valuation of energy cost savings or duplicative counting of energy efficiency features or energy cost savings in the valuation of any subject property that is used to determine a loan amount.

(2) ADDITIONAL AUTHORITY.—At the end of the 7-year period following the implementation of enhanced eligibility and underwriting valuation requirements under this Act, the Secretary may modify or apply additional exceptions to the approach described in subsection (b), where the Secretary finds that the unadjusted appraisal will reflect an accurate market value of the efficiency of the subject property or that a modified approach will better reflect an accurate market value.

(g) APPLICABILITY AND IMPLEMENTATION DATE.—Not later than 3 years after the date of enactment of this Act, and before December 31, 2016, each covered agency shall implement the guidelines required under this section, which shall—

(1) apply to any covered loan for the sale, or refinancing of any loan for the sale, of any home; and
(2) be available on any residential real property, including individual units of condominiums and co-operatives, that qualifies for a covered loan.

SEC. 6. MONITORING.

Not later than 1 year after the date on which the enhanced eligibility and underwriting valuation requirements are implemented under this Act, and every year thereafter, each covered agency with relevant activity shall issue and make available to the public a report that—

(1) enumerates the number of covered loans of the agency for which there was an energy efficiency report, and that used energy efficiency appraisal guidelines and enhanced loan eligibility requirements; and

(2) includes the default rates and rates of foreclosures for each category of loans.

SEC. 7. RULEMAKING.

(a) In General.—The Secretary shall prescribe regulations to carry out this Act, in consultation with the Secretary of Energy and the advisory group established in subsection (b), which may contain such classifications, differentiations, or other provisions, and may provide for such proper implementation and appropriate treatment of different types of transactions, as the Secretary determines are necessary or proper to effectuate the purposes
of this Act, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.

(b) ADVISORY GROUP.—To assist in carrying out this Act, the Secretary shall establish an advisory group, consisting of individuals representing the interests of—

(1) mortgage lenders;
(2) appraisers;
(3) energy raters and residential energy consumption experts;
(4) energy efficiency organizations;
(5) real estate agents;
(6) home builders and remodelers;
(7) State energy officials; and
(8) others as determined by the Secretary.

SEC. 8. ADDITIONAL STUDY.

(a) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, the Secretary shall re-convene the advisory group established in section 7(b), in addition to water and locational efficiency experts, to advise the Secretary on the implementation of the enhanced energy efficiency underwriting criteria established in sections 4 and 5.

(b) RECOMMENDATIONS.—The advisory group established in section 7(b) shall provide recommendations to the Secretary on any revisions or additions to the enhanced
energy efficiency underwriting criteria deemed necessary by the group, which may include alternate methods to better account for home energy costs and additional factors to account for substantial and regular costs of homeownership such as location-based transportation costs and water costs. The Secretary shall forward any legislative recommendations from the advisory group to Congress for its consideration.