

1 “(2) on completion of a review under paragraph
2 (1), if the Secretary determines that significant en-
3 ergy savings would result, upgrade the standards to
4 include all new energy efficiency and renewable en-
5 ergy measures that are technologically feasible and
6 economically justified.”.

7 **SEC. 433. ENHANCED ENERGY EFFICIENCY UNDER-**
8 **WRITING.**

9 (a) **DEFINITIONS.**—In this section:

10 (1) **COVERED AGENCY.**—The term “covered
11 agency”—

12 (A) means—

13 (i) an executive agency, as that term
14 is defined in section 102 of title 31, United
15 States Code; and

16 (ii) any other agency of the Federal
17 Government; and

18 (B) includes any enterprise, as that term is
19 defined under section 1303 of the Federal
20 Housing Enterprises Financial Safety and
21 Soundness Act of 1992 (12 U.S.C. 4502).

22 (2) **COVERED LOAN.**—The term “covered loan”
23 means a loan secured by a home that is issued, in-
24 sured, purchased, or securitized by a covered agency.

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

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

5 (A) an original lender under a covered loan
6 or the holder of a covered loan at the time at
7 which that mortgage transaction is con-
8 summated;

9 (B) any affiliate, agent, subsidiary, suc-
10 cessor, or assignee of an original lender under
11 a covered loan or the holder of a covered loan
12 at the time at which that mortgage transaction
13 is consummated;

14 (C) any servicer of a covered loan; and

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

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

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

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

5 (b) FINDINGS AND PURPOSES.—

6 (1) FINDINGS.—Congress finds that—

7 (A) energy costs for homeowners are a sig-
8 nificant and increasing portion of their house-
9 hold budgets;

10 (B) household energy use can vary sub-
11 stantially depending on the efficiency and char-
12 acteristics of the house;

13 (C) expected energy cost savings are im-
14 portant to the value of the house;

15 (D) the current test for loan affordability
16 used by most covered agencies, commonly
17 known as the “debt-to-income” test, is inad-
18 equate because it does not take into account the
19 expected energy cost savings for the homeowner
20 of an energy efficient home; and

21 (E) another loan limitation, commonly
22 known as the “loan-to-value” test, is tied to the
23 appraisal, which often does not adjust for effi-
24 ciency features of houses.

1 (2) PURPOSES.—The purposes of this section
2 are to—

3 (A) improve the accuracy of mortgage un-
4 derwriting by Federal mortgage agencies by en-
5 suring that energy cost savings are included in
6 the underwriting process as described below,
7 and thus to reduce the amount of energy con-
8 sumed by homes and to facilitate the creation
9 of energy efficiency retrofit and construction
10 jobs;

11 (B) require a covered agency to include the
12 expected energy cost savings of a homeowner as
13 a regular expense in the tests, such as the debt-
14 to-income test, used to determine the ability of
15 the loan applicant to afford the cost of home-
16 ownership for all loan programs; and

17 (C) require a covered agency to include the
18 value home buyers place on the energy effi-
19 ciency of a house in tests used to compare the
20 mortgage amount to home value, taking pre-
21 cautions to avoid double-counting and to sup-
22 port safe and sound lending.

23 (c) ENHANCED ENERGY EFFICIENCY UNDER-
24 WRITING CRITERIA.—

1 (1) IN GENERAL.—Not later than 1 year after
2 the date of enactment of this Act, the Secretary
3 shall, in consultation with the advisory group estab-
4 lished in subsection (f)(2), develop and issue guide-
5 lines for a covered agency to implement enhanced
6 loan eligibility requirements, for use when testing
7 the ability of a loan applicant to repay a covered
8 loan, that account for the expected energy cost sav-
9 ings for a loan applicant at a subject property, in
10 the manner set forth in paragraphs (2) and (3).

11 (2) REQUIREMENTS TO ACCOUNT FOR ENERGY
12 COST SAVINGS.—The enhanced loan eligibility re-
13 quirements under paragraph (1) shall require that,
14 for all covered loans for which an energy efficiency
15 report is voluntarily provided to the mortgagee by
16 the mortgagor, the covered agency and the mort-
17 gagee shall take into consideration the estimated en-
18 ergy cost savings expected for the owner of the sub-
19 ject property in determining whether the loan appli-
20 cant has sufficient income to service the mortgage
21 debt plus other regular expenses. To the extent that
22 a covered agency uses a test such as a debt-to-in-
23 come test that includes certain regular expenses,
24 such as hazard insurance and property taxes, the ex-
25 pected energy cost savings shall be included as an

1 offset to these expenses. Energy costs to be assessed
2 include the cost of electricity, natural gas, oil, and
3 any other fuel regularly used to supply energy to the
4 subject property.

5 (3) DETERMINATION OF ESTIMATED ENERGY
6 COST SAVINGS.—

7 (A) IN GENERAL.—The guidelines to be
8 issued under paragraph (1) shall include in-
9 structions for the covered agency to calculate
10 estimated energy cost savings using—

- 11 (i) the energy efficiency report;
12 (ii) an estimate of baseline average
13 energy costs; and
14 (iii) additional sources of information
15 as determined by the Secretary.

16 (B) REPORT REQUIREMENTS.—For the
17 purposes of subparagraph (A), an energy effi-
18 ciency report shall—

- 19 (i) estimate the expected energy cost
20 savings specific to the subject property,
21 based on specific information about the
22 property;
23 (ii) be prepared in accordance with
24 the guidelines to be issued under para-
25 graph (1); and

1 (iii) be prepared—

2 (I) in accordance with the Resi-
3 dential Energy Service Network's
4 Home Energy Rating System (com-
5 monly known as "HERS") by an indi-
6 vidual certified by the Residential En-
7 ergy Service Network, unless the Sec-
8 retary finds that the use of HERS
9 does not further the purposes of this
10 section; or

11 (II) by other methods approved
12 by the Secretary, in consultation with
13 the Secretary of Energy and the advi-
14 sory group established in subsection
15 (f)(2), for use under this section,
16 which shall include a third-party qual-
17 ity assurance procedure.

18 (C) USE BY APPRAISER.—If an energy ef-
19 ficiency report is used under paragraph (2), the
20 energy efficiency report shall be provided to the
21 appraiser to estimate the energy efficiency of
22 the subject property and for potential adjust-
23 ments for energy efficiency.

24 (4) REQUIRED DISCLOSURE TO CONSUMER FOR
25 A HOME WITH AN ENERGY EFFICIENCY REPORT.—

1 If an energy efficiency report is used under para-
2 graph (2), the guidelines to be issued under para-
3 graph (1) shall require the mortgagee to—

4 (A) inform the loan applicant of the ex-
5 pected energy costs as estimated in the energy
6 efficiency report, in a manner and at a time as
7 prescribed by the Secretary, and if practicable,
8 in the documents delivered at the time of loan
9 application; and

10 (B) include the energy efficiency report in
11 the documentation for the loan provided to the
12 borrower.

13 (5) REQUIRED DISCLOSURE TO CONSUMER FOR
14 A HOME WITHOUT AN ENERGY EFFICIENCY RE-
15 PORT.—If an energy efficiency report is not used
16 under paragraph (2), the guidelines to be issued
17 under paragraph (1) shall require the mortgagee to
18 inform the loan applicant in a manner and at a time
19 as prescribed by the Secretary, and if practicable, in
20 the documents delivered at the time of loan applica-
21 tion of—

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

1 (B) the impact the typical energy cost sav-
2 ings would have on monthly ownership costs of
3 a typical home;

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

8 (D) resources for improving the energy ef-
9 ficiency of a home.

10 (6) PRICING OF LOANS.—

11 (A) IN GENERAL.—A covered agency may
12 price covered loans originated under the en-
13 hanced loan eligibility requirements required
14 under this section in accordance with the esti-
15 mated risk of the loans.

16 (B) IMPOSITION OF CERTAIN MATERIAL
17 COSTS, IMPEDIMENTS, OR PENALTIES.—In the
18 absence of a publicly disclosed analysis that
19 demonstrates significant additional default risk
20 or prepayment risk associated with the loans, a
21 covered agency shall not impose material costs,
22 impediments, or penalties on covered loans
23 merely because the loan uses an energy effi-
24 ciency report or the enhanced loan eligibility re-
25 quirements required under this section.

1 (7) LIMITATIONS.—

2 (A) IN GENERAL.—A covered agency may
3 price covered loans originated under the en-
4 hanced loan eligibility requirements required
5 under this section in accordance with the esti-
6 mated risk of those loans.

7 (B) PROHIBITED ACTIONS.—A covered
8 agency shall not—

9 (i) modify existing underwriting cri-
10 teria or adopt new underwriting criteria
11 that intentionally negate or reduce the im-
12 pact of the requirements or resulting bene-
13 fits that are set forth or otherwise derived
14 from the enhanced loan eligibility require-
15 ments required under this subsection; or

16 (ii) impose greater buy back require-
17 ments, credit overlays, or insurance re-
18 quirements, including private mortgage in-
19 surance, on covered loans merely because
20 the loan uses an energy efficiency report or
21 the enhanced loan eligibility requirements
22 required under this subsection.

23 (8) APPLICABILITY AND IMPLEMENTATION
24 DATE.—Not later than 3 years after the date of en-
25 actment of this Act, and before December 31, 2016,

1 the enhanced loan eligibility requirements required
2 under this subsection shall be implemented by each
3 covered agency to—

4 (A) apply to any covered loan for the sale,
5 or refinancing of any loan for the sale, of any
6 home;

7 (B) be available on any residential real
8 property (including individual units of con-
9 dominiums and cooperatives) that qualifies for
10 a covered loan; and

11 (C) provide prospective mortgagees with
12 sufficient guidance and applicable tools to im-
13 plement the required underwriting methods.

14 (d) ENHANCED ENERGY EFFICIENCY UNDER-
15 WRITING VALUATION GUIDELINES.—

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

19 (A) in consultation with the Federal Fi-
20 nancial Institutions Examination Council and
21 the advisory group established in subsection
22 (f)(2), develop and issue guidelines for a cov-
23 ered agency to determine the maximum per-
24 mitted loan amount based on the value of the
25 property for all covered loans made on prop-

1 erties with an energy efficiency report that
2 meets the requirements of subsection (c)(3)(B);
3 and

4 (B) in consultation with the Secretary of
5 Energy, issue guidelines for a covered agency to
6 determine the estimated energy savings under
7 paragraph (3) for properties with an energy ef-
8 ficiency report.

9 (2) REQUIREMENTS.—The enhanced energy ef-
10 ficiency underwriting valuation guidelines required
11 under paragraph (1) shall include—

12 (A) a requirement that if an energy effi-
13 ciency report that meets the requirements of
14 subsection (c)(3)(B) is voluntarily provided to
15 the mortgagee, such report shall be used by the
16 mortgagee or covered agency to determine the
17 estimated energy savings of the subject prop-
18 erty; and

19 (B) a requirement that the estimated en-
20 ergy savings of the subject property be added to
21 the appraised value of the subject property by
22 a mortgagee or covered agency for the purpose
23 of determining the loan-to-value ratio of the
24 subject property, unless the appraisal includes
25 the value of the overall energy efficiency of the

1 subject property, using methods to be estab-
2 lished under the guidelines issued under para-
3 graph (1).

4 (3) DETERMINATION OF ESTIMATED ENERGY
5 SAVINGS.—

6 (A) AMOUNT OF ENERGY SAVINGS.—The
7 amount of estimated energy savings shall be de-
8 termined by calculating the difference between
9 the estimated energy costs for the average com-
10 parable houses, as determined in guidelines to
11 be issued under paragraph (1), and the esti-
12 mated energy costs for the subject property
13 based upon the energy efficiency report.

14 (B) DURATION OF ENERGY SAVINGS.—The
15 duration of the estimated energy savings shall
16 be based upon the estimated life of the applica-
17 ble equipment, consistent with the rating sys-
18 tem used to produce the energy efficiency re-
19 port.

20 (C) PRESENT VALUE OF ENERGY SAV-
21 INGS.—The present value of the future savings
22 shall be discounted using the average interest
23 rate on conventional 30-year mortgages, in the
24 manner directed by guidelines issued under
25 paragraph (1).

1 (4) ENSURING CONSIDERATION OF ENERGY EF-
2 FICIENT FEATURES.—Section 1110 of the Financial
3 Institutions Reform, Recovery, and Enforcement Act
4 of 1989 (12 U.S.C. 3339) is amended—

5 (A) in paragraph (2), by striking “; and”
6 and inserting a semicolon; and

7 (B) in paragraph (3), by striking the pe-
8 riod at the end and inserting “; and” and in-
9 serting after paragraph (3) the following:

10 “(4) that State certified and licensed appraisers
11 have timely access, whenever practicable, to informa-
12 tion from the property owner and the lender that
13 may be relevant in developing an opinion of value re-
14 garding the energy- and water-saving improvements
15 or features of a property, such as—

16 “(A) labels or ratings of buildings;

17 “(B) installed appliances, measures, sys-
18 tems or technologies;

19 “(C) blueprints;

20 “(D) construction costs;

21 “(E) financial or other incentives regard-
22 ing energy- and water-efficient components and
23 systems installed in a property;

24 “(F) utility bills;

1 “(G) energy consumption and
2 benchmarking data; and

3 “(H) third-party verifications or represen-
4 tations of energy and water efficiency perform-
5 ance of a property, observing all financial pri-
6 vacy requirements adhered to by certified and
7 licensed appraisers, including section 501 of the
8 Gramm-Leach-Bliley Act (15 U.S.C. 6801).

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

14 (5) TRANSACTIONS REQUIRING STATE CER-
15 TIFIED APPRAISERS.—Section 1113 of the Financial
16 Institutions Reform, Recovery, and Enforcement Act
17 of 1989 (12 U.S.C. 3342) is amended—

18 (A) in paragraph (1), by inserting before
19 the semicolon the following: “, or any real prop-
20 erty on which the appraiser makes adjustments
21 using an energy efficiency report”; and

22 (B) in paragraph (2), by inserting after
23 “atypical” the following: “, or an appraisal on
24 which the appraiser makes adjustments using
25 an energy efficiency report.”.

1 (6) PROTECTIONS.—

2 (A) AUTHORITY TO IMPOSE LIMITA-
3 TIONS.—The guidelines to be issued under
4 paragraph (1) shall include such limitations and
5 conditions as determined by the Secretary to be
6 necessary to protect against meaningful under
7 or over valuation of energy cost savings or du-
8 plicative counting of energy efficiency features
9 or energy cost savings in the valuation of any
10 subject property that is used to determine a
11 loan amount.

12 (B) ADDITIONAL AUTHORITY.—At the end
13 of the 7-year period following the implementa-
14 tion of enhanced eligibility and underwriting
15 valuation requirements under this section, the
16 Secretary may modify or apply additional ex-
17 ceptions to the approach described in paragraph
18 (2), where the Secretary finds that the
19 unadjusted appraisal will reflect an accurate
20 market value of the efficiency of the subject
21 property or that a modified approach will better
22 reflect an accurate market value.

23 (7) APPLICABILITY AND IMPLEMENTATION
24 DATE.—Not later than 3 years after the date of en-
25 actment of this Act, and before December 31, 2016,

1 each covered agency shall implement the guidelines
2 required under this subsection, which shall—

3 (A) apply to any covered loan for the sale,
4 or refinancing of any loan for the sale, of any
5 home; and

6 (B) be available on any residential real
7 property, including individual units of con-
8 dominiums and cooperatives, that qualifies for a
9 covered loan.

10 (e) MONITORING.—Not later than 1 year after the
11 date on which the enhanced eligibility and underwriting
12 valuation requirements are implemented under this sec-
13 tion, and every year thereafter, each covered agency with
14 relevant activity shall issue and make available to the pub-
15 lic a report that—

16 (1) enumerates the number of covered loans of
17 the agency for which there was an energy efficiency
18 report, and that used energy efficiency appraisal
19 guidelines and enhanced loan eligibility require-
20 ments;

21 (2) includes the default rates and rates of fore-
22 closures for each category of loans; and

23 (3) describes the risk premium, if any, that the
24 agency has priced into covered loans for which there
25 was an energy efficiency report.

1 (f) RULEMAKING.—

2 (1) IN GENERAL.—The Secretary shall pre-
3 scribe regulations to carry out this section, in con-
4 sultation with the Secretary of Energy and the advi-
5 sory group established in paragraph (2), which may
6 contain such classifications, differentiations, or other
7 provisions, and may provide for such proper imple-
8 mentation and appropriate treatment of different
9 types of transactions, as the Secretary determines
10 are necessary or proper to effectuate the purposes of
11 this section, to prevent circumvention or evasion
12 thereof, or to facilitate compliance therewith.

13 (2) ADVISORY GROUP.—To assist in carrying
14 out this section, the Secretary shall establish an ad-
15 visory group, consisting of individuals representing
16 the interests of—

17 (A) mortgage lenders;

18 (B) appraisers;

19 (C) energy raters and residential energy
20 consumption experts;

21 (D) energy efficiency organizations;

22 (E) real estate agents;

23 (F) home builders and remodelers;

24 (G) State energy officials; and

25 (H) others as determined by the Secretary.

1 (g) ADDITIONAL STUDY.—

2 (1) IN GENERAL.—Not later than 18 months
3 after the date of enactment of this Act, the Sec-
4 retary shall reconvene the advisory group established
5 in subsection (f)(2), in addition to water and loca-
6 tional efficiency experts, to advise the Secretary on
7 the implementation of the enhanced energy efficiency
8 underwriting criteria established in subsections (c)
9 and (d).

10 (2) RECOMMENDATIONS.—The advisory group
11 established in subsection (f)(2) shall provide rec-
12 ommendations to the Secretary on any revisions or
13 additions to the enhanced energy efficiency under-
14 writing criteria deemed necessary by the group,
15 which may include alternate methods to better ac-
16 count for home energy costs and additional factors
17 to account for substantial and regular costs of home-
18 ownership such as location-based transportation
19 costs and water costs. The Secretary shall forward
20 any legislative recommendations from the advisory
21 group to Congress for its consideration.