

105TH CONGRESS
2D SESSION

H. R. 4745

To establish a program to assist homeowners experiencing unavoidable, temporary difficulty making payments on mortgages insured under the National Housing Act.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 8, 1998

Mr. GUTIERREZ introduced the following bill; which was referred to the
Committee on Banking and Financial Services

A BILL

To establish a program to assist homeowners experiencing unavoidable, temporary difficulty making payments on mortgages insured under the National Housing Act.

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.**

4 The Act may be cited as the “Homeowners’ Emer-
5 gency Mortgage Assistance Act”.

6 **SEC. 2. MORTGAGE EMERGENCY ASSISTANCE PROGRAM.**

7 (a) IN GENERAL.—The Secretary shall establish a
8 program to make payments on a mortgage insured under

1 the National Housing Act for a 1- to 4-family residence
2 when—

3 (1) the mortgagee has given the mortgagor no-
4 tice in accordance with section 3(b) that it intends
5 to foreclose the mortgage;

6 (2) at least 2 full monthly installments due on
7 the mortgage are unpaid after the application of any
8 partial payments that may have been accepted but
9 not yet applied to the mortgage account;

10 (3) the mortgagor is suffering financial hard-
11 ship due to circumstances beyond the mortgagor's
12 control which render the mortgagor unable to cor-
13 rect the delinquency on the mortgage and unable to
14 make full mortgage payments before the expiration
15 of the 60-day period beginning on the date that no-
16 tice was sent to the mortgagor in accordance with
17 section 3(b);

18 (4) there is a reasonable prospect that the
19 mortgagor will be able to resume full mortgage pay-
20 ments not later than 36 months after the beginning
21 of the period for which assistance payments are pro-
22 vided and to pay the mortgage in full by its maturity
23 date or by a later date agreed upon by the mortga-
24 gee;

1 (5) the property mortgaged is the mortgagor's
2 principal place of residence;

3 (6) the mortgagor does not own other property
4 which is subject to a mortgage insured or held by
5 the Secretary;

6 (7) the mortgagor has applied to the Secretary
7 for assistance in accordance with section 4; and

8 (8) the mortgagor has not been more than 60
9 days in arrears on a residential mortgage within the
10 2-year period preceding the delinquency for which
11 assistance is requested, unless the mortgagor can
12 demonstrate that the prior delinquency was the re-
13 sult of financial hardship due to circumstances be-
14 yond the control of the mortgagor.

15 (b) WAIVER OF CERTAIN CONDITIONS.—The condi-
16 tions set forth in paragraphs (4) and (5) of subsection
17 (a) may be waived by the Secretary in any case where re-
18 quiring the conditions to be met would adversely affect
19 achievement of the purposes of the National Housing Act.

20 (c) EFFECT OF FINDING OF INELIGIBILITY.—If,
21 after reviewing an application for assistance submitted in
22 accordance with section 4, the Secretary determines that
23 the mortgagor has not met the conditions of eligibility de-
24 scribed in subsection (a), the mortgagor shall be prohib-
25 ited from reapplying for assistance under this Act until

1 the expiration of the 6-month period beginning on the date
2 of such determination unless there is a material change
3 in the financial circumstances of the mortgagor.

4 (d) DETERMINATION RELATING TO FINANCIAL
5 HARDSHIP.—In determining whether a financial hardship
6 is due to circumstances beyond a mortgagor’s control, the
7 Secretary may consider information regarding the mortga-
8 gor’s employment record, credit history, and current in-
9 come.

10 (e) HOUSING COUNSELING AGENCIES.—The Sec-
11 retary shall designate and approve nonprofit housing
12 counseling agencies in each State to be available to assist
13 the Secretary in implementing the program established
14 pursuant to subsection (a).

15 **SEC. 3. LEGAL ACTION.**

16 (a) CONDITIONS UNDER WHICH LEGAL ACTION IS
17 PROHIBITED.—Except as otherwise provided in the Act,
18 a mortgagee of a mortgage which is insured under the Na-
19 tional Housing Act for a 1- to 4-family residence may not
20 accelerate the maturity of or commence any legal action
21 regarding such a mortgage (including mortgage fore-
22 closure to recover under such obligation) or take posses-
23 sion of any security of the mortgagor for such mortgage
24 obligation—

1 (1) before the expiration of the 30-day period
2 beginning on the date that notice of the intent to
3 take such action was sent to the mortgagor in ac-
4 cordance with subsection (b);

5 (2) before the expiration of the 30-day period
6 beginning on the date of the initial meeting between
7 the mortgagor and an approved counseling agency
8 held in accordance with section 4(a);

9 (3) if an application for such assistance under
10 this Act has been submitted to the Secretary on be-
11 half of the mortgagor and such application—

12 (A) is pending; or

13 (B) has been approved by payments have
14 not yet been made toward the mortgage; or

15 (4) if payment toward the mortgage is being
16 made under this Act.

17 (b) REQUIREMENTS OF NOTICE.—Notice under this
18 section shall—

19 (1) give a brief description of the legal action
20 intended and the basis therefore;

21 (2) be sent via first class mail;

22 (3) include a list of approved counseling agen-
23 cies located in the State in which the mortgagor re-
24 sides; and

1 (4) be subject to such other requirements as
2 prescribed by the Secretary.

3 **SEC. 4. APPLICATION FOR ASSISTANCE.**

4 (a) MEETING.—

5 (1) IN GENERAL.—To apply for assistance
6 under this Act, not later than 30 days after receiv-
7 ing notice in accordance with section 3(b), a mortga-
8 gator shall attend a meeting with the mortgagee or an
9 approved counseling agency to attempt to prevent
10 legal action for which the notice was sent by restruc-
11 turing the scheduled mortgage payment. A meeting
12 under this paragraph may be conducted over the
13 telephone.

14 (2) NOTICE.—If the mortgagor meets with the
15 approved counseling agency within the period speci-
16 fied in paragraph (1), the approved counseling agen-
17 cy shall send notice of the meeting, including the
18 date of the meeting, to the mortgagee not later than
19 5 business days after the meeting.

20 (b) PREPARATION; SUBMISSION.—

21 (1) IN GENERAL.—If it is determined at the
22 meeting that the mortgagor is not likely to be able
23 to pay the mortgage delinquency or otherwise resolve
24 the default and prevent foreclosure before the expi-
25 ration of the 60-day period beginning on the date of

1 the meeting, the mortgagor may file an application
2 for mortgage assistance under this Act. At the re-
3 quest of the mortgagor, an approved counseling
4 agency shall—

5 (A) assist the mortgagor in preparing an
6 application for assistance under this Act; and

7 (B) not later than 30 days after the mort-
8 gagor initially requests assistance in the prepa-
9 ration of the application, submit the completed
10 application to the Secretary.

11 (2) FEES.—The Secretary may pay approved
12 counseling agencies a fee, in an amount determined
13 by the Secretary, for rendering assistance pursuant
14 to this Act.

15 (c) NOTICE TO MORTGAGEE.—If the approved coun-
16 seling agency submits an application for assistance to the
17 Secretary on behalf of a mortgagor, the approved counsel-
18 ing agency shall, not later than 5 business days after sub-
19 mitting the application, inform the mortgagee of the date
20 that the application was submitted.

21 (d) FORM; CONTENTS.—An application for assistance
22 under this Act shall be submitted on a form prescribed
23 by the Secretary and shall include a financial statement
24 disclosing all assets and liabilities of the mortgagor,

1 whether singly or jointly held, and all household income
2 regardless of source.

3 (e) EFFECT OF MISREPRESENTATION.—A mortgagor
4 who intentionally misrepresents any financial information
5 in conjunction with the filing of an application for assist-
6 ance under this Act may be denied assistance and required
7 to immediately repay any amount of assistance received,
8 and the mortgagee may, at any time thereafter, take any
9 legal action to enforce the mortgage without any further
10 restrictions or requirements under this Act.

11 (f) AVAILABILITY.—An application for assistance
12 under this Act may be obtained from an approved counsel-
13 ing agency.

14 (g) DETERMINATION ON APPLICATION.—

15 (1) TIME PERIOD.—The Secretary shall deter-
16 mine eligibility of a mortgagor for assistance under
17 this Act not later than 90 days after receipt of the
18 application of the mortgagor.

19 (2) NOTIFICATION.—Not later than 5 business
20 days after making the determination on an applica-
21 tion for assistance, the Secretary will notify the
22 mortgagor and the mortgagee as to whether the ap-
23 plication has been approved or disapproved.

1 **SEC. 5. PAYMENTS.**

2 (a) **AMOUNT TO BRING MORTGAGE CURRENT.**—If
3 the Secretary determines that a mortgagor is eligible for
4 assistance under this Act, the Secretary shall pay to the
5 mortgagee from the Mutual Mortgage Insurance Fund the
6 full amount due to the mortgagee pursuant to the terms
7 of the mortgage without regard to any acceleration under
8 the mortgage, or the full amount of any alternative mort-
9 gage payments agreed to by the mortgagee and mortgagor
10 on the date that the application is approved by the Sec-
11 retary. This amount shall include the amount of principal,
12 interest, taxes, assessments, ground rents, hazard insur-
13 ance, any mortgage insurance or credit insurance pre-
14 miums, and reasonable attorneys' fees incurred by such
15 mortgagee in relation to the arrearage.

16 (b) **MONTHLY ASSISTANCE.**—After the Secretary has
17 paid to the mortgagee the amount pursuant to subsection
18 (a), the Secretary may provide monthly mortgage assist-
19 ance payments to the mortgagee on behalf of the mortga-
20 gor.

21 (c) **PERIOD FOR ASSISTANCE.**—Payments under this
22 Act shall be provided for a period not to exceed 36 months,
23 either consecutively or nonconsecutively. The Secretary
24 shall establish procedures for periodic review of the mort-
25 gator's financial circumstances for the purpose of deter-

1 mining the necessity for continuation, termination, or ad-
2 justment of the amount of the payments.

3 **SEC. 6. REPAYMENT OF ASSISTANCE.**

4 (a) MONTHLY PAYMENTS.—Before making assist-
5 ance payments under this Act on behalf of a mortgagor,
6 the Secretary shall enter into an agreement with the mort-
7 gagor for repayment of all mortgage assistance made by
8 the Secretary plus interest as provided in subsection (b).
9 The agreement shall provide for monthly payments by the
10 mortgagor in an amount determined as follows:

11 (1) If the mortgagor's total housing expense is
12 less than 35 percent of the mortgagor's net effective
13 income, the mortgagor shall pay to the Secretary the
14 difference between 35 percent of the mortgagor's net
15 effective income and the mortgagor's total housing
16 expense unless otherwise determined by the Sec-
17 retary after examining the mortgagor's financial cir-
18 cumstances and ability to contribute to repayment of
19 the mortgage assistance.

20 (2) If the mortgagor's total housing expense is
21 more than 35 percent of the mortgagor's net effec-
22 tive income, repayment of the mortgage assistance
23 shall be deferred until the mortgagor's total housing
24 expense is less than 35 percent of the mortgagor's
25 net effective income.

1 (3) Notwithstanding paragraphs (1) and (2), if
2 repayment of mortgage assistance is not made by
3 the date that the mortgage is paid in full, the mort-
4 gagor shall make mortgage assistance repayments in
5 an amount not less than the previous regular mort-
6 gage payment until the mortgage assistance is re-
7 paid.

8 (b) INTEREST.—Interest shall accrue on all mortgage
9 assistance made under this Act at the rate determined
10 monthly by the Secretary of the Treasury to be equal to
11 the then current average yield on outstanding 30-year
12 bonds issued by the Secretary of the Treasury under sec-
13 tion 3102 of title 31, United States Code, and shall accrue
14 only during the period in which the mortgagor is required
15 to make repayment under this section.

16 (c) ASSISTANCE LOANS.—The amount by which the
17 mortgagor assistance payments made by the Secretary to
18 the mortgagee exceeds the amount of payments made by
19 the mortgagor to the Secretary shall be a loan by the Sec-
20 retary to the mortgagor. The loan shall be evidenced by
21 such documents as the Secretary shall determine nec-
22 essary to protect the interests of the United States.

23 (d) LIEN TO SECURE REPAYMENT OF ASSIST-
24 ANCE.—Repayment of amounts owed to the Secretary
25 from a mortgagor shall be secured by a mortgage lien on

1 the property and by such other obligation as the Secretary
2 may require. The lien or other security interest of the Sec-
3 retary shall not be deemed to take priority over any other
4 secured lien or secured interest in effect against the mort-
5 gator's property on the date assistance payments begin.
6 The Secretary may allow subordination of the mortgage
7 assistance lien if such subordination is necessary to permit
8 the mortgagor to obtain a home improvement loan for re-
9 pairs necessary to preserve the property.

10 (e) TIME FOR PAYMENT.—The mortgagor shall make
11 the above payment to the Secretary at least 7 days before
12 each mortgage payment is due under the mortgage.

13 (f) REVIEW UPON DELINQUENCY.—If the mortgagor
14 fails to pay to the Secretary any amounts due directly
15 from him or her under this section not later than 15 days
16 after the due date, the Secretary shall review the mortga-
17 gor's financial circumstances to determine whether the de-
18 linquency is the result of a change in the mortgagor's fi-
19 nancial circumstance since the payment amount last was
20 determined. If the delinquency is not the result of a
21 change in the mortgagor's financial circumstances, the
22 Secretary shall terminate the mortgage assistance pay-
23 ments and the mortgagee may, at any time thereafter,
24 take any legal action to enforce its mortgage without any
25 further restriction or requirement. If the delinquency is

1 the result of such a change, the Secretary shall modify
2 the mortgagor's required payments to the Secretary as the
3 Secretary shall determine.

4 **SEC. 7. DEFINITIONS.**

5 For the purposes of this Act, the following definitions
6 apply:

7 (1) **APPROVED COUNSELING AGENCY.**—The
8 term “approved counseling agency” means a non-
9 profit housing counseling agency approved by the
10 Secretary pursuant to section 2(e).

11 (2) **GROSS HOUSEHOLD INCOME.**—The term
12 “gross household income” means the total income of
13 a mortgagor, the mortgagor's spouse, children resid-
14 ing in the same household as the mortgagor, and
15 any other resident of the household declared by the
16 mortgagor as a dependent for Federal tax purposes.

17 (3) **HOUSING EXPENSE.**—The term “housing
18 expense” means the sum of the mortgagor's monthly
19 maintenance, utility, and hazard insurance expense,
20 taxes, and required mortgage payments, including
21 escrows.

22 (4) **NET EFFECTIVE INCOME.**—The term “net
23 effective income” means the gross household income
24 of the mortgagor, less city, State, and Federal in-
25 come and social security taxes.

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

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