

110TH CONGRESS  
2D SESSION

# H. R. 7126

To provide stability to the housing market in the United States by providing diligent notice and options to homeowners facing the risk of foreclosure, providing alternatives to the homeowner and mortgagee that can assist in the retention of the home while meeting the financial obligations to ensure that the mortgagee will be made whole, and providing protections to renters of properties subject to mortgages in foreclosure, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 26, 2008

Ms. RICHARDSON introduced the following bill; which was referred to the Committee on Financial Services

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## A BILL

To provide stability to the housing market in the United States by providing diligent notice and options to homeowners facing the risk of foreclosure, providing alternatives to the homeowner and mortgagee that can assist in the retention of the home while meeting the financial obligations to ensure that the mortgagee will be made whole, and providing protections to renters of properties subject to mortgages in foreclosure, and for other purposes.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Housing Options Made  
3 Effective Act” or the “HOME Act”.

4 **SEC. 2. REQUIREMENT TO FILE NOTICE OF DEFAULT BE-**  
5 **FORE FORECLOSURE.**

6 Notwithstanding any provision of State law, no judi-  
7 cial or nonjudicial foreclosure may be initiated with re-  
8 spect to any covered residential mortgage (as such term  
9 is defined in section 14) unless—

10 (1) the mortgagee has filed for record, in the  
11 appropriate public office for filing or recordation of  
12 interests in or against real property for the State or  
13 jurisdiction in which the property subject to the  
14 mortgage is located, a notice of default that in-  
15 cludes—

16 (A) a statement identifying the covered  
17 residential mortgage, the name or names of the  
18 mortgagor and mortgagee, and the book and  
19 page, or instrument number, if applicable,  
20 where the mortgage is recorded or a description  
21 of the property subject to the mortgage;

22 (B) a statement that a breach of the obli-  
23 gation under the mortgage has occurred;

24 (C) a statement setting forth the nature of  
25 each breach actually known to the mortgagee  
26 and of the mortgagee’s election to sell or cause

1 to be sold the property to satisfy that obligation  
2 and any other obligation secured by the mort-  
3 gage that is in default; and

4 (D) a declaration from the mortgagee  
5 that—

6 (i) the mortgagee has complied with  
7 section 4 (relating to direct contact with  
8 the borrower to provide foreclosure avoid-  
9 ance options);

10 (ii) the mortgagee has used due dili-  
11 gence, in accordance with the requirements  
12 of section 5, to contact the borrower; or

13 (iii) the borrower has surrendered the  
14 property to the mortgagee; and

15 (2) the 90-day period beginning upon the filing  
16 of the notice of default has expired.

17 **SEC. 3. REQUIREMENTS FOR FILING NOTICE OF DEFAULT.**

18 Notwithstanding any provision of State law, a mort-  
19 gagee may not file notice of default, as required under sec-  
20 tion 2(1), with respect to any covered residential mortgage  
21 unless—

22 (1) the mortgagee has complied with the re-  
23 quirements of section 4 (relating to direct contact  
24 with the borrower to provide foreclosure avoidance  
25 options) and the 30-day period beginning upon com-

1       pliance with all requirements of section 4 has ex-  
2       pired;

3               (2) the mortgagee has used due diligence, in ac-  
4       cordance with the requirements of section 5, to con-  
5       tact the borrower and the 30-day period beginning  
6       upon compliance by the mortgagee with all require-  
7       ments of such section has expired; or

8               (3) the borrower has surrendered the property  
9       to the mortgagee.

10 **SEC. 4. DIRECT CONTACT WITH BORROWER TO PROVIDE**  
11 **FORECLOSURE AVOIDANCE OPTIONS.**

12       (a) IN GENERAL.—A mortgagee for a covered resi-  
13       dential mortgage complies with the requirements of this  
14       section only if the mortgagee has taken all of the following  
15       actions:

16               (1) DIRECT CONTACT.—The mortgagee has  
17       made direct contact with the borrower via service, in  
18       person, or by telephone and notified the borrower—

19                       (A) that the borrower has a right to re-  
20       quest a meeting with the mortgagee for the  
21       purpose of assessing the borrower’s financial  
22       situation and providing options for the borrower  
23       to avoid foreclosure, which may be held contem-  
24       poraneously with or subsequent to such contact  
25       at the option of the borrower; and

1 (B) of the toll-free telephone number made  
2 available by the Department of Housing and  
3 Urban Development to locate a housing coun-  
4 seling agency certified by the Department.

5 (2) ASSESSMENT OF FINANCIAL CONDITION  
6 AND OPTIONS TO AVOID FORECLOSURE.—

7 (A) IN GENERAL.—If requested by the bor-  
8 rower, the mortgagee has conducted a meeting  
9 with the borrower, not later than 14 days after  
10 the request was made, during which the mort-  
11 gagee has provided the borrower with an assess-  
12 ment of the borrower's financial situation and  
13 options for the borrower to avoid foreclosure.

14 (B) TELEPHONE MEETINGS.—A meeting  
15 required under this paragraph may be con-  
16 ducted by telephone.

17 (C) TIMING.—A mortgagee may comply  
18 with the requirements for a meeting under this  
19 paragraph by fulfilling such requirements upon  
20 making contact with the borrower in accordance  
21 with paragraph (1) or by holding a subsequent  
22 meeting.

23 (D) BORROWER'S USE OF DESIGNEE.—

24 (i) AUTHORITY.—A borrower may  
25 designate a housing counseling agency cer-

1           tified by the Department of Housing and  
2           Urban Development, attorney, or other ad-  
3           visor to discuss options for the borrower to  
4           avoid foreclosure with the mortgagee.

5           (ii) PROCEDURE.—To designate a  
6           housing counseling agency certified by the  
7           Department of Housing and Urban Devel-  
8           opment for purposes of this subparagraph,  
9           a borrower shall send a notarized letter to  
10          the mortgagee stating that the borrower  
11          has designated such a counselor to discuss  
12          options to foreclosure.

13          (iii) BORROWER RESPONSIBILITY FOR  
14          FINAL DECISION.—Notwithstanding the  
15          designation of any housing counseling  
16          agency by a borrower pursuant to this sub-  
17          paragraph, the mortgagee may not accept  
18          a final determination regarding acceptance  
19          or denial of any loan modification or work-  
20          out plan offered to the borrower except di-  
21          rectly from the borrower.

22          (3) LOAN MODIFICATIONS AND WORKOUT  
23          PLANS.—Any loan modification or workout plan of-  
24          fered by the mortgagee to the borrower under a cov-  
25          ered residential mortgage pursuant to contact or

1 meetings required under this section shall be an  
2 offer that—

3 (A) fulfills payment of the principal obliga-  
4 tion of the mortgage; and

5 (B) minimizes the loss of the mortgagee.

6 (b) PARTICIPATION OF LOSS MITIGATION PER-  
7 SONNEL.—Any loss mitigation personnel of a mortgagee  
8 may participate by telephone during any contact required  
9 by this section.

10 **SEC. 5. DUE DILIGENCE IN ATTEMPTING TO CONTACT BOR-**  
11 **ROWER.**

12 (a) IN GENERAL.—The mortgagee for a covered resi-  
13 dential mortgage shall be considered for purposes of sec-  
14 tion 2(a)(2) to have used due diligence in accordance with  
15 this section to contact the borrower under the mortgage  
16 only if the mortgagee complies with the following require-  
17 ments:

18 (1) FIRST ATTEMPT.—The mortgagee shall  
19 send to the borrower at the address of the property  
20 subject to the mortgage and all other addresses of  
21 the borrower known to the mortgagee, by first-class  
22 mail, a letter that—

23 (A) states that the borrower is delinquent  
24 on payments due under the mortgage;

1 (B) instructs the borrower to contact the  
2 mortgagee to discuss options to avoid fore-  
3 closure;

4 (C) includes an address and telephone  
5 number at which to contact the mortgagee; and

6 (D) includes the toll-free telephone number  
7 made available by the Department of Housing  
8 and Urban Development to locate a housing  
9 counseling agency certified by the Department.

10 (2) FOLLOW-UP CONTACT.—After the letter re-  
11 quired under paragraph (1) has been sent, the mort-  
12 gagee shall attempt to contact the borrower by tele-  
13 phone at least three times at different hours and on  
14 different days by calling any and all telephone num-  
15 bers for the borrower that the mortgagee has on file  
16 and, if contact is made, shall provide the informa-  
17 tion specified in subparagraphs (A) through (D) of  
18 paragraph (1).

19 (3) CONTACT BY CERTIFIED MAIL.—If the bor-  
20 rower does not contact the mortgagee within 10 days  
21 after the telephone call requirements of paragraph  
22 (2) have been satisfied/ the mortgagee complies with  
23 paragraph (2) but is unable to provide the borrower  
24 by telephone with the information specified in sub-  
25 paragraphs (A) through (D) of paragraph (1), the

1 mortgagee shall send to the borrower at the address  
2 of the property subject to the mortgage and all other  
3 addresses of the borrower known to the mortgagee,  
4 by certified mail, with return receipt requested, a  
5 letter that contains the information specified in sub-  
6 paragraphs (A) through (D) of paragraph (1).

7 (4) PROCESS SERVER.—If the borrower does  
8 not contact the mortgagee within 14 days after the  
9 certified letter is sent pursuant to paragraph (3), or  
10 the certified letter is returned to the mortgagee  
11 marked “return to sender,” the mortgagee shall uti-  
12 lize the services of a private process server to deliver  
13 the contents of the certified letter to the borrower.

14 (5) WEB POSTING.—If the mortgagee maintains  
15 or has a location on the World Wide Web, the mort-  
16 gagee shall post a prominent link on the homepage  
17 of such website to the following information:

18 (A) A list of financial documents that bor-  
19 rowers in default should collect and be prepared  
20 to present to the mortgagee when discussing  
21 options for avoiding foreclosure.

22 (B) A toll-free telephone number by which  
23 borrowers who wish to discuss options for  
24 avoiding foreclosure may discuss such options  
25 with the mortgagee.

1           (C) The toll-free telephone number made  
2           available by the Department of Housing and  
3           Urban Development to locate a housing coun-  
4           seling agency certified by the Department.

5           (6) DIRECT CONTACT.—If, before the expiration  
6           of the 30-day period beginning upon compliance by  
7           the mortgagee with all requirements of this section,  
8           the borrower requests a meeting with the mortgagee  
9           for the purpose of assessing the borrower’s financial  
10          situation and providing options for the borrower to  
11          avoid foreclosure—

12           (A) the mortgagee shall conduct such a  
13           meeting with the borrower in accordance with  
14           the requirements of paragraphs (2) and (3) of  
15           section 4(a); and

16           (B) for purposes of section 3(1), the mort-  
17           gagee shall be considered to have complied with  
18           section 4 upon completion of the requirements  
19           under subparagraph (A) of this paragraph.

20          (b) AUTHORITY TO CHARGE FEES.—The mortgagee  
21          under a covered residential mortgage entered into after  
22          the date of the enactment of this Act may assess a fee  
23          to the borrower in an amount such the aggregate of such  
24          fees for all covered mortgages entered into by such mort-  
25          gagee does not exceed the amount reasonably estimated

1 to be necessary to cover the costs of actions taken pursu-  
2 ant to paragraphs (1) through (5) of subsection (a) with  
3 respect to all covered residential mortgages of such mort-  
4 gagee.

5 **SEC. 6. DUTIES REGARDING LOAN MODIFICATIONS AND**  
6 **WORKOUT PLANS.**

7 (a) DUTIES OF LOAN SERVICERS.—Any duty any  
8 servicer of covered residential mortgages may have to  
9 maximize net present value under their pooling and serv-  
10 icing agreements relating to such mortgages is owed to  
11 all parties in a loan pool, not to any particular parties,  
12 and a servicer of such mortgages acts in the best interests  
13 of all parties if the servicer agrees to or implements a loan  
14 modification or workout plan for such any such a mort-  
15 gagee for which both of the following apply:

16 (1) The mortgage is in payment default, or pay-  
17 ment default is reasonably foreseeable.

18 (2) Anticipated recovery under the loan modi-  
19 fication or workout plan relating to the mortgage ex-  
20 ceeds the anticipated recovery through foreclosure on  
21 a net present value basis.

22 (b) OFFERING OF WORKOUTS.—The mortgagee for  
23 a covered residential mortgage described in subsection (a)  
24 shall offer the borrower a loan modification or workout  
25 plan in accordance with section 4.

1 **SEC. 7. ACCURATE CREDIT REPORTING.**

2 (a) REPORTING OF SUBSEQUENT MORTGAGE PAY-  
3 MENTS.—In the case of any covered residential mortgage  
4 for which any loan modification or workout plan has been  
5 negotiated between the borrower and the mortgagee and  
6 agreed to or implemented, any payments due under the  
7 mortgage after such agreement or implementation made  
8 on time and pursuant to the loan modification or workout  
9 plan shall be reported to the appropriate consumer report-  
10 ing agency described in section 603(p) of the Fair Credit  
11 Reporting Act and included in the consumer file for such  
12 borrower at such agency and in any consumer report (as  
13 defined in section 603 of the Fair Credit Reporting Act)  
14 prepared from such file.

15 (b) RULE OF CONSTRUCTION.—This section may not  
16 be construed to authorize the omission, from any con-  
17 sumer file or consumer report for any borrower under a  
18 covered residential mortgage, of any delinquent payments  
19 due under the mortgage before or after agreement to or  
20 implementation of any loan modification or workout plan  
21 for the mortgage.

22 **SEC. 8. LOAN MODIFICATION OR WORKOUT PLAN.**

23 (a) INCLUSION OF PROVISION.—Any covered residen-  
24 tial mortgage agreement that is entered into after the date  
25 of the enactment of this Act shall contain a provision  
26 that—

1           (1) grants the borrower under the mortgage  
2           and the mortgagee the right to negotiate a loan  
3           modification or workout plan if—

4                   (A) the mortgage is in payment default or  
5                   payment default is reasonably foreseeable; or

6                   (B) in the case of a mortgagee, the antici-  
7                   pated recovery under a loan workout plan ex-  
8                   ceeds the anticipated recovery through fore-  
9                   closure on a net present value basis; and

10           (2) requires that any such loan modification or  
11           workout plan offered or agreed to comply with the  
12           requirements under section 4(a)(3).

13           (b) DEPOSIT OF PAYMENT.—If the borrower under  
14           a covered residential mortgage agrees to a loan modifica-  
15           tion or workout plan for the mortgage, pursuant to a pro-  
16           vision included in a mortgage agreement pursuant to sub-  
17           section (a) of this section or pursuant to or pursuant to  
18           section 4(a), any payments due under the mortgage made  
19           pursuant to the loan modification or workout plan shall  
20           be deposited directly into the account of the mortgagee.

21           (c) RULE OF CONSTRUCTION.—This section may not  
22           be construed to require the mortgagee for any covered res-  
23           idential mortgage to reduce the principal amount due  
24           under the mortgage, or to prevent the mortgagee from  
25           taking action to minimize the mortgagee’s financial loss.

1 **SEC. 9. APPLICATION OF PARTIAL PAYMENTS.**

2 (a) SEPARATE ACCOUNT.—The mortgagee for a cov-  
3 ered residential mortgage may not refuse, and shall credit  
4 to the account of the borrower under such mortgage, any  
5 partial payments of amounts due under the mortgage.

6 (b) EFFECT ON FORECLOSURE.—Acceptance of par-  
7 tial payments by the mortgagee for a covered residential  
8 mortgage shall not affect determination of default under  
9 the mortgage.

10 **SEC. 10. RIGHTS OF RENTERS IN FORECLOSURE.**

11 (a) IN GENERAL.—In the case of any foreclosure of  
12 any covered residential mortgage for a property:

13 (1) RIGHT TO OCCUPY PROPERTY.—Any suc-  
14 cessor in interest in such property pursuant to the  
15 foreclosure shall assume such interest subject to the  
16 rights of any tenant of the property under the au-  
17 thority of a lease entered into before the initiation  
18 of such foreclosure to occupy the property until the  
19 end of the remaining term of the lease or the evic-  
20 tion pursuant only to a notice of eviction served on  
21 such tenant after the expiration of the 6-month pe-  
22 riod beginning upon foreclosure of the mortgage,  
23 whichever occurs first.

24 (2) NOTICE TO TENANT OF SALE.—Upon post-  
25 ing a notice of sale pursuant to foreclosure, the  
26 mortgagee shall immediately inform any tenant of

1 the property under the authority of a lease entered  
2 into before the initiation of such foreclosure that the  
3 property may be sold in connection with such fore-  
4 closure, and the mortgagee shall inform any such  
5 tenant of the date, time, and location of such sale  
6 if that information is known upon the posting of no-  
7 tice of sale.

8 (3) REQUIREMENT TO USE DUE DILIGENCE TO  
9 CONTACT TENANT.—The mortgagee shall use due  
10 diligence, in accordance with the requirements of  
11 subsection (b), to contact each tenant of the prop-  
12 erty under the authority of a lease entered into be-  
13 fore the initiation of such foreclosure.

14 (b) DUE DILIGENCE TO CONTACT TENANT.—The  
15 mortgagee for a covered residential mortgage shall be con-  
16 sidered for purposes of subsection (a)(3) to have used due  
17 diligence in accordance with this subsection to contact the  
18 tenant of the property subject to a covered residential  
19 mortgage that is being foreclosed only if the mortgagee  
20 sends to the tenant at the address of the property subject  
21 to the mortgage, by certified mail, with return receipt re-  
22 quested, a letter that contains the following information:

23 (1) A statement that the property may be sold  
24 at a foreclosure sale.



1           (1) the mortgagee has filed for record, in the  
2           appropriate public office for filing or recordation of  
3           interest in or against real property for the State or  
4           jurisdiction in which the property subject to the  
5           mortgage is located, a notice of sale that includes—

6                   (A) a statement that a notice of default re-  
7                   quired under section 2 was filed;

8                   (B) a declaration that the mortgagee has  
9                   complied with the requirements under section 3  
10                  (relating to requirements for filing notice of de-  
11                  fault);

12                  (C) identification of the time, place, and  
13                  location of the foreclosure auction or sale; and

14                  (D) an address and telephone number at  
15                  which to contact the mortgagee; and

16           (2) a copy of the notice filed under paragraph  
17           (1)—

18                   (A) is posted on the property to subject to  
19                   the foreclosure sale for the 21-day period end-  
20                   ing upon such sale;

21                   (B) published in a daily or weekly publica-  
22                   tion having wide circulation in the area in  
23                   which the property is located not less than once  
24                   a week during the 3-week period ending upon  
25                   such sale; and

1           (C) is mailed to the borrower not less than  
2           20 days before the sale and to any other party  
3           that requests the mortgagee to provide such no-  
4           tice.

5 **SEC. 12. ADMINISTRATIVE ENFORCEMENT.**

6           Compliance with the requirements of this Act shall  
7           be enforced in the same manner and by the same means  
8           that compliance with the requirements imposed under the  
9           Truth in Lending Act are enforced under section 108 of  
10          such Act (15 U.S.C. 1607).

11 **SEC. 13. PREEMPTION.**

12          This Act shall not preempt any provision of State law  
13          that provides greater protection to borrowers under resi-  
14          dential mortgages.

15 **SEC. 14. DEFINITIONS.**

16          For purposes of this Act, the following definitions  
17          shall apply:

18           (1) COVERED RESIDENTIAL MORTGAGE.—The  
19           term “covered residential mortgage” means a mort-  
20           gage that is a first or subsequent lien on residential  
21           real property (including individual units of con-  
22           dominiums and cooperatives) that is designed prin-  
23           cipally for the occupancy of from one to four fami-  
24           lies and is used as a residence of the borrower under  
25           the mortgage.

1           (2) MORTGAGEE.—The term “mortgagee” in-  
2           cludes, with respect to a mortgage, any beneficiary  
3           or authorized agent of the mortgagee.

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

6 **SEC. 15. INAPPLICABILITY AND EFFECTIVE DATE.**

7           (a) INAPPLICABILITY.—This Act shall not apply to  
8           any covered residential mortgage—

9                   (1) for which the mortgagee has filed notice of  
10           default before the date of the enactment of this Act;

11                   (2) secured by a lien on property that the bor-  
12           rower has surrendered, as evidenced by a written  
13           confirmation of the surrender or delivery of the keys  
14           to the property to the mortgagee; or

15                   (3) the borrower under which has filed for  
16           bankruptcy and for which the proceedings have not  
17           been finalized.

18           (b) EFFECTIVE DATE.—This Act shall take effect on  
19           the date of the enactment of this Act.

○