

106TH CONGRESS
1ST SESSION

S. 1553

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

IN THE SENATE OF THE UNITED STATES

AUGUST 5, 1999

Mr. DURBIN 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 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 This 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 control of the
12 mortgagor which render the mortgagor unable to
13 correct the delinquency on the mortgage and unable
14 to make full mortgage payments before the expira-
15 tion of the 60-day period beginning on the date that
16 notice 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 mort-
24 gagee;

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) EFFECT OF FINDING OF INELIGIBILITY.—If,
16 after reviewing an application for assistance submitted in
17 accordance with section 4, the Secretary determines that
18 the mortgagor has not met the conditions of eligibility de-
19 scribed in subsection (a), the mortgagor shall be prohib-
20 ited from reapplying for assistance under this Act until
21 the expiration of the 6-month period beginning on the date
22 of such determination unless there is a material change
23 in the financial circumstances of the mortgagor.

24 (c) DETERMINATION RELATING TO FINANCIAL
25 HARDSHIP.—In determining whether a financial hardship

1 (which may be caused by a reduction in income or an in-
 2 crease in expenses, or both) is due to circumstances be-
 3 yond the control of a mortgagor, the Secretary may con-
 4 sider information regarding the mortgagor's employment
 5 record, credit history, and current income. Such cir-
 6 cumstances shall include, but not be limited to—

7 (1) loss of a job by a member of the household;

8 (2) salary, wage or earnings reduction of a
 9 member of the household;

10 (3) injury, disability or illness of a member of
 11 the household;

12 (4) divorce or separation in the household; or

13 (5) death of a member of the household.

14 (d) HOUSING COUNSELING AGENCIES.—The Sec-
 15 retary shall designate and approve nonprofit housing
 16 counseling agencies in each State to be available to assist
 17 the Secretary in implementing the program established
 18 pursuant to subsection (a) of this section and to section
 19 4(b)(1)(A). Nonprofit housing agencies designated and ap-
 20 proved under this subsection shall provide assistance to
 21 an eligible mortgagor during the entire period that such
 22 mortgagor receives assistance under this Act.

23 **SEC. 3. LEGAL ACTION.**

24 (a) CONDITIONS UNDER WHICH LEGAL ACTION IS
 25 PROHIBITED.—Except as otherwise provided in the Act,

1 a mortgagee of a mortgage which is insured under the Na-
2 tional Housing Act for a 1- to 4-family residence may not
3 accelerate the maturity of or commence any legal action
4 regarding such a mortgage (including, but not limited to,
5 mortgage foreclosure to recover under such obligation) or
6 take possession of any security of the mortgagor for such
7 mortgage obligation unless the mortgagee has sent to the
8 mortgagor notice pursuant to subsection (b). In addition,
9 the mortgagee may not take such action—

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

14 (2) before the expiration of the 30-day period
15 beginning on the date of the initial meeting between
16 the mortgagor and an approved counseling agency
17 held in accordance with section 4(a);

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

21 (A) is pending; or

22 (B) has been approved but payments have
23 not yet been made toward the mortgage; or

24 (4) if payment toward the mortgage is being
25 made under this Act.

1 (b) REQUIREMENTS OF NOTICE.—The Secretary
2 shall issue regulations that include, but are not limited
3 to, a uniform notice under this section. Such notice shall
4 be in plain language and shall—

5 (1) inform the mortgagor in large bold type
6 that he or she may be eligible for temporary assist-
7 ance in making mortgage payments;

8 (2) include an explanation of the mortgage as-
9 sistance program under this Act;

10 (3) inform the mortgagor that to apply for
11 mortgage assistance, he or she shall attend a meet-
12 ing in accordance with section 4(a) within 30 days
13 of the date of the notice;

14 (4) include the legal action intended and the
15 basis therefore;

16 (5) include a list of approved counseling agen-
17 cies located in the State in which the mortgagor re-
18 sides;

19 (6) be sent via first class mail to the last known
20 address of the mortgagor; and

21 (7) be subject to such other requirements as
22 prescribed by the Secretary.

23 **SEC. 4. APPLICATION FOR ASSISTANCE.**

24 (a) MEETING.—

1 (1) IN GENERAL.—To apply for assistance
2 under this Act, not later than 30 days after receiv-
3 ing notice in accordance with section 3(b), a mort-
4 gagor shall attend a face-to-face meeting with the
5 mortgagee or an approved counseling agency to at-
6 tempt to prevent legal action for which the notice
7 was sent by restructuring the mortgage payment
8 schedule. A meeting under this paragraph may be
9 conducted over the telephone under circumstances
10 prescribed by the Secretary.

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

18 (b) PREPARATION; SUBMISSION.—

19 (1) IN GENERAL.—If the mortgagor is not able
20 to resolve the default and prevent foreclosure before
21 the expiration of the 30-day period beginning on the
22 date of the meeting, the mortgagor may file an ap-
23 plication for mortgage assistance under this Act. At
24 the request of the mortgagor, an approved coun-
25 seling agency shall—

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

3 (B) not later than 30 days after the mort-
4 gator initially requests assistance in the prepa-
5 ration of the application, submit the completed
6 application to the Secretary.

7 (2) FEES.—The Secretary may pay approved
8 counseling agencies a fee, in an amount determined
9 by the Secretary, for rendering assistance pursuant
10 to this Act.

11 (c) NOTICE TO MORTGAGEE.—If the approved coun-
12 seling agency submits an application for assistance to the
13 Secretary on behalf of a mortgagor, the approved coun-
14 seling agency shall, not later than 5 business days after
15 submitting the application, inform the mortgagee of the
16 date that the application was submitted.

17 (d) FORM; CONTENTS.—An application for assistance
18 under this Act shall be submitted on a form prescribed
19 by the Secretary and shall include a financial statement
20 disclosing all assets and liabilities of the mortgagor,
21 whether singly or jointly held, and all household income
22 regardless of source.

23 (e) EFFECT OF MISREPRESENTATION.—A mortgagor
24 who intentionally misrepresents any financial information
25 in connection with the filing of an application for assist-

1 ance under this Act may be denied assistance and required
2 to immediately repay an amount of assistance received,
3 and the mortgagee may, at any time thereafter, take any
4 legal action to enforce the mortgage without any further
5 restrictions or requirements under this Act.

6 (f) AVAILABILITY.—An application for assistance
7 under this Act may be obtained from an approved coun-
8 seling agency.

9 (g) DETERMINATION ON APPLICATION.—

10 (1) TIME PERIOD.—The Secretary shall deter-
11 mine eligibility of a mortgagor for assistance under
12 this Act not later than 60 days after receipt of the
13 application of the mortgagor.

14 (2) NOTIFICATION.—Not later than 5 business
15 days after mailing the determination on an applica-
16 tion for assistance, the Secretary shall notify the
17 mortgagor and the mortgagee as to whether the ap-
18 plication has been approved or disapproved.

19 **SEC. 5. ASSISTANCE PAYMENTS BY SECRETARY.**

20 (a) AMOUNT TO BRING MORTGAGE CURRENT.—If
21 the Secretary determines that a mortgagor is eligible for
22 assistance under this Act, the Secretary shall pay to the
23 mortgagee from the Mutual Mortgage Insurance Fund the
24 full amount due to the mortgagee pursuant to the terms
25 of the mortgage without regard to any acceleration under

1 the mortgage, or the full amount of any alternative mort-
2 gage payments agreed to by the mortgagee and mortgagor
3 on the date that the application is approved by the Sec-
4 retary. This amount shall include the amount of principal,
5 interest, taxes, assessments, ground rents, hazard insur-
6 ance, any mortgage insurance or credit insurance pre-
7 miums, and reasonable attorneys' fees incurred by such
8 mortgagee in relation to the arrearage.

9 (b) MONTHLY ASSISTANCE PAYMENTS.—

10 (1) IN GENERAL.—The Secretary shall make
11 monthly mortgage assistance payments to the mort-
12 gagee on behalf of the mortgagor pursuant to this
13 Act.

14 (2) OBLIGATION OF THE MORTGAGOR.—A
15 mortgagor on whose behalf the Secretary is making
16 the mortgage assistance payments shall pay monthly
17 payments to the Secretary. Such payments shall be
18 in an amount which will cause the mortgagor's total
19 housing expense not to exceed 35 percent of the
20 mortgagor's net effective income. This shall be the
21 maximum amount the mortgagor can be required to
22 pay during the 36 months a mortgagor is eligible for
23 mortgage assistance. The mortgagor shall make such
24 payments at least 7 days before each mortgage pay-
25 ment is due under the mortgage.

1 (3) OBLIGATION OF THE SECRETARY.—Upon
2 receipt of this payment from the mortgagor, the Sec-
3 retary or the Secretary’s duly authorized agent shall
4 send the total mortgage payment directly to the
5 mortgagee.

6 (c) REVIEW UPON DELINQUENCY.—If the mortgagor
7 fails to pay to the Secretary any amounts due directly
8 from the mortgagor under this section not later than 15
9 days after such due date, the Secretary or its designated
10 agent shall review the mortgagor’s financial circumstances
11 to determine whether a delinquency in payments due from
12 the mortgagor under this section or section 6 is the result
13 of a change in the mortgagor’s financial circumstances
14 since the payment amount was last determined. If the de-
15 linquency is not the result of a change in the mortgagor’s
16 financial circumstances, the Secretary shall terminate fu-
17 ture mortgage assistance payments and the mortgagee
18 may, at any time thereafter, take any legal action to en-
19 force its mortgage without any further restriction or re-
20 quirement. If the delinquency is the result of such a
21 change, the Secretary shall modify the mortgagor’s re-
22 quired payments to the Secretary as the Secretary shall
23 determine.

24 (d) PERIOD FOR ASSISTANCE.—Payments under this
25 Act shall be provided for a period not to exceed 36 months,

1 either consecutively or nonconsecutively. The Secretary
2 shall establish procedures for periodic review of the mort-
3 gator's financial circumstances for the purpose of deter-
4 mining the necessity for continuation, termination, or ad-
5 justment of the amount of the payments.

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

7 (a) ASSISTANCE LOAN.—The amount by which the
8 assistance payments made by the Secretary to the mort-
9 gagee exceeds the amount of payments made by the mort-
10 gator to the Secretary shall be a loan by the Secretary
11 to the mortgator. The loan shall be evidenced by such doc-
12 uments as the Secretary shall determine necessary to pro-
13 tect the interests of the United States.

14 (b) REPAYMENT OF ASSISTANCE LOAN.—Before
15 making assistance payments under this Act on behalf of
16 a mortgator, the Secretary shall enter into an agreement
17 with the mortgator for repayment of all mortgage assist-
18 ance made by the Secretary under section 5, plus interest
19 as provided in subsection (c). The agreement shall provide
20 for monthly payments by the mortgator to the Secretary
21 which shall begin once the Secretary has determined that
22 continuation of mortgage assistance payments to the
23 mortgagee is unnecessary, and shall be in an amount de-
24 termined as follows:

1 (1) HOUSING EXPENSE LESS THAN 35 PER-
2 CENT.—If the mortgagor’s total housing expense is
3 less than 35 percent of the mortgagor’s net effective
4 income, the mortgagor shall pay to the Secretary the
5 difference between 35 percent of the mortgagor’s net
6 effective income and the mortgagor’s total housing
7 expense unless otherwise determined by the Sec-
8 retary after examining the mortgagor’s financial cir-
9 cumstances and ability to contribute to repayment of
10 the mortgage assistance.

11 (2) HOUSING EXPENSE GREATER THAN 35 PER-
12 CENT.—If the mortgagor’s total housing expense is
13 more than 35 percent of the mortgagor’s net effec-
14 tive income, repayment of the mortgage assistance
15 shall be deferred until the mortgagor’s total housing
16 expense is less than 35 percent of the mortgagor’s
17 net effective income.

18 (3) WHEN MORTGAGE PAID IN FULL.—Notwith-
19 standing paragraphs (1) and (2), if repayment of
20 mortgage assistance is not made by the date that
21 the mortgage is paid in full, the mortgagor shall
22 make mortgage assistance repayments in an amount
23 not less than the previous regular mortgage payment
24 until the mortgage assistance is repaid.

1 (c) INTEREST.—Interest shall accrue on all mortgage
2 assistance made under this Act at the rate determined
3 monthly by the Secretary of the Treasury to be equal to
4 the then current average yield on outstanding 30-year
5 bonds issued by the Secretary of the Treasury under sec-
6 tion 3102 of title 31, United States Code, and shall accrue
7 only during the period in which the mortgagor is required
8 to make repayment under this section.

9 (d) LIEN TO SECURE REPAYMENT OF ASSIST-
10 ANCE.—Repayment of amounts owed to the Secretary
11 from a mortgagor shall be secured by a mortgage lien on
12 the property and by such other obligation as the Secretary
13 may require. The lien or other security interest of the Sec-
14 retary shall not be deemed to take priority over any other
15 secured lien or secured interest in effect against the mort-
16 gator's property on the date assistance payments begin.
17 The Secretary may allow subordination of the mortgage
18 assistance lien only if such subordination is necessary to
19 permit the mortgagor to obtain a home improvement loan
20 for repairs necessary to preserve the property.

21 (e) TIME FOR REPAYMENT.—Payments under this
22 section shall be made by the mortgagor to the Secretary
23 not later than 14 days after each mortgage payment is
24 due under the mortgage (or in the case of repayment after

1 the mortgage has been paid in full, not later than the date
2 the mortgage payments were due under the mortgage).

3 **SEC. 7. DEFINITIONS.**

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

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

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

17 (3) HOUSEHOLD.—The term “household”
18 means a mortgagor, the mortgagor’s spouse, chil-
19 dren residing in the same residence as the mort-
20 gagor, and any other person living in such residence
21 that is declared by the mortgagor as a dependent for
22 Federal income tax purposes.

23 (4) HOUSING EXPENSE.—The term “housing
24 expense” means the sum of the mortgagor’s monthly
25 maintenance, utility, and hazard insurance expense,

1 taxes, and required mortgage payments, including
2 escrows.

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

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

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