

108TH CONGRESS
1ST SESSION

H. R. 2189

To amend the Solid Waste Disposal Act to assist homeowners with properties contaminated by leaking underground storage tanks in moving from such properties on a temporary or permanent basis by authorizing the Secretary of Housing and Urban Development to guarantee loans to such homeowners.

IN THE HOUSE OF REPRESENTATIVES

MAY 21, 2003

Mr. KANJORSKI introduced the following bill; which was referred to the Committee on Financial Services, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Solid Waste Disposal Act to assist homeowners with properties contaminated by leaking underground storage tanks in moving from such properties on a temporary or permanent basis by authorizing the Secretary of Housing and Urban Development to guarantee loans to such homeowners.

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 “Emergency Home Fi-
3 nancing Assistance Act”.

4 **SEC. 2. GUARANTEED LOAN PROGRAM.**

5 (a) AMENDMENT.—Subtitle I of the Solid Waste Dis-
6 posal Act (42 U.S.C. 6991 et seq.) is amended by adding
7 at the end the following new section:

8 “HUD LOAN GUARANTEES FOR OWNERS OF HOMES
9 AFFECTED BY LEAKING UNDERGROUND STORAGE TANKS

10 “SEC. 9011. (a) PROGRAM AUTHORITY.—

11 “(1) IN GENERAL.—In accordance with the pro-
12 visions of this section, the Secretary of Housing and
13 Urban Development (in this section referred to as
14 the ‘Secretary’) may guarantee, and make commit-
15 ments to guarantee, loans made to homeowners
16 whose properties have been contaminated, and re-
17 duced in value, by leaking underground storage
18 tanks to assist such homeowners to obtain other
19 temporary or permanent residences or to obtain the
20 equity in the property for any other purpose.

21 “(2) ADMINISTRATION BY SPECIAL MASTER.—

22 The Secretary shall administer the loan guarantee
23 program under this section through a Special Mas-
24 ter, who shall be appointed by the Secretary. The
25 Special Master shall carry out all functions of the
26 Secretary under this section, including the promul-

1 gation of any substantive and procedural rules for
2 the administration of the program.

3 “(b) ELIGIBLE LOANS.—To be eligible to be guaran-
4 teed under this section, a loan shall meet the following
5 requirements:

6 “(1) USE.—The proceeds of the loan may be
7 used only for the purpose of—

8 “(A) acquiring, by purchase or lease, a
9 property consisting of one to four dwelling
10 units, which shall be occupied as the principal
11 residence of the borrower; or

12 “(B) obtaining the equity in the property
13 for any other purpose, to the extent provided
14 under paragraph (5)(C).

15 “(2) BORROWER.—The loan shall be made to a
16 borrower who is the owner of a qualified property
17 under subsection (c).

18 “(3) LENDER.—The loan shall be made by a
19 lender approved by and meeting qualifications estab-
20 lished by the Secretary. The following lenders are
21 deemed to be approved under this paragraph:

22 “(A) Any mortgagee approved by the Sec-
23 retary of Housing and Urban Development for
24 participation in the single family mortgage in-

1 surance program under title II of the National
2 Housing Act.

3 “(B) Any lender whose housing loans
4 under chapter 37 of title 38, United States
5 Code, are automatically guaranteed pursuant to
6 section 1802(d) of such title.

7 “(C) Any lender approved by the Secretary
8 of Agriculture to make guaranteed loans for
9 single family housing under the Housing Act of
10 1949.

11 “(D) Any other lender that is supervised,
12 approved, regulated, or insured by any agency
13 of the Federal Government.

14 “(4) SECURITY.—The loan shall be secured by
15 the qualified property of the borrower.

16 “(5) TERMS.—The loan shall—

17 “(A) be made for a term not exceeding 30
18 years;

19 “(B) bear interest (exclusive of the guar-
20 antee fee under subsection (e)(3) and service
21 charges, if any) at a rate agreed upon by the
22 borrower and the lender and determined by the
23 Secretary to be reasonable, which may not ex-
24 ceed the rate generally charged in the area (as
25 determined by the Secretary) for home mort-

1 gage loans not guaranteed or insured by any
2 agency or instrumentality of the Federal Gov-
3 ernment; and

4 “(C) involve a principal obligation not
5 exceeding—

6 “(i) the dollar amount limitation de-
7 termined under section 305(a)(2) of the
8 Federal Home Loan Mortgage Corporation
9 Act for a single-family residence (as such
10 limitation is adjusted annually);

11 “(ii) the amount approved by the Sec-
12 retary under this section; or

13 “(iii) 100 percent of the pre-release
14 fair market value of the qualified property
15 owned by the borrower, as determined by
16 the Secretary.

17 “(c) QUALIFIED PROPERTY.—For purposes of this
18 section, a qualified property is a one- to four-family resi-
19 dence that—

20 “(1) is located on real property on any part of
21 which is within an area that is affected by a release
22 from an underground storage tank, as determined
23 by the Secretary;

24 “(2) immediately before the making of the loan
25 guaranteed under this section, is the principal resi-

1 dence of the borrower under the loan (unless the
2 borrower has temporarily relocated to avoid the con-
3 sequences of the release referred to in paragraph
4 (1));

5 “(3) is determined by the Secretary to be cov-
6 ered by an agreement entered into under subsection
7 (d); and

8 “(4) is determined by the Secretary to be eligi-
9 ble for a loan guaranteed under this section.

10 “(d) AGREEMENTS WITH LOCAL HOUSING AGEN-
11 CIES TO MAINTAIN UNOCCUPIED PROPERTIES AND TAKE
12 TITLE.—An agreement under this subsection is a legally
13 binding agreement entered into between the Secretary and
14 a public housing agency (as such term is defined in section
15 3(b) of the United States Housing Act of 1937 (42 U.S.C.
16 1437a(b)) or other entity selected by the Secretary that
17 provides that—

18 “(1) in the case of a loan guaranteed under this
19 section under which the borrower maintains the bor-
20 rower’s interest in a qualified property located with-
21 in the jurisdiction of the public housing agency or
22 other such entity, the public housing agency or other
23 entity shall take any actions necessary to physically
24 maintain the qualified property during the period

1 that such property remains unoccupied by the bor-
2 rower;

3 “(2) in the case of a loan guaranteed under this
4 section under which the borrower does not retain the
5 borrower’s interest in a qualified property located
6 within the jurisdiction of the public housing agency
7 or other such entity, the public housing agency or
8 other entity shall take title to the qualified property
9 and shall take any actions necessary to physically
10 maintain the qualified property during any period
11 that the property remains unoccupied; and

12 “(3) in the event that the Secretary obtains
13 title to a qualified property located within the juris-
14 diction of the public housing agency or other such
15 entity, pursuant to a default on a loan guaranteed
16 under this section, the public housing agency or
17 other entity shall take title to the qualified property
18 from the Secretary and shall take any actions nec-
19 essary to physically maintain the qualified property
20 during any period that the property remains unoccu-
21 pied.

22 Nothing in this subsection may be construed to prevent
23 a public housing agency or other entity selected by the
24 Secretary, that enters into an agreement under this sub-
25 section, from entering into an agreement with another en-

1 tity to carry out any portion of the responsibilities of the
2 public housing agency or entity selected by the Secretary
3 under the agreement under this subsection.

4 “(e) GUARANTEE.—

5 “(1) LIMITATION.—The Secretary may not
6 guarantee, or make a commitment to guarantee, any
7 loan under this section in an amount exceeding 90
8 percent of the principal amount of the loan.

9 “(2) PRIVATE GUARANTEE OR INSURANCE.—To
10 be eligible for a guarantee under this section, any
11 portion of a loan that is not guaranteed by the Sec-
12 retary shall be covered by a guarantee or mortgage
13 insurance provided by a State or local agency or a
14 private mortgage insurer.

15 “(3) FEE.—The Secretary shall fix and collect
16 a guarantee fee for the guarantee of loans under this
17 section, which shall be a percentage of the principal
18 amount of the loan guaranteed under this section
19 that does not exceed the percentage allowable under
20 section 438(c)(2) of the Higher Education Act of
21 1965 (20 U.S.C. 1087–1(c)(2)) to be charged as an
22 origination fee under such section. The fee shall be
23 paid by the lender at time of issuance of the guar-
24 antee and shall be adequate, in the determination of
25 the Secretary, to cover expenses and probable losses.

1 The Secretary shall deposit any fees collected under
2 this subsection in the loan guarantee fund estab-
3 lished under subsection (i) of this section.

4 “(4) LIABILITY.—The liability under a guar-
5 antee provided under this section shall decrease or
6 increase on a pro rata basis according to any de-
7 crease or increase in the amount of the unpaid obli-
8 gation under the provisions of the loan agreement.

9 “(f) CERTIFICATE OF GUARANTEE.—

10 “(1) APPROVAL PROCESS.—Before the Sec-
11 retary approves any loan for guarantee under this
12 section, the lender shall submit the application for
13 the loan to the Secretary for examination. If the
14 Secretary approves the loan for guarantee, the Sec-
15 retary shall issue a certificate under this paragraph
16 as evidence of the guarantee.

17 “(2) STANDARD FOR APPROVAL.—The Sec-
18 retary may approve a loan for guarantee under this
19 section and issue a certificate under this paragraph
20 only if the Secretary determines there is a reason-
21 able prospect of repayment of the loan.

22 “(3) EFFECT.—A certificate of guarantee
23 issued under this paragraph by the Secretary shall
24 be conclusive evidence of the eligibility of the loan
25 for guarantee under the provisions of this section

1 and the amount of such guarantee. Such evidence
2 shall be incontestable in the hands of the bearer and
3 the full faith and credit of the United States is
4 pledged to the payment of all amounts agreed to be
5 paid by the Secretary as security for such obliga-
6 tions.

7 “(4) FRAUD AND MISREPRESENTATION.—This
8 subsection may not be construed to preclude the
9 Secretary from establishing defenses against the
10 original lender based on fraud or material misrepre-
11 sentation or to bar the Secretary from establishing
12 by regulations in effect on the date of issuance or
13 disbursement, whichever is earlier, partial defenses
14 to the amount payable on the guarantee.

15 “(g) TRANSFER AND ASSUMPTION.—Notwith-
16 standing any other provision of law, any loan guaranteed
17 under this section, including the security given for the
18 loan, may be sold or assigned by the lender to any finan-
19 cial institution subject to examination and supervision by
20 an agency of the Federal Government or of any State or
21 the District of Columbia.

22 “(h) PAYMENT UNDER GUARANTEE.—

23 “(1) NOTIFICATION OF DEFAULT.—In the event
24 of default by the borrower on a loan guaranteed
25 under this section, the holder of the guarantee cer-

1 tificate shall provide written notice of the default to
2 the Secretary.

3 “(2) PAYMENT OPTIONS.—Upon providing such
4 notice, the holder of the guarantee certificate shall
5 be entitled to payment under the guarantee (subject
6 to the provisions of this section) and may proceed to
7 obtain payment in one of the following manners:

8 “(A) FORECLOSURE.—The holder of the
9 certificate may initiate foreclosure proceedings
10 (after providing written notice of such action to
11 the Secretary) and upon a final order by the
12 court authorizing foreclosure and submission to
13 the Secretary of a claim for payment under the
14 guarantee, the Secretary shall pay to the holder
15 of the certificate the pro rata portion of the
16 amount guaranteed (as determined pursuant to
17 subsection (e)) plus reasonable fees and ex-
18 penses as approved by the Secretary. The Sec-
19 retary shall be subrogated to the rights of the
20 holder of the guarantee and the lender holder
21 shall assign the obligation and security to the
22 Secretary.

23 “(B) NO FORECLOSURE.—Without seeking
24 foreclosure (or in any case in which a fore-
25 closure proceeding initiated under subparagraph

1 (A) continues for a period in excess of 1 year),
2 the holder of the guarantee may submit to the
3 Secretary a request to assign the obligation and
4 security interest to the Secretary in return for
5 payment of the claim under the guarantee. The
6 Secretary may accept assignment of the loan if
7 the Secretary determines that the assignment is
8 in the best interests of the United States. Upon
9 assignment, the Secretary shall pay to the hold-
10 er of the guarantee the pro rata portion of the
11 amount guaranteed (as determined under sub-
12 section (e)). The Secretary shall be subrogated
13 to the rights of the holder of the guarantee and
14 the holder shall assign the obligation and secu-
15 rity to the Secretary.

16 “(3) REQUIREMENTS FOR PAYMENT.—Before
17 any payment under a guarantee is made under para-
18 graph (2), the holder of the guarantee shall exhaust
19 all reasonable possibilities of collection. Upon pay-
20 ment, in whole or in part, to the holder, the note or
21 judgment evidencing the debt shall be assigned to
22 the United States and the holder shall have no fur-
23 ther claim against the borrower or the United
24 States. The Secretary shall then take such action to
25 collect as the Secretary determines appropriate.

1 “(i) LOAN FORGIVENESS.—

2 “(1) MANDATORY.—With respect to any loan
3 guaranteed under this section:

4 “(A) PROLONGED CLEANUP.—If the period
5 that began upon identification of the release
6 from the underground storage tank that af-
7 fected the qualified property and ended upon
8 termination of environmental cleanup relating
9 to such release was eight or more years, the
10 Secretary shall take action under this sub-
11 section to forgive a portion of the borrower’s
12 obligation under the loan equal to the lesser
13 of—

14 “(i) the difference between the pre-re-
15 lease fair market value of the qualified
16 property and the fair market value of such
17 property at the time of such forgiveness;
18 and

19 “(ii) the outstanding amount of prin-
20 cipal and interest owed under the loan by
21 the borrower.

22 “(B) SUSTAINED DECREASE IN PROPERTY
23 VALUE.—

24 “(i) IN GENERAL.—If, during any pe-
25 riod described in clause (ii), the fair mar-

1 ket value of the qualified property has de-
2 creased from the pre-release fair market
3 value by at least the amount described in
4 such clause, and such decrease is directly
5 attributable to the release from the under-
6 ground storage tank that affected the
7 property, the Secretary shall take action
8 under this subsection to forgive a portion
9 of the borrower's obligation under the loan
10 equal to the lesser of the amounts under
11 clauses (i) and (ii) of subparagraph (A).

12 “(ii) REQUIRED AMOUNT OF DE-
13 CREASE.—The periods and decreases in
14 value referred to in clause (i) are—

15 “(I) 50 percent during the 1-year
16 period beginning upon identification
17 of the release that affected the prop-
18 erty;

19 “(II) 45 percent during the 2-
20 year period beginning upon such iden-
21 tification;

22 “(III) 40 percent during the 3-
23 year period beginning upon such iden-
24 tification;

1 “(IV) 35 percent during the 4-
2 year period beginning upon such iden-
3 tification;

4 “(V) 30 percent during the 5-
5 year period beginning upon such iden-
6 tification;

7 “(VI) 25 percent during the 6-
8 year period beginning upon such iden-
9 tification; and

10 “(VII) 20 percent during the 7-
11 year period beginning upon such iden-
12 tification.

13 “(C) HEALTH EFFECTS.—If the Secretary
14 determines that a State or Federal health study
15 has indicated that there is a level of chronic or
16 terminal illness that (i) is directly related to ex-
17 posure to the petroleum or other chemicals re-
18 leased from an underground storage tank in a
19 release that affected the qualified property, and
20 (ii) is significantly higher than the level of such
21 illness among the general population, the Sec-
22 retary shall take action under this subsection to
23 forgive a portion of the borrower’s obligation
24 under the loan equal to the lesser of—

1 “(i) the pre-release fair market value
2 of the qualified property; and

3 “(ii) the outstanding amount of prin-
4 cipal and interest owed by the borrower.

5 In issuing regulations defining ‘significantly
6 higher’ for purposes of this subparagraph, the
7 Secretary shall consult with the Administrator
8 and the Secretary of Health and Human Serv-
9 ices.

10 “(2) DISCRETIONARY.—If, upon written appli-
11 cation to the Secretary, the Secretary determines
12 that the borrower under a loan guaranteed under
13 this section is unable to continue payments under
14 the loan due to the nature and extent of the release
15 affecting the qualified property, financial hardship,
16 demonstrated adverse health effects, or any other
17 factor that the Secretary determines indicates that
18 loan forgiveness under this section is appropriate,
19 the Secretary may take action under this subsection
20 to forgive all or part of the borrower’s obligation
21 under the loan.

22 “(3) ASSIGNMENT.—Upon a determination pur-
23 suant to paragraph (1) or (2), the Secretary shall
24 require the holder of the guarantee to assign the ob-
25 ligation and security interest to the Secretary in re-

1 turn for payment of the claim under the guarantee
2 equal to the pro rata portion of the amount guaran-
3 teed (as determined under subsection (e)). The Sec-
4 retary shall be subrogated to the rights of the holder
5 of the guarantee.

6 “(4) FORGIVENESS.—Pursuant to assignment
7 under paragraph (3), the Secretary shall cancel a
8 portion of the borrower’s obligation, which shall
9 be—

10 “(A) in the case of assignment pursuant to
11 a determination under paragraph (1), the por-
12 tion required under paragraph (1); or

13 “(B) in the case of assignment pursuant to
14 a determination under paragraph (2), such por-
15 tion as the Secretary considers appropriate.

16 “(j) LOAN GUARANTEE FUND.—

17 “(1) ESTABLISHMENT.—There is established in
18 the Treasury of the United States a loan guarantee
19 fund for the purpose of providing loan guarantees
20 under this section.

21 “(2) CREDITS.—The guarantee fund shall be
22 credited with—

23 “(A) any amounts, claims, notes, mort-
24 gages, and contracts acquired by the Secretary

1 under this section, and any collections and pro-
2 ceeds therefrom;

3 “(B) any amounts appropriated under
4 paragraph (7);

5 “(C) any guarantee fees collected under
6 subsection (e)(3); and

7 “(D) any interest or earnings on amounts
8 invested under paragraph (4).

9 “(3) USE.—Amounts in the guarantee fund
10 shall be available, to the extent provided in appro-
11 priation Acts, for—

12 “(A) fulfilling any obligations of the Sec-
13 retary with respect to loans guaranteed under
14 this section, including the costs (as such term
15 is defined in section 502 of the Congressional
16 Budget Act of 1974) of such loans;

17 “(B) paying taxes, insurance, prior liens,
18 expenses necessary to make fiscal adjustment in
19 connection with the application and transmittal
20 of collections, and other expenses and advances
21 to protect the Secretary for loans which are
22 guaranteed under this section or held by the
23 Secretary;

24 “(C) acquiring such security property at
25 foreclosure sales or otherwise; and

1 “(D) paying administrative expenses in
2 connection with this section.

3 “(4) INVESTMENT.—Any amounts in the guar-
4 antee fund that the Secretary determines are in ex-
5 cess of amounts currently required to carry out this
6 section may be invested in obligations of the United
7 States.

8 “(5) LIMITATION ON COMMITMENTS TO GUAR-
9 ANTEE LOANS AND MORTGAGES.—

10 “(A) REQUIREMENT OF APPROPRIA-
11 TIONS.—The authority of the Secretary to enter
12 into commitments to guarantee loans under this
13 section shall be effective for any fiscal year to
14 the extent or in such amounts as are or have
15 been provided in appropriation Acts, without re-
16 gard to the fiscal year for which such amounts
17 were appropriated.

18 “(B) LIMITATIONS ON COSTS OF GUARAN-
19 TEES.—The authority of the Secretary to enter
20 into commitments to guarantee loans under this
21 section shall be effective for any fiscal year only
22 to the extent that amounts in the guarantee
23 fund are or have been made available in appro-
24 priation Acts to cover the costs (as such term
25 is defined in section 502 of the Congressional

1 Budget Act of 1974) of such loan guarantees
 2 for such fiscal year. Any amounts appropriated
 3 pursuant to this subparagraph shall remain
 4 available until expended.

5 “(C) LIMITATION ON OUTSTANDING AG-
 6 GREGATE PRINCIPAL AMOUNT.—Subject to the
 7 limitations in subparagraphs (A) and (B), the
 8 Secretary may enter into commitments to guar-
 9 antee loans under this section in each fiscal
 10 year with an aggregate outstanding principal
 11 amount not exceeding such amount as may be
 12 provided in appropriation Acts for such fiscal
 13 year.

14 “(6) LIABILITIES.—All liabilities and obliga-
 15 tions of the assets credited to the guarantee fund
 16 under paragraph (2)(A) shall be liabilities and obli-
 17 gations of the guarantee fund.

18 “(7) AUTHORIZATION OF APPROPRIATIONS.—
 19 There are authorized to be appropriated to the guar-
 20 antee fund such sums as may be necessary to carry
 21 out this section.”.

22 (b) TABLE OF CONTENTS AMENDMENT.—The table
 23 of contents for subtitle I of the Solid Waste Disposal Act
 24 is amended by adding at the end the following new item:

“Sec. 9011. HUD loan guarantees for owners of homes affected by leaking un-
 derground storage tanks.”.

1 (c) REGULATIONS.—Not later than one year after the
2 date of the enactment of this Act, the Secretary of Hous-
3 ing and Urban Development shall issue any regulations
4 necessary to carry out this Act, which shall include regula-
5 tions setting forth guidelines for loan forgiveness pursuant
6 to section 9011(i)(2) of the Solid Waste Disposal Act (as
7 added by the amendment made by subsection (a) of this
8 section).

○