

109TH CONGRESS  
2D SESSION

# H. R. 4991

To require the Secretary of the Treasury to carry out a program to temporarily make payments under residential mortgage loans for properties significantly damaged by Hurricane Katrina.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 16, 2006

Mr. JEFFERSON (for himself, Mr. TAYLOR of Mississippi, Mr. MELANCON, Mr. DAVIS of Alabama, Mr. BISHOP of Georgia, Mr. McDERMOTT, Mr. FORD, Mr. WATT, Mr. OWENS, Ms. KILPATRICK of Michigan, and Mr. TOWNS) introduced the following bill; which was referred to the Committee on Financial Services

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## A BILL

To require the Secretary of the Treasury to carry out a program to temporarily make payments under residential mortgage loans for properties significantly damaged by Hurricane Katrina.

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 Preserva-  
5       tion of Equity Act of 2006”.

1 **SEC. 2. HURRICANE KATRINA MORTGAGE PROTECTION**  
2 **PROGRAM.**

3 (a) IN GENERAL.—The Secretary of the Treasury, in  
4 consultation with the Federal banking agencies, the Na-  
5 tional Credit Union Administration, and the appropriate  
6 State bank supervisors of each State contained in whole  
7 or in part in the GO Zone, shall establish a program to  
8 provide emergency mortgage assistance through the provi-  
9 sion of direct mortgage payments on behalf of eligible indi-  
10 viduals.

11 (b) DEFINITIONS.—For purposes of this section, the  
12 following definitions shall apply:

13 (1) CONSUMER MORTGAGE.—The term “con-  
14 sumer mortgage” means any consumer credit trans-  
15 action (which term shall have the same meaning  
16 given such term for purposes of the Truth in Lend-  
17 ing Act) in which a security interest, including any  
18 such interest arising by operation of law, is retained  
19 or acquired in any property that is used as the prin-  
20 cipal dwelling (under the meaning given such term  
21 for purposes of section 121 of the Internal Revenue  
22 Code of 1986) of the person to whom credit is ex-  
23 tended.

24 (2) CONSUMER MORTGAGE PAYMENT.—The  
25 term “consumer mortgage payment” means the  
26 scheduled payment on a consumer mortgage for

1 principal, interest, and any scheduled deposit in an  
2 escrow account for the purpose of ensuring payment  
3 of taxes, insurance, or other charges with respect to  
4 the property securing such consumer mortgage.

5 (3) ELIGIBLE CONSUMER MORTGAGE.—The  
6 term “eligible consumer mortgage” means a con-  
7 sumer mortgage that meet the following require-  
8 ments:

9 (A) TIMING.—The mortgage was entered  
10 into before August 29, 2005.

11 (B) GOOD STANDING.—As of August 28,  
12 2005, the mortgage was not in foreclosure.

13 (C) PROPERTY REQUIREMENTS.—The  
14 property in which a security interest was re-  
15 tained or acquired under the mortgage—

16 (i) was designed principally as a one-  
17 to four-family residence;

18 (ii) was located in the GO Zone;

19 (iii) was, as of August 28, 2005, the  
20 primary residence of the mortgagor; and

21 (iv)(I) was significantly damaged by  
22 Hurricane Katrina or by flooding resulting  
23 from Hurricane Katrina; or

24 (II) is uninhabitable as a result of  
25 damage or flooding resulting from Hurri-

1           cane Katrina, including uninhabitability re-  
2           sulting from lack of electricity, water, or  
3           other services due to such damage or flood-  
4           ing.

5           (D)       SERVICER       AGREEMENTS.—The  
6           servicer for the mortgage has made such assur-  
7           ances as the Secretary shall require to ensure  
8           that the servicer will comply with the require-  
9           ments of subsection (h).

10          (4) ELIGIBLE INDIVIDUAL.—The term “eligible  
11       individual” means an individual—

12               (A) who is a citizen, national, or qualified  
13               alien as defined in section 431(b) of the Per-  
14               sonal Responsibility and Work Opportunity  
15               Reconciliation Act of 1996 (8 U.S.C. 1641(b));

16               (B) who was a mortgagor on an eligible  
17               consumer mortgage;

18               (C) whose ability to continue meeting the  
19               consumer mortgage payment obligations under  
20               the eligible consumer mortgage was severely im-  
21               paired as a result of hurricane-related disrup-  
22               tion in the GO Zone, as determined in accord-  
23               ance with a standard established by the  
24               Secretary that compares the debt of the indi-  
25               vidual to the income of the individual; and

1 (D) who has agreed to the terms for repay-  
2 ment of assistance under subsection (i).

3 (5) FEDERAL BANKING AGENCY AND STATE  
4 BANK SUPERVISOR.—The terms “Federal banking  
5 agency” and “State bank supervisor” have the  
6 meanings given such terms in section 3 of the Fed-  
7 eral Deposit Insurance Act.

8 (6) GO ZONE.—The term “GO Zone” has the  
9 meaning given such term in section 1400M of the  
10 Internal Revenue Code of 1986)

11 (7) SECRETARY.—The term “Secretary” means  
12 the Secretary of the Treasury.

13 (8) SERVICER.—The term “servicer”, with re-  
14 spect to a consumer mortgage, has the meaning  
15 given such term in section 6(i) of the Real Estate  
16 Settlement Procedures Act of 1974 (12 U.S.C.  
17 2605(i)).

18 (9) HABITABLE; UNINHABITABLE.—

19 (A) IN GENERAL.—The terms “habitable”  
20 and “uninhabitable” mean, with respect to a  
21 residence, that the residence has been deter-  
22 mined to be fit or not to be fit, respectively, for  
23 human habitation.

24 (B) DETERMINATION.—The Secretary  
25 shall, by regulations pursuant to subsection (l),

1           establish procedures and standards for deter-  
2           minations of habitability and uninhabitability  
3           for purposes of the program under this section.  
4           Such standards shall take into consideration de-  
5           terminations and declarations of habitability  
6           and uninhabitability by Federal and State and  
7           local governments or agencies, including the  
8           Federal Emergency Management Agency and  
9           State and local disaster relief agencies, and by  
10          insurers, access or lack thereof to necessary in-  
11          frastructure or services, including electricity,  
12          potable water, and waste water service, and  
13          such other factors as the Secretary considers  
14          appropriate.

15          (c) MORTGAGE PAYMENT RELIEF PROGRAM.—The  
16          Secretary shall design and implement the program under  
17          this section in a manner that provides that assistance to  
18          be paid by the Secretary with respect to an eligible con-  
19          sumer mortgage and on behalf of an eligible individual is  
20          paid directly to the servicer for such mortgage.

21          (d) PERIOD OF ASSISTANCE.—Payments under the  
22          program under this section with respect to an eligible con-  
23          sumer mortgage may be made only for consumer mortgage  
24          payments due under such mortgage during the period be-

1   ginning on August 28, 2005, and ending on the earlier  
2   of—

3           (1) March 1, 2007, or

4           (2) the expiration of the 60-day period begin-  
5   ning upon the the date that the eligible individual  
6   first reoccupies the property subject to the mort-  
7   gage.

8   (e) LIMITATIONS ON PAYMENTS.—

9           (1) IN GENERAL.—Subject to subsection (f), in  
10   no case may the value of the assistance provided  
11   under the program under this section with respect to  
12   any eligible consumer mortgage exceed the aggregate  
13   amount of the consumer mortgage payments due  
14   under the mortgage during the period for which as-  
15   sistance is provided for such mortgage under the  
16   program.

17          (2) NO DOUBLE PAYMENTS.—The Secretary  
18   shall take appropriate actions to ensure that, in the  
19   case of any consumer mortgage payment paid by an  
20   eligible individual on an eligible consumer mortgage  
21   for any period for which payment has already been  
22   made under the program under this section, the  
23   servicer of the consumer mortgage shall return such  
24   payment within a reasonable period of time or shall  
25   immediately credit such payment toward amortiza-

tion of the principal obligation under the mortgage and promptly notify the eligible individual of such credit.

(3) TERMS OF PAYMENT.—For purposes of this section, the amount of any consumer mortgage payment shall be equal to the amount of such payment due under the terms of such consumer mortgage as in effect on August 28, 2005.

(4) PROHIBITION OF FEES AND CHARGES.—Payments under the program under this section may not be made to the servicer of a consumer mortgage that provides for any penalites, fees, charges, additional interest, or servicing costs of any kind attributable to—

(A) participation in the program under this section;

(B) any prepayment of consumer mortgage, including prepayment involving application of insurance proceeds to the mortgage; or

(C) late payment of any consumer mortgage payment due under the consumer mortgage during the period beginning on August 28, 2005, and ending on the commencement of payments under this section for the mortgage.



1           (5) REVERSAL OF ADVERSE ACTIONS ALREADY  
2           TAKEN.—Payments under the program under this  
3           section may not be made to the servicer of a con-  
4           sumer mortgage if, during the period beginning on  
5           August 29, 2005, and ending upon the enrollment of  
6           the consumer mortgage in the program, the servicer  
7           has furnished to any consumer reporting agency (as  
8           such term is defined in section 603 of the Fair Cred-  
9           it Reporting Act) any information that relates to  
10          such consumer mortgage or the mortgagor under  
11          such mortgage and is adverse to the interests of the  
12          mortgagor and has failed to withdraw or remove  
13          such information from the consumer reporting agen-  
14          cy.

15          (f) ENROLLMENT IN PROGRAM.—

16                (1) EXPEDITED PROCESS.—The Secretary shall  
17                establish an expedited process, in accordance with  
18                this subsection, for the enrollment of eligible individ-  
19                uals in the program under this section.

20                (2) NOTIFICATION.—To be eligible to receive  
21                payments under the program under this section, the  
22                servicer of a consumer mortgage shall notify the  
23                Secretary—

24                        (A) of the nonpayment of a scheduled con-  
25                        sumer mortgage payment from an individual in

1 GO Zone, not earlier than 31 days following  
2 such nonpayment; or

3 (B) of a communication to the servicer by  
4 an individual reasonably indicating eligibility for  
5 assistance under the program, after such com-  
6 munication.

7 (3) ENROLLMENT.—The Secretary, upon re-  
8 ceipt of a notice under paragraph (2) regarding a  
9 consumer mortgage, shall enroll the eligible indi-  
10 vidual involved in the program under this section,  
11 subject to the servicer of the mortgage submitting  
12 such confirmation to the Secretary as the Secretary  
13 shall require that the servicer has verified, in accord-  
14 ance with such procedures as the Secretary shall es-  
15 tablish, that mortgagor under such consumer mort-  
16 gage is an eligible individual and that the consumer  
17 mortgage is an eligible consumer mortgage.

18 (4) DUTY OF SERVICER.—The servicer of a con-  
19 sumer mortgage shall make a reasonable effort to  
20 notify an eligible individual—

21 (A) of the enrollment of such individual in  
22 the program under paragraph (3);

23 (B) that, if it is later determined that the  
24 individual is not an eligible individual or the  
25 consumer mortgage is not an eligible consumer

1 mortgage (as determined by the audit process  
2 under subsection (g) or otherwise), such  
3 servicer may be required at a later date to  
4 repay the program for the total amount of con-  
5 sumer mortgage payments made by the Sec-  
6 retary on behalf of such individual, but that  
7 there shall be no liability on the part of the in-  
8 dividual to repay the program for such  
9 amounts; and

10 (C) that such individual may elect to de-  
11 cline enrollment, or cancel enrollment, in the  
12 program by notifying the servicer involved.

13 (g) RETROSPECTIVE AUDIT.—

14 (1) IN GENERAL.—The Secretary shall provide  
15 for the performance of an appropriate audit of the  
16 program under this section by a date that is not  
17 later than 180 days after the date of the enactment  
18 of this Act.

19 (2) REPAYMENT OF IMPROPERLY PROVIDED  
20 FUNDS.—

21 (A) ACTION BY SECRETARY.—If the Sec-  
22 retary determines, pursuant to the audit under  
23 paragraph (1) or otherwise, that an individual  
24 that was enrolled in the program under this  
25 section was not an eligible individual under sub-

1 section (b) or the consumer mortgage was not  
2 an eligible consumer mortgage, the Secretary  
3 shall seek repayment from the servicer of the  
4 consumer mortgage of the amounts paid under  
5 the program on behalf of such individual. Such  
6 individual shall not be liable to the Secretary  
7 for the repayment of such amounts paid under  
8 the program on behalf of the individual.

9 (B) TERMS OF REPAYMENT.—Any repay-  
10 ment pursuant to subparagraph (A) shall be  
11 made with no interest or late penalty to accrue  
12 prior to the commencement of a repayment pe-  
13 riod which shall begin not earlier than the date  
14 that is 3 months after the date on which a de-  
15 termination and notice of noneligibility is pro-  
16 vided.

17 (h) PROHIBITED ACTIONS.—During the period that  
18 payments are made under the program under this section  
19 for an eligible consumer loan, a servicer who accepts pay-  
20 ments under the program under this section with respect  
21 to any eligible consumer mortgage, and any person who  
22 makes or holds such eligible consumer mortgage (if other  
23 than the servicer), may not—

24 (1) accelerate the maturity of or commence any  
25 legal action regarding such mortgage (including

1 mortgage foreclosure to recover under such obliga-  
2 tion) or take possession of any security of the mort-  
3 gagor for such eligible consumer mortgage obliga-  
4 tion;

5 (2) increase the annual percentage rate of inter-  
6 est with respect to such eligible consumer mortgage,  
7 except in the case of any mortgage the terms of  
8 which provide for changes in the rate of interest that  
9 are not made in connection with delinquency, de-  
10 fault, or other credit-related events;

11 (3) refuse to accept, prevent, or otherwise limit  
12 the prepayment (in whole or in part) of any out-  
13 standing principal amount due under the mortgage,  
14 including prepayment involving application of any  
15 insurance proceeds; or

16 (4) impose any other fees or charges with re-  
17 spect to such consumer mortgage, including any fees  
18 or charges for any prepayment described in para-  
19 graph (3).

20 (i) REPAYMENT OF ASSISTANCE AMOUNTS.—Assist-  
21 ance under the program under this section may not be  
22 provided with respect to a consumer mortgage unless the  
23 eligible individual who is the mortgagor under such mort-  
24 gage enters into an agreement with the Secretary that the  
25 aggregate amount of all such assistance provided for such

1 mortgage will be repaid to the Secretary, together with  
2 interest on such amounts, as follows:

3           (1) INTEREST.—The interest on amounts of as-  
4           sistance provided under the program shall accrue at  
5           a rate, as determined by the Secretary, that is equal  
6           to 50 percent of the average rate payable by the  
7           Treasury on its obligations having a 5-year term to  
8           maturity and outstanding as of September 1, 2005,  
9           until full repayment is made.

10           (2) SILENT SECOND MORTGAGE.—Amounts of  
11           assistance and interest shall be secured by a lien on  
12           the property in the aggregate amount of such assist-  
13           ance and interest, that is held by the Secretary and  
14           shall be subordinate to all other mortgages on the  
15           property and to any Federal tax lien, but shall be  
16           superior to any other lien. The lien shall be extin-  
17           guished upon sale or transfer of the property by the  
18           mortgagor and the payment to the Secretary from  
19           the proceeds of such sale or transfer of the aggre-  
20           gate amount of such assistance and interest. The  
21           Secretary may not require the mortgagor to repay  
22           any amount of assistance or interest until the prop-  
23           erty is sold or otherwise transferred.

24           (3) PREPAYMENT.—Notwithstanding the third  
25           sentence of paragraph (2), the mortgagor may make

1 payments, in whole or in part, of amounts of assist-  
2 ance and interest owed to the Secretary pursuant to  
3 this subsection at any time after payments under  
4 this section on behalf of the mortgagor have con-  
5 cluded and no penalty, fee, or charge may be im-  
6 posed for any payments made before sale or transfer  
7 of the property by the mortgagor.

8 (4) SECONDARY MARKET.—The Secretary may  
9 sell and otherwise deal in liens established under this  
10 section, and may issue and guarantee securities  
11 backed by liens established under this section, as the  
12 Secretary considers appropriate.

13 (j) PENALTIES.—

14 (1) IN GENERAL.—In the case of each con-  
15 sumer mortgage that is submitted under subsection  
16 (f) to the Secretary by a servicer and confirmed by  
17 the servicer as eligible for participation in the pro-  
18 gram under this section that is not an eligible con-  
19 sumer mortgage or for which the mortgagor is not  
20 an eligible individual, the Secretary may assess to  
21 the servicer, for each such mortgage so submitted—

22 (A) a civil penalty in an amount not ex-  
23 ceeding the amount of any mortgage payments  
24 received as a consequence of submission of such  
25 ineligible mortgage or individual; and

1 (B) interest, at a rate determined by the  
2 Secretary, for the period that any amounts im-  
3 properly paid under the program on behalf of  
4 such mortgage were held by the servicer.

5 (2) INTENTIONAL VIOLATIONS.—If the Sec-  
6 retary determines that any submission of a mortgage  
7 to which paragraph (1) applies was made with inten-  
8 tional or reckless disregard of the requirements  
9 under subsection (f)(3) regarding verification proce-  
10 dures or with actual knowledge that the consumer  
11 mortgage or the mortgagor under the consumer  
12 mortgage was not eligible for assistance under the  
13 program under this section, the Secretary may as-  
14 sess to the servicer, for each such mortgage so sub-  
15 mitted—

16 (A) a civil penalty in an amount not ex-  
17 ceeding three times the amount of any mort-  
18 gage payments received as a consequence of  
19 submission of such ineligible mortgage or indi-  
20 vidual; and

21 (B) interest, at a rate determined by the  
22 Secretary, for the period that any amounts im-  
23 properly paid under the program on behalf of  
24 such mortgage were held by the servicer.



1           (3) EFFECT ON OTHER LAW.—The penalties  
2       under this subsection shall be in addition to any  
3       other remedies and penalties provided by other pro-  
4       visions of Federal and State law, including any civil  
5       and criminal penalties for fraud and false state-  
6       ments.

7       (k) EXCLUSION OF MORTGAGE RELIEF PAYMENTS  
8 FROM INCOME OF MORTGAGOR.—Any amounts paid  
9 under the program under this section with respect to an  
10 eligible consumer mortgage shall not be included as gross  
11 income of the eligible individual who is the mortgagor  
12 under such mortgage for purposes of the Internal Revenue  
13 Code of 1986 or for any other program for benefits, pay-  
14 ments, or assistance for an individual, household, or fam-  
15 ily eligibility unit provided by any Federal or State agency  
16 or by appropriated funds of the United States or any  
17 State, for which eligibility is determined on the basis of  
18 income or assets or any other test of means.

19       (l) EXPEDITED RULEMAKING.—The Secretary shall  
20 utilize expedited rulemaking procedures to carry out this  
21 section.

22       (m) AUTHORIZATION OF APPROPRIATIONS.—There  
23 are authorized to be appropriated such sums as may be

- 1 necessary for fiscal years 2006 and 2007 to carry out this
- 2 section.

