

110TH CONGRESS  
2D SESSION

# H. R. 6076

To amend the Truth in Lending Act to permit deferrals on certain home mortgage foreclosures for a limited period to allow homeowners to take remedial action, to require home mortgage servicers to provide advance notice of any upcoming reset of the mortgage interest rate, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 15, 2008

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

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## A BILL

To amend the Truth in Lending Act to permit deferrals on certain home mortgage foreclosures for a limited period to allow homeowners to take remedial action, to require home mortgage servicers to provide advance notice of any upcoming reset of the mortgage interest rate, 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Home Retention and  
5 Economic Stabilization Act of 2008”.

1 **SEC. 2. FORECLOSURE DEFERMENT.**

2 (a) IN GENERAL.—Chapter 2 of the Truth in Lend-  
3 ing Act (15 U.S.C. 1631 et seq.) is amended by inserting  
4 after section 128 the following new section:

5 **“§ 128A. Foreclosure deferment and reset notification**  
6 **for certain mortgages**

7 “(a) DEFINITIONS.—For purposes of this section, the  
8 following definitions shall apply:

9 “(1) DEFERMENT PAYMENT AMOUNT.—The  
10 term ‘deferment payment amount’ means the  
11 amount of the monthly payment that is due on an  
12 eligible deferred-foreclosure mortgage during the  
13 deferment period.

14 “(2) DEFERMENT PERIOD.—The term  
15 ‘deferment period’ means the period that—

16 “(A) begins when the eligible deferred-fore-  
17 closure consumer sends notice of the exercise of  
18 the deferral right under subsection (b)(1) with  
19 respect to an eligible deferred-foreclosure mort-  
20 gage to the creditor or servicer; and

21 “(B) ends on the earliest of the following  
22 applicable dates:

23 “(i) The date that is 270 days after  
24 the beginning of the period.

25 “(ii) The end of the 30-day period be-  
26 ginning on any due date for any deferment

1 payment (on such mortgage, in accordance  
2 with this section) which remains unpaid as  
3 of the end of such 30-day period.

4 “(iii) The date on which the creditor  
5 or servicer enters into a qualified loan  
6 modification or workout plan with the con-  
7 sumer.

8 “(iv) The date on which the deferment  
9 is terminated by judicial order.

10 “(3) DEFERMENT PERIOD TRIGGER.—The term  
11 ‘deferment period trigger’ means the date on which  
12 the consumer becomes eligible for a deferment under  
13 subsection (b)(1) with respect to an eligible deferred-  
14 foreclosure mortgage and occurs—

15 “(A) in the case of a subprime mortgage,  
16 on the earlier of the date of any adjustment or  
17 reset of the interest rate on such mortgage or  
18 the date by which the consumer is 60 days de-  
19 linquent on mortgage payments; and

20 “(B) in the case of a negative amortization  
21 mortgage, the date of the first increase in the  
22 minimum monthly payment due under such  
23 mortgage after the origination of such mort-  
24 gage.

1           “(4)    ELIGIBLE    DEFERRED-FORECLOSURE  
2           MORTGAGE.—The term ‘eligible deferred-foreclosure  
3           mortgage’ means a subprime mortgage or a negative  
4           amortization mortgage, that was entered into before  
5           January 1, 2008, and has reached the deferment pe-  
6           riod trigger.

7           “(5)    ELIGIBLE    DEFERRED-FORECLOSURE    CON-  
8           SUMER.—The term ‘eligible deferred-foreclosure con-  
9           sumer’ means a consumer who—

10                   “(A) is a mortgagor on an eligible de-  
11                   ferred-foreclosure mortgage;

12                   “(B) has resided at the property secured  
13                   by such mortgage since the mortgage trans-  
14                   action was entered into and intends to reside at  
15                   such property at least until the end of the  
16                   deferment period;

17                   “(C) has a current monthly income that,  
18                   when multiplied by 12, is less than 200 percent  
19                   of the area median annual income for the rel-  
20                   evant family size in the State in which the resi-  
21                   dence is located; and

22                   “(D) during the deferment period, re-  
23                   sponds to reasonable inquiries from a creditor  
24                   or servicer with respect to an eligible deferred-  
25                   foreclosure mortgage.

1           “(6) NEGATIVE AMORTIZATION MORTGAGE.—  
2           The term ‘negative amortization mortgage’ means a  
3           consumer credit transaction secured by the con-  
4           sumer’s principal residence with the potential for  
5           negative amortization of the outstanding principal  
6           balance and under which the minimum monthly pay-  
7           ment of principal and interest required increases  
8           after the date of origination.

9           “(7) QUALIFIED LOAN MODIFICATION OR  
10          WORKOUT PLAN.—The term ‘qualified loan modifica-  
11          tion or workout plan’ means a modification or plan  
12          that—

13                 “(A) is scheduled to remain in place until  
14                 the deferred-foreclosure consumer sells or refi-  
15                 nances the property;

16                 “(B) does not provide for a repayment  
17                 schedule that results in negative amortization  
18                 at any time or in a balloon payment;

19                 “(C) does not require the deferred-fore-  
20                 closure consumer to pay additional points and  
21                 fees; and

22                 “(D) is reasonably affordable to the de-  
23                 ferred-foreclosure consumer over the life of the  
24                 loan.

1           “(8) SUBPRIME MORTGAGE.—The term  
2           ‘subprime mortgage’ means—

3                   “(A) any residential mortgage loan that  
4                   constitutes a first lien on the dwelling or real  
5                   property securing the loan and either—

6                           “(i) has an annual percentage rate  
7                           that equals or exceeds the yield on securi-  
8                           ties issued by the Secretary of the Treas-  
9                           ury under chapter 31 of title 31, United  
10                          States Code, that bear comparable periods  
11                          of maturity by more than 3 percentage  
12                          points; or

13                           “(ii) has an annual percentage rate  
14                           that equals or exceeds the most recent con-  
15                           ventional mortgage rate, or such other an-  
16                           nual percentage rate as may be established  
17                           by the Board by regulation, by more than  
18                           175 basis points; and

19                          “(B) any residential mortgage loan that is  
20                          not the first lien on the dwelling or real prop-  
21                          erty securing the loan and either—

22                           “(i) has an annual percentage rate  
23                           that equals or exceeds the yield on securi-  
24                           ties issued by the Secretary of the Treas-  
25                           ury under chapter 31 of title 31, United

1 States Code, that bear comparable periods  
2 of maturity by more than 5 percentage  
3 points; or

4 “(ii) has an annual percentage rate  
5 that equals or exceeds the most recent con-  
6 ventional mortgage rate, or such other an-  
7 nual percentage rate as may be established  
8 by the Board by regulation, by more than  
9 375 basis points.

10 “(b) RIGHT TO DEFERMENT OF INSTITUTION OF OR  
11 ACTION ON FORECLOSURE.—

12 “(1) RIGHT ESTABLISHED.—Any eligible de-  
13 ferred-foreclosure consumer shall have the right to  
14 defer any initiation of a foreclosure, whether judicial  
15 or nonjudicial, or any action in connection with a  
16 foreclosure already instituted, including any fore-  
17 closure sale, with respect to any eligible deferred-  
18 foreclosure mortgage by any creditor, servicer, or  
19 holder of such mortgage, or any other person acting  
20 on behalf of any such creditor, servicer, or holder,  
21 until the end of the deferment period.

22 “(2) ENFORCEMENT OF RIGHT.—An eligible de-  
23 ferred-foreclosure consumer may defend against a  
24 foreclosure or bring an action in any court of com-  
25 petent or general jurisdiction to compel compliance

1 with the right of the consumer under paragraph (1)  
2 to defer any initiation of a foreclosure or any action  
3 in connection with a foreclosure already instituted,  
4 including any foreclosure sale, with respect to any  
5 eligible deferred-foreclosure mortgage.

6 “(c) NOTICE TO CONSUMER BEFORE ANY FORE-  
7 CLOSURE ACTION.—

8 “(1) NOTICE OF RIGHT REQUIRED.—Before ini-  
9 tiating any foreclosure with respect to any eligible  
10 deferred-foreclosure mortgage, the creditor or  
11 servicer shall notify, by personal service, any eligible  
12 deferred-foreclosure consumer with respect to such  
13 mortgage of such consumer’s right under subsection  
14 (b) to defer the initiation of foreclosure.

15 “(2) CONTENTS OF NOTICE.—The Board shall  
16 prescribe, by regulations under sections 105 and  
17 122, the content and format, including the size of  
18 the font, of the notices under paragraph (1) in a  
19 manner that maximizes the likelihood that the con-  
20 sumer will obtain and understand all the information  
21 necessary to exercise the right to defer any action to  
22 institute foreclosure, including—

23 “(A) the manner and format for obtaining  
24 such deferral, including a sample notice form,  
25 an identification form, and a certification form



1 for the consumer to use in complying with sub-  
2 section (d)(1);

3 “(B) contact information for the creditor  
4 or servicer, as the case may be and any third  
5 party involved in foreclosure proceedings, in-  
6 cluding State or local officials; and

7 “(C) contact information for obtaining any  
8 counseling concerning the exercise of such de-  
9 ferral from a counselor approved by the appro-  
10 priate State housing finance agency or the Sec-  
11 retary of Housing and Urban Development.

12 “(3) TIMING.—No foreclosure action or pro-  
13 ceeding with respect to any eligible deferred-fore-  
14 closure mortgage shall be valid unless the creditor or  
15 servicer has provided the notice required under this  
16 subsection to the consumer at least 30 days before  
17 instituting any such action or proceeding and at  
18 least once during each subsequent 30-day period  
19 until the foreclosure becomes final.

20 “(d) INSTITUTION OF DEFERMENT.—

21 “(1) PROCEDURE REQUIRED.—Any eligible de-  
22 ferred-foreclosure consumer who chooses to exercise  
23 a deferment right under subsection (b) shall pro-  
24 vide—

1           “(A) notice of the exercise of such to the  
2           servicer or other person described in the notice  
3           to the consumer under subsection (e) by any  
4           reasonable means including by mail, service  
5           whether directly or to any agent, including at  
6           the address of any registered agent;

7           “(B) a clear identification of the eligible  
8           deferred-foreclosure consumer and the address  
9           of the property securing the mortgage; and

10           “(C) a certification that at least 1 con-  
11           sumer borrower with respect to such mortgage  
12           resides at the property secured by such mort-  
13           gage and intends to reside at such property at  
14           least until the end of the deferment period.

15           “(2) SUFFICIENCY OF NOTICE.—

16           “(A) IN GENERAL.—Notice and delivery of  
17           an affidavit under paragraph (1) may be made  
18           by any reasonable means including by mail,  
19           service whether directly or to any agent, includ-  
20           ing at the address of any registered agent with  
21           the secretary of state for the State in which the  
22           property is located, or any attorney rep-  
23           resenting the consumer, or by such means as  
24           the terms of the mortgage or regulations pre-  
25           scribed by the Board may provide.

1           “(B) OTHER PARTIES.—If any court, any  
2           sheriff or other official designated under State  
3           law, or any other person authorized under State  
4           law and the contracts of the parties to maintain  
5           any foreclosure proceeding or conduct any fore-  
6           closure sale receives, directly or indirectly, a  
7           copy of any notice provided under this sub-  
8           section by an eligible deferred-foreclosure con-  
9           sumer with respect to any eligible deferred-fore-  
10          closure mortgage, no foreclosure action may be  
11          taken by the court, sheriff, official, or other  
12          person with respect to such mortgage during  
13          the applicable deferred-foreclosure period.

14          “(3) ACKNOWLEDGMENT.—

15                 “(A) IN GENERAL.—Any creditor, servicer,  
16                 or holder of an eligible deferred-foreclosure  
17                 mortgage, or any other person acting on behalf  
18                 of any such creditor, servicer, or holder, who re-  
19                 ceives a notice from a consumer under para-  
20                 graph (2) shall acknowledge to the consumer  
21                 the receipt of the notice of the exercise of the  
22                 deferment right under subsection (b) before the  
23                 end of the 10-business day period beginning on  
24                 the date of such receipt.

1           “(B) CONTENTS OF NOTICE.—The ac-  
2           knowledge provided to any eligible deferred-  
3           foreclosure consumer under subparagraph (A)  
4           shall include the date on which the next pay-  
5           ment is due on the eligible deferred-foreclosure  
6           mortgage, the deferment payment amount, the  
7           date on which each subsequent payment is due,  
8           and the address or the delivery method for each  
9           such payment that is acceptable to the recipi-  
10          ent.

11          “(4) MONTHLY PAYMENT NOTICES.—Each peri-  
12          odic statement of account submitted by the creditor  
13          or servicer with respect to any eligible deferred-fore-  
14          closure mortgage during the period while any  
15          deferment right under subsection (b) is in effect  
16          shall include—

17                 “(A) the due date and the amount of the  
18                 next payment due on such mortgage;

19                 “(B) the address or the delivery method  
20                 for such payment;

21                 “(C) the date on which the deferral of the  
22                 foreclosure will terminate; and

23                 “(D) a notice that failure to make such  
24                 payment in a timely manner will jeopardize the  
25                 continuation of the deferral of the foreclosure.

1 “(e) DEFERMENT PAYMENT.—

2 “(1) IN GENERAL.—During the deferment pe-  
3 riod with respect to any eligible deferred-foreclosure  
4 mortgage for which any deferment right has been  
5 exercised under subsection (b), monthly payments  
6 shall continue to be made by the consumer with re-  
7 spect to such mortgage.

8 “(2) AMOUNT OF PAYMENT.—The deferment  
9 payment amount for purposes of monthly payments  
10 under paragraph (1) with respect to any eligible de-  
11 ferred-foreclosure mortgage shall be—

12 “(A) in the case of any subprime mort-  
13 gage, the lesser of—

14 “(i) the minimum monthly payment of  
15 principal and interest on the date the loan  
16 was originated; or

17 “(ii) a monthly payment based on the  
18 outstanding loan principal plus a rate of  
19 interest calculated at a fixed annual per-  
20 centage rate, in an amount equal to the  
21 most recent conventional mortgage rate  
22 plus a 100 basis point premium for risk,  
23 amortized over a period of 30 years minus  
24 the period of time since the origination of  
25 the loan; and

1           “(B) in the case of any negative amortiza-  
2           tion mortgage, the amount of the first min-  
3           imum monthly payment due under the mort-  
4           gage after the origination of such mortgage.

5           “(3) AMORTIZATION OF DIFFERENCE.—The  
6           difference between the amount of any monthly pay-  
7           ment due under the terms of any eligible deferred-  
8           foreclosure mortgage and the deferment payment  
9           amount shall be amortized over the life of the mort-  
10          gage beginning after the deferred-foreclosure period  
11          in accordance with regulations which the Board shall  
12          prescribe.

13          “(4) CHARGES PROHIBITED.—No creditor or  
14          servicer may impose any late fee or other fee or  
15          charge during the deferment period with respect to  
16          any eligible deferred-foreclosure mortgage for which  
17          any deferment right has been exercised under sub-  
18          section (b) or in connection with the exercise of such  
19          deferment right.

20          “(f) NOTICE OF RESET AND ALTERNATIVES.—Dur-  
21          ing the 1-month period that ends 120 days before the date  
22          on which, in the case of a subprime mortgage, the interest  
23          rate in effect during the introductory period of the mort-  
24          gage adjusts or resets to a variable interest rate, or in  
25          the case of a negative amortization mortgage, the min-

1 imum monthly payment of principal and interest required  
2 first increases from the amount of the first such minimum  
3 monthly payment due under the mortgage after the origi-  
4 nation of such mortgage, the creditor or servicer of such  
5 loan shall provide a written notice, separate and distinct  
6 from all other correspondence to the consumer, that in-  
7 cludes the following:

8           “(1) Any index or formula used—

9                   “(A) in the case of any subprime mort-  
10                   gage, in determining the annual percentage rate  
11                   applicable as of the effective date of such reset  
12                   or adjustment; and

13                   “(B) in the case of any negative amortiza-  
14                   tion mortgage, in making increases in the min-  
15                   imum monthly payments due, and a source of  
16                   information about the index or formula.

17           “(2) A good faith estimate, based on accepted  
18           industry standards and disclosed in a clear and con-  
19           spicuous manner, of the creditor or servicer of the  
20           amount of the monthly payment that will apply after  
21           the date of the adjustment or reset, or increase, as  
22           applicable, and the assumptions on which this esti-  
23           mate is based.

24           “(3) A list of alternatives consumers may pur-  
25           sue before the date of adjustment or reset, or in-

1 crease, as applicable, and descriptions of the actions  
2 consumers must take to pursue these alternatives,  
3 including—

4 “(A) refinancing;

5 “(B) renegotiation of loan terms;

6 “(C) payment forbearances;

7 “(D) pre-foreclosure sales; and

8 “(E) any payment assistance available  
9 from the State in which the property is located.

10 “(4) The names, addresses, telephone numbers,  
11 and Internet addresses of counseling agencies or  
12 programs reasonably available to the consumer that  
13 have been certified or approved and made publicly  
14 available by the Secretary of Housing and Urban  
15 Development or a State housing finance authority  
16 (as defined in section 1301 of the Financial Institu-  
17 tions Reform, Recovery, and Enforcement Act of  
18 1989).

19 “(5) The address, telephone number, and Inter-  
20 net address for the State housing finance authority  
21 (as so defined) for the State in which the consumer  
22 resides.

23 “(g) MOST RECENT CONVENTIONAL MORTGAGE  
24 RATE.—For purposes of subsection (f)(1)(A)(ii), the term  
25 ‘most recent conventional mortgage rate’ means the con-



1 tract interest rate on commitments for fixed-rate first  
2 mortgages most recently published in the Federal Reserve  
3 Statistical Release on selected interest rates (daily or  
4 weekly), and commonly referred to as the H.15 release (or  
5 any successor publication), in the week preceding a date  
6 of determination for purposes of applying this subsection.

7 “(h) DUTY OF CONSUMER TO MAINTAIN PROP-  
8 ERTY.—

9 “(1) IN GENERAL.—Any eligible deferred-fore-  
10 closure consumer for whom a deferment of fore-  
11 closure is in effect under this section with respect to  
12 any eligible deferred-foreclosure mortgage may not,  
13 with respect to any property securing such mort-  
14 gage, destroy, damage, or impair such property,  
15 allow the property to deteriorate, or commit waste  
16 on the property.

17 “(2) ENFORCEMENT.—Any consumer may be  
18 liable to any creditor or servicer for any violation of  
19 paragraph (1) under section 130(a)(1) and for such  
20 purposes section 130(a) shall be applied by sub-  
21 stituting ‘consumer’ for ‘creditor’ each place such  
22 term appears.

23 “(i) DECLARATION OF RIGHTS.—In addition to the  
24 right of any party to a mortgage to seek a declaratory  
25 judgment under section 2201 of title 28, United States

1 Code, any such party may apply prior to the end of the  
 2 deferment period to any State court of competent or gen-  
 3 eral jurisdiction for an order establishing the rights, du-  
 4 ties, and conditions imposed on or applicable to any party  
 5 to the mortgage, including the terms and conditions of a  
 6 deferment.

7 “(j) COORDINATION WITH STATE LAW.—

8 “(1) IN GENERAL.—No provision of this section  
 9 shall be construed as annulling, altering, or affecting  
 10 the laws of any State relating to deferment of fore-  
 11 closures, except to the extent that those laws are in-  
 12 consistent with the provisions of this section, and  
 13 then only to the extent of the inconsistency.

14 “(2) RULE OF CONSTRUCTION.—A State law is  
 15 not inconsistent with this section if the protection  
 16 such law affords any consumer is greater than the  
 17 protection afforded by this subsection.”.

18 (b) CLERICAL AMENDMENT.—The table of sections  
 19 for chapter 2 of the Truth in Lending Act is amended  
 20 by inserting after the item relating to section 128 the fol-  
 21 lowing new item:

“128A. Foreclosure deferment and reset notification for certain mortgages.”.

22 **SEC. 3. AUTHORIZATION OF APPROPRIATIONS FOR HOUS-**  
 23 **ING COUNSELING.**

24 There is authorized to be appropriated for fiscal year  
 25 2008, \$200,000,000 for the Neighborhood Reinvestment

1 Corporation, for carrying out foreclosure mitigation activi-  
2 ties under the terms and conditions contained in the sec-  
3 ond paragraph under the heading “Neighborhood Rein-  
4 vestment Corporation—Payment to the Neighborhood Re-  
5 investment Corporation” in title III of division K of Public  
6 Law 110–161 (121 Stat. 2441), which may include use  
7 for costs of providing additional counselors, translators,  
8 and other staffers and costs of providing additional com-  
9 puters and improving databases and overall operations to  
10 better assist mortgagor families.

○