

111TH CONGRESS  
1ST SESSION

# H. R. 3142

To establish a program to assist homeowners experiencing unavoidable, temporary difficulty making payments on home mortgages.

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IN THE HOUSE OF REPRESENTATIVES

JULY 9, 2009

Mr. FATAH introduced the following bill; which was referred to the Committee on Financial Services

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## A BILL

To establish a program to assist homeowners experiencing unavoidable, temporary difficulty making payments on home mortgages.

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 for a 1- to 4-  
9 family residence when—

1           (1) the mortgagee has given the mortgagor no-  
2           tice in accordance with section 3(b) that it intends  
3           to foreclose the mortgage;

4           (2) at least 2 full monthly installments due on  
5           the mortgage are unpaid after the application of any  
6           partial payments that may have been accepted but  
7           not yet applied to the mortgage account;

8           (3) the mortgagor is suffering financial hard-  
9           ship due to circumstances beyond the control of the  
10          mortgagor which render the mortgagor unable to  
11          correct the delinquency on the mortgage and unable  
12          to make full mortgage payments before the expira-  
13          tion of the 60-day period beginning on the date that  
14          notice was sent to the mortgagor in accordance with  
15          section 3(b);

16          (4) there is a reasonable prospect that the  
17          mortgagor will be able to resume full mortgage pay-  
18          ments not later than 36 months after the beginning  
19          of the period for which assistance payments are pro-  
20          vided and to pay the mortgage in full by its maturity  
21          date or by a later date agreed upon by the mort-  
22          gagee;

23          (5) the property mortgaged is the mortgagor's  
24          principal place of residence;

1           (6) the mortgagor does not own other residen-  
2           tial property which is subject to a mortgage;

3           (7) the mortgagor has applied to the Secretary  
4           for assistance in accordance with section 4; and

5           (8) the mortgagor has not been more than 60  
6           days in arrears on a residential mortgage within the  
7           2-year period preceding the delinquency for which  
8           assistance is requested, unless the mortgagor can  
9           demonstrate that the prior delinquency was the re-  
10          sult of financial hardship due to circumstances be-  
11          yond the control of the mortgagor.

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

21          (c) DETERMINATION RELATING TO FINANCIAL  
22          HARDSHIP.—In determining whether a financial hardship  
23          (which may be caused by a reduction in income or an in-  
24          crease in expenses, or both) is due to circumstances be-  
25          yond the control of a mortgagor, the Secretary may con-

1 sider information regarding the mortgagor's employment  
2 record, credit history, and current income. Such cir-  
3 cumstances shall include, but not be limited to—

4 (1) loss of job of a member of the household;

5 (2) salary, wage, or earnings reduction of a  
6 member of the household;

7 (3) injury, disability, or illness of a member of  
8 the household;

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

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

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

20 **SEC. 3. LEGAL ACTION.**

21 (a) CONDITIONS UNDER WHICH LEGAL ACTION IS  
22 PROHIBITED.—Except as otherwise provided in the Act,  
23 a mortgagee of a mortgage for a 1- to 4-family residence  
24 may not accelerate the maturity of or commence any legal  
25 action regarding such a mortgage (including, but not lim-

1 ited to, mortgage foreclosure to recover under such obliga-  
2 tion) or take possession of any security of the mortgagor  
3 for such mortgage obligation unless the mortgagee has  
4 sent to the mortgagor notice pursuant to subsection (b).

5 In addition, the mortgagee may not take such action—

6 (1) before the expiration of the 30-day period  
7 beginning on the date that notice of the intent to  
8 take such action was sent to the mortgagor in ac-  
9 cordance with subsection (b);

10 (2) before the expiration of the 30-day period  
11 beginning on the date of the initial meeting between  
12 the mortgagor and an approved counseling agency  
13 held in accordance with section 4(a);

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

17 (A) is pending; or

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

20 (4) if payment toward the mortgage is being  
21 made under this Act.

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

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

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

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

10          (4) include the legal action intended and the  
11 basis therefore;

12          (5) include a list of approved counseling agen-  
13 cies located in the State in which the mortgagor re-  
14 sides;

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

17          (7) be subject to such other requirements as  
18 prescribed by the Secretary.

19 **SEC. 4. APPLICATION FOR ASSISTANCE.**

20 (a) MEETING.—

21           (1) IN GENERAL.—To apply for assistance  
22 under this Act, not later than 30 days after receiv-  
23 ing notice in accordance with section 3(b), a mort-  
24 gagor shall attend a face-to-face meeting with the  
25 mortgagee or an approved counseling agency to at-

1 tempt to prevent legal action for which the notice  
2 was sent by restructuring the mortgage payment  
3 schedule. A meeting under this paragraph may be  
4 conducted over the telephone under circumstances  
5 prescribed by the Secretary.

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

13 (b) PREPARATION; SUBMISSION.—

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

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

23 (B) not later than 30 days after the mort-  
24 gagor initially requests assistance in the prepa-

1           ration of the application, submit the completed  
2           application to the Secretary.

3           (2) FEES.—The Secretary may pay approved  
4           counseling agencies a fee, in an amount determined  
5           by the Secretary, for rendering assistance pursuant  
6           to this Act.

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

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

19          (e) EFFECT OF MISREPRESENTATION.—A mortgagor  
20          who intentionally misrepresents any financial information  
21          in connection with the filing of an application for assist-  
22          ance under this Act may be denied assistance and required  
23          to immediately repay any amount of assistance received,  
24          and the mortgagee may, at any time thereafter, take any

1 legal action to enforce the mortgage without any further  
2 restrictions or requirements under this Act.

3 (f) AVAILABILITY.—An application for assistance  
4 under this Act may be obtained from an approved coun-  
5 seling agency.

6 (g) DETERMINATION ON APPLICATION.—

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

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

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

17 (a) AMOUNT TO BRING MORTGAGE CURRENT.—If  
18 the Secretary determines that a mortgagor is eligible for  
19 assistance under this Act and the Secretary approves such  
20 mortgagor for assistance, the Secretary shall pay to the  
21 mortgagee from any amounts made available to carry out  
22 this Act the full amount due to the mortgagee pursuant  
23 to the terms of the mortgage without regard to any accel-  
24 eration under the mortgage, or the full amount of any al-  
25 ternative mortgage payments agreed to by the mortgagee

1 and mortgagor on the date that the application is ap-  
2 proved by the Secretary. This amount shall include the  
3 amount of principal, interest, taxes, assessments, ground  
4 rents, hazard insurance, any mortgage insurance or credit  
5 insurance premiums, and reasonable attorneys' fees in-  
6 curred by such mortgagee in relation to the arrearage.

7 (b) MONTHLY ASSISTANCE PAYMENTS.—

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

12 (2) OBLIGATION OF THE MORTGAGOR.—A  
13 mortgagor on whose behalf the Secretary is making  
14 the mortgage assistance payments shall pay monthly  
15 payments to the Secretary. Such payments shall be  
16 in an amount which will cause the mortgagor's total  
17 housing expense not to exceed 35 percent of the  
18 mortgagor's net effective income. This shall be the  
19 maximum amount the mortgagor can be required to  
20 pay during the 36 months a mortgagor is eligible for  
21 mortgage assistance.

22 (3) OBLIGATION OF THE SECRETARY.—Upon  
23 receipt of this payment from the mortgagor, the Sec-  
24 retary or the Secretary's duly authorized agent shall

1 send the total mortgage payment directly to the  
2 mortgagee.

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

21 (d) PERIOD FOR ASSISTANCE.—Payments under this  
22 Act shall be provided for a period not to exceed 36 months,  
23 either consecutively or nonconsecutively. The Secretary  
24 shall establish procedures for periodic review of the mort-  
25 gagor’s financial circumstances for the purpose of deter-

1 mining the necessity for continuation, termination, or ad-  
2 justment of the amount of the payments.

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

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

11 (b) REPAYMENT OF ASSISTANCE LOAN.—Before  
12 making assistance payments under this Act on behalf of  
13 a mortgagor, the Secretary shall enter into an agreement  
14 with the mortgagor for repayment of all mortgage assist-  
15 ance made by the Secretary under section 5, plus interest  
16 as provided in subsection (c). The agreement shall provide  
17 for monthly payments by the mortgagor to the Secretary  
18 which (1) shall begin once the Secretary has determined  
19 that continuation of mortgage assistance payments to the  
20 mortgagee is unnecessary, and (2) shall be in an amount  
21 determined as follows:

22 (1) HOUSING EXPENSE LESS THAN 35 PER-  
23 CENT.—If the mortgagor's total housing expense is  
24 less than 35 percent of the mortgagor's net effective  
25 income, the mortgagor shall pay to the Secretary the

1 difference between 35 percent of the mortgagor's net  
2 effective income and the mortgagor's total housing  
3 expense unless otherwise determined by the Sec-  
4 retary after examining the mortgagor's financial cir-  
5 cumstances and ability to contribute to repayment of  
6 the mortgage assistance.

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

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

21 (c) INTEREST.—Interest shall accrue on all mortgage  
22 assistance made under this Act at the rate determined  
23 monthly by the Secretary of the Treasury to be equal to  
24 the then current average yield on outstanding 30-year  
25 bonds issued by the Secretary of the Treasury under sec-

1 tion 3102 of title 31, United States Code, and shall accrue  
2 only during the period in which the mortgagor is required  
3 to make repayment under this section.

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

16 (e) TIME FOR REPAYMENT.—Payments under this  
17 section shall be made by the mortgagor to the Secretary  
18 not later than 14 days after each mortgage payment is  
19 due under the mortgage (or in the case of repayment after  
20 the mortgage has been paid in full, not later than the date  
21 the mortgage payments were due under the mortgage).

22 **SEC. 7. DEFINITIONS.**

23 For the purposes of this Act, the following definitions  
24 apply:

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

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

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

18           (4) HOUSING EXPENSE.—The term “housing  
19 expense” means the sum of the mortgagor’s monthly  
20 maintenance, utility, and hazard insurance expense,  
21 taxes, and required mortgage payments, including  
22 escrows.

23           (5) MORTGAGEE; MORTGAGOR.—The terms  
24 “mortgagee” and “mortgagor” have the meanings

1 given such terms in section 201 of the National  
2 Housing Act (12 U.S.C. 1707).

3 (6) 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 (7) SECRETARY.—The term “Secretary” means  
8 the Secretary of Housing and Urban Development.

9 **SEC. 8. AUTHORIZATION OF APPROPRIATIONS.**

10 There is authorized to be appropriated for each fiscal  
11 year such sums as may be necessary to provide assistance  
12 under this Act and for costs (as such term is defined in  
13 section 502 of the Federal Credit Reform Act of 1990 (2  
14 U.S.C. 661a)) of such assistance.

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