

[DISCUSSION DRAFT]117TH CONGRESS
1ST SESSION**H. R.** _____

To revise the FHA program for home equity conversion mortgages for elderly homeowners to add safeguards to prevent the displacement of homeowners, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

M. _____ introduced the following bill; which was referred to the
Committee on _____

A BILL

To revise the FHA program for home equity conversion mortgages for elderly homeowners to add safeguards to prevent the displacement of homeowners, 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 “Preventing Fore-
5 closures on Seniors Act of 2021”.

1 **SEC. 2. SAFEGUARDS TO PREVENT DISPLACEMENT OF**
2 **HOMEOWNER.**

3 (a) IN GENERAL.—Subsection (j) of section 255 of
4 the National Housing Act (12 U.S.C. 1715z–20(j)) is
5 amended—

6 (1) by striking the subsection designation and
7 all that follows through “The Secretary” and insert-
8 ing the following:

9 “(j) SAFEGUARDS TO PREVENT DISPLACEMENT OF
10 BORROWERS AND ELIGIBLE NON-BORROWING
11 SPOUSES.—

12 “(1) DEFERRAL OF BORROWER’S OBLIGA-
13 TION.—The Secretary”; and

14 (2) by adding at the end the following new
15 paragraphs:

16 “(2) REQUIREMENT TO ACCEPT ASSIGNMENT
17 OF MORTGAGE UPON DEATH OF BORROWING SPOUSE
18 WITH SURVIVING ELIGIBLE NON-BORROWING
19 SPOUSE.—

20 “(A) ASSIGNMENT; NOTICE.—If the mort-
21 gagee of a mortgage insured under this section,
22 upon the death of the last surviving borrower
23 under such mortgage or at such time that the
24 last surviving borrower ceases to reside in such
25 property as his or her principal residence due to
26 health conditions, and where there is an eligible

1 non-borrowing spouse, requests the Secretary to
2 accept assignment of such mortgage—

3 “(i) the Secretary shall—

4 “(I) accept the assignment of the
5 mortgage under terms and conditions
6 approved by the Secretary, but such
7 terms and conditions may not revise
8 the definition of an eligible non-bor-
9 rowing spouse set forth in paragraph
10 (7) of this subsection; or

11 “(II) provide for continuing serv-
12 icing of the mortgage for the duration
13 of an eligible non-borrowing spouse’s
14 occupancy of the property that is sub-
15 ject to the mortgage as his or her
16 principal residence; and

17 “(ii) not later than the expiration of
18 the 30-day period beginning upon notice to
19 the mortgagee of the death or cessation of
20 residence of the borrower, as applicable,
21 the mortgagee shall notify any eligible non-
22 borrowing spouse in writing—

23 “(I) of the opportunity, pursuant
24 to subparagraph (B), for the eligible
25 non-borrowing spouse to remain in the

1 property that is subject to the mort-
2 gage; and

3 “(II) that the eligible non-bor-
4 rowing spouse should contact the
5 mortgagee regarding such assignment.

6 “(B) TREATMENT OF ELIGIBLE NON-BOR-
7 ROWING SPOUSE.—After assignment of a mort-
8 gage to the Secretary pursuant to subparagraph
9 (A), the Secretary shall provide the eligible non-
10 borrowing spouse with a deferral of the due and
11 payable status due to the death or cessation of
12 residence of the borrowing spouse, as applica-
13 ble, as long as the eligible non-borrowing spouse
14 qualifies as such pursuant to paragraph (7)(B).

15 “(C) IDENTIFICATION OF ELIGIBLE NON-
16 BORROWING SPOUSE.—For purposes of com-
17 plying with subparagraph (A), a mortgagee
18 shall make a good faith effort to determine
19 whether there is an eligible non-borrowing
20 spouse with respect to the last surviving bor-
21 rower of a mortgage insured under this section,
22 including a surviving borrower who ceases to re-
23 side in such property as his or her principal
24 residence due to health conditions.

1 “(3) HOME RETENTION FOR NEW MORTGAGES
2 IN CASES OF DELINQUENT TAXES OR INSURANCE.—
3 The Secretary shall require that, in the case of a
4 mortgage that is insured under this section, has an
5 FHA Case Number assigned on or after the date of
6 the enactment of this paragraph, and is in default
7 by reason of failure to make payment of taxes or in-
8 surance required under the mortgage or homeowners
9 association fees, the mortgagee shall, as a pre-
10 condition of sending a due and payable request to
11 the Secretary, take the following actions as allowed
12 by guidelines of the Secretary:

13 “(A) HOME RETENTION.—The mortgagee
14 shall take appropriate home retention actions,
15 which may include the following actions:

16 “(i) Making payments on behalf of the
17 borrower notwithstanding any available
18 balance under the principal limit under
19 subsection (g) of this section.

20 “(ii) Establishing a realistic repay-
21 ment plan for the delinquent property
22 charges.

23 “(iii) Assisting the borrower in con-
24 tacting a HUD-approved Housing Coun-
25 seling Agency (HCA) to obtain counseling

1 in finding some viable resolution to the de-
2 linquency, or in identifying local resources
3 available to provide other assistance, in-
4 cluding funds or homestead exemptions.

5 “(iv) Refinancing the delinquent mort-
6 gage into a new home equity conversion
7 mortgage if—

8 “(I) there is sufficient equity to
9 satisfy the existing mortgage and out-
10 standing property charges; and

11 “(II) the applicant for refi-
12 nancing meets the financial assess-
13 ment guidelines of the Secretary and
14 the program eligibility requirements
15 established by the Secretary under
16 this section.

17 “(v) Extending the deadlines for fore-
18 closure in cases in which the youngest liv-
19 ing borrower or spouse is at least 80 years
20 of age and has critical circumstances such
21 as a terminal illness, long-term physical
22 disability, or a unique occupancy need (as
23 defined by the Secretary).

24 “(vi) Refraining from submitting a
25 due and payable request to the Secretary

1 in cases in which the total arrearage for
2 property taxes and hazard insurance, and
3 homeowners association fees, is less than
4 \$2,000 or such higher amount as the Sec-
5 retary may determine appropriate.

6 “(vii) Any additional actions, includ-
7 ing loss mitigation, as the Secretary con-
8 siders appropriate.

9 “(B) TREATMENT OF ELIGIBLE NON-BOR-
10 ROWING SPOUSE.—The mortgagee shall treat
11 any eligible non-borrowing spouse as a bor-
12 rowing spouse for the purposes of home reten-
13 tion actions.

14 “(4) LOSS MITIGATION AND HOME RETENTION
15 FOR EXISTING MORTGAGES IN CASES OF DELIN-
16 QUENT TAXES OR INSURANCE.—For any mortgage
17 that is insured under this section, has an FHA Case
18 Number assigned before the date of the enactment
19 of this paragraph, and is in default by reason of fail-
20 ure to make payment of taxes or insurance required
21 under the mortgage or homeowners association fees,
22 the Secretary shall take the following actions:

23 “(A) The Secretary shall expand the loss
24 mitigation and home retention options available
25 to mortgagees to include at least all the home

1 retention actions and options required with re-
2 spect to mortgages having case numbers as-
3 signed on or after the date of the enactment of
4 this paragraph.

5 “(B) The Secretary may not curtail inter-
6 est paid to mortgagees who engage in loss miti-
7 gation or home retention actions through inter-
8 est curtailment during such loss mitigation or
9 home retention review or during the period
10 when a loss mitigation or home retention plan
11 is in effect and ending 90 days after any such
12 plan terminates. The Secretary shall pay claims
13 based on the mortgage note rate, if higher than
14 the debenture interest rate, during such loss
15 mitigation or home retention review and during
16 the period when a loss mitigation or home re-
17 tention plan is in effect and ending 90 days
18 after such plan terminates.

19 “(5) MORTGAGEE OPTIONAL ELECTION ASSIGN-
20 MENT.—In implementing the Mortgagee Optional
21 Election Assignment for home equity conversion
22 mortgages insured under this section, the Secretary
23 shall use the definition of ‘eligible non-borrowing
24 spouse’ under paragraph (7) of this subsection in
25 lieu of the definition of ‘eligible surviving non-bor-

1 rowing spouse’ under the definition provisions of
2 Mortgage Letter 2015–15 (June 12, 2015) or any
3 other definition.

4 “(6) CASH FOR KEYS INCENTIVE.—The Sec-
5 retary shall reimburse the mortgagee for a mortgage
6 insured under this section in the amount of a pay-
7 ment by the mortgagee, but in no case exceeding
8 \$3,000 or such other amount as the Secretary may
9 determine appropriate, of any of the following incen-
10 tives:

11 “(A) An incentive paid to the borrower or
12 other party with a legal right to dispose of the
13 property in association with a deed in lieu of
14 foreclosure transaction, but only if the property
15 subject to the mortgage was deeded to the
16 mortgagee within 6 months of when the mort-
17 gagee notified the Secretary, or should have no-
18 tified the Secretary, that the mortgage is due
19 and payable, or the date that the deferral pe-
20 riod ended, or the date the Secretary approved
21 a due and payable request.

22 “(B) An incentive paid to a bona fide ten-
23 ant or other occupant who vacated the property
24 subject to the mortgage before an eviction being
25 initiated by the mortgagee.

1 “(7) DEFINITIONS.—For purposes of this sub-
2 section, the following definitions shall apply:

3 “(A) BORROWER.—The term ‘borrower’
4 means, with respect to a mortgage insured
5 under this section, the original borrower under
6 the note and mortgage. Such term does not in-
7 clude successors or assigns of a borrower.

8 “(B) ELIGIBLE NON-BORROWING
9 SPOUSE.—The term ‘eligible non-borrowing
10 spouse’ means as follows:

11 “(i) CASE NUMBER ASSIGNED BEFORE
12 AUGUST 4, 2014.—With respect to a bor-
13 rower under a mortgage insured under this
14 section that was assigned an FHA Case
15 Number before August 4, 2014, such term
16 means a non-borrowing spouse who—

17 “(I)(aa) was legally married, as
18 determined by the law of the State in
19 which the non-borrowing spouse and
20 borrower reside or resided or the
21 State of celebration, to the borrower
22 at the time of loan closing and re-
23 mained married to the borrower
24 until—

1 “(AA) except as provided in
2 subitem (BB), the death of the
3 borrower; or

4 “(BB) in the case of a bor-
5 rower who permanently ceased
6 residence in such property due to
7 health conditions, the assignment
8 of the mortgage.

9 “(bb) engaged in a committed re-
10 lationship with the borrower akin to
11 marriage but was prohibited, at the
12 time of the mortgage loan origination,
13 from legally marrying the borrower
14 based on the gender of both the bor-
15 rower and non-borrowing spouse, but
16 was legally married, as determined by
17 the law of the State in which the non-
18 borrowing spouse and borrower reside
19 or resided or the State of celebration,
20 to the borrower and remained married
21 to the borrower until—

22 “(AA) except as provided in
23 subitem (BB), the death of the
24 borrower; or

1 “(BB) in the case of a bor-
2 rower who permanently ceased
3 residence in the property secured
4 by the mortgage due to health
5 conditions, the assignment of the
6 mortgage; and

7 “(II) currently resides and re-
8 sided in the property secured by the
9 mortgage insured under this section
10 as his or her principal residence at
11 origination of the mortgage and
12 throughout the duration of the bor-
13 rower’s life.

14 “(ii) CASE NUMBER ASSIGNED ON OR
15 AFTER AUGUST 4, 2014.—With respect to a
16 borrower under a mortgage insured under
17 this section that was assigned an FHA
18 Case Number on or after August 4, 2014,
19 such term means a non-borrowing spouse
20 who—

21 “(I) was legally married, as de-
22 termined by the law of the State in
23 which the non-borrowing spouse and
24 borrower reside or resided or the
25 State of celebration, to the borrower

1 at the time of loan closing and re-
2 mained married to the borrower until
3 the borrower's death or the time that
4 the borrower permanently ceased resi-
5 dence in such property due to health
6 conditions;

7 “(II) was properly disclosed to
8 the mortgagee at origination and spe-
9 cifically named as an eligible non-bor-
10 rowing spouse in the mortgage and
11 loan documents relating to the mort-
12 gage insured under this section; and

13 “(III) currently resides and re-
14 sided in the property secured by the
15 mortgage insured under this section
16 as his or her principal residence at
17 origination of the mortgage and
18 throughout the duration of the bor-
19 rower's life.

20 “(C) NON-BORROWING SPOUSE.—For pur-
21 poses of this subsection, the term ‘non-bor-
22 rowing spouse’ means, with respect to a bor-
23 rower under a mortgage insured under this sec-
24 tion, the spouse of such borrower who is not
25 also a borrower.

1 “(8) REPORTING ON FORECLOSURES.—

2 “(A) ANNUAL REPORT TO CONGRESS.—

3 The Secretary shall submit a report to the Con-
4 gress annually regarding foreclosures on mort-
5 gages insured under this section that identifies
6 the overall number of such foreclosures, and the
7 reasons for such foreclosures, including what
8 percentage of such foreclosures were due to de-
9 linquent payments on taxes and insurance.

10 “(B) PUBLIC DATA REPORTS.—

11 “(i) REQUIREMENT.—The Secretary
12 shall make available publicly on a website
13 of the Department, and regularly update, a
14 dataset for mortgages insured under this
15 section that identifies loan-level origination
16 and performance data, including origina-
17 tion, servicing, and termination informa-
18 tion.

19 “(ii) INCLUDED INFORMATION.— The
20 dataset shall include—

21 “(I) all of the same types of in-
22 formation regarding such mortgages
23 that was reported by the Secretary
24 under home equity conversion mort-

1 gage public data reports, as of dis-
2 continuation of such reports in 2011;

3 “(II) data relating to termi-
4 nations, including the reasons for
5 such terminations;

6 “(III) data relating to non-bor-
7 rowing spouses, including the number
8 of requests for mortgagee optional as-
9 signment (MOE), the number of such
10 requests approved and denied, and the
11 reasons for such denials; and

12 “(IV) data on borrowers in de-
13 fault who were offered loss mitigation,
14 what type of loss mitigation was of-
15 fered, and to what extent loss mitiga-
16 tion was effective.

17 “(9) TREATMENT OF HOMEOWNER ASSOCIA-
18 TION FEE ARREARAGES.—Any arrearage in home-
19 owners association fees shall be considered a prop-
20 erty charge for purposes of home retention and loss
21 mitigation actions required under this subsection.”.

22 (b) CIVIL PENALTY FOR VIOLATING HOME RETEN-
23 TION REQUIREMENTS.—Section 536 of the National
24 Housing Act (12 U.S.C. 1735f–14) is amended—

1 (1) in the last sentence of subsection (a), by
2 striking “activities, as provided in section
3 536(b)(1)(I)” and inserting the following: “or home
4 retention actions, as provided in subsection (b)(1)(I)
5 of this section”; and

6 (2) in subsection (b)(1)(I)—

7 (A) by inserting “or home retention” after
8 “loss mitigation”; and

9 (B) by inserting “or 255(j), respectively,”.

10 **SEC. 3. TREATMENT OF UNANSWERED LETTERS.**

11 Subsection (i) of section 255 of the National Housing
12 Act (12 U.S.C. 1715z-20(i)) is amended by adding at the
13 end the following new paragraph:

14 “(3) TREATMENT OF UNANSWERED LET-
15 TERS.—The Secretary shall provide that, for any
16 mortgage insured under this section and for any
17 purpose under the program under this section, the
18 absence of response by a mortgagor to a letter
19 mailed to the address of the property subject to the
20 mortgage insured under this section shall not, by
21 itself, be considered sufficient evidence that the
22 mortgagor is no longer occupying the property as a
23 primary residence.”.

1 **SEC. 4. COORDINATION WITH BUREAU OF CONSUMER FI-**
2 **NANCIAL PROTECTION.**

3 Section 255 of the National Housing Act (12 U.S.C.
4 1715z-20) is amended—

5 (1) by redesignating subsection (r) as sub-
6 section (q); and

7 (2) by adding at the end the following new sub-
8 section:

9 “(r) **COORDINATION WITH THE BUREAU.**—The Sec-
10 retary and the Bureau of Consumer Financial Protection
11 shall enter into an information sharing agreement to carry
12 out effective monitoring of compliance with consumer pro-
13 tection laws with respect to the program for insuring
14 mortgages under this section.”.