

108TH CONGRESS  
2D SESSION

# S. 2422

To amend the Internal Revenue Code of 1986 to allow certain modifications to be made to qualified mortgages held by a REMIC or a grantor trust.

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## IN THE SENATE OF THE UNITED STATES

MAY 13, 2004

Mr. SMITH (for himself and Mr. CONRAD) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to allow certain modifications to be made to qualified mortgages held by a REMIC or a grantor trust.

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. CERTAIN MODIFICATIONS PERMITTED TO  
4                   QUALIFIED MORTGAGES HELD BY A REMIC  
5                   OR A GRANTOR TRUSTS.**

6       (a) **QUALIFIED MORTGAGES HELD BY A REMIC.—**  
7           (1) **IN GENERAL.**—Paragraph (3) of section  
8           860G(a) of the Internal Revenue Code of 1986 is  
9           amended by adding at the end the following new  
10          subparagraph:

## 1                   “(C) QUALIFIED MODIFICATIONS.—

2                   “(i) IN GENERAL.—An obligation  
3                   shall not fail to be treated as a qualified  
4                   mortgage solely because of a qualified  
5                   modification of such obligation.6                   “(ii) QUALIFIED MODIFICATION.—For  
7                   purposes of this section, the term ‘qualified  
8                   modification’ means, with respect to any  
9                   obligation, any amendment, waiver, or  
10                   other modification which is treated as a  
11                   disposition of such obligation under section  
12                   1001 if such amendment, waiver or other  
13                   modification does not—14                   “(I) extend the final maturity  
15                   date of the obligation,16                   “(II) increase the outstanding  
17                   principal balance under the obligation  
18                   (other than the capitalization of ac-  
19                   crued, unpaid interest),20                   “(III) result in a release of an in-  
21                   terest in real property securing the  
22                   obligation such that the obligation is  
23                   not principally secured by an interest  
24                   in real property (determined after giv-  
25                   ing effect to the release), or

1                             “(IV) result in an instrument or  
2                             property right which is not debt for  
3                             Federal income tax purposes.

4                             “(iii) **DEFAULTS.**—Under regulations  
5                             prescribed by the Secretary, any amend-  
6                             ment, waiver, or other modification of an  
7                             obligation which is in default or with re-  
8                             spect to which default is reasonably fore-  
9                             seeable may be treated as a qualified modi-  
10                             fication for purposes of this section.

11                             “(iv) **DEFEASANCE WITH GOVERN-  
12                             MENT SECURITIES.**—The requirements of  
13                             clause (ii)(III) shall be treated as satisfied  
14                             if, after the release described in such  
15                             clause, the obligation is principally secured  
16                             by Government securities and the amend-  
17                             ment, waiver, or other modification to such  
18                             obligation satisfies such requirements as  
19                             the Secretary may prescribe.”.

20                             (2) **EXCEPTION FROM PROHIBITED TRANS-  
21                             ACTION RULES.**—Subparagraph (A) of section  
22                             860F(a)(2) of such Code is amended by striking  
23                             “or” at the end of clause (iii), by striking the period  
24                             at the end of clause (iv) and inserting “, or”, and  
25                             by adding at the end the following new clause:

1                             “(v) a qualified modification (as de-  
2                             fined in section 860G(a)(3)(C)).”.

3                             (3) CONFORMING AMENDMENTS.—

4                             (A) Section 860G(a)(3) of such Code is  
5                             amended—

6                                 (i) by redesignating clauses (i) and  
7                                 (ii) of subparagraph (A) as subclauses (I)  
8                                 and (II), respectively,

9                                 (ii) by redesignating subparagraphs  
10                                 (A) through (D) as clauses (i) through  
11                                 (iv), respectively,

12                                 (iii) by striking “The term” and in-  
13                                 serting the following:

14                             “(A) IN GENERAL.—The term”, and

15                                 (iv) by striking “For purposes of sub-  
16                                 paragraph (A)” and inserting the fol-  
17                                 lowing:

18                             “(B) TENANT-STOCKHOLDERS OF COOPER-  
19                                 ATIVE HOUSING CORPORATIONS.—For purposes  
20                                 of subparagraph (A)(i)”.

21                             (B) Section 860G(a)(3)(A)(iv) of such  
22                             Code (as redesignated by subparagraph (A)) is  
23                             amended—

1 (i) by striking “clauses (i) and (ii) of  
2 subparagraph (A)” and inserting “sub-  
3 clauses (I) and (II) of clause (i)”, and  
4 (ii) by striking “subparagraph (A)  
5 (without regard to such clauses)” and in-  
6 serting “clause (i) (without regard to such  
7 subclauses”).

8 (b) QUALIFIED MORTGAGES HELD BY A GRANTOR  
9 TRUST.—Section 672 of the Internal Revenue Code of  
10 1986 is amended by adding at the end the following new  
11 subsection:

12       “(g) SPECIAL RULE FOR CERTAIN INVESTMENT  
13 TRUSTS.—A grantor shall not fail to be treated as the  
14 owner of any portion of a trust under this subpart solely  
15 because such portion includes one or more obligations with  
16 respect to which a qualified modification (within the mean-  
17 ing of section 860G(a)(3)(C)) has been, or may be, made  
18 under the terms of such trust.”.

19 (c) EFFECTIVE DATE.—The amendments made by  
20 this section shall apply to amendments, waivers, and other  
21 modifications made after the date of the enactment of this  
22 Act.

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