

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.

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

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:

“(C) QUALIFIED MODIFICATIONS.—

“(i) IN GENERAL.—An obligation shall not fail to be treated as a qualified mortgage solely because of a qualified modification of such obligation.

“(ii) QUALIFIED MODIFICATION.—For purposes of this section, the term ‘qualified modification’ means, with respect to any obligation, any amendment, waiver, or other modification which is treated as a disposition of such obligation under section 1001 if such amendment, waiver or other modification does not—

“(I) extend the final maturity date of the obligation,

“(II) increase the outstanding principal balance under the obligation (other than the capitalization of accrued, unpaid interest),

“(III) result in a release of an interest in real property securing the obligation such that the obligation is not principally secured by an interest in real property (determined after giving 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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