

110TH CONGRESS  
1ST SESSION

# S. 2201

To provide for the penalty-free use of retirement funds for mortgage delinquency relief.

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IN THE SENATE OF THE UNITED STATES

OCTOBER 18, 2007

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

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## A BILL

To provide for the penalty-free use of retirement funds for mortgage delinquency relief.

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 Ownership  
5       Mortgage Emergency Act” or the “HOME Act”.

1 **SEC. 2. TAX-FAVORED WITHDRAWALS FROM RETIREMENT**  
 2 **PLANS FOR MORTGAGE DELINQUENCY RE-**  
 3 **LIEF.**

4 (a) IN GENERAL.—Section 72(t) of the Internal Rev-  
 5 enue Code of 1986 shall not apply to any qualified mort-  
 6 gage delinquency relief distribution.

7 (b) AGGREGATE DOLLAR LIMITATION.—

8 (1) IN GENERAL.—For purposes of this section,  
 9 the aggregate amount of distributions received by an  
 10 individual which may be treated as qualified mort-  
 11 gage delinquency relief distributions for any taxable  
 12 year shall not exceed the excess (if any) of—

13 (A) \$100,000, over

14 (B) the aggregate amounts treated as  
 15 qualified mortgage delinquency relief distribu-  
 16 tions received by such individual for all prior  
 17 taxable years.

18 (2) TREATMENT OF PLAN DISTRIBUTIONS.—If  
 19 a distribution to an individual would (without regard  
 20 to paragraph (1)) be a qualified mortgage delin-  
 21 quency relief distribution, a plan shall not be treated  
 22 as violating any requirement of the Internal Revenue  
 23 Code of 1986 merely because the plan treats such  
 24 distribution as a qualified mortgage delinquency re-  
 25 lief distribution, unless the aggregate amount of  
 26 such distributions from all plans maintained by the

1 employer (and any member of any controlled group  
 2 which includes the employer) to such individual ex-  
 3 ceeds \$100,000.

4 (3) CONTROLLED GROUP.—For purposes of  
 5 paragraph (2), the term “controlled group” means  
 6 any group treated as a single employer under sub-  
 7 section (b), (c), (m), or (o) of section 414 of such  
 8 Code.

9 (c) AMOUNT DISTRIBUTED MAY BE REPAID.—

10 (1) IN GENERAL.—Any individual who receives  
 11 a qualified mortgage delinquency relief distribution  
 12 may, at any time during the 3-year period beginning  
 13 on the day after the date on which such distribution  
 14 was received, make one or more contributions in an  
 15 aggregate amount not to exceed the amount of such  
 16 distribution to an eligible retirement plan of which  
 17 such individual is a beneficiary and to which a roll-  
 18 over contribution of such distribution could be made  
 19 under section 402(c), 403(a)(4), 403(b)(8),  
 20 408(d)(3), or 457(e)(16) of the Internal Revenue  
 21 Code of 1986, as the case may be.

22 (2) TREATMENT OF REPAYMENTS OF DISTRIBUTIONS FROM ELIGIBLE RETIREMENT PLANS OTHER  
 23 THAN IRAS.—For purposes of such Code, if a con-  
 24 tribution is made pursuant to paragraph (1) with re-  
 25

spect to a qualified mortgage delinquency relief distribution from an eligible retirement plan other than an individual retirement plan, then the taxpayer shall, to the extent of the amount of the contribution, be treated as having received the qualified mortgage delinquency relief distribution in an eligible rollover distribution (as defined in section 402(c)(4) of such Code) and as having transferred the amount to the eligible retirement plan in a direct trustee to trustee transfer within 60 days of the distribution.

(3) TREATMENT OF REPAYMENTS FOR DISTRIBUTIONS FROM IRAS.—For purposes of such Code, if a contribution is made pursuant to paragraph (1) with respect to a qualified mortgage delinquency relief distribution from an individual retirement plan (as defined by section 7701(a)(37) of such Code), then, to the extent of the amount of the contribution, the qualified mortgage delinquency relief distribution shall be treated as a distribution described in section 408(d)(3) of such Code and as having been transferred to the eligible retirement plan in a direct trustee to trustee transfer within 60 days of the distribution.

(d) DEFINITIONS.—For purposes of this section—

1           (1) QUALIFIED MORTGAGE DELINQUENCY RE-  
2 LIEF DISTRIBUTION.—Except as provided in sub-  
3 section (b), the term “qualified mortgage delin-  
4 quency relief distribution” means any distribution  
5 from an eligible retirement plan made on or after  
6 the date of the enactment of this Act and before  
7 January 1, 2010, to an individual—

8           (A) whose acquisition indebtedness (as de-  
9 fined in section 163(h)(3)(B) of the Internal  
10 Revenue Code of 1986, without regard to clause  
11 (ii) thereof) with respect to the principal resi-  
12 dence of the taxpayer is in delinquency for at  
13 least 60 days, and

14           (B) whose adjusted gross income (as de-  
15 fined in section 62 of the such Code) for the  
16 taxable year of such distribution does not ex-  
17 ceed \$114,000 (\$166,000 in the case of a joint  
18 return under section 6013 of such Code).

19           (2) ELIGIBLE RETIREMENT PLAN.—The term  
20 “eligible retirement plan” shall have the meaning  
21 given such term by section 402(c)(8)(B) of such  
22 Code.

23           (3) PRINCIPAL RESIDENCE.—The term “prin-  
24 cipal residence” has the same meaning as when used  
25 in section 121 of such Code.

1 (e) INCOME INCLUSION SPREAD OVER 3 YEAR PE-  
 2 RIOD FOR QUALIFIED MORTGAGE DELINQUENCY RELIEF  
 3 DISTRIBUTIONS.—

4 (1) IN GENERAL.—In the case of any qualified  
 5 mortgage delinquency relief distribution, unless the  
 6 taxpayer elects not to have this subsection apply for  
 7 any taxable year, any amount required to be in-  
 8 cluded in gross income for such taxable year shall be  
 9 so included ratably over the 3-taxable year period  
 10 beginning with such taxable year.

11 (2) SPECIAL RULE.—For purposes of para-  
 12 graph (1), rules similar to the rules of subparagraph  
 13 (E) of section 408A(d)(3) of the Internal Revenue  
 14 Code of 1986 shall apply.

15 (f) SPECIAL RULES.—

16 (1) EXEMPTION OF DISTRIBUTIONS FROM  
 17 TRUSTEE TO TRUSTEE TRANSFER AND WITH-  
 18 HOLDING RULES.—For purposes of sections  
 19 401(a)(31), 402(f), and 3405 of the Internal Rev-  
 20 enue Code of 1986, qualified mortgage delinquency  
 21 relief distributions shall not be treated as eligible  
 22 rollover distributions.

23 (2) QUALIFIED MORTGAGE DELINQUENCY RE-  
 24 LIEF DISTRIBUTIONS TREATED AS MEETING PLAN  
 25 DISTRIBUTION REQUIREMENTS.—For purposes of

1 such Code, a qualified mortgage delinquency relief  
 2 distribution shall be treated as meeting the require-  
 3 ments of sections 401(k)(2)(B)(i), 403(b)(7)(A)(ii),  
 4 403(b)(11), and 457(d)(1)(A) of such Code.

5 (g) PROVISIONS RELATING TO PLAN AMEND-  
 6 MENTS.—

7 (1) IN GENERAL.—If this subsection applies to  
 8 any amendment to any plan or annuity contract,  
 9 such plan or contract shall be treated as being oper-  
 10 ated in accordance with the terms of the plan during  
 11 the period described in paragraph (2)(B)(i).

12 (2) AMENDMENTS TO WHICH SUBSECTION AP-  
 13 PLIES.—

14 (A) IN GENERAL.—This subsection shall  
 15 apply to any amendment to any plan or annuity  
 16 contract which is made—

17 (i) pursuant to any amendment made  
 18 by this section, or pursuant to any regula-  
 19 tion issued by the Secretary of the Treas-  
 20 ury or the Secretary of Labor under this  
 21 section, and

22 (ii) on or before the last day of the  
 23 first plan year beginning on or after Janu-  
 24 ary 1, 2010, or such later date as the Sec-  
 25 retary of the Treasury may prescribe.

1 In the case of a governmental plan (as defined  
 2 in section 414(d) of the Internal Revenue Code  
 3 of 1986), clause (ii) shall be applied by sub-  
 4 stituting the date which is 2 years after the  
 5 date otherwise applied under clause (ii).

6 (B) CONDITIONS.—This subsection shall  
 7 not apply to any amendment unless—

8 (i) during the period—

9 (I) beginning on the date the leg-  
 10 islative or regulatory amendment de-  
 11 scribed in subparagraph (A)(i) takes  
 12 effect (or in the case of a plan or con-  
 13 tract amendment not required by such  
 14 legislative or regulatory amendment,  
 15 the effective date specified by the  
 16 plan), and

17 (II) ending on the date described  
 18 in subparagraph (A)(ii) (or, if earlier,  
 19 the date the plan or contract amend-  
 20 ment is adopted),

21 the plan or contract is operated as if such  
 22 plan or contract amendment were in effect;  
 23 and



- 1 (ii) such plan or contract amendment
- 2 applies retroactively for such period.

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