

income tax return within the time prescribed by law or prescribed by the Secretary in pursuance of law.

(Added Pub. L. 95-600, title III, §362(a), Nov. 6, 1978, 92 Stat. 2848; amended Pub. L. 96-222, title I, §103(a)(11)(B), (C), Apr. 1, 1980, 94 Stat. 213; Pub. L. 99-514, title VI, §667(b)(1), Oct. 22, 1986, 100 Stat. 2306; Pub. L. 108-357, title II, §243(f)(5), Oct. 22, 2004, 118 Stat. 1445; Pub. L. 111-325, title III, §301(a)(2), title V, §501(b), Dec. 22, 2010, 124 Stat. 3542, 3554.)

#### PRIOR PROVISIONS

A prior section 860 was renumbered section 859 of this title.

#### AMENDMENTS

2010—Subsec. (f)(2)(B). Pub. L. 111-325, §301(a)(2), inserted “or reported (as the case may be)” after “designated”.

Subsec. (j). Pub. L. 111-325, §501(b), struck out subsec. (j). Text read as follows: “For assessable penalty with respect to liability for tax of a regulated investment company which is allowed a deduction under subsection (a), see section 6697.”

2004—Subsec. (e)(4). Pub. L. 108-357 added par. (4).

1986—Subsec. (j). Pub. L. 99-514 substituted “regulated investment company” for “qualified investment entity”.

1980—Subsec. (f). Pub. L. 96-222 substituted in heading “Deficiency” for “Efficiency” and in par. (2)(A)(i) “(computed without regard)” for “computed without regard”.

#### EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 301(a)(2) of Pub. L. 111-325 applicable to taxable years beginning after Dec. 22, 2010, see section 301(h) of Pub. L. 111-325, set out as a note under section 852 of this title.

Pub. L. 111-325, title V, §501(c), Dec. 22, 2010, 124 Stat. 3554, provided that: “The amendments made by this section [amending this section and repealing section 6697 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Dec. 22, 2010].”

#### EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-357 applicable to statements filed after Oct. 22, 2004, see section 243(g)(4)(E) of Pub. L. 108-357, set out as a note under section 856 of this title.

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, see section 669 of Pub. L. 99-514, set out as a note under section 856 of this title.

#### EFFECTIVE DATE

Pub. L. 95-600, title III, §362(e), Nov. 6, 1978, 92 Stat. 2852, as amended by Pub. L. 96-222, title I, §103(a)(11)(A), Apr. 1, 1980, 94 Stat. 212; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: “The amendments made by this section [enacting this section, amending sections 316, 381, 852, 857, 6422, 6503, 6515, and 6697 of this title, repealing section 859 of this title, and redesignating prior section 860 as 859 of this title] shall apply with respect to determinations (as defined in section 860(e) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) after the date of the enactment of this Act [Nov. 6, 1978].”

### PART IV—REAL ESTATE MORTGAGE INVESTMENT CONDUITS

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860A. Taxation of REMIC's.

Sec.  
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### § 860A. Taxation of REMIC's

#### (a) General rule

Except as otherwise provided in this part, a REMIC shall not be subject to taxation under this subtitle (and shall not be treated as a corporation, partnership, or trust for purposes of this subtitle).

#### (b) Income taxable to holders

The income of any REMIC shall be taxable to the holders of interests in such REMIC as provided in this part.

(Added Pub. L. 99-514, title VI, §671(a), Oct. 22, 1986, 100 Stat. 2309; amended Pub. L. 100-647, title I, §1006(t)(20), Nov. 10, 1988, 102 Stat. 3426.)

#### AMENDMENTS

1988—Subsec. (a). Pub. L. 100-647 substituted “this subtitle” for “this chapter” in two places.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

#### EFFECTIVE DATE

Pub. L. 99-514, title VI, §675(a)-(c), Oct. 22, 1986, 100 Stat. 2320, as amended by Pub. L. 100-647, title I, §1006(w)(1), Nov. 10, 1988, 102 Stat. 3427, provided that:

“(a) GENERAL RULE.—Except as otherwise provided in this section, the amendments made by this subtitle [subtitle H (§§671-675) of title VI of Pub. L. 99-514, enacting this part and amending sections 582, 593, 856, 1272, 6049, and 7701 of this title] shall take effect on January 1, 1987.

“(b) RULES FOR ACCRUING ORIGINAL ISSUE DISCOUNT.—The amendment made by section 672 [amending section 1272 of this title] shall apply to debt instruments issued after December 31, 1986, in taxable years ending after such date.

“(c) TREATMENT OF TAXABLE MORTGAGE POOLS.—

“(1) IN GENERAL.—The amendment made by section 673 [amending section 7701 of this title] shall take effect on January 1, 1992.

“(2) TREATMENT OF EXISTING ENTITIES.—The amendment made by section 673 shall not apply to any entity in existence on December 31, 1991. The preceding sentence shall cease to apply with respect to any entity as of the 1st day after December 31, 1991, on which there is a substantial transfer of cash or other property to such entity.

“(3) SPECIAL RULE FOR COORDINATION WITH WASH-SALE RULES.—Notwithstanding paragraphs (1) and (2), for purposes of applying section 860F(d) of the Internal Revenue Code of 1986 (as added by this part [this subtitle]), the amendment made by section 673 shall apply to taxable years beginning after December 31, 1986.”

#### STUDY OF AMENDMENTS BY PUB. L. 99-514

Pub. L. 99-514, title VI, §675(d), as added by Pub. L. 100-647, title I, §1006(w)(2), Nov. 10, 1988, 102 Stat. 3427, directed Secretary of the Treasury to conduct a study of the operation of the amendments made by this part [this subtitle] and their competitive impact on savings

and loan institutions and similar financial institutions and, not later than Jan. 1, 1990, report to Congress, prior to repeal by Pub. L. 101-508, title XI, §11832(5), Nov. 5, 1990, 104 Stat. 1388-559.

### § 860B. Taxation of holders of regular interests

#### (a) General rule

In determining the tax under this chapter of any holder of a regular interest in a REMIC, such interest (if not otherwise a debt instrument) shall be treated as a debt instrument.

#### (b) Holders must use accrual method

The amounts includible in gross income with respect to any regular interest in a REMIC shall be determined under the accrual method of accounting.

#### (c) Portion of gain treated as ordinary income

Gain on the disposition of a regular interest shall be treated as ordinary income to the extent such gain does not exceed the excess (if any) of—

- (1) the amount which would have been includible in the gross income of the taxpayer with respect to such interest if the yield on such interest were 110 percent of the applicable Federal rate (as defined in section 1274(d) without regard to paragraph (2) thereof) as of the beginning of the taxpayer's holding period, over
- (2) the amount actually includible in gross income with respect to such interest by the taxpayer.

#### (d) Cross reference

**For special rules in determining inclusion of original issue discount on regular interests, see section 1272(a)(6).**

(Added Pub. L. 99-514, title VI, §671(a), Oct. 22, 1986, 100 Stat. 2309.)

### § 860C. Taxation of residual interests

#### (a) Pass-thru of income or loss

##### (1) In general

In determining the tax under this chapter of any holder of a residual interest in a REMIC, such holder shall take into account his daily portion of the taxable income or net loss of such REMIC for each day during the taxable year on which such holder held such interest.

##### (2) Daily portion

The daily portion referred to in paragraph (1) shall be determined—

- (A) by allocating to each day in any calendar quarter its ratable portion of the taxable income (or net loss) for such quarter, and
- (B) by allocating the amount so allocated to any day among the holders (on such day) of residual interests in proportion to their respective holdings on such day.

#### (b) Determination of taxable income or net loss

For purposes of this section—

##### (1) Taxable income

The taxable income of a REMIC shall be determined under an accrual method of accounting and, except as provided in regulations, in the same manner as in the case of an individual, except that—

(A) regular interests in such REMIC (if not otherwise debt instruments) shall be treated as indebtedness of such REMIC,

(B) market discount on any market discount bond shall be included in gross income for the taxable years to which it is attributable as determined under the rules of section 1276(b)(2) (and sections 1276(a) and 1277 shall not apply),

(C) there shall not be taken into account any item of income, gain, loss, or deduction allocable to a prohibited transaction,

(D) the deductions referred to in section 703(a)(2) (other than any deduction under section 212) shall not be allowed, and

(E) the amount of the net income from foreclosure property (if any) shall be reduced by the amount of the tax imposed by section 860G(c).

#### (2) Net loss

The net loss of any REMIC is the excess of—

- (A) the deductions allowable in computing the taxable income of such REMIC, over
- (B) its gross income.

Such amount shall be determined with the modifications set forth in paragraph (1).

#### (c) Distributions

Any distribution by a REMIC—

- (1) shall not be included in gross income to the extent it does not exceed the adjusted basis of the interest, and
- (2) to the extent it exceeds the adjusted basis of the interest, shall be treated as gain from the sale or exchange of such interest.

#### (d) Basis rules

##### (1) Increase in basis

The basis of any person's residual interest in a REMIC shall be increased by the amount of the taxable income of such REMIC taken into account under subsection (a) by such person with respect to such interest.

##### (2) Decreases in basis

The basis of any person's residual interest in a REMIC shall be decreased (but not below zero) by the sum of the following amounts:

- (A) any distributions to such person with respect to such interest, and
- (B) any net loss of such REMIC taken into account under subsection (a) by such person with respect to such interest.

#### (e) Special rules

##### (1) Amounts treated as ordinary

Any amount taken into account under subsection (a) by any holder of a residual interest in a REMIC shall be treated as ordinary income or ordinary loss, as the case may be.

##### (2) Limitation on losses

###### (A) In general

The amount of the net loss of any REMIC taken into account by a holder under subsection (a) with respect to any calendar quarter shall not exceed the adjusted basis of such holder's residual interest in such REMIC as of the close of such calendar quarter (determined without regard to the adjustment under subsection (d)(2)(B) for such calendar quarter).

**(B) Indefinite carryforward**

Any loss disallowed by reason of subparagraph (A) shall be treated as incurred by the REMIC in the succeeding calendar quarter with respect to such holder.

**(3) Cross reference**

**For special treatment of income in excess of daily accruals, see section 860E.**

(Added Pub. L. 99-514, title VI, §671(a), Oct. 22, 1986, 100 Stat. 2309; amended Pub. L. 100-647, title I, §1006(t)(1), (8)(C), (21), Nov. 10, 1988, 102 Stat. 3419, 3421, 3426.)

## AMENDMENTS

1988—Subsec. (b)(1). Pub. L. 100-647, §1006(t)(21), substituted “and, except as provided in regulations, in the same manner” for “and in the same manner” in introductory provisions.

Subsec. (b)(1)(E). Pub. L. 100-647, §1006(t)(8)(C), added subpar. (E).

Subsec. (e)(1). Pub. L. 100-647, §1006(t)(1), substituted “ordinary” for “ordinary income” in heading and amended text generally. Prior to amendment, text read as follows: “Any amount included in the gross income of any holder of a residual interest in a REMIC by reason of subsection (a) shall be treated as ordinary income.”

## EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

**§ 860D. REMIC defined****(a) General rule**

For purposes of this title, the terms “real estate mortgage investment conduit” and “REMIC” mean any entity—

(1) to which an election to be treated as a REMIC applies for the taxable year and all prior taxable years,

(2) all of the interests in which are regular interests or residual interests,

(3) which has 1 (and only 1) class of residual interests (and all distributions, if any, with respect to such interests are pro rata),

(4) as of the close of the 3rd month beginning after the startup day and at all times thereafter, substantially all of the assets of which consist of qualified mortgages and permitted investments,

(5) which has a taxable year which is a calendar year, and

(6) with respect to which there are reasonable arrangements designed to ensure that—

(A) residual interests in such entity are not held by disqualified organizations (as defined in section 860E(e)(5)), and

(B) information necessary for the application of section 860E(e) will be made available by the entity.

In the case of a qualified liquidation (as defined in section 860F(a)(4)(A)), paragraph (4) shall not apply during the liquidation period (as defined in section 860F(a)(4)(B)).

**(b) Election****(1) In general**

An entity (otherwise meeting the requirements of subsection (a)) may elect to be treat-

ed as a REMIC for its 1st taxable year. Such an election shall be made on its return for such 1st taxable year. Except as provided in paragraph (2), such an election shall apply to the taxable year for which made and all subsequent taxable years.

**(2) Termination****(A) In general**

If any entity ceases to be a REMIC at any time during the taxable year, such entity shall not be treated as a REMIC for such taxable year or any succeeding taxable year.

**(B) Inadvertent terminations**

If—

(i) an entity ceases to be a REMIC,

(ii) the Secretary determines that such cessation was inadvertent,

(iii) no later than a reasonable time after the discovery of the event resulting in such cessation, steps are taken so that such entity is once more a REMIC, and

(iv) such entity, and each person holding an interest in such entity at any time during the period specified pursuant to this subsection, agrees to make such adjustments (consistent with the treatment of such entity as a REMIC or a C corporation) as may be required by the Secretary with respect to such period,

then, notwithstanding such terminating event, such entity shall be treated as continuing to be a REMIC (or such cessation shall be disregarded for purposes of subparagraph (A)) whichever the Secretary determines to be appropriate.

(Added Pub. L. 99-514, title VI, §671(a), Oct. 22, 1986, 100 Stat. 2311; amended Pub. L. 100-647, title I, §1006(t)(2)(A), (16)(A), (19), Nov. 10, 1988, 102 Stat. 3419, 3423, 3426; Pub. L. 101-508, title XI, §11704(a)(8), Nov. 5, 1990, 104 Stat. 1388-518.)

## AMENDMENTS

1990—Subsec. (a). Pub. L. 101-508 inserted closing parenthesis before period at end.

1988—Subsec. (a). Pub. L. 100-647, §1006(t)(19), inserted at end “In the case of a qualified liquidation (as defined in section 860F(a)(4)(A)), paragraph (4) shall not apply during the liquidation period (as defined in section 860F(a)(4)(B)).”

Subsec. (a)(4). Pub. L. 100-647, §1006(t)(2)(A)(i), substituted “3rd month beginning after” for “4th month ending after”.

Pub. L. 100-647, §1006(t)(2)(A)(ii), substituted “and at all times thereafter” for “and each quarter ending thereafter”.

Subsec. (a)(6). Pub. L. 100-647, §1006(t)(16)(A), added par. (6).

## EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-647, title I, §1006(t)(2)(B), Nov. 10, 1988, 102 Stat. 3419, provided that: “The amendment made by subparagraph (A)(ii) [amending this section] shall take effect on January 1, 1988.”

Pub. L. 100-647, title I, §1006(t)(16)(D)(i), Nov. 10, 1988, 102 Stat. 3425, provided that: “The amendments made by subparagraph (A) [amending this section] shall apply in the case of any REMIC where the start-up day (as defined in section 860G(a)(9) of the 1986 Code, as in effect on the day before the date of the enactment of this Act [Nov. 10, 1988]) is after March 31, 1988; except that such amendments shall not apply in the case of a

REMIC formed pursuant to a binding written contract in effect on such date.”

Amendment by section 1006(t)(2)(A)(i), (19) of Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

**§ 860E. Treatment of income in excess of daily accruals on residual interests**

**(a) Excess inclusions may not be offset by net operating losses**

**(1) In general**

The taxable income of any holder of a residual interest in a REMIC for any taxable year shall in no event be less than the excess inclusion for such taxable year.

**(2) Special rule for affiliated groups**

All members of an affiliated group filing a consolidated return shall be treated as 1 taxpayer for purposes of this subsection.

**(3) Coordination with section 172**

Any excess inclusion for any taxable year shall not be taken into account—

(A) in determining under section 172 the amount of any net operating loss for such taxable year, and

(B) in determining taxable income for such taxable year for purposes of the 2nd sentence of section 172(b)(2).

**(4) Coordination with minimum tax**

For purposes of part VI of subchapter A of this chapter—

(A) the reference in section 55(b)(2) to taxable income shall be treated as a reference to taxable income determined without regard to this subsection,

(B) the alternative minimum taxable income of any holder of a residual interest in a REMIC for any taxable year shall in no event be less than the excess inclusion for such taxable year, and

(C) any excess inclusion shall be disregarded for purposes of computing the alternative tax net operating loss deduction.

**(b) Organizations subject to unrelated business tax**

If the holder of any residual interest in a REMIC is an organization subject to the tax imposed by section 511, the excess inclusion of such holder for any taxable year shall be treated as unrelated business taxable income of such holder for purposes of section 511.

**(c) Excess inclusion**

For purposes of this section—

**(1) In general**

The term “excess inclusion” means, with respect to any residual interest in a REMIC for any calendar quarter, the excess (if any) of—

(A) the amount taken into account with respect to such interest by the holder under section 860C(a), over

(B) the sum of the daily accruals with respect to such interest for days during such calendar quarter while held by such holder.

To the extent provided in regulations, if residual interests in a REMIC do not have signifi-

cant value, the excess inclusions with respect to such interests shall be the amount determined under subparagraph (A) without regard to subparagraph (B).

**(2) Determination of daily accruals**

**(A) In general**

For purposes of this subsection, the daily accrual with respect to any residual interest for any day in any calendar quarter shall be determined by allocating to each day in such quarter its ratable portion of the product of—

(i) the adjusted issue price of such interest at the beginning of such quarter, and

(ii) 120 percent of the long-term Federal rate (determined on the basis of compounding at the close of each calendar quarter and properly adjusted for the length of such quarter).

**(B) Adjusted issue price**

For purposes of this paragraph, the adjusted issue price of any residual interest at the beginning of any calendar quarter is the issue price of the residual interest (adjusted for contributions)—

(i) increased by the amount of daily accruals for prior quarters, and

(ii) decreased (but not below zero) by any distribution made with respect to such interest before the beginning of such quarter.

**(C) Federal long-term rate**

For purposes of this paragraph, the term “Federal long-term rate” means the Federal long-term rate which would have applied to the residual interest under section 1274(d) (determined without regard to paragraph (2) thereof) if it were a debt instrument.

**(d) Treatment of residual interests held by real estate investment trusts**

If a residual interest in a REMIC is held by a real estate investment trust, under regulations prescribed by the Secretary—

(1) any excess of—

(A) the aggregate excess inclusions determined with respect to such interests, over

(B) the real estate investment trust taxable income (within the meaning of section 857(b)(2), excluding any net capital gain),

shall be allocated among the shareholders of such trust in proportion to the dividends received by such shareholders from such trust, and

(2) any amount allocated to a shareholder under paragraph (1) shall be treated as an excess inclusion with respect to a residual interest held by such shareholder.

Rules similar to the rules of the preceding sentence shall apply also in the case of regulated investment companies, common trust funds, and organizations to which part I of subchapter T applies.

**(e) Tax on transfers of residual interests to certain organizations, etc.**

**(1) In general**

A tax is hereby imposed on any transfer of a residual interest in a REMIC to a disqualified organization.

**(2) Amount of tax**

The amount of the tax imposed by paragraph (1) on any transfer of a residual interest shall be equal to the product of—

(A) the amount (determined under regulations) equal to the present value of the total anticipated excess inclusions with respect to such interest for periods after such transfer, multiplied by

(B) the highest rate of tax specified in section 11(b)(1).

**(3) Liability**

The tax imposed by paragraph (1) on any transfer shall be paid by the transferor; except that, where such transfer is through an agent for a disqualified organization, such tax shall be paid by such agent.

**(4) Transferee furnishes affidavit**

The person (otherwise liable for any tax imposed by paragraph (1)) shall be relieved of liability for the tax imposed by paragraph (1) with respect to any transfer if—

(A) the transferee furnishes to such person an affidavit that the transferee is not a disqualified organization, and

(B) as of the time of the transfer, such person does not have actual knowledge that such affidavit is false.

**(5) Disqualified organization**

For purposes of this section, the term “disqualified organization” means—

(A) the United States, any State or political subdivision thereof, any foreign government, any international organization, or any agency or instrumentality of any of the foregoing,

(B) any organization (other than a cooperative described in section 521) which is exempt from tax imposed by this chapter unless such organization is subject to the tax imposed by section 511, and

(C) any organization described in section 1381(a)(2)(C).

For purposes of subparagraph (A), the rules of section 168(h)(2)(D) (relating to treatment of certain taxable instrumentalities) shall apply; except that, in the case of the Federal Home Loan Mortgage Corporation, clause (ii) of such section shall not apply.

**(6) Treatment of pass-thru entities****(A) Imposition of tax**

If, at any time during any taxable year of a pass-thru entity, a disqualified organization is the record holder of an interest in such entity, there is hereby imposed on such entity for such taxable year a tax equal to the product of—

(i) the amount of excess inclusions for such taxable year allocable to the interest held by such disqualified organization, multiplied by

(ii) the highest rate of tax specified in section 11(b)(1).

**(B) Pass-thru entity**

For purposes of this paragraph, the term “pass-thru entity” means—

(i) any regulated investment company, real estate investment trust, or common trust fund,

(ii) any partnership, trust, or estate, and  
(iii) any organization to which part I of subchapter T applies.

Except as provided in regulations, a person holding an interest in a pass-thru entity as a nominee for another person shall, with respect to such interest, be treated as a pass-thru entity.

**(C) Tax to be deductible**

Any tax imposed by this paragraph with respect to any excess inclusion of any pass-thru entity for any taxable year shall, for purposes of this title (other than this subsection), be applied against (and operate to reduce) the amount included in gross income with respect to the residual interest involved.

**(D) Exception where holder furnishes affidavit**

No tax shall be imposed by subparagraph (A) with respect to any interest in a pass-thru entity for any period if—

(i) the record holder of such interest furnishes to such pass-thru entity an affidavit that such record holder is not a disqualified organization, and

(ii) during such period, the pass-thru entity does not have actual knowledge that such affidavit is false.

**(7) Waiver**

The Secretary may waive the tax imposed by paragraph (1) on any transfer if—

(A) within a reasonable time after discovery that the transfer was subject to tax under paragraph (1), steps are taken so that the interest is no longer held by the disqualified organization, and

(B) there is paid to the Secretary such amounts as the Secretary may require.

**(8) Administrative provisions**

For purposes of subtitle F, the taxes imposed by this subsection shall be treated as excise taxes with respect to which the deficiency procedures of such subtitle apply.

**(f) Treatment of variable insurance contracts**

Except as provided in regulations, with respect to any variable contract (as defined in section 817), there shall be no adjustment in the reserve to the extent of any excess inclusion.

(Added Pub. L. 99-514, title VI, §671(a), Oct. 22, 1986, 100 Stat. 2311; amended Pub. L. 100-647, title I, §1006(t)(13), (15), (16)(B), (17), (23), (26), (27), Nov. 10, 1988, 102 Stat. 3423, 3426, 3427; Pub. L. 104-188, title I, §§1616(b)(10), 1704(h)(1), Aug. 20, 1996, 110 Stat. 1857, 1881.)

## AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104-188, §1616(b)(10)(A), substituted “The” for “Except as provided in paragraph (2), the”.

Subsec. (a)(2). Pub. L. 104-188, §1616(b)(10)(B), (C), redesignated par. (3) as (2), struck out “, except that paragraph (2) shall be applied separately with respect to each corporation which is a member of such group and to which section 593 applies” after “of this subsection”, and struck out former par. (2) which read as follows: “EXCEPTION FOR CERTAIN FINANCIAL INSTITUTIONS.—Paragraph (1) shall not apply to any organiza-

tion to which section 593 applies. The Secretary may by regulations provide that the preceding sentence shall not apply where necessary or appropriate to prevent avoidance of tax imposed by this chapter.”

Subsec. (a)(3). Pub. L. 104-188, § 1616(b)(10)(B), redesignated par. (5) as (3). Former par. (3) redesignated (2).

Subsec. (a)(4). Pub. L. 104-188, § 1616(b)(10)(B), (D), redesignated par. (6) as (4), struck out at end “The preceding sentence shall not apply to any organization to which section 593 applies, except to the extent provided in regulations prescribed by the Secretary under paragraph (2).”, and struck out former par. (4) which related to certain subsidiaries being treated as single corporations to which section 593 applied.

Subsec. (a)(5). Pub. L. 104-188, § 1616(b)(10)(B), redesignated par. (5) as (3).

Subsec. (a)(6). Pub. L. 104-188, § 1616(b)(10)(B), redesignated par. (6) as (4).

Pub. L. 104-188, § 1704(h)(1), added par. (6).  
1988—Subsec. (a)(3), (4). Pub. L. 100-647, § 1006(t)(15), added pars. (3) and (4).

Subsec. (a)(5). Pub. L. 100-647, § 1006(t)(27), added par. (5).

Subsec. (c)(2)(B). Pub. L. 100-647, § 1006(t)(13), (17), substituted “issue price of the residual interest (adjusted for contributions)” for “issue price of residual interest” in introductory text, and in cl. (ii) inserted “(but not below zero)” after “decreased”.

Subsec. (d). Pub. L. 100-647, § 1006(t)(23), inserted at end “Rules similar to the rules of the preceding sentence shall apply also in the case of regulated investment companies, common trust funds, and organizations to which part I of subchapter T applies.”

Subsec. (e). Pub. L. 100-647, § 1006(t)(16)(B), added subsec. (e).

Subsec. (f). Pub. L. 100-647, § 1006(t)(26), added subsec. (f).

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1616(b)(10) of Pub. L. 104-188 applicable to taxable years beginning after Dec. 31, 1995, but not applicable to any residual interest held by a taxpayer if such interest has been held by such taxpayer at all times since Oct. 31, 1995, see section 1616(c)(1), (4) of Pub. L. 104-188, set out as a note under section 593 of this title.

Pub. L. 104-188, title I, § 1704(h)(2), Aug. 20, 1996, 110 Stat. 1881, provided that: “The amendment made by paragraph (1) [amending this section] shall take effect as if included in the amendments made by section 671 of the Tax Reform Act of 1986 [Pub. L. 99-514] unless the taxpayer elects to apply such amendment only to taxable years beginning after the date of the enactment of this Act [Aug. 20, 1996].”

#### EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-647, title I, § 1006(t)(16)(D)(ii)-(iv), Nov. 10, 1988, 102 Stat. 3425, provided that:

“(ii) The amendments made by subparagraphs (B) and (C) [amending this section and section 26 of this title] (except to the extent they relate to paragraph (6) of section 860E(e) of the 1986 Code as added by such amendments) shall apply to transfers after March 31, 1988; except that such amendments shall not apply to any transfer pursuant to a binding written contract in effect on such date.

“(iii) Except as provided in clause (iv), the amendments made by subparagraphs (B) and (C) (to the extent they relate to paragraph (6) of section 860E(e) of the 1986 Code as so added) shall apply to excess inclusions for periods after March 31, 1988 but only to the extent such inclusions are—

“(I) allocable to an interest in a pass-thru entity acquired after March 31, 1988, or

“(II) allocable to an interest in a pass-thru entity acquired on or before March 31, 1988, but attributable to a residual interest acquired by the pass-thru entity after March 31, 1988.

For purposes of the preceding sentence, any interest in a pass-thru entity (or residual interest) acquired after

March 31, 1988, pursuant to a binding written contract in effect on such date shall be treated as acquired before such date.

“(iv) In the case of any real estate investment trust, regulated investment company, common trust fund, or publicly traded partnership, no tax shall be imposed under section 860E(e)(6) of the 1986 Code (as added by the amendment made by subparagraph (B)) for any taxable year beginning before January 1, 1989.”

Amendment by section 1006(t)(13), (15), (17), (23), (26), (27) of Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

## § 860F. Other rules

### (a) 100 percent tax on prohibited transactions

#### (1) Tax imposed

There is hereby imposed for each taxable year of a REMIC a tax equal to 100 percent of the net income derived from prohibited transactions.

#### (2) Prohibited transaction

For purposes of this part, the term “prohibited transaction” means—

##### (A) Disposition of qualified mortgage

The disposition of any qualified mortgage transferred to the REMIC other than a disposition pursuant to—

(i) the substitution of a qualified replacement mortgage for a qualified mortgage (or the repurchase in lieu of substitution of a defective obligation),

(ii) a disposition incident to the foreclosure, default, or imminent default of the mortgage,

(iii) the bankruptcy or insolvency of the REMIC, or

(iv) a qualified liquidation.

##### (B) Income from nonpermitted assets

The receipt of any income attributable to any asset which is neither a qualified mortgage nor a permitted investment.

##### (C) Compensation for services

The receipt by the REMIC of any amount representing a fee or other compensation for services.

##### (D) Gain from disposition of cash flow investments

Gain from the disposition of any cash flow investment other than pursuant to any qualified liquidation.

### (3) Determination of net income

For purposes of paragraph (1), the term “net income derived from prohibited transactions” means the excess of the gross income from prohibited transactions over the deductions allowed by this chapter which are directly connected with such transactions; except that there shall not be taken into account any item attributable to any prohibited transaction for which there was a loss.

### (4) Qualified liquidation

For purposes of this part—

#### (A) In general

The term “qualified liquidation” means a transaction in which—

(i) the REMIC adopts a plan of complete liquidation,

(ii) such REMIC sells all its assets (other than cash) within the liquidation period, and

(iii) all proceeds of the liquidation (plus the cash), less assets retained to meet claims, are credited or distributed to holders of regular or residual interests on or before the last day of the liquidation period.

**(B) Liquidation period**

The term “liquidation period” means the period—

(i) beginning on the date of the adoption of the plan of liquidation, and

(ii) ending at the close of the 90th day after such date.

**(5) Exceptions**

Notwithstanding subparagraphs (A) and (D) of paragraph (2), the term “prohibited transaction” shall not include any disposition—

(A) required to prevent default on a regular interest where the threatened default resulted from a default on 1 or more qualified mortgages, or

(B) to facilitate a clean-up call (as defined in regulations).

**(b) Treatment of transfers to the REMIC**

**(1) Treatment of transferor**

**(A) Nonrecognition gain or loss**

No gain or loss shall be recognized to the transferor on the transfer of any property to a REMIC in exchange for regular or residual interests in such REMIC.

**(B) Adjusted bases of interests**

The adjusted bases of the regular and residual interests received in a transfer described in subparagraph (A) shall be equal to the aggregate adjusted bases of the property transferred in such transfer. Such amount shall be allocated among such interests in proportion to their respective fair market values.

**(C) Treatment of nonrecognized gain**

If the issue price of any regular or residual interest exceeds its adjusted basis as determined under subparagraph (B), for periods during which such interest is held by the transferor (or by any other person whose basis is determined in whole or in part by reference to the basis of such interest in the hand of the transferor)—

(i) in the case of a regular interest, such excess shall be included in gross income (as determined under rules similar to rules of section 1276(b)), and

(ii) in the case of a residual interest, such excess shall be included in gross income ratably over the anticipated period during which the REMIC will be in existence.

**(D) Treatment of nonrecognized loss**

If the adjusted basis of any regular or residual interest received in a transfer described in subparagraph (A) exceeds its issue

price, for periods during which such interest is held by the transferor (or by any other person whose basis is determined in whole or in part by reference to the basis of such interest in the hand of the transferor)—

(i) in the case of a regular interest, such excess shall be allowable as a deduction under rules similar to the rules of section 171, and

(ii) in the case of a residual interest, such excess shall be allowable as a deduction ratably over the anticipated period during which the REMIC will be in existence.

**(2) Basis to REMIC**

The basis of any property received by a REMIC in a transfer described in paragraph (1)(A) shall be its fair market value immediately after such transfer.

**(c) Distributions of property**

If a REMIC makes a distribution of property with respect to any regular or residual interest—

(1) notwithstanding any other provision of this subtitle, gain shall be recognized to such REMIC on the distribution in the same manner as if it had sold such property to the distributee at its fair market value, and

(2) the basis of the distributee in such property shall be its fair market value.

**(d) Coordination with wash sale rules**

For purposes of section 1091—

(1) any residual interest in a REMIC shall be treated as a security, and

(2) in applying such section to any loss claimed to have been sustained on the sale or other disposition of a residual interest in a REMIC—

(A) except as provided in regulations, any residual interest in any REMIC and any interest in a taxable mortgage pool (as defined in section 7701(i)) comparable to a residual interest in a REMIC shall be treated as substantially identical stock or securities, and

(B) subsections (a) and (e) of such section shall be applied by substituting “6 months” for “30 days” each place it appears.

**(e) Treatment under subtitle F**

For purposes of subtitle F, a REMIC shall be treated as a partnership (and holders of residual interests in such REMIC shall be treated as partners). Any return required by reason of the preceding sentence shall include the amount of the daily accruals determined under section 860E(c). Such return shall be filed by the REMIC. The determination of who may sign such return shall be made without regard to the first sentence of this subsection.

(Added Pub. L. 99-514, title VI, §671(a), Oct. 22, 1986, 100 Stat. 2313; amended Pub. L. 100-647, title I, §1006(t)(3), (4), (14), (18)(A), (22)(B)-(E), Nov. 10, 1988, 102 Stat. 3419, 3420, 3423, 3426; Pub. L. 104-188, title I, §1704(t)(74), Aug. 20, 1996, 110 Stat. 1891.)

AMENDMENTS

1996—Subsec. (a)(5). Pub. L. 104-188 substituted “paragraph (2)” for “paragraph (1)” in introductory provisions.

1988—Subsec. (a)(2)(A). Pub. L. 100-647, §1006(t)(3)(B)(i), struck out at end “Notwithstanding the preceding sentence, the term ‘prohibited transaction’ shall not include any disposition required to prevent default on a regular interest where the threatened default resulted from a default on 1 or more qualified mortgages.”

Subsec. (a)(2)(A)(i). Pub. L. 100-647, §1006(t)(3)(A), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: “the substitution of a qualified replacement mortgage for a qualified mortgage.”

Subsec. (a)(2)(A)(iii), (C). Pub. L. 100-647, §1006(t)(22)(B), (C), substituted “REMIC” for “real estate mortgage pool”.

Subsec. (a)(2)(D). Pub. L. 100-647, §1006(t)(3)(C), struck out “described in subsection (b)” before period at end.

Subsec. (a)(5). Pub. L. 100-647, §1006(t)(3)(B)(ii), added par. (5).

Subsec. (b)(1)(A). Pub. L. 100-647, §1006(t)(4), substituted “the transfer of any property to a REMIC in exchange for regular or residual interests in such REMIC” for “the transfer of any property to a REMIC”.

Subsec. (b)(1)(C)(ii). Pub. L. 100-647, §1006(t)(22)(D), substituted “REMIC” for “real estate mortgage pool”.

Subsec. (b)(1)(D)(ii). Pub. L. 100-647, §1006(t)(14), (22)(E), amended cl. (ii) identically, substituting “REMIC” for “real estate mortgage pool”.

Subsec. (e). Pub. L. 100-647, §1006(t)(18)(A), inserted at end “Such return shall be filed by the REMIC. The determination of who may sign such return shall be made without regard to the first sentence of this subsection.”

#### EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-647, title I, §1006(t)(18)(B), Nov. 10, 1988, 102 Stat. 3426, provided that: “Unless the REMIC otherwise elects, the amendment made by subparagraph (A) [amending this section] shall not apply to any REMIC where the start-up day (as defined in section 860G(a)(9) of the 1986 Code as in effect on the day before the date of the enactment of this Act [Nov. 10, 1988]) is before the date of the enactment of this Act.”

Amendment by section 1006(t)(3), (4), (14), (22)(B)–(E) of Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

### § 860G. Other definitions and special rules

#### (a) Definitions

For purposes of this part—

##### (1) Regular interest

The term “regular interest” means any interest in a REMIC which is issued on the start-up day with fixed terms and which is designated as a regular interest if—

(A) such interest unconditionally entitles the holder to receive a specified principal amount (or other similar amount), and

(B) interest payments (or other similar amount), if any, with respect to such interest at or before maturity—

(i) are payable based on a fixed rate (or to the extent provided in regulations, at a variable rate), or

(ii) consist of a specified portion of the interest payments on qualified mortgages and such portion does not vary during the period such interest is outstanding.

The interest shall not fail to meet the requirements of subparagraph (A) merely because the timing (but not the amount) of the principal

payments (or other similar amounts) may be contingent on the extent of prepayments on qualified mortgages and the amount of income from permitted investments. An interest shall not fail to qualify as a regular interest solely because the specified principal amount of the regular interest (or the amount of interest accrued on the regular interest) can be reduced as a result of the nonoccurrence of 1 or more contingent payments with respect to any reverse mortgage loan held by the REMIC if, on the startup day for the REMIC, the sponsor reasonably believes that all principal and interest due under the regular interest will be paid at or prior to the liquidation of the REMIC.

##### (2) Residual interest

The term “residual interest” means an interest in a REMIC which is issued on the start-up day, which is not a regular interest, and which is designated as a residual interest.

##### (3) Qualified mortgage

The term “qualified mortgage” means—

(A) any obligation (including any participation or certificate of beneficial ownership therein) which is principally secured by an interest in real property and which—

(i) is transferred to the REMIC on the startup day in exchange for regular or residual interests in the REMIC,

(ii) is purchased by the REMIC within the 3-month period beginning on the start-up day if, except as provided in regulations, such purchase is pursuant to a fixed-price contract in effect on the startup day, or

(iii) represents an increase in the principal amount under the original terms of an obligation described in clause (i) or (ii) if such increase—

(I) is attributable to an advance made to the obligor pursuant to the original terms of a reverse mortgage loan or other obligation,

(II) occurs after the startup day, and

(III) is purchased by the REMIC pursuant to a fixed price contract in effect on the startup day.<sup>1</sup>

(B) any qualified replacement mortgage, and

(C) any regular interest in another REMIC transferred to the REMIC on the startup day in exchange for regular or residual interests in the REMIC.

For purposes of subparagraph (A), any obligation secured by stock held by a person as a tenant-stockholder (as defined in section 216) in a cooperative housing corporation (as so defined) shall be treated as secured by an interest in real property. For purposes of subparagraph (A), any obligation originated by the United States or any State (or any political subdivision, agency, or instrumentality of the United States or any State) shall be treated as principally secured by an interest in real property if more than 50 percent of such obligations which are transferred to, or purchased

<sup>1</sup> So in original. The period probably should be a comma.

by, the REMIC are principally secured by an interest in real property (determined without regard to this sentence).

**(4) Qualified replacement mortgage**

The term “qualified replacement mortgage” means any obligation—

(A) which would be a qualified mortgage if transferred on the startup day in exchange for regular or residual interests in the REMIC, and

(B) which is received for—

(i) another obligation within the 3-month period beginning on the startup day, or

(ii) a defective obligation within the 2-year period beginning on the startup day.

**(5) Permitted investments**

The term “permitted investments” means any—

(A) cash flow investment,

(B) qualified reserve asset, or

(C) foreclosure property.

**(6) Cash flow investment**

The term “cash flow investment” means any investment of amounts received under qualified mortgages for a temporary period before distribution to holders of interests in the REMIC.

**(7) Qualified reserve asset**

**(A) In general**

The term “qualified reserve asset” means any intangible property which is held for investment and as part of a qualified reserve fund.

**(B) Qualified reserve fund**

For purposes of subparagraph (A), the term “qualified reserve fund” means any reasonably required reserve to—

(i) provide for full payment of expenses of the REMIC or amounts due on regular interests in the event of defaults on qualified mortgages or lower than expected returns on cash flow investments, or

(ii) provide a source of funds for the purchase of obligations described in clause (i) or (iii) of paragraph (3)(A).

The aggregate fair market value of the assets held in any such reserve shall not exceed 50 percent of the aggregate fair market value of all of the assets of the REMIC on the startup day, and the amount of any such reserve shall be promptly and appropriately reduced to the extent the amount held in such reserve is no longer reasonably required for purposes specified in clause (i) or (ii) of this subparagraph.

**(C) Special rule**

A reserve shall not be treated as a qualified reserve for any taxable year (and all subsequent taxable years) if more than 30 percent of the gross income from the assets in such fund for the taxable year is derived from the sale or other disposition of property held for less than 3 months. For purposes of the preceding sentence, gain on the disposition of a qualified reserve asset shall

not be taken into account if the disposition giving rise to such gain is required to prevent default on a regular interest where the threatened default resulted from a default on 1 or more qualified mortgages.

**(8) Foreclosure property**

The term “foreclosure property” means property—

(A) which would be foreclosure property under section 856(e) (without regard to paragraph (5) thereof) if acquired by a real estate investment trust, and

(B) which is acquired in connection with the default or imminent default of a qualified mortgage held by the REMIC.

Solely for purposes of section 860D(a), the determination of whether any property is foreclosure property shall be made without regard to section 856(e)(4).

**(9) Startup day**

The term “startup day” means the day on which the REMIC issues all of its regular and residual interests. To the extent provided in regulations, all interests issued (and all transfers to the REMIC) during any period (not exceeding 10 days) permitted in such regulations shall be treated as occurring on the day during such period selected by the REMIC for purposes of this paragraph.

**(10) Issue price**

The issue price of any regular or residual interest in a REMIC shall be determined under section 1273(b) in the same manner as if such interest were a debt instrument; except that if the interest is issued for property, paragraph (3) of section 1273(b) shall apply whether or not the requirements of such paragraph are met.

**(b) Treatment of nonresident aliens and foreign corporations**

If the holder of a residual interest in a REMIC is a nonresident alien individual or a foreign corporation, for purposes of sections 871(a), 881, 1441, and 1442—

(1) amounts includible in the gross income of such holder under this part shall be taken into account when paid or distributed (or when the interest is disposed of), and

(2) no exemption from the taxes imposed by such sections (and no reduction in the rates of such taxes) shall apply to any excess inclusion.

The Secretary may by regulations provide that such amounts shall be taken into account earlier than as provided in paragraph (1) where necessary or appropriate to prevent the avoidance of tax imposed by this chapter.

**(c) Tax on income from foreclosure property**

**(1) In general**

A tax is hereby imposed for each taxable year on the net income from foreclosure property of each REMIC. Such tax shall be computed by multiplying the net income from foreclosure property by the highest rate of tax specified in section 11(b).

**(2) Net income from foreclosure property**

For purposes of this part, the term “net income from foreclosure property” means the

amount which would be the REMIC's net income from foreclosure property under section 857(b)(4)(B) if the REMIC were a real estate investment trust.

**(d) Tax on contributions after startup date**

**(1) In general**

Except as provided in paragraph (2), if any amount is contributed to a REMIC after the startup day, there is hereby imposed a tax for the taxable year of the REMIC in which the contribution is received equal to 100 percent of the amount of such contribution.

**(2) Exceptions**

Paragraph (1) shall not apply to any contribution which is made in cash and is described in any of the following subparagraphs:

(A) Any contribution to facilitate a clean-up call (as defined in regulations) or a qualified liquidation.

(B) Any payment in the nature of a guarantee.

(C) Any contribution during the 3-month period beginning on the startup day.

(D) Any contribution to a qualified reserve fund by any holder of a residual interest in the REMIC.

(E) Any other contribution permitted in regulations.

**(e) Regulations**

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this part, including regulations—

(1) to prevent unreasonable accumulations of assets in a REMIC,

(2) permitting determinations of the fair market value of property transferred to a REMIC and issue price of interests in a REMIC to be made earlier than otherwise provided,

(3) requiring reporting to holders of residual interests of such information as frequently as is necessary or appropriate to permit such holders to compute their taxable income accurately,

(4) providing appropriate rules for treatment of transfers of qualified replacement mortgages to the REMIC where the transferor holds any interest in the REMIC, and

(5) providing that a mortgage will be treated as a qualified replacement mortgage only if it is part of a bona fide replacement (and not part of a swap of mortgages).

(Added Pub. L. 99-514, title VI, § 671(a), Oct. 22, 1986, 100 Stat. 2315; amended Pub. L. 100-647, title I, § 1006(t)(5)(A)–(E), (6)–(8)(B), (9)(A), (10), Nov. 10, 1988, 102 Stat. 3420–3422; Pub. L. 101-239, title VII, § 7811(c)(9), Dec. 19, 1989, 103 Stat. 2408; Pub. L. 101-508, title XI, § 11704(a)(9), Nov. 5, 1990, 104 Stat. 1388–518; Pub. L. 104-188, title I, § 1621(b)(6), Aug. 20, 1996, 110 Stat. 1867; Pub. L. 108-357, title VIII, § 835(b)(5)–(8), Oct. 22, 2004, 118 Stat. 1593; Pub. L. 109-135, title IV, § 403(cc), Dec. 21, 2005, 119 Stat. 2630.)

AMENDMENTS

2005—Subsec. (a)(3). Pub. L. 109-135, § 403(cc)(2), inserted concluding provisions and struck out former concluding provisions which read as follows: “For purposes of subparagraph (A), any obligation secured by

stock held by a person as a tenant-stockholder (as defined in section 216) in a cooperative housing corporation (as so defined) shall be treated as secured by an interest in real property, and any reverse mortgage loan (and each balance increase on such loan meeting the requirements of subparagraph (A)(iii)) shall be treated as an obligation secured by an interest in real property. For purposes of subparagraph (A), if more than 50 percent of the obligations transferred to, or purchased by, the REMIC are originated by the United States or any State (or any political subdivision, agency, or instrumentality of the United States or any State) and are principally secured by an interest in real property, then each obligation transferred to, or purchased by, the REMIC shall be treated as secured by an interest in real property.”

Subsec. (a)(3)(A)(iii)(I). Pub. L. 109-135, § 403(cc)(1), substituted “a reverse mortgage loan or other obligation” for “the obligation”.

2004—Subsec. (a)(1). Pub. L. 108-357, § 835(b)(5)(A), inserted at end of concluding provisions “An interest shall not fail to qualify as a regular interest solely because the specified principal amount of the regular interest (or the amount of interest accrued on the regular interest) can be reduced as a result of the nonoccurrence of 1 or more contingent payments with respect to any reverse mortgage loan held by the REMIC if, on the startup day for the REMIC, the sponsor reasonably believes that all principal and interest due under the regular interest will be paid at or prior to the liquidation of the REMIC.”

Subsec. (a)(3). Pub. L. 108-357, § 835(b)(7), inserted at end of concluding provisions “For purposes of subparagraph (A), if more than 50 percent of the obligations transferred to, or purchased by, the REMIC are originated by the United States or any State (or any political subdivision, agency, or instrumentality of the United States or any State) and are principally secured by an interest in real property, then each obligation transferred to, or purchased by, the REMIC shall be treated as secured by an interest in real property.”

Pub. L. 108-357, § 835(b)(5)(B), inserted before period at end of concluding provisions “, and any reverse mortgage loan (and each balance increase on such loan meeting the requirements of subparagraph (A)(iii)) shall be treated as an obligation secured by an interest in real property”.

Subsec. (a)(3)(A)(iii). Pub. L. 108-357, § 835(b)(8)(A), added cl. (iii).

Subsec. (a)(3)(B) to (D). Pub. L. 108-357, § 835(b)(6), inserted “and” at end of subpar. (B), substituted period for “, and” at end of subpar. (C), and struck out subpar. (D) which read as follows: “any regular interest in a FASIT which is transferred to, or purchased by, the REMIC as described in clauses (i) and (ii) of subparagraph (A) but only if 95 percent or more of the value of the assets of such FASIT is at all times attributable to obligations described in subparagraph (A) (without regard to such clauses).”

Subsec. (a)(7)(B). Pub. L. 108-357, § 835(b)(8)(B), reenacted heading without change and amended text of subpar. (B) generally. Prior to amendment, text read as follows: “For purposes of subparagraph (A), the term ‘qualified reserve fund’ means any reasonably required reserve to provide for full payment of expenses of the REMIC or amounts due on regular interests in the event of defaults on qualified mortgages or lower than expected returns on cash flow investments. The amount of any such reserve shall be promptly and appropriately reduced as payments of qualified mortgages are received.”

1996—Subsec. (a)(3)(D). Pub. L. 104-188 added subpar. (D).

1990—Subsec. (a)(3)(A). Pub. L. 101-508 struck out comma after “secured” in introductory provisions.

1989—Subsec. (a)(3). Pub. L. 101-239 substituted “subparagraph (A)” for “this subparagraph” in last sentence.

1988—Subsec. (a)(1). Pub. L. 100-647, § 1006(t)(5)(A), amended par. (1) generally. Prior to amendment, par.

(1) read as follows: “The term ‘regular interest’ means an interest in a REMIC the terms of which are fixed on the startup day, and which—

“(A) unconditionally entitles the holder to receive a specified principal amount (or other similar amount), and

“(B) provides that interest payments (or other similar amounts), if any, at or before maturity are payable based on a fixed rate (or to the extent provided in regulations, at a variable rate).

An interest shall not fail to meet the requirements of subparagraph (A) merely because the timing (but not the amount) of the principal payments (or other similar amounts) may be contingent on the extent of prepayments on qualified mortgages and the amount of income from permitted investments.”

Subsec. (a)(2). Pub. L. 100-647, §1006(t)(5)(B), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “The term ‘residual interest’ means an interest in a REMIC which is not a regular interest and is designated as a residual interest.”

Subsec. (a)(3). Pub. L. 100-647, §1006(t)(6)(B), inserted at end “For purposes of this subparagraph, any obligation secured by stock held by a person as a tenant-stockholder (as defined in section 216) in a cooperative housing corporation (as so defined) shall be treated as secured by an interest in real property.”

Subsec. (a)(3)(A). Pub. L. 100-647, §1006(t)(6)(A), struck out “directly or indirectly.”

Subsec. (a)(3)(A)(i). Pub. L. 100-647, §1006(t)(5)(C)(i), substituted “on the startup day in exchange for regular or residual interests in the REMIC” for “on or before the startup day”.

Subsec. (a)(3)(A)(ii). Pub. L. 100-647, §1006(t)(5)(C)(ii), inserted before comma at end “if, except as provided in regulations, such purchase is pursuant to a fixed-price contract in effect on the startup day”.

Subsec. (a)(3)(C). Pub. L. 100-647, §1006(t)(5)(C)(iii), substituted “on the startup day in exchange for regular or residual interests in the REMIC” for “on or before the startup day”.

Subsec. (a)(4)(A). Pub. L. 100-647, §1006(t)(5)(D), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “which would be described in paragraph (3)(A) if it were transferred to the REMIC on or before the startup day, and”.

Subsec. (a)(7)(B). Pub. L. 100-647, §1006(t)(7), inserted before period at end of first sentence “or lower than expected returns on cash flow investments”.

Subsec. (a)(8). Pub. L. 100-647, §1006(t)(8)(A), substituted “section 856(e) (without regard to paragraph (5) thereof)” for “section 856(e)” in subpar. (A) and amended last sentence generally. Prior to amendment, last sentence read as follows: “Property shall cease to be foreclosure property with respect to the REMIC on the date which is 1 year after the date such real estate mortgage pool acquired such property.”

Subsec. (a)(9). Pub. L. 100-647, §1006(t)(5)(E), amended par. (9) generally. Prior to amendment, par. (9) read as follows: “The term ‘startup day’ means any day selected by a REMIC which is on or before the 1st day on which interests in such REMIC are issued.”

Subsec. (c). Pub. L. 100-647, §1006(t)(8)(B), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 100-647, §1006(t)(9)(A), added subsec. (d). Former subsec. (d) redesignated (e).

Pub. L. 100-647, §1006(t)(8)(B), redesignated former subsec. (c) as (d).

Subsec. (e). Pub. L. 100-647, §1006(t)(9)(A), redesignated former subsec. (d) as (e).

Subsec. (e)(4), (5). Pub. L. 100-647, §1006(t)(10), added pars. (4) and (5).

#### EFFECTIVE DATE OF 2005 AMENDMENT

Amendments by Pub. L. 109-135 effective as if included in the provisions of the American Jobs Creation Act of 2004, Pub. L. 108-357, to which they relate, see section 403(nn) of Pub. L. 109-135, set out as a note under section 26 of this title.

#### EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-357 effective Jan. 1, 2005, with exception for any FASIT in existence on Oct. 22, 2004, to the extent that regular interests issued by the FASIT before such date continue to remain outstanding in accordance with the original terms of issuance, see section 835(c) of Pub. L. 108-357, set out as a note under section 56 of this title.

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-188 effective Sept. 1, 1997, see section 1621(d) of Pub. L. 104-188, set out as a note under section 26 of this title.

#### EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, to which such amendment relates, see section 7817 of Pub. L. 101-239, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-647, title I, §1006(t)(5)(F), Nov. 10, 1988, 102 Stat. 3421, provided that: “The amendments made by this paragraph [amending this section] shall not apply to any REMIC where the startup day (as defined in section 860G(a)(9) of the 1986 Code as in effect on the day before the date of the enactment of this Act [Nov. 10, 1988]) is before July 1, 1987.”

Pub. L. 100-647, title I, §1006(t)(9)(B), Nov. 10, 1988, 102 Stat. 3422, provided that: “The amendment made by subparagraph (A) [amending this section] shall not apply to any REMIC where the startup day (as defined in section 860G(a)(9) of the 1986 Code as in effect on the day before the date of the enactment of this Act [Nov. 10, 1988]) is before July 1, 1987.”

Amendment by section 1006(t)(6)-(8)(B), (10) of Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

#### [PART V—REPEALED]

#### **[§§ 860H to 860L. Repealed. Pub. L. 108-357, title VIII, § 835(a), Oct. 22, 2004, 118 Stat. 1593]**

Section 860H, added Pub. L. 104-188, title I, §1621(a), Aug. 20, 1996, 110 Stat. 1858, set forth general rules relating to taxation of a FASIT.

Section 860I, added Pub. L. 104-188, title I, §1621(a), Aug. 20, 1996, 110 Stat. 1859, related to gain recognition on contributions to a FASIT and in other cases.

Section 860J, added Pub. L. 104-188, title I, §1621(a), Aug. 20, 1996, 110 Stat. 1860, prohibited offset of certain FASIT inclusions by non-FASIT losses.

Section 860K, added Pub. L. 104-188, title I, §1621(a), Aug. 20, 1996, 110 Stat. 1861, related to treatment of transfers of high-yield interests to disqualified holders.

Section 860L, added Pub. L. 104-188, title I, §1621(a), Aug. 20, 1996, 110 Stat. 1862; amended Pub. L. 105-34, title XVI, §1601(f)(6), Aug. 5, 1997, 111 Stat. 1091, defined terms and set forth special rules relating to FASITs.

#### EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 2005, with exception for any FASIT in existence on Oct. 22, 2004, to the extent that regular interests issued by the FASIT before such date continue to remain outstanding in accordance with the original terms of issuance, see section 835(c) of Pub. L. 108-357, set out as an Effective Date of 2004 Amendments note under section 56 of this title.

#### **Subchapter N—Tax Based on Income From Sources Within or Without the United States**

#### Part

I. Source rules and other general rules relating to foreign income.