

(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.)

Editorial Notes

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.”

Statutory Notes and Related Subsidiaries

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,

(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 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; Pub. L. 115-141, div. U, title IV, §401(a)(151), Mar. 23, 2018, 132 Stat. 1191.)

Editorial Notes

AMENDMENTS

2018—Subsec. (a)(3)(A)(iii)(III). Pub. L. 115-141 substituted comma for period at end.

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 sub-

par. (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).

Statutory Notes and Related Subsidiaries

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.