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H. R. 1967

To Facilitate Asset Securitization Through the Creation of Financial Asset
Securitization Investment Trusts.

IN THE HOUSE OF REPRESENTATIVES

JUNE 29, 1995

Mr. SHAW (for himself, Mr. RANGEL, Mr. ZIMMER, Mr. McDERMOTT, Mr. PAYNE of Virginia, Mrs. KENNELLY, Mr. CARDIN, Mr. ENGLISH of Pennsylvania, Mr. SAM JOHNSON of Texas, Mr. HANCOCK, Mr. CHRISTENSEN, Mr. NEAL of Massachusetts, Mr. CRANE, Mr. THOMAS, Mr. COLLINS of Georgia, Mr. KLECZKA, Ms. DUNN of Washington, Mr. HOUGHTON, Mr. MATSUI, Mrs. JOHNSON of Connecticut, Mr. HERGER, Mr. NUSSLE, and Mr. PORTMAN) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To Facilitate Asset Securitization Through the Creation of
Financial Asset Securitization Investment Trusts.

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 Securitization En-
5 hancement Act of 1995.”

1 **SEC. 2. FINANCIAL ASSET SECURITIZATION INVESTMENT**
 2 **TRUSTS.**

3 (a) The table of subchapter M of chapter 1 of the
 4 Internal Revenue Code of 1986, is amended by adding the
 5 following title:

6 **“PART V—SECURITIZATION TRUSTS”**

7 (b) The following new heading and table is added im-
 8 mediately following section 860G of the Internal Revenue
 9 Code of 1986:

“PART V—SECURITIZATION TRUSTS

Sec. 860H. Taxation of financial asset securitization investment trusts.
 Sec. 960I. Taxation of owners of FASIT.
 Sec. 860J. Contributions by owners.
 Sec. 860K. Disqualified holders of certain interests.
 Sec. 860L. Definitions.

10 (c) The following new sections are added as part V
 11 of subchapter M of chapter 1 of the Internal Revenue
 12 Code of 1986:

13 **“SEC. 860H. TAXATION OF FINANCIAL ASSET**
 14 **SECURITIZATION INVESTMENT TRUSTS.**

15 “(a) OWNERS, NOT ENTITY, SUBJECT TO TAX.—Ex-
 16 cept as otherwise provided in subsection (c), a FASIT
 17 shall not be subject to taxation under this subtitle and
 18 shall not be treated as a trust, partnership, corporation
 19 or taxable mortgage pool.

20 “(b) TREATMENT OF FASIT DEBT INSTRUMENTS.—
 21 For purposes of this subtitle any qualified or permitted
 22 debt instrument issued by a FASIT shall be treated as

1 indebtedness of the FASIT (and as indebtedness of a cor-
2 poration). The amounts includible in gross income by a
3 holder with respect to any such debt instrument shall be
4 determined under the accrual method of accounting.

5 “(c) TAX ON PROHIBITED INCOME.—

6 “(1) There is hereby imposed on the FASIT a
7 tax on any prohibited income for the taxable year.
8 Such tax shall be imposed at the rate of 100 per-
9 cent, except that in the case of any prohibited in-
10 come described in subparagraph (2)(D) the tax shall
11 be imposed at the highest rate specified in section
12 11(b)(1).

13 “(2) For purposes of this subsection, prohibited
14 income shall mean—

15 “(A) gross income derived from any asset
16 that is not a permitted asset,

17 “(B) gain from the disposition of any asset
18 that was acquired by the FASIT for the prin-
19 cipal purpose of recognizing gains (or reducing
20 losses) as a result of an increase in the market
21 value of the asset following its acquisition
22 (other than an increase attributable to any
23 bond discount),

24 “(C) compensation for services (not includ-
25 ing, for this purpose, any payments received

1 pursuant to the terms of permitted assets held
2 by the FASIT), and

3 (D) income that would be net income from
4 foreclosure property under section 857(b)(4)(B)
5 if the FASIT were a real estate investment
6 trust and all property acquired by the FASIT
7 in connection with the default or imminent de-
8 fault of a debt obligation were foreclosure prop-
9 erty.

10 “(d) TREATMENT UNDER SUBTITLE F.—Except as
11 otherwise provided in regulations, for purposes of subtitle
12 F (other than determining who may sign a FASIT tax
13 return) a FASIT shall be treated as a partnership with
14 a calendar year taxable year and holders of ownership in-
15 terests in such FASIT shall be treated as partners.

16 “(e) TERMINATION OF FASIT STATUS.—An entity
17 that ceases to be a FASIT shall be treated as having dis-
18 tributed all of its assets to the holders of its interests,
19 in accordance with their terms, immediately prior to such
20 cessation.

21 **“SEC. 860I. TAXATION OF OWNERS OF FASIT.**

22 “(a) IN GENERAL.—

23 “(1) PASS-THROUGH OF FASIT INCOME OR
24 LOSS.—

1 “(A) IN GENERAL.—The holder of an own-
2 ership interest in a FASIT shall take into ac-
3 count his daily portion of the taxable income or
4 net loss of such FASIT for each day during the
5 taxable year on which such holder held such in-
6 terest.

7 “(B) CHARACTER, ETC.—Except as other-
8 wise provided in regulations, items of FASIT
9 income or loss (other than the tax-exempt na-
10 ture of any interest income) taken into account
11 under this paragraph shall have the same char-
12 acter, source, and other attributes in the hands
13 of a holder of an ownership interest as such
14 items would have if they were incurred directly
15 by such holder.

16 “(2) DAILY PORTION.—The daily portion re-
17 ferred to in paragraph (1) shall be determined—

18 “(A) by allocating to each day in any ac-
19 crual period its ratable portion of the FASIT’s
20 taxable income (or net loss) for such period,

21 “(B) by dividing the amounts so allocated
22 to any day among the holders of ownership in-
23 terests on such day in proportion to their re-
24 spective holdings on such day, and

1 “(C) by making appropriate adjustments
2 among holders, consistent with the principles
3 described in section 860J(b)(3)(D).

4 “(3) TAXABLE INCOME.—Except as otherwise
5 provided in regulations, the taxable income or net
6 loss of a FASIT shall be determined in the same
7 manner as in the case of a corporation using the ac-
8 crual method and having a calendar year taxable
9 year, except that—

10 “(A) the basis of any property (and the ad-
11 justed issue price of any debt obligation) re-
12 ceived by a FASIT in a qualified exchange shall
13 be equal to the property’s basis in the hands of
14 the transferor immediately before the exchange,

15 “(B) the constant yield method, including
16 the rules of section 1272(a)(6), shall be applied
17 in determining all interest, original issue dis-
18 count, and market discount income and all pre-
19 mium deductions or adjustments with respect to
20 all debt obligations held by the FASIT,

21 “(C) section 163(e)(5) shall not apply with
22 respect to any debt instrument,

23 “(D) the amount of the FASIT’s prohib-
24 ited income described in section 860H(b)(2)(D)
25 (relating to net income from foreclosure prop-

1 erty) shall be reduced by the amount of tax im-
2 posed thereon by section 806H(b)(1),

3 “(E) there shall not be taken into account
4 any item of income, gain, loss or deduction allo-
5 cable to prohibited income (other than prohib-
6 ited income described in the preceding subpara-
7 graph), and

8 “(F) any distribution of property with re-
9 spect to a FASIT security (other than a dis-
10 tribution to which subsection (b)(5) applies)
11 shall be treated as if the FASIT had sold such
12 property for cash (in an amount equal to the
13 property’s fair market value) and distributed
14 such cash.

15 “(4) LOSS LIMITATION.—

16 “(A) IN GENERAL.—The losses taken into
17 account by any holder with respect to an owner-
18 ship interest under paragraph (1) of this sub-
19 section for any accrual period shall not exceed
20 the holder’s adjusted basis in such ownership
21 interest as of the close of such period (deter-
22 mined without regard to any basis reduction for
23 such losses for such loses for such period).

24 “(B) INDEFINITE CARRYFORWARD.—A
25 loss disallowed to a holder by reason of sub-

1 paragraph (A) shall be treated by the holder in
2 the same manner as if it were a loss incurred
3 by the FASIT with respect to such holder in
4 the succeeding accrual period.

5 “(b) DISTRIBUTIONS AND BASIS RULES.—

6 “(1) DISTRIBUTIONS.—A distribution by a
7 FASIT with respect to an ownership interest shall
8 not be included in gross income to the extent it does
9 not exceed the adjusted basis of the interest, and
10 shall be treated as gain from the sale or exchange
11 of such interest to the extent it exceeds the adjusted
12 basis of the interest.

13 “(2) BASIS RULES.—The basis of any person’s
14 ownership interest in a FASIT—

15 “(A) shall be increased by—

16 “(i) the amount of any money (and
17 the transferor’s basis in any property) con-
18 tributed by such person with respect to
19 such interest, and

20 “(ii) the amount of any taxable in-
21 come taken into account by such person
22 with respect to such interest under section
23 860I(a)(1), section 860I(b)(3) or section
24 860J(b), and

1 “(B) shall thereafter be decreased (in the
2 following order but not below zero) by—

3 “(i) the amount of any distributions
4 to such person with respect to such inter-
5 est,

6 “(ii) the amount of any deductions
7 taken into account by such person with re-
8 spect to such interest under section
9 860I(b)(3) or section 860J(b), and

10 “(iii) the amount of any losses taken
11 into account by such person with respect to
12 such interest under section 860I(a)(1).

13 “(3) SECONDARY PURCHASERS.—In the case of
14 any ownership interest (or portion thereof) not ac-
15 quired in a qualified exchange (within the meaning
16 of section 860J(a)(2)), the holder shall, at the end
17 of an accrual period—

18 “(A) take into account as ordinary income
19 the excess, if any, of the fair market value of
20 such ownership interest (or portion) over his
21 adjusted basis therein (determined after the ap-
22 plication of section 860I(a)(1) for such period),
23 and

24 “(B) to the extent permitted in regula-
25 tions, take into account as an ordinary deduc-

1 tion the excess, if any, of his adjusted basis in
2 such interest or portion (determined after the
3 application of section 860I(a)(1) for such pe-
4 riod) over the fair market value thereof.

5 “(4) TREATMENT OF CERTAIN PROPERTY
6 TRANSFERS.—Notwithstanding paragraph (1) and
7 (2), rules similar to those provided by section
8 707(a)(2)(B) and section 737 shall apply as if the
9 FASIT were a partnership and the holders of its
10 ownership interests were partners.

11 “(5) LIMITATIONS ON GAINS AND LOSSES.—
12 Notwithstanding any other provision of this subpart,
13 gain or loss shall not be recognized (and appropriate
14 basis adjustments shall be made) upon—

15 “(A) a distribution of property that is sub-
16 stantially identical to property contributed by
17 the distributee (or by a party bearing a rela-
18 tionship to the distributee described in section
19 267(b) or section 707(b)), or

20 “(B) any other event prescribed in regula-
21 tions where recognition of gain or loss would be
22 inappropriate in light of the holder’s economic
23 position before and after the event.

24 “(c) SPECIAL TREATMENT OF CERTAIN INCOME.—

1 “(1) IN GENERAL.—Except as provided in para-
2 graph (3), the taxable income of any holder of
3 FASIT ownership interests for any taxable year
4 shall in no event be less than the taxable income de-
5 termined solely with respect to such ownership inter-
6 ests.

7 “(2) COORDINATION WITH SECTION 172.—The
8 amount of any income required to be taken into ac-
9 count in a taxable year by the holder of a FASIT
10 ownership interest as a result of the application of
11 the preceding paragraph shall be disregarded.

12 “(A) in determining under section 172 the
13 amount of any net operating loss for such tax-
14 able year, and

15 “(B) in determining taxable income for
16 such taxable year for purposes of the 2nd sen-
17 tence of section 172(b)(2).

18 “(3) EXCEPTION.—Paragraph (1) shall not
19 apply to any FASIT ownership interests to the ex-
20 tent they are comprised of economic interests in the
21 FASIT that—

22 “(A) were part or all of the consideration
23 received in exchange for the transfer to the
24 FASIT of—

1 “(i) debt obligations originated by the
2 holder (including any corporate prede-
3 cessor), by any member of the same affili-
4 ated group of corporations joining in the
5 filing of a consolidated return for the tax-
6 able year, or by any person with respect to
7 whose basis the holder’s basis in such secu-
8 rity is determined, and

9 “(ii) assets having a relationship to
10 such debt obligations described in section
11 860L(b)(4),

12 “(B) had a fair market value at the time
13 of such exchange at least equal to 2 percent of
14 the total consideration received in the exchange,
15 and

16 “(C) had an anticipated weighted average
17 life at least equal to 20 percent of the antici-
18 pated weighted average life (in the hands of the
19 FASIT) of the debt obligations and assets
20 transferred in the exchange.

21 This paragraph shall not apply if the FASIT
22 would have been treated as a corporation under sec-
23 tion 7701(i) but for the application of section
24 860H(a).

1 “(4) CERTAIN TRANSFERS OF LOSS ASSETS.—
2 If an asset is transferred in a qualified exchange,
3 and one of the principal purposes of such transfer
4 is avoidance of the limitations of subsection (c)(1),
5 then any losses or deductions properly attributable
6 to the transferred asset (including an excess of in-
7 terest expense over interest income) shall be dis-
8 regarded for purposes of subsection (c)(1).

9 **“SEC. 860J. CONTRIBUTIONS BY OWNERS.**

10 “(a) TREATMENT OF QUALIFIED EXCHANGES.—

11 “(1) NONRECOGNITION OF GAIN AND LOSS.—
12 Notwithstanding any other provision of this subtitle,
13 gain or loss shall not be recognized to the transferor
14 or the FASIT in a qualified exchange.

15 “(2) DEFINITION.—A qualified exchange is any
16 transfer of property to a FASIT by a person that
17 holds any ownership interests of the FASIT imme-
18 diately after such exchange. Notwithstanding the
19 preceding sentence, to the extent permitted in regu-
20 lations a transferor may elect not to treat a transfer
21 as a qualified exchange.

22 “(3) TREATMENT OF BOOT.—

23 “(A) IN GENERAL.—The receipt in a quali-
24 fied exchange of money, debt instruments, or
25 other property other than ownership interests

1 shall be treated as a distribution with respect to
2 the recipient's ownership interests occurring im-
3 mediately following a contribution to the
4 FASIT.

5 “(B) DEBT INSTRUMENTS.—The issuance
6 of any FASIT debt instrument to a holder of
7 ownership interests shall be treated as if the in-
8 strument had been issued to the holder for cash
9 equal to its issue price and such cash had been
10 distributed to the holder with respect to its
11 ownership interests. The issue price of such in-
12 strument shall equal its fair market value, ex-
13 cept that if such instrument is issued as part
14 of a public offering the issue price shall be de-
15 termined under section 1273.

16 “(b) RECOGNITION AND AMORTIZATION OF BUILT-
17 IN GAIN, ETC.—

18 “(1) IN GENERAL.—At the end of each accrual
19 period the holder of an ownership interest (other
20 than an ownership interest or portion thereof to
21 which section 860I(b)(3) applies)—

22 “(A) shall recognize ordinary income equal
23 to any increase during the period, and

24 “(B) shall be entitled to an ordinary de-
25 duction (or similar adjustment for amortizable

1 bond premium) equal to any decrease during
2 the period,
3 in the amount described in paragraph (2).

4 “(2) AMOUNT DESCRIBED.—The amount de-
5 scribed in this paragraph is the product of—

6 “(A) FASIT’S UNRECOGNIZED GAIN.—Any
7 excess of the fair market value of the FASIT’s
8 assets over the FASIT’s aggregate basis in
9 such assets,

10 “(B) FASIT’S LEVERAGE RATIO.—One,
11 minus the amount determined by dividing—

12 “(i) the fair market value of the
13 FASIT’s ownership interests, by

14 “(ii) the fair market value of the
15 FASIT’s assets, and

16 “(C) HOLDER’S OWNERSHIP FRACTION.—
17 The fraction of the FASIT’s ownership inter-
18 ests that are held by the holder.

19 “(3) SPECIAL RULES.—

20 “(A) DEFERRED GAIN RECOGNITION.—
21 Notwithstanding paragraph (1), if FASIT debt
22 securities are issued to a holder of ownership
23 interests in the FASIT and one of the principal
24 purposes of such issuance is to accelerate the
25 recognition of taxable income to such holder,

1 then the gain that would otherwise be acceler-
2 ated as a result of such issuance shall be de-
3 ferred until such debt securities are disposed of
4 in a transaction in which gain would be recog-
5 nized to the holder.

6 “(B) ANTI-STUFFING.—If assets are con-
7 tributed to a FASIT and there is no substantial
8 business purpose for such contribution other
9 than decreasing the ratio described in subpara-
10 graph (2)(B), then such assets shall be dis-
11 regarded in determining such ratio.

12 “(C) SUBPOOLS.—If a single FASIT in-
13 cludes two or more pools of assets that pre-
14 dominantly support separate debt instruments,
15 this subsection shall be applied as if such sepa-
16 rate pools and their related debt instruments
17 were separate FASIT’s.

18 “(D) MULTIPLE TRANSFERORS.—Rules
19 similar to those contained in section 704(c)
20 shall apply to reallocate items of income, gain,
21 loss and deduction among holders of ownership
22 interests to reflect differing amounts of built-in
23 gain or loss at the time property was contrib-
24 uted in qualified exchanges. Allocations of items
25 of income or deduction to any holder under this

1 clause shall not be limited by any overall in-
2 come or loss of the FASIT or any portion
3 thereof.

4 “(c) VALUATION OF CERTAIN ASSETS AND SECURI-
5 TIES.—

6 “(1) REPLACEMENTS OF ASSETS BY TRANS-
7 FEROR.—The fair market value of any FASIT own-
8 ership interests shall be determined without regard
9 to any future transfers of assets in qualified ex-
10 changes that the transferor may be obligated or per-
11 mitted to make.

12 “(2) TREATMENT OF REVOLVING LOAN
13 POOLS.—In the case of any FASIT holding obliga-
14 tions representing extensions of credit on revolving
15 loan accounts having substantially the same terms—

16 “(A) each extension of credit shall be
17 treated as a separate obligation, and

18 “(B) the anticipated cash flows and fair
19 market value of each such obligation shall be
20 determined using a periodic principal payment
21 rate equal to the reasonably anticipated periodic
22 rate at which principal payments on the ac-
23 counts will be made, as a proportion of their
24 aggregate outstanding principal balances.

1 to enable the transferor or issuer to impede the as-
2 sessment or collection of tax.

3 “(3) CONSEQUENCES OF DISREGARDING CER-
4 TAIN EVENTS.—

5 “(A) TRANSFERS.—If this subsection ap-
6 plies to a transfer, the transferor shall remain
7 liable for any taxes due with respect to the
8 transferred security.

9 “(B) ISSUANCES OF OWNERSHIP INTER-
10 ESTS.—If this subsection applies to the issu-
11 ance of an ownership interest, all other owner-
12 ship interests whose issuance is not disregarded
13 under this subsection shall be treated as rep-
14 resenting ownership of a proportionate share of
15 the ownership interest whose issuance is dis-
16 regarded. If at the time of such issuance there
17 are no other outstanding ownership interests
18 whose issuance is not disregarded, the issuing
19 entity shall not qualify as a FASIT.

20 “(b) TREATMENT OF PASS-THRU ENTITIES.—

21 “(1) IMPOSITION OF TAX.—If, at any time dur-
22 ing any taxable year of a pass-thru entity, a dis-
23 qualified holder is the record holder of an interest in
24 such entity there is hereby imposed on such entity
25 for such taxable year a tax equal to the product of—

1 “(A) the highest rate of tax specified in
2 section 11(b)(1), multiplied by,

3 “(B) the portion of the taxable income of
4 such entity, allocable to the interest held by
5 such disqualified holder, that is attributable to
6 the pass-thru entity’s ownership (directly or
7 through one or more pass-thru entities) of any
8 FASIT ownership interests or permitted debt
9 instruments.

10 Any tax imposed by this subsection shall, for pur-
11 poses of this title (other than this section), be ap-
12 plied against (and operate to reduce) the amount in-
13 cluded in gross income by the pass-thru entity with
14 respect to the security involved.

15 “(2) EXCEPTIONS.—Notwithstanding the pre-
16 ceding paragraph, no tax shall be imposed by para-
17 graph (1)—

18 “(A) CERTAIN BUSINESS LOAN
19 SECURITIZATIONS.—If the security held by the
20 pass-thru entity represents a retained economic
21 interest in debt obligations originated by the en-
22 tity in connection with its sale of goods or serv-
23 ices.

24 “(B) DEALERS.—If the pass-thru entity
25 holds the security for sale to customers in the

1 ordinary course of business (and promptly iden-
2 tifies it as such upon its acquisition), or is a
3 dealer in securities and holds such security for
4 no more than one month.

5 “(C) WHERE HOLDER FURNISHES AFFIDA-
6 VIT.—With respect to any interest in a pass-
7 thru entity if—

8 “(i) the record holder of such interest
9 furnishes to the pass-thru entity an affida-
10 vit that such record holder is not a dis-
11 qualified holder, and

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

15 “(3) ADMINISTRATIVE PROVISIONS.—For pur-
16 poses of subtitle F, the tax imposed by this sub-
17 section shall be treated as an excise tax with respect
18 to which the deficiency procedures of such subtitle
19 apply.

20 “(c) TREATMENT OF CERTAIN ARRANGEMENTS.—

21 “(1) SCOPE.—This subsection shall apply to
22 any pass-thru entity that issues any debt or equity
23 interests—

24 “(A) that are supported by any qualified
25 debt instruments having an original yield to

1 maturity more than 2.5 percentage points above
2 the yield on comparable obligations of the Unit-
3 ed States, determined in the same manner as
4 under section 860L(e)(5), and

5 “(B) that would not qualify under section
6 860L(e)(5).

7 “(2) RECHARACTERIZATION OF DEBT.—If this
8 subsection applies, then solely for the purposes of
9 applying subsection (b)—

10 “(A) any qualified debt instruments de-
11 scribed in the preceding paragraph shall be
12 treated as permitted debt instruments, and

13 “(B) any debt instruments of the pass-thru
14 entity that are described in the preceding para-
15 graph shall be treated as equity interests in the
16 pass-thru entity.

17 “(3) ARRANGEMENTS TREATED AS PASS-THRU
18 ENTITIES.—Any arrangement formed or availed of
19 to divide FASIT debt instruments described in para-
20 graph (1)(A) into two or more classes of debt or eq-
21 uity interests, one or more of which would not qual-
22 ify under section 860L(e)(5), shall be treated as a
23 pass-thru entity for purposes of subsection (b) (even
24 if all of the interests corresponding to equity in the
25 arrangement are held by a single owner).

1 **SEC. 860L. DEFINITIONS AND OTHER RULES OF GENERAL**
2 **APPLICATION.**

3 “For purposes of sections 860H through 860L (and
4 for other purposes as indicated)—

5 “(a) FASIT.—

6 “(1) IN GENERAL.—For purposes of this title,
7 the terms “financial asset securitization investment
8 trust” and “FASIT” shall mean any entity or ar-
9 rangement—

10 “(A) for which an election to be treated as
11 a FASIT applies for the taxable year and all
12 prior taxable years,

13 “(B) substantially all of the assets of
14 which, on the ninetieth day beginning with its
15 formation and at all times thereafter, consist of
16 permitted assets,

17 “(C) all of the interests in which are own-
18 ership interests, permitted debt instruments or
19 qualified debt instruments, and

20 “(D) which has one and only one class of
21 ownership interests.

22 “(2) INADVERTENT DISQUALIFICATIONS OF
23 FASITS.—Notwithstanding the preceding paragraph,
24 an entity’s failure to qualify or remain qualified as
25 a FASIT shall be disregarded if—

1 “(A) the Secretary determines that the
2 event causing such failure was inadvertent and
3 was corrected within a reasonable time of its
4 discovery by the entity, and

5 “(B) the entity, and each person holding
6 an interest in the entity at any time during the
7 period commencing with the event causing such
8 failure, agrees to make such adjustments as
9 may be required by the Secretary with respect
10 to such period.

11 “(b) PERMITTED ASSETS.—Permitted assets shall
12 mean any—

13 “(1) cash or cash items,

14 “(2) debt obligations (but, to the extent pro-
15 vided in regulations, only if any coupons thereon
16 representing rights to contingent interest to which
17 the provisions of section 871(h)(4)(A) would apply
18 are not held by the FASIT),

19 “(3) property that was security for a debt obli-
20 gation held by the FASIT and that was acquired in
21 connection with the default or imminent default of
22 such debt obligation but only if—

23 “(A) the security interest in such property
24 was not created for the principal purpose of

1 permitting the FASIT to invest in such prop-
2 erty,

3 “(B) such debt obligation was not acquired
4 by the FASIT for the principal purpose of ac-
5 quiring such property, and

6 “(C) such property would be in compliance
7 with the limitations of paragraphs (2) and (3)
8 of section 856(e) (without regard to the provi-
9 sions of section 856(e)(5) and, except in the
10 case of real property, without regard to the pro-
11 visions of section 856(e)(4)) if the FASIT were
12 a real estate investment trust,

13 “(4) any instrument or contract in the nature
14 of a hedge or guarantee (including, but not limited
15 to, interest rate swaps, credit enhancements, mini-
16 mum and maximum prepayment guarantees, cur-
17 rency fluctuation hedges, and liquidity arrange-
18 ments) against the risk that payments on debt obli-
19 gations held by the FASIT would not be sufficient
20 to fund timely payments on debt instruments issued
21 by the FASIT (whether or not a portion of the pay-
22 ments received on such instruments or contracts are
23 incidentally payable to holders of ownership inter-
24 ests),

1 “(5) to the extent permitted in regulations,
2 ownership interests in other FASITs, and

3 “(6) contract rights to acquire any assets de-
4 scribed in this paragraph.

5 “(c) DEBT OBLIGATION.—

6 “(1) IN GENERAL.—A debt obligation shall
7 mean any evidence of indebtedness.

8 “(2) EXAMPLES.—Such term shall include (but
9 not be limited to)—

10 “(A) any trade or service receivable which
11 entitles the holder to a fixed amount, and

12 “(B) any participation interest (or similar
13 interest) in an evidence of indebtedness (with-
14 out regard to any characteristics of such inter-
15 est that would not cause it to be classified as
16 other than an interest in a fixed investment
17 trust).

18 “(d) DEBT INSTRUMENT.—A debt instrument shall
19 mean any qualified debt instrument or permitted debt in-
20 strument.

21 “(e) QUALIFIED DEBT INSTRUMENT.—A qualified
22 debt instrument shall mean any instrument issued by a
23 FASIT that is designated as such (regardless of its form)
24 if—

1 “(1) it unconditionally entitles the holder to re-
2 ceive a specified principal amount (or other similar
3 amount),

4 “(2) its interest payments (or other similar
5 amounts), if any, are based on one or more rates
6 (including combinations and variations of rates that
7 would be permitted interest payments for a REMIC
8 regular interest under section 860G(a)(1)(B)) that
9 are fixed or whose variations can reasonably be ex-
10 pected to measure contemporaneous variations in the
11 cost of newly borrowed funds in the currency in
12 which the instrument is denominated,

13 “(3) it does not have a stated maturity greater
14 than 30 years (or such longer period as may be per-
15 mitted by regulations),

16 “(4) its issue price does not exceed 125 percent
17 of its stated principal amount, and

18 “(5) it does not have a yield to maturity (deter-
19 mined, except as otherwise provided by regulations,
20 as of the issuance date based on issue price or pric-
21 ing date based on a reasonable estimate of the issue
22 price, and based on a reasonable prepayment as-
23 sumption for the FASIT’s assets) that is more than
24 five percentage points higher than the yield to matu-
25 rity on outstanding marketable obligations of the

1 United States with a comparable maturity (based
2 upon a statistically significant sampling, a published
3 index, or a similar objective determination).

4 “(f) PERMITTED DEBT INSTRUMENT.—A permitted
5 debt instrument shall mean any instrument issued by a
6 FASIT that is designated as such (regardless of its form),
7 and that is described in paragraphs (1), (2), (3) and (4)
8 of the preceding subsection.

9 “(g) OWNERSHIP INTEREST.—An ownership interest
10 shall mean any interest issued by a FASIT that is des-
11 ignated as such (regardless of its form).

12 “(h) FASIT SECURITY.—A FASIT security shall
13 mean any ownership interest or debt instrument issued by
14 a FASIT.

15 “(i) PASS-THRU ENTITY.—A ‘pass-thru entity’ shall
16 mean—

17 “(1) any regulated investment company, real
18 estate investment trust, or common trust fund,

19 “(2) any partnership, trust, or estate,

20 “(3) any organization to which part I of sub-
21 chapter T applies, and

22 “(4) any S corporation.

23 Except as provided in regulations, a person holding an in-
24 terest in a pass-thru entity as a nominee for another per-

1 son shall, with respect to such interest, be treated as a
2 pass-thru entity.

3 “(j) DISQUALIFIED HOLDER.—A disqualified holder
4 shall mean any holder other than a pass-thru entity or
5 a corporation that is not exempt from corporate income
6 taxation and that is a United States person (or, to the
7 extent provided in regulations, that is otherwise subject
8 to United States tax on the income with respect to its own-
9 ership interests or permitted debt instruments).

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