

terms of the regular and residual interests are fixed and the prices at which a substantial portion of the regular interests will be sold are fixed.

(4) *Treatment of unrecognized gain or loss*—(i) *Unrecognized gain on regular interests.* For purposes of section 860F(b)(1)(C)(i), the sponsor must include in gross income the excess of the issue price of a regular interest over the sponsor's basis in the interest as if the excess were market discount (as defined in section 1278(a)(2)) on a bond and the sponsor had made an election under section 1278(b) to include this market discount currently in gross income. The sponsor is not, however, by reason of this paragraph (b)(4)(i), deemed to have made an election under section 1278(b) with respect to any other bonds.

(ii) *Unrecognized loss on regular interests.* For purposes of section 860F(b)(1)(D)(i), the sponsor treats the excess of the sponsor's basis in a regular interest over the issue price of the interest as if that excess were amortizable bond premium (as defined in section 171(b)) on a taxable bond and the sponsor had made an election under section 171(c). The sponsor is not, however, by reason of this paragraph (b)(4)(ii), deemed to have made an election under section 171(c) with respect to any other bonds.

(iii) *Unrecognized gain on residual interests.* For purposes of section 860F(b)(1)(C)(ii), the sponsor must include in gross income the excess of the issue price of a residual interest over the sponsor's basis in the interest ratably over the anticipated weighted average life of the REMIC (as defined in § 1.860E-1(a)(3)(iv)).

(iv) *Unrecognized loss on residual interests.* For purposes of section 860F(b)(1)(D)(ii), the sponsor deducts the excess of the sponsor's basis in a residual interest over the issue price of the interest ratably over the anticipated weighted average life of the REMIC.

(5) *Additions to or reductions of the sponsor's basis.* The sponsor's basis in a regular or residual interest is increased by any amount included in the sponsor's gross income under paragraph (b)(4) of this section. The sponsor's basis in a regular or residual interest is

decreased by any amount allowed as a deduction and by any amount applied to reduce interest payments to the sponsor under paragraph (b)(4)(ii) of this section.

(6) *Transferred basis property.* For purposes of paragraph (b)(4) of this section, a transferee of a regular or residual interest is treated in the same manner as the sponsor to the extent that the basis of the transferee in the interest is determined in whole or in part by reference to the basis of the interest in the hands of the sponsor.

(c) *REMIC's basis in contributed assets.* For purposes of section 860F(b)(2), the aggregate of the REMIC's bases in the assets contributed by the sponsor to the REMIC in a transaction described in paragraph (a) of this section is equal to the aggregate of the issue prices (determined under section 860G(a)(10) and § 1.86G-1(d)) of all regular and residual interests in the REMIC.

[T.D. 8458, 57 FR 61304, Dec. 24, 1992; 58 FR 8098, Feb. 11, 1993]

§ 1.860F-4 REMIC reporting requirements and other administrative rules.

(a) *In general.* Except as provided in paragraph (c) of this section, for purposes of subtitle F of the Internal Revenue Code, a REMIC is treated as a partnership and any holder of a residual interest in the REMIC is treated as a partner. A REMIC is not subject, however, to the rules of subchapter C of chapter 63 of the Internal Revenue Code, relating to the treatment of partnership items, for a taxable year if there is at no time during the taxable year more than one holder of a residual interest in the REMIC. The identity of a holder of a residual interest in a REMIC is not treated as a partnership item with respect to the REMIC for purposes of subchapter C of chapter 63.

(b) *REMIC tax return*—(1) *In general.* To satisfy the requirement under section 6031 to make a return of income for each taxable year, a REMIC must file the return required by paragraph (b)(2) of this section. The due date and any extensions for filing the REMIC's annual return are determined as if the REMIC were a partnership.

(2) *Income tax return.* The REMIC must make a return, as required by

section 6011(a), for each taxable year on Form 1066, U.S. Real Estate Mortgage Investment Conduit Income Tax Return. The return must include—

(i) The amount of principal outstanding on each class of regular interests as of the close of the taxable year,

(ii) The amount of the daily accruals determined under section 860E(c), and

(iii) The information specified in § 1.860D-1(d)(2) (i), (iv), and (v).

(c) *Signing of REMIC return*—(1) *In general.* Although a REMIC is generally treated as a partnership for purposes of subtitle F, for purposes of determining who is authorized to sign a REMIC's income tax return for any taxable year, the REMIC is not treated as a partnership and the holders of residual interests in the REMIC are not treated as partners. Rather, the REMIC return must be signed by a person who could sign the return of the entity absent the REMIC election. Thus, the return of a REMIC that is a corporation or trust under applicable State law must be signed by a corporate officer or a trustee, respectively. The return of a REMIC that consists of a segregated pool of assets must be signed by a person who could sign the return of the entity that owns the assets of the REMIC under applicable State law.

(2) *REMIC whose startup day is before November 10, 1988*—(i) *In general.* The income tax return of a REMIC whose startup day is before November 10, 1988, may be signed by any person who held a residual interest during the taxable year to which the return relates, or, as provided in section 6903, by a fiduciary, as defined in section 7701(a)(6), who is acting for the REMIC and who has furnished adequate notice in the manner prescribed in § 301.6903-1(b) of this chapter.

(ii) *Startup day.* For purposes of paragraph (c)(2) of this section, startup day means any day selected by a REMIC that is on or before the first day on which interests in such REMIC are issued.

(iii) *Exception.* A REMIC whose startup day is before November 10, 1988, may elect to have paragraph (c)(1) of this section apply, instead of paragraph (c)(2) of this section, in determining who is authorized to sign the REMIC return. See section 1006(t)(18)(B) of the

Technical and Miscellaneous Revenue Act of 1988 (102 Stat. 3426) and § 5h.6(a)(1) of this chapter for the time and manner for making this election.

(d) *Designation of tax matters person.* A REMIC may designate a tax matters person in the same manner in which a partnership may designate a tax matters partner under § 301.6231(a)(7)-1T of this chapter. For purposes of applying that section, all holders of residual interests in the REMIC are treated as general partners.

(e) *Notice to holders of residual interests*—(1) *Information required.* As of the close of each calendar quarter, a REMIC must provide to each person who held a residual interest in the REMIC during that quarter notice on Schedule Q (Form 1066) of information specified in paragraphs (e)(1) (i) and (ii) of this section.

(i) *In general.* Each REMIC must provide to each of its residual interest holders the following information—

(A) That person's share of the taxable income or net loss of the REMIC for the calendar quarter;

(B) The amount of the excess inclusion (as defined in section 860E and the regulations thereunder), if any, with respect to that person's residual interest for the calendar quarter;

(C) If the holder of a residual interest is also a pass-through interest holder (as defined in § 1.67-3T(a)(2)), the allocable investment expenses (as defined in § 1.67-3T(a)(4)) for the calendar quarter, and

(D) Any other information required by Schedule Q (Form 1066).

(ii) *Information with respect to REMIC assets*—(A) *95 percent asset test.* For calendar quarters after 1988, each REMIC must provide to each of its residual interest holders the following information—

(1) The percentage of REMIC assets that are qualifying real property loans under section 593,

(2) The percentage of REMIC assets that are assets described in section 7701(a)(19), and

(3) The percentage of REMIC assets that are real estate assets defined in section 856(c)(6)(B), computed by reference to the average adjusted basis (as defined in section 1011) of the REMIC assets during the calendar quarter (as

described in paragraph (e)(1)(iii) of this section). If the percentage of REMIC assets represented by a category is at least 95 percent, then the REMIC need only specify that the percentage for that category was at least 95 percent.

(B) *Additional information required if the 95 percent test not met.* If, for any calendar quarter after 1988, less than 95 percent of the assets of the REMIC are real estate assets defined in section 856(c)(6)(B), then, for that calendar quarter, the REMIC must also provide to any real estate investment trust (REIT) that holds a residual interest the following information—

(1) The percentage of REMIC assets described in section 856(c)(5)(A), computed by reference to the average adjusted basis of the REMIC assets during the calendar quarter (as described in paragraph (e)(1)(iii) of this section),

(2) The percentage of REMIC gross income (other than gross income from prohibited transactions defined in section 860F(a)(2)) described in section 856(c)(3)(A) through (E), computed as of the close of the calendar quarter, and

(3) The percentage of REMIC gross income (other than gross income from prohibited transactions defined in section 860F(a)(2)) described in section 856(c)(3)(F), computed as of the close of the calendar quarter. For purposes of this paragraph (e)(1)(ii)(B)(3), the term “foreclosure property” contained in section 856(c)(3)(F) has the meaning specified in section 860G(a)(8).

In determining whether a REIT satisfies the limitations of section 856(c)(2), all REMIC gross income is deemed to be derived from a source specified in section 856(c)(2).

(C) *For calendar quarters in 1987.* For calendar quarters in 1987, the percentages of assets required in paragraphs (e)(1)(ii) (A) and (B) of this section may be computed by reference to the fair market value of the assets of the REMIC as of the close of the calendar quarter (as described in paragraph (e)(1)(iii) of this section), instead of by reference to the average adjusted basis during the calendar quarter.

(D) *For calendar quarters in 1988 and 1989.* For calendar quarters in 1988 and 1989, the percentages of assets required in paragraphs (e)(1)(ii) (A) and (B) of this section may be computed by ref-

erence to the average fair market value of the assets of the REMIC during the calendar quarter (as described in paragraph (e)(1)(iii) of this section), instead of by reference to the average adjusted basis of the assets of the REMIC during the calendar quarter.

(iii) *Special provisions.* For purposes of paragraph (e)(1)(ii) of this section, the percentage of REMIC assets represented by a specified category computed by reference to average adjusted basis (or fair market value) of the assets during a calendar quarter is determined by dividing the average adjusted bases (or for calendar quarters before 1990, fair market value) of the assets in the specified category by the average adjusted basis (or, for calendar quarters before 1990, fair market value) of all the assets of the REMIC as of the close of each month, week, or day during that calendar quarter. The monthly, weekly, or daily computation period must be applied uniformly during the calendar quarter to all categories of assets and may not be changed in succeeding calendar quarters without the consent of the Commissioner.

(2) *Quarterly notice required—(i) In general.* Schedule Q must be mailed (or otherwise delivered) to each holder of a residual interest during a calendar quarter no later than the last day of the month following the close of the calendar quarter.

(ii) *Special rule for 1987.* Notice to any holder of a REMIC residual interest of the information required in paragraph (e)(1) of this section for any of the four calendar quarters of 1987 must be mailed (or otherwise delivered) to each holder no later than March 28, 1988.

(3) *Nominee reporting—(i) In general.* If a REMIC is required under paragraphs (e) (1) and (2) of this section to provide notice to an interest holder who is a nominee of another person with respect to an interest in the REMIC, the nominee must furnish that notice to the person for whom it is a nominee.

(ii) *Time for furnishing statement.* The nominee must furnish the notice required under paragraph (e)(3)(i) of this section to the person for whom it is a nominee no later than 30 days after receiving this information.

(4) *Reports to the Internal Revenue Service.* For each person who was a residual interest holder at any time during a REMIC's taxable year, the REMIC must attach a copy of Schedule Q to its income tax return for that year for each quarter in which that person was a residual interest holder. Quarterly notice to the Internal Revenue Service is not required.

(f) *Information returns for persons engaged in a trade or business.* See § 1.6041-1(b)(2) for the treatment of a REMIC under sections 6041 and 6041A.

[T.D. 8366, 56 FR 49516, Sept. 30, 1991, as amended by T.D. 8458, 57 FR 61306, Dec. 24, 1992; 58 FR 8098, Feb. 11, 1993; T.D. 9184, 70 FR 9219, Feb. 25, 2005]

§ 1.860G-1 Definition of regular and residual interests.

(a) *Regular interest*—(1) *Designation as a regular interest.* For purposes of section 860G(a)(1), a REMIC designates an interest as a regular interest by providing to the Internal Revenue Service the information specified in § 1.860D-1(d)(2)(ii) in the time and manner specified in § 1.860D-1(d)(2).

(2) *Specified portion of the interest payments on qualified mortgages*—(i) *In general.* For purposes of section 860G(a)(1)(B)(ii), a specified portion of the interest payments on qualified mortgages means a portion of the interest payable on qualified mortgages, but only if the portion can be expressed as—

(A) A fixed percentage of the interest that is payable at either a fixed rate or at a variable rate described in paragraph (a)(3) of this section on some or all of the qualified mortgages;

(B) A fixed number of basis points of the interest payable on some or all of the qualified mortgages; or

(C) The interest payable at either a fixed rate or at a variable rate described in paragraph (a)(3) of this section on some or all of the qualified mortgages in excess of a fixed number of basis points or in excess of a variable rate described in paragraph (a)(3) of this section.

(ii) *Specified portion cannot vary.* The portion must be established as of the startup day (as defined in section 860G(a)(9) and § 1.860G-2(k)) and, except as provided in paragraph (a)(2)(iii) of

this section, it cannot vary over the period that begins on the startup day and ends on the day that the interest holder is no longer entitled to receive payments.

(iii) *Defaulted or delinquent mortgages.* A portion is not treated as varying over time if an interest holder's entitlement to a portion of the interest on some or all of the qualified mortgages is dependent on the absence of defaults or delinquencies on those mortgages.

(iv) *No minimum specified principal amount is required.* If an interest in a REMIC consists of a specified portion of the interest payments on the REMIC's qualified mortgages, no minimum specified principal amount need be assigned to that interest. The specified principal amount can be zero.

(v) *Specified portion includes portion of interest payable on regular interest.* (A) The specified portions that meet the requirements of paragraph (a)(2)(i) of this section include a specified portion that can be expressed as a fixed percentage of the interest that is payable on some or all of the qualified mortgages where—

(1) Each of those qualified mortgages is a regular interest issued by another REMIC; and

(2) With respect to that REMIC in which it is a regular interest, each of those regular interests bears interest that can be expressed as a specified portion as described in paragraph (a)(2)(i)(A), (B), or (C) of this section.

(B) See § 1.860A-1(a) for the effective date of this paragraph (a)(2)(v).

(vi) *Examples.* The following examples, each of which describes a pass-thru trust that is intended to qualify as a REMIC, illustrate the provisions of this paragraph (a)(2).

Example 1. (i) A sponsor transferred a pool of fixed rate mortgages to a trustee in exchange for two classes of certificates. The Class A certificate holders are entitled to all principal payments on the mortgages and to interest on outstanding principal at a variable rate based on the current value of One-Month LIBOR, subject to a lifetime cap equal to the weighted average rate payable on the mortgages. The Class B certificate holders are entitled to all interest payable on the mortgages in excess of the interest paid on the Class A certificates. The Class B certificates are subordinate to the Class A certificates so that cash flow shortfalls due