§ 1.860G–2T Other rules (temporary).

(a) through (g)(3)(ii)(A) [Reserved] For further guidance, see §1.860G–2(a) through (g)(3)(ii)(A).

(B) Presumption that a reserve is reasonably required. The amount of a reserve fund is presumed to be reasonable (and an excessive reserve is presumed to have been promptly and appropriately reduced) if it does not exceed the amount required by a third party insurer or guarantor, who does not own directly or indirectly (within the meaning of section 267(c)) an interest in the REMIC (as defined in section 1.860D–1(b)(1)), as a condition of providing credit enhancement.

(C) Presumption may be rebutted. The presumption in §1.860G–2(g)(3)(ii)(B) may be rebutted if the amounts required by the third party insurer are not commercially reasonable considering the factors described in §1.860G–2(g)(3)(ii)(A).

(D) Effective/applicability date. Paragraphs (g)(3)(ii)(B) and (C) of this section apply on and after July 6, 2011.

(E) Expiration date. The applicability of paragraphs (g)(3)(ii)(B) and (C) of this section expires on or before July 1, 2014.
§ 1.860G–3 Treatment of foreign persons.

(a) Transfer of a residual interest with tax avoidance potential—(1) In general. A transfer of a residual interest that has tax avoidance potential is disregarded for all Federal tax purposes if the transferee is a foreign person. Thus, if a residual interest with tax avoidance potential is transferred to a foreign holder at formation of the REMIC, the sponsor is liable for the tax on any excess inclusion that accrues with respect to that residual interest.

(2) Tax avoidance potential—(i) Defined. A residual interest has tax avoidance potential for purposes of this section unless, at the time of the transfer, the transferor reasonably expects that, for each excess inclusion, the REMIC will distribute to the transferee residual interest holder an amount that will equal at least 30 percent of the excess inclusion, and that each such amount will be distributed at or after the time at which the excess inclusion accrues and not later than the close of the calendar year following the calendar year of accrual.

(ii) Safe harbor. For purposes of paragraph (a)(2)(i) of this section, a transferor has a reasonable expectation if the 30-percent test would be satisfied were the REMIC’s qualified mortgages to prepay at each rate within a range of rates from 50 percent to 200 percent of the rate assumed under section 1272(a)(6) with respect to the qualified mortgages (or the rate that would have been assumed had the mortgages been issued with original issue discount).

(3) Effectively connected income. Paragraph (a)(1) of this section will not apply if the transferee’s income from the residual interest is subject to tax under section 871(b) or section 882.

(b) Accounting for REMIC net income—(1) Allocation of partnership income to a foreign partner. A domestic partnership shall separately state its allocable share of REMIC taxable income or net loss in accordance with §1.702–1(a)(8). If a domestic partnership allocates all or some portion of its allocable share of REMIC taxable income to a partner that is a foreign person, the amount allocated to the foreign partner shall be taken into account by the foreign partner for purposes of sections 871(a), 881, 1441, and 1442 as if that amount was received on the last day of the partnership’s taxable year, except to the extent that some or all of the amount is required to be taken into account by the foreign partner at an earlier time under section 860G(b) as a result of a distribution by the partnership to the foreign partner or a disposition of the foreign partner’s indirect interest in the REMIC residual interest. A disposition in whole or in part of the foreign partner’s indirect interest in the REMIC residual interest may occur as a result of a termination of the REMIC, a disposition of the partnership’s residual interest in the REMIC, a disposition of the foreign partner’s interest in the partnership, or any other reduction in the foreign partner’s allocable share of the portion of the REMIC net income or deduction allocated to the partnership. See §1.871–14(d)(2) for the treatment of interest received on a regular or residual interest in a REMIC.

(b) Excess inclusion income allocated by certain pass-through entities to a foreign person. If an amount is allocated under section 860E(d)(1) to a foreign person that is a shareholder of a real estate investment trust or a regulated investment company, a participant in a common trust fund, or a patron of an organization to which part I of subchapter ...