Draft of 1/27/25

Section 860F

(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.

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(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,

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

(C) deemed to have occurred as a result of any change in the terms of a qualified mortgage as long as the qualified mortgage continues to be principally secured by an interest in real property following such change.

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Section 860G

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(a) DEFINITIONS For purposes of this part—

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(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 pursuant to a fixed-price contract in effect on the startup day, or

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(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

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(III) is purchased by the REMIC pursuant to a fixed price contract in effect on the startup day,

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(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), (i) 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), (ii) any tax assessment secured by a lien arising from a property assessed clean energy (PACE) program authorized by state legislation or any state or local obligation substantially all of which is backed by such PACE assessments and (iii) any loan secured by an interest in an entity that holds an interest (including indirectly through one or more entities) in real property (if the entity is not treated as a corporation, the loan is substantially nonrecourse, and in the event of default of the loan and foreclosure, the lender will replace the borrower as the sole owner of such entity and the owner of the interest in the real property for purposes of this title) 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).

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(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—

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

(ii) received for a defective obligation within the 2-year period beginning on the startup day, or

(iii) deemed to be received as a result of changes to a qualified mortgage described in Section 860F(a)(5)(C).

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