

Part III

Administrative, Procedural, and Miscellaneous

26 CFR 601.105: Examination of returns and claims for refund, credit or abatement; determination of correct tax liability.
(Also Part I, §§ 860D, 860G, 1001; 1.860G-2, 1.1001-3.)

Rev. Proc. 2010-30

SECTION 1. PURPOSE

This revenue procedure describes the circumstances under which the Internal Revenue Service (the “Service”) will not challenge a mortgage loan held by a real estate mortgage investment conduit (a “REMIC”) as other than a “qualified mortgage” on the grounds that the mortgage loan fails to be principally secured by an interest in real property for purposes of section 860G(a)(3)(A) of the Internal Revenue Code and § 1.860G-2(a)(8) of the Income Tax Regulations following a release of a lien on an interest in real property that secures the mortgage loan.

SECTION 2. BACKGROUND—COMMERCIAL MORTGAGE LOANS

.01 Frequently, a single commercial mortgage loan is secured by liens on multiple interests in real property.

.02 The terms of a commercial mortgage loan typically allow the borrower to obtain a release of a lien if certain conditions are satisfied. In a limited number of cases, the borrower may obtain the release of a lien at will. More often, a lien release is conditioned on a requirement that the borrower pay down the principal on the loan by a prescribed amount. If the mortgage loan is secured by multiple properties, the terms of the obligation may provide that certain properties may be sold and the sale proceeds applied to pay down the loan. In general, the payment required must be no less than the net proceeds from a sale of the property or no less than an amount that is calculated by a predetermined formula.

.03 In addition, the terms of the obligation may provide that, in the event of a casualty loss or a condemnation of all or a portion of the property, the borrower may obtain the release of the affected property if it applies the insurance proceeds or the condemnation award to pay down the loan.

SECTION 3. BACKGROUND — REMICS

.01 Commercial mortgage loans are commonly pooled and held in REMICs, securitization vehicles governed by sections 860A through 860G.

.02 Section 860D(a)(4) provides, in pertinent part, that an entity qualifies as a REMIC only if, as of the close of the third month beginning after the startup day and at all times thereafter, substantially all of the entity's assets consist of qualified mortgages and permitted investments. This asset test is satisfied if the entity owns no more than a *de minimis* amount of other assets. See § 1.860D-1(b)(3)(i). As a safe harbor, the amount of assets other than qualified mortgages and permitted investments is *de minimis* if the aggregate of the adjusted bases of those assets is less than one percent

of the aggregate of the adjusted bases of all of the entity's assets. Section 1.860D-1(b)(3)(ii).

.03 With limited exceptions, a mortgage loan is not a qualified mortgage unless it is transferred to the REMIC on the startup day in exchange for regular or residual interests in the REMIC. See section 860G(a)(3)(A)(i).

.04 The legislative history of the REMIC provisions indicates that Congress intended the provisions to apply only to an entity that holds a substantially fixed pool of real estate mortgages and related assets and that "has no powers to vary the composition of its mortgage assets." S. Rep. No. 99-313, 99th Cong., 2^d Sess. 791-92, 1986-3 (Vol. 3) C.B. 791-92.

.05 Section 1.1001-3(c)(1)(i) defines a "modification" of a debt instrument as any alteration, including any deletion or addition, in whole or in part, of a legal right or obligation of the issuer or holder of a debt instrument, whether the alteration is evidenced by an express agreement (oral or written), conduct of the parties, or otherwise. Section 1.1001-3(e) governs which modifications of debt instruments are "significant." Under § 1.1001-3(b), for most federal income tax purposes, a significant modification produces a deemed exchange of the original debt instrument for a new debt instrument.

.06 Under §1.860G-2(b), related rules apply to determine REMIC qualification. Except as specifically provided in §1.860G-2(b)(3), if there is a significant modification of an obligation that is held by a REMIC, then the modified obligation is treated as one that was newly issued in exchange for the unmodified obligation that it replaced. See § 1.860G-2(b)(1). For this purpose, the rules in § 1.1001-3(e) determine whether a

modification is “significant.” See § 1.860G-2(b)(2). Thus, even if an entity initially qualifies as a REMIC, one or more significant modifications of loans held by the entity may terminate the entity’s qualification if the modifications cause less than substantially all of the entity’s assets to be qualified mortgages.

.07 Certain loan modifications are not significant modifications for purposes of § 1.860G–2(b)(1), even if the modifications are significant under § 1.1001–3.

Section 1.860G–2(b)(3) contains a list of modifications that are expressly permitted without regard to the section 1001 modification rules.

SECTION 4. BACKGROUND —PRINCIPALLY SECURED BY AN INTEREST IN REAL PROPERTY

.01 A mortgage loan is a qualified mortgage only if it is principally secured by an interest in real property. Section 860G(a)(3)(A).

.02 In general, for purposes of section 860G(a)(3)(A), an obligation is principally secured by an interest in real property only if it satisfies the “80–percent test” set forth in § 1.860G–2(a)(i). (Section 1.860G–2(a)(ii) contains an alternative test.)

.03 Under the 80–percent test, an obligation is principally secured by an interest in real property if the fair market value of the interest in real property securing the obligation—

- (1) Was at least equal to 80 percent of the adjusted issue price of the obligation at the time the obligation was originated; or
- (2) Is at least equal to 80 percent of the adjusted issue price of the obligation at the time the sponsor contributes the obligation to the REMIC.

.04 In the absence of a lien release or certain other transactions that alter a legal right or obligation either of a REMIC or of the issuer of a mortgage loan that is held by the REMIC, the mortgage loan is not retested to determine whether the current value of its real estate collateral still satisfies the principally secured test.

.05 Under § 1.860G–2(a)(8), if a REMIC releases its lien on an interest in real property that secures a qualified mortgage, the mortgage ceases to be a qualified mortgage on the date the lien is released unless either—

- (1) The mortgage is defeased in the manner described in § 1.860G–2(a)(8)(ii); or
- (2) The lien is released in a modification that satisfies both of the following criteria:

- (i) The modification either is not a significant modification as defined in § 1.860G–2(b)(2) or, under one of the exceptions in § 1.860G–2(b)(3), is not treated as a significant modification for purposes of § 1.860G–2(b)(1); and

- (ii) Following the modification, the obligation continues to be principally secured by an interest in real property, as determined by § 1.860G–2(b)(7).

.06 Section 1.860G–2(b)(7) provides that, for purposes of §§ 1.860G–2(a)(8)(i), 1.860G–2(b)(3)(v), and 1.860G–2(b)(3)(vi), an obligation continues to be principally secured by an interest in real property following a transaction that alters the legal rights of the parties only if, as of the date of the transaction, the obligation satisfies either paragraph (b)(7)(ii) or paragraph (b)(7)(iii) of § 1.860G–2.

.07 An obligation satisfies § 1.860G–2(b)(7)(ii) if the fair market value of the interest in real property securing the obligation, determined as of the date of the modification, is at least 80 percent of the adjusted issue price of the modified obligation,

determined as of the date of the modification. If, as of the date of the modification, the servicer reasonably believes that the obligation satisfies the criterion in the preceding sentence, then the obligation is deemed to do so. A reasonable belief does not exist if the servicer actually knows, or has reason to know, that the criterion is not satisfied.

For purposes of § 1.860G–2(b)(7)(ii), a servicer must base a reasonable belief on—

- (1) A current appraisal performed by an independent appraiser;
- (2) An appraisal that was obtained in connection with the origination of the obligation and, if appropriate, that has been updated for the passage of time and for any other changes that might affect the value of the interest in real property;
- (3) The sales price of the interest in real property in the case of a substantially contemporary sale in which the buyer assumes the seller's obligations under the mortgage; or
- (4) Some other commercially reasonable valuation method.

.08 An obligation satisfies § 1.860G–2(b)(7)(iii) if § 1.860G–2(b)(7)(ii) is not satisfied but the fair market value of the interest in real property that secures the obligation immediately after the modification equals or exceeds the fair market value of the interest in real property that secured the obligation immediately before the modification. The criterion in the preceding sentence must be established by a current appraisal, an original (and updated) appraisal, or some other commercially reasonable valuation method; and the servicer must not actually know, or have reason to know, that the criterion in the preceding sentence is not satisfied.

.09 Under § 1.860G–2(a)(5), obligations secured by interests in real property include mortgage pass-through certificates guaranteed by GNMA, FNMA, FHLMC, or CMHC (Canada Mortgage and Housing Corporation) and other investment trust interests that represent undivided beneficial ownership in a pool of obligations principally secured by interests in real property and related assets that would be considered to be permitted investments if the investment trust were a REMIC, provided that the investment trust is classified as a trust under § 301.7701–4(c) of the Procedure and Administration Regulations.

.10 Under § 1.860G–2(b)(6), if a REMIC holds as a qualified mortgage a pass-through certificate or other investment trust interest of the type described in § 1.860G–2(a)(5), the modification of a mortgage loan that backs the pass-through certificate or other interest is not a modification of the pass-through certificate or other interest unless the investment trust structure was created to avoid the prohibited transaction rules of section 860F(a). Analogously, unless a substantial purpose of the trust structure was to avoid the restrictions imposed by § 1.860G–2(a)(8) and § 1.860G–2(b), the release of a lien on an interest in real property that secures an obligation held by the trust does not cause § 1.860G–2(a)(8) automatically to disqualify the obligation.

.11 When there are significant declines in commercial real estate property values, properties that secure commercial loans may fall in value to an amount below the 80 percent threshold. The borrower may be in default on its obligation or default may be reasonably foreseeable. In these instances, the servicer may work with the borrower to avoid default.

.12 In the preamble to final regulations published September 16, 2009 (the “Final Regulations”), the Service noted that, although a qualified mortgage must be principally secured by an interest in real property, a release pursuant to the terms of a mortgage obligation is not a release that disqualifies the mortgage if the mortgage continues to be principally secured by real property after giving effect to any releases, substitutions, additions, or other alterations to the collateral. In addition, the preamble explains that a lien release occasioned by a default or reasonably foreseeable default would not disqualify a mortgage if the principally secured test continues to be satisfied.

See T.D. 9463, 74 FR 47436-01.

SECTION 5. SCOPE

.01 This revenue procedure applies to a release of a lien on an interest in real property that secures a mortgage loan held by a REMIC in circumstances in which §§ 1.860G-2(b)(7)(ii) and 1.860G-2(b)(7)(iii) are not satisfied. A release of a lien that is effected by either a grandfathered transaction described in section 5.02 of this revenue procedure or by a qualified pay-down transaction described in section 5.03 of this revenue procedure qualifies for the benefits of this revenue procedure.

.02 A grandfathered transaction is any release of a lien on an interest in real property that satisfies the following two criteria—

- (1) The lien release is not a modification for purposes of § 1.1001-3(c) because it occurred by operation of the terms of the debt instrument (including a lien release pursuant to the exercise of a unilateral option of the borrower within the meaning of § 1.1001-3(c)(3)); and

(2) The terms providing for the lien release are contained in a contract that was executed no later than December 6, 2010.

.03 A “qualified pay-down transaction” is a transaction in which a lien is released on an interest in real property and which includes a payment by the borrower resulting in a reduction in the adjusted issue price of the loan by a “qualified amount” as described in section 5.04 of this revenue procedure.

.04 A “qualified amount” is an amount that is equal to or greater than at least one of the following:

(1) the sum of —

- (a) the net proceeds available to the borrower from an arms-length sale of the property to an unrelated person;
- (b) the net proceeds from the receipt of a condemnation award with respect to the property; and
- (c) in a case to which (a) or (b) above applies, the net proceeds from the receipt of an insurance or tort settlement with respect to the property;

(2) an amount that is determined under the loan agreement and that equals or exceeds the product of —

- (a) the adjusted issue price of the obligation at the time of the lien release; multiplied by
- (b) a fraction equal to the fair market value at origination of the released interest, divided by the aggregate fair market value at

origination of all of the interests in real property that secured the loan immediately before the lien release;

(3) the fair market value (at the time of the transaction) of the interest in real property the lien on which is released, plus the amount of any tort or insurance settlement that is expected to be, or has been, received with respect to the property and that is not reflected directly or indirectly in the property's fair market value at the time of the transaction;

or

(4) an amount such that, immediately after the transaction, the ratio of the adjusted issue price of the loan to the fair market value of the interests in real property securing the loan is no greater than what that ratio was immediately before the transaction.

.05 The term "net proceeds" for purposes of section 5.04(1) of this revenue procedure means the amount realized for purposes of computing gain or loss under section 1001.

.06 If, as of the date of the lien release, the servicer reasonably believes that the transaction satisfies one of the criteria set forth in section 5.04(3) or 5.04(4) of this revenue procedure, then that criterion is deemed to be satisfied. A reasonable belief does not exist, however, if the servicer actually knows, or has reason to know, that the criterion is not satisfied. For purposes of this section 5.06, a reasonable belief must be based on the information or methods described in § 1.860G-2(b)(7)(ii)(A)-(D).

SECTION 6. APPLICATION

If a release of a lien on an interest in real property that secures a mortgage loan held by a REMIC satisfies the requirements of section 5 of this revenue procedure, the Service will not challenge the mortgage loan's status as a qualified mortgage on the grounds that the loan fails to be principally secured by an interest in real property for purposes of section 860G(a)(3)(A) and § 1.860G-2(a)(8)(i)(B) following the release of the lien.

SECTION 7. EXAMPLES

The following examples illustrate the application of this revenue procedure:

.01 Example 1

(1) Facts.

(i) On a date subsequent to December 6, 2010, Borrower *B* issued a mortgage loan to lender *L*. At origination, the stated principal of *B*'s loan was \$100 million, and nine interests in real property (X_1 through X_9) secured the loan. *L* contributed the loan to *R*, a REMIC.

(ii) At the time when the loan was originated and the liens were created, the fair market values of these properties were as shown in the center column below:

Real Property Interest	Fair market value at origination	Fair market value at lien release
X_1	\$20 million	n/a
X_2	\$5 million	\$2 million
X_3	\$25 million	\$12.5 million
X_4 through X_9	\$60 million	\$39 million

(iii) Under the loan documents, in the event that some of the real collateral suffers a casualty loss, *B* may demand a release of the lien(s) on the affected collateral but may do so only if *B* pays down the loan with the proceeds of a sale of that collateral and the proceeds of any insurance settlement with respect to the casualty loss.

(iv) On Date 1, *R* released the lien on X_1 in a transaction that did not cause the mortgage loan issued by *B* to cease to be a qualified mortgage.

(v) Subsequent to Date 1, on Date 2, properties X_2 and X_3 sustained a casualty loss. Immediately prior to the casualty, properties X_2 and X_3 had an aggregate fair market value of \$19.5 million. On Date 2, after the casualty, they had a fair market value of \$14.5 million.

(vi) Consistent with B 's rights under the loan documents, B demanded a release of the liens on properties X_2 and X_3 to enable B to sell them. At the time the liens on these two properties were released, the values of the various properties securing the loan were as shown in the right-hand column in the table above. B disposed of properties X_2 and X_3 in an arms-length sale to an unrelated person. The net proceeds from the sale within the meaning of section 5.05 of this revenue procedure were \$14 million, and B paid down the loan by that amount when B received those proceeds. Subsequently, B received \$5 million as an insurance settlement with respect to the loss suffered by the two properties, and B paid down the loan by an additional \$5 million when those proceeds were received.

(2) Analysis.

(i) Under § 1.860G-2(a)(8), R 's release of the liens on properties X_2 and X_3 causes the loan to cease to be a qualified mortgage unless the release takes place in a transaction that satisfies either paragraph (a)(8)(i) or paragraph (a)(8)(ii) of § 1.860G-2. The release of the liens on X_2 and X_3 does not satisfy § 1.860G-2(a)(8)(ii) because the release is not pursuant to a defeasance. The lien release, however, satisfies § 1.860G-2(a)(8)(i) if the transaction in which it occurs meets the requirements of § 1.860G-2(a)(8)(i)(A) and § 1.860G-2(a)(8)(i)(B).

(ii) The transaction in which the lien was released resulted from the exercise of an option that is unilateral within the meaning of § 1.1001-3(c)(3). Thus, the transaction is not a significant modification as defined in § 1.860G-2(b)(2) and therefore is described in § 1.860G-2(a)(8)(i)(A). In addition, however, to satisfy § 1.860G-2(a)(8)(i)(B), the loan must continue to be principally secured by an interest in real property as determined by § 1.860G-2(b)(7).

(iii) The release of the lien on X_2 and X_3 does not satisfy the 80-percent test in § 1.860G-2(b)(7)(ii) or the alternative test in § 1.860G-2(b)(7)(iii). The loan, however, continues to be treated as principally secured by an interest in real property if this release and the associated payoff of the loan are within the scope of section 5 of this revenue procedure.

(iv) The release of the liens on properties X_2 and X_3 is not part of a grandfathered transaction described in section 5.02 of this revenue procedure because B issued the loan after December 6, 2010.

(v) The release of the liens on properties X_2 and X_3 , however, is within the scope of section 5.03 of this revenue procedure if it is part of a "qualified payoff transaction." First, the transaction involved a release of a lien on an interest in real property and included a payment by the borrower that resulted in a reduction in the

adjusted issue price of the loan. Second, the transaction meets the requirements of both section 5.03(4) and section 5.03(1) of this revenue procedure. Third, the payment by the borrower to reduce the adjusted issue price of the loan is a “qualified amount” as described in section 5.04(1) of this revenue procedure. The qualified amount is \$19 million, which is the amount realized for purposes of computing gain or loss under section 1001 of the Code. Thus, the transaction satisfies the requirements of section 5.03 of this revenue procedure. Therefore, under Section 6 of this revenue procedure, the Service will not challenge the mortgage loan’s status as a qualified mortgage on the grounds that, following the release of the liens, it fails to be principally secured by an interest in real property for purposes of section 860G(a)(3)(A) and § 1.860G-2(a)(8)(i)(B).

.02 Example 2

(1) Facts.

(i) Assume the same facts as in (i) and (iv) of Example 1. Assume further that the executed loan documents give *B* a unilateral right to obtain a release of any one or more of the properties that secure the loan, but only if *B* pays down 110 percent of the “allocated loan amount” for the property or properties the liens on which are being released. The loan documents define “allocated loan amount” as the proportionate loan balance of the properties on which liens are released, based on the relative appraised values of the properties at origination of the loan.

(ii) At the time when the loan was originated and the liens were created, the fair market values of the nine properties securing the loan were as shown in the center column below. The appraised values at that time were the same.

Real Property Interest	Fair market value at origination	Fair market value at lien release
X_1	\$20 million	n/a
X_2	\$5 million	\$3.25 million
X_3	\$25 million	\$16.25 million
X_4 through X_9	\$60 million	\$39 million

(iii) At a time when the fair market values of X_2 through X_9 had declined by 35%, *B* exercised its right to obtain a release of the liens on X_2 and X_3 . Immediately before *R* released the liens, the loan’s adjusted issue price (within the meaning of § 1.1275-1(b)) for federal income tax purposes was \$79 million (as a result of amortization and prepayments on the loan). The unpaid loan balance for purposes of computing the allocated loan amount under the loan agreement was \$80 million. To obtain the lien release, *B* paid \$29,333,333 to reduce the unpaid principal on the loan. This amount was determined as—

$$1.10 \times \$80,000,000 \times \left(\frac{[\$5,000,000 + \$25,000,000]}{[\$5,000,000 + \$25,000,000 + \$60,000,000]} \right)$$

(iv) Immediately before and after the lien release and paydown, the values of properties X_2 through X_9 were as shown in the right-hand column in the table above. Thus, the aggregate fair market value (\$39 million) of the interests in real property that secured the loan immediately after the release of the lien was less than 80 percent of the loan's adjusted issue price (\$49,666,667). ($\$49,666,667 = \$79,000,000 - \$29,333,333$). ($[39,000,000 / 49,666,667] = 78.5$ percent).

(2) Analysis.

(i) Under § 1.860G-2(a)(8), *R*'s release of the liens on properties X_2 and X_3 causes the loan to cease to be a qualified mortgage unless the release takes place in a transaction that satisfies either paragraph (a)(8)(i) or paragraph (a)(8)(ii) of § 1.860G-2. The release of the liens on X_2 and X_3 does not satisfy § 1.860G-2(a)(8)(ii) because it is not pursuant to a defeasance. The release of the liens on X_2 and X_3 , however, satisfies § 1.860G-2(a)(8)(i) if the transaction in which the liens are released meets the requirements of § 1.860G-2(a)(8)(i)(A) and § 1.860G-(a)(8)(i)(B).

(ii) The transaction in which the liens were released resulted from the exercise of an option that is unilateral within the meaning of § 1.1001-3(c)(3). Thus, the transaction is not a significant modification as defined in § 1.860G-2(b)(2) and therefore is described in § 1.860G-2(a)(8)(i)(A). In addition, however, to satisfy § 1.860G-2(a)(8)(i)(B), the loan must continue to be principally secured by an interest in real property as determined by § 1.860G-2(b)(7).

(iii) The release of the liens on X_2 and X_3 does not satisfy the 80-percent test in § 1.860G-2(b)(7)(ii) or the alternative test in § 1.860G-2(b)(7)(iii). The loan, however, continues to be treated as principally secured by an interest in real property if the release and the associated paydown of the loan are within the scope of section 5 of this revenue procedure.

(iv) The release of the liens on properties X_2 and X_3 is not part of a grandfathered transaction described in section 5.02 of this revenue procedure because *B* issued the loan on a date after December 6, 2010.

(v) The release of the liens on properties X_2 and X_3 , however, satisfies section 5.03 of this revenue procedure if it is part of a "qualified paydown transaction." First, the transaction involves a release of a lien on an interest in real property and contains a payment by the borrower that results in a reduction in the adjusted issue price of the loan. Second, because the transaction is pursuant to the terms of the loan document and is not a modification for purposes of § 1.1001-3, the condition in section 5.03(1) of this revenue procedure is satisfied. Third, the payment by the borrower to reduce the adjusted issue price of the loan is a "qualified amount" because it is not less than the amount described in section 5.04(2) of this revenue procedure. The \$29,333,333 amount by which the loan was paid down (the contractually determined allocated loan amount) is greater than the minimum amount of \$26,333,333, which is required by section 5.04(2). ($\$26,333,333 = [79,000,000 \times (30,000,000 / 90,000,000)]$). (The value of X_1 at origination is not included in the denominator because X_1 did not secure the

loan immediately before the lien release.) Thus, the transaction is a qualified paydown transaction within the meaning of section 5.03 of this revenue procedure, and, therefore, under section 6 of this revenue procedure, the Service will not challenge the mortgage loan's status as a qualified mortgage on the grounds that, following the release of the liens, it fails to continue to be principally secured by an interest in real property for purposes of section 860G(a)(3)(A) and § 1.860G-2(a)(8)(i)(B).

.03 Example 3

(1) Facts.

(i) Assume that the facts are the same as (i) of Example 2, except that at origination there was also a tenth property (X_{10}) securing the loan. Property X_{10} was an "outparcel," which had not been appraised at the time of origination of the loan and to which L had not assigned any value in underwriting the loan. The loan documents at origination granted B an unconditional right to demand a release of the lien on X_{10} at any time, without making any special payment on the loan. Although the value of property X_{10} was small compared to properties X_1 through X_9 , it was positive at all times relevant to this example. Moreover, at the time of the lien release described below, the servicer of the loan knew or had reason to know that the fair market value of X_{10} had been positive at origination.

(ii) At the time when the loan was originated and the liens were created, the fair market values of the ten properties securing the loan were as shown in the center column below. Except for property X_{10} , the appraised values at that time were the same. Immediately before and after the lien release, the fair market values of properties X_2 through X_{10} were as shown in the right-hand column below. (Except for property X_{10} , the information in this table is the same as that in Facts (ii) of Example 2.)

Real Property Interest	Fair market value at origination	Fair market value at lien release
X_1	\$20 million	n/a
X_2	\$5 million	\$3.25 million
X_3	\$25 million	\$16.25 million
X_4 through X_9	\$60 million	\$39 million
X_{10}	Greater than zero	Greater than zero

(iii) After Date 1, B exercised its right to demand a release of the lien on property X_{10} (the outparcel). B did not make any payment on the loan in connection with the lien release.

(2) Analysis.

(i) Under § 1.860G-2(a)(8), R 's release of the lien on property X_{10} causes the loan to cease to be a qualified mortgage unless the release takes place in a transaction that satisfies either paragraph (a)(8)(i) or paragraph (a)(8)(ii) of § 1.860G-2. The lien

release on property X_{10} does not satisfy § 1.860G–2(a)(8)(ii) because it is not pursuant to a defeasance. The lien release on property X_{10} satisfies § 1.860G–2(a)(8)(i) only if the transaction in which it occurs meets the requirements of both § 1.860G–2(a)(8)(i)(A) and § 1.860G–2(a)(8)(i)(B).

(ii) The transaction in which the lien was released resulted from the exercise of an option that is unilateral within the meaning of § 1.1001–3(c)(3). Thus, the transaction is not a significant modification as defined in § 1.860G–2(b)(2) and therefore is described in § 1.860G–2(a)(8)(i)(A). In addition, however, to satisfy § 1.860G–2(a)(8)(i)(B), the loan must continue to be principally secured by an interest in real property as determined by § 1.860G–2(b)(7).

(iii) The release of the lien on X_{10} does not satisfy the 80-percent test in § 1.860G–2(b)(7)(ii) or the alternative test in § 1.860G–2(b)(7)(iii).

(iv) The unilateral right to release the lien on property X_{10} without paying down the loan is not a grandfathered transaction described in section 5.02 of this revenue procedure because B issued the loan after December 6, 2010.

(v) The release of the lien on property X_{10} is within the scope of section 5.03 of this revenue procedure only if it is pursuant to a “qualified paydown transaction.” Under the loan documents, the allocated loan amount of property X_{10} may be zero, but that amount does not satisfy section 5.04(2) of this revenue procedure. Although property X_{10} was assigned no value for underwriting purposes, the servicer knew or had reason to know that, at origination, it had a value greater than \$0. Therefore, the amount required by section 5.04(2) of this revenue procedure is greater than zero.

(vi) Because the transaction does not meet the requirements either of section 5 of this revenue procedure or of § 1.860G–2(b)(7)(ii)–(iii), § 1.860G–2(a)(8)(i)(B) is not satisfied, and § 1.860G–(a)(8) causes the loan to cease being a qualified mortgage on the date that the lien is released.

SECTION 8. EFFECTIVE DATE

This revenue procedure applies to releases of liens on interests in real property securing mortgage loans held by REMICs that are effected on or after September 16, 2009.

SECTION 9. DRAFTING INFORMATION

The principal author of this revenue procedure is Richard LaFalce of the Office of Associate Chief Counsel (Financial Institutions and Products). For further information, contact Mr. LaFalce on (202) 622–3930 (not a toll-free call).