

**Internal Revenue Service**

Number: **201649009**  
Release Date: 12/2/2016  
Index Number: 860D.00-00

Department of the Treasury  
Washington, DC 20224

Third Party Communication: None  
Date of Communication: Not Applicable

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CC:FIP:B01  
PLR-112666-16  
Date: September 7, 2016

**Legend:**

- Trustee =
- Trustee 2 =
- Trustee 3 =
- Trustee 4 =
- State 1 =
- State 2 =
- Year 1 =
- Year 2 =
- Company =
- Exchange =
- Date 1 =
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Dear :

This letter is in reply to a letter dated April 4, 2016, in which Trustee, solely in its capacity as trustee or indenture trustee of real estate mortgage investment conduits (“REMICs”) identified in Appendix A (each a “Taxpayer” and, collectively, the “Taxpayers”), requests certain rulings in connection with each Taxpayer’s qualification as a REMIC under Sections 860A-860G of the Internal Revenue Code. Specifically, you have asked for the following rulings:

1. In the case of each Taxpayer for which a timely, valid and continuing REMIC election has been made in accordance with the applicable Governing Agreement (as defined below), none of (i) the execution of the Settlement Agreement (as defined below), (ii) the methodology for determining, and the right to receive, an Allocable Share (as defined below) of the Settlement Payment (as defined below), or (iii) the receipt of an Allocable Share of the Settlement Payment, will cause such Taxpayer to fail to meet the requirements of Section 860D(a)(4).
2. In the case of each Taxpayer for which a timely, valid and continuing REMIC election has been made in accordance with the applicable Governing Agreement, the receipt of an Allocable Share of the Settlement Payment will be treated as a payment received on qualified mortgages within the meaning of Section 1.860G-2(g)(1)(ii) of the Income Tax Regulations.

3. In the case of each Taxpayer for which a timely, valid and continuing REMIC election has been made in accordance with the applicable Governing Agreement, the distribution of an Allocable Share amount in accordance with the applicable Governing Agreement and the Settlement Agreement will not cause any regular interest in such Taxpayer to fail to qualify as a “regular interest” as defined in Section 860G(a)(1) or the sole class of residual interest in such Taxpayer to fail to qualify as a “residual interest” as defined in Section 860G(a)(2).

4. In the case of each Taxpayer for which a timely, valid and continuing REMIC election has been made in accordance with the applicable Governing Agreement, the receipt of an Allocable Share amount will not be treated as a “prohibited transaction” within the meaning of Section 860F(a)(2) or as a contribution that is subject to the tax imposed under Section 860G(d)(1).

## **Facts**

### *Background*

Trustee acts solely as trustee for A residential mortgage-backed securitization trusts (“RMBS”), and solely as indenture trustee for B RMBS. Each RMBS trust comprises one or more Taxpayers, each of which has elected to be treated as a REMIC within the meaning of Section 860D. Each of the A RMBS trusts for which Trustee acts as trustee is evidenced by a separate pooling and servicing agreement (“PSA”). The B RMBS trust for which Trustee acts as indenture trustee is evidenced by an indenture and an amended and restated trust agreement (“ARTA”). In addition, each Taxpayer has also entered into the related mortgage loan purchase agreements and assignment and assumption agreements (each a “Governing Agreement” and collectively, the “Governing Agreements”). Under the Governing Agreements, Trustee serves as trustee or indenture trustee for each of the Taxpayers. The laws of State 1 or State 2, as the case may be, govern the rights and obligations of the parties to the Governing Agreements, including the Trustee. The annual accounting period for each Taxpayer is the calendar year and each Taxpayer utilizes the accrual method of accounting for maintaining its accounting books and filing its U.S. federal income tax return.

Company is a bank holding company whose shares of common stock are traded on Exchange. Company and its subsidiaries (collectively, “Bank”) constitute a banking and financial services organization.

Taxpayers function as residential mortgage loan securitization vehicles. The Taxpayers were established during the period of Year 1 through Year 2 for the primary purpose of raising financing in the securitization market with respect to pools of residential real estate mortgage loans originated or acquired by Bank, the sponsor of the mortgage securitizations.

The securitization process for each Taxpayer generally occurred as follows:

- (1) One or more Bank entities (the “Seller”), sold portfolios of residential mortgage loans (the “Mortgage Loans”) to another Bank entity (the “Depositor”).
- (2) For RMBS trusts governed by PSAs, the Depositor conveyed the Mortgage Loans to the related trustee to be held in trust. For RMBS trusts governed by an Indenture and ARTA, the Depositor conveyed the Mortgage Loans to a State 2 statutory trust for the benefit of the noteholders, and the owner trustee, on behalf of the statutory trust, assigned to the indenture trustee all of the statutory trust’s right, title and interest in and to the Mortgage Loans.
- (3) Several classes of RMBS certificates or notes representing various entitlements to the underlying mortgage pool’s cash flows then were issued and sold through an underwriter or underwriters to investors (“Investors”).
- (4) In certain instances, all or part of a class of issued certificates or notes may have been retained by Bank.
- (5) For each RMBS trust, a master servicer, servicer, or both (“Master Servicer”) was charged with responsibility for, among other things, collecting debt service payments on the Mortgage Loans, taking any necessary enforcement action against borrowers, and remitting payments on a monthly basis for distribution to the Investors.

In each securitization, an election was made to treat the Mortgage Loans and certain related assets held by the applicable trust as one or more REMICs under the Code.

The Governing Agreements for the securitizations contain a series of representations and warranties made for the benefit of each RMBS trust. In general, these include representations that the Mortgage Loans were underwritten in all material respects in accordance with certain underwriting guidelines, that the Mortgage Loans conform in all material respects to their descriptions in the investor disclosure documents, and that the origination, underwriting and collection practices of the Seller have been lawful and customary in the mortgage lending and servicing business.

### *The Dispute*

In a letter dated Date 1 to Bank, a group of institutional investors (“Institutional Investors”) alleged that a significant number of the Mortgage Loans, with respect to which the Institutional Investors held investment certificates or notes, had been sold or deposited into the trusts based on false and/or fraudulent representations and warranties by the mortgage originators, the Seller, and/or the Depositor. These assertions were based in part on the alleged excessive early default and foreclosure rates on and in respect to the Mortgage Loans.

Bank and the Institutional Investors engaged in extensive negotiations over a period of more than C years in an effort to reach a settlement relating to the alleged breaches of the Governing Agreements. The negotiations resulted in a settlement (the “Settlement”) memorialized in a Settlement Agreement (the “Settlement Agreement”) between the Institutional Investors and Bank. Under the terms of the Settlement Agreement, the Institutional Investors then submitted a letter to Trustee, as a party to the underlying Governing Agreements, expressing their support for the Settlement and requesting that Trustee accept it. The Settlement Agreement involves a total of D RMBS trusts. Trustee acts as trustee for E of the RMBS trusts, however only F of these are structured as REMICs. Trustee 2, Trustee 3, and Trustee 4 (collectively with Trustee, the “Settlement Trustees”) act as trustee, indenture trustee, or separate trustee for a total of G RMBS Trusts, each of which is structured as one or more REMICs.

The Settlement Agreement defines “Accepting Trustee” as a trustee that has accepted the Settlement Agreement on behalf of an RMBS trust, or on behalf of only one or more separate Mortgage Loan groups contained within an RMBS trust. Trustee constitutes an Accepting Trustee under the Settlement Agreement.

The Settlement Agreement defines “Settlement Trust” as each RMBS trust, including each Taxpayer, for which the applicable Settlement Trustee accepted and signed the Settlement Agreement with respect to all Mortgage Loans held by the trust and in the case where the applicable Settlement Trustee accepted and signed the Settlement Agreement on behalf of one or more, but not all of the Mortgage Loan groups contained within an RMBS trust, each such separate Mortgage Loan group for which the applicable Settlement Trustee accepted and signed the Settlement Agreement.

Under the Settlement Agreement, any RMBS trust or specific Mortgage Loan group contained within an RMBS trust for which the Settlement Agreement was not accepted is referred to as a “Non-Settling Trust”. None of the RMBS trusts, in their entirety, constitute a Non-Settling Trust. H separate Mortgage Loan groups contained within certain RMBS trusts are Non-Settling Trusts. Each RMBS trust, and each Non-Settling Trust, is treated as a separate “trust” for purposes of determining payment under the Settlement Agreement.

In Month, Year, Trustee accepted and signed the Settlement Agreement on behalf of the Taxpayers.

### *The Settlement Agreement*

The Settlement Agreement has two principal terms. One, a settlement payment to be allocated among all of the Settlement Trusts (the “Settlement Payment”), and two, a release of claims against Bank that arise under or are based upon the Governing Agreements or that relate to the origination, sale, delivery, servicing, and/or

administration of Mortgage Loans to or in the Taxpayers. The Settlement Agreement does not contain releases regarding the servicing of Mortgage Loans within any of the Settlement Trusts, except as it pertains to alleged failures by any Bank entity to provide notice of representation and warranty violations or to otherwise enforce claims for breaches of representations and warranties.

The Settlement Payment will be allocated among the Settlement Trusts in accordance with an agreed allocation formula that is based on the past and expected future losses associated with the Mortgage Loans held in all of the RMBS trusts. An independent financial advisor (the "Expert") retained by the Accepting Trustees will perform any calculations required in connection with the allocation formula, and those allocation calculations will be treated as final and accepted by the parties, absent bad faith or manifest error.

The Settlement Payment allocations are determined by reference to the amount of "net losses" incurred by each Settlement Trust and each Non-Settling Trust. The Expert will calculate the amount of net losses for each Settlement Trust and for each Non-Settling Trust that have been incurred and are estimated to be incurred from each trust's inception to its expected termination. The amount will be expressed as a percentage of the sum of the net losses that are estimated to be borne by the Settlement Trusts and Non-Settling Trusts (the "Net Loss Percentage").

The Expert will calculate the allocable share of the Settlement Payment for each Settlement Trust and for each Non-Settling Trust by multiplying the amount of the Settlement Payment by the Net Loss Percentage for each Settlement Trust and Non-Settling Trust (the "Allocable Share").

Within 1 days of the completion of the Expert's calculation of each Settlement Trust's Allocable Share, and at the direction of the Trustee, Bank will wire each Settlement Trust's Allocable Share into the related trust's collection or distribution account for further distribution to Investors.

Taxpayers represent that the distribution provisions of the Settlement Agreement do not alter the rights or obligations of any of REMIC trust or REMIC interests therein and that the distribution of Allocable Shares to Investors is consistent with the distribution provisions contained in the Governing Agreements that provide for the distribution of subsequent recoveries or unscheduled principal amounts received. The Settlement Agreement requires that the distribution of a REMIC trust's Allocable Share to its Investors be consistent with the applicable provisions contained in the Settlement Trust's Governing Agreement that provide for the distribution of subsequent recoveries or unscheduled principal amounts received, as the case may be. The Settlement Agreement provides that each Settlement Trust's distribution of Allocable Share amounts to Investors be characterized as distributions of principal in respect of REMIC regular interest classes entitled to receive such distributions. Distributions to the Investors who hold regular interest classes entitled to receive principal will be made

either in the order of seniority of such classes or on a pro-rata basis in accordance with applicable senior-subordinate principal distribution priority rules.

In the event a REMIC's distribution waterfall provisions and its current Allocable Share amount available for distribution would combine to result in a distribution of any amount on or in respect of any trust's residual interest class, whether on the date of the distribution of an Allocable Share or on any subsequent distribution date that is not the final distribution date under the Governing Agreement, such amount shall not be paid on or distributed to such residual class. Instead, the affected Settlement Trustee would retain this amount in the applicable trust's distribution account, and on the next distribution date, the Settlement Trustee would distribute the retained amount to the applicable regular interest Investors entitled to receive a principal distribution of subsequent recoveries or unscheduled payments of principal.

Consistent with the Governing Agreements, the Settlement Agreement provides for the allocation of a notional amount to each REMIC's issued certificates or notes equal to the REMIC's distributed Allocable Share, in order to restore the outstanding principal balance of such certificates or notes attributable to the prior write down of previously incurred realized losses on Mortgage Loans. Specifically, a notional amount equal to a REMIC's Allocable Share will be applied in the reverse order of previously allocated realized losses to increase, on a pro rata basis within each class, the class certificate balance, component balance, component principal balance, or note principal balance of each class of certificates or notes (other than any class of REMIC residual interests) to which realized losses have been previously allocated. An increase to the principal balance of any class of certificates or notes shall not exceed the aggregate amount of realized losses previously allocated to such class under the Governing Agreements. In addition, holders of certificates or notes whose class principal balances are restored will not be entitled to any payment in respect of interest on the restored amount for any interest accrual period relating to the distribution date on which such increase occurs or on any prior distribution date.

## **Law and Analysis**

### Issue #1 and #2: Qualified Mortgages, Permitted Investments, and Payments Received on Qualified Mortgages

Section 860D(a) provides that the terms "real estate mortgage investment conduit" and "REMIC" mean any entity that meets several requirements including that as of the close of the third month beginning after the startup day and at all times thereafter, substantially all of the assets of the entity consist of qualified mortgages and permitted investments.

Section 860G(a)(3)(A) defines qualified mortgage to include 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 within the 3-month period beginning on the startup day if, except as provided in regulations, such purchase is pursuant to a fixed-price contract in effect on the startup day, or (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 (III) is purchased by the REMIC pursuant to a fixed price contract in effect on the startup day.

Section 860G(a)(5) defines “permitted investments” to mean any cash flow investment, qualified reserve asset, or foreclosure property. Section 860G(a)(6) defines “cash flow investment” to mean any investment of amounts received under qualified mortgages for a temporary period before distribution to holders of interests in the REMIC.

Section 1.860D-1(b)(3)(i) provides that, for purposes of the asset test of section 860D(a)(4), substantially all of a qualified entity’s assets are qualified mortgages and permitted investments if the qualified entity owns no more than a *de minimis* amount of other assets. Section 1.860D-1(b)(3)(ii) provides that 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 REMIC’s assets.

Section 1.860G-2(g)(1)(ii) states that, in determining what is a cash flow investment, the term “payments received on qualified mortgages” includes, among other payments, payments by a sponsor or prior owner in lieu of the sponsor’s or prior owner’s repurchase of a defective obligation, as defined in Section 1.860G-2(g)(1)(ii)(f), that was transferred to the REMIC in breach of a customary warranty.

Section 1.860G-2(f)(1) defines a defective obligation as a mortgage subject to certain defects including that the mortgage does not conform to a customary representation or warranty given by the sponsor or prior owner of the mortgage regarding the characteristics of the mortgage, or the characteristics of the pool of mortgages of which the mortgage is a part.

Each Taxpayer’s right to receive its Allocable Share under the Settlement Agreement arises from the Mortgage Loans. The Allocable Share for each Taxpayer is a contract claim that stems directly from the rights held by the Trustee on behalf of each Taxpayer and its status as a REMIC. Therefore, a Taxpayer’s right to receive an Allocable Share does not constitute an asset that is newly acquired by a REMIC after its startup date. The execution of the Settlement Agreement, the methodology used to determine a Taxpayer’s Allocable Share, and the receipt of the Allocable Share by a Taxpayer, arise from each Taxpayer’s interest in the Mortgage Loans and its status as a REMIC, and, therefore, will not cause any Taxpayer to fail to meet the requirements under Section 860D(a)(4).



The Allocable Share under Settlement Agreement is the result of a dispute between the Institutional Investors and Bank regarding whether the Mortgage Loans conveyed to each Taxpayer violated customary representations and warranties under the respective Governing Agreements. For purposes of the REMIC rules, a defective obligation includes mortgages that do not conform to a customary representation or warranty given by the sponsor or prior owner of the mortgage regarding the characteristics of the mortgage, or the characteristics of the pool of mortgages of which the mortgage is a part. Each Taxpayer's right to the Allocable Share under the Settlement Agreement is akin to a payment received by such Taxpayer from a sponsor or prior owner in lieu of the sponsor or prior owner's repurchase of such a defective obligation. Therefore, pursuant to Section 1.860G-2(g)(1)(ii), the Allocable Share will be considered a payment received on a qualified mortgage pursuant to Section 1.860G-2(g)(1)(ii).

### Issue #3: Regular and Residual Interests

Section 860G(a)(1) defines a "regular interest" in a REMIC to mean any interest in a REMIC which is issued on the startup day with fixed terms and which is designated as a regular interest if (A) such interest unconditionally entitles the holder to receive a specified principal amount (or other similar amount), and (B) interest payments (or other similar amount), if any, with respect to such interest at or before maturity (i) are payable based on a fixed rate (or to the extent provided in regulations, at a variable rate), or (ii) consist of a specified portion of the interest payments on qualified mortgages and such portion does not vary during the period such interest is outstanding.

Section 860G(a)(2) defines a "residual interest" in a REMIC to mean an interest in a REMIC which is issued on the startup day, which is not a regular interest, and which is designated as a residual interest.

Section 860G(a)(9) defines the term "startup day" to mean the day on which the REMIC issues all of its regular and residual interests.

Section 1.860G-1(a)(1) provides that, 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 Section 1.860D-1(d)(2)(ii) in the time and manner specified in Section 1.860D-1(d)(2). Section 1.860G-1(c) provides that a residual interest is an interest in a REMIC that is issued on the startup day and that is designated as a residual interest by providing the information specified in Section 1.860D-1(d)(2)(ii) at the time and in the manner provided in Section 1.860D-1(d)(2). A residual interest need not entitle the holder to any distributions from the REMIC.

Section 1.860G-1(a)(4) provides that, for purposes of Section 860G(a)(1), a regular interest in a REMIC has fixed terms on the startup day if, on the startup day, the REMIC's organizational documents irrevocably specify (i) the principal amount (or other

similar amount) of the regular interest, (ii) the interest rate or rates used to compute any interest payments (or other similar amounts) on the regular interest, and (iii) the latest possible maturity date of the interest.

A REMIC regular interest must be issued on the startup date with fixed terms. A REMIC residual interest is an interest in the REMIC issued on the startup date that is not a regular interest. Taxpayers represent that the distribution provisions of the Settlement Agreement do not alter the rights or obligations of any of the Taxpayers or the Investors' interests therein and that the distribution of Allocable Shares to Investors is consistent with the distribution provisions contained in the Governing Agreements that provide for the distribution of subsequent recoveries or unscheduled principal amounts received. Distributions that are made pursuant to these provisions are treated as and constitute distributions of underlying Mortgage loan principal collections. The Settlement Agreement also provides that should a principal payment become payable to a class of REMIC residual interests, such payment will be maintained in the distribution account and the Trustee shall distribute the retained amount to the applicable regular interest Investors entitled to receive a principal distribution of subsequent recoveries or unscheduled payments of principal. Accordingly, the distribution of an Allocable Share to Investors will not cause any regular interest in a Taxpayer to fail to qualify as a regular interest or the sole class of residual interest in the Taxpayer to fail to qualify as a residual interest.

#### Issue #4: Tax on Contributions after Startup Date and Prohibited Transaction

Except as provided in Section 860G(d)(2), Section 860G(d)(1) imposes on any amount that is contributed to a REMIC after the startup day a tax equal to 100 percent of the amount contributed. Section 860G(d)(2) provides that the tax on contributions after the startup date shall not apply to any contribution which is made in cash and is (A) a contribution to facilitate a cleanup call (as defined in regulations) or a qualified liquidation, (B) a payment in the nature of a guarantee, (C) a contribution during the 3-month period beginning on the startup day, (D) a contribution to a qualified reserve fund by any holder of a residual interest in the REMIC, or (E) any other contribution permitted in regulations.

Section 860F(a)(1) imposes a tax equal to 100 percent of the net income derived from prohibited transactions. Section 860F(a)(2) defines prohibited transaction to mean one of the following: (A) 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) the receipt of any income attributable to any asset which is neither a qualified mortgage nor a permitted investment, (C) the receipt by the REMIC of any amount representing a fee or other compensation for services, or (D) gain from

the disposition of any cash flow investment other than pursuant to any qualified liquidation.

As discussed above, the receipt of the Allocable Share by a Taxpayer arises from the Mortgage Loans and each Taxpayer's status as a REMIC. The Allocable Share arises in connection with each Taxpayer's interest in the Mortgage Loans and is neither a contribution of cash to the REMIC nor is it listed as a prohibited transaction in Section 860F(a)(2). As a result, the receipt of the Allocable Share by a Taxpayer will not be treated as a prohibited transaction within the meaning of Section 860F(a)(2) or as a contribution subject to tax under Section 860G(d)(1).

## Conclusion

We hereby rule as follows:

1. In the case of each Taxpayer for which a timely, valid and continuing REMIC election has been made in accordance with the applicable Governing Agreement, none of (i) the execution of the Settlement Agreement, (ii) the methodology for determining, and the right to receive, an Allocable Share of the Settlement Payment, or (iii) the receipt of an Allocable Share of the Settlement Payment will cause the Taxpayer to fail to meet the requirements of Section 860D(a)(4).
2. In the case of each Taxpayer for which a timely, valid and continuing REMIC election has been made in accordance with the applicable Governing Agreement, the receipt of an Allocable Share of the Settlement Payment will be treated as a payment received on qualified mortgages within the meaning of Section 1.860G-2(g)(1)(ii).
3. In the case of each Taxpayer for which a timely, valid and continuing REMIC election has been made in accordance with the applicable Governing Agreement, the distribution of an Allocable Share amount in accordance with the applicable Governing Agreement and the Settlement Agreement will not cause any regular interest in such Taxpayer to fail to qualify as a "regular interest" as defined in Section 860G(a)(1) or the sole class of residual interest in such Taxpayer to fail to qualify as a "residual interest" as defined in Section 860G(a)(2).
4. In the case of each Taxpayer for which a timely, valid and continuing REMIC election has been made in accordance with the applicable Governing Agreement, the receipt of an Allocable Share amount will not be treated as a "prohibited transaction" within the meaning of Section 860F(a)(2) or as a contribution that is subject to the tax imposed under Section 860G(d)(1).

This ruling's application is limited to the facts, representations, Code sections, and regulations cited herein. Except as specifically ruled upon above, no opinion is

expressed concerning any federal income tax consequences related to the facts herein under any other provisions of the Code. Specifically, we do not rule whether any Taxpayer qualifies as a REMIC under Sections 860A-860G or whether any Mortgage Loan qualifies as a qualified mortgage as defined in Section 860G(a)(3).

This ruling is directed only to the taxpayers that requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent. In accordance with the provisions of a Power of Attorney on file, we are sending a copy of this ruling letter to your authorized representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

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Jason Kurth  
Assistant to the Branch Chief, Branch 1  
Office of Associate Chief Counsel  
(Financial Institutions & Products)