

§ 1.6050H-1

26 CFR Ch. I (4-1-08 Edition)

- (g) Effective date.
- (1) In general.
- (2) Points.

[T.D. 8571, 59 FR 63250, Dec. 8, 1994]

§ 1.6050H-1 Information reporting of mortgage interest received in a trade or business from an individual.

(a) Information reporting requirement—

(1) *Overview.* The information reporting requirements of section 6050H, this section, and § 1.6050H-2 apply to an interest recipient who receives at least \$600 of interest on a qualified mortgage for a calendar year or who makes a reimbursement of interest described in § 1.6050H-2(a)(2)(iv). Paragraph (b) of this section defines qualified mortgage. Paragraph (c) of this section defines interest recipient. Paragraph (d) of this section contains additional rules relating to the reporting requirement for foreign persons, cooperative housing corporations, and nonresident alien individuals. Paragraph (e) of this section contains rules for determining the amount of interest received on a mortgage for a calendar year. Paragraph (f) of this section provides rules for determining when prepaid interest in the form of points is taken into account as interest for purposes of section 6050H, this section, and § 1.6050H-2.

(2) *Reporting requirement.* Except as otherwise provided in this section and § 1.6050H-2, an interest recipient that either receives at least \$600 of interest on a qualified mortgage for a calendar year or makes reimbursements of interest described in § 1.6050H-2(a)(2)(iv) must, with respect to that interest—

- (i) File an information return with the Internal Revenue Service; and
- (ii) Furnish a statement to the payor of record on the mortgage.

(3) *Optional reporting.* An interest recipient may, but is not required to, report its receipt of less than \$600 of interest on a qualified mortgage for a calendar year. Similarly, an interest recipient also may report reimbursements of interest on a qualified mortgage even if the reimbursements are not required to be reported by § 1.6050H-2(a)(2)(iv). An interest recipient that chooses, but is not required, to file a return as provided in this section and § 1.6050H-2(a) or to furnish a statement

as provided in this section and § 1.6050H-2(b) is subject to the requirements of this section and § 1.6050H-2.

(b) *Qualified mortgage—*(1) *In general.* A mortgage is a qualified mortgage if the payor of record on the mortgage is an individual, including an individual acting in a capacity as a sole proprietor of a business. A mortgage is not a qualified mortgage if the payor of record on the mortgage is not an individual (such as a trust, estate, partnership, association, company, or corporation), even though an individual is a co-borrower on the mortgage and all the trustees, beneficiaries, partners, members, or shareholders of the payor of record are individuals.

(2) *Mortgage—*(i) *In general.* Except as otherwise provided in paragraphs (b)(2)(ii) and (b)(2)(iii) of this section, an obligation is a mortgage if real property (regardless of where located) secures all or part of the obligation. An interest recipient must determine whether real property secures an obligation at the time the obligation is created or, if security is added or removed at a later time, at that later time. Real property includes a manufactured home as defined in section 25(e)(10). An obligation includes a line of credit or a credit card obligation. For purposes of this section and § 1.6050H-2, a borrower incurs a line of credit or credit card obligation when the borrower first has the right to borrow against the line of credit or credit card, whether the borrower actually borrows an amount at that time. An obligation will not fail to be treated as a mortgage solely because, under an applicable State or local homestead law or other debtor protection law in effect on August 16, 1986, the security interest is ineffective or the enforceability of the security interest is restricted.

(ii) *Transitional rule for certain obligations existing on December 31, 1984—*(A) *In general.* An obligation that existed on December 31, 1984, is not a mortgage if, at the time the payor of record incurred the obligation, the interest recipient reasonably classified the obligation as other than a mortgage, real property loan, real estate loan, or other similar type of obligation. A reasonable classification of an obligation

must be consistent with industry practices and determined according to the purpose of the obligation, the property securing the obligation, and any other reasonable factor. For purposes of this paragraph (b)(2)(ii)(A), an obligation was not reasonably classified as other than a mortgage, real property loan, real estate loan, or other similar type of obligation if, at the time the payor of record incurred the obligation, more than one-half of the obligations in the particular class in which the obligation was classified were secured primarily by real property.

(B) *Examples.* The following examples illustrate the rules of paragraph (b)(2)(ii)(A) of this section:

Example 1. B offers an unsecured line of credit and a line of credit secured by real property. B separately markets the two credit lines, and they are governed by different terms and conditions. For accounting purposes, B classifies the two types of loans as a single class. For purposes of paragraph (b)(2)(ii)(A) of this section, the two types of loans are different classes of obligations.

Example 2. B operates a program to make loans to small businesses. Depending on the amount of the loan and the credit history of the borrower, B may or may not require security for the loan. If B requires security, it may consist of real or personal property. For accounting purposes, B classifies all of the loans within this program as a single class. For purposes of paragraph (b)(2)(ii)(A) of this section, all of the loans within this program may be classified as belonging to a single class.

(iii) *Transitional rule for certain obligations existing on December 31, 1987.* An obligation that was incurred after December 31, 1984, and that existed on December 31, 1987, is not a mortgage if the obligation is not primarily secured by real property.

(3) *Payor of record.* A payor of record on a mortgage is the person carried on the books and records of the interest recipient as the principal borrower on the mortgage. If the books and records of the interest recipient do not indicate which borrower is the principal borrower, the interest recipient must designate a borrower as the principal borrower.

(4) *Lender of record.* The lender of record is the person who, at the time the loan is made, is named as the lender on the loan documents and whose right to receive payment from the

payor of record is secured by the payor of record's principal residence. An intention by the lender of record to sell or otherwise transfer the loan to a third party subsequent to the close of the transaction will not affect the determination of who is the lender of record.

(c) *Interest recipient—(1) Trade or business requirement.* Except as provided in paragraph (c)(4) of this section, an interest recipient is a person that is engaged in a trade or business (whether or not the trade or business of lending money) and that, in the course of the trade or business, either receives interest on a mortgage or makes a reimbursement of interest on a qualified mortgage described in § 1.6050H-2(a)(3). For purposes of this paragraph (c)(1), if a person holds a mortgage which was originated or acquired in the course of a trade or business, the interest on the mortgage is considered to be received in the course of that trade or business. For example, if real estate developer A lends money to individual B to enable B to purchase a house in a subdivision owned and developed by A, and B gives a mortgage to A for the loan, A is an interest recipient for interest received on the mortgage. Alternatively, if C, a person engaged in the trade or business of being a physician, lends money to individual D to enable D to purchase C's home, and D gives a mortgage to C for the loan, C is not an interest recipient for interest received on the mortgage, because C will not receive the interest in the course of the trade or business of being a physician.

(2) *Interest received or collected on behalf of another person—(i) General rule.* Except as otherwise provided in paragraph (c)(2)(ii) or (3) of this section, a person that, in the course of its trade or business, receives or collects interest on a mortgage on behalf of another person (e.g., the lender of record) is the interest recipient (the initial recipient) for the mortgage. In this case, the reporting requirement of paragraph (a) of this section does not apply to the transfer of interest from the initial recipient to the person for which the initial recipient receives or collects the interest. For example, if financial institution A collects interest on behalf

of financial institution B, A is the initial recipient for the mortgage and is subject to the reporting requirements of section 6050H, and B is not required to report the interest received on the mortgage from A.

(ii) *Exception—(A) Scope of exception.* Paragraph (c)(2)(i) of this section does not apply for any period for which—

(1) An initial recipient does not possess the information needed to comply with the reporting requirement of paragraph (a) of this section; and

(2) The person for which the interest is received or collected would receive the interest in the course of its trade or business if the interest were paid directly to that person. For purposes of this paragraph (c)(2)(ii)(A)(2), if interest is received or collected on behalf of a person other than an individual, that person is presumed to receive interest in a trade or business.

(B) *Application of exception.* If the exception provided by this paragraph (c)(2)(ii) applies, the person for which the interest is received or collected is the interest recipient with respect to interest received or collected on the mortgage during the period described in this paragraph (c)(2)(ii).

(3) *Interest received in the form of points.* For purposes of this section and § 1.6050H-2, in the case of prepaid interest received in the form of points (as defined in paragraph (f) of this section):

(i) *In general.* Except as provided in paragraph (c)(3)(ii) of this section, only the lender of record or a qualified person (as defined in § 1.6050H-2(d)(2)) is treated as receiving the points. The lender of record or qualified person is treated as receiving all points paid directly by the payor of record in connection with the purchase of the principal residence.

(ii) *If designation agreement is in effect.* If a designation agreement is executed pursuant to § 1.6050H-2(d) with respect to points, only the designated party under the agreement is treated as receiving points with respect to any mortgage to which the agreement applies. The designated party is treated as receiving all points with respect to any mortgage to which the agreement applies.

(4) *Governmental unit.* A governmental unit or an agency or instrumentality of a governmental unit that receives interest on a mortgage is an interest recipient without regard to the requirement of paragraph (c)(1) of this section that the interest be received in the course of a trade or business. A governmental unit or an agency or instrumentality of a governmental unit that is an interest recipient must designate an officer or employee to satisfy the reporting requirements of paragraph (a) of this section.

(5) *Examples.* The following examples illustrate the rules of paragraph (c) of this section:

Example 1. Financial institution F collects mortgage interest on behalf of financial institution G and deposits the amount collected into G's account held with F. F possesses the information needed to comply with the reporting requirement of paragraph (a) of this section. F is the interest recipient for the mortgage. G is not required to report.

Example 2. The facts are the same as in example (1), except that F does not possess the information needed to comply with the reporting requirement. G, the person for which F collects the interest, is the interest recipient for the mortgage. F is not required to report.

Example 3. S, an individual, sells real property to another individual, P, and takes back a mortgage from P to finance the sale. S does not receive the interest in the course of a trade or business. B, a bank, collects P's payments of principal and interest on behalf of S and deposits that amount into an account held at the bank in S's name. B does not possess the information needed to comply with the reporting requirement of paragraph (a) of this section. B is the interest recipient for P's mortgage without regard to paragraph (c)(2)(ii) of this section, because S would not receive the interest in the course of a trade or business. S is not required to report.

Example 4. X collects mortgage interest on behalf of Y, who would receive the interest in the course of a trade or business. X possesses the information needed to comply with the reporting requirement of paragraph (a) of this section. On July 1, 1988, Z assumes X's interest collection responsibilities. Z does not possess the information needed to comply with the reporting requirement of paragraph (a) of this section. X is the interest recipient for interest received from January 1, 1988, through June 30, 1988. Because Z does not possess the requisite information and Y would receive the interest in the

course of a trade or business, Y is the interest recipient for interest received from July 1, 1988, through December 31, 1988.

Example 5. On December 1, Borrower obtains from Lender funds with which to purchase an existing structure to be used as Borrower's principal residence. In connection with the mortgage, Lender charges Borrower \$300 as points. Borrower pays this amount to Lender at closing using unborrowed funds. In addition, Lender receives from Borrower with respect to the mortgage \$300 as interest (as determined under paragraph (e) of this section) other than points. Because Lender has received at least \$600 in interest, including points, with respect to Borrower's mortgage during the calendar year, Lender must report the payments in accordance with paragraph (a) of this section and §1.6050H-2. Under those sections, Lender must separately state on the information return and the statement to Borrower the \$300 received as interest (other than points) and the \$300 received as points.

(d) *Additional rules—(1) Reporting by foreign person.* An interest recipient that is not a United States person (as defined in section 7701(a)(30)) must report interest received on a qualified mortgage only if it receives the interest—

(i) At a location in the United States, or

(ii) At a location outside the United States if the interest recipient is—

(A) A controlled foreign corporation (within the meaning of section 957(a)), or

(B) A person, 50 percent or more of the gross income of which, from all sources for the three-year period ending with the close of the taxable year preceding the receipt of interest (or for such part of the period as the person was in existence), was effectively connected with the conduct of a trade or business within the United States.

(2) *Reporting with respect to non-resident alien individual—(i) In general.* The reporting requirement of paragraph (a) of this section does not apply if—

(A) The payor of record is a non-resident alien individual, and

(B) Real property located in the United States does not secure the mortgage.

(ii) *Nonresident alien individual status.* For purposes of paragraph (d)(2)(i)(A) of this section, an interest recipient must apply the following documentary evidence rules to determine whether a

payor of record is a nonresident alien individual:

(A) If interest is paid outside the United States, the interest recipient must satisfy the documentary evidence standard provided in §1.6049-5(c) with respect to the payor of record; and

(B) If interest is paid within the United States, the interest recipient must secure from the payor of record a Form W-8 or a substantially similar statement signed by the payor under penalty of perjury as described in §1.1441-1(e)(1).

For purposes of this paragraph (d)(2)(ii), the place of payment is the place where the payor of record completes the acts necessary to effect payment. An amount paid by transfer to an account maintained by an interest recipient in the United States or by mail to a United States address is considered to be paid within the United States.

(3) *Reporting by cooperative housing corporations.* For purposes of this section and §1.6050H-2, an amount received by a cooperative housing corporation from an individual tenant-stockholder that represents the tenant-stockholder's proportionate share of interest described in section 216(a)(2) is interest received on a qualified mortgage in the course of the cooperative housing corporation's trade or business. A cooperative housing corporation is an interest recipient with respect to each tenant-stockholder's proportionate share of interest and must report \$600 or more of interest received from an individual tenant-stockholder. The terms "cooperative housing corporation," "tenant-stockholder," and "tenant-stockholder's proportionate share" are defined in section 216 and the regulations thereunder.

(e) *Amount of interest received on mortgage for calendar year—(1) In general.* For purposes of this section and §1.6050H-2, interest includes mortgage prepayment penalties and late charges other than late charges for a specific mortgage service. Interest also includes prepaid interest in the form of points (as defined in paragraph (f) of this section). Whether an interest recipient receives \$600 or more of interest on a mortgage for a calendar year is

determined on a mortgage-by-mortgage basis. An interest recipient need not aggregate interest received on all of the mortgages of a payor of record held by the interest recipient to determine whether the \$600 threshold is met. Therefore, an interest recipient need not report interest of less than \$600 received on a mortgage, even though it receives a total of \$600 or more of interest on all of the mortgages of the payor of record for a calendar year.

(2) *Calendar year*—(i) *In general*. Except as otherwise provided in paragraph (e)(2)(ii) or (iii) of this section, the calendar year for which interest is received is the later of the calendar year in which the interest is received or the calendar year in which the interest properly accrues.

(ii) *De minimis rule*. An interest recipient may treat interest received during the current calendar year which properly accrues by January 15 of the subsequent calendar year as interest received for the current calendar year. For example, if an interest recipient receives a monthly interest payment on December 31, 1988, which includes interest accruing for the period December 5, 1988, to January 5, 1989, the interest recipient may treat the entire interest payment as received for 1988. If a portion of an interest payment received in a current calendar year accrues after January 15 of the subsequent calendar year, an interest recipient must report as interest received for the current calendar year only the portion that properly accrues by the end of the current calendar year. For example, if an interest recipient receives a monthly payment that includes interest accruing for the period December 20, 1988, through January 20, 1989, the interest recipient may not report as interest received for 1988 any interest accruing after December 31, 1988. The interest recipient must report the interest accruing after December 31, 1988, as received for calendar year 1989.

(iii) *Applicability to points*. Paragraphs (e)(2)(i) and (ii) of this section do not apply to prepaid interest in the form of points (as defined in paragraph (f) of this section). Points (as defined in paragraph (f) of this section) must be reported in the calendar year in which they are received.

(3) *Certain interest not received on mortgage*—(i) *Interest received from seller on payor of record's mortgage*. Interest received from a seller or a person related to a seller within the meaning of section 267(b) or section 707(b)(1) on a payor of record's mortgage is not interest received on a mortgage. For example, interest is not received on a mortgage if a real estate developer deposits an amount in escrow with an interest recipient and advises it to draw on the account to pay interest on a payor of record's mortgage (e.g., a buy-down mortgage). Similarly, interest is not received on a mortgage if an interest recipient receives a lump sum from a real estate developer for interest on a payor of record's mortgage.

(ii) *Interest received from governmental unit*. Interest received from a governmental unit or an agency or instrumentality of a governmental unit is not interest received on a mortgage. For example, interest is not received on a mortgage if received as a housing assistance payment from the Department of Housing and Urban Development on a mortgage insured under section 235 of the National Housing Act (12 U.S.C. 1701-1715z (1982 & Supp. 1983)). Except as otherwise provided in paragraph (e) (1) and (2) of this section, interest received on a mortgage is only the excess of interest received on the mortgage over interest received from a governmental unit or an agency or instrumentality of a governmental unit.

(4) *Interest calculated under Rule of 78s method of accounting*. An interest recipient permitted by Revenue Procedure 83-40, 1983-1, C.B. 774 (or other revenue procedure) to use the Rule of 78s method of accounting to calculate interest earned on a transaction may report as interest received on a mortgage interest earned on the transaction as calculated under the Rule of 78s method of accounting only if the interest recipient satisfies the notice requirement of § 1.6050H-2(c).

(f) *Points treated as interest*—(1) *General rule*. Subject to the limitations of paragraph (f)(2) of this section, an amount is deemed to be points paid in respect of indebtedness incurred in connection with the purchase of the payor of record's principal residence (points) for purposes of this section and

§1.6050H-2 to the extent that the amount—

(i) Is clearly designated on the Uniform Settlement Statement prescribed under the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. 2601 *et seq.*, (e.g., the Form HUD-1) as points incurred in connection with the indebtedness, for example *as loan origination fees* (including amounts so designated on Veterans Affairs (VA) and Federal Housing Administration (FHA) loans), *loan discount, discount points, or points*;

(ii) Is computed as a percentage of the stated principal amount of the indebtedness incurred by the payor of record;

(iii) Conforms to an established practice of charging points in the area in which the loan is issued and does not exceed the amount generally charged in the area;

(iv) Is paid in connection with the acquisition by the payor of record of a residence that is the principal residence of the payor of record and that secures the loan. For this purpose, the lender of record may rely on a signed written statement of the payor of record that states whether the proceeds of the loan are for the purchase of the mortgagor's principal residence; and

(v) Is paid directly by the payor of record.

(2) *Limitations.* An amount is not points for purposes of this section to the extent that the amount is—

(i) Paid in connection with indebtedness incurred for the improvement of a principal residence;

(ii) Paid in connection with indebtedness incurred to purchase or improve a residence that is not the payor of record's principal residence, such as a second home, vacation property, investment property, or trade or business property;

(iii) Paid in connection with a home equity loan or a line of credit, even though the loan is secured by the payor of record's principal residence;

(iv) Paid in connection with a refinancing loan (except as provided by paragraph (f)(4) of this section), including a loan incurred to refinance indebtedness owed by the borrower under the terms of a land contract, a contract for

deed, or similar forms of seller financing;

(v) Paid in lieu of amounts that ordinarily are stated separately on the Form HUD-1, such as appraisal fees, inspection fees, title fees, attorney fees, and property taxes; or

(vi) Paid in connection with the acquisition of a principal residence, to the extent that the amount is allocable to indebtedness in excess of the aggregate amount that may be treated as acquisition indebtedness under section 163(h)(3)(B)(ii).

(3) *Special rule*—(i) *Amounts paid directly by payor of record.* For purposes of this section, an amount is considered *paid directly* by the payor of record if it is—

(A) Provided by the payor of record from funds that have not been borrowed from the lender of record for this purpose as part of the overall transaction. The amount provided may include amounts designated as down payments, escrow deposits, earnest money applied at the closing, and other funds actually paid over by the payor of record at or before the time of closing; or

(B) Paid as points (within the meaning of this paragraph (f)) on behalf of the payor of record by the seller. For this purpose, an amount paid as points to an interest recipient by the seller on behalf of the payor of record is treated as paid to the payor of record and then paid directly by the payor of record to the interest recipient.

(ii) *Examples.* The provisions of this paragraph (f) are illustrated by the following examples:

Example 1. Financed payment of points. Buyer purchases a principal residence for \$100,000. There is a total of \$7,000 in closing costs (exclusive of down payment) charged in connection with the sale. Of this amount, \$3,000 is charged as points (within the meaning of paragraph (f) of this section). At closing, Buyer makes a down payment of \$20,000 and provides unborrowed funds in the amount of \$4,000 for the payment of various closing costs other than points. Buyer finances payment of the points by increasing the principal amount of the loan by \$3,000. Seller makes no payments on Buyer's behalf. Because Buyer has provided at closing funds that have not been borrowed from the lender of record for this purpose in an amount at least equal to the amount charged as points in the transaction, the lender of record (or a

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qualified person) must report \$3,000 as points in accordance with this section and § 1.6050H-2.

Example 2. Seller-paid points. Buyer purchases a principal residence for \$100,000. There is a total of \$7,000 in closing costs (exclusive of down payment) charged in connection with the sale. Of this amount, \$3,000 is charged as points (within the meaning of this paragraph (f)). Seller agrees to pay all closing costs on behalf of Buyer, including the amount charged as points. Accordingly, the amount paid by Seller as points is treated as paid directly by Buyer, and the lender of record (or a qualified person) must report the \$3,000 as points in accordance with this section and § 1.6050H-2.

(4) *Construction loans*—(i) *In general.* An amount paid in connection with indebtedness incurred to construct a residence, or to refinance indebtedness incurred to construct a residence, is deemed to be points for purposes of this section to the extent the amount—

(A) Is clearly designated on the loan documents as points incurred in connection with the indebtedness, for example, as *loan origination fees, loan discount, discount points, or points*;

(B) Is computed as a percentage of the stated principal amount of the indebtedness incurred by the payor of record;

(C) Conforms to an established practice of charging points in the area in which the loan is issued and does not exceed the amount generally charged in the area;

(D) Is paid in connection with indebtedness incurred by the payor of record to construct (or to refinance construction of) a residence that is to be used, when completed, as the principal residence of the payor of record;

(E) Is paid directly by the payor of record; and

(F) Is not allocable to indebtedness in excess of the aggregate amount that may be treated as acquisition indebtedness under section 163(h)(3)(B)(ii).

(ii) *Limitation on refinancing of construction loans.* Amounts paid in connection with refinancing indebtedness incurred to construct a residence are not treated as points to the extent they are allocable to indebtedness that exceeds the indebtedness incurred to construct the residence.

(5) *Amounts paid to mortgage brokers.* Amounts received directly or indirectly by a mortgage broker are treat-

ed as points under this paragraph (f) to the same extent the amounts would be so treated if they were paid to and retained by the lender of record, and must be reported by the lender of record in accordance with this section and § 1.6050H-2.

(6) *Effect on deduction of points.* This section and § 1.6050H-2 address only the information reporting requirements of section 6050H and do not affect a payor of record's deduction for any amount in accordance with applicable provisions of the Internal Revenue Code.

(g) *Effective date*—(1) *In general.* Except as provided in paragraph (g)(2) of this section, this section is effective for mortgage interest received after December 31, 1987. Section 1.6050H-1T contains rules for reporting mortgage interest received after December 31, 1984, and before January 1, 1988.

(2) *Points.* The reporting requirements of this section do not apply to prepaid interest received in the form of points before January 1, 1995. In addition, the inclusion of points in the determination of interest under paragraph (e)(1) of this section applies only to transactions occurring after December 31, 1994.

[T.D. 8191, 53 FR 12002, Apr. 12, 1988, as amended by T.D. 8571, 59 FR 63251, Dec. 8, 1994; T.D. 8734, 62 FR 53492, Oct. 14, 1997]

§ 1.6050H-1T Information reporting of mortgage interest received in a trade or business from individuals after 1985 and before 1988 (temporary).

The following questions and answers relate to the requirement of reporting mortgage interest under section 6050H of the Internal Revenue Code of 1954, as added by section 145 of the Tax Reform Act of 1984 (Pub. L. 98-369, 98 Stat. 685):

REQUIREMENT OF REPORTING

In general

Q-1: What does section 6050H provide with respect to the reporting of mortgage interest?

A-1: In general, section 6050H provides that an information return must be made by any person who is engaged in a trade or business and who, in the course of such trade or business, receives from any individual \$600 or more of interest on any mortgage in a calendar year. For purposes of this section—