obtained by virtue of charging off or marking to market covered property, and other amounts similarly related to property, whether or not disposed of.

(3) *Treatment of FFA received in exchange for property.* FFA included in the amount realized for property under this paragraph (d) is not includible in income under paragraph (a)(1) of this section. The amount realized is treated in the same manner as if realized from a person other than Agency or a Controlled Entity. For example, gain attributable to FFA received with respect to a capital asset retains its character as capital gain. Similarly, FFA received with respect to property that has been charged off for income tax purposes is treated as a recovery to the extent of the amount previously charged off. Any FFA provided in excess of the amount realized under this paragraph (d) is includible in income under paragraph (a)(1) of this section.

(4) *Adjustment to FFA*—(i) *In general.* If an Institution pays or transfers money or property to Agency or a Controlled Entity, the amount of money and fair market value of the property is an adjustment to its FFA to the extent the amount paid and transferred exceeds the amount of money and fair market value of property Agency or a Controlled Entity provides in exchange.

(ii) *Deposit insurance.* This paragraph (d)(4) does not apply to amounts paid to Agency with respect to deposit insurance.

(iii) *Treatment of an interest held by Agency or a Controlled Entity*—(A) *In general.* For purposes of this paragraph (d), an interest described in § 1.597–3(b) is not treated as property when transferred by the issuer to Agency or a Controlled Entity nor when acquired from Agency or a Controlled Entity by the issuer.

(B) *Dispositions to persons other than issuer.* On the date Agency or a Controlled Entity transfers an interest described in § 1.597–3(b) to a holder other than the issuer, Agency or a Controlled Entity, the issuer is treated for purposes of this paragraph (d)(4) as having transferred to Agency an amount of money equal to the sum of the amount of money and the fair market value of property that was paid by the new holder as consideration for the interest.

(iv) *Consolidated groups.* For purposes of this paragraph (d), an 9Institution will be treated as having made any transfer to Agency or a Controlled Entity that was made by any other member of its consolidated group. The consolidated group must make appropriate investment basis adjustments to the extent the member transferring money or other property is not the member that received FFA.

(5) *Manner of making adjustments to FFA*—(i) *Reduction of FFA and deferred FFA.* An Institution adjusts its FFA under paragraph (d)(4) of this section by reducing in the following order and in an aggregate amount not greater than the adjustment—

(A) The amount of any FFA that is otherwise includible in income for the taxable year (before application of paragraph (c) of this section); and

(B) The balance (but not below zero) in the deferred FFA account, if any, maintained under paragraph (c)(4) of this section.

(ii) *Deduction of excess amounts.* If the amount of the adjustment exceeds the sum of the amounts described in paragraph (d)(5) (i) of this section, the Institution may deduct the excess to the extent the deduction does not exceed the amount of FFA included in income for prior taxable years reduced by the amount of deductions allowable under this paragraph (d)(5)(ii) in prior taxable years.

(iii) *Additional adjustments.* Any adjustment to FFA in excess of the sum of the amounts described in paragraphs (d)(5)(i) and (ii) of this section is treated—

(A) By an Institution other than a New Entity or Acquiring, as a deduction of the amount in excess of FFA received that is required to be transferred to Agency under section 11(g) of the Federal Deposit Insurance Act (12 U.S.C. 1821(g)); or

(B) By a New Entity or Acquiring, as an adjustment to the purchase price paid in the Taxable Transfer (see § 1.338(b)–3T).

(e) *Examples.* The following examples illustrate the provisions of this section:

Example 1. Timing of inclusion of FFA in income. (i) Institution M, a calendar year taxpayer without Continuing Equity because it is in Agency receivership, is not a member of a consolidated group and has not been acquired in a Taxable Transfer. On January 1, 1997, M has assets with a total adjusted basis of $100 million and total liabilities of $120 million. M's deductions do not exceed its gross income (determined without regard to FFA) for 1997. Agency provides $30 million of FFA to M in 1997. The amount of this FFA that M must include in income in 1997 is limited by § 1.597–2(c)(2) to $20 million, the amount by which M's liabilities ($120 million) exceed the total adjusted basis of its assets ($100 million) at the beginning of the taxable year. Pursuant to § 1.597–2(c)(4)(i), M must establish a deferred FFA account for the remaining $10 million.

(ii) If Agency instead lends M the $30 million, M's indebtedness to Agency is disregarded and the results are the same as in paragraph (i) of this *Example 1.* Section 597(c); §§ 1.597–1(b) (defining FFA) and 1.597–3(b).

Example 2. Transfer of property to Agency. (i) Institution M, a calendar year taxpayer without Continuing Equity because it is in Agency receivership, is not a member of a consolidated group and has not been acquired in a Taxable Transfer. At the beginning of 1998, M's remaining equity is $0 and M has a deferred FFA account of $10 million. Agency does not provide any FFA to M in 1998. During the year, M transfers property not covered by a Loss Guarantee to Agency and does not receive any consideration. The property has an adjusted basis of $5 million and a fair market value of $1 million at the time of the transfer. M has no other taxable income or loss in 1998.

(ii) Under § 1.597–2(d)(1), M is treated as selling the property for $1 million, its fair market value, thus recognizing a $4 million loss ($5 million–$1 million). In addition, because M did not receive any consideration from Agency, under § 1.597–2(d)(4) M has an adjustment to FFA of $1 million, the amount by which the fair market value of the transferred property ($1 million) exceeds the consideration M received from Agency ($0). Because no FFA is provided to M in 1998, this adjustment reduces the balance of M's deferred FFA account to $9 million ($10 million–$1 million). Section 1.597–2(d)(5)(i)(B). Because M's $4 million loss causes M's deductions to exceed its gross income by $4 million in 1998 and M has no remaining equity, under § 1.597–2(c)(4)(iii)(A) M must include $4 million of deferred FFA in income, and must decrease the remaining $9 million balance of its deferred FFA account by the same amount, leaving a balance of $5 million.

Example 3. Loss Guarantee. Institution Q, a calendar year taxpayer, sells an asset covered by a Loss Guarantee to an unrelated third party for $4,000. Q's adjusted basis in the asset at the time of sale and the asset's guaranteed value are both $10,000. Pursuant to the Loss Guarantee, Agency pays Q $6,000 ($10,000–$4,000). Q's amount realized from the sale of the asset is $10,000 ($4,000 from the third party and $6,000 from Agency). Section 1.597–2(d)(2). Q realizes no gain or loss on the sale ($10,000–$10,000 = $0), and therefore includes none of the $6,000 of FFA it receives pursuant to the Loss Guarantee in income. Section 1.597–2(d)(3).

§ 1.597–3 Other rules.

(a) *Ownership of assets.* For all income tax purposes, an Institution is treated as the owner of all assets covered by a Loss Guarantee, yield maintenance agreement, or cost to carry or cost of funds reimbursement agreement, regardless of whether Agency (or a Controlled Entity) otherwise would be treated as the owner under general principles of income taxation.

(b) *Debt and equity interests received by Agency.* Debt instruments, stock, warrants, or other rights to acquire stock of an Institution (or any of its affiliates) that Agency or a Controlled Entity