

or injury is substantial, FDA will need to consider whether the risk posed by continuing marketing of the device is important, material, or significant in relation to the benefit to the public health from continued marketing (21 CFR 895.21(a)(1)).

In its petition response, FDA stated that it did not have sufficient information to conclude that there is a legal basis for banning the devices identified in the petition. In support of their petition, the petitioners refer to occupational exposure data obtained from the Epinet database coordinated by the University of Virginia (Ref. 1). The Epinet data show that 52 hospitals with a total average daily census of 9,681 patients reported 3,180 sharp object injuries in 1998. Syringes accounted for 33 percent of these injuries; needles on IV lines, 2 percent; butterfly needles, 8 percent; vacuum tube blood collection needles, 6 percent; IV catheter stylets and glass capillary tubes, less than 1 percent.

The petition also cited similar data from the Centers for Disease Control and Prevention (CDC). The CDC reported that, for the period from June 1995 to July 1999, there were 4,951 sharp object injuries reported to its surveillance system. Of these reported injuries, 29 percent involved hypodermic needles, 13 percent butterfly needles, 6 percent IV catheter stylets, and 4 percent blood drawing needles. The petition also stated that 8 percent of exposures with hollow bore needles were categorized as IV line-related.

Although the petition addressed the number of injuries related to generic types of devices, it did not show: (1) Which specific devices were used; (2) how many devices of that type were used during the relevant time period; (3) what the design characteristics of those devices were or (4) whether the devices met any or all of the design criteria listed. In the absence of such information about specific devices, FDA was unable to conclude that any particular device presented a "substantial deception or an unreasonable and substantial risk of illness or injury." FDA invites interested persons to submit data and information that would provide insight on the basis for banning one or more of these devices.

#### B. Performance Standard

The petition requested that FDA issue performance standards based on the five design criteria identified in the FDA safety alert (listed in section III.A of this document) following the procedures set forth in 21 CFR part 861. The petition listed the criteria but did not discuss

how FDA could apply these criteria to specific devices in the context of a mandatory performance standard; or how such a standard would provide reasonable assurance of the safety and effectiveness of these devices.

In its response, FDA stated that it did not have sufficient information to develop a standard to address the risk of needlestick injury. FDA believes that these criteria are a good starting point to develop a standard, but FDA needs additional information to determine how best to apply these criteria to specific devices in the context of a standard.

FDA invites interested persons to submit any information or data addressing the appropriateness of developing a performance standard, based on these criteria or others. FDA is also prepared to enter into discussions with any organization that wishes to develop a voluntary consensus standard for one or more of these devices that FDA may adopt or recognize in some form.

#### C. Labeling

Finally, the petition requested that FDA require that the labeling for "conventional syringes" state: "TO PREVENT POSSIBLE EXPOSURE TO HIV AND HEPATITIS, DO NOT USE FOR STANDARD BLOOD DRAWS." The petitioners stated that current labeling for syringes does not contain adequate warning of the hazards that the device presents.

In its response, FDA stated that the information in this statement is well known to healthcare professionals who use these types of devices and, therefore, under 21 CFR 801.109(c), FDA would not ordinarily require such a statement in the labeling. FDA invites interested persons to comment on whether the proposed labeling statement or any other labeling requirement is necessary to provide reasonable assurance of the safety and effectiveness of these devices.

#### IV. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments on this document by September 19, 2002. Submit electronic comments to <http://www.fda.gov/dockets/ecomments>. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the name of the device and the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets

Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

#### V. References

The following references have been placed on display in the Dockets Management Branch (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Petition from Public Citizen, Health Research Group and the Service Employees International Union (Docket No. 01P-0120) and FDA's response dated September 5, 2001.

2. Letter from Dr. Michael A. Friedman, Deputy Commissioner for Operations, Food and Drug Administration, to Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, dated December 18, 1998.

3. Letter from Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, to Dr. Michael A. Friedman, Deputy Commissioner for Operations, Food and Drug Administration, dated February 8, 1999.

Dated: January 31, 2002.

**Margaret M. Dotzel,**

*Associate Commissioner for Policy.*

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Parts 1, 301 and 602

[REG-106871-00 and REG-209813-96]

RIN 1545-BA83 and RIN 1545-AU15

#### Reporting for Widely Held Fixed Investment Trusts

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Proposed rulemaking and withdrawal of previous notice of proposed rulemaking.

**SUMMARY:** This document contains the withdrawal of proposed regulations (REG-209813-96), published on August 13, 1998 in the **Federal Register** (63 FR 43354). This document also contains new proposed regulations that define widely held fixed investment trusts, clarify the reporting obligations of the trustees of these trusts and the middlemen connected with these trusts, and provide for the communication of necessary tax information to beneficial owners of trust interests.

**DATES:** Written or electronic comments and requests for a public hearing must be received by September 18, 2002.

**ADDRESSES:** Send submissions to: CC:ITA:RU (REG-106871-00), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may also be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU (REG-106871-00), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC or sent electronically, via the IRS Internet site at: <http://www.irs.gov/regs>.

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Faith Colson, (202) 622-3060 or Viva Hammer, (202) 622-0869; concerning submission of comments, Guy Traynor, (202) 622-7180 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

**Paperwork Reduction Act**

The collection of information in this notice of proposed rulemaking has been previously reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1540.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to the collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Background**

This document contains repropoed amendments to the Income Tax Regulations (26 CFR part 1) under section 671. These repropoed amendments are to be issued under the authority of section 7805.

On August 13, 1998, the IRS and Treasury published in the **Federal Register** (63 FR 43354) a notice of proposed rulemaking (REG-209813-96, 1998-2 C.B. 259) under sections 671, 6049 and 6109. A public hearing was held on November 5, 1998. No oral comments were made at the public hearing. Written comments were received.

After consideration of the written comments received, the IRS and Treasury believe that it is appropriate to repropoese these regulations.

Accordingly, the provisions of the proposed regulations published in August of 1998, are withdrawn, and these repropoese regulations are now being issued.

A fixed investment trust is an arrangement classified as a trust under § 301.7701-4(c). Beneficial interests in these trusts are divided into unit interests. The IRS treats these trusts as grantor trusts under subpart E, part I, subchapter J, chapter 1 of the Internal Revenue Code (Code) and the owners of the beneficial interests, or units, as grantors. See Rev. Rul. 84-10 (1984-1 C.B. 155); Rev. Rul. 61-175 (1961-2 C.B. 128). Interests in these trusts are often held in the street name of a middleman, who holds such interests on behalf of the beneficial owners. Thus, trustees ordinarily do not know the identity of the beneficial owners and are not in a position to communicate information directly to them. These repropoese regulations provide tax information reporting rules that specifically require the sharing of tax information among trustees, middlemen, and the beneficial owners of domestic fixed investment trusts in which any interest is held by a middleman.

Although the repropoese regulations retain the scope and framework provided under the 1998 proposed regulations, the repropoese regulations allow more flexibility regarding the format and frequency in which trust information is communicated from trustees to middlemen. In addition, the repropoese regulations simplify the rules contained in the 1998 proposed regulations for the reporting of a sale or disposition of a trust asset.

**Explanation of Provisions**

*I. Scope and General Framework of Reporting Rules*

These repropoese regulations apply to all widely held fixed investment trusts. In the 1998 proposed regulations, a *widely held fixed investment trust* (WHFIT) was defined as a fixed investment trust in which any interest is held by a middleman. The term *middleman* included but was not limited to, a custodian of a person's account, a nominee, and a broker holding an interest for a customer in street name. In the preamble to the 1998 proposed regulations, comments were requested on the application and scope of these definitions. No comments were received and those definitions are retained in these repropoese regulations except that the definition of a WHFIT is modified to clarify that a trust must be classified as a United States person

under section 7701(a)(30)(E) to be a WHFIT.

A notice of proposed rulemaking (REG-108553-00), published in the **Federal Register** (65 FR 60822) on October 12, 2000, specified safe harbors under which certain investment trusts would be classified as United States persons under section 7701(a)(30)(E). Commentators responding to those proposed regulations noted that certain fixed investment trusts would be outside those safe harbors and would accordingly be treated as foreign trusts. As a result of those trusts being treated as foreign trusts, United States investors in those trusts would be subject to the reporting rules under section 6048. The commentators suggested that United States investors in those trusts should not be subject to reporting under section 6048 and to the corresponding penalties in section 6677 for failure to comply with the section 6048 reporting requirements. Final regulations (TD 8962) under 7701 were published in the **Federal Register** (66 FR 41778) on August 9, 2001. The preamble to those final regulations states that because a guidance project concerning reporting requirements for all widely held fixed investment trusts was under consideration, those final regulations would not specifically address the section 6048 reporting issue raised by the commentators. The IRS and Treasury continue to study how to facilitate the application of the section 6048 rules to foreign fixed investment trusts and request practical suggestions on this issue, including how Forms 3520 and 3520A can be adapted for use with foreign fixed investment trusts.

The information reporting framework in the 1998 proposed regulations was similar to that for regular interests in a real estate mortgage investment conduit (REMIC). See § 1.6049-7. Under this framework, the responsibility for information reporting lies primarily with the person in the ownership chain who holds an interest for a beneficial owner and is, therefore, in the best position to communicate with, and provide trust tax information to, the beneficial owner. Thus, a brokerage firm that holds an interest in a WHFIT for an individual as a middleman is to report WHFIT tax information with respect to that individual to the IRS on Forms 1099 and furnish WHFIT tax information to the individual. Similarly, if an interest in a WHFIT is held directly by an individual and not through a middleman, the trustee is to report to the IRS and provide WHFIT tax information directly to the individual. One commentator suggested a different framework: one similar to the rules in

§ 1.6031(b)-1T and § 1.6031(c)-1T regarding partnership interests held by nominees. Under § 1.6031(b)-1T and § 1.6031(c)-1T, nominees are required to provide information regarding the identity of a partner to the partnership. The partnership must then provide necessary tax information directly to the partner. Given that this suggestion was merely an alternative to that commentator's preferred solution of simplifying the reporting requirements provided by the 1998 proposed regulations, and that no other commentators raised concerns about the framework, the repropoed regulations retain the REMIC framework.

## II. Trustee's Requirement to Calculate and Provide WHFIT Information

### A. General Rules

Under the 1998 proposed regulations and the repropoed regulations, a trustee is no longer required to file a Form 1041, with an attached statement, for a WHFIT. See § 1.671-4(a). Instead, a trustee must provide trust tax information to requesting persons (middlemen and others). In addition, if a beneficial owner that is not an exempt recipient, holds an interest in a WHFIT directly with the trust, and not through a middleman, the trustee must also file a Form 1099 with respect to that owner and furnish trust tax information to that owner.

Consistent with the taxation of grantor trusts, the 1998 proposed regulations required trustees to provide trust tax information in a manner that was sufficient for requesting persons to determine the exact items of income, deduction, and credit of the WHFIT that were attributable to a unit interest holder. In addition, the 1998 proposed regulations required trustees to calculate and provide WHFIT information on a quarterly basis. In drafting the 1998 proposed regulations, the IRS and Treasury believed that quarterly reporting was necessary for requesting persons to have sufficient information to determine the trust items that were attributable to a unit interest holder who held a unit interest for less than an entire calendar year or a unit interest holder not using a calendar year as the holder's taxable year.

Several commentators, in describing current tax reporting practices, indicated that trustees do not provide trust tax information in a manner that would enable a requesting person to determine the exact amounts of trust items that are attributable to a unit interest holder. With respect to the requirement of quarterly reporting in the 1998 proposed regulations, several

commentators responded that many trustees only provide tax reporting information on a calendar year basis. These commentators contended that quarterly reporting unnecessarily increased a trustee's reporting burden fourfold. These commentators argued that WHFIT tax information only needs to be calculated and provided on a calendar year basis for trustees and middlemen to fulfill Form 1099 reporting requirements. Other commentators responded that some WHFITs provide information on a monthly basis.

In response to these comments, the repropoed regulations remove the quarterly reporting requirement contained in the 1998 proposed regulations. Under the repropoed regulations, trustees may choose either a calendar month, calendar quarter, or a full or half calendar year reporting period provided that the information supplied by the trustee under the chosen reporting period enables the WHFIT items attributable to a particular unit interest holder to be determined with reasonable accuracy, regardless of the holder's taxable year or the period of time that the unit interest holder held its interest.

The repropoed regulations provide that once a reporting period has been chosen by a trustee, the trustee must use that reporting period throughout the trust's existence. It is expected that requesting persons (in particular, middlemen) will develop a method for processing information from a WHFIT that takes into account the reporting period chosen by the trustee. The consistency requirement was included in the repropoed regulations in response to concerns that requesting persons would be required to change their processing systems if the trustee changes the WHFIT's reporting period. The IRS and Treasury invite comments on the necessity of the consistency requirement and on whether an alternative approach would be more effective in facilitating the processing of information by requesting persons.

Because requesting persons may be required to process WHFIT tax information provided by many different trustees, the repropoed regulations also require trustees to provide trust tax information in a manner that is consistent with industry practice. Thus, a requesting person using current industry practice must be able to process the WHFIT tax information provided by the trustee.

The repropoed regulations require that the information provided by the trustee be presented in a manner such that a requesting person is able to

separately state any WHFIT item that, if taken into account separately by a beneficial owner, could result in an income tax liability for the beneficial owner different from that which would result if the beneficial owner did not take the item into account separately. Examples of the types of information that are to be provided under this provision include: (i) Items of tax preference subject to the alternative minimum tax imposed by section 55; (ii) investment interest and investment income and expense necessary to compute limitations under section 163(d); (iii) income from oil and gas subject to depletion under sections 613 and 613A; (iv) most depreciation and depletion expenses; and (v) intangible drilling and development costs (see section 263(c)). This provision is not intended to require asset-by-asset reporting.

### B. Method of Accounting

A beneficial owner of a unit interest must report WHFIT items consistent with the owner's method of accounting. See, for example, Rev. Rul. 84-10. For administrative convenience and with the intent of being consistent with industry practice, under the 1998 proposed regulations, a WHFIT was to calculate and provide WHFIT tax information using the cash receipts and disbursements method of accounting. Several commentators confirmed that the majority of WHFITs currently use the cash receipts and disbursements method of accounting. Under the repropoed regulations, WHFIT tax information must be calculated and provided using the cash receipts and disbursements method of accounting except where another method is required by the Code or regulations with respect to a specific trust item. Accordingly, a WHFIT must provide information necessary for unit interest holders to comply with the rules of subtitle A, chapter 1, subchapter P, part V, subpart A, which require the inclusion of accrued amounts with respect to original issue discount (OID), and section 860B(b), which requires the inclusion of accrued amounts with respect to a REMIC regular interest.

The repropoed regulations also provide that if a WHFIT is marketed to accrual method taxpayers and the WHFIT holds assets for which the timing of the recognition of income is materially affected by the use of the accrual method, trust tax information must be calculated and provided using the accrual method of accounting.

### C. Information To Be Provided by All WHFITs

The information to be provided by the trustee under the repropose and 1998 proposed regulations is similar. The tax reporting information the trustee is to calculate and provide under the repropose regulations includes:

#### 1. All Items of Income, Deduction, and Credit

Under both the repropose and the 1998 proposed regulations, the trustee must provide information with respect to all items of income (including OID), deduction (including affected expenses (as defined in § 1.67-2T(i)(1))), and credit of the WHFIT. In furnishing information regarding the items of income, the trustee must provide the gross amount of trust income generated by trust assets. Thus, if a WHFIT receives a payment net of an expense or expenses, the payment must be grossed up to reflect the deducted expense so that the WHFIT's income and expenses can be properly reported by unit interest holders. The trustee must also have, and make available, information regarding the WHFIT's expenses, including affected expenses.

#### 2. Information To Enable Unit Interest Holders To Determine Gain or Loss on the Sale or Disposition of a WHFIT Asset

The repropose regulations simplify, but do not eliminate, reporting by the trustee with respect to the sale or disposition of a WHFIT asset.

The reporting rules in the 1998 proposed regulations were designed to provide a unit interest holder with sufficient information to calculate the unit interest holder's approximate gain or loss on the sale or disposition of an asset by the WHFIT. To that end, trustees were required to provide information regarding the amount of the gross proceeds from the sale or disposition of a WHFIT asset, the date of sale or disposition of the asset, and the percentage of the asset that has been sold or disposed of. In addition, trustees were required to provide a schedule showing the portion (expressed as a percentage) of the total fair market value of all the assets held by the WHFIT that the asset sold or disposed of represented as of the last day of each quarter that the asset was held by the WHFIT. The 1998 proposed regulations also required that this information be provided on an asset-by-asset approach.

Commentators stated that, for various reasons, it would be impossible, or, at the very least, extremely costly and burdensome for trustees to comply with

the reporting rules contained in the 1998 proposed regulations. These commentators urged the IRS and Treasury to adopt reporting rules that require trustees and middlemen to only provide information regarding the amount of gross proceeds that are distributed to a unit interest holder.

These commentators noted that many trustees and middlemen currently only provide information regarding the amount of gross proceeds that are distributed. Commentators also noted, however, that as a result of this reporting, many beneficial owners treat the distribution of gross proceeds by the WHFIT as a return of the beneficial owner's investment. Therefore, any gain, loss, discount, or premium that should be recognized by a beneficial owner as a result of the sale or disposition of a trust asset is deferred until the beneficial owner either exhausts its basis in its unit interest or sells or redeems its unit interest. Commentators nevertheless contended that the resulting tax deferral did not justify the reporting obligations imposed by the 1998 proposed regulations. As support, commentators contended that to maintain their status as trusts under § 301.7701-4(c), WHFITs sell or dispose of their assets only infrequently.

In response to these comments, the repropose regulations provide that the information to be reported with respect to an asset sale or disposition depends on whether the WHFIT's asset sales or dispositions for the calendar year exceed a de minimis amount. If trust sales proceeds for a given calendar year equal or are less than 5% of the fair market value of the assets of the trust as of January 1 of that year, a trust meets the de minimis test for the calendar year. The repropose regulations define trust sales proceeds as the gross proceeds received by a WHFIT with respect to a sale or disposition of an asset by the WHFIT. If a trust meets the de minimis test, the trustee need only provide information that enables requesting persons to calculate the amount of trust sales proceeds that are attributable to a unit interest holder.

If asset sales and dispositions exceed the de minimis amount, the trustee must provide, with respect to each sale or disposition: (i) The date of the sale; (ii) information regarding trust sale proceeds; (iii) information that will enable a unit interest holder to allocate with reasonable accuracy a portion of its basis in its unit interest to the sale or disposition; and (iv) information that will enable a unit interest holder to allocate with reasonable accuracy a portion of its market discount or

premium, if any, to the sale or disposition.

Commentators on the 1998 proposed regulations indicated that, in providing information regarding gross proceeds, trustees and middlemen only provide unit interest holders with information regarding the amount of gross proceeds that have been distributed to them, not the amount that is attributable to each unit interest holder. Under these repropose regulations, trustees and middlemen, when providing gross proceeds information, must provide information regarding the amount of gross proceeds that are attributable to the holder.

#### 3. Information With Respect to Redemptions and Sales of Unit Interests

Specific guidelines for the reporting of the redemption of a unit interest from a WHFIT and for the reporting of a sale of a unit interest on a secondary market were not provided under the 1998 proposed regulations. In response to the comments received with respect to the 1998 proposed regulations, the repropose regulations now provide guidance on the reporting of these transactions.

#### 4. Other Information

The repropose regulations require the trustee to provide any other information necessary for a unit interest holder that is a beneficial owner of a unit interest to report, with reasonable accuracy, the items of income, deduction, and credit attributable to the portion of the trust treated as owned by the unit interest holder under section 671. Several commentators objected to the inclusion of a similar requirement in the 1998 proposed regulations. The IRS and Treasury note that WHFITs are used to hold a wide variety of assets. This provision is intended to clarify that trustees must accommodate beneficial owners' needs for appropriate information with respect to the assets held by the WHFIT. This provision is also intended to clarify that the information provided by the trustee must accommodate the different tax attributes of the beneficial owners of the WHFIT. This provision, however, is not intended to require asset-by-asset reporting.

#### D. Additional Information To Be Provided by the Trustee of a Widely Held Mortgage Trust

Commentators on the 1998 proposed regulations identified specific concerns regarding the tax information reporting obligations of the trustee of a WHFIT that primarily holds mortgages as its assets. The IRS and Treasury believe

that changes in the repropoed regulations that apply to all WHFITs address some of these concerns. In response to other concerns raised by the commentators, the repropoed regulations provide certain rules tailored specifically to widely held mortgage trusts (WHMTs). The repropoed regulations define a WHMT as a WHFIT, substantially all the assets of which, measured by value, are mortgages, amounts received on mortgages, and reasonably required reserve funds.

#### 1. Receipt of Scheduled and Unscheduled Principal Payments

Commentators requested clarification regarding the reporting of the trust's receipts of scheduled and unscheduled principal payments on the mortgages held by the WHMT. Under the repropoed regulations, trustees must calculate and provide information regarding these principal receipts, and, as with all information provided by the trustee, it must be done in a manner that enables a requesting person to determine with reasonable accuracy the principal receipts attributable to a unit interest holder. Scheduled and unscheduled principal receipts are aggregated with the WHMT's proceeds from sales and dispositions of mortgages and reported as trust sales proceeds to the IRS on Form 1099. Unless a trustee reports under the safe harbor for certain WHMTs, scheduled and unscheduled principal receipts and trust sales proceeds are reported separately to beneficial owners.

#### 2. Sales and Dispositions of Mortgages

Commentators requested that the IRS and Treasury clarify that certain transactions that regularly occur during the administration of a WHMT do not trigger the reporting rules for sales and dispositions provided under the 1998 proposed regulations. These transactions involve the sale of a mortgage by a WHMT to the guarantor, sponsor, or previous owner for an amount equal to its unpaid principal balance plus accrued but unpaid interest. Commentators maintained that the costs involved in reporting these transactions as sales or dispositions under the 1998 proposed regulations outweighed the benefit of reporting the required information to unit interest holders. The IRS and Treasury believe that the de minimis test in the repropoed regulations alleviates the reporting burden concerns expressed by the commentators responding to the 1998 proposed regulations. Therefore, in general, the repropoed regulations provide no special WHMT rules for

reporting these transactions and, under the repropoed regulations, these transactions are reported the same as any other sale or disposition engaged in by a WHFIT.

The repropoed regulations do, however, adjust the de minimis test for WHMTs. In response to concerns regarding provisions in the 1998 proposed regulations that require a trustee of a WHMT to assign a fair market value to mortgages held by a WHMT, the repropoed regulations provide that the trustee is to use the aggregate outstanding principal balance of the WHMT's mortgages for purposes of applying the de minimis test. Scheduled and unscheduled principal receipts are not included in the amount of trust sales proceeds for purposes of determining whether a WHMT has met the de minimis test.

#### 3. Reporting Information With Respect to Market Discount

The 1998 proposed regulations required, with respect to a WHFIT that holds a pool of debt instruments subject to section 1272(a)(6)(C)(iii), that trustees and middlemen provide information to enable beneficial owners to comply with market discount rules and where applicable, section 1272(a)(6) (as amended by section 1004 of the Taxpayer Relief Act of 1997, Public Law 105-34 (111 Stat. 766, 911) (1997)).

Several commentators questioned the application of this reporting requirement in the 1998 proposed regulations. These commentators asserted that, in the absence of additional guidance under section 1272(a)(6)(C)(iii), it was unclear which WHFITs held a pool of debt instruments subject to that section and accordingly were required to report market discount information and information consistent with section 1272(a)(6)(C)(iii) to comply with the 1998 proposed regulations. These commentators requested that this reporting requirement be deferred until substantive guidance is provided regarding the application of section 1272(a)(6)(C)(iii).

In response to this comment, the IRS and Treasury note that, under section 1276(a)(3), beneficial owners of a unit interest are required to include in gross income, as ordinary income, the partial payment of a debt instrument to the extent that such payment does not exceed the accrued market discount on the debt instrument. The IRS and Treasury also note that unit interest holders in a WHMT consistently receive partial payments on the mortgages held by the WHMT and that, absent information being provided by the trustee, unit interest holders in a WHMT

do not have the information necessary to calculate their accrued market discount under section 1276(a)(3) and, therefore, cannot properly report the tax consequences of their ownership of the unit interest. For this reason, the repropoed regulations require trustees and middlemen of all WHMTs to provide information to enable unit interest holders to calculate market discount by any reasonable manner that is consistent with section 1276(a)(3). Pending the issuance of guidance under section 1272(a)(6)(C)(iii), a trustee may, but is not required, by these repropoed regulations, to provide market discount and OID information that is calculated consistent with the application of section 1272(a)(6)(C)(iii). The repropoed regulations only provide reporting rules. Substantive rules regarding OID and market discount are provided in subtitle A, chapter 1, subchapter P, part V of the Code and the regulations thereunder.

Commentators also contended that substantive guidance was lacking regarding the methodology to be used by unit interest holders in accruing market discount under section 1276(a)(3). The commentators contended that the requirement to provide market discount information should be deferred until guidance regarding methodology is issued.

Section 1803(a)(13)(A) of the Tax Reform Act of 1986 (TRA 1986) Public Law 99-514 (100 Stat. 2085) amended section 1276 to include sections 1276(a)(3) and (b)(3). Section 1276(b)(3) provides that the computation of the accrual of market discount with respect to partial principal payments is to be provided by Treasury regulations. To date, no regulations have been issued under section 1276(b)(3). The IRS and Treasury note, however, that although no regulations have been issued under section 1276(b)(3), the conference report accompanying the amendment to section 1276 provides that until such time as the Treasury Department issues such regulations, the conferees intend that market discount be accrued as provided in the conference report. See H.R. Rep. No. 841, 99th Cong., 2nd Sess., at II-842 (1986). Accordingly, the IRS and Treasury believe that there is sufficient guidance regarding the methodology for accruing market discount under section 1276(a)(3) to impose as a current requirement that trustees provide market discount information that enables a unit interest holder to determine the portion of the holder's market discount that has accrued during the reporting period by any manner reasonably consistent with section 1276(a)(3). In addition, the

reproposed regulations include a safe harbor for certain WHMTs for providing market discount information that is considered to be reasonably consistent with section 1276(a)(3). The safe harbor requires the use of the prepayment assumption used in pricing the original issue of unit interests.

#### 4. Reporting Information With Respect to Amortizable Bond Premium

The 1998 proposed regulations imposed no reporting requirements on trustees and middlemen with respect to amortizable bond premium. Some owners of unit interests that acquire their interests at a premium may have amortizable bond premium within the meaning of section 171. In response to comments received with respect to the 1998 proposed regulations, as well as in connection with other matters, the IRS and Treasury note that not all owners of unit interests may receive sufficient information to reasonably determine the amount of any amortizable bond premium on mortgages held by a WHMT. For this reason, the reproposed regulations include a general requirement that trustees and middlemen of all WHMTs provide information to enable unit interest holders to determine the amount of the unit interest holder's amortizable bond premium, if any, in any manner that is reasonably consistent with section 171. The IRS and Treasury are continuing to study and request comments on an appropriate safe harbor for reporting premium information for unit interest holders that buy their interests at a premium.

#### D. Safe Harbor Factors

Several commentators reported that many trustees currently provide tax information to middlemen through the use of "factors." These trustees assume that middlemen maintain a record of certain trust information with respect to the unit interest holders for whom the middlemen hold an interest. Trustees provide these middlemen with data, called factors, which are ratios. Trustees assume that middlemen will use these factors to extrapolate by multiplication necessary trust tax information with respect to their unit interest holders from the information that middlemen already have in their records. The factors provided by a trustee depend on the type of assets held by the WHFIT and the tax items to be determined. Some trustees provide factors on a calendar year basis and some provide factors on a monthly basis. As an example, the comments received with respect to the 1998 proposed regulations indicated that the trustees of many

WHFITs assume that middlemen receive and maintain a record of the amount of cash distributed to (or credited to the account of) a unit interest holder from the WHFIT during the calendar year. These trustees provide middlemen with factors that when multiplied by the amount of cash from the WHFIT distributed by a middleman to (or credited to the account of) a unit interest holder during the calendar year, enable a middleman to determine the amount of trust income and the amount of trust expenses that are attributable to the unit interest holder for the calendar year.

The reproposed regulations provide as safe harbors, examples of methods for calculating certain factors that the IRS and Treasury believe will enable requesting persons to determine, with reasonable accuracy, the trust items attributable to a unit interest holder. Section 1.671-5(g) of the reproposed regulations provides safe harbor methods for calculating factors that provide information with respect to sales and dispositions of trust assets, trust income, trust expenses, OID, and market discount for certain WHMTs. The reproposed regulations condition the application of the safe harbors on the WHMT meeting certain requirements. The IRS and Treasury request comments on how the safe harbors provided in proposed § 1.671-5(g) can be modified and extended to WHMTs not meeting the requirements in the reproposed regulations.

Section 1.671-5(f) of the reproposed regulations provides safe harbor methods for calculating certain factors that provide similar information for WHFITs other than WHMTs. The IRS and Treasury request comments regarding the applicability of the safe harbors in proposed § 1.671-5(f) to WHFITs that hold assets other than stock and debt instruments and whether different safe harbors are needed for those WHFITs.

The IRS and Treasury also request comments on how the safe harbors provided in § 1.671-5(f) and (g) of the reproposed regulations can be modified to better conform to industry practice while providing the IRS and beneficial owners with necessary WHFIT tax information. In addition, the IRS and Treasury request comments from requesting persons on their ability to process WHFIT tax information that is provided to them in the form of factors.

#### E. Time and Manner for Providing WHFIT Information

##### 1. Trustee May Identify a Trust Representative and Publish Trust Information on the Internet

Under both the 1998 proposed regulations and the reproposed regulations, the trustee must identify the name, address, and telephone number of a representative or official of the WHFIT who will provide the trust information required to be provided by the trustee. In addition to the list of places described in the 1998 proposed regulations where the trustee may publish this information, the reproposed regulations also permit the trust representative to be identified in the trust's prospectus or on the trustee's Internet site. When providing this information under the reproposed regulations, the trustee must also identify the reporting period that the trustee will use to calculate and provide trust information. Further, the reproposed regulations permit the trust information described in § 1.671-5(c) of the reproposed regulations to be furnished to requesting persons on the trustee's Internet site or on another Internet site designated by the trustee.

##### 2. Extension of Time for Furnishing Trust Information for Certain WHFITs

With respect to most WHFITs, the reproposed regulations retain the requirement of the 1998 proposed regulations that WHFIT information be provided on or before the later of the 30th day after the close of the reporting period for which the information is requested, or, the 14th day after the receipt of the request to provide information. Under the reproposed regulations, if substantially all of the assets of the WHFIT are unit interests in another WHFIT or regular interests in a REMIC, the reproposed regulations allow the trustee until on or before the later of the 44th day after the close of the reporting period for which the information is requested, or, the 28th day after the receipt of the request to provide trust information.

#### III. Rules for Providing Trust Information to the IRS and to Beneficial Owners

##### A. In General

Under the 1998 proposed regulations and the reproposed regulations, a middleman is required to file Forms 1099 with the Internal Revenue Service and to furnish a tax information statement to the beneficial owner of a unit interest. If a beneficial owner holds an interest directly with a trustee, the trustee is required to file Forms 1099

with the Internal Revenue Service and to furnish the statement to the beneficial owner. A Form 1099 and a statement are not required for a beneficial owner that is an exempt recipient.

The repropoed regulations provide rules for determining the information to be provided on the Forms 1099 required to be filed with the Internal Revenue Service with respect to a beneficial owner and for determining the information to be provided on the tax information statement required to be furnished to the owner. First, the information provided on the Forms 1099 and the tax information statement must be consistent with the information required to be provided by the trustee under § 1.671-5(c) of the repropoed regulations. Second, the information provided must reflect with reasonable accuracy the trust items that are attributable to the beneficial owner. Third, the statement must separately state any trust item that if taken into account separately by the beneficial owner, could result in an income tax liability for that owner different from that which would result if the owner did not take the item into account separately.

In addition, the repropoed regulations require that the information provided on the Forms 1099 and the tax information statement be determined as provided in § 1.671-5(f) or (g), as appropriate, if the trustee has provided information in accordance with the safe harbors described in those paragraphs. One commentator requested that trustees and middlemen be permitted to provide factors to beneficial owners. Under this approach, a beneficial owner would have the burden of understanding and applying the factors to determine the amounts of income, deductions, and credits of the WHFIT that are attributable to the owner. The repropoed regulations provide that middlemen, and trustees, where appropriate, must provide the IRS and beneficial owners with the amounts of income, deduction, and credit of a WHFIT that are attributable to a beneficial owner. It is not permissible for middlemen and trustees to merely provide factors to a beneficial owner.

#### B. Reporting With Respect to Foreign Unit Interest Holders

The 1998 proposed regulations did not address reporting with respect to unit interest holders that are not United States persons. In response to comments received with respect to the 1998 proposed regulations, the repropoed regulations clarify that payments made from a WHFIT to a unit interest holder that is not a United States person are to

be withheld and reported in accordance with Subtitle A, Chapter 3 of the Code and the regulations thereunder.

#### IV. Clarification of the Relationship Between These Reporting Rules and Other Reporting Rules

The preamble to the 1998 proposed regulations noted that appropriate adjustments to other information reporting rules may be necessary to make them compatible with those proposed regulations. One such provision is § 1.6049-5(a)(6), which was cited by one commentator as an example of a provision allowing the amount of interest to be reported to the IRS to be based on the interest paid as stated on the investor's certificate, rather than the interest on the notes or obligations underlying the certificate. To be consistent with the taxation of a grantor trust, the repropoed regulations revise § 1.6049-5(a)(6) to clarify that the income to be reported with respect to WHFITs is the gross amount of income earned by trust assets.

In addition, comments received with respect to the 1998 proposed regulations requested clarification of the relationship between the reporting rules in the proposed regulations and the reporting rules in subpart B, part III, subchapter A, chapter 61 of the Code (Information Returns Concerning Transactions with Other Persons) (subpart B). In response, the repropoed regulations provide that if reporting is required under the repropoed regulations and subpart B, the repropoed regulations will control. The repropoed regulations also provide that the rules of subpart B are incorporated into the repropoed regulations to the extent that those rules are not inconsistent with the reporting rules in the repropoed regulations.

#### Proposed Effective Date

These regulations are proposed to be applicable beginning January 1, 2004.

#### Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the regulations generally clarify existing reporting obligations and are expected, for the most part, to have a minimal impact on industry practice. Thus, the regulations will not result in a significant economic impact on any entity subject to the regulations.

Further, the reporting burdens in these regulations will fall primarily on large brokerage firms, large banks, and other large entities acting as trustees or middlemen, most of which are not small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. chapter 6). Thus, a substantial number of small entities will not be affected. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

#### Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic or written comments (a signed original and eight (8) copies) that are submitted timely (in the manner described in the **ADDRESSES** caption) to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

#### Drafting Information

The principal author of these regulations is Faith Colson, Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

#### List of Subjects

##### 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

##### 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

##### 26 CFR Part 602

Reporting and recordkeeping requirements.

## Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1, 301 and 602 are proposed to be amended as follows:

### PART 1—INCOME TAXES

1. The authority citation for part 1 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*

2. Section 1.671-4 is amended by revising paragraph (a) to read as follows:

#### § 1.671-4 Method of reporting.

(a) *Portion of trust treated as owned by the grantor or another person.* Except as otherwise provided in paragraph (b) of this section and § 1.671-5, items of income, deduction, and credit attributable to any portion of a trust which, under the provisions of subpart E (section 671 and following), part I, subchapter J, chapter 1 of the Internal Revenue Code, is treated as owned by the grantor or another person are not reported by the trust on Form 1041, "U.S. Income Tax Return for Estates and Trusts," but are shown on a separate statement to be attached to that form. Section 1.671-5 provides special reporting rules for widely held fixed investment trusts. Section 301.7701-4(e)(2) of this chapter provides guidance on how the reporting rules in this paragraph (a) apply to an environmental remediation trust.

\* \* \* \* \*

3. Section 1.671-5 is added to read as follows:

#### § 1.671-5 Reporting for widely held fixed investment trusts.

(a) *Table of contents.* This table of contents lists the major paragraph headings for this section.

- (a) Table of contents.
- (b) Definitions.
- (c) Trustee's obligation to furnish information.
  - (1) In general.
  - (i) Calculation and presentation.
  - (ii) Reporting period.
  - (iii) Accounting method.
  - (iv) Gross income requirement.
- (2) Information to be provided for all trusts.
  - (i) Trust identification.
  - (ii) Items of income, deduction and credit.
  - (iii) Asset sales and dispositions.
  - (iv) Information on redemptions and sales of WHFIT unit interests.
  - (v) Other information.
- (3) Additional information to be provided for a WHMT.
  - (i) Market discount information.
  - (ii) Premium information.
  - (iii) Principal payment information.
- (4) Identifying the trust reporting period and the representative who will provide information.

- (5) Time and manner of providing information.
  - (i) Time.
  - (ii) Manner.
- (6) Requesting information from a WHFIT.
  - (i) Requesting persons.
  - (ii) Manner of requesting information.
  - (iii) Period of time during which requesting person may request WHFIT information.
- (7) Trustee's requirement to retain records.
- (d) Form 1099 requirement for trustees and middlemen.
  - (1) Obligation to file Form 1099 with the Internal Revenue Service.
    - (i) In general.
    - (ii) Forms 1099 not required for exempt recipients.
    - (iii) Reporting with respect to foreign persons.
  - (2) Information to be reported.
    - (i) Determining amounts to be provided on Forms 1099.
    - (ii) Information to be provided on Forms 1099.
  - (3) Time and manner of filing Forms 1099.
  - (e) Requirement of furnishing the statement to a unit interest holder.
    - (1) In general.
    - (i) General rule for determining information for statement.
      - (ii) Required use of safe harbor information.
      - (iii) Requirement to separately state relevant WHFIT items.
    - (2) Information required to be provided on written statement with respect to all WHFITs.
      - (i) WHFIT information.
      - (ii) Identification of the person furnishing the statement.
      - (iii) Items of income, deduction and credit.
      - (iv) Asset sales and dispositions.
      - (v) Information on the redemption or sale of a unit interest.
      - (vi) Other information.
      - (vii) Required statement.
    - (3) Additional information to be provided on written statement with respect to WHMTs.
      - (i) Information regarding market discount and premium.
      - (ii) Information regarding principal payments.
    - (4) Due date and other requirements with respect to statement required to be furnished to the unit interest holder.
  - (f) Safe harbors for providing information for WHFITs other than WHMTs.
    - (1) Safe harbors for trustee reporting of WHFIT information.
      - (i) In general.
      - (ii) Safe harbor for reporting WHFIT income and expenses.
      - (iii) Safe harbor for reporting OID.
      - (iv) Safe harbor for reporting information with respect to sales of WHFIT assets.
      - (v) Safe harbor for reporting redemptions and sales of unit interests on a secondary market.
        - (2) Use of information provided by trustees under safe harbors.
    - (i) Use of information provided in accordance with the safe harbor for reporting WHFIT income and expense.
    - (ii) Use of safe harbor for reporting OID.
    - (iii) Use of safe harbor for reporting information with respect to sales or dispositions.

- (3) Example of use of safe harbors.
  - (i) Facts.
  - (ii) Trustee reporting.
  - (iii) Broker's use of information provided by Trustee.
- (g) Safe Harbor for certain WHMTs.
  - (1) Safe harbors for trustee reporting of trust information.
    - (i) In general.
    - (ii) Requirements for use of safe harbors.
    - (iii) Safe harbor for reporting WHMT income, expenses, principal receipts, and sales and dispositions of mortgages.
    - (iv) Safe harbor for reporting OID information.
    - (v) Safe Harbor for reporting market discount information.
    - (vi) Safe harbor for reporting premium information.
  - (2) Use of information provided by a trustee under the safe harbor.
    - (i) Use of information provided in accordance with the safe harbor for reporting WHMT income, expenses, receipt of principal payments, and sales and dispositions of mortgages.
      - (ii) Use of OID factor to determine the OID attributable to a unit interest holder.
      - (iii) Requirement to provide market discount information.
      - (iv) Requirement to provide premium information.
  - (3) Example of safe harbor.
    - (i) Facts.
    - (ii) Trustee reporting.
    - (iii) Broker's use of the information provided by trustee.
  - (h) Requirement that middlemen furnish information to exempt recipients and noncalendar-year taxpayers.
    - (1) In general.
    - (2) Time and manner of providing information.
    - (3) Clearing organization.
      - (i) Reserved.
    - (j) Exempt recipients.
      - (1) Requirement that exempt recipient include accurate trust information in computing taxable income.
      - (2) Exempt recipients defined.
        - (i) Persons described in paragraph 1.6049-4(c)(1)(ii) of this chapter.
        - (ii) Middlemen.
        - (iii) Real estate mortgage investment conduit.
      - (iv) A WHFIT.
      - (v) Certain trusts and estates.
    - (k) Coordination with information reporting rules under subpart B, part III, subchapter A, chapter 61 of the Internal Revenue Code (Information Returns Concerning Transactions With Other Persons).
      - (l) Backup withholding requirements.
      - (m) Penalties for failure to comply.
      - (n) Effective date.

(b) *Definitions.* Solely for purposes of this § 1.671-5:

- (1) An *asset* includes any real or personal, tangible or intangible property held by the trust, including an interest in a contract.
- (2) An *affected expense* is an expense described in § 1.67-2T(i)(1).
- (3) The *cash held for distribution* is the amount of cash that would be payable to unit interest holders if the

amount of a distribution were required to be determined as of the date in question.

(4) A *distribution paid on redemption of a unit interest* is the portion of a redemption price that represents the cash held for distribution with respect to the redeemed unit interest.

(5) An *exempt recipient* is any person described in paragraph (j)(2) of this section.

(6) The *gross proceeds paid on redemption of a unit interest* is the portion of the redemption price that represents payment for the assets held by the trust (other than cash held for distribution) with respect to the redeemed unit interest.

(7) A *middleman* is any person who, at any time during the calendar year, holds an interest in an arrangement classified as a trust under § 301.7701-4(c) of this chapter, on behalf of, or for the account of, another person, or who otherwise acts in a capacity as an intermediary for the account of another person. A middleman includes, but is not limited to—

(i) A custodian of a person's account, such as a bank, financial institution, or brokerage firm acting as custodian of an account;

(ii) A nominee, including the joint owner of an account or instrument except if the joint owners are husband and wife; and

(iii) A broker (as defined in section 6045(c)(1) and § 1.6045-1(a)(1)) holding an interest for a customer in street name.

(8) A *mortgage* is an obligation that is principally secured by an interest in real property within the meaning of § 1.860G-2(a).

(9) The *redemption price* is the total amount paid to a unit interest holder upon redemption of a unit interest.

(10) A *reporting period* is the period chosen under paragraph (c)(1)(ii) of this section by the trustee for providing trust information to requesting persons.

(11) A *requesting person* is a person specified in paragraph (c)(6)(i) of this section who is entitled under this § 1.671-5 to request the trust information specified in paragraphs (c)(2) and (3) of this section.

(12) The *start-up date* is the date on which substantially all of the assets and the contracts for the purchase of assets have been deposited with the trustee of the widely held fixed investment trust.

(13) *Trust sale proceeds* are the gross proceeds (see § 1.6045-1(d)(5)) received by a trust with respect to the sale or disposition of an asset held by a trust.

(14) A *unit interest holder* is any person who holds a direct or indirect interest, including a beneficial interest,

in a widely held fixed investment trust at any time during the calendar year.

(15) A *widely held fixed investment trust* (WHFIT) is an arrangement classified as a trust under § 301.7701-4(c) of this chapter in which any interest in the trust is held by a middleman; provided the trust is a United States person under section 7701(a)(30)(E), and the unit interest holders of the trust are treated as owners under subpart E, part I, subchapter J, chapter 1 of the Internal Revenue Code.

(16) A *widely held mortgage trust* (WHMT) is a WHFIT, substantially all the assets of which, measured by value, are mortgages, amounts received on mortgages, and reasonably required reserve funds. A WHFIT does not fail to meet this definition merely because it holds, during a brief initial funding period, both cash and short-term contracts for the purchase of mortgages.

(c) *Trustee's obligation to furnish information*—(1) *In general.* Upon request, a trustee of a WHFIT must provide to any requesting person, for the reporting period requested, the information described in paragraph (c)(2) of this section and, in the case of a WHMT, the information described in paragraph (c)(3) of this section. The information provided by the trustee must be determined in accordance with the following rules.

(i) *Calculation and presentation.* WHFIT information must be provided in any manner that—

(A) Enables a requesting person to determine with reasonable accuracy the WHFIT items described in paragraphs (c)(2) and (3) of this section that are attributable to a unit interest holder for the taxable year of that unit interest holder;

(B) Conforms, generally, with industry practice for the reporting of the WHFIT items described in paragraphs (c)(2) and (3) of this section for the type of asset or assets held by the WHFIT; and

(C) Enables a requesting person to separately state any WHFIT item that, if taken into account separately by a beneficial owner of a unit interest, would result in an income tax liability different from that which would result if the owner did not take the item into account separately.

(ii) *Reporting period*—(A) *General rule.* Provided a trustee uses the same reporting period throughout the trust's existence and the information provided by the trustee meets the requirements of paragraph (c)(1)(i) of this section, WHFIT information may be determined and provided on the basis of a calendar month, calendar quarter, or half or full calendar year.

(B) *Reporting period for original issue discount and market discount.*

Notwithstanding paragraph (c)(1)(ii)(A) of this section, a trustee must determine the information required to be provided with respect to original issue discount (OID), market discount, and premium using a semi-annual, or shorter, reporting period.

(iii) *Accounting method*—(A) *General rule.* WHFIT information must be calculated and provided using the cash receipts and disbursements method of accounting except where another method is required by the Internal Revenue Code or regulations with respect to a specific trust item. Accordingly, a trustee must provide information necessary for unit interest holders to comply with the rules of subtitle A, chapter 1, subchapter P, part V, subpart A which require the inclusion of accrued amounts with respect to OID, and section 860B(b) which requires the inclusion of accrued amounts with respect to a REMIC regular interest.

(B) *Exception for WHFITs marketed predominantly to taxpayers on the accrual method.* If the trustee or the trust's sponsor has knowledge that a WHFIT is marketed primarily to accrual method unit interest holders and the WHFIT holds assets for which the timing of the recognition of income is materially affected by the use of the accrual method of accounting, the WHFIT must prepare and report trust information using the accrual method of accounting.

(iv) *Gross income requirement.* The amount of trust income reported by the trustee must be the amount of gross income generated by the WHFIT's assets. Thus, in the case of a WHFIT that receives a payment net of an expense or expenses, the payment must be grossed up to reflect the deducted expense or expenses. See paragraph (c)(2)(iii) of this section regarding reporting with respect to sales and dispositions.

(2) *Information to be provided by all trusts.* With respect to all WHFIT's—

(i) *Trust identification.* The trustee must provide information identifying the WHFIT, including—

(A) The name of the WHFIT;

(B) The name and address of the trustee;

(C) The employer identification number of the WHFIT; and

(D) The Committee on Uniform Security Identification Procedure (CUSIP) number, account number, serial number, or other identifying number of the WHFIT.

(ii) *Items of income, deduction, and credit.* The trustee must provide information detailing—

- (A) All items of gross income;
- (B) All items of deduction; and
- (C) All items of credit.

(iii) *Asset sales and dispositions*—(A) *The de minimis test.* The information to be reported under this paragraph (c)(2)(iii) with respect to asset sales and dispositions depends on whether the WHFIT meets a de minimis test with respect to sales and dispositions for the calendar year.

(1) *De minimis test.* A WHFIT meets the de minimis test if trust sales proceeds for the calendar year equal or are less than five percent of the aggregate fair market value of all assets held by the trust as of January 1st of that year, or the start-up date, if the trust was not in existence on January 1st.

(2) *Effect of clean-up call.* If a WHFIT fails to meet the de minimis test in this paragraph (c)(2)(iii) solely as the result of a clean-up call (the redemption of all unit interests in termination of the WHFIT when the administrative costs of the trust outweigh the benefits of maintaining the trust), the WHFIT will be treated as having met the de minimis test in this paragraph (c)(2)(iii).

(B) *Information required to be provided for WHFITs meeting the de minimis test.* If a WHFIT meets the de minimis test of this paragraph (c)(2)(iii) for a calendar year, the trustee must provide the date of each sale or disposition and information regarding the trust sale proceeds received by the trust with respect to the sale or disposition. The trustee must also provide requesting persons with a statement that the WHFIT met the de minimis test of this paragraph (c)(2)(iii) for the calendar year.

(C) *Additional information required to be provided for WHFITs not meeting the de minimis test.* If a WHFIT does not meet the de minimis test of this paragraph (c)(2)(iii) for a calendar year, the trustee must provide with respect to each sale or disposition of WHFIT assets—

(1) The date of each sale or disposition;

(2) Information regarding the trust sale proceeds received by the WHFIT with respect to the sale or disposition;

(3) Information that will enable a unit interest holder to allocate with reasonable accuracy a portion of the holder's basis in the unit interest to the sale or disposition; and

(4) Information that will enable a unit interest holder to allocate with reasonable accuracy a portion of the unit interest holder's market discount or premium, if any, to the sale or disposition.

(D) *Application of this paragraph to a WHMT*—In the case of a WHMT, the

trust meets the de minimis test in this paragraph (c)(2)(iii) if trust sales proceeds for the calendar year equal or are less than five percent of the aggregate outstanding principal balance of all mortgages held by the WHMT as of January 1st of that year, or the start-up date, if the trust was not in existence on January 1st. For purposes of applying the de minimis test in this paragraph (c)(2)(iii), scheduled and unscheduled principal payments are not included in the amount of trust sales proceeds.

(iv) *Information on redemptions and sales of WHFIT unit interests*—(A) *Redemptions.* For each date on which the redemption price of a unit interest is determined, the trustee must provide information to enable a requesting person to determine—

(1) The redemption price per unit interest on that date;

(2) The gross proceeds paid on redemption of a unit interest on that date; and

(3) The income that should be attributed to a unit interest for the portion of the reporting period that a redeeming unit interest holder held the unit interest.

(B) *Sale of a unit interest*—If a secondary market for the unit interests of the WHFIT is established, the trustee must provide for each day of the reporting period, information to enable a requesting person to determine the undistributed WHFIT income, per unit interest, held by the WHFIT as of the date of sale.

(v) *Other information.* The trustee must provide any other information necessary for a unit interest holder that is the beneficial owner of a unit interest to report, with reasonable accuracy, the items of income, deduction, and credit attributable to the portion of the trust treated as owned by the unit interest holder under section 671 for the requested reporting period or any other reporting period.

(3) *Additional information to be provided for a WHMT.* In addition to meeting the requirements of paragraph (c)(2) of this section, the trustee must provide—

(i) *Market discount information.* Information that enables a unit interest holder to determine, in any manner that is reasonably consistent with section 1276(a)(3), the portion of the unit interest holder's market discount, if any, that has accrued during the reporting period.

(ii) *Premium information.* Information that enables a unit interest holder to determine, in any manner that is reasonably consistent with section 171, the amount of the unit interest holder's

amortizable bond premium, if any, for the reporting period.

(iii) *Principal payment information.* Information regarding principal payments, both scheduled and unscheduled, received by the WHMT on mortgages held by the WHMT.

(4) *Identifying the trust reporting period and the representative who will provide information*—The trustee must identify a representative of the WHFIT who will provide the information specified in this paragraph (c) and the reporting period which will be used by the trustee. The name, address, and telephone number of the representative and the reporting period must be—

(i) Printed in a publication generally read by, and available to, requesting persons;

(ii) Stated in the trust's prospectus; or

(iii) Posted on the trustee's internet site.

(5) *Time and manner of providing information*—(i) *Time*—(A) *In general.* Except as provided in paragraph (c)(5)(i)(B) of this section, a trustee must provide the information specified in this paragraph (c) to requesting persons on or before the later of—

(1) The 30th day after the close of the reporting period or periods for which the information was requested; or

(2) The day that is 14 days after the receipt of the request.

(B) *Trusts holding interests in REMICs or other WHFITs.* If substantially all the assets of a WHFIT are unit interests in other WHFITs, REMIC regular interests, or both, a trustee must provide the information specified in this paragraph (c) on or before the later of—

(1) The 44th day after the close of the reporting period or periods for which the information was requested; or

(2) The day that is 28 days after the receipt of the request.

(ii) *Manner.* The information specified in this paragraph (c) must be provided—

(A) By written statement sent by first class mail to the address provided by the requesting person;

(B) By causing it to be printed in a publication generally read by and available to requesting persons and by notifying the requesting person in writing of the publication in which it will appear, the date on which it will appear, and, if possible, the page on which it will appear;

(C) By causing it to be posted on an internet site and by notifying requesting persons in writing of the internet site on which it will appear; or

(D) By any other method agreed to by the trustee and requesting persons.

(6) *Requesting information from a WHFIT*—(i) *Requesting persons.* The following persons that hold an interest

in a WHFIT may request the information specified in this paragraph (c) from that WHFIT—

(A) Any middleman;

(B) Any broker who holds a unit interest on its own behalf;

(C) Any other exempt recipient who holds an interest directly and not through a middleman;

(D) Any noncalendar-year unit interest holder who holds a WHFIT interest directly and not through a middleman; and

(E) A representative or agent for a person specified in this paragraph (c)(6).

(ii) *Manner of requesting information.* In requesting WHFIT information, a requesting person must specify the WHFIT and the reporting period or periods for which information is requested.

(iii) *Period of time during which a requesting person may request WHFIT information.* During the WHFIT's existence and for three years following the date of the WHFIT's termination, a requesting person may request information for any of the WHFIT's reporting periods.

(7) *Trustee's requirement to retain records.* During the existence of the WHFIT and for at least five years following the date of termination, the trustee must maintain in its records a copy of the information provided to requesting persons for each reporting period and such supplemental data as may be necessary to establish that the information provided to requesting persons is correct and meets the requirements of this paragraph (c).

(d) *Form 1099 requirement for trustees and middlemen—(1) Obligation to file Form 1099 with the Internal Revenue Service—(i) In general.* Except as provided in paragraphs (d)(1)(ii) and (iii) of this section—

(A) Every trustee must file with the Internal Revenue Service the appropriate Forms 1099, reporting the information specified in paragraph (d)(2) of this section with respect to any unit interest holder who holds an interest in the WHFIT directly and not through a middleman; and

(B) Every middleman must file with the Internal Revenue Service the appropriate Forms 1099, reporting the information specified in paragraph (d)(2) of this section with respect to any unit interest holder on whose behalf or account the middleman holds an interest in the WHFIT or acts in a capacity of an intermediary.

(ii) *Forms 1099 not required for exempt recipients.* A Form 1099 is not required with respect to a unit interest holder that is an exempt recipient. If the trustee or middleman backup withholds

under section 3406 on payments made to an exempt recipient (because, for example, the exempt recipient has failed to furnish a Form W-9 on request), then the trustee or middleman is required to file a Form 1099 under this paragraph, unless the trustee or middleman refunds the amount withheld in accordance with § 31.6413(a)-3 of this chapter. Paragraph (j) of this section describes unit interest holders that may be treated as exempt recipients.

(iii) *Reporting with respect to foreign persons.* Payments made by a WHFIT to a unit interest holder that is not a United States person must be reported as provided under subtitle A, chapter 3 of the Internal Revenue Code (sections 1441 through 1464) and the regulations thereunder and are not reported under this paragraph (d).

(2) *Information to be reported—(i) Determining amounts to be provided on Forms 1099—(A) In General.* The information provided for a calendar year by a trustee or middleman to the Internal Revenue Service on the appropriate Forms 1099 must be consistent with the information provided by the trustee under paragraph (c) of this section and must reflect with reasonable accuracy the WHFIT items that are attributable to a unit interest holder.

(B) *Use of safe harbor information.* If the trustee, in providing WHFIT information, uses the safe harbors in paragraph (f)(1) or (g)(1) of this section, then the trustee or middleman must calculate the information to be provided to the Internal Revenue Service on the Forms 1099 in accordance with paragraph (f)(2) or (g)(2) of this section, as appropriate.

(ii) *Information to be provided on Form 1099.* The trustee or middleman must include on the appropriate Forms 1099—

(A) *Taxpayer information.* The name, address, and taxpayer identification number of the unit interest holder.

(B) *Information regarding the person filing the Form 1099.* The name, address, taxpayer identification number, and telephone number of the person required to file the Form 1099.

(C) *Gross income.* The amount of gross income (including OID) of the WHFIT attributable to the unit interest holder for the calendar year.

(D) *Trust sale proceeds.* The trust sale proceeds that are attributable to the unit interest holder for the calendar year. With respect to a unit interest holder in a WHMT, the amount reported under this paragraph (d)(2)(ii)(D) includes the principal receipts that are attributable to that unit interest holder for the calendar year.

(E) *Gross proceeds paid on unit interest redemptions—(1) In general.* The gross proceeds paid on redemption of a unit interest to the unit interest holder for the calendar year, if any.

(2) *In-kind redemption.* If a unit interest holder redeems a unit interest solely for a pro-rata share of the assets of the WHFIT plus the undistributed cash income, the value of the assets received by the unit interest holder as a result of the redemption is not reported to the IRS as gross proceeds paid on redemption of a unit interest. The gross income attributable to the redeemed unit interest for the calendar year must be reported under paragraph (d)(2)(ii)(C) of this section.

(F) *Gross proceeds paid on the sale of a unit interest on a secondary market.* The gross proceeds paid to a unit interest holder for the sale of a unit interest or interests on a secondary market established for the WHFIT for the calendar year, if any.

(G) *Other information.* Any other information required by the Forms 1099.

(3) *Time and manner of filing Forms 1099.* The Forms 1099 required to be filed under this paragraph (d) must be filed on or before February 28th (March 31, if filed electronically) of the year following the year for which the Forms 1099 are being filed. The returns must be filed with the appropriate Internal Revenue Service Center, at the address listed in the instructions for the Forms 1099. For extensions of time for filing returns under this section, see § 1.6081-1, the instructions for the Forms 1099, and applicable revenue procedures (see § 601.601(d)(2) of this chapter). For magnetic media filing requirements, see § 301.6011-2 of this chapter. Trust sale proceeds, gross proceeds paid on unit interest redemption, and gross proceeds paid on the sale of a unit interest are to be reported on the same type of Form 1099 as that required for reporting gross proceeds under section 6045.

(e) *Requirement of furnishing a statement to the unit interest holder—*

(1) *In general.* Every trustee or middleman required to file appropriate Forms 1099 under paragraph (d) of this section with respect to a unit interest holder must furnish to that unit interest holder (the person whose identifying number is required to be shown on the form) a written statement showing both the information described in paragraph (e)(2) of this section, and, in the case of a WHMT, the information described in paragraph (e)(3) of this section. The information provided must be in accordance with the following rules—

(i) *General rule for determining information for statement.* The information provided on the written

statement furnished to the unit interest holder for the calendar year by the trustee or middleman must be consistent with the information provided by the trustee under paragraph (c) of this section and the information provided on the Forms 1099 filed with the IRS under paragraph (d) of this section. The information provided must reflect with reasonable accuracy the WHFIT items that are attributable to the unit interest holder.

(ii) *Required use of safe harbor information.* If the trustee, in providing WHFIT information, has used the safe harbors in paragraph (f)(1) or (g)(1) of this section, the trustee or middleman must calculate the information to be provided on the written statement furnished to the unit interest holder in accordance with paragraph (f)(2) or (g)(2) of this section, as appropriate.

(iii) *Requirement to separately state relevant WHFIT items.* The trustee or middleman must separately state any items that if taken into account separately by that unit interest holder would result in an income tax liability different from that which would result if the item was not taken into account separately.

(2) *Information required to be provided on written statement with respect to all WHFITs.* For the calendar year, the written statement furnished to the unit interest holder must meet the following requirements—

(i) *WHFIT information.* The written statement must identify the WHFIT. The written statement must include the information required to be provided by the trustee under paragraph (c)(2)(i)(A) of this section, regarding the name of the WHFIT, and paragraph (c)(2)(i)(D) of this section, regarding the identifying number of the WHFIT.

(ii) *Identification of the person furnishing the statement.* The written statement must provide the name, address, and taxpayer identification number of the person required to furnish the statement.

(iii) *Items of income, deduction, and credit.* The written statement must detail all items of income (including OID), deduction, and credit that are attributable to the unit interest holder.

(iv) *Asset sales and dispositions—(A) Information to be reported with respect to a WHFIT meeting the de minimis test.* If the WHFIT has met the de minimis test of paragraph (c)(2)(iii) of this section, the written statement need only provide information detailing the trust sale proceeds that are attributable to the unit interest holder.

(B) *Information to be reported with respect to trust not meeting the de minimis test.* If the trust has not met the

de minimis test of paragraph (c)(2)(iii) of this section, the written statement must provide with respect to each sale or disposition of a WHFIT asset—

(1) The date of sale or disposition;

(2) Information regarding the trust sale proceeds that are attributable to the unit interest holder;

(3) Information that will enable the unit interest holder to allocate with reasonable accuracy a portion of the holder's basis in the holder's unit interest to the sale or disposition; and

(4) Information that will enable a unit interest holder to allocate with reasonable accuracy a portion of the unit interest holder's market discount or amortizable bond premium, if any, to the sale or disposition.

(v) *Information on the redemption or sale of a unit interest—*The written statement must provide the unit interest holder with information regarding the gross proceeds paid on redemption for each unit interest redeemed during the calendar year and the gross proceeds paid on the sale of a unit interest for each unit interest sold during the calendar year.

(vi) *Other information.* The written statement must include any other information necessary the unit interest holder to report, with reasonable accuracy, the items of income, deduction, and credit attributable to the portion of the trust treated as owned by the unit interest holder under section 671 for the current calendar year, or any other year.

(vii) *Required statement.* The written statement must inform the unit interest holder that the items of income, deduction, and credit, and any other information shown on the statement, must be taken into account in computing the taxable income and credits of the unit interest holder on the income tax return of the unit interest holder.

(3) *Additional information to be provided on written statement with respect to WHMTs.* For the calendar year, in addition to meeting the requirements of paragraph (e)(2) of this section, the written statement furnished to the unit interest holder of a WHMT must also meet the following requirements—

(i) *Information regarding market discount and premium.* The written statement must include the information regarding market discount and premium that is required to be provided by the trustee under paragraphs (c)(3)(i) and (ii) of this section.

(ii) *Information regarding principal payments.* The written statement must include information regarding the principal payments, scheduled and

unscheduled, received by the WHMT that are attributable to the unit interest holder.

(4) *Due date and other requirements with respect to the statement required to be furnished to the unit interest holder.* The statement required to be furnished to the unit interest holder under this paragraph (e) for a calendar year must be furnished to the holder before March 16 of the year following the year for which the statement is being furnished. The person sending the statement must maintain in its records a copy of the statement furnished to the unit interest holder and supplemental data as may be required to establish the correctness of the statement for a period of 5 years from the due date for furnishing such statement.

(f) *Safe harbors for providing information for WHFITs other than WHMTs—(1) Safe harbors for trustee reporting of WHFIT information—(i) In general.* Except in the case of a WHMT, a trustee of a WHFIT that reports an item under a safe harbor in this paragraph (f)(1), is deemed to provide and calculate that WHFIT item in accordance with the rules of paragraph (c)(1)(i) of this section. Any item reported under a safe harbor in this paragraph (f)(1) must include a statement giving notice to that effect when providing information to a requesting person.

(ii) *Safe harbor for reporting WHFIT income and expenses.* A trustee satisfies this safe harbor for providing income and expense information by first determining the total amount of WHFIT distributions (both actual and deemed) for the calendar year and then expressing each income or expense item as a fraction of the total amount of WHFIT distributions. These fractions (hereafter called factors) must be accurate to at least four decimal places.

(A) *Step one: Determine the total amount of WHFIT distributions for the calendar year.* The trustee determines the total amount of WHFIT distributions (actual and deemed) for the calendar year. If the calculation of total amount of WHFIT distributions under this paragraph (f)(1)(ii)(A) results in a zero or a negative number, the trustee may not determine income and expense information under the safe harbor in this paragraph. The *total amount of WHFIT distributions* equals the amount of WHFIT funds paid out to the unit interest holders (including amounts paid as of the result of redemptions) for the calendar year—

(1) Increased by—

(i) All amounts that would have been distributed during the calendar year but

were instead reinvested pursuant to a reinvestment plan; and

(ii) All cash held for distribution to unit interest holders as of December 31 of the year for which the trustee is reporting; and

(2) Decreased by—

(i) All cash distributed during the current year that was included in a year-end cash allocation factor (see paragraph (f)(1)(ii)(C)(1) of this section) of a prior year; and

(ii) All gross proceeds paid on redemption of a unit interest for the calendar year.

(3) For the purpose of calculating the amount of WHFIT funds paid out to unit interest holders and the for the purpose of calculating all gross proceeds paid on redemption of a unit interest for the calendar year, pro-rata in-kind redemptions made during the calendar year are disregarded.

(B) *Step two: Determine factors that express the ratios of WHFIT income and expenses to the total amount of WHFIT distributions.* The trustee determines factors that express the ratios of WHFIT income and expenses to the total amount of WHFIT distributions as follows—

(1) *Income factors.* For each type of income earned by a WHFIT for the calendar year, the trustee determines the ratio of—

(i) The gross amount of that type of income; divided by

(ii) The total amount of WHFIT distributions for the calendar year.

(2) *Expense factors.* For each type of expense paid by a WHFIT during the calendar year, the trustee determines the ratio of—

(i) The gross amount of that type of expense; divided by

(ii) The total amount of WHFIT distributions for the calendar year.

(C) *Step three: Determine adjustments for reconciling the total amount of WHFIT distributions (determined under step one) with amounts actually paid to unit interest holders.* Paragraph (f)(1)(ii)(B) of this section (step two) requires an item of income or expense to be expressed as a ratio of that item to the total amount of WHFIT distributions (as determined under step one). A unit interest holder's share of the total amount of WHFIT distributions may differ from the amount actually paid to that unit interest holder. A trustee, therefore, must provide information that will be used to compute a unit interest holder's share of the total amount of WHFIT distributions based on the amount actually paid to the unit interest holder. A trustee satisfies this requirement by providing a

current year-end cash allocation factor and a prior year cash allocation factor.

(1) *The current year-end cash allocation factor is—*

(i) The amount of cash held for distribution to unit interest holders by the WHFIT as of December 31 of the year for which the trustee is reporting; divided by

(ii) The number of unit interests outstanding as of December 31.

(2) *The prior year cash allocation factor is—*

(i) The amount of the distribution during the current calendar year that was included in determining a year-end cash allocation factor for a prior year; divided by

(ii) The number of unit interests outstanding on the date of the distribution.

(D) *Requirement that trustee furnish additional information to requesting persons.* In the case where the safe harbor factors provided by the trustee under this paragraph (f)(1)(ii) cannot be used to determine with reasonable accuracy the income and expense attributable to a unit interest holder, upon request of the person responsible for filing the Form 1099 under paragraph (d) of this section, the trustee must provide to the person additional information to enable the income and expense attributable to the unit interest holder to be determined with reasonable accuracy. See paragraph (f)(2)(i)(A)(3)(ii) of this section.

(iii) *Safe harbor for reporting OID.* With respect to information regarding OID, the trustee may satisfy paragraph (c)(1)(i) of this section by providing, for each reporting period, any day of which is in that calendar year, the aggregate daily accrual of OID per \$1,000 of original principal amount.

(iv) *Safe harbor for reporting information with respect to sales of WHFIT assets—(A) Safe harbor for a WHFIT meeting the de minimis test.* If a WHFIT meets the de minimis test of paragraph (c)(2)(iii) of this section regarding sales and dispositions of WHFIT assets, the trustee satisfies this safe harbor for WHFIT's meeting the de minimis test by providing a list of dates (from earliest to latest) on which WHFIT assets were sold or disposed of during the calendar year and by including for each date identified, the total amount of trust sale proceeds per unit interest received by the WHFIT for all sales or dispositions of WHFIT assets on that date.

(B) *Safe harbor for WHFIT not meeting the de minimis test—* If a WHFIT does not meet the de minimis test under paragraph (c)(2)(iii) of this section regarding sales and dispositions

of trust assets, the trustee satisfies this safe harbor for WHFIT's not meeting the de minimis test by providing—

(1) A list of dates (from earliest to latest) on which sales or dispositions of WHFIT assets occurred during the calendar year and by providing for each date identified—

(i) The trust sales proceeds received by the trust, per unit interest, with respect to the sales and dispositions, on that date;

(ii) The portion of all assets (expressed as a percentage) held by the WHFIT that the assets sold or disposed of on that date represented.

(2) Determination of the portion of all assets held by the WHFIT that the assets sold or disposed of represented—

(i) If a WHFIT terminates within twenty four months of the start-up date of the WHFIT, the portion of the total fair market value of all assets held by the WHFIT that the assets sold or disposed of represented shall be based on the fair market value of the WHFIT's assets as of the start-up date; or

(ii) If a WHFIT terminates more than twenty four months after the start-up date of the WHFIT, the portion of the total fair market value of all assets held by the WHFIT that the assets sold or disposed of represented shall be based on the fair market value of the WHFIT's assets as of the date of the sale or disposition.

(v) *Safe harbor for reporting redemptions and sales of unit interests on a secondary market—(A)*

*Redemptions.* For each date on which the redemption price of a unit interest is determined, the trustee must provide—

(1) The gross proceeds paid on redemption on a unit interest on that date; and

(2) The distribution paid on redemption of a unit interest on that date.

(B) *Sale of a unit interest on a secondary market.* For each day of the calendar year, the trustee must provide the amount of a distribution a unit interest holder would be entitled to with respect to a unit interest had the amount of a distribution been determined on that date.

(2) *Use of information provided by trustees under safe harbors.* If a trustee reports a WHFIT item in accordance with a safe harbor described in paragraph (f)(1) of this section, then the information provided with respect to that item on the Forms 1099 required under paragraph (d) of this section and on the statement required to be furnished under paragraph (e) of this section must be determined as provided in this paragraph (f)(2).

(i) *Use of information provided in accordance with the safe harbor for reporting WHFIT income and expense.* If a trustee determines WHFIT income and expenses under paragraph (f)(1)(ii) of this section, then the trustee or middleman must determine the amount of each type of income and expense attributable to a unit interest holder as follows—

(A) *Step one: Determine the total amount of WHFIT distributions attributable to the unit interest holder.* To determine the total amount of WHFIT distributions attributable to a unit interest holder, the amount paid to the unit interest holder during the calendar year (including amounts paid as the result of redemptions) is—

(1) Increased by—

(i) All amounts that would have been distributed during the calendar year to the unit interest holder but were reinvested pursuant to a reinvestment plan (unless another person (for example, the custodian of the reinvestment plan) is responsible for reporting these amounts under paragraph (d) of this section);

(ii) An amount equal to the current year-end cash allocation factor (provided by the trustee in accordance with paragraph (f)(1)(ii)(C)(1) of this section) multiplied by the number of unit interests held by the unit interest holder as of December 31; and

(iii) The amount of a distribution the unit interest holder would be entitled to had the amount of a distribution been determined on the date the unit interest holder sold a unit interest or interests on a secondary market established for the WHFIT. See paragraph (f)(1)(v)(B) of this section.

(2) Decreased by—

(i) An amount equal to the prior year cash allocation factor (provided by the trustee in accordance with paragraph (f)(1)(ii)(C)(2) of this section) multiplied by the number of unit interests held by the unit interest holder on the date of the distribution;

(ii) An amount equal to all gross proceeds paid on redemption of a unit interest to the unit interest holder for the calendar year; and

(iii) The amount of any distribution received by a unit interest holder during the calendar year with respect to a unit interest acquired on the secondary market established for the WHFIT that is attributable to another unit interest holder under paragraph (f)(2)(i)(A)(1)(iii) of this section.

(3) *Rules applicable to this paragraph (f)(2)(i)—(i) Treatment of in-kind distributions under this paragraph (f)(2)(i).* The value of the assets distributed to a unit interest holder as

a result of a pro-rata in-kind redemption are not included in the amount paid to the unit interest holder or the gross proceeds paid on redemption of a unit interest for purposes of this paragraph (f)(2)(i).

(ii) *The total amount of distributions attributable to a unit interest holder calculated under this paragraph (f)(2)(i)(A) equals zero or less.* If the total amount of distributions attributable to a unit interest holder, calculated under this paragraph (f)(2)(i)(A), equals zero or less, the middleman or trustee may not report the income and expense attributable to the unit interest holder under this paragraph (f)(2)(i). The middleman or trustee must request additional information from the trustee of the WHFIT to enable the trustee and middleman to determine with reasonable accuracy the items of income and expense that are attributable to the unit interest holder.

(B) *Step two: Apply the factors provided by the trustee to determine the items of income and expense that are attributable to the unit interest holder.*

The amount of each type of income (other than OID) and each type of expense attributable to a unit interest holder is determined as follows—

(1) *Application of income factors.* For each income factor provided by the trustee for the calendar year, the trustee or middleman multiplies—

(i) The income factor; by

(ii) The total amount of WHFIT distributions attributable to the unit interest holder for the calendar year (as determined in paragraph (f)(2)(i)(A) of this section).

(2) *Application of expense factors.* For each expense factor provided by the trustee for the calendar year, the trustee or middleman multiplies—

(i) The expense factor; by

(ii) The total amount of WHFIT distributions attributable to the unit interest holder for the calendar year (as determined in paragraph (f)(2)(i)(A) of this section).

(ii) *Use of safe harbor for reporting OID.* With respect to each reporting period any day of which is in the calendar year, the amount of OID that is allocable to each unit interest held by a unit interest holder is determined by multiplying—

(A) The product of the OID factor and the original principal balance of the unit interest divided by 1,000; by

(B) The number of days during the OID reporting period in that calendar year that the unit interest holder held the unit interest.

(iii) *Use of safe harbor for reporting information with respect to sales or dispositions—(A) In general—(1)*

*Information reported on Form 1099.* A trustee or middleman preparing a Form 1099 need provide only the amount of trust sales proceeds (as determined under paragraph (f)(2)(iii)(B) of this section) that are attributable to a unit interest holder for the calendar year. See paragraph (d)(2)(ii)(D) of this section.

(2) *Information provided on statement furnished to unit interest holder—(i) Information for WHFITs meeting the de minimis test.* If a WHFIT meets the de minimis test of paragraph (c)(2)(iii) of this section, the written statement required to be furnished to the unit interest holder under paragraph (e) of this section need provide to the unit interest holder only the amount of trust sale proceeds (as determined under paragraph (f)(2)(iii)(B) of this section) that are attributable to the unit interest holder for the calendar year.

(ii) *Information for WHFITs not meeting the de minimis test.* If a WHFIT does not meet the de minimis test in paragraph (c)(2)(iii) of this section, the written statement required to be furnished to the unit interest holder under paragraph (e) of this section must include a list of dates (in order, from earliest to latest) on which sales or dispositions of trust assets occurred during the calendar year and by providing for each date identified—

(A) The trust sales proceeds received by the trust with respect to the sales or dispositions of trust assets on that date that are attributable to the unit interest holder; and

(B) The information provided by the trustee under paragraph (f)(1)(iv)(B)(2) of this section regarding the portion of all assets (expressed as a percentage) held by the WHFIT that the assets sold or disposed of on that date represented.

(B) *Determining the trust sales proceeds that are attributable to the unit interest holder for the calendar year.* To determine the trust sale proceeds attributable to a unit interest holder for the calendar year, the aggregate trust sale proceeds, per unit interest, received by the WHFIT on each date on which trust assets were sold or disposed of is multiplied by the number of unit interests held by the unit interest holder on that date and aggregated for the year.

(3) *Example of use of safe harbors.* The following example illustrates the use of the safe harbor factors in this paragraph (f) to calculate and provide WHFIT information:

*Example—(i) Facts—(A) In general—(1)* Trust is a WHFIT that holds common stock in ten different corporations and has 100 unit interests outstanding. The agreement governing Trust requires Trust to distribute the cash held by Trust reduced by accrued but unpaid expenses on April 15, July 15,

and October 15 of the 2004 calendar year. The agreement also provides that the unit interests will be redeemed by Trust for an amount equal to the value of the unit interest, as of the close of business, on the day that the unit interest is tendered for redemption. There is no reinvestment plan and there is no secondary market for sales of trust interests.

(2) Broker holds ten unit interests in Trust in street name for each of *J* and *S*. *J* and *S* are individual, cash basis taxpayers.

(3) As of December 31, 2003, Trust holds \$12x for distribution to unit interest holders on the next distribution date and has no accrued but unpaid expenses. Trustee includes the \$12x in determining the year-end cash allocation factor for December 31, 2003.

(B) *Trust events occurring during the 2004 calendar year*—(1) During 2004, Trust receives \$588x in dividend income and \$12x in interest income from investment of WHFIT funds pending distribution to unit interest

holders, and pays \$45x in expenses, all of which are affected expenses.

(2) Trust makes all three of its required distributions. On April 15, Trust distributes \$135x which includes the \$12x included in determining the year-end cash allocation factor for December 31 of the prior year. On July 15, Trust distributes \$135x. On October 15, Trust distributes \$123x.

(3) On December 10, *J* tenders one of *J*'s unit interests to Trustee for redemption. Trustee determines that the redemption price of a unit interest on December 10 is \$116x, of which, \$115x represents the gross proceeds paid on redemption of a unit interest and \$1x represents a distribution paid on redemption of a unit interest.

(4) On December 12, Trustee sells shares of common stock for \$115x. The \$115x represents less than five percent of the aggregate fair market value of the common stock held by Trust as of January 1. On December 17, Trustee pays \$116x to Broker on *J*'s behalf for the redemption of the unit

interest. *J* is the only unit interest holder to redeem a unit interest during the calendar year.

(5) As of December 31, Trust holds cash of \$173x and has incurred \$15x in expenses that Trust has not paid.

(C) *Broker's actions during the 2004 calendar year*. During 2004, Broker credits the accounts of both *J* and *S* with their respective shares of the distributions made by Trust. Specifically, Broker credits each account with \$13.50x for the April 15 distribution, \$13.50x for the July 15 distribution and \$12.30x for the October 15 distribution. In addition, Broker credits *J*'s account with \$116x for *J*'s redemption of the unit interest. Consequently, as of December 31, Broker has credited \$155.30x to *J*'s account and \$39.30x to *S*'s account.

(ii) *Trustee reporting*—(A) Trustee is within the safe harbors of this paragraph (f)(1) if Trustee provides the following information to requesting persons—

|   |        |
|---|--------|
| Factor for dividend income .....  | 1.0889 |
| Factor for interest income .....  | .0222  |
| Factor for affected expenses .....  | .0833  |
| Current year-end cash allocation factor .....                             | 1.5960 |
| Prior year cash allocation factor .....                                   | .1200  |
| Gross proceeds paid on redemption of a unit interest as of 12/10/04 ..... | 115    |
| Distribution paid on redemption of a unit interest as of 12/10/04 .....   | 1      |
| Trust sales proceeds per unit interest for 12/12/04 .....                 | 1.1616 |

(B) Trustee determines this information as follows—

(1) *Step one: Trustee determines the total amount of WHFIT distributions for the calendar year*. The total amount of WHFIT distributions (actual and deemed) for the calendar year for purposes of determining the safe harbor factors is \$540x. This amount consists of the amounts paid on each scheduled distribution date during the calendar year (\$135x, \$135x, and \$123x), and the total amount paid to *J* as a result of *J*'s redemption of a unit interest (\$116x) (\$135x + \$135x + \$123x + \$116x = \$509x)—

(i) Increased by all cash held for distribution to unit interest holders as of December 31, 2004 (\$158x), which is the cash held as of December 31, 2004 (\$173x) reduced by the accrued but unpaid expenses as of December 31, 2004 (\$15x), and

(ii) Decreased by—  
(A) All amounts distributed during the calendar year but included in the year-end cash allocation factor from a prior year (\$12x); and

(B) All gross proceeds paid on redemption of a unit interest for the calendar year (\$115x).

(2) *Step two: Trustee determines factors that express the ratio of WHFIT income (other than OID) and expenses to the total amount of WHFIT distributions*. Trustee determines the factors for each type of income earned by Trust and each type of expense as follows—

(i) *Factor for dividend income*. The factor for dividend income is 1.0889 which represents the ratio of—

(A) The gross amount of dividends (\$588x); divided by

(B) The total amount of WHFIT distributions for the calendar year (\$540x).

(ii) *Factor for interest income*. The factor for interest income is .0222, which represents the ratio of—

(A) The gross amount of other income (\$12x); divided by

(B) The total amount of WHFIT distributions for the calendar year (\$540x).

(iii) *Expense Factor*. The factor for affected expenses is .0833 which represents the ratio of—

(A) The gross amount of affected expenses paid by Trust for the calendar year (\$45x); divided by

(B) The total amount of WHFIT distributions for the calendar year (\$540).

(3) *Step three: Trustee determines adjustments for reconciling the total amount of WHFIT distributions with amounts paid to unit interest holders*. To enable requesting persons to determine the total amount of WHFIT distributions that are attributable to a unit interest holder based on amounts actually paid to the unit interest holder, the trustee must provide both a current year-end cash allocation factor and a prior year cash allocation factor.

(i) *Current year-end cash allocation factor*. The adjustment factor for cash held by Trust at year end is 1.5960 which represents—  
(A) The cash held for distribution as of December 31, 2004 (\$158x) (the amount of cash held by Trust on December 31, 2004 (\$173x) reduced by accrued but unpaid expenses (\$15x)); divided by  
(B) The number of unit interests outstanding at year-end, (99).

(ii) *Prior Year Cash Allocation Factor*. The adjustment factor for distributions of year-end cash from the prior year is .1200 which represents—

(A) The amount of the distribution during the current calendar year that was included

in a year-end cash allocation factor for a prior year (\$12x); divided by

(B) The number of units outstanding at the time of the distribution, (100).

(4) *Trust sales proceeds information*. To satisfy the safe harbor, Trustee provides a list of dates on which trust assets were sold during the calendar year, and the amount of trust sales proceeds received as the result of the sale or disposition, per unit interest. In this case, only one sale took place during the calendar year, on December 12, 2004, and the amount of trust sale proceeds received per unit interest on that date is \$1.1616 (\$115x/99).

(iii) *Broker's use of information provided by Trustee*—(A) Broker uses the information furnished by Trustee under the safe harbors to determine that the following items are attributable to *J* and *S*—

With respect to *J*:

|  |          |
|--|----------|
| Dividend Income .....                                      | \$58.21x |
| Interest Income .....                                      | 1.19x    |
| Affected Expenses .....                                    | 4.45x    |
| Trust sale proceeds .....                                  | 10.45x   |
| Gross proceeds paid on redemption of a unit interest ..... | 115.00x  |

With respect to *S*:

|                           |          |
|---------------------------|----------|
| Dividend Income .....     | \$58.87x |
| Interest Income .....     | 1.20x    |
| Affected Expenses .....   | 4.50x    |
| Trust sale proceeds ..... | 11.62x   |

(B) Broker determines this information as follows—

(1) *Step one: Broker determines the total amount of WHFIT distributions attributable to *J* and *S**. The total amount of WHFIT distributions attributable to *J* is \$53.46x and the total amount of WHFIT distributions attributable to *S* is \$54.06. These amounts

represent the total amount paid to *J* (\$155.30x) and *S* (\$39.30x)—

(i) Increased by an amount equal to the current year-end cash allocation factor (1.5960) multiplied by the number of unit interests held by *J* (9) and *S* (10) as of December 31, 2004, that is for *J*, \$14.36x; and for *S*, \$15.96x;

(ii) Decreased by—

(A) An amount equal to the prior year cash allocation factor (.1200) multiplied by the number of unit interests held by *J* (10) and *S* (10) at the time of the distribution, that is for *J* and *S*, \$1.20x, each;

(B) An amount equal to all gross proceeds paid on redemption of a unit interest to the unit interest holder for the calendar year, or that is, for *J* (\$115x).

(2) *Step two: Broker applies the factors provided by Trustee to determine the Trust's income and expenses that are attributable to J and S.* The amounts of each type of income (other than OID) and expense that are attributable to *J* and *S* are determined by multiplying the factor for that type of income or expense by the total amount of WHFIT distributions attributable to *J* and *S* as follows—

(i) *Application of factor for dividends.* The amount of dividend income attributable to *J* is \$58.21x and the amount of dividend income attributable to *S* is \$58.87x. Broker determines these amounts by multiplying the total amount of WHFIT distributions attributable to *J* and to *S* (\$53.46x and \$54.06x, respectively) by the factor for dividends (1.0889).

(ii) *Application of factor for interest income.* The amount of interest income attributable to *J* is \$1.19x and the amount of interest income attributable to *S* is \$1.20x. Broker determines these amounts by multiplying the total amount of WHFIT distributions attributable to *J* and to *S* (\$53.46x and \$54.06x, respectively) by the factor for interest (.0222).

(iii) *Application of factor for affected expenses.* The amount of affected expenses attributable to *J* is \$4.45x and the amount of affected expenses attributable to *S* is \$4.50x. Broker determines these amounts by multiplying the total amount of WHFIT distributions attributable to *J* and to *S* (\$53.46x and \$54.06x, respectively) by the factor for affected expenses (.0833).

(3) *Broker determines the amount of trust sale proceeds attributable to J and S.* The amount of trust sale proceeds attributable to *J* is \$10.45x and the amount of trust sale proceeds attributable to *S* is \$11.61x. Broker determines these amounts by multiplying the number of unit interests held by *J* (9) and by *S* (10) on the date of sale, December 12, 2004, by the trust sale proceeds per unit interest on that date (1.1616). *J* also recognizes gain or loss on *J*'s redemption of a unit interest on December 10, 2004 based on the amount of gross proceeds paid on redemption of a unit interest (\$115x) and *J*'s basis in the redeemed unit interest.

(g) *Safe Harbor for certain WHMTs—*(1) *Safe harbors for trustee reporting of trust information—*(i) *In general.* A trustee of a WHMT that meets the requirements of paragraph (g)(1)(ii) of

this section and that reports a WHMT item or items under the safe harbor established for it in this paragraph (g)(1) is deemed to provide and calculate the WHMT item or items in accordance with the rules of paragraph (c)(1)(i) of this section. Any item reported under a safe harbor in this paragraph (g)(1) must include a statement giving notice to that effect when providing information to a requesting person.

(ii) *Requirements for use of safe harbors.* To use the safe harbors provided under this paragraph (g)(1), a WHMT must meet the following requirements—

(A) The WHMT must meet the de minimis sales and dispositions test under paragraph (c)(2)(iii) of this section;

(B) All sales and dispositions made by the WHMT during the calendar year must be for an amount equal to the unpaid principal balance plus the accrued but unpaid interest of the mortgage at the time of the sale or disposition;

(C) The trust must make monthly distributions of income and principal to unit interest holders;

(D) All unit interests in the WHMT must represent the right to receive pro-rata shares of both the income and the principal payments received by the WHMT on the mortgages it holds;

(E) The WHMT must report under this paragraph (g)(1)(ii) for the entire calendar year; and

(F) The assets of the WHMT are limited to—

(1) Mortgages with uniform characteristics;

(2) Amounts received on mortgages and held for distribution to unit interest holders; and

(3) Reasonably required reserve funds.

(G) The aggregate outstanding principal balance as defined in paragraph (g)(1)(iii)(D) of this section as of the WHMT's start-up date must equal the aggregate of the original face amounts of all issued unit interests.

(iii) *Safe harbor for reporting WHMT income, expenses, principal receipts, and sales and dispositions of mortgages.* A trustee satisfies this safe harbor for providing information with respect to income, expense, principal receipts, and sales and dispositions by complying with each step of the safe harbor provided in this paragraph (g)(1)(iii).

(A) *Step one: Trustee determines monthly pool factors that provide information regarding the WHMT's receipt of principal payments and the WHMT's receipt of proceeds from sales and dispositions of mortgages.* The trustee must, for each month of the calendar year and for January of the

following calendar year, calculate and provide the ratio (expressed as a decimal carried to at least eight places and called a *pool factor*) of—

(1) The amount that represents the aggregate outstanding principal balance of the WHMT as of the first business day of the month; divided by

(2) The amount that represents the aggregate outstanding principal balance of the WHMT as of the start-up day.

(B) *Step two: Trustee determines monthly expense factors that provide information regarding WHMT expenses.* For each month of the calendar year and for each type of expense paid by the WHMT during that month, the trustee calculates and provides the ratio (expressed as a decimal carried to at least eight places and called an *expense factor*) of—

(1) The gross amount, for the month, of each type of expense; divided by

(2) The amount that represents the aggregate outstanding principal balance of the WHMT as of the start-up day, divided by 1,000.

(C) *Step three: Trustee determines monthly income factors that provide information regarding the trust's gross monthly income.* For each month of the calendar year and for each type of gross income earned by the WHMT during that month, the trustee calculates and provides the ratio (expressed as a decimal carried to at least eight places and called an *income factor*) of—

(1) The gross amount, for the month, of each type of income; divided by

(2) The amount that represents the aggregate outstanding principal balance of the WHMT as of the start-up date, divided by 1,000.

(D) *Definition of aggregate outstanding principal balance.* For purposes of this paragraph (g)(1)(iii), the amount of the aggregate outstanding principal balance of a WHMT is the aggregate of—

(1) The outstanding principal balance of all mortgages held by the WHMT;

(2) The amounts received on mortgages and held for distribution by the WHMT; and

(3) The amount of the reserve fund.

(iv) *Safe harbor for reporting OID information—*(A) *Safe harbor for reporting OID prior to the issuance of final regulations under section 1272(a)(6)(C)(iii).* With respect to information regarding OID, the trustee, prior to the issuance of final regulations under section 1272(a)(6)(C)(iii), may satisfy paragraph (c)(1)(i) of this section by providing, for each reporting period during the calendar year, the aggregate daily accrual of OID per \$1,000 of aggregate outstanding principal balance as of the start-up day. In calculating the

aggregate daily accrual of OID per unit interest, the trustee must use a method that utilizes the prepayment assumption used in pricing the original issue of unit interests.

(B) *Safe harbor for reporting OID after the issuance of final regulations under section 1272(a)(6)(C)(iii).* [Reserved]

(v) *Safe Harbor for reporting market discount information—(A) Safe harbor for reporting market discount information prior to the issuance of final regulations under sections 1272(a)(6)(C)(iii) and 1276(b)(3).* With respect to information regarding market discount, the trustee, prior to the issuance of final regulations under sections 1272(a)(6)(C)(iii) and 1276(b)(3), may satisfy the requirements of paragraph (c)(1)(i) of this section by providing—

(1) In the case of a WHMT holding mortgages issued with OID, the ratio (expressed as a decimal carried to at least eight places) of—

(i) The OID accrued during the reporting period calculated in accordance with paragraph (g)(1)(iv) of this section; divided by

(ii) The total remaining OID as of the beginning of the reporting period as determined under paragraph (g)(1)(v)(A)(3) of this section; or

(2) In the case of a WHMT holding mortgages not issued with OID, the ratio (expressed as a decimal carried to at least eight places) of—

(i) The amount of stated interest paid to the WHMT during the reporting period; divided by

(ii) The total amount of stated interest remaining to be paid to the WHMT as of the beginning of the reporting period as determined under paragraph (g)(1)(v)(A)(3) of this section.

(3) *Computing the total amount of stated interest remaining to be paid and the total remaining OID at the beginning of a period.* To compute the total amount of stated interest remaining to be paid to the WHMT as of the beginning of the reporting period and the total remaining OID as of the beginning of the reporting period, the trustee must use a method that utilizes the prepayment assumption used in pricing the original issue of unit interests.

(B) *Safe harbor for reporting market discount information following the issuance of final regulations under sections 1272(a)(6)(C)(iii) and 1276(b)(3).* [Reserved]

(vi) *Safe harbor for reporting premium information.* [Reserved]

(2) *Use of information provided by a trustee under the safe harbor.* If a trustee reports an item in accordance with a safe harbor described in paragraph (g)(1)

of this section, then the information provided, with respect to that WHMT item, on the Forms 1099 required to be filed with the IRS under paragraph (d) of this section and on the statement required to be furnished to the unit interest holder under paragraph (e) of this section must be determined as provided in this paragraph (g)(2).

(i) *Use of information provided in accordance with the safe harbor for reporting WHMT income, expenses, receipt of principal payments, and sales and dispositions of mortgages.* The amount of each type of income and expense, principal payments, and proceeds from sales and dispositions of mortgages that are attributable to a unit interest holder for each month of the calendar year is computed as follows:

(A) *Step one: Determine the monthly amount of principal receipts and the amount of proceeds from the sales and dispositions of mortgages that are attributable to each unit interest—(1) Use of factor.* For each month of the calendar year that a unit interest was held on the record date, the amount of principal receipts and the amount of proceeds from sales and dispositions of mortgages that are attributable to each unit interest is determined by multiplying—

(i) The original face amount of the unit interest; by

(ii) The difference between the pool factor for the current month and the pool factor for the following month.

(2) *Reporting of principal receipts and proceeds from sales and dispositions of mortgages.* The aggregate of the amount of principal receipts and proceeds from sales and dispositions of mortgages that are attributable to each unit interest for the calendar year are reported to the IRS on Form 1099 as trust sales proceeds.

(B) *Step two: Apply the expense factors provided by the trustee to determine the amount of each type of expense that is attributable to each unit interest.* For each month of the calendar year that a unit interest was held on the record date, the amount of each type of expense that is attributable to each unit interest is determined by multiplying—

(1) The original face amount of the unit interest divided by 1000; by

(2) The expense factor for that month and that type of expense.

(C) *Step three: Apply the income factors provided by the trustee to determine the amount of each type of income that is attributable to each unit interest.* For each month of the calendar year that a unit interest was held on the record date, the amount of each type of income that is attributable to each unit interest is determined by multiplying—

(1) The original face amount of the unit interest divided by 1000; by

(2) The income factor for that month and that type of income.

(D) *Definitions for this paragraph (g)(2)(i).* For purposes of this paragraph (g)(2)(i)—

(1) The *record date* is the date used by the WHMT to determine the owner of the unit interest for the purpose of distributing the payment for the month.

(2) The *original face amount of the unit interest* is the original principal amount of a unit interest on its issue date.

(ii) *Use of OID factor to determine the OID attributable to a unit interest holder.* With respect to each OID reporting period, the amount of OID that is attributable to each unit interest held by a unit interest holder is determined by multiplying—

(A) The product of the OID factor by the original face amount of the unit interest divided by 1,000; by

(B) The number of days during the OID reporting period that the unit interest holder held the unit interest.

(iii) *Requirement to provide market discount information.* The market discount information provided by the trustee in accordance with paragraph (g)(1)(v) of this section must be provided to the unit interest holder in, or with, the written statement required to be furnished to the unit interest holder under paragraph (e) of this section.

(iv) *Requirement to provide premium information.* [Reserved]

(3) *Example of safe harbor.* The following example illustrates the use of the safe harbor factors in paragraphs (g)(1) and (2) of this section to calculate and provide trust information:

*Example.* (i) *Facts—(A) In general.* X is a WHMT. As of January 1, 2004, X's assets consist of 100 15-year mortgages, each having an unpaid principal balance of \$125,000 and a fixed, annual interest rate of 7.25 percent. X's unit interest holders are entitled to monthly, pro-rata distributions of the principal payments received by X. X's unit interest holders are also entitled to monthly, pro-rata distributions of the interest earned on the mortgages held by X, reduced by expenses. Unit interests are issued in increments of \$5,000 with a \$25,000 minimum. Broker holds a unit interest in X, with an original face amount of \$25,000, in street name, for J during the entire 2004 calendar year.

(B) *Trust events during the 2004 calendar year.* During the 2004 calendar year, X collects all interest and principal payments when due and makes all monthly distributions when due. One mortgage is repurchased from X in July for \$122,249, the mortgage's unpaid principal balance interest at the time. During November, another mortgage is prepaid in full. X earns \$80 interest income each month from the

temporary investment of X's funds pending distribution to the unit interest holders. All of X's expenses are affected expenses. The aggregate outstanding principal balance of X, X's interest income, and X's expenses, for each month of the 2004 calendar year are as follows:

| Month     | Principal balance | Income | Expenses |
|-----------|-------------------|--------|----------|
| January   | 12,500,000        | 75,601 | 5,288    |
| February  | 12,461,413        | 75,368 | 5,273    |
| March     | 12,422,593        | 75,133 | 5,256    |
| April     | 12,383,538        | 74,897 | 5,240    |
| May       | 12,344,247        | 74,660 | 5,244    |
| June      | 12,304,719        | 74,421 | 5,207    |
| July      | 12,264,953        | 74,181 | 5,191    |
| August    | 12,102,696        | 73,200 | 5,122    |
| September | 12,062,850        | 72,960 | 5,106    |
| October   | 12,022,763        | 72,717 | 5,089    |
| November  | 11,982,433        | 72,474 | 5,073    |
| December  | 11,821,235        | 71,500 | 5,006    |
| January   | 11,780,829        |        |          |

(ii) *Trustee reporting*—(A) Trustee, X's fiduciary, comes within the safe harbors of paragraph (g)(1)(iii) of this section by providing the following information to requesting persons:

| Month     | Pool factor | Income factor | Expense factor |
|-----------|-------------|---------------|----------------|
| January   | 1.00000000  | 6.04808000    | .42304000      |
| February  | .99691304   | 6.02944000    | .42184000      |
| March     | .99380744   | 6.01064000    | .42048000      |
| April     | .99068304   | 5.99176000    | .41920000      |
| May       | .98753976   | 5.97280000    | .41952000      |
| June      | .98437752   | 5.95368000    | .41656000      |
| July      | .98119624   | 5.93448000    | .41528000      |
| August    | .96821568   | 5.85600000    | .40976000      |
| September | .96502800   | 5.83680000    | .40848000      |
| October   | .96182104   | 5.81736000    | .40712000      |
| November  | .95859464   | 5.79792000    | .40584000      |
| December  | .94569880   | 5.72000000    | .40048000      |
| January   | .94246632   |               |                |

(B) Trustee determines this information as follows:

(1) *Step one: Trustee determines monthly pool factors that provide information regarding X's receipt of principal payments and X's receipt of proceeds from sales and dispositions of mortgages.* Trustee calculates and provides X's pool factor for each month of the 2004 calendar year. For the month of January the pool factor is 1.0, which represents the ratio of—

(i) The amount that represents the aggregate outstanding principal balance of X (12,500,000) as of the first business day of January; divided by

(ii) The amount that represents the aggregate outstanding principal balance of X (12,500,000) as of the start-up day.

(2) *Step two: Trustee determines monthly expense factors that provide*

*information regarding X's expenses.*

Trustee calculates and provides the expense factors for each month of the 2004 calendar year. During 2004, X has only affected expenses, and therefore, will only have one expense factor for each month. The expense factor for the month of January is .42304000 which represents the ratio of—

(i) The gross amount of expenses paid during January by X (5,288); divided by

(ii) The amount that represents the aggregate outstanding principal balance of X as of the start-up date (12,500,000) divided by 1,000 (12,500).

(3) *Step three: Trustee determines monthly income factors that provide information regarding X's gross monthly income.* Trustee calculates and provides the income factors for each month of the

2004 calendar year. During 2004, X has only interest income, and therefore, will only have one income factor for each month. The income factor for the month of January is 6.04808000 which represents the ratio of—

(i) The gross amount of interest income earned by X during January (\$75,601); divided by

(ii) The amount that represents that aggregate outstanding principal balance of X as of the start-up date (12,500,000), divided by 1,000 (12,500).

(iii) *Broker's use of the information provided by Trustee*—(A) Broker uses the information provided by Trustee under the safe harbor to determine that the following trust items are attributable to J:

| Month    | Trust sale proceeds | Affected expenses | Gross interest income |
|----------|---------------------|-------------------|-----------------------|
| January  | \$77.17             | \$10.58           | \$151.20              |
| February | 77.64               | 10.55             | 150.74                |
| March    | 78.11               | 10.51             | 150.27                |
| April    | 78.58               | 10.48             | 149.79                |
| May      | 79.06               | 10.49             | 149.32                |

| Month           | Trust sale proceeds | Affected expenses | Gross interest income |
|-----------------|---------------------|-------------------|-----------------------|
| June .....      | 79.53               | 10.41             | 148.84                |
| July .....      | 324.51              | 10.38             | 148.36                |
| August .....    | 79.69               | 10.24             | 146.40                |
| September ..... | 80.17               | 10.21             | 145.92                |
| October .....   | 80.66               | 10.18             | 145.43                |
| November .....  | 322.40              | 10.15             | 144.95                |
| December .....  | 80.81               | 10.01             | 143.00                |
| Total .....     | 1438.33             | 124.19            | 1774.22               |

(B) Broker determines this information as follows:

(1) *Step one: Broker determines the amount of principal receipts and the amount of proceeds from sales and dispositions of mortgages that are attributable to J for the 2004 calendar year.* Broker determines the amount of principal receipts and the amount of proceeds from the sales and dispositions of mortgages that are attributable to J for each month of the 2004 calendar year.

For the month of January, Broker determines that the amount of principal receipts and the amount of proceeds from the sales and dispositions of mortgages that are attributable to J is \$77.17. Broker determines this by multiplying the original face amount of J's unit interest (\$25,000) by .00308696, the difference between the pool factor for January (1.00000000), the current month, and the pool factor for February (.99691304) the following month. Broker reports the aggregate of the monthly amounts of principal receipts and amounts of proceeds from sales and dispositions that are attributable to J for the 2004 calendar year as trust sales proceeds on the Form 1099 filed with the IRS.

(2) *Step two: Broker applies the expense factors provided by Trustee to determine the amount of expenses that are attributable to J for the 2004 calendar year.* Broker determines the amount of X's expenses that are attributable to J for each month of the 2004 calendar year. For the month of January, Broker determines that the amount of expenses attributable to J is \$10.58. Broker determines this by multiplying the original face amount of J's unit interest (25,000) divided by 1,000 (25) by the expense factor for January (.42304000). Broker determines the expenses that are attributable to J for the 2004 calendar year by aggregating the monthly amounts.

(3) *Step three: Broker applies the income factors provided by Trustee to determine the amount of gross interest income attributable to J for the 2004 calendar year.* Broker determines the

amount of gross interest income that is attributable to J for each month of the 2004 calendar year. For the month of January, Broker determines that the amount of gross interest income attributable to J is \$151.20. Broker determines this by multiplying the original face amount of J's unit interest (25,000) divided by 1,000 (25), by the income factor for January (6.04808000). Broker determines the amount of the gross interest income that is attributable to J for the 2004 calendar year by aggregating the monthly amounts.

(h) *Requirement that middlemen furnish information to exempt recipients and noncalendar-year taxpayers—(1) In general.* A middleman that holds a unit interest on behalf of, or for the account of, any exempt recipient listed in paragraph (j)(2) of this section and any noncalendar-year unit interest holder must provide to such exempt recipient or noncalendar-year unit interest holder, upon request, the information provided by the trustee to the middleman under paragraph (c) of this section.

(2) *Time and manner of providing information.* The middleman must provide the requested information in writing to any such requester on or before the later of the 44th day after the close of the reporting period for which the information was requested, or the day that is 28 days after the receipt of the request. A middleman must provide information with respect to a WHFIT holding an interest in another WHFIT or a WHFIT holding an interest in a REMIC on or before the later of the 58th day after the close of the reporting period for which the information was requested, or the day that is 42 days after the receipt of the request.

(3) *Clearing organization.* A clearing organization described in § 1.163-5(c)(2)(i)(D)(8) is not required to furnish information to exempt recipients or non-calendar-year taxpayers under this paragraph.

(i) [Reserved]

(j) *Exempt recipients—(1) Requirement that exempt recipient include accurate trust information in*

*computing taxable income.* Under this § 1.671-5, trustees and middlemen are not required to file Forms 1099 with respect to a unit interest holder that is an exempt recipient or furnish statements to a unit interest holder that is an exempt recipient. An exempt recipient that is a beneficial owner must, however, obtain trust information and must include the items of income, deduction, and credit of the trust in computing its taxable income and credits on its income tax return.

(2) *Exempt recipients defined.* For purposes of this section, an exempt recipient includes—

(i) *Persons described in § 1.6049-4(c)(1)(ii).* Any person described in § 1.6049-4(c)(1)(ii) is an exempt recipient.

(ii) *Middlemen.* Middlemen, as defined in paragraph (b)(7) of this section, are exempt recipients.

(iii) *Real estate mortgage investment conduit.* A real estate mortgage investment conduit, as defined in section 860D(a), is an exempt recipient.

(iv) *A WHFIT.* A WHFIT, as defined in paragraph (b)(15) of this section, is an exempt recipient.

(v) *Certain trusts and estates.* A trust or an estate for which the trustee or middleman of the WHFIT is also required to file a Form 1041, "U.S. Income Tax Return for Estates and Trusts," in its capacity as a fiduciary of that trust or estate is an exempt recipient.

(k) *Coordination with information reporting rules under subpart B, part III, subchapter A, chapter 61 of the Internal Revenue Code (Information Returns Concerning Transactions With Other Persons).* In general, in cases where reporting is required for a WHFIT under both this § 1.671-5 and under subpart B, part III, subchapter A, chapter 61 of the Internal Revenue Code (Sections 6041 through 6050S) (Information Reporting Sections), the reporting rules for WHFITs under this § 1.671-5 control. The provisions of the Information Reporting Sections and the regulations thereunder are incorporated into this § 1.671-5 as applicable, except that

those rules do not apply to the extent that they are inconsistent with the provisions of this § 1.671-5.

(l) *Backup withholding requirements.* Every trustee and middleman required to file a Form 1099 under this section § 1.671-5 is a payor within the meaning of § 31.3406(a)-2 of this chapter, and must backup withhold as required under section 3406 and any regulations thereunder.

(m) *Penalties for failure to comply.* Every trustee and middleman who fails to comply with the reporting obligations imposed by this § 1.671-5 is subject to penalties under sections 6721, 6722, and any other applicable penalty provisions.

(n) *Effective date.* These regulations are applicable beginning January 1, 2004.

4. Section 1.6041-9 is added to read as follows:

**§ 1.6041-9 Coordination with reporting rules for widely held fixed investment trusts under § 1.671-5.**

See § 1.671-5 for the reporting rules for widely held fixed investment trusts as defined under that section. For purposes of section 6041, middlemen and trustees of widely held fixed investment trust are deemed to have management and oversight functions in connection with payments made by the widely held fixed investment trust.

5. Section 1.6042-5 is added to read as follows:

**§ 1.6042-5 Coordination with reporting rules for widely held fixed investment trusts under § 1.671-5.**

See § 1.671-5 for the reporting rules for widely held fixed investment trusts as defined under that section.

6. Section 1.6045-1 is amended by adding paragraph (d)(7) to read as follows:

**§ 1.6045-1 Returns of information of brokers and barter exchanges.**

\* \* \* \* \*

(d) \* \* \*

(7) *Coordination with reporting rules for widely held fixed investment trusts under § 1.671-5.* See § 1.671-5 for the reporting rules for widely held fixed investment trusts as defined under that section.

\* \* \* \* \*

7. Section 1.6049-4 is amended by adding paragraph (c)(3) to read as follows:

**§ 1.6049-4 Return of information as to interest paid and original issue discount includible in gross income after December 31, 1982.**

\* \* \* \* \*

(c) \* \* \*

(3) *Coordination with reporting rules for widely held fixed investment trusts under § 1.671-5.* See § 1.671-5 for the reporting rules for widely held fixed investment trusts as defined under that section.

\* \* \* \* \*

8. In § 1.6049-5, paragraph (a)(6) is revised to read as follows:

**§ 1.6049-5 Interest and original issue discount subject to reporting after December 31, 1982.**

(a) \* \* \*

(6) Interest paid on amounts held by investment companies as defined in section 3 of the Investment Company Act (15 U.S.C. section 80-a) and on amounts paid on pooled funds or trusts. The interest to be reported with respect to a widely held fixed investment trust, as defined in § 1.671-5(b)(15), shall be the interest earned on the assets held by the trust. See § 1.671-5 for the reporting rules for widely held fixed investment trusts as defined under that section.

\* \* \* \* \*

9. Section 1.6050N-2 is added to read as follows:

**§ 1.6050N-2 Coordination with reporting rules for widely held fixed investment trusts under § 1.671-5.**

See § 1.671-5 for the reporting rules for widely held fixed investment trusts as defined under that section.

**PART 301—PROCEDURE AND ADMINISTRATION**

10. The authority citation for part 301 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*

11. Section 301.6109-1 is amended by revising the last sentence of paragraph (a)(2)(i) to read as follows:

**§ 301.6109-1 Identifying numbers.**

(a) \* \* \*

(2) \* \* \*

(i) \* \* \* If the trustee has not already obtained a taxpayer identification number for the trust, the trustee must obtain a taxpayer identification number for the trust as provided in paragraph (d)(2) of this section in order to report pursuant to § 1.671-4(a), (b)(2)(i)(B), (b)(3)(i), or 1.671-5 of this chapter.

\* \* \* \* \*

**PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT**

12. The authority citation for part 602 continues to read as follows:

**Authority:** 26 U.S.C. 7805.

13. In § 602.101, paragraph (b) is amended by adding an entry “1.671-5”

in numerical order to the table to read as follows:

**§ 602.101 OMB Control numbers.**

\* \* \* \* \*

(b) \* \* \*

| CFR part or section where identified and described | Current OMB control No. |
|--|-------------------------|
| 1.671-5 .....                                      | 1545-1540               |
| * * * * *  | * * * * *               |

**Robert E. Wenzel,**  
Deputy Commissioner of Internal Revenue.  
[FR Doc. 02-15352 Filed 6-19-02; 8:45 am]  
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**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Part 165**

[CGD01-02-065]

RIN 2115-AA97

**Safety and Security Zones; High Interest Vessel Transits, Narragansett Bay, Providence River, and Taunton River, RI**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish permanent safety and security zones around high interest vessels (HIVs) while those vessels are operating within Rhode Island Sound, Narragansett Bay and the Providence and Taunton Rivers. This proposed rule would also create safety and security zones around HIVs and adjacent land areas while HIVs are moored at waterfront facilities in the Providence Captain of the Port zone. The safety and security zones are needed to safeguard the public, high interest vessels and their crews, and other vessels and their crews, and the Port of Providence, Rhode Island from sabotage or other subversive acts, accidents, or other causes of a similar nature.

**DATES:** Comments and related materials must reach the Coast Guard on or before August 5, 2002.

**ADDRESSES:** You may mail comments and related material to Marine Safety Office Providence, 20 Risho Avenue, East Providence, Rhode Island 02914. Marine Safety Office Providence maintains the public docket for this rulemaking. Comments and materials received from the public, as well as