

**DEPARTMENT OF THE TREASURY****Internal Revenue Service****26 CFR Parts 1, 301, and 602**

[TD 9241]

RIN 1545-BA83

**Reporting for Widely Held Fixed Investment Trusts****AGENCY:** Internal Revenue Service (IRS), Treasury.**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations that define widely held fixed investment trusts, clarify the reporting obligations of the trustees and the middlemen connected with these trusts, and provide for communication of tax information to beneficial owners of trust interests. The regulations will affect trustees of, and middlemen holding interests on behalf of beneficial owners of trust interests with respect to, widely held fixed investment trusts.

**DATES:** *Effective Date:* These regulations are effective January 24, 2006.

*Applicability Date:* For dates of applicability of these regulations, see § 1.671-5(m).

**FOR FURTHER INFORMATION CONTACT:** Faith Colson, (202) 622-3060 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:****Paperwork Reduction Act**

The collection of information contained in these final regulations 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. Response to this collection of information is mandatory.

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.

The estimated annual burden per recordkeeper varies from 1 to 4 hours, depending on individual circumstances, with an estimated average of 2 hours. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to a collection of information must be retained as long as their contents might 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 amendments to 26 CFR parts 1, 301 and 602. On June 20, 2002, the Internal Revenue Service (IRS) and the Treasury Department withdrew proposed regulations (REG-209813-96) relating to the reporting requirements for widely held fixed investment trusts (WHFITs) previously published in the **Federal Register** (63 FR 43354) on August 13, 1998 (1998 Proposed Regulations) and published a new notice of proposed rulemaking (REG-106871-00) in the **Federal Register** (67 FR 41892) on June 20, 2002 (Reproposed Regulations). No public hearing was requested or held with respect to the Reproposed Regulations. Comments responding to the Reproposed Regulations were received. After consideration of the comments, the Reproposed Regulations, with certain revisions, are adopted as final regulations by this Treasury decision.

Section 301.7701-4(c) of the Procedure and Administration Regulations provides grantor trust treatment to an investment trust with a single class of ownership interests, representing undivided beneficial interests in the assets of the trust, if there is no power to vary the investment of the owners (a fixed investment trust). An investment trust with multiple classes of ownership interests, in which there is no power to vary the investment of the owners will also be treated as a grantor trust, if the trust is formed to facilitate direct investment in the assets of the trust and the existence of multiple classes is incidental to that purpose. Beneficial owners of trust interests are treated as grantors. See § 301.7701-4(c); see also Rev. Rul. 84-10, (1984-1 C.B. 155); Rev. Rul. 61-175, (1961-2 C.B. 128).

Trustees of fixed investment trusts frequently do not know the identities of the beneficial owners of the trust interests and are unable to communicate tax information directly to them because trust interests often are held in street name, *i.e.*, in the name of a middleman. The reproposed and final regulations provide rules that specifically require the sharing of tax information among trustees, middlemen, and beneficial owners of fixed investment trusts that meet the definition of a widely held

fixed investment trust (WHFIT). (See section IA below.)

In general, the final regulations retain the structure of the Reproposed Regulations. Paragraph (c) of the reproposed and final regulations provides general reporting requirements for trustees to provide information to requesting persons, which include: (1) Middlemen, (2) beneficial owners who are brokers, (3) exempt recipients who hold their trust interests directly (and not through a middleman), (4) noncalendar-year beneficial owners who hold their trust interests directly, and (5) a representative or agent of any of the above. Paragraphs (d) and (e) of the reproposed and final regulations describe the responsibility of trustees and middlemen for information reporting to the IRS and beneficial owners. Paragraphs (f) and (g) of the reproposed and final regulations provide reporting safe harbors.

**Explanation of Revisions to Reproposed Regulations and Summary of Comments****I. Definitions****A. Definition of a Widely Held Fixed Investment Trust and Classification as a Widely Held Mortgage Trust or a Non-Mortgage Widely Held Fixed Investment Trust**

The Reproposed Regulations define a WHFIT as an arrangement classified as a trust under § 301.7701-4(c) in which at least one interest is held by a middleman, provided that the trust is classified as a United States person under section 7701(a)(30)(E). The final regulations retain this definition.

The Reproposed Regulations introduced the term *widely held mortgage trust* (WHMT) to describe a WHFIT, the assets of which are mortgages, amounts received on mortgages, and reasonably required reserve funds, as measured by value. The final regulations expand the definition of a WHMT, to provide that a WHFIT is also a WHMT if substantially all its assets also include trust interests in one or more WHMTs and regular interests in one or more real estate mortgage investment conduits (REMICs).

The final regulations also introduce a new term, *non-mortgage widely held fixed investment trust* (NMWHFIT), to clarify and distinguish the requirements and reporting safe-harbor for WHMTs from the requirements and reporting safe harbor applicable to other WHFITs. A NMWHFIT is any WHFIT that is not a WHMT.

### *B. Definition of a Mortgage*

The Reproposed Regulations provide a reporting safe harbor for WHMTs that directly hold interests in mortgages; the safe harbor is not available to tiered arrangements. The IRS and the Treasury Department, after considering the comments received with respect to the Reproposed Regulations, have determined that the definition of a mortgage should be clarified in the final regulations to provide that an interest in a WHMT is not a mortgage under the regulations. Accordingly, the final regulations define a mortgage as an obligation that is principally secured by an interest in real property within the meaning of § 1.860G-2(a)(5) of the Income Tax Regulations, except that a mortgage does not include an interest in another WHMT or an interest in a mortgage held by another WHMT. The principal effect of this change is to clarify that, although a WHFIT investing in another WHMT is classified as a WHMT and is subject to the general reporting provisions that apply only to WHMTs, it is not eligible for the WHMT safe harbor reporting rules for the reasons discussed in section VI(B) below.

### *C. Definition of Trust Interest Holders, Beneficial Owners and Middleman*

Under the Reproposed Regulations, a unit interest holder is defined as any person who holds a direct or indirect interest in a WHFIT at any time during the calendar year. The final regulations replace the term unit interest holder with two new terms: Trust interest holder (TIH) and beneficial owner. A TIH is any person who holds a direct or indirect interest in a WHFIT at any time during the calendar year. A beneficial owner is a TIH who holds a beneficial interest in a WHFIT. As in the Reproposed Regulations, in the final regulations, the term middleman refers to a TIH that holds a trust interest 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.

### *D. Definition of Item*

The Reproposed Regulations use the term item without defining that term. Item as used in the final regulations refers broadly to an item of income, expense, or credit as well as any trust event (for example, the sale of an asset) or any characteristic or attribute of the above that affects the income, deductions, or credits reported by a beneficial owner in any taxable year that the beneficial owner holds a trust interest. Item also may refer to an

individual item or to a group of items depending on whether the item must be reported individually under § 1.671-5(c)(1)(i) and (e)(1).

### *E. Definition of Start-Up Date*

The Reproposed Regulations define the start-up date of a WHFIT as the date on which substantially all of the assets and the contracts for the purchase of assets are deposited with the trustee of the WHFIT. The Reproposed Regulations also define an asset to include an interest in a contract. Because the definition of an asset includes an interest in a contract, the definition of the start-up date in the Reproposed Regulations is revised in the final regulations to provide that the start-up date is the date on which substantially all of the assets are deposited with the trustee.

## **II. General Reporting and Record Retention Obligations**

### *A. Requirement That the Trustee Provide Trust Information on a Calendar Year Basis*

In general, the repropoed and final regulations require the trustee to provide information regarding the WHFIT to requesting persons. The Reproposed Regulations provide that the trustee could choose either a calendar month, calendar quarter, or half or full calendar year reporting period, provided that the information furnished by the trustee under the chosen reporting period allowed the recipient to determine the WHFIT items attributable to a particular beneficial owner with reasonable accuracy, regardless of the owner's taxable year or the period of time during the calendar year that the owner held the unit interest.

One commentator was concerned that if a trustee choose a reporting period shorter than a full calendar year, the trustee might also report trust information to middlemen more than once a year and because of this, middlemen would be required to process WHFIT information more than once a year. Another commentator was concerned that, if a trustee chose a reporting period shorter than a calendar year, the trustee could be required to report trust information more than once a year.

In response to these comments, the final regulations provide that, regardless of the period chosen by the trustee for calculating trust information, the trustee must provide the information required under these regulations on a calendar year basis. The trustee, of course, may provide additional trust information to

requesting persons throughout the calendar year at the trustee's discretion. For example, if a trustee uses a monthly calculation period, the trustee must provide a single statement to requesting persons at the end of the year that contains the information required to be reported under these regulations for each month of the calendar year. In addition to the calendar year statement, the trustee may, but is not required to, provide additional statements to requesting persons during the calendar year.

To further clarify that a trustee may choose the period for calculating the information required to be reported under these regulations, but in all events must report that information to requesting persons on a calendar year basis, the final regulations refer to the period chosen by the trustee for calculating trust information as the calculation period rather than the reporting period.

### *B. Trustee's Burden To Retain Information and Supplemental Data*

The Reproposed Regulations provide that, throughout the duration of the trust and for a period of five years following the termination of the trust, a trustee must retain: (1) A copy of the information required to be provided to requesting persons each year; and (2) any supplemental data necessary to establish that the information provided to requesting persons is correct and meets the requirements of paragraph (c) (supplemental data).

One commentator noted that some WHFITs, particularly WHMTs, may be in existence for up to 30 years and that the requirement in the Reproposed Regulations for a trustee to maintain the WHFIT's records for up to 35 years is overly burdensome. The commentator acknowledged that the IRS and investors may need to obtain WHFIT information from the trustee before the limitations period applicable to a beneficial owner's taxable year expires and suggested that the final regulations provide that a trustee only be required to retain information for a certain period after the close of the calendar year to which the information relates.

The IRS and the Treasury Department adopt this suggestion with respect to supplemental data. However, information with respect to each calendar year of the WHFIT may be required by the IRS and by beneficial owners in order to determine tax items of a beneficial owner (for example, market discount or basis) for the entire life of the WHFIT and for several years after its termination. For this reason, the final regulations continue to require the

trustee to retain a copy of the information required to be provided to requesting persons for the duration of the WHFIT and for at least five years after its termination. The IRS and the Treasury Department believe that this requirement is not overly burdensome because this information can be maintained electronically. The final regulations modify the requirement with respect to supplemental data by providing that trustees need only retain supplemental data for five years after the close of the calendar year to which the supplemental data relates.

### *C. Manner in Which WHFIT Information Is To Be Provided*

The Reproposed Regulations provide that WHFIT information may be provided in any manner that enables a requesting person to determine, with reasonable accuracy, the WHFIT items that are attributable to a beneficial owner for the taxable year of that beneficial owner. The Reproposed Regulations further require that this information be furnished in a format that generally conforms to industry practice for the reporting of a particular item of income, deduction, or credit for the type of asset or assets held by the WHFIT.

One commentator suggested that, if the trustee is not providing trust information under a safe harbor, information could be shared more accurately and processed more efficiently if trustees were required to calculate and provide trust information on the basis of trust interests. The IRS and the Treasury Department do not agree that calculating and providing trust information on a per trust interest basis is always the best method for conveying information with respect to trust items that are not reported under the safe harbors. The requirement that the trustee provide information consistent with industry practice is intended to ensure that trustees provide WHFIT information in a format that can be processed by the systems used by the majority of middlemen. Accordingly, the final regulations do not adopt the suggestion.

One commentator also suggested that middlemen be permitted to furnish beneficial owners with information calculated on a trust interest basis rather than the amount of the item that is attributable to the beneficial owner. The final regulations permit a middleman or a trustee to furnish information calculated on a trust interest basis to a beneficial owner with respect to a trust item, if: (1) The amount of the item is not required to be provided to the IRS on an information return; and (2) the

trustee calculates and provides information on the basis of a trust interest with respect to that trust item under paragraph (c) of the regulations.

### *D. Elimination of Separate General Reporting Rules for WHMTs*

The Reproposed Regulations include separate reporting requirements for trustees and middlemen of WHMTs and trustees and middlemen of WHFITs other than WHMTs (*i.e.*, non-mortgage widely-held fixed investment trusts or NMWHFITs as defined in these final regulations), with respect to market discount, bond premium, and principal payments. The final regulations include general reporting requirements with respect to market discount, bond premium, and non pro-rata partial principal payment information that apply to all WHFITs. As under the Reproposed Regulations, the final regulations require WHMTs to provide market discount, bond premium, and non pro-rata partial principal payment information regardless of whether the WHMT meets one of the *de minimis* tests described in section III of the Preamble. Under the final regulations, however, NMWHFITs that meet the general *de minimis* test or the qualified NMWHFIT exception (also described in section III of the Preamble) are not required to provide information regarding bond premium and market discount.

### *E. Requirement That a Trustee Identify a Representative of the WHFIT and Identify the WHMT or as a NMWHFIT*

The Reproposed Regulations require a trustee of a WHFIT to provide the name, address and telephone number of the WHFIT representative in a publication widely available to middlemen, in the trust's prospectus, or at the trustee's Internet website. The final regulations retain this requirement. Further, if the trustee provides trust information at an Internet website, the final regulations also require trustees, in addition to providing information regarding the WHFIT representative, to provide the address of the Internet website at which the trustee provides WHFIT information.

Two commentators were concerned that middlemen would not be able to identify a client's investment as an investment in a WHFIT and suggested that the IRS publish a directory or list of WHFITs that would include the name and CUSIP number of each WHFIT, along with the name, address and telephone number of the WHFIT's representative. Commentators noted that a publicly available directory or list would assist middlemen and brokers in

identifying investment trusts as WHFITs and in locating the WHFIT's representatives.

In response to these comments, the final regulations require a trustee to identify the WHFIT as either a WHMT or a NMWHFIT when identifying the trust representative. Further, the IRS and the Treasury Department are studying whether a directory or list of WHFITs can be compiled by the IRS. The IRS and Treasury Department are concerned that such a directory is not currently feasible because of the large number of WHMTs. However, the IRS and Treasury request additional comments from middlemen regarding the type of WHFITs that should be included in any directory, the type of information needed by middlemen (especially, middlemen holding WHMT interests), and the format of a directory that would be most helpful. The IRS and Treasury Department also request comments from trustees regarding how the IRS could obtain the trust information needed for the directory from the trustees in the least burdensome manner for taxpayers as well as the Government.

## **III. Reporting of Asset Sales and Dispositions**

### *A. General Information Reporting Requirements*

Under the Reproposed Regulations, the trustee is required to provide information that would enable a requesting person to calculate the amount of trust sales proceeds attributable to a beneficial owner with respect to each sale or disposition of an asset by the trust. In addition, consistent with grantor trust treatment, unless a WHFIT meets the "*de minimis* test," (discussed in III(B) of this Preamble), the trustee is required under the Reproposed Regulations to provide information that would enable a beneficial owner to allocate with reasonable accuracy a portion of its basis in its trust interest and to allocate a portion of its market discount or bond premium, if any, to each sale or disposition of an asset by the trust. The final regulations retain these general information reporting requirements for asset sales and dispositions. Although the requirements to provide market discount and bond premium information (discussed in section II(D) of this Preamble), are the same as those in the Reproposed Regulations, in the final regulations, for purposes of clarity, these requirements are provided separately from the requirement to provide information with respect to

sales and dispositions of assets by the trust.

The final regulations retain the exception from the general information reporting requirements for WHFITs that meet the general de minimis test. In addition, the final regulations provide an exception for WHMTs that meet a special de minimis test for WHMTs that directly hold interests in mortgages (the WHMT de minimis test is discussed in section III(E) of this Preamble). The final regulations also provide an exception from the general information reporting requirements for NMWHFITs that meet the qualified NMWHFIT exception, which is applicable only to NMWHFITs with a start up date that is on or before February 23, 2006.

*B. Simplified Reporting for WHFITs That Meet the General WHFIT de minimis Test*

For WHFITs that meet a de minimis test, the Reproposed Regulations substantially simplified reporting with respect to the sale or disposition of a trust asset from that required under the 1998 Proposed Regulations. These simplified rules balanced current industry practice with the need for beneficial owners to accurately report the tax consequences of ownership of a trust interest. Under the Reproposed Regulations, the WHFIT de minimis test is satisfied for the calendar year if the aggregate amount of trust sales proceeds for that calendar year is not more than five percent of the fair market value of the assets of the trust as of January 1 of that year (the general WHFIT de minimis test). The Reproposed Regulations define trust sales proceeds as the gross proceeds received by the WHFIT with respect to a sale or disposition of an asset by the WHFIT.

Under the Reproposed Regulations, if the trust meets the general WHFIT de minimis test, the trustee is excepted from the requirement to report information regarding basis, market discount and bond premium. The IRS and Treasury Department recognize that this method of reporting will likely result in some deferral of both gain and loss for investors, but have determined that, in cases where the WHFIT has de minimis sales and dispositions, the level of deferral is acceptable given the costs of fully accurate reporting of sales and dispositions. The final regulations retain this exception from the general requirement to provide basis, market discount and bond premium information for WHFITs that meet the general de minimis test.

*C. Extension of Simplified Reporting to NMWHFITs That Meet the Qualified NMWHFIT Exception*

Several commentators requested that the final regulations except WHFITs having a start-up date prior to the date of publication of these final regulations from the requirement to report basis, market discount, and bond premium information with respect to sales and dispositions. These commentators also requested that trustees and middlemen be permitted to report information regarding distributed trust sales proceeds rather than attributable trust sales proceeds.

To accommodate the industry's concerns regarding existing NMWHFITs, the final regulations add an exception for qualified NMWHFITs (the qualified NMWHFIT exception). The qualified NMWHFIT exception is met if a NMWHFIT has a start-up date that is on or before February 23, 2006 and the calendar year for which the trustee is reporting begins before January 1, 2011. NMWHFITs that meet the qualified NMWHFIT exception are excepted from the requirement that trustees and middlemen provide information regarding basis, market discount, and bond premium.

*D. Distributed Trust Sales Proceeds May Be Reported by Trustees and Middlemen of Trusts Meeting the General de minimis Test or the Qualified NMWHFIT Exception*

Several commentators noted that the requirement in the Reproposed Regulations that trustees of WHFITs other than WHMTs (NMWHFITs in these final regulations) report information to enable a requesting person to determine the amount of trust sales proceeds attributable to a beneficial owner would impose an undue burden. These commentators noted that, under current industry practice, trustees and middlemen of WHFITs other than WHMTs only report to the IRS and the beneficial owner the amount of trust sales proceeds distributed to the beneficial owner.

The IRS and Treasury Department have determined that if a NMWHFIT meets either the general WHFIT de minimis test for the calendar year or the qualified NMWHFIT exception, the purpose of reporting trust sales proceeds information to beneficial owners (e.g., to enable beneficial owners to adjust their basis in their trust interest to account for the sale or disposition of the trust asset) is met if the beneficial owner is given information regarding the amount of trust sales proceeds distributed to the beneficial owner. Accordingly, if a

NMWHFIT meets either the general WHFIT de minimis test for the calendar year, or the qualified NMWHFIT exception, the final regulations require: (1) Trustees to report information that will enable middlemen to determine the amount of trust sales proceeds distributed to each beneficial owner during the calendar year; and (2) middlemen and trustees to report to the IRS and to each beneficial owner the amount of trust sales proceeds that are distributed to that beneficial owner.

*E. Simplified Reporting for WHMTs That Meet the General de minimis Test or the Special WHMT de minimis Test*

In addition to the general WHFIT de minimis test, the final regulations also provide a special WHMT de minimis test that applies to WHMTs that directly hold interests in mortgages (the special WHMT de minimis test). The special WHMT de minimis test is met if the trust sales proceeds received by the WHMT for the calendar year are not more than five percent of the aggregate outstanding principal balance of the WHMT (as defined in paragraph (g)(1)(iii)(D) of the final regulations) as of January 1 of that year. In applying the special WHMT de minimis test, amounts that result from the complete or partial payment of the outstanding principal balance of the mortgages held by the WHMT are not included in the amount of trust sales proceeds. A WHMT that holds interests in another WHMT or that holds interests in a REMIC may not use the special WHMT de minimis test, but may use the general WHFIT de minimis test (discussed in section III(B), above).

If a WHMT meets the special WHMT de minimis test or the general WHFIT de minimis test, trustees and middlemen are excepted from the general requirement to report information to enable a beneficial owner to allocate basis to a sale or disposition and are only required to report information regarding the trust sales proceeds that are attributable to a particular beneficial owner. If a WHMT does not meet a de minimis test, trustees and middlemen must report information to enable a beneficial owner to allocate basis to the sale or disposition as well as the trust sales proceeds that are attributable to the beneficial owner.

#### **IV. Exception for Certain Equity Trusts From the Requirement That Trustees and Middlemen Report Information To Enable a Requesting Person To Determine the Income That Is Attributable to a Redeeming or Selling Beneficial Owner Up to the Date of Redemption or Sale**

The Reproposed Regulations require trustees and middlemen to report information to enable requesting persons to determine the income of the WHFIT attributable to a selling, purchasing, or redeeming beneficial owner for the portion of the calendar year that the beneficial owner held its trust interest. Commentators objected to this requirement for WHFITs if substantially all the income of the WHFIT is comprised of dividends (equity trusts). These commentators noted that although trustees and middlemen report interest income earned by the WHFIT up to the date of redemption or sale of a trust interest, providing this information with respect to dividend income is inconsistent with long-standing WHFIT industry reporting practice. Currently there is no mechanism in place for communicating this information between trustees and middlemen of equity trusts. Under current industry practice, the entire amount paid to a beneficial owner who sells or redeems an interest in an equity trust, including the amount paid for undistributed dividends held by the trust at the time of the sale or redemption, is reported to the IRS and to the beneficial owner as gross proceeds. As a result, a selling or redeeming beneficial owner may report the ordinary dividend income portion of the payment as a capital gain. The purchasing beneficial owner also receives incorrect income information that may lead the purchasing beneficial owner to overstate its dividend income. Commentators objected to expending resources for the development and testing of new tax reporting systems to accurately report dividend income to selling, purchasing, and redeeming beneficial owners, especially with respect to existing equity trusts.

Commentators acknowledge, however, that the net asset value of an equity trust, including the cash held for distribution, generally is calculated on a daily basis. Because in the final regulations, the cash held for distribution is a key component in calculating the amount of income attributable to a selling, purchasing, or redeeming beneficial owner under the safe harbor for NMWHFITs, the final regulations retain the general requirement that trustees and

middlemen provide information to determine the trust income that should be attributed to a redeeming, selling, or purchasing beneficial owner.

The IRS and the Treasury Department recognize, however, that if an equity trust frequently distributes its income, the trust is not likely to accumulate significant undistributed dividend income. In such a case, the increased accuracy that results from providing beneficial owners with accurate income information up to the date of sale or redemption does not warrant the burden of compiling and reporting this information. Accordingly, under the final regulations, trustees or middlemen of equity trusts that are required by their governing documents to distribute all cash (less reasonably required reserve funds) held by the NMWHFIT at least monthly need not provide information regarding the income that is attributable to a redeeming, selling, or purchasing beneficial owner up to the date of sale or redemption. The final regulations also except trustees and middlemen of an equity trust that meets the qualified NMWHFIT exception (described in section III of this Preamble) from the requirement that trustees and middlemen provide information regarding the income that is attributable to a redeeming, selling, or purchasing beneficial owner up to the date of sale or redemption.

#### **V. Safe Harbor Reporting for WHFITs**

##### ***A. The Safe Harbors Must Be Used Consistently***

Under the Reproposed Regulations, a trustee of a WHFIT can decide whether or not to use the safe harbor reporting practices on a year-by-year basis. The IRS and the Treasury Department have concluded, however, that middlemen and beneficial owners should receive WHFIT information that is calculated consistently from one calendar year to the next because, assuming beneficial owners report trust items consistent with the WHFIT information provided to them, a trustee's change in reporting could result in changes in the timing that may impact beneficial owners. Further, allowing trustees to report under the safe harbor one year and not the next, likely would confuse and burden the middlemen and beneficial owners that must process WHFIT information. Accordingly, the final regulations require trustees that choose to use the safe harbor to report under the safe harbor for the life of the WHFIT. WHFITs that have a start-up date prior to January 1, 2007 may choose to report under the safe harbor provided the trustee begins to report according to the

safe harbor requirements on or before January 1, 2007 and does so for the life of the WHFIT.

Under the Reproposed Regulations and the final regulations, a WHMT must meet the eligibility requirements of § 1.671-5(g)(1)(ii) and report consistently with the safe harbor reporting rules to be deemed to have met its reporting requirements under paragraph (c) of the regulations with respect to the trust items described in the safe harbor. The final regulations eliminate two of the eligibility requirements in the Reproposed Regulations that are inconsistent with the rule that the safe harbor must be used for the life of the WHMT.

##### ***B. Request for Comments Regarding the Need for Safe Harbors for NMWHFITs That Are Outside the Safe Harbor in the Final Regulations***

The Reproposed Regulations include safe harbor reporting rules available to WHFITs other than WHMTs (*i.e.*, NMWHFITs). If the trustee of a WHFIT other than a WHMT reports consistently with the safe harbor, the trustee is deemed to have met the requirements of paragraph (c)(1) of the Reproposed Regulations. Those safe harbor reporting rules were developed in response to comments received on the 1998 Proposed Regulations describing the current reporting practices of WHFITs that primarily receive dividend and interest income.

Upon reconsideration of those safe harbor reporting rules and the various types of NMWHFITs, the IRS and the Treasury Department recognize that the type of information reported under those reporting rules is only relevant to NMWHFITs that hold stock and debt instruments and that information reported under the safe harbor probably would not be useful to middlemen and beneficial owners of NMWHFITs that hold other types of assets. As a result, the IRS and Treasury concluded that safe harbor treatment should only be available to NMWHFITs for which the safe harbors were designed (*e.g.*, NMWHFITs that hold stock and debt instruments) and that other safe harbor reporting rules should govern NMWHFITs that are outside the safe harbor. Accordingly, in the final regulations only NMWHFITs substantially all the income of which is comprised of dividends (as defined in section 6042(b) and the regulations thereunder) or interest (as defined in section 6049(b) and the regulations thereunder) that report as provided in the NMWHFIT safe harbor will be deemed to have met the requirements of paragraph (c)(1) of the final regulations.

The IRS and the Treasury Department are considering providing additional safe harbor reporting rules for NMWHFITs that are not under the NMWHFIT safe harbor in the final regulations and encourage trustees and middlemen to submit comments regarding NMWHFITs for which further reporting safe harbors should be provided, including information regarding current industry reporting practice for NMWHFITs that do not qualify for the NMWHFIT safe harbor in the final regulations.

### *C. Safe Harbor Reporting for WHMTs*

#### **1. Reporting Sales and Dispositions Under the WHMT Safe Harbor**

The 1998 Proposed Regulations did not allow trustees and middlemen to aggregate sales and dispositions of trust assets, even fungible trust assets, for reporting purposes. In response to comments on the 1998 Proposed Regulations, as well as the addition of section 1272(a)(6)(C)(iii) to the Code in 1997, the Reproposed Regulations permit aggregate reporting for sales and dispositions and principal receipts for WHMTs eligible to report under the WHMT safe harbor. Under the WHMT safe harbor, a trustee is permitted to combine, for reporting purposes, amounts received as trust sales proceeds from the sale or disposition of some mortgages (including principal receipts that completely retire a mortgage) with non pro-rata partial principal payments from other mortgages. Thus, the safe harbor permits trustees and middlemen to report trust information as if the WHMT, in effect, held only one mortgage, and to report the aggregate of trust sales proceeds and non pro-rata partial principal payments as though the trustee had received a non pro-rata partial principal payment on that mortgage.

The WHMT safe harbor in the Reproposed Regulations is only available to WHMTs that met the requirements of § 1.671-5(g)(1)(ii) of those regulations. Commentators requested that the final regulations provide that trustees of all WHMTs, not just those meeting the eligibility requirements of § 1.671-5(g)(1)(ii), be allowed to apply this treatment for reporting purposes. The commentators suggested that reporting sales and dispositions separately from principal payments is unnecessary because receipt by the trust of trust sales proceeds and receipt of principal payments have identical tax consequences for a beneficial owner.

Under Rev. Rul. 84-10 (1984-1 C.B. 155), a beneficial owner of a WHMT is

treated for federal income tax purposes as having a proportionate share of equitable ownership in each of the mortgages of the WHMT. If a taxpayer owns mortgages outright and not in trust, the taxpayer does not report mortgage sales proceeds or the complete prepayment of a mortgage in the same manner as the receipt of a non pro-rata partial principal payment. That is, a taxpayer that owns two mortgages does not combine the sale of one mortgage with the receipt of non pro-rata partial payments from the other mortgage for purposes of calculating the taxpayer's federal income tax liability. For this reason and the reasons discussed in section V(B)(3) of this Preamble, the IRS and Treasury Department do not adopt the commentators' request.

#### **2. Requirement That Trustees Use a Prepayment Assumption When Providing Market Discount and OID Information Under the WHMT Safe Harbor**

The Reproposed Regulations require trustees and middlemen of all WHMTs to report information to enable beneficial owners to calculate market discount in any reasonable manner that is consistent with section 1276(a)(3). Regulations have not been issued under the market discount provisions of the Code (sections 1276 to 1278). The preamble to the Reproposed Regulations notes that, in the absence of regulations governing accrual of market discount, guidance regarding the accrual of market discount with respect to the partial payment of a debt instrument is provided in the conference report (see H.R. Rep. No. 841, 99th Cong., 2nd Sess., at II-842 (1986)) accompanying the amendment that enacted section 1276(a)(3) (see section 1803(a)(13)(A) of the Tax Reform Act of 1986, Public Law 99-514, 100 Stat. 2085) (the Conference Report). Consistent with Congressional intent expressed in the Conference Report indicating that holders must report market discount in the absence of regulations, the Reproposed Regulations impose a general requirement that trustees and middlemen of WHMTs report market discount information.

The WHMT safe harbor provision for reporting market discount information in the Reproposed Regulations is based on the Conference Report. Under that safe harbor, trustees report market discount by providing one market discount fraction for the WHMT that is the ratio of, either: (1) The OID accrued during the month to the total remaining OID as of the beginning of the month; or (2) the interest paid during the month to the remaining interest payable on the

mortgages held by the WHMT as of the beginning of the month. The Reproposed Regulations require trustees to utilize a method that takes into account the prepayment assumption used in pricing the original issue of trust interests. The Reproposed Regulations also include a WHMT safe harbor provision for OID information that required the use of the same prepayment assumption.

Commentators reported that they assumed that the Reproposed Regulations permit trustees to use the safe harbor for reporting only sales and dispositions and the receipt of principal payments and to ignore other trust items, such as market discount and OID, when reporting under the safe harbor.

The WHMT safe harbor in the final regulations permits trustees and middlemen of WHMTs that meet the requirements of § 1.671-5(g)(1)(ii), to aggregate the trust sales proceeds received from sales and dispositions of some mortgages with non pro-rata partial principal payments on other mortgages, but the safe harbor also requires trustees and middlemen to report market discount and OID information consistent with section 1272(a)(6). Safe harbor treatment is available to WHMTs that meet the requirements of § 1.671-5(g)(1)(ii) because the IRS and the Treasury Department have determined that, for those WHMTs, if market discount and OID are reported as provided in the safe harbor, mortgage-by-mortgage reporting with respect to sales and dispositions and principal payments is unnecessary. Accordingly, the final regulations clarify that, for a trustee to be deemed to have met the requirements of paragraph (c)(1) of the regulations, the trustee must report all items identified in the WHMT safe harbor consistent with the WHMT safe harbor.

#### **3. Reporting for WHMTs That Are Outside the Safe Harbor**

Some commentators may view the Conference Report as providing authority to report market discount information using a single composite fraction, regardless of whether the trustee is permitted to, and does in fact, report under the WHMT safe harbor. The IRS and the Treasury Department disagree with the commentators' reading of the Conference Report as applied to WHMTs. The Conference Report simply provides that, until such time as the Treasury Department issues regulations regarding the computation of the accrual of market discount, holders may elect to accrue market discount using either a constant interest method or a market discount fraction.

The Conference Report may implicitly discuss aggregate reporting in that it states that, in the case of debt instruments that would be subject to the OID rules contained in section 1272(a)(6) (without regard to whether the debt instruments have OID), the same prepayment assumption that would be made in computing OID would be made in computing the accrual of market discount (whether or not the taxpayer elects to accrue market discount on the basis of a constant interest rate). Section 1272(a)(6)(C)(iii) provides that section 1272(a)(6) applies to any pool of debt instruments, the yield on which may be affected by reason of prepayments. However, no guidance has been issued regarding the application of section 1272(a)(6)(C)(iii). Until guidance is issued under section 1272(a)(6)(C)(iii), the IRS and Treasury Department believe that it is appropriate to provide safe harbor treatment only for trustees of relatively straight forward arrangements who report information consistent with the application of section 1272(a)(6) as provided by the safe harbor reporting rules.

#### 4. Reporting Bond Premium Under the WHMT Safe Harbor

The Reproposed Regulations include a general requirement that trustees and middlemen of all WHMTs report information to enable beneficial owners to determine the amount of amortizable bond premium, if any, in any manner that is reasonably consistent with section 171. The Reproposed Regulations reserve the portion of the WHMT safe harbor on reporting information regarding bond premium. None of the comments on the Reproposed Regulations specifically addressed bond premium issues. Accordingly, the final regulations continue to reserve guidance on the issue while the IRS and the Treasury Department study how bond premium information is to be appropriately reported for WHMTs. The IRS and the Treasury Department welcome comments on this issue. Until safe harbor reporting rules are provided for bond premium, a trustee will not be penalized if the trustee reports information that enables a beneficial owner to determine, in any manner reasonably consistent with section 171, the amount of the beneficial owner's amortizable bond premium, if any, for the calendar year.

#### VI. Application of Reporting Rules to Foreign Fixed Investment Trusts

A fixed investment trust that is not classified as a United States person is not a WHFIT under the Reproposed

Regulations or the final regulations. Nothing in the Reproposed Regulations or these final regulations alters the application of section 6048 to United States investors in a foreign fixed investment trust. The preamble to the Reproposed Regulations notes that the IRS and the Treasury Department continue to study how to facilitate the application of section 6048 rules to foreign fixed investment trusts and requested comments on this issue, including how forms 3520 and 3520A could be adapted for use with foreign fixed investment trusts.

Commentators suggested that many beneficial owners of interests in a foreign fixed investment trust cannot comply with the reporting requirements of section 6048 because they cannot obtain the necessary information from the trustee. These commentators suggested that, rather than adapting Forms 3520 and 3520A to foreign fixed investment trusts, the IRS and the Treasury Department should permit certain foreign fixed investment trusts to report pursuant to the reporting rules in these regulations. The commentators also suggested that the final regulations provide that, if a foreign fixed investment trust reports pursuant to these reporting rules, United States investors in the trust be excepted from the reporting rules in section 6048. The IRS and the Treasury Department intend to provide guidance in the area of foreign trust reporting and will consider whether any of the suggested approaches for WHFITs are more appropriate in this context.

#### VII. Effective Date of Final Regulations and Applicability to Existing WHFITs

The Reproposed Regulations provide that the reporting rules were to be applicable beginning January 1, 2004. Most commentators requested that the applicability date be delayed until January 1, 2005, to enable trustees and middlemen to change their reporting systems to comply with the new reporting rules. To ensure that there is sufficient time to comply with the reporting requirements, the final regulations provide that these regulations are effective January 1, 2007. Accordingly, beginning with the 2007 calendar year, trustees must report trust information in accordance with paragraph (c) of the final regulations. Trustees and middlemen must file Forms 1099 with the IRS and furnish tax information statements to beneficial owners that meet the requirements of paragraphs (d) and (e) of the final regulations with respect to the 2007 calendar year and all subsequent years.

Regarding the applicability of these reporting rules to existing WHFITs, one commentator requested that the final regulations except all WHFITs in existence as of the effective date of the final regulations from the new reporting rules. Other commentators requested that WHFITs in existence as of the effective date of the final regulations be excepted from specific provisions. The final regulations apply to all WHFITs, including those in existence as of the effective date. However, in response to the comments, the final regulations except certain NMWHFITs that have a start-up date on or before February 23, 2006 from specific reporting requirements regarding market discount, bond premium, sales and dispositions, redemptions, and sales of trust interests until January 1, 2011. The details of these exceptions have been discussed in sections IID, III, and IV of this preamble.

#### Special Analysis

It has been determined that this Treasury decision 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 minimal impact on industry practice, and to not have a significant economic impact on entities 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 are not expected to 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, the proposed and the Reproposed Regulations preceding these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

#### Drafting Information

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

**Adoption of the Amendments to the Regulations**

■ Accordingly, 26 CFR parts 1, 301, and 602 are amended as follows:

**PART 1—INCOME TAXES**

■ **Paragraph 1.** The authority citation for part 1 continues to read, in part, as follows:

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

■ **Par. 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 that, 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 regarding the application of the reporting rules in this paragraph (a) to an environmental remediation trust.

\* \* \* \* \*

■ **Par. 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 report information.
  - (1) In general.
  - (i) Calculation.
  - (ii) Calculation period.
  - (iii) Accounting method.

- (iv) Gross income requirement.
- (2) Information to be reported by all WHFITs.
- (i) Trust identification and calculation period chosen.
- (ii) Items of income, expense, and credit.
- (iii) Non pro-rata partial principal payments.
- (iv) Asset sales and dispositions.
- (v) Redemptions and sales of WHFIT interests.
- (vi) Information regarding bond premium.
- (vii) Information regarding market discount.
- (viii) Other information.
- (3) Identifying the representative who will provide trust information.
- (4) Time and manner of providing information.
  - (i) Time.
  - (ii) Manner.
  - (iii) Inclusion of information with respect to all calculation periods.
- (5) Requesting information from a WHFIT.
  - (i) In general.
  - (ii) Manner of requesting information.
  - (iii) Period of time during which a requesting person may request WHFIT information.
- (6) Trustee’s requirement to retain records.
- (d) Form 1099 requirement for trustees and middlemen.
- (1) Obligation to file Form 1099 with the IRS.
  - (i) In general.
  - (ii) Forms 1099 not required for exempt recipients.
  - (iii) Reporting and withholding 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.
  - (i) Time and place.
  - (ii) Reporting trust sales proceeds, redemption asset proceeds, redemption proceeds, sales asset proceeds, sales proceeds, and non pro-rata partial principal payments.
- (e) Requirement to furnish a written tax information statement to the TIH.
  - (1) In general.
  - (2) Information required.
    - (i) WHFIT information.
    - (ii) Identification of the person furnishing the statement.
    - (iii) Items of income, expense, and credit.
    - (iv) Non pro-rata partial principal payments.
    - (v) Asset sales and dispositions.
    - (vi) Redemption or sale of a trust interest.
    - (vii) Information regarding market discount and bond premium.
    - (viii) Other information.
  - (ix) Required statement.
- (3) Due date and other requirements.
- (4) Requirement to retain records.
- (f) Safe harbor for providing information for certain NMWHFITs.
  - (1) Safe harbor for trustee reporting of NMWHFIT information.
    - (i) In general.
    - (ii) Reporting NMWHFIT income and expenses.
    - (iii) Reporting non pro-rata partial principal payments under the safe harbor.
    - (iv) Reporting sales and dispositions of NMWHFIT assets under the safe harbor.
    - (v) Reporting redemptions under the safe harbor.

- (vi) Reporting the sale of a trust interest under the safe harbor.
- (vii) Reporting OID information under the safe harbor.
- (viii) Reporting market discount information under the safe harbor.
- (ix) Reporting bond premium information under the safe harbor.
- (x) Reporting additional information.
- (2) Use of information provided by trustees under the safe harbor for NMWHFITs.
  - (i) In general.
  - (ii) Determining NMWHFIT income and expenses under the safe harbor.
  - (iii) Reporting non pro-rata partial principal payments under the safe harbor.
  - (iv) Reporting sales and dispositions of NMWHFIT assets under the safe harbor.
  - (v) Reporting redemptions under the safe harbor.
  - (vi) Reporting sales of trust interests under the safe harbor.
  - (vii) Reporting OID information under the safe harbor.
  - (viii) Reporting market discount information under the safe harbor.
  - (ix) Reporting bond premium information under the safe harbor.
- (3) Example of the use of the safe harbor for NMWHFITs.
  - (i) Facts.
  - (ii) Trustee reporting.
  - (iii) Brokers’ use of information provided by Trustee.
  - (g) Safe Harbor for certain WHMTs.
    - (1) Safe harbor for trustees of certain WHMTs for reporting information.
      - (i) In general.
      - (ii) Requirements.
      - (iii) Reporting WHMT income, expenses, non pro-rata partial principal payments, and sales and dispositions under the safe harbor.
      - (iv) Reporting OID information under the safe harbor.
      - (v) Reporting market discount information under the safe harbor.
      - (vi) Reporting bond premium information under the safe harbor.
    - (2) Use of information provided by a trustee under the safe harbor.
      - (i) In general.
      - (ii) Reporting WHMT income, expenses, non pro-rata partial principal payments, and sales and dispositions under the safe harbor.
      - (iii) Reporting OID information under the safe harbor.
      - (iv) Requirement to provide market discount information under the safe harbor.
      - (v) Requirement to provide bond premium information under the safe harbor.
    - (3) Example of safe harbor in paragraph (g)(1) of this section.
      - (i) Facts.
      - (ii) Trustee reporting.
      - (iii) Broker’s use of the information provided by Trustee.
      - (h) Requirement that middlemen furnish information to beneficial owners that are exempt recipients and non calendar year beneficial owners.
        - (1) In general.
        - (2) Time for providing information.
        - (3) Manner of providing information.
        - (4) Clearing organization.



- (i) Reserved.
- (j) Coordination with other information reporting rules.
- (k) Backup withholding requirements.
- (l) Penalties for failure to comply.
- (m) Effective date.

(b) *Definitions.* Solely for purposes of this section:

(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) A *beneficial owner* is a trust interest holder (TIH) (as defined in paragraph (b)(20) of this section) that holds a beneficial interest in a widely held fixed investment trust (WHFIT) (as defined in paragraph (b)(22) of this section.)

(4) The *calculation period* is the period the trustee chooses under paragraph (c)(1)(ii) of this section for calculating the trust information required to be provided under paragraph (c) of this section.

(5) The *cash held for distribution* is the amount of cash (other than trust sales proceeds) that would be payable to TIHs if the amount of a distribution were required to be determined as of the date in question.

(6) A *clean-up call* is the redemption of all trust interests in termination of the WHFIT when the administrative costs of the WHFIT outweigh the benefits of maintaining the WHFIT.

(7) An *exempt recipient* is—

(i) Any person described in § 1.6049-4(c)(1)(ii);

(ii) A middleman (as defined in paragraph (b)(10) of this section);

(iii) A real estate mortgage investment conduit (as defined in section 860(D)(a)) (REMIC);

(iv) A WHFIT; or

(v) 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.

(8) An *in-kind redemption* is a redemption in which a beneficial owner receives a pro-rata share of each of the assets of the WHFIT that the beneficial owner is deemed to own under section 671.

(9) An *item* refers to an item of income, expense, or credit as well as any trust event (for example, the sale of an asset) or any characteristic or attribute of the trust that affects the income, deductions, and credits reported by a beneficial owner in any taxable year that the beneficial owner holds an interest in the trust. An item may refer to an individual item or a

group of items depending on whether the item must be reported separately under paragraphs (c)(1)(i) and (e)(1) of this section.

(10) A *middleman* is any TIH, other than a qualified intermediary as defined in § 1.1031(k)-1(g), who, at any time during the calendar year, holds an interest in a WHFIT on behalf of, or for the account of, another TIH, 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;

(iii) A joint owner of an account or instrument other than—

(A) A joint owner who is the spouse of the other owner; and

(B) A joint owner who is the beneficial owner and whose name appears on the Form 1099 filed with respect to the trust interest under paragraph (d) of this section; and

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

(11) A *mortgage* is an obligation that is principally secured by an interest in real property within the meaning of § 1.860G-2(a)(5), except that a mortgage does not include an interest in another WHFIT or mortgages held by another WHFIT.

(12) A *non-mortgage widely held fixed investment trust* (NMWHFIT) is a WHFIT other than a widely held mortgage trust (as defined in paragraph (b)(23) of this section).

(13) A *non pro-rata partial principal payment* is any partial payment of principal received on a debt instrument which does not retire the debt instrument and which is not a pro-rata prepayment described in § 1.1275-2(f)(2).

(14) The *redemption asset proceeds* equal the redemption proceeds (as defined in paragraph (b)(15) of this section) less the cash held for distribution with respect to the redeemed trust interest.

(15) The *redemption proceeds* equal the total amount paid to a redeeming TIH as the result of a redemption of a trust interest.

(16) A *requesting person* is—

(i) A middleman;

(ii) A beneficial owner who is a broker;

(iii) A beneficial owner who is an exempt recipient who holds a trust interest directly and not through a middleman;

(iv) A noncalendar-year beneficial owner who holds a trust interest directly and not through a middleman; or

(v) A representative or agent of a person specified in this paragraph (b)(16).

(17) The *sales asset proceeds* equal the sales proceeds (as defined in paragraph (b)(18) of this section) less the cash held for distribution with respect to the sold trust interest at the time of the sale.

(18) The *sales proceeds* equal the total amount paid to a selling TIH in consideration for the sale of a trust interest.

(19) The *start-up date* is the date on which substantially all of the assets have been deposited with the trustee of the WHFIT.

(20) A *trust interest holder* (TIH) is any person who holds a direct or indirect interest, including a beneficial interest, in a WHFIT at any time during the calendar year.

(21) *Trust sales proceeds* equal the amount paid to a WHFIT for the sale or disposition of an asset held by the WHFIT, including principal payments received by the WHFIT that completely retire a debt instrument (other than a final scheduled principal payment) and pro-rata partial principal prepayments described under § 1.1275-2(f)(2). Trust sales proceeds do not include amounts paid for any interest income that would be required to be reported under § 1.6045-(d)(3).

(22) A *widely held fixed investment trust* (WHFIT) is an arrangement classified as a trust under § 301.7701-4(c) of this chapter, provided that—

(i) The trust is a United States person under section 7701(a)(30)(E);

(ii) The beneficial owners of the trust are treated as owners under subpart E, part I, subchapter J, chapter 1 of the Internal Revenue Code; and

(iii) At least one interest in the trust is held by a middleman.

(23) A *widely held mortgage trust* (WHMT) is a WHFIT, the assets of which consist only of one or more of the following—

(i) Mortgages;

(ii) Regular interests in a REMIC;

(iii) Interests in another WHMT;

(iv) Reasonably required reserve funds;

(v) Amounts received on the assets described in paragraphs (b)(23)(i), (ii), (iii), and (iv) of this section pending distribution to TIHs; and

(vi) During a brief initial funding period, cash and short-term contracts for the purchase of the assets described in paragraphs (b)(23)(i), (ii), and (iii).

(c) *Trustee's obligation to report information—*(1) *In general.* Upon the

request of a requesting person (as defined in paragraph (b)(16) of this section), a trustee of a WHFIT must report the information described in paragraph (c)(2) of this section to the requesting person. The trustee must determine such information in accordance with the following rules—

(i) *Calculation.* WHFIT information may be calculated in any manner that enables a requesting person to determine with reasonable accuracy the WHFIT items described in paragraph (c)(2) of this section that are attributable (or, if permitted under paragraphs (c)(2)(iv)(B) or (f)(2)(iii) of this section, distributed) to a beneficial owner for the taxable year of that owner. The manner of calculation must generally conform with industry practice for calculating the WHFIT items described in paragraph (c)(2) of this section for the type of asset or assets held by the WHFIT, and must enable a requesting person to separately state any WHFIT item that, if taken into account separately by a beneficial owner, 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) *Calculation period.*—WHFIT information may be calculated on the basis of a calendar month, calendar quarter, or half or full calendar year, provided that a trustee uses the same calculation period for the life of the WHFIT and the information provided by the trustee meets the requirements of paragraph (c)(1)(i) of this section. Regardless of the calculation period chosen by the trustee, the trustee must provide information requested by a requesting person under paragraph (c)(5) on a calendar year basis. The trustee may provide additional information to requesting persons throughout the calendar year at the trustee's discretion.

(iii) *Accounting method.*—(A) *General rule.* WHFIT information must be calculated and reported using the cash receipts and disbursements method of accounting unless 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 TIHs to comply with the rules of subtitle A, chapter 1, subchapter P, part V, subpart A of the Internal Revenue Code, 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 knows or reasonably should know that a WHFIT is marketed primarily to accrual method TIHs 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 trustee must calculate and report trust information using the accrual method of accounting.

(iv) *Gross income requirement.* The amount of income required to be reported by the trustee is the gross income (as defined in section 61) generated by the WHFIT's assets. Thus, in the case of a WHFIT that receives a payment of income from which an expense (or expenses) has been deducted, the trustee, in calculating the income to be reported under paragraph (c)(2)(ii) of this section, must report the income earned on the trusts assets unreduced by the deducted expense or expenses and separately report the deducted expense or expenses. See paragraph (c)(2)(iv) of this section regarding reporting with respect to sales and dispositions.

(2) *Information to be reported by all WHFITs.* With respect to all WHFITs—

(i) *Trust identification and calculation period chosen.* The trustee must report information identifying the WHFIT, including—

- (A) The name of the WHFIT;
- (B) The employer identification number of the WHFIT;
- (C) The name and address of the trustee;
- (D) The Committee on Uniform Security Identification Procedure (CUSIP) number, account number, serial number, or other identifying number of the WHFIT;
- (E) The classification of the WHFIT as either a WHMT or NMWHFIT; and
- (F) The calculation period used by the trustee.

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

- (A) All items of gross income (including OID);
- (B) All items of expense (including affected expenses); and
- (C) All items of credit.

(iii) *Non pro-rata partial principal payments.* The trustee must report information detailing non pro-rata partial principal payments (as defined in paragraph (b)(13) of this section) received by the WHFIT.

(iv) *Asset sales and dispositions.* The trustee must report information regarding sales and dispositions of WHFIT assets as required in this paragraph (c)(2)(iv). For purposes of this paragraph (c)(2)(iv), a payment (other than a final scheduled payment) that

completely retires a debt instrument (including a mortgage held by a WHMT) or a pro-rata prepayment on a debt instrument (see § 1.1275–2(f)(2)) held by a WHFIT must be reported as a full or partial sale or disposition of the debt instrument.

(A) *General rule.* Except as provided in paragraph (c)(2)(iv)(B) (regarding the exception for certain NMWHFITs) or (c)(2)(iv)(C) (regarding the exception for certain WHMTs) of this section, the trustee must report with respect to each sale or disposition of a WHFIT asset—

(1) The date of each sale or disposition;

(2) Information that enables a requesting person to determine the amount of trust sales proceeds (as defined in paragraph (b)(21) of this section) attributable to a beneficial owner as a result of each sale or disposition; and

(3) Information that enables a beneficial owner to allocate, with reasonable accuracy, a portion of the owner's basis in its trust interest to each sale or disposition.

(B) *Exception for certain NMWHFITs.* If a NMWHFIT meets either the general WHFIT de minimis test of paragraph (c)(2)(iv)(D)(1) of this section for a calendar year, or the qualified NMWHFIT exception of paragraph (c)(2)(iv)(E) of this section, the trustee is not required to report under paragraph (c)(2)(iv)(A) of this section. Instead, the trustee must report sufficient information to enable a requesting person to determine the amount of trust sales proceeds distributed to a beneficial owner during the calendar year with respect to each sale or disposition of a trust asset. The trustee also must provide requesting persons with a statement that the NMWHFIT is permitted to report under this paragraph (c)(2)(iv)(B).

(C) *Exception for certain WHMTs.* If a WHMT meets either of the de minimis tests of paragraph (c)(2)(iv)(D) of this section for the calendar year, the trustee is not required to report under paragraph (c)(2)(iv)(A) of this section. Instead, the trustee must report information to enable a requesting person to determine the amount of trust sales proceeds attributable to a beneficial owner as a result of the sale or disposition. The trustee also must provide requesting persons with a statement that the WHMT is permitted to report under this paragraph (c)(2)(iv)(C).

(D) *De minimis tests.*—(1) *General WHFIT de minimis test.* The general WHFIT de minimis test applies to a NMWHFIT or to a WHMT that does not meet the requirements for the special

WHMT de minimis test in paragraph (c)(2)(iv)(D)(2) of this section. The general WHFIT de minimis test is satisfied if trust sales proceeds for the calendar year are not more than five percent of the aggregate fair market value of all assets held by the trust as of the later of January 1st of that year or the trust's start-up date (as defined in paragraph (b)(19) of this section).

(2) *Special WHMT de minimis test.* A WHMT that meets the asset requirement of paragraph (g)(1)(ii)(D) of this section satisfies the special WHMT de minimis test in this paragraph (c)(2)(iv)(D)(2) if trust sales proceeds for the calendar year are not more than five percent of the aggregate outstanding principal balance of the WHMT (as defined in paragraph (g)(1)(iii)(D) of this section) as of the later of January 1st of that year or the trust's start-up date. For purposes of applying the special WHMT de minimis test in this paragraph (c)(2)(iv)(D)(2), amounts that result from the complete or partial payment of the outstanding principal balance of the mortgages held by the trust are not included in the amount of trust sales proceeds.

(3) *Effect of clean-up call.* If a WHFIT fails to meet either de minimis test described in this paragraph (c)(2)(iv)(D) solely as the result of a clean-up call, as defined in paragraph (b)(6) of this section, the WHFIT will be treated as having met the de minimis test.

(E) *Qualified NMWHFIT exception.* The qualified NMWHFIT exception is satisfied if a NMWHFIT has a start-up date that is before February 23, 2006 and the calendar year for which the trustee is reporting begins before January 1, 2011.

(v) *Redemptions and sales of WHFIT interests—(A) Redemptions—(1) In general.* Unless paragraph (c)(2)(v)(C) of this section (regarding certain NMWHFITs with dividend income) applies, for each date on which the amount of redemption proceeds for the redemption of a trust interest is determined, the trustee must provide information to enable a requesting person to determine—

(i) The redemption proceeds (as defined in paragraph (b)(15) of this section) per trust interest on that date;

(ii) The redemption asset proceeds (as defined in paragraph (b)(14) of this section) per trust interest on that date; and

(iii) The gross income that is attributable to the redeeming beneficial owner for the portion of the calendar year that the redeeming beneficial owner held its interest (including income earned by the WHFIT after the date of the last income distribution).

(2) *In-kind redemptions.* The value of the assets received with respect to an in-kind redemption (as defined in paragraph (b)(8) of this section) is not required to be reported under this paragraph (c)(2)(v)(A). Information regarding the income attributable to a redeeming beneficial owner must, however, be reported under paragraph (c)(2)(v)(A)(1)(iii) of this section.

(B) *Sale of a trust interest—*Unless paragraph (c)(2)(v)(C) (regarding certain NMWHFITs with dividend income) of this section applies, if a secondary market for trust interests in the WHFIT is established, the trustee must provide, for each day of the calendar year, information to enable a requesting person to determine—

(1) The sale asset proceeds (as defined in paragraph (b)(17) of this section) per trust interest on that date; and

(2) The gross income that is attributable to a selling beneficial owner and to a purchasing beneficial owner for the portion of the calendar year that each held the trust interest.

(C) *Exception for certain NMWHFITs with dividend income.* The trustee of a NMWHFIT to which this paragraph applies is not required to report the information described in paragraph (c)(2)(v)(A) (regarding redemptions) or (c)(2)(v)(B) (regarding sales) of this section. However, the trustee must report to requesting persons, for each date on which the amount of redemption proceeds to be paid for the redemption of a trust interest is determined, information that will enable requesting persons to determine the redemption proceeds per trust interest on that date. The trustee also must provide requesting persons with a statement that this paragraph applies to the NMWHFIT. This paragraph applies to a NMWHFIT if substantially all the income of the NMWHFIT consists of dividends (as defined in section 6042(b) and the regulations thereunder) and—

(1) The trustee is required by the governing document of the NMWHFIT to make distributions of all cash (less reasonably required reserve funds) held by the NMWHFIT no less frequently than monthly; or

(2) The qualified NMWHFIT exception of paragraph (c)(2)(iv)(E) of this section is satisfied.

(vi) *Information regarding bond premium.* The trustee generally must report information that enables a beneficial owner to determine, in any manner that is reasonably consistent with section 171, the amount of the beneficial owner's amortizable bond premium, if any, for each calendar year. However, if for the calendar year, a NMWHFIT meets either the general

WHFIT de minimis test of paragraph (c)(2)(iv)(D)(1) of this section or the qualified NMWHFIT exception of paragraph (c)(2)(iv)(E) of this section, the trustee of such NMWHFIT is not required to report information regarding bond premium.

(vii) *Information regarding market discount.* The trustee generally must report information that enables a beneficial owner to determine, in any manner reasonably consistent with section 1276 (including section 1276(a)(3)), the amount of the market discount that has accrued during the calendar year. However, if for the calendar year, a NMWHFIT meets either the general WHFIT de minimis test of paragraph (c)(2)(iv)(D)(1) of this section or the qualified NMWHFIT exception of paragraph (c)(2)(iv)(E) of this section, the trustee of such NMWHFIT is not required to provide information regarding market discount.

(viii) *Other information.* The trustee must provide any other information necessary for a beneficial owner of a trust interest to report, with reasonable accuracy, the items (as defined in paragraph (b)(9) of this section) attributable to the portion of the trust treated as owned by the beneficial owner under section 671.

(3) *Identifying the representative who will provide trust information.* The trustee must identify a representative of the WHFIT who will provide the information specified in this paragraph (c). The trustee also may identify an Internet website at which the trustee will provide the information specified in this paragraph (c). This information 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 at the trustee's Internet website.

(4) *Time and manner of providing information—(i) Time—(A) In general.*

Except as provided in paragraph (c)(4)(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 calendar year to which the request relates; or

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

(B) *Trusts holding interests in other WHFITs or in REMICs.* If the WHFIT holds an interest in one or more other WHFITs or holds one or more REMIC regular interests, or holds both, a trustee must provide the information specified in this paragraph (c) to requesting persons on or before the later of—

(1) The 44th day after the close of the calendar year to which the request relates; 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 requesting persons 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 at an Internet website, provided the trustee identifies the website under paragraph (c)(3) of this section;

(D) By electronic mail provided that the requesting person requests that the trustee furnish the information by electronic mail and the person furnishes an electronic address; or

(E) By any other method agreed to by the trustee and the requesting person.

(iii) *Inclusion of information with respect to all calculation periods.* If a trustee calculates WHFIT information using a calculation period other than a calendar year, the trustee must provide information for each calculation period that falls within the calendar year requested.

(5) *Requesting information from a WHFIT—(i) In general.* Requesting persons may request the information specified in this paragraph (c) from a WHFIT.

(ii) *Manner of requesting information.* In requesting WHFIT information, a requesting person must specify the WHFIT and the calendar year for which information is requested.

(iii) *Period of time during which a requesting person may request WHFIT information.* For the life of the WHFIT and for five years following the date of the WHFIT's termination, a requesting person may request the information specified in this paragraph (c) for any calendar year of the WHFIT's existence beginning with the 2007 calendar year.

(6) *Trustee's requirement to retain records.* For the life of the WHFIT and for five years following the date of termination of the WHFIT, the trustee must maintain in its records a copy of the information required to be provided to requesting persons this paragraph (c) for each calendar year beginning with the 2007 calendar year. For a period of five years following the close of the calendar year to which the data pertains, the trustee also must maintain in its records 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 IRS—(i) In general.* Except as provided in paragraphs (d)(1)(ii) and (iii) of this section—

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

(B) Every middleman must file with the IRS the appropriate Forms 1099, reporting the information specified in paragraph (d)(2) of this section with respect to any TIH on whose behalf or account the middleman holds an interest in the WHFIT or acts as an intermediary.

(ii) *Forms 1099 not required for exempt recipients—(A) In general.* A Form 1099 is not required with respect to a TIH who is an exempt recipient (as defined in paragraph (b)(7) of this section), unless 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). If the trustee or middleman backup withholds, then the trustee or middleman is required to file a Form 1099 under this paragraph (d) unless the trustee or middleman refunds the amount withheld in accordance with § 31.6413(a)-3 of this chapter.

(B) *Exempt recipients must include WHFIT information in computing taxable income.* A beneficial owner who is an exempt recipient must obtain WHFIT information and must include the items (as defined in paragraph (b)(9) of this section) of the WHFIT in computing its taxable income on its federal income tax return. Paragraphs (c)(3) and (h) of this section provide rules for exempt recipients to obtain information from a WHFIT.

(iii) *Reporting and withholding with respect to foreign persons.* The items of the WHFIT attributable to a TIH who is not a United States person must be reported, and amounts must be withheld, as provided under subtitle A, chapter 3 of the Internal Revenue Code (sections 1441 through 1464) and the regulations thereunder and not reported under this paragraph (d).

(2) *Information to be reported—(i) Determining amounts to be provided on Forms 1099.* The amounts reported to the IRS for a calendar year by a trustee

or middleman on the appropriate Form 1099 must be consistent with the information provided by the trustee under paragraph (c) of this section and must reflect with reasonable accuracy the amount of each item required to be reported on a Form 1099 that is attributable (or if permitted under paragraphs (d)(2)(ii)(D) and (E) of this section, distributed) to the TIH. 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 IRS on the Forms 1099 in accordance with paragraph (f)(2) or (g)(2) of this section, as appropriate.

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

(A) *Taxpayer information.* The name, address, and taxpayer identification number of the TIH;

(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.* All items of gross income of the WHFIT attributable to the TIH for the calendar year (including OID and all amounts of income attributable to a selling, purchasing, or redeeming TIH for the portion of the calendar year that the TIH held its interest (unless paragraph (c)(2)(v)(C) of this section (regarding certain NMWHFITs with dividend income) applies));

(D) *Non pro-rata partial principal payments.* All non pro-rata partial principal payments (as defined in paragraph (b)(13) of this section) received by the WHFIT that are attributable (or distributed, in the case of a trustee or middleman reporting under paragraph (f)(2)(iii) of this section) to the TIH;

(E) *Trust sales proceeds.* All trust sales proceeds (as defined in paragraph (b)(21) of this section) that are attributable to the TIH for the calendar year, if any, or, if paragraph (c)(2)(iv)(B) of this section (regarding certain NMWHFITs) applies, the amount of trust sales proceeds distributed to the TIH for the calendar year;

(F) *Reporting redemptions.* All redemption asset proceeds (as defined in paragraph (b)(14) of this section) paid to the TIH for the calendar year, if any, or, if paragraph (c)(2)(v)(C) of this section (regarding certain NMWHFITs with dividend income) applies, all redemption proceeds (as defined in paragraph (b)(15) of this section) paid to the TIH for the calendar year;

(G) *Reporting sales of a trust interest on a secondary market.* All sales asset proceeds (as defined in paragraph (b)(17) of this section) paid to a TIH for the sale of a trust interest or interests on a secondary market established for the WHFIT for the calendar year, if any, or, if paragraph (c)(2)(v)(C) of this section (regarding certain NMWHFITs with dividend income) applies, all sales proceeds (as defined in paragraph (b)(18) of this section) paid to the TIH for the calendar year; and

(H) *Other information.* Any other information required by the Form 1099.

(3) *Time and manner of filing Forms 1099*—(i) *Time and place.* The Forms 1099 required to be filed under this paragraph (d) must be filed on or before February 28 (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.

(ii) *Reporting trust sales proceeds, redemption asset proceeds, redemption proceeds, sale asset proceeds, sales proceeds and non pro-rata partial principal payments*—(A) *Form to be used.* Trust sales proceeds, redemption asset proceeds, redemption proceeds, sale asset proceeds, sales proceeds, and non pro-rata partial principal payments are to be reported on the same type of Form 1099 as that required for reporting gross proceeds under section 6045.

(B) *Appropriate reporting for in-kind redemptions.* The value of the assets distributed with respect to an in-kind redemption is not required to be reported to the IRS. Unless paragraph (c)(2)(v)(C) of this section applies, the trustee or middleman must report the gross income attributable to the redeemed trust interest for the calendar year up to the date of the redemption under paragraph (d)(2)(ii)(C) of this section.

(e) *Requirement to furnish a written tax information statement to the TIH*—(1) *In general.* Every trustee or middleman required to file appropriate Forms 1099 under paragraph (d) of this section with respect to a TIH must furnish to that TIH (the person whose identifying number is required to be shown on the form) a written tax information statement showing the information described in paragraph (e)(2) of this section. The amount of a

trust item reported to a TIH under this paragraph (e) must be consistent with the information reported to the IRS with respect to the TIH under paragraph (d) of this section. Information provided in this written statement must be determined in accordance with the rules provided in paragraph (d)(2)(i) of this section (regardless of whether the information was required to be provided on a Form 1099). Further, the trustee or middleman must separately state on the written tax information statement any items that, if taken into account separately by that TIH, would result in an income tax liability that is different from the income tax liability that would result if the items were not taken into account separately.

(2) *Information required.* For the calendar year, the written tax information statement must meet the following requirements:

(i) *WHFIT information.* The written tax information statement must include the name of the WHFIT and the identifying number of the WHFIT ;

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

(iii) *Items of income, expense, and credit.* The written tax information statement must include information regarding the items of income (that is, the information required to be reported to the IRS on Forms 1099), expense (including affected expenses), and credit that are attributable to the TIH for the calendar year;

(iv) *Non pro-rata partial principal payments.* The written tax information statement must include the information required to be reported to the IRS on Forms 1099 under paragraph (d)(2)(ii)(D) of this section (regarding the non pro-rata partial principal payments that are attributable [or distributed, in the case of a trustee or middleman reporting under paragraph (f)(2)(iii) of this section] to the TIH for the calendar year).

(v) *Asset sales and dispositions*—(A) *General rule.* Unless paragraph (c)(2)(iv)(B) (regarding the exception for certain NMWHFITs) or (c)(2)(iv)(C) (regarding the exception for certain WHMTs) of this section applies, the written tax information statement must include, with respect to each sale or disposition of a WHFIT asset for the calendar year—

(1) The date of sale or disposition;

(2) Information regarding the trust sales proceeds that are attributable to the TIH as a result of the sale or disposition; and

(3) Information that will enable the TIH to allocate with reasonable accuracy a portion of the TIH's basis in the TIH's trust interest to the sale or disposition.

(B) *Special rule for certain NMWHFITs and WHMTs.* In the case of a NMWHFIT to which paragraph (c)(2)(iv)(B) of this section applies or in the case of a WHMT to which paragraph (c)(2)(iv)(C) of this section applies, the written tax information statement must include, with respect to asset sales and dispositions, only the information required to be reported to the IRS on Form 1099 under paragraph (d)(2)(ii)(E) of this section.

(vi) *Redemption or sale of a trust interest.* The written tax information statement must include the information required to be reported to the IRS on Forms 1099 under paragraphs (d)(2)(ii)(F) and (G) of this section (regarding the sales and redemptions of trust interests made by the TIH for the calendar year);

(vii) *Information regarding market discount and bond premium.* The written tax information statement must include the information required to be reported by the trustee under paragraphs (c)(2)(vi) and (vii) of this section (regarding bond premium and market discount);

(viii) *Other information.* The written tax information statement must include any other information necessary for the TIH to report, with reasonable accuracy for the calendar year, the items (as defined in paragraph (b)(9) of this section) attributable to the portion of the trust treated as owned by the TIH under section 671. The written tax information statement may include information with respect to a trust item on a per trust interest basis if the trustee has reported (or calculated) the information with respect to that item on a per trust interest basis and information with respect to that item is not required to be reported on a Form 1099; and

(ix) *Required statement.* The written tax information statement must inform the TIH 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 TIH on the Federal income tax return of the TIH. If the written tax information statement reports that an amount of qualified dividend income is attributable to the TIH, the written tax information statement also must inform the TIH that the TIH must meet the requirements of section 1(h)(11)(B)(iii) to treat the dividends as qualified dividends.

(3) *Due date and other requirements.* The written tax information statement

must be furnished to the TIH on or before March 15 of the year following the calendar year for which the statement is being furnished.

(4) *Requirement to retain records.* For a period of no less than five years from the due date for furnishing the written tax information statement, a trustee or middleman must maintain in its records a copy of any written tax information statement furnished to a TIH, and such supplemental data as may be required to establish the correctness of the statement.

(f) *Safe harbor for providing information for certain NMWHFITs—(1) Safe harbor for trustee reporting of NMWHFIT information—*The trustee of a NMWHFIT that meets the requirements of paragraph (f)(1)(i) of this section is deemed to satisfy paragraph (c)(1)(i) of this section, if the trustee calculates and provides WHFIT information in the manner described in this paragraph (f) and provides a statement to a requesting person giving notice that information has been calculated in accordance with this paragraph (f)(1).

(i) *In general.* (A) *Eligibility to report under this safe harbor.* Only NMWHFITs that meet the requirements set forth in paragraphs (f)(1)(i)(A)(1) and (2) of this section may report under this safe harbor.

(1) Substantially all of the NMWHFIT's income is from dividends (as defined in section 6042(b) and the regulations thereunder) or interest (as defined in section 6049(b) and the regulations thereunder); and

(2) All trust interests have identical value and rights

(B) *Consistency requirements.* The trustee must—

(1) Calculate all trust items subject to the safe harbor consistent with the safe harbor; and, (2) Report under this paragraph (f)(1) for the life of the NMWHFIT; or, if the NMWHFIT has a start-up date before January 1, 2007, the NMWHFIT must begin reporting under this paragraph (f)(1) as of January 1, 2007 and must continue to report under this paragraph for the life of the NMWHFIT.

(ii) *Reporting NMWHFIT income and expenses.* A trustee must first determine the total amount of NMWHFIT distributions (both actual and deemed) for the calendar year and then express each income or expense item as a fraction of the total amount of NMWHFIT distributions. These fractions (hereinafter referred to as factors) must be accurate to at least four decimal places.

(A) *Step One: Determine the total amount of NMWHFIT distributions for*

*the calendar year.* The trustee must determine the total amount of NMWHFIT distributions (actual and deemed) for the calendar year. If the calculation of the total amount of NMWHFIT 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 this paragraph (f)(1)(ii)(A) (but may report all other applicable items under this paragraph (f)(1)). The total amount of NMWHFIT distributions equals the amount of NMWHFIT funds paid out to all TIHs (including all trust sales proceeds, all principal receipts, and all redemption proceeds) 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 TIHs 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) for a prior year;

(ii) All redemption asset proceeds paid for the calendar year, or if paragraph (c)(2)(v)(C) of this section applies to the NMWHFIT, all redemption proceeds paid for the calendar year;

(iii) All trust sales proceeds distributed during the calendar year; and

(iv) All non pro-rata partial principal payments distributed during the calendar year.

(3) For the purpose of determining the amount of all redemption asset proceeds or redemption proceeds paid for the calendar year with respect to paragraph (f)(1)(ii)(A)(2)(ii) of this section, the value of the assets (not including cash) distributed with respect to an in-kind redemption is disregarded. Any cash distributed as part of the redemption must be included in the total amount of NMWHFIT distributions.

(B) *Step Two: Determine factors that express the ratios of NMWHFIT income and expenses to the total amount of NMWHFIT distributions.* The trustee must determine factors that express the ratios of NMWHFIT income and expenses to the total amount of NMWHFIT distributions as follows:

(1) *Income factors.* For each item of income generated by the NMWHFIT's assets for the calendar year, the trustee must determine the ratio of the gross amount of that item of income to the

total amount of NMWHFIT distributions for the calendar year; and

(2) *Expense factors.* For each item of expense paid by a NMWHFIT during the calendar year, the trustee must determine the ratio of the gross amount of that item of expense to the total amount of NMWHFIT distributions for the calendar year.

(C) *Step Three: Determine adjustments for reconciling the total amount of NMWHFIT distributions (determined under Step One) with amounts actually paid to TIHs.*

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 NMWHFIT distributions as determined in paragraph (f)(1)(ii)(A) of this section (Step One). A TIH's share of the total amount of NMWHFIT distributions may differ from the amount actually paid to that TIH. A trustee, therefore, must provide information that can be used to compute a TIH's share of the total amount of NMWHFIT distributions based on the amount actually paid to the TIH. A trustee satisfies this requirement by providing a current year-end cash allocation factor, a prior year cash allocation factor, and the date on which the prior year cash was distributed to TIHs (prior year cash distribution date).

(1) *The current year-end cash allocation factor.* The current year-end cash allocation factor is the amount of cash held for distribution to TIHs by the NMWHFIT as of December 31 of the calendar year for which the trustee is reporting, divided by the number of trust interests outstanding as of that date.

(2) *The prior year cash allocation factor.* The prior year cash allocation factor is the amount of the distribution during the calendar year for which the trustee is reporting that was included in determining a year-end cash allocation factor for a prior year, divided by the number of trust interests outstanding on the date of the distribution.

(iii) *Reporting non pro-rata partial principal payments under the safe harbor.* The trustee must provide a list of dates on which non pro-rata partial principal payments were distributed by the trust, and the amount distributed, per trust interest.

(iv) *Reporting sales and dispositions of NMWHFIT assets under the safe harbor—(A) NMWHFITs that must report under the general rule—(1) In general.* If a NMWHFIT must report under the general rule of paragraph (c)(2)(iv)(A) of this section, the trustee must provide a list of dates (from earliest to latest) on which sales or

dispositions of NMWHFIT assets occurred during the calendar year for which the trustee is reporting and, for each date identified, provide—

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

(ii) The trust sales proceeds distributed to TIHs, per trust interest, with respect to the sales and dispositions on that date, and the date that the trust sales proceeds were distributed to the TIHs; and

(iii) The ratio (expressed as a percentage) of the assets sold or disposed of on that date to all assets held by the NMWHFIT.

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

(i) If a NMWHFIT terminates within twenty-four months of its start-up date, the ratio of the assets sold or disposed of on that date to all assets held by the NMWHFIT is based on the fair market value of the NMWHFIT's assets as of the start-up date; or

(ii) If a NMWHFIT terminates more than twenty-four months after its start-up date, the ratio of the assets sold or disposed of on that date to all assets held by the NMWHFIT is based on the fair market value of the NMWHFIT's assets as of the date of the sale or disposition.

(B) *NMWHFITs excepted from the general rule.* If paragraph (c)(2)(iv)(B) of this section applies to the NMWHFIT, the trustee must provide a list of dates on which trust sales proceeds were distributed, and the amount of trust sales proceeds, per trust interest, that were distributed on that date. The trustee also must also provide requesting persons with the statement required by paragraph (c)(2)(iv)(B) of this section.

(v) *Reporting redemptions under the safe harbor—(A) In general.* The trustee must:

(1) Provide a list of dates on which the amount of redemption proceeds paid for the redemption of a trust interest was determined and the amount of the redemption asset proceeds determined per trust interest on that date, or if paragraph (c)(2)(v)(C) of this section applies to the NMWHFIT, the amount of redemption proceeds determined on that date; or

(2) Provide to each requesting person that held (either for its own behalf or for the behalf of a TIH) a trust interest that was redeemed during the calendar year, the date of the redemption and the amount of the redemption asset proceeds per trust interest determined on that date, or if paragraph (c)(2)(v)(C)

of this section applies to the NMWHFIT, the amount of the redemption proceeds determined for that date; and

(B) *Paragraph (c)(2)(v)(C) statement.* If paragraph (c)(2)(v)(C) of this section applies to the NMWHFIT, the trustee must provide a statement to requesting persons to the effect that the trustee is providing information consistent with paragraph (c)(2)(v)(C) of this section.

(vi) *Reporting the sale of a trust interest under the safe harbor.* If paragraph (c)(2)(v)(C) of this section does not apply to the NMWHFIT, the trustee must provide, for each day of the calendar year, the amount of cash held for distribution, per trust interest, by the NMWHFIT on that date. If the trustee is able to identify the date on which trust interests were sold on the secondary market, the trustee alternatively may provide information for each day on which sales of trust interests occurred rather than for each day during the calendar year. If paragraph (c)(2)(v)(C) of this section applies to the NMWHFIT, the trustee is not required to provide any information under this paragraph (f)(1)(vi), other than a statement that the NMWHFIT meets the requirements to report under paragraph (c)(2)(v)(C) of this section.

(vii) *Reporting OID information under the safe harbor.* The trustee must provide, for each calculation period, the average aggregate daily accrual of OID per \$1,000 of original principal amount.

(viii) *Reporting market discount information under the safe harbor—(A) In general.* If the trustee of a NMWHFIT is required to provide information regarding market discount under paragraph (c)(2)(vii) of this section, the trustee must provide the information required under paragraph (f)(1)(iv)(A)(1)(iii) of this section. If the trustee is not required to provide market discount information under paragraph (c)(2)(vii) of this section (because the NMWHFIT meets either the *de minimis* test of paragraph (c)(2)(iv)(D) of this section, or the qualified NMWHFIT exception of paragraph (c)(2)(iv)(E) of this section), the trustee is not required under this paragraph (f) to provide any information regarding market discount.

(B) *Reporting market discount information under the safe harbor when the yield of the debt obligations held by the WHFIT is expected to be affected by prepayments.* [Reserved.]

(ix) *Reporting bond premium information under the safe harbor.* [Reserved.]

(x) *Reporting additional information.* If a requesting person cannot use the information provided by the trustee under paragraphs (f)(1)(ii) through (ix) of this section to determine with

reasonable accuracy the trust items that are attributable to a TIH, the requesting person must request, and the trustee must provide, additional information to enable the requesting person to determine the trust items that are attributable to the TIH. See, for example, paragraph (f)(2)(ii)(A)(4) of this section which requires a middleman to request additional information from the trustee when the total amount of WHFIT distributions attributable to a TIH equals zero or less.

(2) *Use of information provided by trustees under the safe harbor for NMWHFITs—(i) In general.* If a trustee reports NMWHFIT items in accordance with paragraph (f)(1) of this section, the information provided with respect to those items on the Forms 1099 required under paragraph (d) of this section to be filed with the IRS and on the statement required under paragraph (e) of this section to be furnished to the TIH must be determined as provided in this paragraph (f)(2).

(ii) *Determining NMWHFIT income and expense under the safe harbor.* The trustee or middleman must determine the amount of each item of income and expense attributable to a TIH as follows—

(A) *Step One: Determine the total amount of NMWHFIT distributions attributable to the TIH.* To determine the total amount of NMWHFIT distributions attributable to a TIH for the calendar year, the total amount paid to, or credited to the account of, the TIH during the calendar year (including amounts paid as trust sales proceeds or partial non-pro rata principal payments, redemption proceeds, and sales proceeds) is—

(1) Increased by—

(i) All amounts that would have been distributed during the calendar year to the TIH, but that 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); and

(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 trust interests held by the TIH as of December 31 of the calendar year for which the trustee is reporting; and

(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 trust interests held by the TIH on the date of the distribution;



(ii) An amount equal to all redemption asset proceeds paid to the TIH for the calendar year, or if paragraph (c)(2)(v)(C) of this section applies to the NMWHFIT, an amount equal to all redemption proceeds paid to the TIH for the calendar year;

(iii) An amount equal to all sale asset proceeds paid to the TIH for the calendar year, or if paragraph (c)(2)(v)(C) of this section applies to the NMWHFIT, the amount of sales proceeds paid to the TIH for the calendar year;

(iv) In the case of a TIH that purchased a trust interest in a NMWHFIT to which paragraph (c)(2)(v)(C) of this section does not apply, an amount equal to the cash held for distribution per trust interest on the date that the TIH acquired its interest, multiplied by the trust interests acquired on that date;

(v) The amount of the trust sales proceeds distributed to the TIH, calculated as provided in paragraph (f)(2)(iv)(A)(3) of this section; and

(vi) The amount of non pro-rata partial principal prepayments distributed to the TIH during the calendar year, calculated as provided in paragraph (f)(2)(iii) of this section.

(3) *Treatment of in-kind distributions under this paragraph (f)(2)(i).* The value of the assets (not including cash) received with respect to an in-kind redemption is not included in the amount used in paragraph (f)(2)(ii)(A)(2)(ii) of this section. The cash distributed as part of the redemption, however, must be included in the total amount of NMWHFIT distributions paid to the TIH.

(4) *The total amount of distributions attributable to a TIH calculated under this paragraph (f)(2)(i)(A) equals zero or less.* If the total amount of distributions attributable to a TIH, calculated under this paragraph (f)(2)(i)(A), equals zero or less, the trustee or middleman may not report the income and expense attributable to the TIH under this paragraph (f)(2)(i). The trustee or middleman must request additional information from the trustee of the NMWHFIT to enable the trustee or middleman to determine with reasonable accuracy the items of income and expense that are attributable to the TIH. The trustee or middleman must report the other items subject to paragraph (f)(1) of this section in accordance with this paragraph (f)(2).

(B) *Step Two: Apply the factors provided by the trustee to determine the items of income and expense that are attributable to the TIH.* The amount of each item of income (other than OID)

and each item of expense attributable to a TIH is determined as follows—

(1) *Application of income factors.* For each income factor, the trustee or middleman must multiply the income factor by the total amount of NMWHFIT distributions attributable to the TIH for the calendar year (as determined in paragraph (f)(2)(i)(A) of this section).

(2) *Application of expense factors.* For each expense factor, the trustee or middleman must multiply the expense factor by the total amount of NMWHFIT distributions attributable to the TIH for the calendar year (as determined in paragraph (f)(2)(i)(A) of this section).

(iii) *Reporting non pro-rata partial principal payments under the safe harbor.* To determine the amount of non pro-rata partial principal payments that are distributed to a TIH for the calendar year, the trustee or middleman must aggregate the amount of non pro-rata partial principal payments distributed to a TIH for each day that non pro-rata principal payments were distributed. To determine the amount of non pro-rata principal payments that are distributed to a TIH on each distribution date, the trustee or middleman must multiply the amount of non-pro rata principal payments per trust interest distributed on that date by the number of trust interests held by the TIH.

(iv) *Reporting sales and dispositions of NMWHFIT assets under the safe harbor—(A) Reporting under the safe harbor if the general rules apply to the NMWHFIT.* Unless paragraph (c)(2)(iv)(B) of this section applies, the trustee or middleman must comply with paragraphs (f)(2)(iv)(A)(1), (2), and (3) of this section.

(1) *Form 1099.* The trustee or middleman must report the amount of trust sales proceeds attributable to the TIH for the calendar year on Form 1099. To determine the amount of trust sales proceeds attributable to a TIH for the calendar year, the trustee or middleman must aggregate the total amount of trust sales proceeds attributable to the TIH for each date on which the NMWHFIT sold or disposed of an asset or assets. To determine the total amount of trust sales proceeds attributable to a TIH for each date that the NMWHFIT sold or disposed of an asset or assets, the trustee or middleman multiplies the amount of trust sales proceeds received by the NMWHFIT per trust interest on that date by the number of trust interests held by the TIH on that date.

(2) *The written tax information statement furnished to the TIH.* The written tax information statement required to be furnished to the TIH 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 provide, for each date identified—

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

(ii) The information provided by the trustee under paragraph (f)(1)(iv)(B)(2) of this section regarding the ratio of the assets sold or disposed of on that date to all the assets of the NMWHFIT held on that date, prior to such sale or disposition.

(3) *Calculating the total amount of trust sales proceeds distributed to the TIH.* To determine the total amount of NMWHFIT distributions attributable to a TIH, the trustee or middleman must calculate the amount of trust sales proceeds distributed to the TIH for the calendar year. (See paragraph (f)(2)(ii)(A)(2)(v) of this section.) To determine the amount of trust sales proceeds distributed to a TIH for the calendar year, the trustee or middleman must aggregate the total amount of trust sales proceeds distributed to the TIH for each date on which the NMWHFIT distributed trust sales proceeds. To determine the total amount of trust sales proceeds distributed to a TIH for each date that the NMWHFIT distributed trust sales proceeds, the trustee or middleman must multiply the amount of trust sales proceeds distributed by the NMWHFIT per trust interest on that date by the number of trust interests held by the TIH on that date.

(B) *Reporting under the safe harbor if paragraph (c)(2)(iv)(B) of this section applies to the NMWHFIT.* If paragraph (c)(2)(iv)(B) of this section applies, the trustee or middleman must calculate, in the manner provided in paragraph (f)(2)(iv)(A)(3) of this section, the amount of trust sales proceeds distributed to the TIH for the calendar year. The trustee or middleman must report this amount on the Form 1099 filed for the TIH and on the written tax information statement furnished to the TIH.

(v) *Reporting redemptions under the safe harbor—(A) Except as provided in paragraph (f)(2)(v)(B) or (C) of this section, if the trustee has provided a list of dates for which the amount of the redemption proceeds to be paid for the redemption of a trust interest was determined and the redemption asset proceeds paid for that date, the trustee or middleman must multiply the redemption asset proceeds determined per trust interest for that date by the number of trust interests redeemed by the TIH on that date.*

(B) If paragraph (c)(2)(v)(C) of this section applies, and the trustee has provided a list of dates for which the amount of the redemption proceeds to be paid for the redemption of a trust interest was determined and the redemption proceeds determined per trust interest on each date, the trustee or middleman must multiply the redemption proceeds per trust interest for each date by the number of trust interests redeemed by the TIH on that date.

(C) If the trustee has provided the requesting person with information regarding the redemption asset proceeds paid for each redemption of a trust interest held by the middleman for the calendar year, or if paragraph (c)(2)(v)(C) of this section applies and the trustee has provided the amount of redemption proceeds paid for each redemption of a trust interest held by the middleman during the calendar year, the requesting person may use this information to determine the amount of the redemption asset proceeds or redemption proceeds paid to the TIH for the calendar year.

(vi) *Reporting sales of trust interests under the safe harbor*—(A) Except as provided in paragraph (f)(2)(vi)(B) of this section, the trustee or middleman must subtract the amount of cash held for distribution per trust interest on the date of the sale from the sales proceeds paid to the TIH to determine the sale asset proceeds that are to be reported to the TIH for each sale of a trust interest.

(B) If paragraph (c)(2)(v)(C) of this section applies, the trustee or middleman must report the sales proceeds paid to the TIH as a result of each sale of a trust interest.

(vii) *Reporting OID information under the safe harbor*—The trustee or middleman must aggregate the amounts of OID that are allocable to each trust interest held by a TIH for each calculation period. The amount of OID that is allocable to a trust interest, with respect to each calculation period, is determined by multiplying—

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

(B) The number of days during the OID calculation period in that calendar year that the TIH held the trust interest.

(viii) *Reporting market discount information under the safe harbor*—(A) Except as provided in paragraph (f)(2)(viii)(B) of this section, the trustee or middleman must provide the TIH with the information provided under paragraph (f)(1)(vii)(B) of this section.

(B) If paragraph (c)(2)(iv)(B) of this section applies, the trustee and middleman are not required under this paragraph (f)(2) to provide any information regarding market discount.

(ix) *Reporting bond premium information under the safe harbor.*  
[Reserved]

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

*Example: (i) Facts—(A) In general—(1)* Trust is a NMWHFIT that holds common stock in ten different corporations and has 100 trust interests outstanding. The start-up date for Trust is December 15, 2006, and the termination date for Trust is March 15, 2008. 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 2007 calendar year. The agreement also provides that the trust interests will be redeemed by the Trust for an amount equal to the value of the trust interest, as of the close of business, on the day that the trust interest is tendered for redemption. There is no reinvestment plan. A secondary market for interests in Trust will be created by Trust's sponsor and Trust's sponsor will provide Trustee with a list of dates on which sales occurred on this secondary market.

(2) As of December 31, 2006, Trust holds \$12x for distribution to TIHs 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, 2006.

(B) *Events occurring during the 2007 calendar year—(1)* As of January 1, 2007, Broker1 holds ten trust interests in Trust in street name for each of J and A and Broker2 holds ten trust interests in Trust in street name for S, J, A, and S; are individual, cash method taxpayers.

(2) As of January 1, 2007, the fair market value of the Trust's assets equals \$10,000x.

(3) During 2007, Trust receives \$588x in dividend income. Trustee determines that \$400x of the dividend income received during 2007 meets the definition of a qualified dividend in section 1(h)(11)(B)(i) and the holding period requirement in section 1(h)(11)(B)(iii) with respect to the Trust. During 2007, Trust also receives \$12x in interest income from investment of Trust's funds pending distribution to TIHs, and pays \$45x in expenses, all of which are affected expenses.

(4) On April 15, 2007, Trustee distributes \$135x, which includes the \$12x included in determining the year-end cash allocation factor for December 31, 2006. As a result of the distribution, Broker1 credits J's account and A's account for \$13.50x each. Broker2 credits S's account for \$13.50x.

(5) On June 1, 2007, Trustee sells shares of stock for \$1000x to preserve the soundness of the trust. The stock sold on June 1, 2007,

equaled 20% of the aggregate fair market value of the assets held by Trust on the start-up date of the Trust.

(6) On July 15, 2007, Trustee distributes \$1,135x, which includes the \$1,000x of trust sales proceeds received by Trust for the sale of assets on June 1, 2007. As a result of the distribution, Broker1 credits J's account and A's account for \$113.50x each. Broker 2 credits S's account for \$113.50x.

(7) On September 30 2007, J, through Trust's sponsor, sells a trust interest to S for \$115.35x. Trustee determines that the cash held for distribution per trust interest on September 30 is \$1.35x. As a result of the sale, Broker1 credits J's account for \$115.35x.

(8) On October 15, 2007, Trustee distributes \$123x. As a result of the distribution, Broker1 credits J's account for \$11.07x and A's account for \$12.30x. Broker2 credits S's account for \$13.53x.

(9) On December 10, 2007, J tenders a trust interest to Trustee for redemption through Broker1. Trustee determines that the amount of the redemption proceeds to be paid for a trust interest that is tendered for redemption on December 10, 2007, is \$116x, of which \$115x represents the redemption asset proceeds. On December 12, 2007, Trustee sells shares of common stock for \$115x to have sufficient cash to pay J's redemption proceeds. The stock sold on December 12, 2007, equaled 2% of the aggregate fair market value of all the assets of Trust as of the start up date. On December 17, 2007, Trustee pays the \$116x redemption proceeds (including the \$115x trust sales proceeds received by Trust for the sale of the stock on December 12) to Broker1 on J's behalf, and Broker1 in turn pays \$116x to J as redemption proceeds.

(10) On December 10, 2007, J, through Trust's sponsor, also sells a trust interest to S for \$116x. Trustee determines that the cash held for distribution per trust interest on that date is \$1x. As a result of the sale, Broker1 credits J's account for \$116x.

(11) As of December 31, 2007, Trust holds cash of \$173x and has incurred \$15x in expenses that Trust has not paid. J is the only TIH to redeem a trust interest during the calendar year. The sale of two trust interests in Trust by J to S are the only sales that occurred on the secondary market established by Trust's sponsor during 2007.

(ii) *Trustee reporting—(A) Summary of information provided by Trustee.* Trustee meets the requirements of paragraph (f)(1) of this section if Trustee provides the following information to requesting persons:

(1) Income and expense information:	
Factor for ordinary dividend income.	0.3481
Factor for qualified dividend income.	0.7407
Factor for interest income .....	0.0222
Factor for affected expenses .....	0.0833
Current year-end cash allocation factor.	1.5960
Prior year cash allocation factor	0.1200
Prior year cash distribution date	April 15

(2) Information regarding asset sales and distributions:

Date of sale	Trust sales proceeds received	Trust sales proceeds distributed and date distributed	Percent of trust sold
June 1 .....	\$10.0000x .....	\$10.0000x (July 15) .....	20
December 12 .....	1.1616x .....	0.0000x .....	2

## (3) Information regarding redemptions:

Date	Redemption asset proceeds
December 10 .....	\$115x

## (4) Information regarding sales of trust interests

Date	Cash held for distribution per trust interest
September 30 .....	\$1.35x
December 10 .....	1.00x

(B) Trustee determines this information as follows:

(1) *Step One: Trustee determines the total amount of NMWHFIT distributions for the calendar year.* The total amount of NMWHFIT 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 (\$1135x, \$135x, and \$123x), plus the total amount paid to J as a result of J's redemption of a trust interest (\$116x) (\$1,135x + \$135x + \$123x + \$116x = \$1,509x)—

(i) Increased by all cash held for distribution to TIHs as of December 31, 2007 (\$158x), which is the cash held as of December 31, 2007 (\$173x) reduced by the accrued but unpaid expenses as of December 31, 2007 (\$15x), and

(ii) Decreased by all amounts distributed during the calendar year but included in the year-end cash allocation factor from a prior year (\$12x); all redemption asset proceeds paid for the calendar year (\$115x); and all trust sales proceeds distributed during the calendar year (\$1,000x).

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

(i) *Ordinary dividend income factor.* The ordinary dividend income factor is 0.3481, which represents the ratio of the gross amount of ordinary dividends (\$188x) to the total amount of NMWHFIT distributions for the calendar year (\$540x).

(ii) *Qualified dividend income factor.* The qualified dividend income factor is 0.7407 which represents the ratio of the gross

amount of qualified dividend income (\$400x) to the total amount of NMWHFIT distributions for the calendar year (\$540x).

(iii) *Interest income factor.* The interest income factor is 0.0222, which represents the ratio of the gross amount of interest income (\$12x) to the total amount of NMWHFIT distributions for the calendar year (\$540x).

(iv) *Expense factor.* The affected expenses factor is 0.0833, which represents the ratio of the gross amount of affected expenses paid by Trust for the calendar year (\$45x) to the total amount of NMWHFIT distributions for the calendar year (\$540x).

(3) *Step Three: Trustee determines adjustments for reconciling the total amount of NMWHFIT distributions with amounts paid to TIHs.* To enable requesting persons to determine the total amount of NMWHFIT distributions that are attributable to a TIH based on amounts actually paid to the TIH, 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 the cash held for distribution as of December 31, 2007 (\$158x) (the amount of cash held by Trust on December 31, 2007 (\$173x) reduced by accrued, but unpaid, expenses (\$15x)), divided by the number of trust 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 0.1200, which represents 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 the number of trust interests outstanding at the time of the distribution (100). The prior year cash distribution date is April 15, 2007.

(4) *Reporting sales and dispositions of trust assets—(i) Application of the de minimis test and the qualified NMWHFIT exception.* The aggregate fair market value of the assets of Trust as of January 1, 2007, was \$10,000x. During the 2007 calendar year, Trust received trust sales proceeds of \$1115x. Trust sales proceeds received by Trust for the 2007 calendar year equal 11.15% of Trust's fair market value as of January 1, 2007. Accordingly, neither the de minimis test or the qualified NMWHFIT exception is met for the calendar year.

(ii) *Information to be provided.* To satisfy the requirements of paragraph (f)(1) of this section with respect to sales and dispositions of Trust's assets, Trustee provides a list of dates on which trust assets were sold during

the calendar year, and provides, for each date: the trust sales proceeds (per trust interest) received on that date; the trust sales proceeds distributed to TIHs (per trust interest) with respect to sales or dispositions on that date; the date those trust sales proceeds were distributed, and the ratio of the assets sold or disposed of on that day to all the assets held by Trust. Because Trust will terminate within 15 months of its start-up date, Trustee must use the fair market value of the assets as of the start-up date to determine the portion of Trust sold or disposed of on any particular date.

(5) *Reporting redemptions.* Because Trust is not required to make distributions at least as frequently as monthly, and Trust's start-up date is after February 23, 2006, the exception in paragraph (c)(2)(v)(C) of this section does not apply to Trust. To satisfy the requirements of paragraph (f)(1) of this section, Trustee provides a list of dates for which the redemption proceeds to be paid for the redemption of a trust interest was determined for the 2007 calendar year and the redemption assets proceeds paid for each date. During 2007, Trustee only determined the amount of redemption proceeds to be paid for the redemption of a trust interest once, for December 10, 2007, and the redemption asset proceeds determined for that date was \$115x.

(6) *Reporting sales of trust interest.* Because Trust is not required to make distributions at least as frequently as monthly, and Trust's start up date is after February 23, 2006, the exception in paragraph (c)(2)(v)(C) of this section does not apply to Trust. Sponsor, in accordance with the trust agreement, provides Trustee with a list of dates on which sales on the secondary market occurred. To satisfy the requirements of paragraph (f)(1) of this section, Trustee provides requesting persons with a list of dates on which sales on the secondary market occurred and the amount of cash held for distribution per trust interest on each date. During 2007, two sales occurred on the secondary market. The first sale occurred on September 30, 2007, and the amount of cash held for distribution, per trust interest, on that date is \$1.35x. The second sale occurred on December 10, 2007, and the amount of cash held for distribution, per trust interest, on that date is \$1.00x.

(iii) *Brokers' use of information provided by Trustee.* (A) Broker1 and Broker2 use the information furnished by Trustee under the safe harbor to determine that the following items are attributable to J, A, and S—

With respect to J

Ordinary Dividend Income .....	\$17.89x
Qualified Dividend Income .....	38.07x
Interest Income .....	1.14x
Affected Expenses .....	4.28x
Trust sales proceeds reported on Form 1099 .....	108.13x

Redemption asset proceeds	
For redemption on December 10 .....	115.00x
Sale asset proceeds	
For sale on September 30 .....	114.00x
For sale on December 10 .....	115.00x
With respect to A	
Ordinary Dividend Income .....	18.82x
Qualified Dividend Income .....	40.04x
Interest Income .....	1.20x
Affected Expenses .....	4.50x
Trust sales proceeds reported on Form 1099 .....	11.62x
With respect to S	
Ordinary Dividend Income .....	19.54x
Qualified Dividend Income .....	41.58x
Interest Income .....	1.25x
Affected Expenses .....	4.68x
Trust sales proceeds reported on Form 1099 .....	113.94x

With respect to J, A, and S (regarding the sales and dispositions executed by Trust during the calendar year)

Date	Trust sales proceeds received per trust interest	Percent of trust sold
June 15 .....	\$10.0000x .....	20
December 12 .....	1.1616x .....	2

(B) The brokers determine the information provided to J, A, and S as follows—

(1) *Step One: Brokers determine the total amount of NMWHFIT distributions attributable to J, A, and S.* Broker1 determines that the total amount of NMWHFIT distributions attributable to J is \$51.39x and the total amount of NMWHFIT distributions attributable to A is \$54.06x. Broker2 determines that the total amount of NMWHFIT distributions attributable to S is \$56.13x.

(i) To calculate these amounts the brokers begin by determining the total amount paid to J, A, and S for the calendar year—

(A) The total amount paid to J for the calendar year equals \$485.42x and includes the April 15, 2007, distribution of \$13.50x, the July 15, 2007, distribution of \$113.50x, the sales proceeds for the September 30, 2007, sale of \$115.35x, the October 15, 2007, distribution of \$11.07x, and the redemption proceeds of \$116x and sales proceeds of \$116x for the redemption and sale on December 10, 2007.

(B) The total amount paid to A for the calendar year equals \$139.30x and includes the April 15, 2007, distribution of \$13.50x, the July 15, 2007, distribution of \$113.50x and the October 15, 2007, distribution of \$12.30x.

(C) The total amount paid to S for the calendar year equals \$140.53x and includes the April 15, 2007, distribution of \$13.50x, the July 15, 2007, distribution of \$113.50x and the October 15, 2007, distribution of \$13.53x.

(ii) The brokers increase the total amount paid to J, A, and S by an amount equal to the current year-end cash allocation factor (1.5960) multiplied by the number of trust interests held by J (7), A (10), and S (12) as of December 31, 2007; that is for J, \$11.17x; for A, \$15.96x; and for S, \$19.15x.

(iii) The brokers reduce the amount paid to J, A, and S as follows—

(A) An amount equal to the prior year cash allocation factor (0.1200), multiplied by the number of trust interests held by J (10), A (10), and S (10) on the date of the prior year cash distribution; that is for J, A, and S, \$1.20x, each;

(B) An amount equal to all redemption asset proceeds paid to a TIH for the calendar year; that is, for J, \$115x;

(C) An amount equal to all sales asset proceeds attributable to the TIH for the calendar year; that is for J, \$229x (for the September 30, 2007, sale: \$115.35x – 1.35x (cash held for distribution per trust interest on that date) – \$114x; and for the December 10, 2007, sale: \$116x – 1.00 (cash held for distribution per trust interest on that date) = \$115x));

(D) In the case of a purchasing TIH, an amount equal to the amount of cash held for distribution per trust interest at the time the TIH purchased its trust interest, multiplied by the number of trust interests purchased; that is for S, \$2.35x (\$1.35x with respect to the September 30, 2007, sale and \$1x with respect to the December 10, 2007, sale);

(E) All amounts of trust sales proceeds distributed to the TIH for the calendar year; that is for J, A, and S, \$100. (\$100 each, with respect to the June 15, 2007, sale of assets by Trust, and \$0 each, with respect to the December 12, 2007, sale of assets by Trust).

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

(i) *Application of factor for ordinary dividends.* The amount of ordinary dividend income attributable to J is \$17.89x, to A is \$18.82x, and to S is \$19.54x. The brokers determine these amounts by multiplying the total amount of NMWHFIT distributions attributable to J, A, and S (\$51.39x, \$54.06x, and \$56.13x, respectively) by the factor for ordinary dividends (0.3481).

(ii) *Application of factor for qualified dividend income.* The amount of qualified dividend income attributable to J is \$38.07x, to A is \$40.04x, and to S is \$41.58x. The brokers determine these amounts by multiplying the total amount of NMWHFIT

distributions attributable to J, A, and S (\$51.39x, \$54.06x, and \$56.13x, respectively) by the factor for qualified dividends (0.7407).

(iii) *Application of factor for interest income.* The amount of interest income attributable to J is \$1.14x, to A is \$1.20x, and to S is \$1.25x. The brokers determine these amounts by multiplying the total amount of NMWHFIT distributions attributable to J, A, and S (\$51.39x, \$54.06x, and \$56.13x, respectively) by the factor for interest (0.0222).

(iv) *Application of factor for affected expenses.* The amount of affected expenses attributable to J is \$4.28x, to A is \$4.50x, and to S is \$4.68x. The brokers determine these amounts by multiplying the total amount of NMWHFIT distributions attributable to J, A, and S (\$51.39x, \$54.06x, and \$56.13x, respectively) by the factor for affected expenses (0.0833).

(3) *Brokers reporting of sales and dispositions of trust assets—(i) Determining the amount of trust sales proceeds to be reported on Form 1099 for J, A, and S.* The amount of trust sales proceeds to be reported on Form 1099 with respect to J is \$108.13x, to A is \$111.62x, and to S is \$113.94x. To determine these amounts, the brokers aggregate the amount of trust sales proceeds attributable to J, A, and S for each date on which Trust sold or disposed of assets. The brokers determine the amount of trust sales proceeds to be reported with respect to the June 15, 2007, asset sale by multiplying the number of trust interests held by J (10), A (10) and S (10) on that date by the trust sales proceeds received per trust interest on that date (\$10x). The brokers determine the amount of trust sales proceeds to be reported with respect to the December 12, 2007, asset sale by multiplying the number of trust interests held by J (7), A (10) and S (12) on that date by the trust sales proceeds received per trust interest on that date (\$1.1616x).

(ii) *Information provided on the tax information statements furnished to J, A, and S.* The tax information statements furnished to J, A, and S must include the dates of each sale or disposition (June 15, 2007, and December 12, 2007); the amount of trust sales proceeds per trust interest received on those dates (\$10.00x and \$1.1616x, respectively); and, the percentage of Trust sold or disposed of on that date (20% and 2%, respectively).

(4) *Reporting redemptions.* Broker1 reports on Form 1099 and on the written tax

information statement furnished to *J* that *J* received \$115x in redemption asset proceeds for the calendar year.

(5) *Reporting sales of trust interests on the secondary market.* Broker1 reports on *J*'s two sales of trust interests. With respect to the sale on September 30, 2007, the sale asset proceeds equals \$114x (\$115.35x sale proceeds—\$1.35x cash held for distribution on that date) and with respect to the sale on December 10, 2007, the sale asset proceeds equal \$115x (\$116x sale proceeds—\$1x cash held for distribution on that date). Broker1 reports these amounts on Form 1099 and on the tax information statement furnished to *J*.

(g) *Safe Harbor for certain WHMTs—*  
(1) *Safe harbor for trustee of certain WHMTs for reporting information—(i) In general.* The trustee of a WHMT that meets the requirements of paragraph (g)(1)(ii) of this section is deemed to satisfy paragraph (c)(1)(i) of this section, if the trustee calculates and provides WHFIT information in the manner described in this paragraph (g) and provides a statement to the requesting person giving notice that information has been calculated in accordance with this paragraph (g)(1).

(ii) *Requirements.* A WHMT must meet the following requirements—

(A) The WHMT must make monthly distributions of the income and principal payments received by the WHMT to its TIHs;

(B) All trust interests in the WHMT must represent the right to receive an equal pro-rata share of both the income and the principal payments received by the WHMT on the mortgages it holds (for example, a WHMT that holds or issues trust interests that qualify as stripped interests under section 1286 may not report under this safe harbor);

(C) The WHMT must—

(1) Report under this paragraph

(g)(1)(ii) for the life of the WHMT; or

(2) If the WHMT has a start-up date before January 1, 2007, the WHMT must begin reporting under this paragraph (g)(1)(ii) as of January 1, 2007, and must continue to report under this paragraph for the life of the WHMT;

(D) The WHMT must calculate all items subject to the safe harbor consistent with the safe harbor;

(E) The assets of the WHMT must be limited to—

(1) Mortgages with uniform characteristics;

(2) Reasonably required reserve funds; and

(3) Amounts received on mortgages or reserve funds and held for distribution to TIHs; and

(F) 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 trust interests.

(iii) *Reporting WHMT income, expenses, non pro-rata partial principal payments, and sales and dispositions under the safe harbor.* A trustee must comply with each step provided in this paragraph (g)(1)(iii).

(A) *Step One: Determine monthly pool factors.* 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 of the aggregate outstanding principal balance of the WHMT as of the first business day of the month; to

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

(B) *Step Two: Determine monthly expense factors.* For each month of the calendar year and for each item of expense paid by the WHMT during that month, the trustee must calculate and provide 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 item of expense; to

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

(C) *Step Three: Determine monthly income factors.* For each month of the calendar year and for each item of gross income earned by the WHMT during that month, the trustee must calculate and provide 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 item of income, to

(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 as principal payments and held for distribution by the WHMT; and

(3) The amount of the reserve fund (exclusive of undistributed income).

(iv) *Reporting OID information under the safe harbor—(A) Reporting OID prior to the issuance of final regulations under section 1272(a)(6)(C)(iii)—*(1) For calendar years prior to the effective date of final regulations under section 1272(a)(6)(C)(iii), the trustee must

provide, for each month during the calendar year, the aggregate daily accrual of OID per \$1,000 of aggregate outstanding principal balance as of the start-up date (daily portion). For purposes of this paragraph (g)(1)(iv), the daily portion of OID is determined by allocating to each day of the month its ratable portion of the excess (if any) of—

(i) The sum of the present value (determined under section 1272(a)(6)(B)) of all remaining payments under the mortgages held by the WHMT at the close of the month, and the payments during the month of amounts included in the stated redemption price of the mortgages, over

(ii) The aggregate of each mortgage's adjusted issue price as of the beginning of the month.

(2) In calculating the daily portion of OID, the trustee must use the prepayment assumption used in pricing the original issue of trust interests.

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

(v) *Reporting market discount information under the safe harbor—(A) Reporting market discount information prior to the issuance of final regulations under sections 1272(a)(6)(C)(iii) and 1276(b)(3).* For calendar years prior to the effective date of final regulations under sections 1272(a)(6)(C)(iii) and 1276(b)(3), the trustee must provide—

(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 month (calculated in accordance with paragraph (g)(1)(iv) of this section); to

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

(2) In the case of a WHMT holding mortgages issued without 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 month; to

(ii) The total amount of stated interest remaining to be paid to the WHMT as of the beginning of the month (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 month.* To compute the total amount of stated interest remaining to be paid to the WHMT as of the beginning of the month and the total remaining OID as of the beginning of the month, the trustee must use the prepayment assumption used in pricing the original issue of unit interests.

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

(vi) *Reporting bond premium information under the safe harbor.* [Reserved.]

(2) *Use of information provided by a trustee under the safe harbor—(i) In general.* If a trustee reports WHMT items in accordance with paragraph (g)(1) of this section, the information provided with respect to those items 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 TIH under paragraph (e) of this section must be determined as provided in this paragraph (g)(2).

(ii) *Reporting WHMT income, expenses, non pro-rata partial principal payments, and sales and dispositions under the safe harbor.* The amount of each item of income, the amount of each item of expense, and the combined amount of non pro-rata partial principal payments and trust sales proceeds that are attributable to a TIH for each month of the calendar year must be computed as follows:

(A) *Step One: Determine the aggregate of the non pro-rata partial principal payments and trust sales proceeds that are attributable to the TIH for the calendar year.* For each month of the calendar year that a trust interest was held on the record date—

(1) *Determine the monthly amounts per trust interest.* The trustee or middleman must determine the aggregate amount of non pro-rata partial principal payments and the trust sales proceeds that are attributable to each trust interest for each month by multiplying—

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

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

(2) *Determine the amount for the calendar year.* The trustee or middleman must multiply the monthly amount per trust interest by the number of trust interests held by the TIH on the record date of each month. The trustee or middleman then must aggregate these monthly amounts, and report the aggregate amount on the Form 1099 filed with the IRS and on the tax information statement furnished to the TIH as trust sales proceeds. No other information is required to be reported to the IRS or the TIH to satisfy the requirements of paragraphs (d) and (e) of this section under this paragraph (g)

with respect to sales and dispositions and non pro-rata partial principal payments.

(B) *Step Two: Determine the amount of each item of expense that is attributable to a TIH—(1) Determine the monthly amounts per trust interest.* For each month of the calendar year that a trust interest was held on the record date, the trustee or middleman must determine the amount of each item of expense that is attributable to each trust interest by multiplying—

(i) The original face amount of the trust interest, divided by 1000; by

(ii) The expense factor for that month and that item of expense.

(2) *Determine the amount for the calendar year.* The trustee or middleman must multiply the monthly amount of each item of expense per trust interest by the number of trust interests held by the TIH on the record date of each month. The trustee or middleman then must aggregate the monthly amounts for each item of expense to determine the total amount of each item of expense that is attributable to the TIH for the calendar year.

(C) *Step Three: Determine the amount of each item of income that is attributable to the TIH for the calendar year—(1) Determine the monthly amounts per trust interest.* For each month of the calendar year that a trust interest was held on the record date, the trustee or middleman must determine the amount of each item of income that is attributable to each trust interest by multiplying—

(i) The original face amount of the trust interest, divided by 1,000; by

(ii) The income factor for that month and that item of income.

(2) *Determine the amount for the calendar year.* The trustee or middleman must multiply the monthly amount of each item of income per trust interest by the number of trust interests held by the TIH on the record date of each month. The trustee or middleman then must aggregate the monthly amounts for each item of income to determine the total amount of each item of income that is attributable to the TIH for the calendar year.

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

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

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

(iii) *Reporting OID information under the safe harbor.* With respect to each month, trustee or middleman must determine the amount of OID that is attributable to each trust interest held by a TIH by multiplying—

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

(B) The number of days during the month that the TIH held the trust interest.

(iv) *Requirement to provide market discount information under the safe harbor.* The trustee or middleman must provide the market discount information in accordance with paragraph (g)(1)(v) of this section to the TIH in, or with, the written statement required to be furnished to the TIH under paragraph (e) of this section.

(v) *Requirement to provide bond premium information under the safe harbor.* [Reserved]

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

*Example.* (i) *Facts—(A) In general.* X is a WHMT. X's start-up date is January 1, 2007. As of that date, 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. None of the mortgages were issued with OID. X's TIHs are entitled to monthly, pro-rata distributions of the principal payments received by X. X's TIHs are also entitled to monthly, pro-rata distributions of the interest earned on the mortgages held by X, reduced by expenses. Trust interests are issued in increments of \$5,000 with a \$25,000 minimum. The prepayment assumption used in pricing the original issue of trust interests is six percent. Broker holds a trust interest in X, with an original face amount of \$25,000, in street name, for C during the entire 2007 calendar year.

(B) *Trust events during the 2007 calendar year.* During the 2007 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 2007 for \$122,249, the mortgage's unpaid principal balance plus accrued, but unpaid, interest at the time. During November 2007, 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 TIHs. All of X's expenses are affected expenses. The aggregate outstanding principal balance of X's mortgages, X's interest income, and X's expenses, for each month of the 2007 calendar year, along with the aggregate outstanding principal balance of X as of January 2008, 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 .....	12,264,952	74,181	5,191
August .....	12,102,696	73,200	5,122
September .....	12,062,849	72,960	5,106
October .....	12,022,762	72,718	5,089
November .....	11,982,432	72,474	5,073
December .....	11,821,234	71,500	5,006
January .....	11,780,829	.....	.....

(ii) *Trustee reporting.* (A) Trustee, X's fiduciary, comes within the safe harbor of paragraph (g)(1)(ii) of this section by

providing the following information to requesting persons:

Month	Pool factor	Income factor	Expense factor
January .....	1.00000000	6.04806667	0.42304000
February .....	0.99691304	6.02941628	0.42184000
March .....	0.99380744	6.01065328	0.42048000
April .....	0.99068304	5.99177670	0.41920000
May .....	0.98753976	5.97278605	0.41952000
June .....	0.98437752	5.95368085	0.41656000
July .....	0.98119616	5.93446013	0.41528000
August .....	0.96821564	5.85603618	0.40976000
September .....	0.96502792	5.83677704	0.40848000
October .....	0.96182096	5.81740161	0.40712000
November .....	0.95859459	5.79790896	0.40584000
December .....	0.94569875	5.71999659	0.40048000
January .....	0.94246631	.....	.....

(B) Trustee determines this information as follows:

(1) *Step One: Trustee determines monthly pool factors.* Trustee calculates and provides X's pool factor for each month of the 2007 calendar year. For example, for the month of January 2007 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.* Trustee calculates and provides the expense factors for each month of the 2007 calendar year. During 2007, X has only affected expenses, and therefore, will

have only one expense factor for each month. For example, the expense factor for the month of January 2007 is 0.42304000, 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.* Trustee calculates and provides the income factors for each month of the 2007 calendar year. During 2007, X has only interest income, and therefore, will have only one income factor for each month. For example, the income factor for the month of January 2007 is 6.04806667, 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).

(4) *Step Four: Trustee calculates and provides monthly market discount fractions.* Trustee calculates and provides a market discount fraction for each month of the 2007 calendar year using a prepayment assumption of 6% and a stated interest rate of 7.25%.

(iii) *Broker's use of the information provided by Trustee.* (A) Broker uses the information provided by Trustee under paragraph (g) of this section to determine that the following trust items are attributable to C:

Month	Aggregate trust sales proceeds and non pro-rata partial principal payments	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
June .....	79.53	10.41	148.84
July .....	324.51	10.38	148.36
August .....	79.69	10.24	146.40



Month	Aggregate trust sales proceeds and non pro-rata partial principal payments	Affected expenses	Gross interest income
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 the non pro-rata partial principal payments and trust sales proceeds received by X that are attributable to C for the 2007 calendar year.* Broker determines the amount of the non pro-rata partial principal payments and trust sales proceeds received by X that are attributable to C for each month of the 2007 calendar year. For example, for the month of January, Broker determines that the amount of principal receipts and the amount of trust sales proceeds that are attributable to C is \$77.17. Broker determines this by multiplying the original face amount of C's trust interest (\$25,000) by 0.00308696, the difference between the pool factor for January 2007 (1.00000000) and the pool factor for the following month of February 2007 (0.99691304). Broker reports the aggregate of the monthly amounts of non pro-rata partial principal payments and trust sales proceeds that are attributable to C for the 2007 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 C for the 2007 calendar year.* Broker determines the amount of X's expenses that are attributable to C for each month of the calendar year. For example, for the month of January 2007, Broker determines that the amount of expenses attributable to C is \$10.58. Broker determines this by multiplying the original face amount of C's trust interest (\$25,000), divided by 1,000 (\$25) by the expense factor for January 2007 (0.42304000). Broker determines the expenses that are attributable to C for the 2007 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 C for the 2007 calendar year.* Broker determines the amount of gross interest income that is attributable to C for each month of the calendar year. For example, for the month of January 2007, Broker determines that the amount of gross interest income attributable to C is \$151.20. Broker determines this by multiplying the original face amount of C's trust interest (\$25,000), divided by 1,000 (\$25), by the income factor for January 2007 (6.04806667). Broker determines the amount of the gross interest income that is attributable to C for the 2007 calendar year by aggregating the monthly amounts.

(4) *Step Four: Broker provides market discount information to C.* Broker provides C with the market discount fractions calculated and provided by the trustee of X under paragraph (g)(3)(ii)(D) of this section.

(h) *Requirement that middlemen furnish information to beneficial owners that are exempt recipients and noncalendar-year beneficial owners—(1) In general.* A middleman that holds a trust interest on behalf of, or for the account of, either a beneficial owner that is an exempt recipient defined in paragraph (b)(7) of this section or a noncalendar-year beneficial owner, must provide to such beneficial owner, upon request, the information provided by the trustee to the middleman under paragraph (c) of this section.

(2) *Time for providing information.* The middleman must provide the requested information to any beneficial owner making a request under paragraph (h)(1) of this section on or before the later of the 44th day after the close of the calendar year 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 calendar year for which the information was requested, or the 42nd day after the receipt of the request.

(3) *Manner of providing information.* The requested information must be provided—

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

(ii) By electronic mail provided that the person requesting the information requests that the middleman furnish the information by electronic mail and the person furnishes an electronic address;

(iii) At an Internet website of the middleman or the trustee, provided that the beneficial owner requesting the information is notified that the requested information is available at the Internet website and is furnished the address of the site; or

(iv) Any other manner agreed to by the middleman and the beneficial owner requesting the information.

(4) *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 TIHs under this paragraph (h).

(i) [Reserved.]

(j) *Coordination with other information reporting rules.* In general, in cases in which reporting is required for a WHFIT under both this section and 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 section must be applied. The provisions of the Information Reporting Sections and the regulations thereunder are incorporated into this section as applicable, but only to the extent that such provisions are not inconsistent with the provisions of this section.

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

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

(m) *Effective date.* These regulations are applicable January 1, 2007. Trustees must calculate and provide trust information with respect to the 2007 calendar year and all subsequent years consistent with these regulations. Information returns required to be filed with the IRS and the tax information statements required to be furnished to trust interest holders after December 31, 2007 must be consistent with these regulations.

■ **Par. 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 (WHFIT) (as defined under that section). For purposes of section 6041, middlemen and trustees of WHFITs are deemed to have management and oversight functions in connection with payments made by the WHFIT.

■ **Par. 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).

■ **Par. 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 of this chapter.* See § 1.671–5 for the reporting rules for widely held fixed investment trusts (as defined under that section).

\* \* \* \* \*

■ **Par. 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 of this chapter.* See § 1.671–5 for the reporting rules for widely held fixed investment trusts (as defined under that section).

\* \* \* \* \*

■ **Par. 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)(22), 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).

\* \* \* \* \*

■ **Par. 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**

■ **Par. 10.** The authority citation for part 301 continues to read, in part, as follows:

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

■ **Par. 11.** Section 301.6109–1 is amended by:

■ 1. Revising the heading to paragraph (a)(2).

■ 2. Revising paragraph (a)(2)(i).

The revisions read as follows:

**§ 301.6109–1 Identifying numbers.**

(a) \* \* \*

(2) *A trust that is treated as owned by one or more persons pursuant to sections 671 through 678—(i) Obtaining a taxpayer identification number—(A) General rule.* Unless the exception in paragraph (a)(2)(i)(B) of this section applies, a trust that is treated as owned by one or more persons under sections 671 through 678 must obtain a taxpayer identification number as provided in paragraph (d)(2) of this section.

(B) *Exception for a trust all of which is treated as owned by one grantor or one other person and that reports under § 1.671–4(b)(2)(i)(A) of this chapter.* A trust that is treated as owned by one grantor or one other person under sections 671 through 678 need not obtain a taxpayer identification number, provided the trust reports pursuant to § 1.671–4(b)(2)(i)(A) of this chapter. The trustee must obtain a taxpayer identification number as provided in

paragraph (d)(2) of this section for the first taxable year that the trust is no longer owned by one grantor or one other person or for the first taxable year that the trust does not report pursuant to § 1.671–4(b)(2)(i)(A) of this chapter.

\* \* \* \* \*

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

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

Authority: 26 U.S.C. 7805.

■ **Par. 13.** In § 602.101, paragraph (b) is amended by adding an entry 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
* * *	* *

Approved: January 5, 2006.

**Mark E. Matthews,**

*Deputy Commissioner for Services and Enforcement.*

**Eric Solomon,**

*Acting Deputy Assistant Secretary.*

[FR Doc. 06–396 Filed 1–23–06; 8:45 am]

**BILLING CODE 4830–01–U**