

SUPPORTING STATEMENT
(REG-122450-98 (FINAL); REG-100272-97 and REG-122450-98
(NPRM)

TD 9004 (final)

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

REG-100272-97; REG-122450-98

Section 860L(a)(3) of the Internal Revenue Code authorizes qualified entities to elect to become a Financial Asset Securitization Investment Trust ("FASIT"). The Code does not prescribe the manner in which the election is to be made. Rather, the legislative history indicates that the manner of making the election is to be determined by the Secretary of the Treasury. Proposed Regulation section 1.860H-1(b)(2) prescribes the manner of making an election which requires the holder of an ownership interest in a FASIT to file a statement attached to its federal income tax return.

Sections 860H(a)(1) and (2) also prescribe that entities electing to be a FASIT are not considered to be an entity for purposes of computing federal income tax and credit. Rather, the tax attributes of the FASIT flow to the holder of the ownership interest. Proposed Reg. section 1.860H-6(e) requires the ownership interest holder to annually file a statement identifying the FASIT's tax items.

REG-122450-98

The collection of information in this regulation is in 1.860E-1(c)(5)(ii). This information is required to enable the IRS to verify that a taxpayer is complying with the conditions of this regulation.

TD 9004 (final)

This collection contains final regulations relating to safe harbor transfers of noneconomic residual interests in real estate mortgage investment conduits (REMICs). The final regulations provide additional limitations on the circumstances under which transferors may claim safe harbor treatment.

2. USE OF DATA

REG-100272-97; REG-122450-98

The Internal Revenue Service will use the information relating to elections to determine what entities are doing business as FASITs. The Service will use the information regarding the FASIT's items of income, gain, and etc. to ensure that those items are being taxed appropriately, and that the holder of the ownership interest is taxed properly under the Internal Revenue laws.

REG-122450-98

This data will be used by IRS auditors to ensure that the transferor has taken the appropriate measures in order to receive safe harbor treatment under section 1.860E-1(c)(4)-(10) of the Treasury Regulations.

TD 9004 (final)

This information is required to enable the IRS to verify that a taxpayer is complying with the conditions of this regulation.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

There are no plans to provide electronic filing because electronic filing is not appropriate for the collection of information in this submission.

4. EFFORTS TO IDENTIFY DUPLICATION

We have attempted to eliminate duplication within the agency wherever possible.

5. METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER SMALL ENTITIES

Not applicable.

6. CONSEQUENCES OF LESS FREQUENT COLLECTION ON FEDERAL PROGRAMS OR POLICY ACTIVITIES

Not applicable.

7. SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE INCONSISTENT WITH GUIDELINES IN 5 CFR 1320.5(d)(2)

Not applicable.

8. CONSULTATION WITH INDIVIDUALS OUTSIDE OF THE AGENCY ON AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OF INSTRUCTIONS AND FORMS, AND DATA ELEMENTS

The notice of proposed rulemaking REG-100272-97 and REG-122450-98 was published in the Federal Register on October 7, 2002(67 FR 62417). Written comments responding to the notice of proposed rule-making were received. The final regulations (TD 9004) were published in the Federal register (67 FR 47451), on July 19, 2002. The final regulations provide additional limitations on the circumstances under which transferors may claim safe harbor treatment.

We received no comments during the comment period in response to the **Federal Register** notice (73 FR 29177), dated May 20, 2008.

9. EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS

Not applicable.

10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES

Generally, tax returns and tax information are confidential as required by 26 USC 6103.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

Not applicable.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

REG-100272-97 and REG-122450-98 (NPRM)

Proposed Regulation section 1.860H-1(b)(2) prescribes the manner of making an election which requires the holder of an ownership interest in a FASIT to file a statement attached to its federal income tax return. We estimate that 150 FASIT elections will be made. We estimate that the annual reporting burden per election is 2 hours/election with a total annual reporting burden of 300 hours.

Proposed Reg. section 1.860H-6(e) requires the ownership interest holder to annually file a statement identifying the FASIT's tax items. We estimate that the annual reporting burden for 150 FASITs will be 3 hours/FASIT with a total annual reporting burden of 450 hours.

We estimate the total annual burden to be is 750 hours.

REG-122450-98 (FINAL)

Section 1.860E-1(c)(4)-(10) sets forth a safe harbor for establishing the lack of improper knowledge for transfers of noneconomic residual interests in Real Estate Mortgage Investment Trusts (REMICs) and ownership interests in Financial Asset Securitization Investment Trusts (FASITs).

In the final regulations, §1.860E-1(c)(5)(ii) requires that in order for a transferor to receive safe harbor treatment, a transferee must agree in writing that any subsequent transfer of the noneconomic residual interest will be to another eligible corporation (as defined in the regulation) in a transaction that satisfies paragraphs (c)(4)(i), (c)(4)(ii), and (c)(4)(iii) of the regulation.

It is our understanding that within this industry the transferor and transferee enter into a written agreement when a residual interest is transferred. The written requirement found in 1.860E-1(c)(5)(ii) will most likely become a paragraph within an existing agreement used industry-wide.

This is a one-time written agreement required only when a noneconomic residual interest is transferred from one holder to another. We estimate that there are approximately 470 of these transactions annually. It will take one hour to complete. Accordingly, the estimated annual reporting burden is 470 hours.

The net reporting burden is 1,220 hours.

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

As suggested by OMB, our **Federal Register** notice dated May 20, 2008, requested public comments on estimates of cost of burden that are not captured in the estimates of burden hours, i.e., estimates of capital or start-up costs and

costs of operation, maintenance, and purchase of services to provide information. However, we did not receive any response from taxpayers on this subject. As a result, estimates of the cost burdens are not available at this time.

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

Not applicable.

15. REASONS FOR CHANGE IN BURDEN

There is no change in the paperwork burden previously approved by OMB. We are making this submission to renew the OMB approval.

16. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION

Not applicable.

17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE

We believe that displaying the OMB expiration date is inappropriate because it could cause confusion by leading taxpayers to believe that the regulations sunset as of the expiration date. Taxpayers are not likely to be aware that the Service intends to request renewal of the OMB approval and obtain a new expiration date before the old one expires.

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT ON OMB FORM 83-I

Not applicable.

Note: The following paragraph applies to all of the collections of information in this submission:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.