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WHERE: Office of the Federal Register Conference Room, 800 North Capitol Street, NW., Washington, DC (3 blocks north of Union Station Metro)
RESERVATIONS: 202–523–4538

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WHERE: Glenn M. Anderson Federal Building, Conference Room—Room 3470, 501 West Ocean Boulevard, Long Beach, CA 90802
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[Two Sessions]
WHEN: December 13, 1995 at 9:00 am and 1:00 pm
WHERE: National Archives—Pacific Northwest Region, Conference Room, 6125 Sand Point Way, NE., Seattle, WA 98115
RESERVATIONS: 206–526–6507

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–ANE–47; Amendment 39–9437; AD 95–24–05]

Airworthiness Directives; McCauley Accessory Division, The Cessna Aircraft Company, Model C35, C72, C74, C75, C80, C86, C87, C92, and C93 Series Propellers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to McCauley Accessory Division, The Cessna Aircraft Company, Model C35, C72, C74, C75, C80, C86, C87, C92, and C93 series propellers. This action requires initial and repetitive visual and dye penetrant inspections of the propeller hub for cracks. This action also requires a one-time eddy current inspection for cracks in the threaded areas of the propeller hub followed by modification of the hub to contain oil with red dye as a terminating action to the repetitive inspections. This amendment is prompted by reports of cracked propeller hubs. The actions specified in this AD are intended to prevent propeller blade separation due to a cracked propeller hub, which could result in separation of the engine from the aircraft and subsequent loss of aircraft control.

DATES: Effective December 18, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 18, 1995.

Comments for inclusion in the Rules Docket must be received on or before January 30, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–ANE–47, 12 New England Executive Park, Burlington, MA 01803–5299.

The service information referenced in this AD may be obtained from McCauley Accessory Division, The Cessna Aircraft Company, 3535 McCauley Dr., Vandalia, OH 45377–0430; telephone (513) 890–5246, fax (513) 890–6001. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Patricia Bonnen, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Ave., Room 232, Des Plaines, IL 60018; telephone (708) 294–7134, fax (708) 294–7834.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) has received several reports of cracked propeller hubs on McCauley Accessory Division, The Cessna Aircraft Company, Model C35, C72, C74, C75, C80, C86, C87, C92, and C93 series propellers. Additionally, two incidents have occurred where the propeller blades separated during flight. This condition, if not corrected, could result in propeller blade separation due to a cracked propeller hub, which could result in separation of the engine from the aircraft and subsequent loss of aircraft control.

The FAA has reviewed and approved the technical contents of the following service documents:

(a) McCauley Accessory Division, The Cessna Aircraft Company, Service Bulletin (SB) No. 200C, dated January 20, 1994, that describes procedures for an initial and repetitive visual and dye penetrant inspections of propeller hubs for cracks, and

(b) McCauley Service Letter (SL) No. 1993–11A, dated June 20, 1995, that describes procedures for eddy current inspection for cracks in the threaded areas of the propeller hub and modification of the hub to contain oil with red dye, which provides a built-in means of crack detection, as well as improved lubrication and corrosion protection.

Since an unsafe condition has been identified that is likely to exist or develop on other propellers of the same type design, this airworthiness directive (AD) is being issued to prevent propeller blade separation due to a cracked propeller hub, which could result in separation of the engine from the aircraft and subsequent loss of aircraft control. This AD requires initial and repetitive visual and dye penetrant inspections of the propeller hub for cracks. This AD also requires a one-time eddy current inspection for cracks in the threaded areas of the propeller hub followed by modification of the hub to contain oil with red dye, which constitutes terminating action to the repetitive visual and dye-penetrant inspections. The actions are required to be accomplished in accordance with the service documents described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of

the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 94–ANE–47.'' The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–24–05 McCauley Accessory Division, The Cessna Aircraft Company: Amendment 39–9437. Docket 94–ANE–47.

Applicability: McCauley Accessory Division, The Cessna Aircraft Company, Model C35, C72, C74, C75, C80, C86, C87, C92, and C93 series propellers, incorporating the following Hub Models:

D3AF32C35–( )
3AF32C72–( )
3AF34C74–( )
3AF32C75–( )
D3AF32C80–( )
3AF34C86–( )
3AF32C87–( )
D3AF32C87–( )
3AF34C92–( )
3AF32C93–( )

The parentheses used in the above list indicate the presence or absence of an additional letter(s) which vary the basic propeller hub model designation. These letter(s) define minor changes that do not affect interchangeability or eligibility, and therefore, this airworthiness directive (AD) still applies regardless of whether these letters are present or absent on the propeller hub model designation.

These propellers are installed on but not limited to the following aircraft: Beech 58, 58A, 95–C55, –C55A, –D55, –D55A, –E55, –E55A.

British Aerospace B–206 Series 2.

Cessna 310K, 310L, 310N, 310P, 310Q, 310R, T310P, T310Q, T310R, 320D, 320E, 320F, 335, 340, 340A, 401, 401A, 401B, 402, 402A, 402B, 402C, 411, 411A, 414, 414A, 421, 421A, 421B.

Colemill Executive 600 (Conversion of Cessna 310I, 310J, 310K, 310L, 310N).

RAM Conversion of Cessna 340.

Note 1: The above is not an exhaustive list of aircraft which may contain the affected McCauley Model C35, C72, C74, C75, C80, C86, C87, C92, and C93 series propellers, incorporating Models D3AF32C35, 3AF32C72, 3AF34C74, 3AF32C75, D3AF32C80, 3AF34C86, 3AF32C87, D3AF32C87, 3AF34C92, and 3AF32C93 propeller hubs because of installation approvals made by Supplemental Type Certificate or Federal Aviation Administration (FAA) Form 337 ''Major Repair and Alteration,'' etc. It is the responsibility of the owner, operator and person returning the aircraft to service to determine if an aircraft has an affected propeller

Note 2: This AD applies to each propeller identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For propellers that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (g) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any propeller from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent propeller blade separation due to a cracked propeller hub, which could result in separation of the engine from the aircraft and subsequent loss of aircraft control, accomplish the following:

(a) Within the next 25 hours time in service (TIS) after the effective date of this AD, unless already accomplished within the last 35 hours TIS, and thereafter at intervals not to exceed 60 hours TIS, perform a visual and dye penetrant inspection for cracks in propeller hubs in accordance with McCauley Accessory Division, The Cessna Aircraft Company, Service Bulletin (SB) No. 200C, dated January 20, 1994. Any propeller hubs found cracked during this inspection are to be permanently retired from service and replaced with a serviceable hub modified in accordance with paragraph (c) of this AD, or with an equivalent initial production propeller which has incorporated a hub containing oil with red dye.

(b) For affected propellers identified with the change letter ''R'' following the hub model designation and having an oil-fill plug in the side of the hub, compliance is required only with paragraphs (d) and (f) of this AD.

(c) Perform a one-time eddy current inspection and modify serviceable propeller hubs in accordance with the following schedule and requirements:

Propeller Time-In-Service (TIS) on the effective date of this AD	Compliance required
Greater than 900 hours or 59 calendar months since last overhaul/penetrant inspection or installed new, or prior TIS unknown.	Within the next 300 hours or at the next annual inspection or within 12 months after the effective date of this AD, whichever occurs first.
Less than or equal to both 900 hours and 59 calendar months since last overhaul/penetrant inspection or installed new.	Prior to the accumulation of 1,200 hours or 60 calendar months since last overhaul/penetrant inspection or installed new, whichever occurs first.

(1) Perform a one-time eddy current inspection for cracks in the threaded areas of the propeller hubs in accordance with McCauley Accessory Division, The Cessna Aircraft Company, Service Letter (SL) No. 1993–11A, dated June 20, 1995.

(2) Any propeller hubs found cracked during the eddy current inspection are to be permanently retired from service and replaced with a serviceable hub modified in accordance with paragraph (c) of this AD, or with an equivalent initial production propeller which has incorporated a hub containing oil with red dye.

(3) Modify affected propeller hubs to contain oil with red dye, in accordance with McCauley Accessory Division, The Cessna Aircraft Company, SL No. 1993–11A, dated June 20, 1995. Completion of this modification of the hub to contain oil with red dye constitutes terminating action to the repetitive inspections required by paragraph (a) of this AD.

Note: The modification of the propeller hub assembly to contain oil with a red dye provides an ''on-condition'' (in-service) means of early crack detection of the propeller assembly and also improves lubrication and corrosion protection. The oil will add approximately 4.0 lbs. to the weight of the propeller assembly.

(4) Previous compliance with McCauley Accessory Division SL 1993–11, dated September 15, 1993, also constitutes compliance with paragraphs (a) and (c) of this AD.

(5) Install Decal-Warning ''Oil Filled'', part number B–6493, in accordance with McCauley Accessory Division, The Cessna Aircraft Company, SL No. 1993–11A, dated June 20, 1995, Figure F–9.

(d) If leakage of oil containing red dye is detected in service (whether during flight or while on the ground), determine, prior to further flight, the source of leakage in accordance with the procedures specified in Section A–7 of McCauley SL No. 1993–11A, dated June 20, 1995. Remove from service, prior to further flight, propeller assemblies that exhibit cracks and replace with a serviceable unit, modified in accordance with paragraph (c) of this AD, or with an equivalent initial production propeller that has incorporated a hub containing oil with red dye. Oil-filled propellers are identified with the change letter ''R'' following the Hub Model Designation and have an oil-fill plug in the side of the hub.

(e) The ''calendar month'' compliance times stated in this AD allow the performance of the required action up to the last day of the month in which compliance is required. For example, a required eddy current inspection and modification 60 calendar months from last overhaul/penetrant inspection that was performed on December 15, 1991, would allow the eddy current inspection and modification to be performed no later than December 31, 1996.

(f) Report in writing any cracks found during the accomplishment of paragraphs (a), (c) or (d) of this AD to the Manager, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Room 232, Des Plaines, IL 60018; telephone (708) 294–7134, fax (708) 294–7834, within 10 days of the inspection. Information collection requirements contained in the regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (P.L. 96–511) and has been assigned OMB Control Number 2120–0056.

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Chicago Aircraft Certification Office. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Chicago Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Chicago Aircraft Certification Office.

(h) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(i) The inspections and modification required by this AD shall be done in accordance with the following McCauley Accessory Division, The Cessna Aircraft Company, service documents:

Document No.	Pages	Date
SB 200C	1–4	January 20, 1994.
Total pages: 4.		
SL 1993–11A:		
Cover Page	1	June 20, 1995.
Section A	1–4	June 20, 1995.
Section B	1	June 20, 1995.
Section C	1	June 20, 1995.
Section D	1–7	June 20, 1995.
Section E	1–10	June 20, 1995.
Section F	1–15	June 20, 1995.
Section G	1	June 20, 1995.
Section H	1–4	June 20, 1995.
Section I	1–4	June 20, 1995.
Total pages: 48.		

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McCauley Accessory Division, The Cessna Aircraft Company, 3535 McCauley Dr., Vandalia, OH 45377–0430; telephone (513) 890–5246, fax (513) 890–6001. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(j) This amendment becomes effective on December 18, 1995.

Issued in Burlington, Massachusetts, on November 7, 1995.

James C. Jones,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 95–28957 Filed 11–30–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–219–AD; Amendment 39–9444; AD 95–24–14]

Airworthiness Directives; de Havilland Model DHC–8 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain de Havilland Model DHC–8 series airplanes. This action requires eddy current inspections to detect cracking of the pivot tubes in the drag strut of the nose landing gear (NLG), and repair or replacement of any cracked tube with a serviceable or new tube. This amendment is prompted by reports that the pivot tubes cracked or failed completely due to fatigue. The actions specified in this AD are intended to prevent such fatigue cracking and subsequent failure of the pivot tube, which could result in a nose gear-up landing.

DATES: Effective December 18, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 18, 1995.

Comments for inclusion in the Rules Docket must be received on or before January 30, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–219–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jon Hjelm, Aerospace Engineer, Airframe Branch, ANE–172, FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7523; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: Transport Canada Aviation, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on certain de Havilland Model DHC–8 series airplanes. Transport Canada Aviation advises that it has received reports indicating that the pivot tube located in the drag strut of the nose landing gear (NLG) cracked or failed completely on several Model DHC–8 series airplanes. During one incident, the NLG failed to extend, which resulted in damage to the airplane during the subsequent landing. The cause of these pivot tube failures has been attributed to fatigue. Fatigue cracking and subsequent failure of the pivot tube in the drag strut of the NLG, if not detected and corrected in a timely manner, could result in a nose gear-up landing.

Bombardier, Inc., has issued Service Bulletin S.B. 8–32–131, dated September 8, 1995, which includes (as an attachment) Messier-Dowty Service Bulletin M–DT DHC8–32–77, dated July 5, 1995. The Messier-Dowty service bulletin describes procedures for repetitive high frequency eddy current inspections to detect cracking of the pivot tube, part number 8225–3, located in the drag strut of the NLG. The service bulletin also describes procedures for repair or replacement of any cracked pivot tube with a serviceable tube having the same part number, or with a new strengthened tube having part number 8225–5 (de Havilland Modification 8/2266). This new strengthened tube contains more material in the waisted area of the center arm. Installation of a new strengthened pivot tube would eliminate the need for inspections of the pivot tubes. Transport Canada Aviation classified the Bombardier service bulletin as mandatory and issued Canadian airworthiness directive CF–95–15, dated September 11, 1995, in order to assure the continued airworthiness of these airplanes in Canada.

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada Aviation has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada Aviation, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent failure of the pivot tube in the drag strut of the NLG and a subsequent nose gear-up landing. This AD requires repetitive eddy current inspections to detect cracking of the pivot tubes in the drag strut of the NLG, and repair or replacement of any cracked tube with a serviceable tube having the same part number or with a new strengthened tube. Installation of a new strengthened pivot tube, if accomplished, constitutes terminating action for the inspection requirements of this AD. The actions are required to be accomplished in accordance with the Bombardier service bulletin described previously.

Operators should note that the service bulletin recommends accomplishing the initial eddy current inspection at the following times: Prior to the accumulation of 13,400 total landings (for drag strut assemblies with 12,650 or less total landings); within the next 750 landings (for drag strut assemblies with between 12,651 and 20,000 total landings); or within the next 500 landings (for drag strut assemblies with 20,001 or more total landings). However, the FAA has determined that these compliance times would not address the identified unsafe condition in a timely manner. In developing an appropriate compliance time for this AD, the FAA considered not only the recommendation specified in the service bulletin, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, the time necessary to perform the inspection (less than one hour), and the availability of replacement parts. In light of all of these factors, the FAA finds that a compliance time of prior to the accumulation of 13,400 total landings on the drag strut assembly, or within 30 days after the effective date of this AD, is appropriate for initiating the required actions in that it represents the maximum interval of time allowable for affected airplanes to continue to operate without compromising safety.

Although installation of new strengthened pivot tubes is provided as an optional terminating action, the FAA is considering further rulemaking to require the installation of those pivot tubes on all affected airplanes. Therefore, this AD is considered to be interim action.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–219–AD.'' The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does

not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–24–14 De Havilland, Inc.: Amendment 39–9444. Docket 95–NM–219–AD.

Applicability: Model DHC–8 series airplanes, serial numbers 003 through 403 inclusive; and Model DHC–8 series airplanes on which a drag strut having serial numbers DEC 001/83 through DCL 432/94 inclusive is installed; as listed in Bombardier Service Bulletin S.B. 8–32–131, dated September 8, 1995; certificated in any category.

Note: 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the pivot tube in the drag strut of the nose landing gear (NLG) and a subsequent nose gear-up landing, accomplish the following:

(a) Prior to the accumulation of 13,400 total landings on the drag strut assembly, or within 30 days after the effective date of this AD, whichever occurs later: Perform an eddy current inspection to detect cracking of the pivot tube, part number (P/N) 8225–3, located in the drag strut of the NLG, in accordance with Bombardier Service Bulletin S.B. 8–32–131, dated September 8, 1995.

Note 2: The Bombardier service bulletin includes (as an attachment) Messier- Dowty Service Bulletin M-DT DHC8–32–77, dated July 5, 1995. The Messier-Dowty service bulletin details the specific procedures for accomplishment of the requirements of this AD.

(1) If no cracking is found, repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 2,000 landings.

(2) If any cracking is found that can be removed completely by reworking the pivot tube in accordance with the service bulletin, prior to further flight, repair the pivot tube in accordance with the service bulletin. Thereafter, repeat the inspection required by paragraph (a) of this AD at intervals not to exceed 1,000 landings.

(3) If any cracking is found that cannot be removed completely by reworking the pivot tube in accordance with the service bulletin, prior to further flight, accomplish paragraph (a)(3)(i) or (a)(3)(ii) of this AD in accordance with the service bulletin.

(i) Replace the cracked pivot tube with a serviceable tube having P/N 8225–3. Thereafter, perform the repetitive inspections required by paragraph (a) of this AD. Or

(ii) Replace the cracked pivot tube with a new strengthened tube having P/N 8225–5. No further action is required by this AD.

(b) Replacement of a pivot tube having P/N 8225–3 with a pivot tube having P/N 8225–5 (de Havilland Modification 8/2266), in accordance with Bombardier Service Bulletin S.B. 8–32–131, dated September 8, 1995, constitutes terminating action for the inspection requirements of this AD.

(c) As of the effective date of this AD, no person shall install a drag strut assembly having serial numbers DEC 001/83 through DCL 432/94 inclusive on any airplane unless that assembly has been inspected and found to be crack-free, or unless that assembly has been inspected and repaired, in accordance with the requirements of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The actions shall be done in accordance with Bombardier Service Bulletin S.B. 8–32–131, dated September 8, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on December 18, 1995.

Issued in Renton, Washington, on November 22, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–29329 Filed 11–30–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–244–AD; Amendment 39–9429; AD 95–23–09]

Airworthiness Directives; McDonnell Douglas Model DC–10 Series Airplanes and KC–10A (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to McDonnell Douglas Model DC–10 series airplanes and KC–10A (military) airplanes, that currently requires the implementation of a program of structural inspections to detect and correct fatigue cracking in order to ensure the continued airworthiness of these airplanes as they approach the manufacturer's original fatigue design life goal. This amendment requires clarification of some Principle Structural Elements (PSE) and some

non-destructive inspection (NDI) procedures. This amendment is prompted by new data submitted by the manufacturer indicating that certain revisions to the program are necessary in order to clarify some PSE's and some NDI procedures. The actions specified by this AD are intended to prevent fatigue cracking that could compromise the structural integrity of these airplanes.

DATES: Effective January 2, 1996.

The incorporation by reference of McDonnell Douglas Report No. L26–012, ''DC–10 Supplemental Inspection Document (SID),'' Volume I, Revision 5, dated October 1994; Volume II, Revision 5, dated October 1994; and Volume III–94, dated November 1994, as listed in the regulations, is approved by the Director of the Federal Register as of January 2, 1996.

The incorporation by reference of McDonnell Douglas Report No. L26–012, ''DC–10 Supplemental Inspection Document (SID),'' Volume I, Revision 3, dated December 1992, Volume II, Revision 3, dated December 1992, and Volume III–92, dated October 1992, as listed in the regulations, was approved previously by the Director of the Federal Register as of November 24, 1993 (58 FR 54949, October 25, 1993).

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846–1771, Attention: Business Unit Manager, Contract Data Management C1–255 (35–22). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Maureen Moreland, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5238; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 93–17–09, amendment 39–8680 (58 FR 54949, October 25, 1993), which is applicable to McDonnell Douglas Model DC–10 series airplanes and KC–10A (military) airplanes, was published as a supplemental notice of proposed rulemaking in the Federal Register on September 7, 1995 (60 FR 46544). The action proposed to require the implementation of a program of structural inspections to detect and correct fatigue cracking in order to ensure the continued airworthiness of these airplanes as they approach the manufacturer's original fatigue design life goal.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Several commenters support the proposed rule.

One commenter notes that Volume III–94 of McDonnell Douglas Report No. L26–012, ''DC–10 Supplemental Inspection Document (SID),'' dated November 1994 (referenced in the proposal as the appropriate source of service information) changed 18 Principle Structural Elements (PSE) from Fleet Leader Operator Sample (FLOS) inspections to Fleet Leader Sample (FLS) inspections. The commenter states that these changes were made because operators submitted an insufficient number of results from FLOS inspections. The commenter requests that, in future revisions of the document, these FLS inspections be changed to 100 percent inspections, which would simplify scheduling and be more cost effective.

The FAA does not concur with the commenter's request to change FLS inspections to 100 percent inspections. The FAA finds that Volume III–94 of the SID changed eight PSE's from FLOS inspections to FLS inspections because of a decrease in the sample size (i.e., fewer Model DC–10 series airplanes in the SID program). The inspections in the McDonnell Douglas SID programs were established using specific criteria for determining whether a PSE should be defined as FLOS, FLS, or 100 percent. The manufacturer established these criteria only after extensive and detailed consultations with large numbers of operators and with the FAA. Because of the decrease in sample size, these PSE's meet the criteria of FLS, but not that of FLOS or 100 percent. The 100 percent inspection is only applicable if an insufficient number of samples exists in the sample size to utilize sampling concepts.

One operator requests that the proposed rule be revised to include provisions for operators that combine fleets with other operators under the same maintenance program. The FAA does not concur. The FAA does not consider it appropriate to include various provisions in an AD applicable to a single operator's unique use of its airplanes. Paragraph (d) of this AD provides for the approval of alternative methods of compliance to address these types of unique circumstances. Further, this commenter does not compile sufficient data for each of its airplanes so that an individual airplane's age and inspection requirements can be adequately evaluated.

One commenter requests that the reporting requirement in proposed paragraph (b)(4) be revised to clarify that ''all inspection results (negative or positive)'' includes reporting the results of findings of discrepancies. The FAA does not concur. Section 2 of Volume III–94 of the SID provides detailed instructions for reporting the results of all inspection findings, including findings of discrepancies.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 419 Model DC–10 series airplanes and KC–10A (military) airplanes of the affected design in the worldwide fleet. The FAA estimates that 249 airplanes of U.S. registry and 13 U.S. operators will be affected by this AD.

The incorporation of the SID program into an operator's maintenance program, as required by AD 93–17–09, takes approximately 1,270 work hours (per operator), at an average labor rate of $60 per work hour. Based on these figures, the cost to the 13 affected U.S. operators to incorporate the SID program is estimated to be $990,600.

The incorporation of the revised procedures in this AD action will take approximately 20 additional work hours per operator to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost to the 13 affected U.S. operators to incorporate these revised procedures into the SID program into an operator's maintenance program is estimated to be $15,600, or $1,200 per operator.

The recurring inspection costs, as required by AD 93–17–09, are estimated to be 365 work hours per airplane per year, at an average labor rate of $60 per work hour. Based on these figures, the recurring inspection costs required by AD 93–17–09 are estimated to be $21,900 per airplane, or $5,453,100 for the affected U.S. fleet.

Since no new recurring inspection procedures have been added to the program by this new AD action, there is no additional economic burden on affected operators to perform any additional recurrent inspections.

Based on the above figures, the cost impact of this AD on U.S. operators is estimated to be $5,468,700 for the first year, and $5,453,100 for each year thereafter. These ''cost impact'' figures assume that no operator has yet accomplished any of the requirements of this AD. However, it can be reasonably assumed that a majority of the affected operators have already initiated the SID program (as required by AD 93–17–09).

Additionally, the number of required work hours for each inspection (and the SID program), as indicated above, is presented as if the accomplishment of those actions were to be conducted as ''stand alone'' actions. However, in actual practice, these actions for the most part will be accomplished coincidentally or in combination with normally scheduled airplane inspections and other maintenance program tasks. Therefore, the actual number of necessary additional work hours will be minimal in many instances. Further, any costs associated with special airplane scheduling can be expected to be minimal.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8680 (58 FR 54949, October 25, 1993), and by adding a new airworthiness directive (AD), amendment 39–9429, to read as follows:

95–23–09 McDonnell Douglas: Amendment 39–9429. Docket 94–NM–244–AD. Supersedes AD 93–17–09, Amendment 39–8680.

Applicability: Model DC–10 series airplanes and KC–10A (military) airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure the continuing structural integrity of these airplanes, accomplish the following:

(a) Within 6 months after November 24, 1993 (the effective date of AD 93–17–09, amendment 39–8680), incorporate a revision into the FAA-approved maintenance inspection program which provides for inspection(s) of the Principal Structural Elements (PSE's) defined in Section 2 of Volume I of McDonnell Douglas Report No. L26–012, ''DC–10 Supplemental Inspection Document (SID),'' Revision 3, dated December 1992, in accordance with Section 2 of Volume III–92, dated October 1992, of the SID. The non-destructive inspection (NDI) techniques set forth in Section 2 and Section 4 of Volume II, Revision 3, dated December 1992, of the SID provide acceptable methods for accomplishing the inspections required by this paragraph. All inspection results (negative or positive) must be reported to McDonnell Douglas, in accordance with the instructions contained in Section 2 of Volume III–92, dated October 1992, of the SID. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For those Fleet Leader Operator Sampling (FLOS) PSE's that do not have a Normal Maintenance Visual Inspection specified in Section 4 of Volume II, Revision 3, dated December 1992, of the SID, the procedure for general visual inspection is as follows: Perform an inspection of the general PSE area for cleanliness, presence of foreign objects, security of parts, cracks, corrosion, and damage.

(2) For PSE's 53.10.031E/.032E, 53.10.047E/.048E, and 57.10.029E/.030E: The ENDDATE for these PSE's is October 1993. (For these PSE's, disregard the June 1993 ENDDATE specified in Section 2 of Volume III–92, dated October 1992, of the SID.)

(b) Within 6 months after the effective date of this AD, replace the revision of the FAA-approved maintenance inspection program required by paragraph (a) of this AD with a revision that provides for inspection(s) of the PSE's defined in Section 2 of Volume I of McDonnell Douglas Report No. L26–012, ''DC–10 Supplemental Inspection Document (SID),'' Revision 5, dated October 1994, in accordance with Section 2 of Volume III–94, dated November 1994, of the SID. The NDI techniques set forth in Section 2 of Volume II, Revision 5, dated October 1994, of the SID provide acceptable methods for accomplishing the inspections required by this paragraph.

(1) Prior to reaching the threshold (N_{th}), but no earlier than one-half of the threshold (N_{th}/2), specified for all PSE's listed in Volume III–94, dated November 1994, of the SID, inspect each PSE sample in accordance with the NDI procedures set forth in Section 2 of Volume II, Revision 5, dated October 1994. Thereafter, repeat the inspection for that PSE at intervals not to exceed DNDI/2 of the NDI procedure that is specified in Volume III–94, dated November 1994, of the SID.

(2) This AD does not require visual inspections of FLOS PSE's on airplanes listed in Volume III–94, dated November 1994, of the SID planning data at least once during the specified inspection interval, in accordance with Section 2 of Volume III–94, dated November 1994, of the SID.

(3) For PSE's 53.10.055/.056E, 55.10.013/.014B, 53.10.005/.006E, 53.10.031/.032E, 53.10.047/.048E, 57.10.029/.030E: The EDATE for these PSE's is June 1998. (For these PSE's, disregard the June 1996 EDATE specified in Section 2, of Volume III–94, dated November 1994, of the SID.)

(4) All inspection results (negative or positive) must be reported to McDonnell Douglas in accordance with the instructions contained in Section 2 of Volume III–94, dated November 1994, of the SID. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(c) Any cracked structure detected during the inspections required by paragraph (a) or (b) of this AD must be repaired before further flight, in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note 1: Requests for approval of any PSE repair that would affect the FAA-approved maintenance inspection program required by this AD should include a damage tolerance assessment for that PSE repair.

(d) (1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of

compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(2) Alternative methods of compliance previously granted for AD 93–17–09, amendment 39–8680, continue to be considered as acceptable alternative methods of compliance with this amendment.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The actions shall be done in accordance with McDonnell Douglas Report No. L26–012, ''DC–10 Supplemental Inspection Document (SID),'' Volume I, Revision 5, dated October 1994, Volume II, Revision 5, dated October 1994, and Volume III–94, dated November 1994; and McDonnell Douglas Report No. L26–012, ''DC–10 Supplemental Inspection Document (SID),'' Volume I, Revision 3, dated December 1992, Volume II, Revision 3, dated December 1992, and Volume III–92, dated October 1992. The incorporation by reference of McDonnell Douglas Report No. L26–012, ''DC–10 Supplemental Inspection Document (SID),'' Volume I, Revision 5, dated October 1994, Volume II, Revision 5, dated October 1994, and Volume III–94, dated November 1994; which contains the following list of effective pages:

Volume number referenced and date	Page No.	Revision level shown on page	Date shown on page
I—All Series, Revision 5, October 1994	List of Effective Pages A, B, C, D, E, and F.	5	October 1994.
II—All Series, Revision 5, October 1994	List of Effective Pages A, B, C, D, E, F, G, H, J, K, L, M, N, O, and P.	5	October 1994.
III–94—All Series, Original November 1994	Entire Document	Original	November 1994.

The incorporation by reference of McDonnell Douglas Report No. L26–012, ''DC–10 Supplemental Inspection Document (SID),'' Volume I, Revision 5, dated October 1994, Volume II, Revision 5, dated October 1994, and Volume III–94, dated November 1994; is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The incorporation by reference of McDonnell Douglas Report No. L26–012, ''DC–10 Supplemental Inspection Document (SID),'' Volume I, Revision 3, dated December 1992, Volume II, Revision 3, dated December 1992, and Volume III–92, dated October 1992, was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of November 24, 1993 (58 FR 54949, October 25, 1993). Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846–1771, Attention: Business Unit Manager, Contract Data Management C1–255 (35–22). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(g) This amendment becomes effective on January 2, 1996.

Issued in Renton, Washington, on November 6, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–29328 Filed 11–30–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 95–AWP–23]

Establishment of Class E Airspace; Springerville, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a Class E airspace area at Springerville, AZ. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 21 has made this action necessary. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Springerville/Babbitt Field Airport, Springerville, AZ.

EFFECTIVE DATE: 0901 UTC, February 29, 1996.

FOR FURTHER INFORMATION CONTACT: Scott Speer, Airspace Specialist, System Management Branch, AWP 530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6533.

SUPPLEMENTARY INFORMATION:

History

On October 10, 1995, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing a Class E airspace area at Springerville, AZ (60 FR 52637). The development of a GPS SIAP at Springerville/Babbitt Field Airport has made this action necessary.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. Class E airspace designations listed in this document will be published subsequently in this Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes a Class E airspace area at Springerville, AZ. The development of a GPS SIAP at Springerville/Babbitt Field Airport has made this action necessary. The intended effect of this action is to provide adequate Class E airspace for aircraft executing the GPS RWY 21 SIAP at Springerville/Babbitt Field Airport, AZ.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP CA E5 Springerville, AZ [New]

Springerville/Babbit Field Airport, AZ
(lat. 34°07′43″ N, long. 109°18′41″ W)

That airspace extending upward from 700 feet above the surface within a 4.2-mile radius of Springerville/Babbit Field Airport; that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 34°09′00″ N, long. 109°28′00″ W; to lat. 34°19′00″ N, long. 109°00′00″ W; to lat. 34°03′00″ N, long. 109°05′00″ W; to lat. 34°03′00″ N, long. 109°28′00″ W, thence to the point of beginning.

* * * * *

Issued in Los Angeles, California, on November 21, 1995.

James H. Snow,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 95–29349 Filed 11–30–95; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–AWP–8]

Establishment of Class E Airspace; Mammoth Lakes, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace areas at Mammoth Lakes, CA. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 27 has made this action necessary. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Mammoth Lakes Airport, Mammoth Lakes, CA.

EFFECTIVE DATE: 0901 UTC February 29, 1996.

FOR FURTHER INFORMATION CONTACT: Scott Speer, Airspace Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California, 90261, telephone (310) 725–6533.

SUPPLEMENTARY INFORMATION:

History

On October 17, 1995, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class E airspace areas at Mammoth Lakes, CA (60 FR 53724). The development of a GPS SIAP at Mammoth Lakes Airport has made this action necessary.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. Class E airspace designations are published in Paragraphs 6002 and 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. Class E airspace designations listed in this document will be published subsequently in this Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace areas at Mammoth Lakes, CA. The development of a GPS SIAP at Mammoth Lakes Airport has made this action necessary. The intended effect of this action is to provide adequate Class E airspace for aircraft executing the GPS RWY 27 SIAP at Mammoth Lakes Airport, Mammoth Lakes, CA.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6002 Class E airspace areas designated as a surface area or an airport.

* * * * *

AWP CA E2 Mammoth Lakes, CA [New]

Mammoth Lakes Airport, CA
(lat. 37°37′26″ N, long. 118°50′19″W)

Within a 4.1-miles radius of the Mammoth Lakes Airport and within 1.8 miles each side of the 099° bearing from the Mammoth Lakes Airport, extending from the 4.1-miles radius to 5.6 miles southeast of the Mammoth Lakes Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP CA E5 Mammoth Lakes, CA [New]

Mammoth Lakes Airport, CA
(lat. 37°37′26″ N, long. 118°50′19″ W)

That airspace extending upward from 700 feet above the surface within a 4.1-mile radius of the Mammoth Lakes Airport and within 1.8 miles each side of the 099° bearing from the Mammoth Lakes Airport, extending from the 4.1-miles radius to 5.6 miles southeast of the Mammoth Lakes Airport. That airspace extending upward from 1,200 feet above the surface within the area bounded by a line beginning at lat. 37°49′00″ N, long. 118°58′00″ W; to lat. 37°49′00″ N, long. 119°13′00″ W; to lat. 38°10′00″ N, long.

119°13′00″ W; to lat. 38°10′00″ N, long. 118°34′00″ W, thence to the point of beginning.

* * * * *

Issued in Los Angeles, California, on November 21, 1995.

James H. Snow,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 95–29348 Filed 11–30–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 93F–0166]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of pyromellitic dianhydride as a modifier in the manufacture of polyethylene terephthalate copolymers intended for food-contact applications. This action is in response to a petition filed by M. & G. Ricerche S.p.A.

DATES: Effective December 1, 1995; written objections and requests for a hearing by January 2, 1996.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of August 12, 1993 (58 FR 42975), FDA announced that a food additive petition (FAP 3B4375) had been filed by M. & G. Ricerche, S.p.A., c/o Keller and Heckman, 1001 G St. NW., suite 500 West, Washington, DC 20001 (formerly c/o Delta Analytical Corp., 7910 Woodmont Ave., suite 1000, Bethesda, MD 20814). The petition proposed to amend the food additive regulations in § 177.1630 *Polyethylene phthalate polymers* (21 CFR 177.1630) to provide for the safe use of pyromellitic dianhydride as a modifier in the manufacture of polyethylene terephthalate copolymers intended for food-contact applications.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed food additive use in polyethylene terephthalate food-contact articles is safe, and the regulation in § 177.1630 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before January 2, 1996, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR part 177 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

2. Section 177.1630 is amended in paragraph (e)(4) by alphabetically adding a new substance to paragraph (i) in the ''List of Substances and Limitations'' to read as follows:

§ 177.1630 Polyethylene phthalate polymers.

* * * * *

(e) * * *

(4) * * *

List of Substances and Limitations

(i) * * *

Ethylene terephthalate copolymers: Prepared by the condensation of dimethyl terephthalate or terephthalic acid with ethylene glycol, modified with one or more of the following: Azelaic acid, dimethyl azelate, dimethyl sebacate, sebacic acid, pyromellitic dianhydride. The level of pyromellitic dianhydride shall not exceed 0.5 percent by weight of the finished copolymer which may be used under conditions of use E through H as described in Table 2 of § 176.170(c) of this chapter.

* * * * *

Dated: November 21, 1995.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–29219 Filed 11–30–95; 8:45 am]

BILLING CODE 4160–01–F

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 253

[Docket No. 95–3 CARP]

Cost of Living Adjustment for Performance of Musical Compositions by Colleges and Universities

AGENCY: Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Office of the Library of Congress announces a cost of

living adjustment of 2.8% in the royalty rates paid by colleges, universities, or other nonprofit educational institutions that are not affiliated with National Public Radio, for the use of copyrighted published nondramatic musical compositions. The cost of living adjustment is based on the change in the Consumer Price Index from October, 1994, to October, 1995.

EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Marilyn J. Kretsinger, Acting General Counsel, or Tanya Sandros, Copyright Arbitration Royalty Panel Specialist, at Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: On December 22, 1992, the Copyright Royalty Tribunal published in the Federal Register final rules governing the terms and rates of copyright royalty payments with respect to certain uses by noncommercial educational broadcast stations of published nondramatic musical works and published pictorial, graphic and sculptural works. 57 FR 60957 (December 22, 1992). The Copyright Royalty Tribunal determined in that proceeding that colleges, universities, and other noneducational institutions which are not affiliated with National Public Radio would pay a royalty rate adjusted each year according to changes in the Consumer Price Index for the use of copyrighted published nondramatic musical compositions. 37 CFR 304.10. Accordingly, the Tribunal published a cost of living adjustment on December 1, 1993. 58 FR 63294 (December 1, 1993).

On December 17, 1993, Congress abolished the Copyright Royalty Tribunal. Copyright Royalty Tribunal Reform Act of 1993 (CRT Reform Act), Public Law 103–198, 107 Stat. 2304. The CRT Reform Act directed the Library of Congress and the Copyright Office to adopt the rules and regulations of the CRT as found in 37 CFR Chapter III. 17 U.S.C. 802(d). The Office subsequently reissued the CRT regulations on December 22, 1993. 58 FR 67690 (December 22, 1993).

In a later action, former 37 CFR 304.10, which calls for the annual cost of living adjustments to rates paid by college and university radio stations, was renumbered 37 CFR 253.10. 59 FR 23964 (May 9, 1994).

Accordingly, the Copyright Office of the Library of Congress is hereby performing the annual cost of living adjustment pursuant to the 1992 public broadcasting rate adjustment proceeding.

The change in the cost of living as determined by the Consumer Price Index (all consumers, all items) during the period from the most recent Index published before December 1, 1994, to the most recent Index published before December 1, 1995, was 2.8% (1994's figure was 149.5; 1995's figure was 153.7, based on 1982–1984=100 as a reference base). Rounding off to the nearest dollar, the adjustment in the royalty rate for the use of musical compositions in the repertory of ASCAP and BMI is $211 each and $49 for the use of musical compositions in the repertory of SESAC.

List of Subjects in 37 CFR Part 253

Copyright, Radio, Television.

PART 253—USE OF CERTAIN COPYRIGHTED WORKS IN CONNECTION WITH NONCOMMERCIAL EDUCATIONAL BROADCASTING

1. The authority citation for part 253 continues to read as follows:

Authority: 17 U.S.C. 118, 801(b)(1) and 803.

2. Section 253.5 is amended by revising paragraphs (c)(1) through (c)(3).

§ 253.5 Performance of musical compositions by public broadcasting entities licensed to colleges and universities.

* * * * *

(c) * * *

(1) For all such compositions in the repertory of ASCAP, $211 annually.

(2) For all such compositions in the repertory of BMI, $211 annually.

(3) For all such compositions in the repertory of SESAC, $49 annually.

* * * * *

Dated: November 21, 1995.

Marybeth Peters,

Register of Copyrights.

[FR Doc. 95–29145 Filed 11–30–95; 8:45 am]

BILLING CODE 1410–33–P

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37 CFR Part 255

[Docket No. RM 95–4 CARP]

Digital Performance Right in Sound Recordings

AGENCY: Copyright Office, Library of Congress.

ACTION: Initiation of voluntary negotiation period and final rule.

SUMMARY: The Copyright Office is initiating the six month voluntary negotiation period for negotiating terms and rates for a compulsory license for digital subscription transmissions, and adopting the rate for a compulsory license for digital phonorecord delivery as required by the Digital Performance Right in Sound Recordings Act of 1995.

DATES: The effective date of this document is December 1, 1995. The initiation of the six month voluntary negotiation period is December 1, 1995. The effective date of the rate for digital phonorecord deliveries is February 1, 1996.

ADDRESSES: Copies of voluntary license agreements and petitions, if sent by mail, should be addressed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, D.C. 20024. If hand delivered, they should be brought to: Office of the Copyright General Counsel, James Madison Memorial Building, Room LM–407, First and Independence Avenue, S.E. Washington, D.C. 20540.

FOR FURTHER INFORMATION CONTACT: Marilyn Kretsinger, Acting General Counsel, or William Roberts, Senior Attorney, Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, D.C. 20024, (202) 707–8380.

SUPPLEMENTARY INFORMATION: On November 1, 1995, the President signed into law the ''Digital Performance Right in Sound Recordings Act of 1995'' (''Digital Performance Act''), Pub. L. 104–39. The Digital Performance Act creates an exclusive right for copyright owners of sound recordings, subject to certain limitations, to perform publicly the sound recordings by means of certain digital audio transmissions. *See* 17 U.S.C. 106(6).

Among the limitations on the performance of a sound recording publicly by means of a digital audio transmission is the creation of a new compulsory license for nonexempt subscription transmissions. The Digital Performance Act defines a ''subscription transmission'' as one that ''is a transmission that is controlled and limited to particular recipients, and for which consideration is required to be paid or otherwise given by or on behalf of the recipient to receive the transmission or a package of transmissions including the transmission.'' 17 U.S.C. 114(j)(8). All nonexempt subscription transmissions are eligible for section 114 compulsory licensing provided they are not made by an ''interactive service,'' which is defined in part as ''one that enables a member of the public to receive, on request, a transmission of a particular sound recording chosen by or on behalf of the recipient.'' *See* 17 U.S.C. 114(j)(4).

The terms and rates of the section 114 statutory license are determined by voluntary negotiation among the affected parties and, where necessary, compulsory arbitration conducted under chapter 8 of the Copyright Act. The voluntary negotiation period was triggered on enactment of the Digital Performance Act, which directs the Librarian of Congress, within 30 days of enactment, to publish in the Federal Register a notice initiating ''voluntary negotiation proceedings for the purpose of determining reasonable terms and rates of royalty payments * * *'' 17 U.S.C. 114(f)(1). The voluntary negotiation period is to last for six months, and any terms and rates negotiated during the period are to be effective from February 1, 1996, the effective date of the Digital Performance Act,[1] through December 31, 2000. The Digital Performance Act requires that the terms and rates should be established separately for each different type of digital audio transmission service then in operation, but does not require or suggest that the terms and rates established must be different. The negotiations between copyright owners of sound recordings and the entities performing such recordings under the § 114 license are to be governed by the provisions of section 114(e) (which grants the negotiating parties an antitrust exemption), and each party is responsible for bearing its own costs.

In the legislative history to the Digital Performance Act, the Committee expressed hope that the voluntary negotiation period will lead to an industry-wide agreement concerning royalty terms and rates. S. Rep. No. 128, 104th Cong., 1st Sess. 29 (1995). If an agreement as to rates and terms is reached and there is no further controversy, then it is not necessary for the parties to submit to arbitration. In such cases, the Librarian of Congress will follow current rate regulation procedures and notify the public of the proposed agreement in a notice and comment proceeding and, if no opposing comment is received from a party with a substantial interest and intent to participate in an arbitration proceeding, the Librarian will adopt the terms and rates embodied in the agreement without convening a copyright arbitration royalty panel. 37 CFR 251.63(b). If, however, no industry-wide agreement is reached, or only certain parties negotiate license agreements, then those copyright owners and entities performing sound recordings not subject to a voluntary agreement shall be bound by the terms and rates set by a CARP. Arbitration proceedings are initiated upon the filing of a petition for ratemaking with the Librarian of Congress during the 60 days immediately following the six month voluntary negotiation period. Arbitration cannot take place without the filing of a petition even if no voluntary license agreements are negotiated.

Initiation of Voluntary Negotiations

Pursuant to 17 U.S.C. 114(f)(1), the Copyright Office of the Library of Congress is initiating the six month voluntary negotiation period for sound recording copyright owners and entities that perform or authorize the performance of sound recordings by means of nonexempt digital subscription transmissions. The negotiation period is to run from December 1, 1995 to June 1, 1996. Parties which negotiate a voluntary license agreement during this period are encouraged to submit two copies of the agreement to the Copyright Office at the above listed address within 30 days of its execution.

Petitions

Pursuant to 17 U.S.C. 114(f)(2), those sound recording copyright owners and entities that perform or authorize the performance of sound recordings by means of nonexempt digital transmissions and who have not negotiated license agreements under section 114(f)(1) are subject to arbitration upon the filing of a petition. Only those parties with a significant interest in the establishment of terms and rates for the section 114 license may file a petition. Petitions must be submitted in accordance with 17 U.S.C. 803(a)(1), and may be filed at any time during the period commencing on June 2, 1996, and ending on August 1, 1996. Petitions should be submitted to the Copyright Office at the address listed in this notice. The petitioner must deliver an original and five copies of the petition to the Office.

If all the affected parties negotiate a single industry-wide agreement during the period described in section 114(f)(1), they must petition the Librarian of Congress for acceptance of the agreement during the same 60 day period. The Librarian will then follow the notice and comment procedures of 37 CFR 251.63(b). If a party with a significant interest and an intent to participate in an arbitration proceeding files an objection to the agreement during the notice and comment proceeding, then the Librarian shall initiate an arbitration proceeding in accordance with chapter 8 of the Copyright Act and 37 CFR 251 part.

Digital Phonorecord Delivery

The Digital Performance Act also provides that the section 115 compulsory license to make and distribute phonorecord includes the right of the compulsory licensee to make or authorize digital phonorecord deliveries. The Act identifies that the rate for all digital phonorecord deliveries made or authorized under a compulsory license on or before December 31, 1997, shall be the same as the rate in effect for the making and distribution of a physical phonorecord. [2] As a result, the Office is amending part 255 of its rules to reflect the new royalty rate for digital phonorecord deliveries, and to adopt the same definition of digital phonorecord delivery as appears in the Digital Performance Act. The effective date of the rule change is February 1, 1996, the date on which the Digital Performance Act takes effect.

Good Cause Finding

Section 553(b)(3)(B) states that notice of a proposed rulemaking is not required ''when the agency for good cause finds * * * that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.''

Because the Digital Performance Act requires that the new rate for digital phonorecord deliveries is to be the same as for the making and distribution of physical phonorecords until December 31, 1997, the Office is without any discretion in the matter. Therefore, it would be impracticable, unnecessary, and contrary to the public interest to solicit comments on a rule that is mandated by law.

List of Subjects in 37 CFR Part 255

Copyright, Recordings.

For the reasons set forth in the preamble, the Copyright Office amends 37 CFR part 255 as follows:

PART 255—ADJUSTMENT OF ROYALTY PAYABLE UNDER COMPULSORY LICENSE FOR MAKING AND DISTRIBUTING PHONORECORDS

1. The authority citation for part 255 continues to read as follows:

[1] The effective date of the Digital Performance Act is February 1, 1996, with the exception of sections 114 (e) and (f) of the law, which became effective upon date of enactment.

[2] After December 31, 1997, the rate for digital phonorecord deliveries could be the same or different than the rate for making and distributing a physical phonorecord, depending on the outcome of negotiations or CARP proceedings scheduled to take place that year.

Authority: 17 U.S.C. 801(b)(1) and 803.

2. Section 255.1 is revised to read as follows:

§ 255.1 General.

This part 255 adjusts the rates of royalties payable under the compulsory license for making and distributing phonorecords, including digital phonorecord deliveries, embodying nondramatic musical works, under 17 U.S.C. 115.

3. A new § 255.4 is added to read as follows:

§ 255.4 Definition of digital phonorecord delivery.

A ''digital phonorecord delivery'' is each individual delivery of a phonorecord by digital transmission of a sound recording which results in a specifically identifiable reproduction by or for any transmission recipient of a phonorecord of that sound recording, regardless of whether the digital transmission is also a public performance of the sound recording or any nondramatic musical work embodied therein. A digital phonorecord delivery does not result from a real-time, noninteractive subscription transmission of a sound recording where no reproduction of the sound recording or the musical work embodied therein is made from the inception of the transmission through to its receipt by the transmission recipient in order to make the sound recording audible.

4. A new § 255.5 is added to read as follows:

§ 255.5 Royalty rate for digital phonorecord deliveries.

For every digital phonorecord delivery made on or before December 31, 1997, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 6.95 cents, or 1.3 cents per minute of playing time or fraction thereof, whichever amount is larger.

Dated: November 24, 1995.

Marilyn Kretsinger,

Acting General Counsel.

Approved:

James H. Billington,

The Librarian of Congress.

[FR Doc. 95–29146 Filed 11–30–95; 8:45 am]

BILLING CODE 1410–33–P

37 CFR Part 259

[Docket No. 94–3 CARP]

Representation for Claiming DART Royalties in Musical Works

AGENCY: Copyright Office, Library of Congress.

ACTION: Amendment of regulation and policy statement.

SUMMARY: The Copyright Office currently requires a performing rights organization to have separate, specific and written authorization from its members or affiliates in order to file a claim on behalf of its members for DART royalties in the Musical Works Fund. The performing rights organization had sought reconsideration of this rule. This document establishes that the Office retains this practice, but amends the rule and applies the requirement to all organizations and associations that act as common agents for the purposes of filing claims, negotiating settlements and receiving digital royalties on behalf of their members or affiliates. Under this amended rule, organizations and associations that act only as common agents must specify in their claim how the parties entitled to receive royalties, i.e., their members or affiliates, fit the definition of interested copyright party under the Act.

EFFECTIVE DATE: January 2, 1996.

FOR FURTHER INFORMATION CONTACT: Marilyn J. Kretsinger, Acting General Counsel, or Tanya Sandros, CARP Specialist. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION:

I. Background

On October 28, 1992, Congress enacted the Audio Home Recording Act (AHRA). This Act requires manufacturers and importers to pay royalties on digital audio recording devices and media (DART) that are distributed in the United States. The royalties are deposited with the Copyright Office and distributed in one of two ways. Parties may negotiate settlements among themselves; or if they cannot settle, a Copyright Arbitration Royalty Panel (CARP), convened by the Copyright Office (hereafter ''Office''), and the Librarian of Congress, allocates royalty payments among the joint and individual claimants.

To qualify for DART royalties, interested copyright parties entitled to receive funds under section 1006 must file a claim in January or February of each calendar year for royalties collected during the preceding year. 17 U.S.C. 1006(a)(2), 1007(a)(1). The DART royalties are divided into two funds—the Sound Recording Fund, which accounts for 66⅔% of the royalties, and the Musical Works Fund, which accounts for the remaining 33⅓% of the royalties.

The Copyright Royalty Tribunal (CRT) had the original authority to promulgate the rules and regulations to administer the AHRA. Shortly after the October 28, 1992, enactment of the AHRA, the CRT faced the issue of defining the extent of proof required of a performing rights organization to demonstrate that it had the proper authorization to represent its members or affiliates before the CRT in a DART proceeding. The CRT invited public comment in an Advance Notice of Rulemaking. 57 FR 54542 (November 19, 1992). On January 29, 1993, the CRT adopted a rebuttable presumption that performing rights organizations represented their respective members or affiliates in royalty proceedings for the 1992 fund. 58 FR 6441, 6444 (January 29, 1993). The interim regulations also directed the parties to file a report, by June 1, 1993, on this issue. Subsequently, on October 18, 1993, the CRT published final regulations which required performing rights organizations to obtain separate, specific, written authorization from its members. 58 FR 53822 (October 18, 1993); 37 CFR 259.2 (formerly 37 CFR 311.2).

On November 3, 1993, the American Society of Composers, Authors, and Publishers (ASCAP), Broadcast Music, Inc. (BMI) and SESAC, Inc. (SESAC) filed with the CRT a petition to reopen for reconsideration the rulemaking proceeding that resulted in the CRT's final rule. On December 3, 1993, the CRT officially held the petition in abeyance. Order, dated December 3, 1993, In the Matter of Digital Recording Technology Act; Implementation, CRT Docket No. 92–3 DART.

Shortly thereafter, on December 17, 1993, the President signed the Copyright Royalty Tribunal Reform Act of 1993, Public Law 103–198, 107 Stat. 2304, thereby eliminating the CRT and replacing it with a system of ad hoc Copyright Arbitration Royalty Panels administered by the Librarian of Congress and the Copyright Office. The new Act directed the Librarian of Congress to convene CARPs to adjust rates and distribute royalties, *see* 17 U.S.C. 111, 115, 116, 118, 119 and Chapter 10, and to immediately adopt the rules and regulations of the former CRT. In response to these directions, the Copyright Office issued a notice adopting the full text of the rules and regulations of the former CRT on an

interim basis. 58 FR 67690 (December 22, 1993).

On January 18, 1994, the Copyright Office published proposed regulations that revised the adopted CRT rules and adapted them for the administration of the new ad hoc arbitration panels. 59 FR 2550 (January 18, 1994). At this time, the Office concluded that it was not a successor agency of the CRT, and would therefore, not continue any matter before the CRT at the time the CRT Reform Act became law. Instead, parties who had issues pending before the Tribunal would need to initiate new action under the rules and regulations governing the administration of the CARPs.

On February 15, 1994, the performing rights organizations filed a comment with the Copyright Office seeking reconsideration of the rule, now adopted by the Copyright Office, that required separate, specific, written authorization from the members of the performing rights societies. In the Matter of Copyright Arbitration Royalty Panels; Rules and Regulations, Copyright Office Docket No. RM 94–1. Essentially, in response to our Notice of Proposed Rulemaking, the performing rights organizations asked that their comments either serve to reopen the CRT's former rulemaking proceeding or that the Office consider the matter anew. PRO Comment at 4. The Gospel Music Coalition and Copyright Management, Inc. filed a joint reply on February 23, 1994, to the performing rights organizations' comment and opposed reconsideration of the issue. Id.

On May 9, 1994, the Copyright Office issued interim regulations which noted that the Office considered the performing rights organizations' comment as a petition for reconsideration of a pending CRT matter and would consider the petition anew in a separate rulemaking. 59 FR 23964, 23966 (May 9, 1994). Subsequently, the Office initiated a review of the rule with a request for comments on the issue of whether performing rights organizations need specific, separate, written authorization to represent their members' or affiliates' interest in the collection and distribution of DART royalties. 59 FR 63043 (December 7, 1994).

II. The Parties

The American Society of Composers, Authors and Publishers (''ASCAP''), Broadcast Music, Inc. (''BMI''), and SESAC, Inc. (SESAC) (collectively, ''Performing Rights Organizations or PRO'') filed joint comments advocating the adoption of a rebuttable presumption of agency between the Performing Rights Organizations and their members or affiliates for the collection and distribution of royalties.

The Gospel Music Coalition (''GMC'') and James Cannings filed comments with the former CRT supporting the present requirement for specific, separate, written authorization. In response to the notice for comments in this proceeding, GMC and Mr. Cannings requested that these former comments be incorporated into the present review.

III. Discussion

Section 1007(a)(1) of the Copyright Code defines the class of eligible claimants as ''every interested copyright party seeking to receive royalty payments to which such party is entitled under section 1006.''

Section 1006 describes the entitlement to royalties as belonging to those interested copyright parties whose works were embodied in a digital or analog musical recording, and distributed, or disseminated to the public in transmissions.

Therefore, a performing rights society is not eligible by itself to file claims because it does not own the works described in section 1006. However, it could be eligible to file claims if it were authorized by someone who does own a work described in section 1006.

This was explained in the House Report:

> Section 1001(7)(D) refers to * * * (4) any association or organization that is 'engaged in licensing rights in musical works to music users on behalf of writers and publishers,' i.e., performing rights societies such as ASCAP and BMI. These various associations and organizations are not themselves directly entitled to receive royalties; only those individuals or organizations specified in section 1006(a) receive royalties directly. Nevertheless, these associations and organizations may be designated as common agents to negotiate and receive payment for royalties on behalf of others pursuant to section 1007(a)(2) * * *. For example, with respect to the 50 percent of the Musical Works Fund allocated to writers, writers eligible to file a claim can negotiate among themselves regarding who should receive how much of the 50 percent, or could appoint common agents, for example, one of the interested copyright parties defined in section 1007(7)(D), to negotiate and *file claims on their behalf* (emphasis ours). H.R. Rep. No. 873, 102nd Cong., 2d Sess. 23 (1992).

The issue, therefore, is, not whether a performing rights society can file claims by itself. Clearly, it can not. The issue is whether it can file claims on behalf of its members or affiliates based on a rebuttable assumption that its members or affiliates have granted it the authority to do so, or whether a specific, separate, written authorization to represent a member or affiliate is required.

Previously rulings requiring a performing rights society to obtain specific, separate, written authorizations were based on the fact a performing rights society represent its members or affiliates for the public performing right only, and not for any other right. Because the DART royalty was intended as a compensation for the reproduction right (i.e., home taping), the former Copyright Royalty Tribunal could not conceptually accept the performing rights societies' assertion that they had a right to represent their members or affiliates based on a rebuttable assumption.

However, throughout the rulemaking proceedings for the regulations governing the administration of the AHRA, the performing rights organizations have argued strenuously for a rebuttable presumption of agency which would allow them to file for royalties on behalf of their members or affiliates without specific authorization. The past three filing periods, the former CRT and the Copyright Office granted the presumption for the filing years in question to these organizations for two fundamental reasons: (1) To avoid disenfranchising an unwary claimant, and (2) to grant sufficient time to the performing rights organizations to complete the enormous task of contacting their members and obtaining the necessary authorization.

The Office shares the PROs concern over disenfranchising an unwary claimant, but believes the strength of this argument has steadily diminished over time. Similarly, the Office believes the performing rights organizations have had sufficient time to obtain the proper authorization. In fact, the performing rights organizations have had over two years to meet the requirements of the disputed rule, since it went into effect on October 18, 1993. 58 FR 53822. Therefore, the Office no longer finds these reasons, which are still put forth by the performing rights organizations, see PRO Comment 1 at 4, compelling; and now seeks to equalize the filing process with respect to all organizations and associations that file on behalf of their members.

In support of their position, the performing rights organizations have argued that their members do not distinguish their right to recover royalties under DART from their right to recover royalties under the compulsory licenses, especially in light of the historical practice where a performing rights organization represented its members' interests before the former CRT in cable, satellite, and jukebox

distribution proceedings and noncommercial educational broadcasting proceedings. Id.

While this observation may be valid, the Office notes that, historically, these organizations have represented their members' only for their public performance rights in the designated proceedings, and not the reproduction right addressed under DART.

The Office does not find that any misunderstanding on the part of a member as to the performing rights organization role vis-a-vis the former CRT, and now the Copyright Office, can be a valid basis for a rebuttable presumption. Furthermore, the Office believes the performing rights societies have had sufficient time to correct any misunderstanding.

Alternatively, the PRO argue that the regulation imposes a penalty on their members because the performing rights societies use broad, generalized agency terms in place of specific language that directly addresses the right to collect royalties under AHRA. Id. To that extent, § 259.2(c)(2) which we are adopting here does permit general agency terms to be sufficient if a court with the authority to interpret a PRO contract rules that the terms in question do extend to the filing of claims for DART royalties.

Under the regulation which requires separate, written and specific authorization, the Office provides an exception. The exception allows the membership or affiliation agreement to authorize the performing rights organization to represent its members before the Copyright Office or the Copyright Arbitration Royalty Panel in royalty filing and fee distribution proceedings, and pointedly does not require the agreement to articulate which exclusive right under the Copyright Act of 1976 the organization represents. 37 CFR 259.2(c)(1).

This exception supports an earlier argument raised by Mr. James Cannings, and incorporated by reference in the present proceeding, which asserted that the standard agreements between performing rights societies and their members did not grant a society an automatic right to represent its members before the Tribunal. See Cannings comment to Interim Regulations, 58 FR 6441 (January 29, 1993). While the Office cannot interpret the terms of the membership contracts, the Office will accept express statements in a membership agreement which authorize the organization to represent a member before the Copyright Office or a CARP as an appropriate grant of authority to the performing rights society to act on behalf of the signatory.

Another earlier argument raised by GMC in support of the present regulation concerned the confusion arising from duplicative and overlapping claims. GMC comment and reply comment to NPRM, 57 FR 54542, (November 18, 1992). The Office finds this argument moot under the present regulations, since it requires all joint claimants to file a list of all individual claimants to the joint claim. This requirement allows the parties to spot overlapping claims quickly and to resolve the issue among themselves.

Additionally, the Gospel Music Coalition has argued on several occasions that the rebuttable presumption allows the performing rights societies to file on behalf of all its members, whether entitled or not under the Act, thereby inflating the magnitude of their initial claim. See GMC comment and reply comment to NPRM, 57 FR 54542 (November 18, 1992); and GMC comment to Interim Regulations, 58 FR 6441 (January 29, 1993). The Office concurs and acknowledges the fact that to allow the performing rights organizations to avail themselves continually of the rebuttable presumption grants the performing rights societies a preferential position in the filing process.

The PRO state a corollary to this argument and assert that failure to grant the rebuttable presumption will create a windfall for the other claimants at the expense of unsuspecting, disenfranchised claimants. The Office recognizes that both positions depict potential outcomes under different final rules, but neither argument addresses the main concerns underpinning the current rule; namely, the language and intent of the Act.

On another front, the PRO stress that the adoption of a permanent rebuttable inference of agency will not impair the rights of individuals to file their own claim, or join their claims together. See PRO Comment at 7. While the Office agrees with this statement, the Office cannot reconcile the use of the inference with the plain language of the Act and its intent as depicted in the underlying legislative history. Clearly, the Act contemplated a process where an individual takes the initiative to file on his or her own behalf, or expressly authorizes a common agent to act on his or her behalf.[1]

The Office does not refute the Performing Rights Organizations' assertion that Congress recognized a licensing association or organization's status as an interested copyright party. But recognition of this fact still does not provide adequate grounds for allowing a performing rights organization to assert a rebuttal inference of agency when the statute clearly denies it a right to file a claim or negotiate on behalf of its members without an express grant of authority.

In fact, Congress made no presumptions about the agency status of any organization or association which (1) represents parties entitled to royalties under AHRA, or (2) engages in licensing rights in musical works to music users on behalf of writers and publishers, i.e., an interested copyright party under 17 U.S.C. 1001(7)(D). As GMC pointed out, the language in the Act and the legislative history merely permits the performing rights organizations to act as common agents, if so designated. See discussion of GMC comment and reply to NPRM, 57 FR 54542, (November 18, 1992). The Copyright Office agrees with this interpretation and will not open a door which Congress expressly left closed.

For all the reasons stated above, the Copyright Office affirms the original regulation requiring separate, specific and written authorization and applies the rule to all organizations and associations acting as common agents, and thereby declines to grant a permanent, rebuttable inference of agency to the performing rights organizations.

IV. Clarification of a Filing Requirement

The Copyright Office further notes that organizations and associations that are interested copyright parties pursuant to 17 U.S.C. 1001(7)(D) are not entitled to file claims on their own behalf unless the organization or association is also an interested copyright party as defined under 17 U.S.C. 1001(7)(A), (B) or (C). These organizations and associations, however, may act as common agents on behalf of their members or affiliates, if so authorized. But, common agents, which are also interested copyright parties under the Act, cannot satisfy the requirement under 37 CFR 259.3(a)(3), to state ''how the claimant fits within the definition of interested copyright party pursuant to 17 U.S.C. 1001(7)'' by stating that the common agent is an interested copyright party pursuant to

[1] Performing rights organizations, which are interested copyright parties under the Act pursuant to 17 U.S.C. 1001(7)(D), are never mentioned in section 1006, much less granted agency status for purposes of filing claims for their members. Additional support for this interpretation is found in 17 U.S.C. 1007(a)(2) which allows interested copyright parties specified in section 1006(b) to designate a common agent, including any organization described in section 1001(7)(D), to negotiate or receive payment on their behalf.

17 U.S.C. 1001(7)(D). Rather, the common agent must state how its members or affiliates, who are the actual claimants, fit into the definition of interested copyright party under 17 U.S.C. 1001(7)(A), (B) or (C) in order to satisfy this filing requirement.

Additionally, the Copyright Office requires only a concise statement of the authorization for the filing of the joint claim. See 37 CFR 259.3(d). Copies of the separate, specific and written authorizations should not be filed with the Office.

List of Subjects in 37 CFR Part 259

Claims, Copyright, Recordings.

PART 259—FILING OF CLAIMS TO DIGITAL AUDIO RECORDING DEVICES AND MEDIA ROYALTY PAYMENTS

1. The authority citation for part 259 continues to read as follows:

Authority: 17 U.S.C. 1007(a)(1).

2. Sec. 259.3 is revised to read as follows:

§ 259.2 Time of filing.

(a) *General.* During January and February of each succeeding year, every interested copyright party claiming to be entitled to digital audio recording devices and media royalty payments made for quarterly periods ending during the previous calendar year shall file a claim with the Copyright Office. Claimants may file claims jointly or as a single claim.

(b) *Consequences of an untimely filing.* No royalty payments for the previous calendar year shall be distributed to any interested copyright party who has not filed a claim to such royalty payments during January or February of the following calendar year.

(c) *Authorization.* Any organization or association, acting as a common agent, shall be required to obtain from its members or affiliates separate, specific, and written authorization, signed by members, affiliates, or their representatives, to file claims to the Musical Works Fund or the Sound Recording Fund, apart from their standard agreements, for purposes of royalties filing and fee distribution. Such written authorization, however, will not be required in cases where either:

(1) The agreement between the organization or association and its members or affiliates specifically authorizes such entity to represent its members or affiliates before the Copyright Office and/or the Copyright Arbitration Royalty Panels in royalty filing and fee distribution proceedings; or

(2) The agreement between the organization or association and its members or affiliates, as specified in a court order issued by a court with authority to interpret the terms of the contract, authorizes such entity to represent its members or affiliates before the Copyright Office and/or Copyright Arbitration Royalty Panels in royalty filing and fee distribution proceedings.

Dated: November 24, 1995.

Marilyn J. Kretsinger,

Acting General Counsel.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 95–29147 Filed 11–30–95; 8:45 am]

BILLING CODE 1410–33–P

POSTAL SERVICE

39 CFR Part 20

Implementation of International Package Consignment Service

AGENCY: Postal Service.

ACTION: Amendment to interim rule.

SUMMARY: This amendment to International Package Consignment Service (IPCS) provides an additional entry option to IPCS mailers whose plants are more than 500 miles from the John F. Kennedy (JFK) Processing Facility at the JFK International Airport. In the original interim regulations, which took effect December 1, 1994 (59 FR 65961–65971), any mailer whose plant is more than 500 miles from the JFK Processing Facility must present IPCS packages for verification at the mailer's plant and then transport them as a drop shipment to the JFK Processing Facility according to a schedule agreed upon by the mailer and the Postal Service. At the JFK Processing Facility, the Postal Service processes the mailer's IPCS packages and dispatches them by air to Japan.

Although that entry option remains available to all qualifying IPCS mailers, an alternative option has been developed that allows mailers to share some of the processing of the mail and to avoid transporting the packages to the JFK Processing Facility. Under this alternative option, those mailers whose plants are more than 500 miles from the JFK Processing Facility, and who choose to do so, may process their IPCS packages, using Postal Service-provided workstations to sort and prepare the packages as required by the Postal Service. The Postal Service then verifies and accepts the packages at the mailers' plants and transports the packages by truck to the nearest Postal Service air mail facility (AMF) according to a schedule agreed upon by the mailer and the Postal Service. From the AMF, the Postal Service dispatches the IPCS packages directly to Japan, bypassing the JFK Processing Facility. Under this option, mailers save the cost of transporting their packages to the JFK Processing Facility, and the Postal Service saves the cost of processing and sorting individual packages. The interim implementing regulations are amended and set forth below for comment before their adoption in final form.

DATES: The amended interim regulations took effect September 1, 1995. Comments must be received on or before January 2, 1996.

ADDRESSES: Written comments should be mailed or delivered to International Business Unit, U.S. Postal Service, 475 L'Enfant Plaza SW, Room 4400–E, Washington, DC 20260–6500. Copies of all written comments will be available at the above address for public inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Frank Richards, (202) 268–5743.

SUPPLEMENTARY INFORMATION:

International Package Consignment Service (IPCS) provides a mailing service that meets the needs of mail-order companies and other mailers that send merchandise packages from the United States to multiple international addresses. Currently, IPCS is available only to Japan.

IPCS benefits all users of other services provided by the Postal Service by decreasing the total revenue that the Postal Service needs to recover from those services. At the same time, IPCS makes it easier and more economical for mail-order companies and other mailers in the United States to export their products to international markets.

After the December 1, 1994, implementation of IPCS (59 FR 65961–65971), the Postal Service determined that it could further reduce costs and improve service by allowing mailers to share the package processing workload if they met certain conditions. An alternative entry option was thus conceived for those mailers that had transportation costs associated with IPCS and that agreed to share the processing workload of their IPCS packages.

A mailer that wishes to use this alternative entry option for IPCS will be required to enter into a service agreement with the Postal Service that provides the same commitments as required of all other IPCS mailers. In

addition to those commitments, the mailer will be required to install and use Postal Service-provided workstations to process IPCS packages and to sort and prepare them for dispatch, as the service dictates.

The Postal Service hereby amends IPCS to Japan to allow an alternative entry option for those qualifying mailers whose plants are more than 500 miles from the JFK Processing Facility.

Although 39 U.S.C. 407 does not require advance notice and opportunity for submission of comments, and the Postal Service is exempted by 39 U.S.C. 410(a) from the advance notice requirements of the Administrative Procedure Act regarding proposed rulemaking (5 U.S.C. 553), the Postal Service invites interested persons to submit written data, views, or arguments concerning this amendment to the interim rule.

List of Subjects in 39 CFR Part 20

International postal service, Foreign relations.

The Postal Service adopts the following amendments to the International Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

PART 20—[AMENDED]

1. The authority citation for 39 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

2. Subchapter 620 of the International Mail Manual is amended as follows:

620 International Package Consignment Service

* * * * *

625 IPCS Service Agreements

* * * * *

625.2 Required Provisions

Each service agreement must contain the following:

* * * * *

d. For a mailer processing packages at the mailer's plant, the mailer's commitment to use Postal Service-provided workstations to process all IPCS packages and to sort and prepare those packages for dispatch as specified by the Postal Service.

* * * * *

626 IPCS to Japan

626.1 Description

626.11 General

IPCS to Japan provides the mailer with three delivery options and with preparation by the Postal Service (or on Postal Service-provided equipment) of the customs forms required by Japan Post.

626.12 JFK Processing Facility

All IPCS packages processed by the Postal Service are processed at, and dispatched to Japan from, a dedicated facility (the JFK Processing Facility) at JFK International Airport.

626.13 Delivery Options

* * * * *

626.132 Standard Air Service. Packages sent as Standard Air Service are transported by air to Japan, where they enter Japan Post's domestic airmail system for delivery. The mailer can track Standard Air Service packages through dispatch from the JFK Processing Facility or the appropriate air mail facility.

626.133 Economy Air Service. Packages sent as Economy Air Service are transported by air to Japan, where they enter Japan Post's domestic surface mail system for delivery. The mailer can track Economy Air Service packages through dispatch from the JFK Processing Facility or the appropriate air mail facility.

626.2 Acceptance

* * * * *

626.22 More Than 500 Miles From JFK

626.221 Drop Shipment to JFK. If the plant at which the mailer's IPCS packages originate is more than 500 miles from the JFK Processing Facility, the mailer may present the packages for verification at the plant and transport them as a drop shipment to the JFK Processing Facility for acceptance according to a schedule agreed upon by the mailer and the Postal Service.

626.222 Transport to Air Mail Facility. Alternatively, the mailer may process the packages, using Postal Service-provided workstations, and prepare dispatches as specified by the Postal Service. The Postal Service verifies and accepts the dispatches at the mailer's plant according to a schedule agreed upon by the mailer, and the Postal Service transports the packages to an appropriate air mail facility for dispatch to Japan.

* * * * *

627 Customs Forms Required

The mailer is not normally required to affix customs forms to IPCS packages sent to Japan if the packages are processed at the JFK Processing Facility. In such cases, the Postal Service prints the necessary customs forms, based on the package-specific information transmitted by the mailer, and affixes the forms to the packages. If the packages are processed at the mailer's plant on Postal Service-provided workstations, those workstations print the necessary forms that the mailer normally affixes to the packages. During the interim period in which the Postal Service and the mailer are establishing the information system linkages to enable the Postal Service to accomplish this, the mailer must affix the appropriate customs forms to the packages, as follows:

* * * * *

628 Preparation Requirements

628.1 Express Service

628.11 Processing at JFK

Every package sent through Express Service must bear a label identifying it as an Express Service package. The mailer is not normally required to affix this label when such packages are processed at the JFK Processing Facility. In this case, the Postal Service prints the necessary label and affixes it to the Express Service package. During the interim period in which the Postal Service and the mailer are establishing the information systems linkages to enable the Postal Service to accomplish this, the mailer is required to affix to every Express Service package Label 11–B, Express Mail Post Office to Addressee, or an alternative label as directed by the Postal Service.

628.12 Processing at Mailer's Plant

When packages are processed at the mailer's plant on Postal Service-provided workstations, the workstations print the necessary label, and the mailer affixes it to the Express Service package.

* * * * *

A transmittal letter making the changes in the International Mail Manual will be published and transmitted automatically to subscribers. Notice of issuance of the transmittal letter will be published in the Federal Register as provided by 39 CFR 20.3.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 95–29323 Filed 11–30–95; 8:45 am]

BILLING CODE 7710–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[FCC 95–213]

Changes in the Delegated Authority of Various Bureaus

AGENCY: Federal Communications Commission.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final regulations (FCC 95–213), which were published July 10, 1995 (60 FR 35503). The regulations related to the delegated authority of various bureaus.

EFFECTIVE DATE: December 1, 1995.

FOR FURTHER INFORMATION CONTACT: Sue McNeil, (202) 418–0660.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction modify the delegated authority of various bureaus.

Need for Correction

The correction is needed because the final regulations inadvertently reinstated language in the delegation of authority of the Compliance and Information Bureau which had been modified while adoption of the regulations was under consideration by the Commission.

List of Subjects in 47 CFR Part 0

Authority delegations (Government agencies), Organization and functions (Government agencies).

Accordingly, 47 CFR Part 0 is corrected by making the following correcting amendments:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for Part 0 continues to read as follows:

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

§ 0.311 [Amended]

2. In § 9.311, paragraph (f), the phrase ''deemed relevant in the investigation of an alleged violation or violations of section 301 (unlicensed operation) or 302a (illegal marketing of radio frequency devices) of the Communications Act of 1934, as amended'' is revised to read ''relating to investigations under the authority of the Communications Act of 1934, as amended. Before issuing a subpoena, the bureau shall obtain the approval of the Office of General Counsel''.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–27299 Filed 11–30–95; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 90

[PR Docket No. 92–235, DA 95–2354]

Private Land Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Final rule; denial of requests for stay.

SUMMARY: On June 15, 1995, the Commission adopted a *Report and Order* which established technical rules and guidelines aimed at improving the efficiency of the PLMR spectrum and facilitating the introduction of advanced technologies into the private mobile services (60 FR 37152, July 19, 1995). In addition, the *Report and Order* mandated the consolidation of the Part 90 Private Land Mobile Radio (PLMR) services, including the Public Safety Radio Services. The PLMR industry was given three months from the effective date of the rules in the *Report and Order* to develop and submit a comprehensive consolidation consensus plan. The *Report and Order* stated that the industry report on radio service consolidation would be required to be submitted on November 20, 1995. The Public Safety Communications Council, the Association of Public-Safety Communications Officials-International, Inc., the International Municipal Signal Association, and the International Association of Fire Chiefs request that the Commission stay consolidation of the Part 90 Public Safety Radio Services until such time as the charter of the Public Safety Wireless Advisory Committee (Advisory Committee) has expired and the Commission has had the opportunity to review and consider the recommendations of the Advisory Committee. Included in the work of the Advisory Committee is the examination of the definition, structure, functions, and ways to enhance telecommunications for the existing Public Safety Radio Services. According to its Charter, the Advisory Committee report is due by September 11, 1996. This order denies the requests for stay as the Petitioners do not meet the standards required for grant of a stay. Specifically, Petitioners have failed to make the required showing of irreparable harm as both the Advisory Committee and the Commission would benefit by the submission of proposals or comments as to how best to accomplish the consolidation of the radio services. Second, Petitioners' requests for stay will harm other Public Safety Radio Services parties and non-public safety radio services as it will remove a specific class of land mobile services from the consolidation planning process and unnecessarily delay and detrimentally affect the PLMR community efforts to achieve more efficient and flexible spectrum use. Finally, we find that a stay is contrary to the public interest because the Commission should continue its efforts to examine and discuss the range of issues facing public safety communications and a failure to submit proposals and comments would delay efforts to consolidate the radio services.

EFFECTIVE DATE: December 1, 1995.

FOR FURTHER INFORMATION CONTACT: Sonia Greenaway of the Wireless Telecommunications Bureau at (202) 418–0680.

SUPPLEMENTARY INFORMATION:

Adopted: November 20, 1995.
Released: November 20, 1995.

By the Deputy Chief, Wireless Telecommunications Bureau.

1. *Introduction.* On June 15, 1995, the Commission adopted a *Report and Order* [1] that, among other matters, mandated consolidation of the Part 90 Private Land Mobile Radio (PLMR) services, including the Public Safety Radio Services.[2] The Public Safety Communications Council (PSCC),[3] the Association of Public-Safety Communications Officials-International, Inc. (APCO), the International Municipal Signal Association (IMSA), and the International Association of Fire Chiefs (IAFC) request that the Commission stay consolidation of the Part 90 Public Safety Radio Services until such time as the charter of the Public Safety Wireless Advisory Committee (Advisory Committee) has expired and the Commission has had the opportunity to review and consider the recommendations of the Advisory Committee.[4] For the reasons stated below, we deny the requests for stay.

[1] *Report and Order,* PR Docket No. 92–235, FCC 95–255, 60 FR 37152 (July 19, 1995).

[2] The Part 90 Public Safety Radio Services (subpart B) include the Fire, Emergency Medical, Forestry-Conservation, Highway Maintenance, Local Government and Police Radio Services, 47 CFR subpart B.

[3] We note that the Executive Committee members of the Council include the Association of Public-Safety Communications Officials-International, Inc. and the International Municipal Signal Association/ International Association of Fire Chiefs. PSCC also seeks a stay with respect to the Subpart C Special Emergency Radio Service.

[4] Parties emphasize that this request for stay does not relate to non-public safety radio services.

2. *Background.* The *Report and Order* established technical rules and guidelines aimed at improving the efficiency of the PLMR spectrum and facilitating the introduction of advanced technologies into the private mobile services. In addition to the technical rules adopted, the Commission concluded that the number of PLMR service pools should be reduced and consolidated. The Commission decided that maintaining twenty service pools is administratively burdensome and that consolidating the PLMR services into 2–4 service pools would lead to greater operational efficiency for users and promote more flexible use of the spectrum.[5] Instead of dictating a specific plan and structure for the radio services under a consolidated system, the Commission encouraged the PLMR community, including users, manufacturers, and frequency coordinators, to submit a consensus plan that would reflect the interests and needs of the community which in turn would assist the Commission in consolidating the service pools. The PLMR industry was given three months from the effective date of the rules in the *Report and Order* to develop and submit a comprehensive consolidation consensus plan. This industry report on radio service consolidation is due November 20, 1995. The Commission stated in the *Report and Order* that it would issue its final rule amendments on consolidation approximately six months after the effective date of the *Report and Order.* Further, if noted that consolidation of the PLMR services will incorporate the PLMR community's recommendations if consensus is achieved but will proceed regardless of the participation of the PLMR community.[6]

3. Independently of this rulemaking, the National Telecommunications and Information Administration (NTIA) and the Commission have established the Advisory Committee to prepare a final report to the NTIA and the Commission on operational, technical and spectrum requirements of Federal, state and local public safety entities through the year 2010. Included in the work of the Advisory Committee is the examination of the definition, structure, and functions of the existing Public Safety Radio Services. According to its Charter, the Advisory Committee will submit a report to the Commission within twelve months of the first formal meeting.[7]

4. *Contention of the Parties.* Petitioners each present similar reasons in support of their requests for stay of the Public Safety Radio Service consolidation, including the filing of a proposal as to how best to consolidate the services pursuant to the Commission's *Report and Order.* Petitioners argue that it would be premature and inappropriate for the Commission to require the filing of a consensus plan and immediate consolidation of the existing Public Safety Radio Services before the Advisory Committee has completed its work.[8] According to PSCC ''[i]t would be needlessly expensive and burdensome on all involved, including the Commission, for the Public Safety services to implement changes * * * and then have to make significant changes again at the conclusion of the (Advisory Committee's) studies and recommendations.'' [9] IMSA and IAFC further contend that they are entitled to a stay under the four-prong test [10] set forth in *Washington Metropolitan Transit Commission* v. *Holiday Tours, Inc.,* 559 F.2d 841 (D.C. Cir. 1977) (Holiday Tours).[11] We will address each applicable ''prong'' below.[12]

5. *Irreparable Harm.* First, IMSA/IAFC contend that failure to allow the Advisory Committee to do its job and provide crucial information which would determine the best way to consolidate existing stations could cause irreparable harm to new applicants as well as existing licensees. They argue that a stay will allow the Commission sufficient time to ensure that policies developed for the Public Safety Radio Services maximize interoperability, efficiency and enhancement of public safety telecommunications and minimize chances for interference or mismanagement of these important services.[13]

6. A stay is an extraordinary remedy which the Commission grants upon request in limited circumstances. Based on the factors presented by the above parties, we conclude that Petitioners do not meet the standards required for grant of a stay. Specifically, we find that Petitioners have failed to make the required showing of irreparable harm. To show irreparable harm, ''the injury must be both certain and great; it must be actual and not theoretical.'' [14] We believe that Petitioners overstate the impact of not granting their request.

7. The Advisory Committee's work and recommendations will be an important vehicle in the Commission's endeavor to ensure that public safety communications are effective, efficient and respond to the increasing demands placed on the public safety community. The consolidation of services is but one of a myriad of issues that the Advisory Committee may address within the extremely confined time frame it is working under. The Advisory Committee will be meeting throughout the coming months to examine issues and make recommendations. The resolution of every issue does not necessarily await articulation in the Advisory Committee's final report. Throughout the process, a number of recommendations may emerge as consensus agreements or be acted upon formally. Importantly, because of its time constraints, the Advisory Committee itself would benefit by the submission of proposals or comments as to how best to accomplish the consolidation of services. Moreover, the Commission's review and analysis of consolidation alternatives can commence while still affording the Advisory Committee an opportunity to make a recommendation on the issue. Under these circumstances, as both the Advisory Committee and the Commission would benefit by the submission of proposals or views addressing the consolidation of services, we find that Petitioners have failed to

[5] The twenty (20) PLMR services which are the focus of this proceeding are the Public Safety Radio Services (Local Government, Police, Fire, Highway Maintenance, Forestry-Conservation and Emergency Medical) the Special Emergency Radio Service, the Industrial Radio Services (Power, Petroleum, Forest Products, Video Production, Relay Press, Special Industrial, Business, Manufacturers, and Telephone Maintenance), and the Land Transportation Radio Services (Motor Carrier, Railroad, Taxicab, and Automobile Emergency).

[6] *Report and Order* at para. 55.

[7] The first formal meeting of the Advisory Committee was held on September 11, 1995. The Advisory Committee report therefore is due by September 11, 1996.

[8] *See,* for example, APCO petition at 2, PSCC petition at 4, and IMSA/IAFC petition at 2.

[9] Public Safety Communication Council comments at 5.

[10] Under this test, a party moving for a stay must show: (1) A strong likelihood of prevailing on the merits; (2) irreparable harm; (3) issuance of a stay will not harm others; and (4) that granting a stay will serve the public interest. IMSA/IAFC note, however, that its pleading addresses only three prongs of the test as there is no underlying litigation and no issue with respect to prevailing on the merits.

[11] *See also Virginia Petroleum Jobbers Ass'n* v. *Federal Power Commission,* 259 F.2d 921, 925 (D.C. Cir. 1958).

[12] We do not herein address ''likelihood of prevailing on the merits.'' This prong is inapposite because these petitions are not filed in conjunction with a contested cause of action between opposing parties.

[13] IMSA/IAFC comments at 6.

[14] *Wisconsin Gas Co.* v. *FERC,* 758 F.2d 669, 674 (D.C. Cir. 1985); *In the Matter of Cincinnati Bell Telephone Company, Requests for Stay of Orders Finding Violations of the Commission's Rate of Return Prescriptions,* 8 FCC Rcd 6709 (1993).

make the required showing of if irreparable harm.[15]

8. *Harm to Others.* Second, IMSA/IAFC allege that the stay will benefit, not harm, other Public Safety Radio Service parties because the Commission's grant of this request will aid in the establishment of a fair and safe frequency coordination process, avoid the implementation of a consolidation plan that conflicts with the intent and direction of the Advisory Committee report, and avert the disruption of dismembering and reconstructing the finalized consolidation plan should the plan prove unworkable in light of the Advisory Committee's recommendations.[16] Further, IMSA/IAFC maintain that non-public safety radio services will remain unaffected as this request for stay does not relate to non-public safety radio services.

9. As we have stated, we are not faced with the circumstance of proceeding in light of contrary recommendations of the Advisory Committee. Those recommendations have not been formulated and in fact, both the Advisory Committee and Commission would benefit by the proposals and comments of industry of how best to accomplish the consolidation of services. Significant potential for harm to others in the PLMR community will accrue if we were to impose a stay in the consolidation of the Public Safety Radio Services. In the *Report and Order,* the Commission noted that it sought a consensus from all users in the PLMR community in developing a consolidation plan. The Commission recognized that this action represented a significant change for all PLMR services. The Commission viewed consolidation as a unified effort by the PLMR community to maximize the effective and efficient operations of the private services. The *Report and Order* emphasized the importance of developing a consolidation plan for all of the PLMR services. A specific comprehensive consolidation plan must include clear guidelines for the structure of the Public Safety Radio Services. Should the public safety community not participate in discussions to develop a consensus for consolidating the radio services, the PLMR community efforts to achieve more efficient and flexible spectrum use could be unnecessarily delayed and detrimentally affected. In short, removing a specific class of land mobile services from the consolidation planning process would significantly and adversely affect the entire ''Refarming'' initiative.

10. *Public Interest.* Third, IMSA/IAFC argue that it is in the public interest to use the Advisory Committee to its maximum potential, and not to risk conflicting directives from the Advisory Committee and the rulemaking proceeding concerning the consolidation of the Public Safety Radio Services.[17] Moreover, these parties state that the delay resulting from this request will be minimal. Again, the Commission is not at a point where it risks even a potential conflict with a recommendation of the Advisory Committee. The Commission is committed to a process that provides the Advisory Committee an opportunity to examine the range of issues facing public safety communications. Our pervading interest is that proposals and comments on the consolidation of services be submitted so that the Commission can continue its efforts in implementing the Refarming initiative, which includes the benefit of any Advisory Committee recommendation addressing the consolidation of services. A stay would likely delay these efforts and be contrary to the public interest.

11. *Conclusion.* For these reasons, and pursuant to § 1.43 of the Commission's rules, the Requests for Stay filed by the Association of Public-Safety Communications Officials-International, Inc., the International Municipal Signal Association and the International Association of Fire Chiefs, and the Public Safety Communications Council are denied.

12. The deadline for filing a consensus plan for consolidation remains November 20, 1995. We will consider, however, the views of the petitioners and the Advisory Committee in conjunction with the recommendations submitted November 20th, prior to issuing a final order on consolidation of the PLMR services.

Federal Communications Commission.

Gerald P. Vaughan,

Deputy Chief, Wireless Telecommunications Bureau.

[FR Doc. 95–29089 Filed 11–30–95; 8:45 am]

BILLING CODE 6712–01–M

[15] ''The most important of [the] factors is irreparable harm, without which other factors need not be considered.'' *In the Matter of Cincinnati Bell Telephone Company, Requests for Stay of Orders Finding Violations of the Commission's Rate of Return Prescriptions,* 8 FCC Rcd at 6710, note 23.

[16] Comments of IMSA/IAFC at 7.

[17] IMSA/IAFC comments at 8.

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 219

[Docket No. RSOR–6; Notice No. 43]

RIN 2130–AA81

Random Drug Testing: Announcement of 1996 Minimum Testing Rate; Designation of New Laboratory for Post-Accident Toxicology Testing

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Final rule and notice of determination.

SUMMARY: Using data from Management Information System (MIS) annual reports, FRA has calculated that the rail industry random drug testing positive rate for 1994 was 0.808 per cent. Since the industry-wide random drug positive rate continues to be below 1.0 per cent, the Federal Railroad Administrator (Administrator) has determined that the minimum annual random drug testing rate for the period January 1, 1996 through December 31, 1996 will remain at 25 percent of covered railroad employees.

This rule also announces that FRA intends to award a contract to Northwest Toxicology, Inc. (Northwest), to conduct post-accident toxicological analysis, effective December 1, 1995.

DATES: This final rule is effective December 1, 1995.

The minimum annual random drug testing rate is 25 percent of covered railroad employees for the period January 1, 1996 through December 31, 1996.

ADDRESSES: Any petition for reconsideration should be submitted to the Docket Clerk, Docket No. RSOR–6, Office of the Chief Counsel, Federal Railroad Administration, 400 7th Street, SW., Room 8201, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Lamar Allen, Alcohol and Drug Program Manager, Office of Safety Enforcement, Operating Practices Division, Federal Railroad Administration, 400 7th Street, SW., Room 8314, Washington, DC 20590, (Telephone: (202) 366–0127) or James T. Schultz, Chief, Operating Practices Division, Office of Safety Enforcement, Federal Railroad Administration, 400 7th Street, SW., Room 8314, Washington, DC 20590, (Telephone: (202) 366–9178).

SUPPLEMENTARY INFORMATION:

Administrator's Determination of 1996 Random Drug Testing Rate

In a final rule published on December 2, 1994 (59 FR 62218), FRA announced that it will set future minimum random drug testing rates according to the rail industry's overall random drug positive rate, which is determined using annual railroad drug program data taken from FRA's Management Information System. Under this performance-based system, FRA will lower the minimum random drug testing rate to 25 percent whenever the industry-wide random drug positive rate is less than 1.0 percent for two calendar years while testing at 50 percent. FRA will return the rate to 50 percent if the industry-wide random drug positive rate is 1.0 percent or higher in any subsequent calendar year. Each year, the Administrator will publish a Federal Register notice announcing the minimum random drug testing rate for the following year.

In 1994, FRA set the 1995 minimum random drug testing rate at 25 percent because 1992 and 1993 industry drug testing data indicated a random drug positive rate below 1.0 percent. In this rule, FRA announces that the minimum random drug testing rate will continue to be 25 per cent of covered railroad employees for the period January 1, 1996 through December 31, 1996, since the industry random positive rate for 1994 was 0.808 per cent.

FRA implemented a parallel performance-based system for random alcohol testing, which will not be fully implemented until January 1, 1996. Since FRA has less than one year of data, the current random alcohol minimum testing rate of 25 per cent will remain the same for 1996.

Designation of New Post-Accident Testing Laboratory

Beginning December 1, 1995, all post-accident toxicological analysis under Subpart C of Part 219 will be conducted by Northwest Toxicology, Inc. Therefore, FRA amends Appendix B to Part 219 to designate Northwest as its laboratory for post-accident toxicological testing.

This rule is being made effective in less than the 30 days from publication otherwise required by law so that FRA can immediately commence testing at its newly designated post-accident testing laboratory. FRA has therefore determined that good cause exists under the provisions of 5 U.S.C. 553(d)(3) to warrant an expedited effective date.

Executive Order 12866 and DOT Regulatory Policies and Procedures

FRA has determined that this rule is nonsignificant under Executive Order 12866 and under the Department of Transportation's Regulatory Policy and Procedures.

The Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. FRA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Federalism Impact

This rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, FRA has determined that this rule does not have sufficient federalism implications to warrant preparation of a Federalism assessment.

Paperwork Reduction Act

FRA has determined that this rule does not significantly change any previously approved information collection requirements.

List of Subjects in 49 CFR Part 219

Alcohol and drug abuse, Railroad safety.

Accordingly, for the reasons stated above, FRA amends 49 CFR Part 219 as follows:

PART 219—CONTROL OF ALCOHOL AND DRUG USE

1. The authority for Part 219 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20111–20113, 20140, 21301 and 21304; Pub. L. 103–272 (July 5, 1994); and 49 CFR 1.49(m).

2. Appendix B to Part 219 is revised to read as follows:

Appendix B to Part 219—Designation of Laboratory for Post-Accident Toxicological Testing

The following laboratory is currently designated to conduct post-accident toxicological analysis under Subpart C of this part: Northwest Toxicology, Inc., 1141 E. 3900 S., Suite A–110, Salt Lake City, UT 84124, telephone: (801) 288–2431 (Day), (801) 483–3383 (Night/Weekend).

Issued in Washington, DC on November 22, 1995.

S. Mark Lindsey,

Acting Administrator, Federal Railroad Administration.

[FR Doc. 95–29288 Filed 11–30–95; 8:45 am]

BILLING CODE 4910–06–P

Proposed Rules

Federal Register
Vol. 60, No. 231
Friday, December 1, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95–ACE–11]

Proposed Amendment to Class E Airspace; Charles City, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Charles City Municipal Airport, Charles City, IA. The development of a new Standard Instrument Approach Procedure (SIAP) based on the relocated Non-Directional Radio Beacon (NDB) has made the proposal necessary. The intended effect of this proposal is to provide an additional 1 mile of controlled airspace for departing aircraft and aircraft executing the SIAP at Charles City Municipal Airport.

DATES: Comments must be received on or before January 6, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Operations Branch, ACE–530, Federal Aviation Administration, Docket No. 95–ACE–11, 601 East 12th Street, Kansas City, Missouri 64106.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the office of the Manager, Air Traffic Operations Branch, Air Traffic Division, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Air Traffic Operations Branch, ACE–530C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone number: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 95–ACE–11.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to provide additional controlled airspace for a new Instrument Flight Rules (IFR) procedure at the Charles City Municipal Airport. The additional airspace would segregate aircraft operating under VFR conditions from aircraft operating under IFR procedures. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Charles City, IA [Revised]

Charles City Municipal Airport, IA
(Lat. 43°04′21″ N, long. 92°36′39″ W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Charles City Municipal Airport.

* * * * *

Issued in Kansas City, MO, on November 14, 1995.

Richard L. Day,

Acting Manager, Air Traffic Division Central Region.

[FR Doc. 95–29356 Filed 11–30–95; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–ACE–12]

Proposed Amendment to Class E Airspace; Clinton, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Clinton Municipal Airport, Clinton, IA. The development of a new Standard Instrument Approach Procedure (SIAP) based on the Global Positioning System (GPS) has made the proposal necessary. The intended effect of this proposal is to provide additional controlled airspace for aircraft executing the SIAP at Clinton Municipal Airport.

DATES: Comments must be received on or before January 8, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Operations Branch, ACE–530, Federal Aviation Administration, Docket No. 95–ACE–12, 601 East 12th Street, Kansas City, Missouri 64106.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the office of the Manager, Air Traffic Operations Branch, Air Traffic Division, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Air Traffic Operations Branch, ACE–530c, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone number: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 95–ACE–12.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to provide additional controlled airspace for a new Instrument Flight Rules (IFR) procedure at the Clinton Municipal Airport. The additional airspace would segregate aircraft operating under VFR conditions from aircraft operating under IFR procedures. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective

September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Clinton, IA [Revised]

Clinton Municipal Airport, IA
(Lat. 41°49′52″N, long. 90°19′45″W)
Davenport VORTAC
(Lat. 41°42′30″N., long. 90°29′01″W)
Clinton NDB
(Lat. 41°49′43″N., long. 90°19′40″W)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Clinton Municipal Airport and within 1.8 miles each side of he 044° radial of the Davenport VORTAC extending from the 6-mile radius to the VORTAC and within 4.5 miles each side of the 316° bearing from the Clinton NDB extending to 10.5 miles northwest of the NDB and within 1 mile each side of the 146° bearing from the Clinton Municipal Airport extending from the 6-mile radius to 9.5 miles southeast of the airport.

* * * * *

Issued in Kansas City, MO, on November 14, 1995.

Richard L. Day,

Acting Manager, Air Traffic Division Central Region.

[FR Doc. 95–29355 Filed 11–30–95; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–AEA–05]

Proposed Establishment of Class E Airspace; Clarksville, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would establish Class E Airspace at Clarksville, VA. A standard instrument approach procedure (SIAP), based on the Global Positioning System (GPS), has been developed for Runway (RWY) 4 at Marks Municipal Airport, Clarksville, VA. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations to the airport. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before February 29, 1996.

ADDRESSES: Send comments on the proposed rule in triplicate to: Manager, System Management Branch, AEA–530, Docket No. 95–AEA–05 F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the System Management Branch, AEA–530, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, System Management Branch, AEA–530, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 95–AEA–05''. The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace extending upward from 700 feet above the surface (AGL) at Clarksville, VA. A GPS RWY 4 SIAP has been developed for Marks Municipal Airport. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for IFR operations at the airport. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace extending upward from 700 feet above the surface are published in Paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, is proposed to be amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA VA E5 Clarksville, VA

Marks Municipal Airport, VA
(Lat. 36°35′45″ N, long. 78°33′37″ W)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Marks Municipal Airport excluding that portion within the Chase City Municipal Airport 700 foot Class E Airspace Area.

* * * * *

Issued in Jamaica, New York, on November 30, 1995.

John S. Walker,

Manager, Air Traffic Division.

[FR Doc. 95–29353 Filed 11–30–95; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–AEA–07]

Proposed Amendment to Class E Airspace; Elkins, WV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Elkins, WV. The development of a new Standard Instrument Approach Procedure (SIAP) at Elkins-Randolph County-Jennings Randolph Field based on the Global Positioning System has made this proposal necessary. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for instrument flight rules (IFR) operations at the airport.

DATES: Comments must be received on or before February 29, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, AEA–530, Docket No. 95–AEA–07, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined in the during normal business hours in the System Management Branch, AEA–530, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, System Management Branch, AEA–530, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 95–AEA–07.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Class E airspace area at Elkins, WV. A GPS RWY 23 SIAP has been developed for the Elkins-Randolph County-Jennings Randolph Field. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for IFR operations at the airport. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, l959–1963 Comp., p. 389; 14 CFR 11.69.

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, is proposed to be amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA WV E5 Elkins, WV

Elkins-Randolph County-Jenings Randolph Field Airport, WV
(Lat 38°53′22″ N, long. 79°51′25″ W)

That airspace extending upward from 700 feet above the surface within a 11-mile radius of Elkins-Randolph County-Jennings Randolph Field Airport.

* * * * *

Issued in Jamaica, New York, on November 30, 1995.

John S. Walker,

Manager, Air Traffic Division.

[FR Doc. 95–29352 Filed 11–30–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 801, 803, 804, and 897

[Docket No. 95N–0253]

Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco Products to Protect Children and Adolescents: Findings of the Focus Group Testing of Brief Statements for Cigarette Advertisements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of findings.

SUMMARY: The Food and Drug Administration (FDA) is announcing the findings of focus groups concerning the brief statements that would be required on all cigarette advertising. On August 11, 1995, FDA issued a proposed rule which, among other things, would require cigarette advertising to carry a brief statement on the relevant warnings, precautions, side effects, and contraindications pertaining to cigarette use. The agency said it would perform extensive focus group testing on the proposed brief statement. This document announces the findings of that focus group testing.

DATES: Written comments by January 2, 1996.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Office of Policy (HF–23), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3380.

SUPPLEMENTARY INFORMATION: In the Federal Register of August 11, 1995 (60 FR 41314), FDA published a proposed rule that would restrict the sale and distribution of cigarettes and smokeless tobacco products in order to protect children and adolescents. The proposed rule, among other things, would require cigarette advertising to carry a brief statement, such as ''About one out of three kids who become smokers will die from their smoking.'' The preamble to the proposed rule stated that FDA would conduct focus group testing of this proposed brief statement to evaluate the content and various formats for the brief statement to determine if the warnings are communicated effectively (60 FR 41314 at 41338). FDA also stated that it would base the design, format, and content of the brief statement which is required by section 502(r) of the Federal Food, Drug, and Cosmetic Act on all advertisements and other descriptive printed matter pertaining to restricted devices) on the results of the focus group testing and on comments to the proposed rule.

FDA has completed the focus group testing and, through this document, is announcing the focus groups' findings. FDA will use the report, as well as comments submitted on the report, to determine the design, format, and content of the brief statement when preparing a final rule. The report is accompanied by sample graphics illustrating how a brief statement might be presented and by two moderator's guides.

Interested persons may on or before January 2, 1996, submit to the Dockets Management Branch (address above) written comments on the focus group report. Two copies are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

The report, entitled, ''Findings of the Focus Group Testing of Brief Statements for Cigarette Advertisements,'' is as follows:

Executive Summary

Macro International, a research firm which provides survey, market research, and focus group services worldwide, was awarded a contract from the U.S. Food and Drug Administration (FDA) to conduct a series of focus groups with adolescents to compare and evaluate brief statements directed to teens that address the risks of smoking. Macro has done nationally-representative surveys and demographic studies in 80 countries and has offices with state-of-the-art focus group facilities in its headquarters outside Washington DC, New York City, Moscow, Warsaw, Prague, Budapest, and Burlington VT.

This contract included two series of focus groups. The purpose of the first series of groups, held in Calverton, Maryland, was to examine a number of brief statements about smoking to determine which of several kinds of messages teens found most compelling. The purpose of the second series of focus groups, held in cities around the U.S., was to evaluate a shortened list of messages and consider methods of presentation that would be most effective in informing teens about the risks of smoking. Participants in these focus groups were 12–17 year old males and females, and included both smokers and non-smokers. The focus groups were held during October and November, 1995.

I. Assumptions and Basic Perceptions of Adolescent Smoking

According to the participants in the focus groups, smoking among teenagers is widespread. Almost all teens will try smoking at some point during their adolescence. There is little stigma attached to experimentation with smoking, since many teens consider it to be a ''rite of passage''. Few teens who are just beginning to smoke consider themselves at risk for becoming addicted to cigarettes because they are convinced that they can quit at any time. The groups said that teens try smoking because of peer pressure; the desire to do something that they perceive to be an adult activity; and as a way to rebel against their parents, either overtly or covertly.

Some of the focus groups did have active, regular smokers as part of the group, and the attitudes about smoking expressed by these participants was quite different than those expressed by non-smokers or occasional smokers. Participants who indicated that they were regular smokers did not mention any of the reasons given by ''social smokers'' as their reasons for smoking. They do not smoke in groups, nor do they smoke for social acceptance. Rather, they smoke because it ''calms them down'' or satisfies a physical need. Non-smokers or infrequent smokers indicated that they felt most people could stop smoking at any time; the teens who said they were addicted to smoking made it clear that, for them, smoking was no longer a matter of choice but a matter of need.

II. Perceptions of Cigarette Advertising

All of the groups expressed familiarity with the cigarette advertisements shown to them, and many were aware of incentive programs sponsored by major cigarette manufacturers, whereby cigarette smokers could receive clothing items or other products by cashing in ''Camel dollars'' or ''Marlboro miles'' for products from a catalog. The focus groups said that they felt the

primary target of cigarette ads were teens and young adults, and that ads show people having a good time so that kids will think that their lives will improve if they smoke.

III. Perceptions of Surgeon General's Warnings

Unless prompted, the participants did not think of the Surgeon General's warning as part of the advertisement. They are aware that it is there, but it is considered a required element that is skipped over as a matter of course. Participants thought that it was required by the government or that it was there to keep people from suing the manufacturer for smoking-related illnesses or death. Participants did not think that the current Surgeon General's warnings were effective. They said that the terminology used was too complex (emphysema and carbon monoxide were two terms cited repeatedly as being too complex for them to understand), and that the ads seem to be designed to make the messages as unnoticeable as possible.

IV. Perceptions of New Brief Statements

All groups were shown a variety of new brief statements that were intended to be directed primarily toward teenagers. Responses to the messages appeared to fall into three general categories: positive responses from most or all of the participants; mixed responses, where some groups responded positively but others did not; and messages that were poorly received by all groups. A ''positive'' response was defined as one where participants indicated that teens their age would read the message, consider the implications of the message, and perhaps change behavior because of it. Mixed responses included some positive responses, but also included neutral or negative responses to the brief statement. A response was categorized as negative if a whole group never liked the message.

The message that received the most positive response from groups across the country was one that said, ''Tobacco kills more Americans each year than AIDS, alcohol, accidents, murder, suicides, illegal drugs, and fires * * * combined.'' Other messages that received generally positive responses from most groups were, ''About one out of three kids who become smokers will die from their smoking,'' ''Of the 3000 young people who begin smoking each day, 1000 will die from their smoking,'' and ''Tobacco causes shortness of breath, coughing, yellow teeth and wrinkles.'' It is notable that the messages that received the most positive responses from the groups were those which presented facts and figures.

Messages that received mixed consideration from the groups were those that were directed at a limited audience such as ''Smoking hurts your athletic performance''; or those that the groups considered to be ''slogans,'' such as ''Addiction happens much faster than you think'' or ''Everyone now addicted to cigarettes started out 'just trying' cigarettes.''

Several brief statements received negative responses from all groups to whom they were shown. They included most of the messages addressing the issue of addiction, such as ''Addiction sucks you in to a lifetime of smoking,'' ''Smoking is a deadly addiction,'' and ''Kids who start smoking find they can't stop—once it's too late.''

V. Perceptions of Possible Design Elements for the Brief Statements

The major design elements that groups saw as leading to visual prominence were type size, distinctive borders, a color that contrasted with the rest of the ad, and to a lesser extent use of a distinctive icon. Most groups recommended using a very large type size to increase the visual prominence of the brief statement and to make it easier to read. All groups were enthusiastic about the use of a jagged border to draw attention to the brief statement. They also recommended varying the message and varying its appearance over time so that consumers would not habituate to its appearance.

Participants said that a brief statement would be most effective if it was visually prominent in the ad, and that the optimal design of the brief statement would necessarily depend upon the design of a particular advertisement. Thus, several groups recommended that the brief statements should be added after the advertisement was designed to minimize the likelihood of it being designed to reduce the impact of the brief statement. If that was not possible, many groups indicated that placing the message at the top of the advertisement or in the middle would be optimal for getting attention.

Many of the groups said that the new brief statement should be more visually prominent than the Surgeon General's warning, and that the new statement should be distinct from the Surgeon General's warning.

VI. Other Findings

1. A common sentiment expressed by participants in some groups was that the best way to present the information would be as a stand-alone advertisement portraying the risks of smoking rather than as part of a cigarette advertisement.

2. Smokers and non-smokers expressed similar sentiments about messages that were effective, and about how to convey messages about the risks of smoking in ways that would appeal to adolescents.

3. Most groups expressed the belief that any messages about the risks of smoking would be most effective with younger children or with people who had not yet started to smoke, rather than with current smokers.

Methodology

Number and Composition of Groups

A total of 19 focus groups were held in five cities across the United States. Cities were selected to reflect a diversity of populations. The cities used for this study included Calverton, Maryland (a suburb of Washington, DC); Minneapolis, Minnesota; Charlotte, North Carolina; Houston, Texas; and San Francisco, California. Groups included participants that represented the ethnic diversity of the geographical area. All groups were segmented by age, with approximately one-half of the groups comprised of 12–14 year olds and the rest of 15–17 year olds. All groups were single sex groups with the exception of a mixed group of 15–17 year old males and females in Calverton. The groups in Calverton, Charlotte and Minneapolis were pre-screened to determine smoking status of participants; the groups in San Francisco and Houston were not pre-screened for smoking status since the recruiting experiences from Calverton, Charlotte and Minneapolis assured the project personnel that both smokers and non-smokers would be included in all groups regardless of whether or not participants were pre-screened.

All of the focus groups for this project were 90–120 minutes long. During Phase I of the project (the Calverton groups), the primary objective was to determine which of 15 messages presented to participants were received the most positively. During Phase II of the project, the primary objectives were to refine the list of acceptable messages even further; and to obtain feedback about how the brief statements could be presented to showcase the message most effectively.

Schedule of Groups

Calverton, Maryland: 3 groups at Macro's focus group facility
October 17, 5:30 p.m. - 8 Boys, 12–14 years old - Smokers
October 18, 4:30 p.m. - 8 Girls, 12–14 years old - Mix of smokers and non-smokers
October 18, 6:30 p.m. - 8 Boys and Girls, 15–17 years old - Smokers
Charlotte, North Carolina: 4 groups at FacFind, Inc.
October 24, 4:30 p.m. - 7 Girls, 12–14 years old - Smokers
October 24, 6:30 p.m. - 8 Girls, 15–17 years old - Mix of smokers and non-smokers
October 25, 4:30 p.m. - 8 Boys, 12–14 years old - Mix of smokers and non-smokers
October 25, 6:30 p.m. - 9 Boys, 15–17 years old - Smokers
Minneapolis, Minnesota: 4 groups at Orman Guidance Research
October 24, 4:30 p.m. - 8 Girls, 12–14 years old - Mix of smokers and non-smokers
October 24, 6:30 p.m. - 8 Girls, 15–17 years old - Smokers
October 25, 4:30 p.m. - 8 Boys, 12–14 years old - Mix of smokers and non-smokers
October 25, 6:30 p.m. - 8 Boys, 15–17 years old - Mix of smokers and non-smokers
Houston, Texas: 4 Groups at CQS Research Inc.
October 31, 4:30 p.m. - 8 Girls, 12–14 years old - Mix of smokers and non-smokers
October 31, 6:30 p.m. - 5 Girls, 15–17 years old - Mix of smokers and non-smokers
November 1, 4:30 p.m. - 9 Boys, 12–14 years old - Mix of smokers and non-smokers
November 1, 6:30 p.m. - 7 Boys, 15–17 years old - Mix of smokers and non-smokers
San Francisco, California: 4 groups at Fleischman Field Research, Inc.
November 8, 4:00 p.m. - 8 Girls, 12–14 years old - Mix of smokers and non-smokers
November 8, 6:00 p.m. - 8 Girls, 15–17 years old - Mix of smokers and non-smokers
November 9, 4:00 p.m. - 8 Boys, 12–14 years old - Mix of smokers and non-smokers
November 9, 6:00 p.m. - 8 Boys, 15–17 years old - Mix of smokers and non-smokers

Recruitment

Calverton Groups

Macro used Olchak Market Research, Inc. (OMR) to recruit the 3 groups in Calverton. OMR had been used successfully by Macro in the past to conduct recruitment efforts for focus groups. OMR maintains a randomly collected database of individuals who are likely to participate in focus groups or other market research projects. To maintain and add to this database, OMR calls individuals at random and explains that they are a market research firm which periodically performs market surveys and recruits for focus groups. They inform the individual that participants in these projects are paid for their time, then they ask whether the individual would be interested in participating in a future project. If the individual is interested in participating, his/her demographic information is recorded for future use. OMR does not use address lists provided by organizations, nor does it use individuals who contact them and ask to be placed on their list since many of these people are ''professional'' survey and focus group participants.

To ensure that a sufficient sample of adolescents attended, 14 youths were recruited for each group so that each group had 9 participants. OMR called adult individuals who were known to have children in the desired age range (12–17 years old), and used the attached screening instrument in their recruiting efforts. OMR made first contact with the parents of each youth. If the parents approved of their child's participation in the group, the child was then screened to determine if his/her age group (12–14 or 15–17 years old), gender, ethnicity, and smoking status fit the profiles called for in any of the 3 Calverton groups. If the youth's profile matched the desired profile for one of the groups, he/she was asked to participate and offered a $40 incentive. Cash incentives are routinely used in focus group projects to ensure that participants attend groups that they have been asked to attend. All recruits were sent a confirmation letter by OMR, and OMR also telephoned them within 36 hours of the focus group to confirm their attendance. Each confirmation letter also contained a parental permission form which had to be completed and signed before any youth was allowed to participate in a group or receive the incentive payment.

Other Cities

Recruiting in Charlotte, Minneapolis, Houston, and San Francisco was performed by the individual focus group facilities with guidance from Macro staff. Each facility's recruiting methodology mirrored OMR's in most respects, except that the facilities in Houston and San Francisco did not screen participants for their smoking status for any group. Pre-screening for these groups was not required because the recruiting patterns in Calverton, Charlotte and Minneapolis indicated that a mix of smokers and non-smokers would result whether smoking status was pre-screened or not.

Statement of Limitations

In market research, the focus group approach seeks to develop insight and direction rather than quantitatively precise or absolute measures. Because of the limited number of respondents and the restrictions of recruiting, this research must be considered in a qualitative frame of reference.

This study cannot be considered reliable or valid in a statistical sense since the recruiting of participants cannot be replicated, nor can the moderator ask the same questions of other respondents. This type of research is intended to provide guidance in determining knowledge, awareness, attitudes and opinions about concepts, products, or advertising formats.

Certain biases are inherent in this type of study and are stated here to remind the reader that focus group data cannot be projected to any universe of individuals. First, participants tend to be risk takers and may be somewhat more assertive than non-participants. Second, participants in a focus group study ''self-select'' themselves by the very fact that they are those people who were available at a time a particular group was scheduled. Participants thus were not selected randomly so that each person in a pool of possible participants did not have an equal chance of being selected. Third, participants who attend focus group sessions may be more articulate and willing to express opinions in a group than non-participants. And finally, people in groups may respond differently to a question than if asked the same question individually. They may follow the lead of a strong speaker or someone they perceive as ''expert,'' despite efforts of the moderator to eliminate this bias.

This report cannot accurately detail the wealth of information in the non-verbal area, such as ''body language,'' (posture, sleepiness, wiggling in the chair, etc.) or the amount of time elapsed between questions from the moderator and actual responses from the group. It also cannot report on the subtle area of ''peer pressure''—the willingness to avoid making a particular response because of fear of what others in the group might think, or quickly changing a response when others in the group appear to oppose a particular position.

Finally, the reader is reminded that this report is intended primarily to clarify cloudy issues and point the direction for future research, and that data here cannot be projected to a universe of similar respondents.

Moderators

Two moderators were used for this project. Both are Macro employees with professional moderator training and significant practical experience moderating focus groups. The moderator for the Charlotte and San Francisco groups was trained at the Burke Institute in Cincinnati, Ohio. The moderator for the groups in Calverton, Minneapolis, and Houston was trained at the Riva Institute in Bethesda, Maryland.

Data analysis

All of the focus groups were taped. The tapes were used to develop transcriptions of the sessions for preparation of the report. All direct quotations in this report were identified via the professional transcriptions, which were produced by SAG Corporation in Washington, DC with tapes supplied by Macro.

Protection of privacy of participants

All participants and their parents were promised anonymity for their participation in this study. Thus, no participant names or other identifying characteristics appear in this report.

Format for Discussion

Phase I—Calverton

The primary objective of the Calverton groups was to obtain adolescents' reactions to 15 messages that had been developed as possible brief statements directed towards teens. In addition, participants were queried about attitudes toward smoking among their contemporaries and attitudes toward cigarette advertising among this population. Thus, the discussion for these groups followed the following format:

A. Discussion of Cigarette Advertising

Participants were queried about their knowledge of cigarette advertising and their perceptions of what messages cigarette advertisements were attempting to convey. Sample cigarette advertisements were present to aid the discussion.

B. Discussion of Surgeon General's Warnings

The moderator focused discussion upon the Surgeon General's warnings currently appearing on cigarette advertisements and elicited reactions to those warnings.

C. Presentation of Sets of Brief Statements

Participants were presented with four sets of brief statements, with each set containing messages that addressed different aspects of smoking. Statements were presented in sets to ease the process of comparison and selection of the most effective messages, due to the large number of brief statements that were presented to this group. The four sets of messages presented to the Calverton groups were:

Set 1

Kids who smoke like adults get addicted like adults.

Tobacco kills more Americans each year than AIDS, alcohol, accidents, murder, suicides, illegal drugs and fires * * * combined.

The earlier you start smoking the greater your risk of lung cancer.

Smoking harms your baby.

Set 2

Most teen smokers believe they can quit but after six years 75% still smoke.

About one out of three kids who become smokers will die from it.

Tobacco causes shortness of breath, coughing, wheezing, yellow teeth and wrinkles.

Cigarette smoke has more than 4000 chemicals including ones that cause cancer.

Set 3

Tobacco kills more people every day than 2 jumbo jets crashing with no survivors.

Smoking is a deadly addiction.

Smoking today leads to fewer tomorrows.

Set 4

Kids who start smoking find they can't stop—once it's too late.

Everyone now addicted to cigarettes started out 'just trying' cigarettes.

Most smokers wish they could quit but can't.

70% of smokers wish they could quit.

Addiction happens much faster than you think.

D. Discussion of Similarities and Differences of Preferred Messages

Based upon the responses to the messages listed above, each group selected their preferred messages and discussed the reasons why they chose certain messages over the others presented.

Phase II—Charlotte, Minneapolis, Houston, San Francisco

The primary objective of the groups in the cities outside the Washington, DC area was to further refine the list of appropriate messages and then develop presentation criteria that would make the brief statements most effective within the context of cigarette advertisements.

A. Discussion about Kids and Smoking

Participants were asked to talk about the number of their peers that smoked, reasons teenagers smoke, and situations in which teens would most likely be smoking. The topic of addiction and how teens perceive addiction also was discussed in many of the groups. Participants were told at the outset that whether or not they personally smoked was their own business, and that what the moderator was interested in was their perception of how teens in general regarded smoking. Participants also were told about and asked to discuss recent trends in the rate of adult and teen smokers.

B. Cigarette Advertising

Examples of cigarette ads on pasteboard displays were shown to the groups and the participants' familiarity with the ads, as well as their reactions to them, were discussed. The moderator also focused discussion upon the Surgeon General's warnings currently appearing on cigarette advertisements and elicited reactions to those warnings.

C. Presentation of New Brief Statements

Based upon the responses to the brief statements of the Calverton groups, seven message were tested in the focus groups held in Charlotte and Minneapolis. These messages were discussed individually and favorite messages were selected by each group. The messages presented included:

Smoking today leads to fewer tomorrows.

Of the 3000 young people who begin smoking each day, 1000 will die from their smoking.

About one out of three kids who become smokers will die from their smoking.

Tobacco kills more Americans each year than AIDS, alcohol, accidents, murder, suicide, illegal drugs and fires * * * combined.

Everyone now addicted to cigarettes started out ''just trying'' cigarettes.

Tobacco causes shortness of breath, coughing, yellow teeth and wrinkles.

Addiction happens much faster than you think.

In addition to the seven messages listed above, three new messages were tested in Houston and San Francisco. These messages were:

Smoking hurts your athletic performance.

Addiction sucks you into a lifetime of smoking.

Non-smokers run faster than smokers.

D. Discussion of Message Format and Placement

Each group then was asked to discuss the issue of presentation of brief statements on advertisements. Using the pasteboards of existing advertisements, each group examined issues such as: the size of the message; position of the message; different types of boundaries; whether or not attribution of the message was effective (for example, attribution of a factual statement to the Centers for Disease Control); the use of icons to draw attention to a message; or other factors identified by the groups. To evaluate each of these factors, sample messages in different sizes, shapes, with/without attribution, with/without icons, and with/without specialized borders were developed so that the moderator (or participants) could demonstrate placement of the brief statements in various configurations.

Participants were presented with sample brief statements in three sizes. The ''large'' messages were 25 percent of the total height of the ads used as samples for the groups. The statements identified as ''medium'' sized were 15 percent of the total height, and the ''small'' versions were 8 percent of the total height, which is the approximate size of the Surgeon General's warning.

E. Summary of Preferences

Each group summarized its preferences for the messages that participants preferred and the placement and design elements that would be most effective in drawing the attention of adolescents to the dangers of smoking. Participants also used this occasion to make other recommendations that might make the messages more effective.

General Findings

I. Assumptions and Basic Perception of Adolescent Smoking

1. All of the groups indicated that a high percentage of adolescents will try cigarette smoking at some point during their teenage years. Estimates of the number of teens who will try smoking ranged from 50 to 99 percent. The major reasons given for why teens try smoking included: peer pressure; doing something that adults would not approve of; the perception of smoking as a ''cool'' activity; curiosity; and being around parents, other family members and friends who smoke.

''pressure from your friends''

''It's kind of like you go out and somebody offers you a cigarette and everybody else has one * * *.''

''It's more they're being rebels.''

''Some people, well, you know, like, do it to be cool.''

''Lots of people, most of the kids I know, my friends, their, like, their brothers and sisters give them a cigarette, saying, 'You want to try it yet?'''

2. The adolescents in our groups indicated that teens attach little stigma to smoking because it is seen as an exploratory behavior rather than as a permanent lifestyle choice. Smoking appears to be not a lifestyle choice, but rather a matter of ''trying it out,'' ''exploring what it is like,'' and an informational pre-decisional behavior.

''* * * you know, other people are doing it, so why not try it?''

''At the beginning, it would be like just curiosity and wanting to know what it's like.''

3. When asked where they get cigarettes, the adolescents in these groups indicated that they get them from family or friends who smoke; they buy them at convenience stores or other retail outlets known for allowing minors to purchase cigarettes; or they steal them.

''Well, I'm speaking from experience because when I was growing up my brother would buy them for me.''

''You just go up to the counter, and even if you don't have any ID, you can still get them.''

4. Teens that are just trying smoking stated very different reasons for smoking than teens who regularly smoke. The teens in these focus groups said that people try smoking to feel cool; to experience something that they consider to be ''adult'' behavior; and because of social pressures to try smoking in group situations. In contrast, the participants who identified themselves as smokers said that they smoked because it calms them down, or because smoking satisfies a physical and mental need. They indicated that they do not smoke in groups, nor do they smoke for social acceptance, but rather to meet bodily needs.

''It's like, oh, I smoke but I just do it after school. Have a cigarette to calm down or something.''

''I used to be real jittery and nervous all the time, and it really calms me down.''

''Your body craves it. You don't think about it anymore. It just becomes part of your life, just to have a cigarette.''

5. Some of the practiced smokers in the groups expressed a very fatalistic attitude about their lives, and they questioned the likelihood of whether they would live a long time.

''They're going to die anyway. At least they're doing something they want to do.''

6. Non-smokers in these groups were often critical of people who smoke regularly as adults, calling the behavior ''stupid'' or ''unhealthy.'' However, their criticism often was tempered by the fact that they know family members, relatives or other respected adults who are or have been longtime smokers.

''People smoke because they're putting lots of nicotine in their blood and killing themselves.''

''I mean, it's like suicide, you know?''

II. Perceptions of Cigarette Advertising

1. The adolescent participants in the focus groups were very familiar with cigarette advertising. There was 100% recognition of familiar ads, such as Camel, Marlboro, Virginia Slims, and Newport ads. There also was high awareness of the availability of promotional items with cigarette logos on them, such as T-shirts, book bags, etc. Participants explained how one could accumulate ''Marlboro Miles'' or ''Camel C Dollars'' to acquire such items.

''Yeah, you get, like, at certain brands you get points for them and you can turn them points in for, like, Zippo lighters or jackets and bags.''

''They're every camel with a cigarette in his mouth. They go like, 'Everyone have a good time.'''

2. There was high awareness in all of the groups of familiar slogans, logos on billboards, and point-of-purchase displays. Some participants expressed the belief that cigarettes are advertised on television, although others in the groups usually pointed out that cigarette advertising was not allowed on TV.

''It showed him smoking a Winston and said, 'See, you really can be a winner!'''

''Everyone associates that orange and green with Newport * * *''

3. Most of the participants indicated that they did not believe that they were influenced by cigarette advertisements.

''I mean, it has nothing to do with the ads. They don't keep me from it, nor they don't make me do it.''

''If you're just flipping through a magazine and you see it, you might stop and you might see something you like about it, and then flip on through. You don't really think of smoking or not smoking.''

4. Participants in all of the groups responded that text-only ads are less attractive and less likely to be effective than ads with pictures. Although they indicated that consumers would be less likely to read the new warnings on text-only advertisements, they felt that text-only ads may serve to lessen teen smoking. The younger participants in particular said that anything requiring reading was boring and much less likely to attract their attention.

''I probably wouldn't look at it in the first place because it's black and white.''

''People like pictures, not a whole bunch of words.''

''Yeah, you won't even look at it. It's just a bunch of words.''

''It's like a birthday card. You get a birthday card that has too many words, you just skim through it and get the money out of it.''

III. Perceptions of Surgeon General's Warning Statements

1. All of the groups recognized the Surgeon General's warnings, but unless they were prompted, they did not appear to consider the Surgeon General's warning a part of the advertisement. Participants expressed the belief that it was there because it was required by the government, or because cigarette manufacturers were trying to protect themselves from lawsuits.

''They are required by law. They wouldn't put it on there if they weren't.''

''If they didn't put them on there, they would get sued.''

2. Participants also commented that the Surgeon General's warnings often were too small and camouflaged within the context of the ad, either through the use of colors that helped the warning ''blend in'' with the background colors—the Marlboro ad, for example, which features white snow or sand surrounding the white Surgeon General's warning—or with images that directed the eye away from the warning message. Most groups also mentioned that the warning itself was often quite small in relation to the ad on which it appeared.

''You can see, like, on that one [Virginia Slims ad], they put it down in the bottom corner, when you're looking, like, at that lady.''

''They glance at it, but what they see is the thing that's being advertised. They don't notice that little small print.''

''They blend it in with that white with the white snow on it, they just put it right at the bottom in the white snow.''

3. Many participants expressed the belief that the Surgeon General's warnings were difficult to understand. They did not know what effect carbon monoxide would have on them, for example, and many participants did not know what emphysema was.

''Kids are not going to know what carbon monoxide is.''

IV. Perception of New Brief Statements

1. There was a high degree of consensus about which statements were more or less liked.

2. The statements that were received most positively were those that included factual statements about the health risks associated with regular (i.e. long term) smoking.

''Dying means a lot.''

''I think the numbers * * * might make it a little more noticeable.''

''It makes it more real.''

''Picture like 1,000 people dying at once, you know?''

3. The one brief statement that consistently was identified as effective was the one that stated, ''Tobacco kills more Americans each year than AIDS, alcohol, accidents, murder, suicides, illegal drugs and fires * * * combined.'' Most of the participants indicated that, although they knew that smoking was not good for them, they were unaware that smoking was as dangerous as this statement indicated. They mentioned AIDS, accidents, illegal drugs, and suicide as well-publicized causes of death, but that cigarette-related deaths were not so obvious because they generally occurred among older people as a result of long illnesses rather than in sensational situations that were covered by the nightly news.

''You are always hearing about how many people die from AIDS and alcohol and murder, and tobacco kills more than all of them combined. That ought to freak them out.''

''I think even little kids who are younger, people do realize the serious effect of AIDS, and if they think that AIDS is bad then they have to realize that tobacco is worse.''

''Because you hear about those things more than you ever hear about tobacco.''

4. A message that stated that ''About 1 in 3 kids who become smokers will die from it'' also was considered effective by many of the groups. A similar statement that said ''1000 out of 3000'' was also considered effective by some participants, while others said that teens would be likely to think that they could ''beat the odds'' if they became smokers.

''Well, they'll think, 'It won't happen to me. I'll go ahead and do it anyway.' They'll think they'll be one of the two.''

5. Many of the groups indicated that, if one of the brief statements listed above was included on advertising, it is likely that people who were considering smoking might reconsider, due to the seriousness of the consequences.

6. The message about the short term effects of smoking on physical appearance and fitness appealed to some groups, particularly the girls, who were more concerned about yellow teeth and wrinkles. Groups thought that such a message about the more immediate effects smoking would be useful because it spoke to everyday concerns of kids.

''That will make them realize that if they are going to smoke, it will have an effect on their looks.''

''I think people like are more worried about what they look like on the outside than like maybe like lung cancer or something.''

''* * * that's one of the main reasons why I don't smoke because it affects how I run and stuff like that.''

7. No other message of those tested received support from more than a few groups. Individual groups were favorable toward ''Everyone now addicted to cigarettes started out 'just trying,'' ''Smoking today leads to fewer tomorrows,'' or ''Smoking hurts your athletic performance,'' but other groups did not see these messages as particularly effective.

8. Other messages were universally disliked or ineffective.

9. There was no discernible difference in reactions to messages between smokers and non-smokers. Both smokers and non-smokers appeared to have similar taste in messages.

10. Several messages addressing the addiction aspect of smoking were tried and proved ineffectual.

V. Perception of Possible Design Elements for New Brief Statements

1. All groups indicated that the guiding design principle for the brief statements was for the statements to be visually prominent in the ad.

2. All groups recognized that the optimal design of the brief statement, particularly placement, would necessarily depend on the design of the particular advertisement. For example, all groups indicated that advertisers would try to design their ads to diminish the visual performance of the brief statement, like they do with the Surgeon General's warning. Some groups recommended that the brief statements be added after the advertisement was designed to minimize the possibility of it being designed to reduce the impact of the brief statement.

''Well, if it's in the middle then they will be forced to read it, because you have to look at it.''

''If it's possible, right in the middle.''

''I am an artist and I notice that a lot of propaganda is, they have a pattern through the picture, so your eyes tend to follow the pattern. Like when you see the cigarette it sort of points to her face, you see the pizza and her laughing and you see him, and the Surgeon General's warning is always somewhere obscured.''

''They'll design the picture to avoid it, I think.''

3. Many of the groups said that the new brief statement should be more visually prominent than the Surgeon General's warning—which led them to say that the new

brief statements needed to be distinct from the existing Surgeon General's warning.

''I mean, because if you have one of those, except bigger, you know, 'Oh, it's another Surgeon General's warning.' I mean, you skip over it again. But they do it, say, right in the middle, if they do write it in the same kind of style but make it look different some sort of way, you know, have it kind of in similar writing but not necessarily the block writing, it might be—people are more apt to read it.''

''The little one is almost the size of the Surgeon General's itself, so you're not improving it too much.''

4. Although placement was seen as the design element most dependent upon the specific advertisement, many groups recommended that, if possible, the message be put at the top of the ad or in the middle to ensure the greatest visibility.

''Because when you pick it up that's where you start reading.''

''If you put it in a place where it stays away from all the words, it would do a lot to make it stand out.''

''Put either one [Surgeon General's warning or brief statement] at the top. You are going to read that before you read the thing [ad].''

5. The major design elements that groups saw as contributing to visual prominence were type size, distinctive borders, and to a lesser extent, the use of a distinctive icon. Most groups said that the bigger the type size, the better, because it made it easier to read and more likely that the brief statement would be read. In fact, none of the groups felt that the smallest type size would be acceptable, although several groups approved of the middle type size if it would be placed appropriately. Several of the groups said that the middle size represented the best trade-off of the needs of the advertiser and the need to have the brief statement noticeable.

''Something flashy.''

''If they're going to allow people to sell cigarettes, then I don't think they should have them put big letters on the cigarette box that make people not want to smoke.''

6. Groups were mixed about the desirability of the ''arrow-type'' border for a brief statement, but were universally enthusiastic about the properties of a jagged-type border as a way to capture the attention of readers.

''Because it's [the jagged edge border] almost like a coupon.''

''It catches your eye more.''

7. Some groups were positive about the icon, with others less so. While most group said it would marginally improve the salience of a message, some groups thought the icon itself was not optimal and suggested other alternatives. Some groups worried that the trade-off between the extra space required by the icon and a larger message was not justified.

8. Groups frequently suggested that the appearance of a message be changed regularly so that consumers would not habituate to its appearance.

''You ought to change it periodically. I don't know what all you could change it to, but have it somehow different because I'm sure when they first started putting the Surgeon General's warning on there it caught peoples' eyes because it was new.''

9. Most groups mentioned that color would be a good way to increase the prominence of a message. Almost every group mentioned neon shades, either in jest or in a serious manner, or at the very least a shade that contrasted with the colors in the advertisement itself.

''I just think that in general a different color from the whole poster, but still where it doesn't look tacky. It still blends in, but not in a similar color.''

''If it was in a different color, that stands out no matter how much you try to avoid some of the stuff, it's going to catch your eye no matter what.''

''A vibrant color.''

''I think it should be like a neon orange.''

''I think there should be like two or three colors that it can be and you have to not use that color in your ad.''

10. Some participants suggested that the best way to present the information would be as a stand-alone advertisement rather than as part of a cigarette advertisement.

''Just have more ads against smoking.''

''I know. Yeah, for a good commercial, you go, put, like, for a commercial, somebody smokes, put, like, you know, on the Indiana Jones where all his skin comes off and the blood's running out!''

11. The reaction to attribution to a source of information (Centers for Disease Control, FDA, other sources of attribution) also received a mixed response. While some groups said that attribution would strengthen a statement, others disagreed with that viewpoint.

''It doesn't really matter (who said it) * * * as long as it's fact.''

''Someone with a degree who graduated—the Surgeon General.''

Addenda

1. Sample graphics
2. Moderator's Guides
   a. Phase I
   b. Phase II

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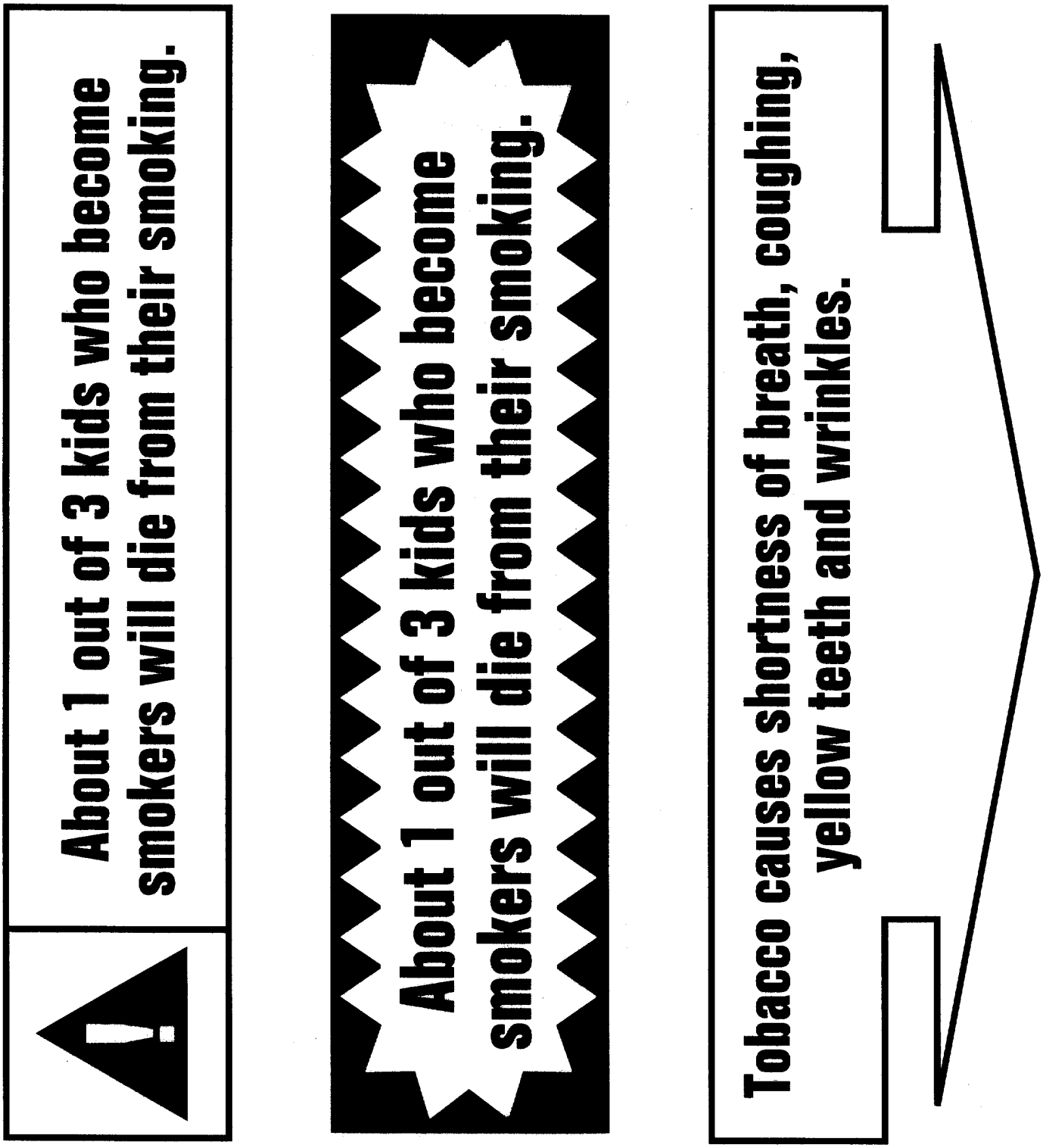

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Cigarette Advertising Focus Groups Phase I Moderator's Guide

Outline

1. Introductions
2. Presentation of Examples of Cigarette Ads
3. Discussion of Cigarette Advertising in General
4. Discussion of Warning Statements
5. Presentation and Discussion of First Set
6. Presentation and Discussion of Second Set
7. Presentation and Discussion of Third Set
8. Presentation and Discussion of Fourth Set
9. Discussion of Similarities and Differences of the Winners

Materials:

3–5 Examples of Cigarette Ads (Relevant to this Age Group).

Sheets of Paper with 3 or 4 Possible Brief Statement Wordings. Each Participant Will Get Four of These During the Session.

1. Introductions

Summary:

Moderator and respondents introduce themselves to one another. Overall plan for the focus groups is discussed. ''Today, we'll be looking and talking about some examples of cigarette advertising.'' Important points to emphasize in the introduction. We are not here to talk about whether you do or do not smoke. That's your business. Nothing you say in the group will get back to your parents or anyone else. We care about how cigarette advertising works, and we want to talk to people of your age to get a better idea of how they see and understand advertising.

2,3. Discussion of Cigarette Advertising: General

Materials:

Examples of cigarette ads on pasteboard displays are shown to the group and remain on display throughout the session.

''Here are some examples of cigarette advertising.''

Have you seen these kinds of ads before?

Where do you usually see them?

Do you notice anything different or special about cigarette ads compared to other kinds of products that are advertised, or are they basically the same as other ads?

What other kinds of ads do cigarette ads remind you of?

What kind of person is most likely to look at cigarette ads?

Who is not likely to pay much attention to these kinds of ads?

—The 3 ads are present at this point, but they are not the focus of the discussion. Smokers and non-smokers will almost certainly be brought up in this discussion, but we do not want participants to focus on their own behavior at this point.

—Warning statements are not cued by the moderator, but will probably come up in the discussion. Moderator needs to explore issues as they arise, but there is no need to focus on warning messages at this point.

—An important point here is to let people reveal their own *natural categories* about cigarette advertising and warning statements before the concept of ''warning statements'' is explicitly introduced.

Do you think these 3 ads are different from each other, or are they basically the same?

How are they different/same?

4. Discussion of Warning Messages

—The discussion is turned toward issues related to the warning statements, which may or may not have been discussed already. The moderator needs to explore the issues below without being repetitive or redundant with any previous discussion.

''Let's talk a little bit about the warning messages in the ads—which you may or may not have noticed.''

—The moderator refers here to the Surgeon General's Warning statements in the ads as examples of warning messages.

Why are these messages there?

Do you think they work?

Why? Why not?

Who looks at these messages?

Who is supposed to look at these messages?

When did you first notice that these messages were in cigarette advertising? What did you think when you first saw them?

How could you improve these kinds of messages?

5. Presentation of Set of Warning Messages

Materials: 81/2″ X 11″ pages, containing several different possible warning messages.

''The warning messages that we have seen so far are not the only possible warning messages. What I'd like to do now is show you possible wordings for warning statements and get your reactions to these. These messages could be used in cigarette advertisements in the same way as in the ads we have here today.

''Here are some possible wordings for warning statements.''

—Each participant gets a sheet with examples of possible warning messages. The sets of possible warning messages will have to be determined. The intent is to present participants with a small number of statements they can compare and contrast rather than one at a time or in one big list. The selection of statements should take advantage of the ability to elicit direct comparisons.

Do you feel any of these statements is particularly good or bad? credible/not credible personally relevant/not relevant Why?

What does (pick one of the messages at a time/but get reactions to as many as you think are necessary) mean to you?

How would you describe the differences, if any, between these messages?

Would you be more likely to pay attention to some of these messages? Which ones? Why?

What sort of young person would be likely to pay/not pay attention to these messages?

Do they all have the same target audience?

Which messages will appeal to which groups?

Which one(s) do you like best? (Get them to rate the messages and record consensus choice(s).)

6,7,8. Repeat the same discussion above for each new set of warning statements

9. Discussion of similarities and differences of the 4 winners.

''Here are the messages the group thought were best''

Are there other kinds of warning messages that we haven't included that you think should be in cigarette advertising? What would those be? Why do you think they would be good?

—moderator needs to include suggestions that are reasonably well received by the group as part of the final set of messages that will be discussed below.

How would you describe the differences, if any, between these messages?

Is there anything that these messages have in common that makes them superior to the other kinds of messages that did not make the final cut?

How would you describe the intended audiences for the different messages? Same? Different? Which messages appeal to what kinds of people?

Of all these messages, which one do you think is most likely to be effective? Why?

Which one(s) do you personally like the most?

At the end of the session, the participants will fill out a short outtake questionnaire that will contain some questions about smoking status, number of cigarettes smoked, brands smoked, and other relevant information.

Cigarette Advertising Focus Groups Phase II Moderator's Guide

Outline:

1. Introductions
2. Kids and Smoking
3. Information Piece
4. Cigarette Advertising
5. Warning Messages
6. Presentation of New Warning Messages: Content
7. Size of Message
8. Position
9. Boundaries
10. Attribution
11. Icons
12. Summary

Materials:

3–5 Examples of Cigarette Ads (Relevant to this Age Group).

Visuals Examples of Ads (Could Be Same Ads as Used Above) That Embody Various Format and Design Features That We Want to Evaluate—as Many as Needed.

1. Introductions

Summary:

A. Moderator and respondents introduce themselves to one another.

B. Overall plan for the focus groups is discussed:

Today, we want to talk about kids and smoking. Some of you may be smokers, but we're not here to talk about whether you smoke or not. That's your business.

But what we do care about is how kids in general think about smoking. In particular, we want to get a better idea of how kids in your age group think about smoking.

Nothing you say in the group will get back to your parents or anyone else. The best way

you can help us is to tell us what you really think, not what you think we want to hear, or what you think you should say.

2. Kids and Smoking

This is a warmup activity. Questions below are suggestions, not requirements. You don't need to ask every question. Try to get people interested and comfortable. Should take about 5–10 minutes

A. Do kids smoke at your school? How many kids smoke? Who smokes? Are boys as likely to smoke as girls?

B. When do kids first try smoking? How old are they? Is it the same for girls and boys? What kinds of things make a difference in kids' decision to try a cigarette?

C. What kinds of situations are kids in when they try smoking? Is this the same for girls and boys? Is the situation the same for younger and older kids?

D. Are the kinds of things that lead kids to try a first cigarette the same kinds of things that lead them to smoke regularly? If not, what are the differences?

E. Where do kids get cigarettes? Where do they smoke?

Other possible questions.

Who do they smoke with? Do they smoke alone, or mostly with others? Who are the others? Does this change as they smoke more regularly? Is how kids get cigarettes different if they smoke occasionally or regularly?

3. Information Piece

I want to get your reaction to this piece of information—I assure you that it is true.

Did you know that over the last 25 years the number of adults who smoke has gone down. And the number of adults who smoke keeps going down.

But the number of young people who smoke has not gone down, and is actually going up in some groups—such as 12–14 year olds.

Are you surprised by this? Why do you think this is happening?

4. Cigarette Advertising

Materials:

Examples of cigarette ads on pasteboard displays are shown to the group and remain on display throughout the session.

Here are some examples of cigarette advertising.

Have you seen these kinds of ads before?

Where do you usually see them?

What other kinds of ads do cigarette ads remind you of?

Who is most likely to look at cigarette ads?

Who is not likely to pay much attention to these kinds of ads?

—Warning statements are not cued by the moderator, but will probably come up in the discussion. Moderator needs to explore issues as they arise but does not need to focus on warning messages at this point.

—An important point here is to let people reveal their own natural categories about cigarette advertising and warning statements before the concept of ''warning statements'' is explicitly introduced.

5. Discussion of Warning Messages

''Let's talk a little bit about the warning messages in the ads—which you may or may not have noticed.''

—The moderator refers here to the Surgeon General's Warning statements in the ads as examples of warning messages.

Why are these messages there?

Do you think they work?

Why? Why not?

Who looks at these messages?

Who is supposed to look at these messages?

What do you think about the placement of the Surgeon General's warning?

What about the size of the warning message?

How could you improve these kinds of messages?

6. Presentation of New Warning Messages: Content

Materials: Sheet containing six messages

As background for the next section, laws are being considered to require that all cigarette advertisements have information about the risks of teenage smoking. This would be in addition to the Surgeon General's warning already required on cigarette advertisements.

What I want to do now is show you some examples of possible messages and see what you think.

Let's look at these 6 messages. Moderator reads the 6 messages.

Moderator re-reads the first message.

What does this mean to you?

Do you think it is effective?

Would it appeal to kids your age?

Repeat with the other 5 messages—re-read each, one at a time, and discuss the content.

What does this mean to you?

Do you think it is effective?

Would it appeal to kids your age?

Ask them which they think is most effective. As much as possible, use that one for the example in the other tasks.

7. Size of Message

Materials: A message (perhaps the message chosen in 6) in the three different sizes on appropriate ads

Here are some examples of how these messages might actually look in cigarette advertising.

Which of these ads presents the warning information in the best way? Why do you say that?

Does the size of the warning information change the way kids are likely to react to an ad.

Will the size of the message have the same kind of effect on all ads, or will it work differently for some ads.

Would it make a difference whether the ad it was on was in color like this or only black and white?

8. Position

Materials: Three more ads with the same message and size in the 3 different placements on the ad.

Which of these ads presents the warning information in the best way? Why do you say that?

Does the placement of the warning information change the way kids are likely to react to an ad.

Will the placement of the message have the same kind of effect on all ads, or will it work differently for some ads.

Would it make a difference whether the ad it was on was in color like this or only black and white?

9. Boundaries

Materials: Three more ads with messages in the same size and placement (probably top placement) but with different boundaries.

Which of these ads presents the warning information in the best way? Why do you say that?

Does the boundary of the warning information change the way kids are likely to react to an ad.

Will the kind of boundary for the message have the same kind of effect on all ads, or will it work differently for some ads.

Would it make a difference whether the ad it was on was in color like this or only black and white?

10. Attribution

Materials: Two ads with the same message, size and placement, but one with the CDC attribution

Which of these ads presents the warning information in the best way? Why do you say that?

Does giving the source of the warning information change the way kids are likely to react to an ad.

Will giving the source for the message have the same kind of effect on all ads, or will it work differently for some ads.

Would it make a difference whether the ad it was on was in color like this or only black and white?

Are there other organizations that kids would be more likely to believe? What?

11. Icons

Materials: Three ads with more or less the same message, boundary, size, placement, but one without an icon, one with a larger icon, and one with a smaller icon.

Which of these ads presents the warning information in the best way? Why do you say that?

Does having an icon for the warning information change the way kids are likely to react to an ad.

What does the icon look like to you.

Will having an icon for the message have the same kind of effect on all ads, or will it work differently for some ads.

Would it make a difference whether the ad it was on was in color like this or only black and white?

Are there other icons that kids would be more likely to understand? What?

12. Summary

As you see, there are many possible features that make up a total presentation. We couldn't show you all possible combinations, but we want your opinions and ideas about how different features go together or don't go together. You may have suggestions about trying combinations that we haven't tried, and that's good. Let's look think about the whole picture you have put together from your choices.

Do you think this message, size, placement, with this boundary and picture (icon), and with the organization you chose it should come from, would look right? Would it be an

effective whole ad? Why or why not? How might it be improved?

At the end of the session, the participants will fill out a short outtake questionnaire that will contain some questions about smoking status, number of cigarettes smoked, brands smoked, and other relevant information.

Dated: November 28, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–29299 Filed 11–30–95; 8:45 am]

BILLING CODE 4160–01–F

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 102

Modifications to Role of National Labor Relations Board's Administrative Law Judges Including: Assignment of Administrative Law Judges as Settlement Judges; Discretion of Administrative Law Judges to Dispense With Briefs, to Hear Oral Argument in Lieu of Briefs, and to Issue Bench Decisions

AGENCY: National Labor Relations Board.

ACTION: Proposed permanent modification of rules upon expiration of one-year experiment.

SUMMARY: The National Labor Relations Board (NLRB) issues a document proposing to make permanent, following expiration of the one-year experimental period on January 31, 1996, the experimental modification to its rules authorizing the use of settlement judges and providing administrative law judges (ALJs) with the discretion to dispense with briefs, to hear oral argument in lieu of briefs, and to issue bench decisions.

DATES: Comments must be received on or before December 29, 1995.

ADDRESSES: Comments should be sent to: Office of the Executive Secretary, National Labor Relations Board, 1099 14th Street NW., Room 11600, Washington, D.C. 20570. Telephone: (202) 273–1940.

FOR FURTHER INFORMATION CONTACT: John J. Toner, Acting Executive Secretary, Telephone: (202) 273–1940.

SUPPLEMENTARY INFORMATION: On September 8, 1994, the Board issued a Notice of Proposed Rulemaking (NPR) which proposed certain modifications to the Board's rules to permit the assignment of ALJs to serve as settlement judges, and to provide ALJs with the discretion to dispense with briefs, to hear oral argument in lieu of briefs, and to issue bench decisions (59 FR 46375). The NPR provided for a comment period ending October 7, 1994.

Thereafter, on December 22, 1994, following consideration of the comments received to the NPR, the Board [1] issued a notice implementing, on a one-year experimental basis, the proposed modifications (59 FR 65942). The notice provided that the modifications would become effective on February 1, 1995, and would expire at the end of the one-year experimental period on January 31, 1996, absent renewal by the Board.

Recently, on November 6 and 8, 1995, the Board met with the Management and Union-side Panels of the NLRB Advisory Committee on Agency Procedure to discuss, among other matters, the experience to date with the experimental modifications and whether the modifications should be extended or made permanent following expiration of the one-year experimental period.[2] The following is a summary of the information that the Board provided to the members of the Advisory Committee Panels on this question.

Settlement Judges

Since February 1, 1995, settlement judges have been assigned in 55 cases. There have been settlements in 35 of the cases. Eighteen cases did not settle and went to trial. Settlement is still possible in some of the remaining cases. Some of the cases which settled did so after a trial judge was assigned and occurred either after conference calls conducted by the trial judge or at the hearing site. Twenty seven, or just about half of the cases in which settlement judges were assigned, were Region 4 (Philadelphia) cases in which the region played an active role in setting up settlement conferences. In about half a dozen other cases appointment of a settlement judge was requested by the General Counsel or a party. In the remaining 22 cases, settlement judges were assigned at the initiative of the Division of Judges. The Division of Judges has suggested appointment of settlement judges in other cases, but not all the parties have agreed. At the end of August 1995, there were a total of 577 settlements by ALJs compared to 544 at the end of August 1994. The difference is almost the same as the number of cases in which settlement judges were assigned and settlements were reached.

Bench Decisions

Ten bench decision have issued since February 1, 1995 (out of approximately 400 total ALJ decisions). Several of the bench decisions turned on simple credibility determinations. None of the cases involved complex legal issues. The average transcript length was 144 pages; the median length was slightly higher. All of the cases took less than one day. In six of the 10 cases, no exceptions were filed to the ALJ's bench decision, and the Board therefore adopted the ALJ's decision in the absence of exceptions. Of the four other bench-decision cases, the Board short-form adopted the ALJ's decision in three of the cases,[3] and the other case is still pending before the Board on exceptions.

The response of both the Management and the Union-side Panel of the Advisory Committee generally favored a continuation of the modifications, with the exception of the modification authorizing bench decisions, which received a mixed response from the Management-side Panel. The response of the Management-side Panel of the Advisory Committee generally favored a continuation of the modification authorizing the use of settlement judges. Several members of the Panel stated that they favored extending the settlement judge procedure, provided that the use of settlement judges continued to be consensual as currently provided. One member, however, stated the view that the emphasis with respect to settlement should be on the trial judges themselves and the Regional Office staff rather than on settlement judges. With respect to bench decisions, one member of the Management-side Panel stated the view that this procedure should also be extended and used in more cases. However, two other members expressed concern about the lack of discovery and the absence of an opportunity to file a brief.

The Union-side Panel also generally favored continuation of the settlement judge procedure. The Panel emphasized, however, that the settlement judge should not have the authority to postpone the trial date. Further, the Panel indicated that it was not necessarily opposed to eliminating the requirement that all parties agree to the use of a settlement judge or mandating that parties appear at an initial settlement conference. Finally, the

[1] Chairman Gould and Members Devaney and Browning; Members Stephens and Cohen dissenting in part.

[2] A notice of these meetings was issued on October 19, 1995, advising the public of the agenda and of the right to attend and file written comments on the matters discussed within 30 days thereafter (60 FR 54090). To date, no written public comments have been received.

[3] *Sylvan Industrial Piping, Inc.*, 317 NLRB 772 (1995); *The Riverboat Hotel*, 319 NLRB No. 30 (Sept. 29, 1995); and *Kinco, Ltd.*, 319 NLRB No. 56 (Oct. 23, 1995) (Member Cohen dissenting in part).

Panel indicated support for continuing the bench decision procedure and encouraging its greater use.

Having reviewed the experience to date with the modifications and the views of the Advisory Committee, the Board is proposing to extend the modifications in their current form by making them permanent following the expiration of the one-year experimental period on January 31, 1996. The modifications are set forth below without change. The Board is providing a period for public comment on this proposal.

As required by the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the NLRB certifies that these rules will not have a significant impact on small business entities.

List of Subjects in 29 CFR Part 102

Administrative practice and procedure, Labor management relations.

For the reasons set forth above, the NLRB proposes to permanently amend 29 CFR Part 102 as follows upon expiration of the one-year experimental period on January 31, 1996:

PART 102—RULES AND REGULATIONS, SERIES 8

1. The authority citation for 29 CFR part 102 continues to read as follows:

Authority: Section 6, National Labor Relations Act, as amended (29 U.S.C. 151, 156). Section 102.117(c) also issued under Section 552(a)(4)(A) of the Freedom of Information Act, as amended (5 U.S.C. 552(a)(4)(A)). Sections 102.143 through 102.155 also issued under Section 504(c)(1) of the Equal Access to Justice Act, as amended (5 U.S.C. 504(c)(1)).

2. Section 102.35 is revised to read as follows:

§ 102.35 Duties and powers of administrative law judges; assignment and powers of settlement judges.

(a) It shall be the duty of the administrative law judge to inquire fully into the facts as to whether the respondent has engaged in or is engaging in an unfair labor practice affecting commerce as set forth in the complaint or amended complaint. The administrative law judge shall have authority, with respect to cases assigned to him, between the time he is designated and transfer of the case to the Board, subject to the Rules and Regulations of the Board and within its powers:

(1) To administer oaths and affirmations;

(2) To grant applications for subpoenas;

(3) To rule upon petitions to revoke subpoenas;

(4) To rule upon offers of proof and receive relevant evidence;

(5) To take or cause depositions to be taken whenever the ends of justice would be served thereby;

(6) To regulate the course of the hearing and, if appropriate or necessary, to exclude persons or counsel from the hearing for contemptuous conduct and to strike all related testimony of witnesses refusing to answer any proper question;

(7) To hold conferences for the settlement or simplification of the issues by consent of the parties, but not to adjust cases;

(8) To dispose of procedural requests, motions, or similar matters, including motions referred to the administrative law judge by the Regional Director and motions for summary judgment or to amend pleadings; also to dismiss complaints or portions thereof; to order hearings reopened; and upon motion order proceedings consolidated or severed prior to issuance of administrative law judge decisions;

(9) To approve a stipulation voluntarily entered into by all parties to the case which will dispense with a verbatim written transcript of record of the oral testimony adduced at the hearing, and which will also provide for the waiver by the respective parties of their right to file with the Board exceptions to the findings of fact (but not to conclusions of law or recommended orders) which the administrative law judge shall make in his decisions;

(10) To make and file decisions, including bench decisions delivered within 72 hours after conclusion of oral argument, in conformity with Public Law 89–554, 5 U.S.C. 557;

(11) To call, examine, and cross-examine witnesses and to introduce into the record documentary or other evidence;

(12) To request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support thereof;

(13) To take any other action necessary under the foregoing and authorized by the published Rules and Regulations of the Board.

(b) Upon the request of any party or the judge assigned to hear a case, or on his or her own motion, the chief administrative law judge in Washington, D.C., the deputy chief judge in San Francisco, the associate chief judge in Atlanta, or the associate chief judge in New York may assign a judge who shall be other than the trial judge to conduct settlement negotiations. In exercising his or her discretion, the chief, deputy chief, or associate chief judge making the assignment will consider, among other factors, whether there is reason to believe that resolution of the dispute is likely, the request for assignment of a settlement judge is made in good faith, and the assignment is otherwise feasible. *Provided*, however, that no such assignment shall be made absent the agreement of all parties to the use of this procedure.

(1) The settlement judge shall convene and preside over conferences and settlement negotiations between the parties, assess the practicalities of a potential settlement, and report to the chief, deputy, or associate the status of settlement negotiations, recommending continuation or termination of the settlement negotiations. Where feasible settlement conferences shall be held in person.

(2) The settlement judge may require that the attorney or other representative for each party be present at settlement conferences and that the parties or agents with full settlement authority also be present or available by telephone.

(3) Participation of the settlement judge shall terminate upon the order of the chief, deputy, or associates issued after consultation with the settlement judge. The conduct of settlement negotiations shall not unduly delay the hearing.

(4) All discussions between the parties and the settlement judge shall be confidential. The settlement judge shall not discuss any aspect of the case with the trial judge, and no evidence regarding statements, conduct, offers of settlement, and concessions of the parties made in proceedings before the settlement judge shall be admissible in any proceeding before the Board, except by stipulation of the parties. Documents disclosed in the settlement process may not be used in litigation unless voluntarily produced or obtained pursuant to subpoena.

(5) No decision of a chief, deputy, or associate concerning the assignment of a settlement judge or the termination of a settlement judge's assignment shall be appealable to the Board.

(6) Any settlement reached under the auspices of a settlement judge shall be subject to approval in accordance with the provisions of Section 101.9 of the Board's Statements of Procedure.

3. Section 102.42 is revised to read as follows:

§ 102.42 Filings of briefs and proposed findings with the administrative law judge and oral argument at the hearing.

Any party shall be entitled, upon request, to a reasonable period at the

close of the hearing for oral argument, which may include presentation of proposed findings and conclusions, and shall be included in the stenographic report of the hearing. In the discretion of the administrative law judge, any party may, upon request made before the close of the hearing, file a brief or proposed findings and conclusions, or both, with the administrative law judge, who may fix a reasonable time for such filing, but not in excess of 35 days from the close of the hearing. Requests for further extensions of time shall be made to the chief administrative law judge in Washington, D.C., to the deputy chief judge in San Francisco, California, to the associate chief judge in New York, New York, or to the associate chief judge in Atlanta, Georgia, as the case may be. Notice of the request for any extension shall be immediately served on all other parties, and proof of service shall be furnished. Three copies of the brief or proposed findings and conclusions shall be filed with the administrative law judge, and copies shall be served on the other parties, and a statement of such service shall be furnished. In any case in which the administrative law judge believes that written briefs or proposed findings of fact and conclusions may not be necessary, he or she shall notify the parties at the opening of the hearing or as soon thereafter as practicable that he or she may wish to hear oral argument in lieu of briefs.

4. In § 102.45, paragraph (a), is revised to read as follows:

§ 102.45 Administrative law judge's decision; contents; service; transfer of case to the Board; contents of record in case.

(a) After hearing for the purpose of taking evidence upon a complaint, the administrative law judge shall prepare a decision. Such decision shall contain findings of fact, conclusions, and the reasons or basis therefor, upon all material issues of fact, law, or discretion presented on the record, and shall contain recommendations as to what disposition of the case should be made, which may include, if it be found that the respondent has engaged in or is engaging in the alleged unfair labor practices, a recommendation for such affirmative action by the respondent as will effectuate the policies of the Act. The administrative law judge shall file the original of his decision with the Board and cause a copy thereof to be served on each of the parties. If the administrative law judge delivers a bench decision, promptly upon receiving the transcript the judge shall certify the accuracy of the pages of the transcript containing the decision; file with the Board a certified copy of those pages, together with any supplementary matter the judge may deem necessary to complete the decision; and cause a copy thereof to be served on each of the parties. Upon the filing of the decision, the Board shall enter an order transferring the case to the Board and shall serve copies of the order, setting forth the date of such transfer, on all the parties. Service of the administrative law judge's decision and of the order transferring the case to the Board shall be complete upon mailing.

* * * * *

Dated, Washington, D.C., November 27, 1995.

By direction of the Board:

John J. Toner,

Acting Executive Secretary.

[FR Doc. 95–29297 Filed 11–30–95; 8:45 am]

BILLING CODE 7545–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[FRL–5337–5]

National Emissions Standards for Radionuclide Emissions From Facilities Licensed by the Nuclear Regulatory Commission and Federal Facilities not Covered by Subpart H

AGENCY: Environmental Protection Agency (EPA).

ACTION: Reopening of comment period and notice of public hearings.

SUMMARY: The Office of Radiation and Indoor Air, Radiation Protection Division is reopening the comment period for the proposal to rescind subpart I for NRC and Agreement State licensees other than nuclear power reactors; and will also hold public hearings on this proposed rule to rescind 40 CFR part 61, subpart I.

We are reopening the comment period to allow the public the opportunity to view NRC's proposed constraint level rule. When EPA first published it's notice of proposed rulemaking on September 28, 1995 (60 FR 50161, No.188), it was with the expectation that NRC's proposal was forthcoming and at that point we placed a draft of the proposal provided to us in the public docket (A–92–50). Due to NRC's delay in publishing their proposed constraint level rule, EPA needs to provide additional time for the public to review the actual proposal from NRC.

DATES: The reopening of the comment period allows comments to be received by EPA on or before January 20, 1996. The hearings will be held on Tuesday, January 9, 1996, from 9:00 am to 5:00 pm.

ADDRESSES: The hearings will take place at the Marriott Hotel, 1999 Jefferson Davis Highway, in Arlington, VA (accessed from the Crystal City Metro stop). Comments should be submitted (in duplicate if possible) to: Central Docket Section, Environmental Protection Agency, Attn: Air Docket No. A–92–50, Washington, DC 20460. Docket A–92–50 contains the rulemaking record. The docket is available for public inspection between the hours of 8:00 am and 5:30 pm, Monday through Friday, in room M1500 of Waterside Mall, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying. The fax number is (202) 260–4400.

FOR FURTHER INFORMATION CONTACT: Eleanor Thornton, Program Analyst, Center for Federal Guidance and Air Standards, Radiation Protection Division, Office of Radiation and Indoor Air (6602J), Environmental Protection Agency, Washington, DC 20460, (202) 233–9773.

SUPPLEMENTARY INFORMATION: This meeting is open to any member of the public. As noted in the notice reopening the comment period (60 FR 50161, No.188, September 28, 1995), requests to participate in the public hearing should be made in writing to the Director, Lawrence G. Weinstock, Radiation Protection Division, Office of Radiation and Indoor Air (6602J), Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, by January 3, 1996. Requests may also be faxed to EPA at (202) 233–9629 or 233–9626. Requests to participate in the public hearing should also include an outline of the topics to be addressed, the amount of time requested, and the names of the participants. EPA may also allow testimony to be given at the hearing without prior notice, subject to time restraints and at the discretion of the hearing officer. Three (3) copies of testimony should be submitted at the time of appearance at the hearings.

Dated: November 22, 1995.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 95–29361 Filed 11–30–95; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 60, No. 231
Friday, December 1, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Special Provision for Frozen Concentrated Orange Juice Under the North American Free Trade Agreement Implementation Act

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice of determination of termination of existence of price conditions necessary for imposition of temporary duty on frozen concentrated orange juice from Mexico.

SUMMARY: This is notification that for 5 consecutive business days the daily price for frozen concentrated orange juice was greater than the applicable average daily closing price of the New York Cotton Exchange. This precludes at this time imposition of a snapback tariff on Mexican frozen concentrated orange juice.

FOR FURTHER INFORMATION CONTACT: Joseph Somers, Horticultural and Tropical Products Division, Foreign Agricultural Service, U.S. Department of Agriculture, Washington, DC 20250–1000 or telephone at (202) 720–2974.

SUPPLEMENTARY INFORMATION: The North American Free Trade Agreement Implementation Act (''NAFTA Implementation Act'') authorizes the imposition of a temporary duty (snapback) for Mexican frozen concentrated orange juice when certain conditions exist. Mexican articles falling under subheading 2009.11.00 of the Harmonized Tariff Schedule of the United States (HTS) are subject to the snapback duty provision.

Under section 309(a) of the NAFTA Implementation Act, certain price conditions must exist before the United States can apply a snapback duty on imports of Mexican frozen concentrated orange juice. In addition, such imports must exceed specified amounts before the snapback duty can be applied. The price conditions exist when for each period of 5 consecutive days the daily price for frozen concentrated orange juice is less than the trigger price.

For the purpose of this provision, the term ''daily price'' means the daily closing price of the New York Cotton Exchange, or any successor as determined by the Secretary of Agriculture (the ''Exchange''), for the closest month in which contracts for frozen concentrated orange juice are being traded on the Exchange. The term ''business day'' means a day in which contracts for frozen concentrated orange juice are being traded on the Exchange. The term ''trigger price'' means the average daily closing price of the Exchange for the corresponding month during the previous 5-year period, excluding the year with the highest average price for the corresponding month and the year the lowest average price for the corresponding month.

Price conditions no longer exist when the Secretary determines that for a period of 5 consecutive business days the daily price for frozen concentrated orange juice has exceeded the trigger price.

Whenever the price conditions are determined to exist or to cease to exist the Secretary is required to immediately notify the Commissioner of Customs of such determination. Whenever the determination is that the price conditions exist and the quantity of Mexican articles of frozen concentrated orange juice entered exceeds (1) 264,978,000 liters (single strength equivalent) in any of calendar years 1994 through 2002, or (2) 340,560,000 liters (single strength equivalent) in any of calendar years 2003 through 2007, the rate of duty on Mexican articles of frozen concentrated orange juice that are entered after the date on which the applicable quantity limitation is reached and before the date of publication in the Federal Register of the determination that the price conditions have ceased to exist shall be the lower of—(1) the column 1—General rate of duty in effect for such articles on July 1, 1991; or (2) the column 1—General rate of duty in effect on that day. For the purpose of this provision, the term ''entered'' means entered or withdrawn from warehouse for consumption in the customs territory of the United States.

In accordance with Section 309(a) of the NAFTA Implementation Act, it has been determined that for the period October 18–24, 1995, the daily price for frozen concentrated orange juice exceeded the trigger price.

Issued at Washington, DC the 24th day of November, 1995.

August Schumacher, Jr.,

Administrator, Foreign Agricultural Service.

[FR Doc. 95–29344 Filed 11–30–95; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of issuance of an export trade certificate of review, application No. 95–00005.

SUMMARY: The Department of Commerce has issued an Export Trade Certificate of Review to The Connell Company on November 13, 1995. This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, 202–482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (1993).

The Office of Export Trading Company Affairs (''OETCA'') is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the Federal Register. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

A. Export Trade

1. Products

Japonica brown rice.

2. Export Trade Facilitation Services (as They Relate to the Export of Products)

Communication and processing of export orders; inspection, fumigation and stevedoring; transportation; freight forwarding and trade documentation; insurance; billing of foreign buyers; collection of letters of credit and other financial instruments.

B. Export Markets

The export markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

C. Export Trade Activities and Methods of Operation

To engage in Export Trade in the Export Markets, The Connell Company may:

(i) solicit orders from foreign purchasers;

(ii) receive information on a one-to-one basis from individual Suppliers regarding inventories and near-term production schedules for the purpose of determining the availability of Products for purchase and export;

(iii) confer from time to time, on a one-to-one basis, with individual Suppliers regarding a potential purchase by The Connell Company with regard to the quantities, price, delivery schedule, and other pertinent matters pertaining thereto;

(iv) allocate export sales among individual Suppliers, provided that The Connell Company does not intentionally disclose to any Supplier any information about other Suppliers' sales to The Connell Company for export;

(v) enter into purchase agreements with one or more Suppliers for the purchase of Products in the United States, and sales agreements with one or more foreign purchasers for the sale of Products in the Export Markets;

(vi) refuse to purchase from one or more Suppliers for reasons The Connell Company deems fit; and

(vii) as the single buyer of Products, coordinate schedules for delivery of Products to the dock among Suppliers; allocate dock space; allocate Products to various vessels; coordinate stevedoring from the inland trucks to the dock and from the dock to the vessels; arrange for inspection by both U.S. and foreign inspection services; arrange for fumigation of the Products; arrange for various documentation regarding the cargo; and provide for other Export Trade Facilitation Services as they relate to the export of Products.

D. Terms and Conditions of Certificate

1. In engaging in the above Export Trade Activities and Methods of Operation, The Connell Company will not intentionally disclose, directly or indirectly, to any Supplier any information about any other Supplier's costs, production, capacity, inventories, domestic prices, domestic sales, or U.S. business plans, strategies, or methods that is not already generally available to the trade or public.

2. The Connell Company will comply with requests made by the Secretary of Commerce on behalf of the Secretary of Commerce or the Attorney General for information or documents relevant to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Attorney General or the Secretary of Commerce believes that the information or documents are required to determine that the Export Trade, Export Trade Activities and Methods of Operation of a person protected by this Certificate of Review continue to comply with the standards of Section 303(a) of the Act.

E. Definitions

''Supplier'' means a person that produces, provides, or sells Products.

F. Protection Provided by Certificate

The Certificate protects The Connell Company, its directors, officers, and employees acting on its behalf, from private treble damage actions and government criminal and civil suits under U.S. federal and state antitrust laws for the export conduct specified in the Certificate and carried out during its effective period in compliance with its terms and conditions.

G. Effective Period of Certificate

The Certificate continues in effect from the effective date indicated below until it is relinquished, modified, or revoked as provided in the Act and the Regulations.

H. Other Conduct

Nothing in the Certificate prohibits The Connell Company from engaging in conduct not specified in the Certificate, but such conduct is subject to the normal application of the antitrust laws.

I. Disclaimer

The issuance of the Certificate of Review to The Connell Company by the Secretary of Commerce with the concurrence of the Attorney General under the provisions of the Act does not constitute, explicitly or implicitly, an endorsement or opinion by the Secretary or by the Attorney General concerning either (a) the viability or quality of the business plans of The Connell Company or (b) the legality of such business plans of The Connell Company under the laws of the United States (other than as provided in the Act) or under the laws of any foreign country. The application of the Certificate to conduct in export trade where the United States Government is the buyer or where the United States Government bears more than half the cost of the transaction is subject to the limitations set forth in Section V.(D.) of the ''Guidelines for the Issuance of Export Trade Certificates of Review (Second Edition)'', 50 Fed. Reg. 1786 (January 11, 1985).

Dated: November 21, 1995.

W. Dawn Busby,

Director, Office of Export Trading Company Affairs.

[FR Doc. 95–29283 Filed 11–30–95; 8:45 am]

BILLING CODE 3510–DR–P

National Oceanic and Atmospheric Administration

[I.D. 112195A]

Mid-Atlantic Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's Surf Clam and Ocean Quahog Industry Advisory Committee will hold a public meeting.

DATES: The meeting will be held on December 12, 1995, from 10:00 a.m. until 5:00 p.m.

ADDRESSES: The meeting will be held at the Doubletree Guest Suites Philadelphia International Airport, 4101 Island Avenue, Philadelphia, PA; telephone: (215) 365-6600.

Council Address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19901.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, Executive Director; telephone: (302) 674-2331.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to discuss the overfishing definition for Surf Clams and Ocean Quahogs.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for

sign language interpretation or other auxiliary aids should be directed to Joanna Davis at (302) 674-2331 at least 5 days prior to the meeting date.

Dated: November, 24, 1995.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–29285 Filed 11–30–95; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to the procurement list.

SUMMARY: This action adds to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: January 2, 1996.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603–7740.

SUPPLEMENTARY INFORMATION: On September 15, 1995, the Committee for Purchase from People who are Blind or Severely Disabled published notice (60 F.R. 47937) of proposed addition to the Procurement List.

Comments were received from an association representing small disadvantaged businesses and from a company which was a contractor for related services at the same Government installation. The association questioned the Committee's practice of providing notice of the proposed addition to the Procurement List only in the Federal Register, and claimed, without providing any supporting information, that the proposed addition would have a severe economic impact on small businesses that support the installation. The company claimed that the addition would have a severe adverse impact on it, and also claimed that procurement regulations had been violated in connection with the current contract to provide these services to the Government.

The Committee is required by its statute, at 41 U.S.C. 47(a)(2), to follow the informal rulemaking procedure set forth in 5 U.S.C. 553 when adding commodities and services to the Procurement List. The latter statute requires notices of proposed rulemakings to be published in the Federal Register. In addition, 44 U.S.C. 1507 provides that Federal Register notice is legally sufficient notice of a Government action to all concerned. Consequently, the Committee believes it acted as Congress intended when it gave notice of the proposal to add these services to the Procurement List.

The contracting officer for the services informed the Committee that, prior to the start of the current contract with the non-profit agency, the services being added to the Procurement List were being performed by Government personnel and were not part of the contract which the commenting contractor had with the installation. Accordingly, addition of these services to the Procurement List should have no effect on the commenting contractor or on any of the businesses represented by the commenting association because they will not lose any work they already had with this Government installation.

Award of the current contract for these and other services was not done under authority of the Committee's statute, as the services were not on the Procurement List. The Committee has been informed that the commenting contractor is pursuing its claim that procurement regulations were violated in a forum which is better equipped than the Committee to address them.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the service, fair market price, and impact of the additions on the current or most recent contractor, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action will not have a severe economic impact on current contractors for the service.

3. The action will result in authorizing small entities to furnish the service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Accordingly, the following service is hereby added to the Procurement List: Administrative Services, Naval Air Warfare Center, Training Systems Division, Orlando, Florida.

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 95–29326 Filed 11–30–95; 8:45 am]

BILLING CODE 6820–33–P

Procurement List Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to the procurement list.

SUMMARY: This action adds to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: January 2, 1996.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603–7740.

SUPPLEMENTARY INFORMATION: On September 29, 1995, the Committee for Purchase from People who are Blind or Severely Disabled published notice (60 F.R. 50559) of proposed addition to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the service, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action will not have a severe economic impact on current contractors for the service.

3. The action will result in authorizing small entities to furnish the service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Accordingly, the following service is hereby added to the Procurement List: Janitorial/Custodial, Beaver U.S. Army Reserve Center, 2001 Industrial Park Road, Beaver, West Virginia.

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 95–29325 Filed 11–30–95; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: January 2, 1996.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Office Supplies
(Requirements for Fort Bragg, North Carolina)
NPA: Lions Club Industries, Durham, North Carolina

Office Supplies
(Requirements for Fort Jackson, South Carolina) NPA: Lions Club Industries, Durham, North Carolina

Services

Administrative Services for the following General Services Administration locations:

Denver Federal Center
Buildings 1, 41 and 44
6th & Kipling
Lakewood, Colorado

Denver Field Office
1961 Stout Street
Denver, Colorado

Colorado Field Office
730 Simms Street
Golden, Colorado
NPA: Bayaud Industries, Denver, Colorado

Janitorial/Custodial
Schofield Barracks, Building T–913
Fort Shafter, Hawaii
NPA: Goodwill Industries of Honolulu, Inc., Honolulu, Hawaii

Janitorial/Custodial
Carl D. Perkins Federal Building and U.S. Courthouse
1504 Greenup Avenue
Ashland, Kentucky
NPA: Goodwill Industries of KYOWVA Area, Inc., Huntington, West Virginia

Recycling Service
Basewide
Goodfellow Air Force Base, Texas
NPA: Mental Health/Mental Retardation Services for the Concho Valley, San Angelo, Texas

Switchboard Operation
VA Medical Center
1601 Perdido Street
New Orleans, Louisiana
NPA: Goodwill Industries of Southeastern Louisiana, New Orleans, Louisiana

Beverly L. Milkman,

Executive Director.

[FR Doc. 95–29327 Filed 11–30–95; 8:45 am]

BILLING CODE 6820–33–P

COMMODITY FUTURES TRADING COMMISSION

Application of the New York Futures Exchange, Inc., as a Contract Market in Futures and Futures Options on the PSE Technology Index

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures and futures option contracts.

SUMMARY: The New York Futures Exchange, Inc (NYFE or Exchange) has applied for designation as a contract market in futures and futures options on the PSE Technology Index.

The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before January 2, 1996.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581. Reference should be made to the NYFE contract markets on the PSE technology index.

FOR FURTHER INFORMATION CONTACT: Please contact Stephen Sherrod of the

Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581, telephone 202–418–5277.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 418–5097.

Other materials submitted by the NYFE in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 C.F.R. Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 C.F.R. 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 C.F.R. 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the NYFE, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC, on November 28, 1995.

Blake Imel,

Acting Director.

[FR Doc. 95–29303 Filed 11–30–95; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Department of the Army

Final Environmental Impact Statement (FEIS) on the Disposal and Reuse of the Materials Technology Laboratory, Watertown, MA

AGENCY: Department of the Army, DOD.

ACTION: Notice of availability.

SUMMARY: The proposed action evaluated by this FEIS is the disposal of the Materials Technology Laboratory (MTL).

This action will result in the disposal of 37 acres of excess property at MTL in accordance with the Defense Base Closure and Realignment Act of 1988, Public Law 100–526. The FEIS addresses the environmental and socioeconomic effects of the disposal and subsequent reuse of the 37 acres. Three alternative methods of disposal are analyzed: Encumbered Disposal, Unencumbered Disposal and Retention of the Property in a Caretaker Status (i.e., the No Action Alternative).

The Encumbered Disposal Alternative addresses natural or man-made encumbrances to the future reuse. The Unencumbered Disposal Alternative evaluates the potential to remove encumbrances, thereby allowing the property to be disposed with fewer or no Army-imposed restrictions on future use. The impacts of reuse are evaluated in terms of low, medium and high land use intensities.

No significant environmental or human health effects are anticipated from the disposal of MTL. Hazardous waste remediation will have a beneficial effect on soils, surface water, and groundwater. Reuse measures that future owners could take include exercise of discretion in land use planning and infrastructure development. Adherence to deed restrictions and enforcement of zoning, subdivision regulation, and building permits could help maintain visual resources inherent at the MTL site.

DATES: Inquiries will be accepted within 30 days of the publication of this Notice of Availability.

ADDRESSES: Copies of the Final Environmental Impact Statement can be obtained by writing to Mr. James Davidson, at the U.S. Army Materiel Command, ATTN: AMCSO, 5001 Eisenhower Avenue, Alexandria, VA 22333–0001.

Dated: November 13, 1995.

Raymond J. Fatz,

Acting Deputy Assistant Secretary of the Army, (Environmental, Safety and Occupational Health), OASA, (I, L&E).

[FR Doc. 95–29284 Filed 11–30–95; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of teleconference meetings.

SUMMARY: This notice sets forth the schedule and proposed agenda of forthcoming meetings of the Executive and Nominations Committees of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE: Executive Committee December 6, 1995 and Nominations Committee December 8, 1995.

TIME: Executive Committee 11:00 a.m. (et) to completion of business and Nominations Committee 4:00 p.m. (et) to completion of business.

LOCATION: 800 North Capitol Street NW., Suite 825, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Stephen Swearingen, Budget and Finance Officer, National Assessment Governing Board, Suite 825, 800 North Capitol Street NW., Washington, D.C., 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994 (Title IV of the Improving America's Schools Act of 1994), (Pub. L. 103–382).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress. The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons.

On December 6, the Executive Committee of the National Assessment Governing Board will meet via teleconference from 11:00 a.m. until the completion of business. Following the roll call and introductory remarks, the Committee will review the agenda for a NAGB meeting in St. Louis on Saturday, January 13, 1996.

The meeting of the Nominations Committee, scheduled for December 8, 1995, will be held from 4:00 p.m. until the completion of business. After the roll call and introductory remarks, the Committee will review procedures to be used for the solicitation of the names of individuals to succeed the Board members whose terms expire September 30, 1996. The expiring terms are in the following categories: local superintendent, general public (2), testing and measurement expert (2), state superintendent, and 12th grade teacher.

Because these are teleconference meetings, facilities will be provided so

the public will have access to the Committee's deliberations. These facilities will be provided in the location listed in the portion of this notice titles ''LOCATION.''

The public is being given less than fifteen days notice of this teleconference because there was no funding available to hold the previously announced Board Meeting in Seattle and plans have to be approved to hold another Board Meeting as soon as possible and to begin the Nominations process.

Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite 825, 800 North Capitol Street NW., Washington, D.C., from 8:30 a.m. to 5:00 p.m.

Dated: November 28, 1995.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 95–29377 Filed 11–30–95; 8:45 am]

BILLING CODE 4000–01–M

Privacy Act of 1974; Computer Matching Program; Notice

AGENCY: Department of Education.

ACTION: Notice of Computer Matching Programs to comply with Public Law (Pub. L.) 100–503, the Computer Matching and Privacy Protection Act of 1988.

SUMMARY: Section 484(p) of title IV of the Higher Education Act of 1965, as amended (HEA) requires the Secretary of Education, in cooperation with the Commissioner of the Social Security Administration (SSA), to verify any social security number (SSN) provided by an applicant for student financial assistance. Section 484(g) of the HEA authorizes the Secretary to verify statements provided by title IV applicants with regard to their citizenship and immigration status, using an automated or other system of verification.

In order to ensure that applicants for title IV student financial assistance have a valid SSN and citizenship status for the purpose of meeting eligibility requirements under the title IV programs, the Department of Education (ED) and the SSA will exchange relevant verifying information using a computer matching program. The purpose of this notice is to announce the operation of the computer matching program and to provide certain required information concerning the computer matching program.

In accordance with the Privacy Act of 1974 (5 U.S.C. 552a) as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs (see 54 FR at 25818, June 19, 1989), and OMB Circular A–130, the following information is provided:

1. Names of Participating Agencies

The Department of Education and the Social Security Administration.

2. Purpose of the Match

Section 484(p) of the HEA requires ED to verify the SSN provided by any applicant for assistance under title IV of that Act. Section 484(g) of the HEA authorizes the Secretary to verify statements provided by title IV applicants with regard to their citizenship and immigration status using an automated or other system, with other Federal agencies that may be in possession of information relevant to such statements and supporting documentation.

The purpose of this new matching program is to expand ED's matching program that verifies the accuracy of each applicant's SSN. The expanded matching program will further verify the accuracy of applicant claims of U.S. citizenship. The new match will supplement the Department's ability to track title IV loan defaulters using SSNs, by preventing disbursements of title IV assistance to applicants whose citizenship status do not comply with the requirements of section 484(a)(5) of the HEA.

3. Authority for Conducting the Matching Program

Sections 484 (g) and (p) of the HEA; Section 1106(a) of the Social Security Act.

4. Categories of Records and Individuals Covered by the Match

ED will submit for verification from its Central Processing Systems files the SSN and other identifying information for each applicant for title IV assistance. This information will be matched against the SSA Numident, which contains the SSN, citizenship status and identifying information for all SSN holders.

5. Effective Dates of the Matching Program

The matching program will become effective 40 days after a copy of the agreement, as approved by the Data Integrity Board of each agency, is sent to Congress and the Office of Management and Budget (OMB) (or later if OMB objects to some or all of the agreement), or 30 days after publication of this notice in the Federal Register, whichever date is later. The matching program will continue for 18 months after the effective date and may be extended for an additional 12 months thereafter, if the conditions specified in 5 U.S.C. 522a(o)(2)(D) have been met.

6. Address for Receipt of Public Comments or Inquiries

Individuals wishing to comment on this matching program or obtain additional information about the program including a copy of the computer matching agreement between ED and SSA should contact Ms. Edith Bell, Program Specialist, Policy Development Division, U.S. Department of Education, 600 Independence Avenue SW, (Room 3053, ROB–3), Washington, DC 20202, Telephone (202) 708–7888.

Written comments should be submitted to Ms. Bell at this address. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Dated: November 27, 1995.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 95–29338 Filed 11–30–95; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Record of Decision; Safe Interim Storage of Hanford Tank Wastes, Hanford Site, Richland, WA

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of record of decision (ROD).

SUMMARY: DOE and the Washington State Department of Ecology (Ecology) have jointly prepared the Safe Interim Storage of Hanford Tank Wastes Final Environmental Impact Statement (SIS EIS) (DOE/EIS–0212) to assess the environmental and human health impacts associated with the construction and operation of facilities and systems to continue the safe management of high-level, mixed radioactive wastes stored in tanks at the Hanford Site. After careful consideration of environmental impacts, lifecycle costs, public, agency, and tribal comments, and engineering evaluations, DOE has decided to implement most of the actions of the preferred alternative evaluated in the Final SIS EIS and are documenting this determination in this

ROD. The actions will involve the continued operation of the existing cross-site transfer system (ECSTS) until replaced by the construction and operation of a new replacement cross-site transfer system (RCSTS) consisting of buried, double-wall, insulated pipes, and continued operation of the mixer pump installed in Tank 101–SY to mitigate the unacceptable accumulation of hydrogen and other flammable gases.

Pending resolution of a recently identified safety issue, DOE is deferring a decision on the retrieval of solids from Tank 102–SY, and limiting the transfer of wastes through Tank 102–SY to non-complexed wastes. Evaluation of this issue will be addressed under DOE's NEPA procedures as necessary. DOE and Ecology have determined that new storage tanks will not be necessary at the present time to mitigate the flammable gas safety issue, based on the demonstrated success of the mixer pump.

FOR FURTHER INFORMATION CONTACT: For further information on DOE and Ecology activities related to this project or copies of the Final SIS EIS, please contact:

Carolyn Haass, U.S. Department of Energy, PO Box 550, MSIN S7–51, Richland, WA 99352, (509) 372–2731

Geoff Tallent, Washington Department of Ecology, PO Box 47600, Olympia, WA 98504–7600, (360) 407–7112

For further information on DOE's National Environmental Policy Act (NEPA) process, please contact: Carol Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0002, (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: DOE has prepared this ROD pursuant to the Council on Environmental Quality (CEQ) regulations for implementing the provisions of NEPA (40 CFR parts 1500–1508) and the DOE NEPA regulations (10 CFR part 1021). The ROD is based on the analyses of environmental impacts identified in the Final SIS EIS (DOE/EIS–0212); consideration of project costs; compliance requirements for systems involved in the handling, transport, and storage of high-level mixed radioactive waste, and public, agency, and tribal comments.

Because NEPA and SEPA are very comparable in their purpose, intent, and procedures, Ecology and DOE decided to prepare one EIS addressing the requirements of both SEPA and NEPA. In February 1994, a memorandum of understanding (MOU) was signed between the DOE, Richland Operations Office and Ecology. The MOU called for the joint preparation of the SIS EIS, the contents of which have been determined to satisfy both SEPA and NEPA requirements.

Purpose and Need

DOE and Ecology identified the need to continue to provide safe storage of high-level radioactive tank wastes while supporting tank farm management and operations prior to implementing decisions made in the ROD for the Tank Waste Remedial System (TWRS) EIS. The TWRS EIS is evaluating the alternatives for permanent disposal of wastes currently stored in tanks at the Hanford Site. To minimize the risk of managing tank wastes prior to the TWRS ROD, a modern, safe, reliable, and compliant replacement cross-site transfer capability is needed to move wastes between the 200 West and 200 East Area tank farms. This transfer capability is required because the 200 West Area has far less useable double shell tank (DST) capacity than there is waste in single shell tanks (SSTs).

The replacement waste transfer capability would provide the means to move waste from the 200 West Area to the available DST capacity located in the 200 East Area.

The ECSTS has been used to transfer wastes from the 200 West Area to the 200 East Area for the past 40 years. This underground pipeline system is at the end of its original design life. Currently, four of six lines are out of service and unavailable to perform transfers due to plugging. The two useable lines do not meet current engineering standards such as, double containment and leak detection, required for waste management facilities.

Based on current tank waste management and operation activities, the SIS EIS addressed the need to do the following:

- Remove Salt Well Liquids (SWLs) from older SSTs to reduce the likelihood of liquid waste escaping from the corroded tanks into the environment. Many of these tanks have leaked and new leaks are developing in these tanks at a rate of more than one per year.
- Provide ability to transfer the tank wastes via a compliant system to mitigate any future safety concerns and use current or future tank space allocations.
- Provide adequate tank waste storage capacity for future waste volumes associated with tank farm operations and other Hanford facility operations.
- Mitigate the flammable gas safety issue in Tank 101–SY.

Summary of Alternatives and Impacts

DOE and Ecology have identified four action alternatives in addition to the no action alternative to satisfy the need to continue to provide safe storage of high-level waste until decisions are made based on the TWRS EIS. The alternatives consist of the preferred alternative, truck transfer alternative, rail transfer alternative, and new storage alternative. DOE evaluated the construction and operation phases of each alternative to assess potential impacts to the following environmental categories:

- Geology, Seismology, Soils.
- Population and Socioeconomics.
- Water Resources and Hydrology.
- Transportation.
- Air Quality.
- Land Use.
- Radiation.
- Cultural Resources.
- Noise.
- Health Effects.
- Biological Resources.

The impact analysis showed that there would be no impacts related to geology, seismology, water resources and hydrology, radiation, noise, population and socioeconomics, or cultural resources for any of the alternatives. Environmental categories where potential impacts were identified are discussed under each alternative as applicable.

Preferred Alternative

The preferred alternative consists of the following components:

- Construction and operation of the RCSTS for cross-site transfer of SWLs, and 200 West Area Facility wastes from Tank 102–SY to DSTs in the 200 East Area;
- Construction of a waste retrieval system in Tank 102–SY to retrieve solids;
- Continued operation of a mixer pump in Tank 101–SY;
- Transfer of liquid wastes through the ECSTS until the proposed RCSTS becomes operational in 1998.

Transuranic solids from Tank 102–SY would be retrieved, transferred via the RCSTS and consolidated in 200 East Area DSTs to provide space for transfer of complexed SWLs. The consolidation of tank waste is an ongoing tank farm management action evaluated under prior environmental impact statements and a supplement (ERDA 1538, DOE/EIS–0063, DOE/EIS–0113). Although such retrieval is addressed in the decisions resulting from these NEPA documents, the retrieval of Tank 102–SY sludge was discussed in the SIS EIS for a comprehensive consideration of impacts.

Impacts. Environmental effects identified under the preferred alternative are primarily related to construction activities and include impacts to soils, land use, and biological resources. Construction of the RCSTS and associated facilities would disturb approximately 30 hectares (74 acres) of land, none of which are considered to be prime or unique farmland. Fugitive dust emissions are anticipated during earth moving activities, but would be mitigated by dust suppression measures.

Of the 30 hectares (74 acres) of land that would be disturbed while constructing the RCSTS, approximately 9 hectares (23 acres) would be mature sagebrush/cheatgrass habitat, a State designated Priority Habitat and important habitat for the loggerhead shrike, a Federal and State candidate species; the sagebrush lizard, a Federal candidate species; and the sage sparrow, a State candidate species. The 9 hectares (23 acres) represents 0.01 percent of the total sagebrush habitat at Hanford. The preferred alternative would include establishing habitat restoration sites to mitigate the disturbance of native soil and removal of vegetation in the construction area.

Truck Transfer Alternative

This alternative includes truck transfer of all wastes listed under the preferred alternative, with the exception of solids from Tank 102–SY which would not be retrieved under this alternative. Mitigation of the Tank 101–SY safety issue by continued operation of the mixer pump would also occur under the truck transfer alternative. The alternative would transfer SWL from interim stabilization of 200 West Area SSTs and 200 West Area facility wastes to DSTs in the 200 East Area by truck, without using Tank 102–SY as a staging tank for complexed wastes. The SIS EIS evaluated the 3,800 liters (1,000 gallons) LR–56(H) truck and a hypothetical 19,000 liter (5,000 gallon) tanker truck. The alternative would utilize existing roadways and include construction and operation of a new load facility in 200 West Area and an unload facility in 200 East Area, including underground transfer piping to and from the facilities, and some additional roadway segments.

Impacts. Environmental effects from implementing the truck transfer alternative include impacts to soils, transportation, and worker health, due to the construction of load and unload facilities and roadway segments, and operation of the truck transfer system.

Construction of the load and unload facilities and roadways would disturb approximately 2 hectares (5 acres) of land, none of which is considered to be prime or unique farmland, or mature sagebrush habitat. During construction activities, dust suppression measures would be implemented to reduce fugitive dust emissions.

The truck transfer alternative would use existing Hanford Site roadways and new onsite road extensions to transport approximately 1.9 million liters (5 million gallons) of radioactive waste. Using the LR–56 truck (3,800 liters (1,000 gallons) capacity), approximately 4,691 truck trips would be required over 1,564 working days assuming three trips per day. If the 19,000 liters (5,000 gallons) capacity truck is used, approximately 938 truck trips over 313 working days would be required, assuming three trips per day. Potential traffic circulation impacts could occur from barricaded roads, speed limitations, escorts, and other administrative controls. However, based on a frequency of three truck trips per day, shipping during off-peak hours, and providing advanced notice of truck shipments, no significant adverse traffic circulation impacts are anticipated.

Operators and health physics technicians would be exposed to radiation within acceptable limits during operation of the load and unload facilities. However, estimates for radiation dose to the truck driver yielded an unacceptably high dose. Additional shielding analysis or restrictions on the quantities of radioactive materials would be necessary to ensure that radiation exposures would be as low as reasonably achievable for the drivers.

Rail Transfer Alternative

This alternative includes rail transfer of all wastes listed under the preferred alternative, with the exception of solids from Tank 102–SY which would not be retrieved under this alternative. Mitigation of the Tank 101–SY safety issue by continued operation of the mixer pump would also occur under the rail transfer alternative. The alternative would transfer salt well liquids from interim stabilization of SSTs, and 200 West Area facility wastes by a hypothetical 38,000 liter (10,000 gallon) rail car. The alternative includes use of existing Hanford Site rail lines, construction and operation of some additional onsite rail line segments, as well as construction and operation of a new load facility in 200 West Area and a new unload facility in 200 East Area.

Impacts. Environmental effects associated with the rail transfer alternative include impacts to soils and transportation. Construction of the load and unload facilities and rail spurs would disturb approximately 2 hectares (5 acres) of land, none of which is considered to be prime or unique farmland, or mature sagebrush habitat. During construction activities, dust suppression measures would be implemented to reduce fugitive dust emissions.

Approximately 470 train trips, assuming one tank car per trip, would be required to transfer the subject waste. Assuming 2 train trips per day, 235 days would be required to transfer the wastes. The two additional daily trips would not impact existing rail operations. Significant impacts to road traffic from road closures during rail transport are not expected because of advance notice of shipments, restricting shipments to off-peak hours, and the short duration of road closures.

New Storage Alternative

This alternative includes mitigation of the Tank 101–SY flammable gas safety issue by dilution and retrieval of the waste. Facilities constructed and operated to accomplish this action would include a new tank facility (NTF), including two new DSTs and associated facilities, a waste retrieval system in Tank 101–SY, a waste retrieval system in Tank 102–SY, and the RCSTS. This alternative also includes transfer of waste from Tank 102–SY, SWL from interim stabilization of SSTs in the 200 West Area, and transfer of 200 West Area facility wastes as described for the preferred alternative. This alternative would provide additional storage capacity that could be used for other future waste management needs.

Impacts. Environmental effects identified under the new storage alternative are primarily related to construction activities and include impacts to soils, land use, biological resources, and worker exposure. Construction of the RCSTS and NTF would disturb approximately 30 hectares (74 acres) and 20 hectares (50 acres) of land, respectively, none of which are considered to be prime or unique farmland. Fugitive dust emissions are anticipated during earth moving activities, but would be mitigated by dust suppression measures. The 50 hectares (124 acres) of land would be a small incremental addition of land committed to waste management at Hanford.

Approximately 30 hectares (74 acres) of mature sagebrush/cheatgrass habitat would be disturbed from constructing the RCSTS and NTF. The new storage alternative would include establishing habitat restoration sites to mitigate the disturbance of native soil and removal of vegetation in the construction area.

No health effects are anticipated for routine operation of any facilities under the new storage alternative.

No Action Alternative

This alternative would not construct any new tanks, tank retrieval systems, or cross-site transfer systems. The flammable gas safety issue in Tank 101–SY would be managed through continued operation of the existing mixer pump. The remaining supernatant in Tank 102–SY, SWLs from interim stabilization of SSTs, and liquid waste from 200 West Area facilities would be transported from the 200 West Area to the 200 East Area via the ECSTS.

Impacts. There are no environmental impacts associated with normal operations of the no action alternative. However, due to lack of secondary containment and poor leak detection capabilities of the aging ECSTS, leaks to the environment are considered more likely than under the other alternatives evaluated in the SIS EIS. To avoid environmental impacts from a failure of the ECSTS during waste transfer, operational controls prior to waste transfers such as, pressure testing at levels in excess of operational pressures, would be used to confirm the integrity of the ECSTS before waste is introduced into the system.

Environmentally Preferred Alternative

Normal operations under the no action alternative would not result in the loss of State-designated Priority Habitat, would not result in the generation of additional contaminated materials requiring decommissioning and disposal, and would not cause additional worker exposures over existing levels, as would occur under the preferred, truck transfer, rail transfer, and new storage alternatives. Therefore, the no action alternative is considered the environmentally preferred alternative under normal operating conditions.

However, because the existing cross-site transfer system is over 40 years old, there is a higher probability of system failure or an accident than under the other transfer alternatives evaluated in the Final SIS EIS. Additionally, because the existing transfer system is not compliant with current engineering standards requiring double containment and leak detection systems, there is a higher likelihood of a release to the environment under accident conditions than would be anticipated under the other transfer alternatives.

Other Considerations

In addition to the assessment of environmental impacts provided by the SIS EIS, DOE and Ecology considered costs, comments on the Final SIS EIS, and nuclear criticality safety in determining a course of action to meet the need for interim management of Hanford tank wastes.

Costs

Comparative analysis of construction, operation, and decommissioning costs among the alternatives was generated for an interim period of five years and lifecycle operations till 2028. The analysis was based on a comparable set of baseline assumptions regarding waste volumes and transfer schedules, and accurately reflects relative costs among alternatives. However, the estimates may not accurately represent the true cost of implementing a specific alternative once final decisions are reached on waste transfers. Based on the unresolved criticality safety issues described below, retrieval costs for solids removal from Tank 102–SY have been excluded from the preferred and new storage alternatives. The results of the analysis are as follows:

Alternative	Interim costs (1995 dollars in millions)	Lifecycle costs[b] (1995 dollars in millions)
Preferred	[a] $105.2	$243
Truck transfer	125.9	632.8
Rail transfer	113.7	491.8
New storage	[a] 328.1	589.6
No action	48.9	NA

[a] Excludes costs for retrieval of solids from Tank 102–SY as proposed in the SIS EIS.

[b] Includes costs for retrieval of solids from Tank 102–SY under all alternatives.

The lifecycle costs for the no action alternative were not estimated because the ECSTS could not meet waste transfer requirements beyond the interim time period. All alternatives include a $36 million decontamination and decommissioning cost for the ECSTS.

Comments Received

DOE and Ecology received comments from two individuals on the Final SIS EIS.

Comment. One individual agreed with continued operation of the mixer pump in Tank 101–SY to mitigate flammable gas accumulation.

Response. DOE will continue the operation of the mixer pump in Tank 101–SY.

Comment. ''The fundamental assumption is that the best way to maintain Safe storage is to suck liquid waste out of single shell tanks and then move it to a safer double shell tank. Why is that safer? A lot of things can go wrong when you pressurize the waste and move it that can't happen if you leave it in the single shell tanks. Look at the spray leaks from your ITRS and PPSS that can kill hundreds of people. Compare that to the lack of impacts to people if you leave the waste in the single shell tanks as laid out in the Hanford EIS that produced the empty grout vaults and the unbuilt vitrification plant. [Assumed DOE/EIS–0113] Those facilities weren't needed either and the Department rushed to the wrong decision spending millions of dollars unnecessarily.''

Response. In the Record of Decision based on the Final Environmental Impact Statement for the Disposal of Hanford Defense High-Level, Transuranic, and Tank Wastes (HDW–EIS) (53 FR 12449), and again in the Finding of No Significant Impact for an environmental assessment for the Waste Tank Safety Program (DOE/EA–0915), DOE decided to continue to safely store the SST waste prior to making a decision on the disposal of this waste. The decision on the final disposition of the SST waste will be made by the Department in the TWRS EIS. The SST interim stabilization program is an ongoing program initiated in late 1970s to reduce the potential for release of high-level wastes into the environment and allow continued safe storage of the high-level sludge, salt cake, and non-pumpable liquid waste. Although no adverse radiological impacts were postulated by the HDW-EIS for leaking SSTs, including the ultraconservative 40,000 m^3 (10.5 million gallons) release scenario evaluated, DOE policy is to reduce the potential for any liquid release whenever practicable [DOE/EIS–0113]. Further, all retrievals and waste transfers will occur at subcritical levels in accordance with existing procedures. There are currently 67 SSTs which have been declared confirmed or assumed leakers. These SSTs have released 2.3 to 3.4 million liters (600,000 to 900,000 gallons) of waste to the environment. Therefore, it is DOE's policy that the continued safe storage of the SST waste pending a final disposal decision requires the continuation of the SST interim stabilization program, which is scheduled to be completed by the year 2000.

The postulated spray releases from Initial Tank Retrieval System (ITRS) and Past Practice Sluicing System (PPSS) evaluated in the Final SIS EIS have a probability of extremely unlikely to incredible or 10-5 to 10-7 per year. When compared to the almost certain release to the environment if liquid wastes are left in SSTs, DOE has determined that the risks of transfer are

acceptable and that the risks to the environment from suspension of the interim stabilization program are unacceptable.

Comment. ''What are the true impacts of leaving the waste in the single shell tanks? Are they any greater now than they were in the old EIS?''

Response. The SIS EIS is an interim action EIS which considers only near term actions required to safely manage tank wastes until disposal decisions are made through the TWRS ROD. Leaving waste in the SSTs is beyond the scope of the SIS EIS. The TWRS EIS is currently re-evaluating the consequences which would result from leaving wastes in single shell tanks.

Comment. ''How much money will you waste this time on an action that isn't needed?''

Response. The costs of the alternative actions are specified above. DOE believes that the action is needed and the costs are justified.

Comment. ''Your purpose and need statement basically says you need it because the State told you to do it in the TPA. So you already made the decision in a fundamentally flawed way without regard to NEPA. Once again the NEPA process at DOE is a sham . . . The bottom line is that the DOE NEPA process is a sham, and now the State is a part of it. You make decisions and then try to justify them with EISs.''

Response. This EIS was prepared to comply with the requirements of NEPA. An EIS document identifies and evaluates the environmental impacts of the proposed action and reasonable alternatives. The Tri Party Agreement defines the schedules and milestones for taking certain cleanup actions at the Hanford Site. The Tri Party Agreement is annually revisited and can be changed if new information arises or situations change. For example, the Tri Party Agreement had milestones for the six new double shell tanks which were identified in Draft SIS EIS. Public comments received on the Draft SIS EIS as part of the NEPA process and new studies indicated that six new double shell tanks were not needed. As a result, an adjustment to DOE's preferred alternative was made in the Final SIS EIS and the Tri Party Agreement was modified to delete the milestones for construction of new double shell tanks.

Comment. ''Even if you absolutely had to move some waste you already have an existing pipeline system that can move liquids. This year you moved over 400,000 gallons of waste through it. Why can't you use it for more transfers? In fact your EIS says you plan to do just that. For this EIS most of the waste is planned to go through the existing pipelines. Why can't you send a few more transfers through the existing lines? This would undoubtedly be cheaper and less damaging to the environment. Before the last transfer the line was pressured tested to make sure it would be safe. Why not just do that every time? You could take very little risk by doing this and you'd save the people of this country tens of millions of dollars.''

Response. The existing lines are planned to be used for liquid waste transfers as indicated in the comment. However, due to the age of the lines and likelihood of failure of these lines, DOE believes it is prudent to replace these lines with a modern, safe, reliable and compliant waste transfer system. This will provide DOE with a more certain ability to meet its need for cross-site waste transfers.

Comment. ''A new line isn't needed just to move the amount of liquid waste specified in this EIS. The State is making DOE build this line to service the TWRS planned mission of vitrifying all the waste in the tanks. If that's the true need, then this action needs to be covered in the TWRS EIS where there might be a real need. Building it for this trumped up need will prejudice the TWRS decision (which already seems to have been made.)''

Response. DOE has a need to move waste cross-site prior to implementing decisions based on the TWRS EIS. This need exists independent of the decisions that may be reached based on the TWRS EIS. The replacement cross site transfer system could become a component of the TWRS, but DOE does not believe that its existence would be prejudicial to any of the alternatives being considered within the TWRS EIS.

Comment. ''How in the world can you be privatizing TWRS if you haven't already made the decision?''

Response. Privatization of TWRS is not an action that was considered in this EIS.

Tank Farm Criticality Control

Through an ongoing safety evaluation process, DOE recently revisited its operational assumptions regarding the potential for the occurrence of a nuclear criticality event during waste storage and transfers. Changes to the Tank Farm Authorization Basis for Criticality that were approved in September 1995, were rescinded by DOE in October 1995, pending the outcome of a criticality safety evaluation process outlined for the Defense Nuclear Facilities Safety Board (DNFSB) on November 8, 1995. Until these criticality safety evaluations are completed, Hanford will operate under the historic limits which maintain reasonable assurance of subcritical conditions during tank farm storage and transfer operations. Of the actions evaluated in the Final SIS EIS, only the retrieval of solids from Tank 102–SY is affected by the technical uncertainties regarding criticality. Based on the quantities of plutonium in Tank 102–SY sludge, retrieval of the solids falls within the scope of the criticality safety issues which will be evaluated over the next few months. As a result, a decision on retrieval of solids from Tank 102–SY is being deferred in this ROD. Tank 101–SY mixer pump operations, interim operation of the ECSTS, operation of the RCSTS, SWL retrievals, and 200 West Area Facility waste generation, would all occur within the applicable criticality limits and would be subcritical.

Decision

Based on the consideration of environmental impacts, cost, engineering standards, criticality safety, and comments received on the Final SIS EIS, DOE will construct and operate the RCSTS on the proposed route identified in the Final SIS EIS, continue operating the mixer pump in Tank 101–SY, and transfer waste from the interim stabilization program and other facility waste in the 200 West Area. During construction of the RCSTS, SWLs and 200 West Area facility wastes will be transferred through the ECSTS to DST storage in the 200 East Area. These actions will provide safe, compliant, and reliable high-level waste transfer capabilities and will operate with wastes at subcritical levels under the existing Hanford Tank Farm Interim Safety Basis, until final disposal decisions are made under the TWRS EIS.

The RCSTS will provide Hanford with a waste transfer capability that meets current engineering standards for double containment and leak detection. As compared to other transfer alternatives, the RCSTS will:

- More effectively minimize worker exposures and meet ALARA requirements through remote operations and underground transfers;
- Cost less during both the interim time period and less over a lifecycle operation than the other action alternatives;
- Provide greater operational flexibility by conducting transfers that are independent of weather or site traffic;
- More efficiently manage the transfer of millions of gallons of wastes required in the near term and potentially required in the future.

The RCSTS will be built on the proposed route identified in the Final SIS EIS. Alternative routes evaluated in the EIS would have environmental impacts identical to the proposed route except with respect to impacts on Priority Habitat. The western segment optional route would reduce habitat impacts by only 0.6 hectares (1.6 acres) but at a significant cost increase. The eastern option would result in an increase in habitat loss by 2.1 hectares (5.3 acres) over the proposed route. Because habitat impacts will be mitigated, engineering siting criteria are more favorable, and construction costs would be less, the proposed RCSTS route is selected.

The continued operation of a mixer pump in Tank 101–SY is selected to mitigate the flammable gas safety issue in that tank. The mixer pump has been proven to be effective mitigation during more than one year of operations. A replacement pump is available and will be maintained as a contingency should the existing pump fail. Dilution as a mitigation was not selected due to the success of the mixer pump, and because it would increase waste volumes requiring new tanks for storage and generate more waste for future disposal.

DOE will continue to use the ECSTS until the RCSTS is operational to provide access to 200 East Area DSTs for storage of 200 West Area facility wastes and retrieved SWLs. SWL retrievals will continue to reduce the risk to the environment from leaking SSTs. Operational procedures will assure the integrity of the ECSTS prior to any waste transfers. The current planning base estimates that the ECSTS will operate for approximately 625 hours during five transfers before the RCSTS is operational.

Based on the new information available to DOE, since the issuance of the Final SIS EIS, regarding nuclear criticality safety concerns during retrieval, transfer, and storage actions, DOE has decided to defer a decision on the construction and operation of a retrieval system in Tank 102–SY. Pending the outcome of the technical initiative to resolve the tank waste criticality safety issue, transfers of wastes through Tank 102–SY will be limited to non-complexed wastes.

Mitigation

All practical means to avoid or mitigate environmental impacts from the actions to be implemented by this ROD have been adopted by DOE. With the exception of habitat losses and dust generation from construction activities, and the potential to encounter cultural resources during subsurface disturbance, all potentially significant impacts have been avoided.

Construction of the RCSTS will result in impacts that can be either avoided or minimized through the implementation of mitigation measures. The surface and subsurface disturbance required for the installation of the RCSTS, a 10 kilometer (6.2 mile) double-wall pipeline, has the potential to affect biota, dust emissions, and cultural resources. Biota will be displaced due to the loss of habitat. Particulate emissions in the form of dust releases from exposed soils will occur if not mitigated. Cultural resources may be encountered during subsurface excavations necessitating mitigation actions.

Impacts to biota resulting from the loss of habitat will be mitigated through a program of transplantation of mature sagebrush from the RCSTS construction corridor to a mitigation site located in close proximity to the impacted area. In addition, tublings will be cultivated and transferred to the mitigation site. For the 9 hectares (23 acres) of mature sagebrush lost to the RCSTS construction, 27 hectares (69 acres) of sagebrush habitat will be planted.

Dust emissions will be mitigated by a combination of watering and reseeding of disturbed areas. In areas of active construction, water will be applied at frequencies sufficient to prevent unacceptable releases of dust. After RCSTS construction is completed, those areas not required for routine access or maintenance will be reseeded with native grass species.

No archaeological or historical sites were identified in the corridor to be disturbed by RCSTS construction. However, one potential archaeological site was identified within the compensation area to be utilized for habitat mitigation. Impacts to this site will be mitigated through avoidance. All ground-disturbing actions that occur during RCSTS construction or habitat mitigation activities will be monitored. A qualified archaeologist identified by DOE will assess the significance of any resources uncovered. The archaeologist will coordinate with DOE to initiate consultation with the State Historic Preservation Officer (SHPO) and the appropriate tribal representatives, including members of the Wanapum People, Yakama Indian Nation, Confederated Tribes of the Umatilla Indian Reservation, and Nez Perce Tribe. To the extent possible, all materials determined significant will be avoided during subsequent activities and will be left in place. If this is not possible, removal will be conducted in consultation with DOE, the SHPO, and appropriate tribal representatives.

In accordance with § 1021.331(a) of the DOE regulations implementing NEPA (10 CFR part 1021), a Mitigation Action Plan (MAP) will be prepared that addresses mitigation actions associated with the course of action directed by this ROD.

Issued

The State of Washington concurred on this Record of Decision via letter to the Department of Energy on November 21, 1995. This Record of Decision for the Safe Interim Storage of Hanford Tank Wastes is issued by the Department of Energy, Richland Operations Office, Richland, Washington on November 21, 1995.

John D. Wagoner,

Manager, DOE Richland Operations Office.

[FR Doc. 95–29313 Filed 11–30–95; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site-Specific Advisory Board, Fernald

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Fernald.

DATES: Thursday, December 7, 1995: 6:00 p.m.–8:30 p.m.

ADDRESSES: The Joint Information Center, 6025 Dixie Highway, Route 4, Fairfield, Ohio.

FOR FURTHER INFORMATION CONTACT: John S. Applegate, Chair of the Fernald Citizens Task Force, P.O. Box 544, Ross, Ohio 45061, or call the Fernald Citizens Task Force message line (513) 648–6478.

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of future use, cleanup levels, waste disposition and cleanup priorities at the Fernald site.

Tentative Agenda

Thursday, December 7, 1995

6:00 p.m.—Task Force Administration (Call to order, Approval of Minutes, Chair's Remarks).

6:15 p.m.—Report of Membership Committee.

6:45 p.m.—Review of 1996 Workplan:

Schedule
Issues
Committee Structure
7:30 p.m.—Discussion of Upcoming Site Design Related Activities.
7:45 p.m.—Opportunity for Public Comment.
8:00 p.m.—Wrap Up.
8:15 p.m.—Adjourn.

A final agenda will be available at the meeting, Thursday, December 7, 1995.

Public Participation

The meeting is open to the public. Written statements may be filed with the Task Force chair either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Task Force chair at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official, Kenneth Morgan, Public Affairs Officer, Ohio Field Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. Due to programmatic issues that had to be resolved prior to publication, this notice is being published less than 15 days before the date of the meeting.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to John S. Applegate, Chair, the Fernald Citizens Task Force, P.O. Box 544, Ross, Ohio 45061 or by calling the Task Force message line at (513) 648–6478.

Issued at Washington, DC on November 22, 1995.

Rachel Murphy Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–29312 Filed 11–30–95; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site-Specific Advisory Board, Department of Energy/Los Alamos National Laboratory

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Los Alamos National Laboratory.

DATES: Tuesday, December 12, 1995: 6:30 pm–9:30 pm; 8:00 pm to 9:00 pm (public comment session).

ADDRESSES: The Senior Stroke Center, 735 Viet Nam Memorial Parkway Road, Espanola, New Mexico 87352.

FOR FURTHER INFORMATION CONTACT: Ms. Lisa Roybal, EM SSAB, Los Alamos National Laboratory, Northern New Mexico Community College, 1002 Onate Street, Espanola, NM 87352, (800)753–8970, or (505)753–8970.

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Advisory Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Tuesday, December 12, 1995

6:30 PM—Call to Order and Welcome.
7:00 PM— Sub-Committee Reports.
8:00 PM— Input from the Public.
9:30 PM— Adjourn.

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ms. Lisa Roybal, at the telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. This notice is being published less than 15 days before the date of the meeting, due to programmatic issues that had to be resolved prior to publication.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Herman Le-Doux, Department of Energy, Los Alamos Area Office, 528 35th Street, Los Alamos, NM 87185–5400.

Issued at Washington, DC on November 28, 1995.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–29307 Filed 11–30–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Project No. 2496–006 Oregon]

Eugene Water & Electrical Board; Notice of Intent to Hold a Public Meeting in Springfield, Oregon, to Discuss the Draft Environmental Impact Statement (DEIS) for the Proposed Relicensing of the Leaburg-Walterville Hydroelectric Project

November 27, 1995.

On October 13, 1995, the Commission staff mailed the DEIS to the Environmental Protection Agency, resource and land management agencies, and interested organizations and individuals. This document evaluates the environmental consequences of the proposed relicensing of the Leaburg-Walterville Hydroelectric Project at the installed capacity of 21.5 megawatts. The project is located on the Mckenzie River in Land County, Oregon.

The public meeting will be recorded by a court reporter and is scheduled to be held at 7 p.m. on Tuesday, December 19, 1995, at the Thurston High School auditorium which is located just off Highway 126, at 333 North 58th Street, Springfield, Oregon.

At the meeting, Commission Staff will summarize major DEIS findings and recommendations. Resource agency personnel and other interested persons will have an opportunity to submit oral and written comments on the DEIS for the Commission's public record. Written comments on the DEIS may also be sent to: The Federal Energy Regulatory Commission, 888 First Street N.E., Washington, DC. 20426. Comments must be received before December 26, 1995. All correspondence should include the project name and number on the first page of the correspondence.

The DEIS considers recommendations of government agencies, nongovernmental organizations, affected Indian tribes, the public, Eugene Water & Electric Board (EWEB), and the Commission's staff. It evaluates natural and social resource benefits, the economic costs, and the project-specific

and cumulative environmental impacts associated with relicensing the project.

To maintain and enhance the project's power generation efficiency and capacity, the DEIS recommends raising Leaburg Lake by 1.5 feet, installing structures in the McKenzie River near the Walterville intake, excavating the Walterville tailrace, and upgrading powerhouse generation equipment. The environmental impacts of these actions would be minor and could be mitigated by staff recommended measures.

To enhance highly valued McKenzie River fishery resources, EWEB would install a fish screen in the Walterville canal intake and would install tailrace barriers in the Leaburg and Walterville tailraces. To further improve fish habitat and boating opportunities, enhanced year-around minimum in-stream flows, including a flow allotment that could be used during late-summer low-flow conditions are recommended.

To enhance recreation access and opportunities along the McKenzie River, EWEB proposes trust fund donations to acquire lands along the river for access and habitat protection. EWEB also proposes several lesser measures to enhance wildlife habitat values and recreation opportunities on project lands.

Lois D. Cashell,

Secretary.

[FR Doc. 95–29290 Filed 11–30–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2544–009 Washington]

Washington Water Power Co.; Notice of Availability of Environmental Assessment

November 27, 1995.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) Regulations, 18 CFR Part 380 (Order 486, 52 FR 47897), the Commission's Office of Hydropower Licensing has reviewed an application for a reservoir drawdown to install a manual sluice gate at the Meyers Falls Project, Project No. 2544–009. The Meyers Falls Project is located on the Colville River, in Stevens County, Washington. The application is for a reservoir drawdown associated with the installation of a manual sluice gate. An Environmental Assessment (EA) was prepared for the application. The EA finds that approving the application would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 3104, of the Commission's offices at 941 North Capitol Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 95–29289 Filed 11–30–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–77–000]

Koch Gateway Pipeline Company; Notice of Request Under Blanket Authorization

November 27, 1995.

Take notice that on November 20, 1995, Koch Gateway Pipeline Company (Koch Gateway), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP96–77–000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to operate as a jurisdictional facility, a delivery tap placed in service under Section 311(a) of the Natural Gas Policy Act and § 284.3(c) of the Commission's Regulations, under Koch Gateway's blanket certificate issued in Docket No. CP82–430–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Koch Gateway states that the proposed certification of facilities will enable it to provide transportation under its blanket transportation certificate through an existing delivery tap serving Entex, Inc. a local distribution company, in Neshoba County, Mississippi.

Koch Gateway asserts that it will operate the delivery tap in compliance with 18 CFR Part 157, Subpart F and that it has sufficient capacity to render the proposed service without detriment or disadvantage to its other existing customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–29291 Filed 11–30–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–76–000]

Northern Natural Gas Company; Notice of Request Under Blanket Authorization

November 27, 1995.

Take notice that on November 20, 1995, Northern Natural Gas Company (Northern), P.O. Box 3330, Omaha, Nebraska, 68103–0330, filed in Docket No. CP96–76–000 a request pursuant to §§ 157.205, and 157.216(b) of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, and 157.216(b)) for approval to abandon certain small volume measuring station facilities under Northern's blanket certificate authority issued in Docket No. CP82–401–000, pursuant to Section 7(b) of the Natural Gas Act (NGA), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern proposes to abandon a total of 140 measuring station facilities, located in Iowa, Kansas, Minnesota, Nebraska, and South Dakota, all as more fully set forth in the request on file with the Commission. Northern states that the facilities to be abandoned are jurisdictional facilities under the NGA and were constructed pursuant to superseded 2.55 regulations, budget, or blanket authority, depending on the year the facilities were originally placed in-service. Northern indicates that Peoples Natural Gas Company's end-users have requested the removal of these stations from their property.

Any person or the Commission's Staff may, within 45 days of the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), a motion to intervene and pursuant to § 157.205 of the regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activities shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for

authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–29292 Filed 11–30–95; 8:45 am]

BILLING CODE 6717–01–M

Office of Energy Research

Health and Environmental Research Advisory Committee; Renewal

AGENCY: Department of Energy.

ACTION: Notice of renewal.

SUMMARY: Pursuant to Section 14(a)(2)(A) of the Federal Advisory Committee Act, and in accordance with title 41 of the Code of Federal Regulations, section 101–6.1015(a), and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Health and Environmental Research Advisory Committee has been renewed for a two-year period beginning in November 1995. The Committee will provide advice to the Director, Office of Energy Research, on the Biological and Environmental Research Program managed by the Office of Health and Environmental Research.

The renewal of the Health and Environmental Research Advisory Committee has been determined to be essential to the conduct of the Department of Energy business and to be in the public interest in connection with the performance of duties imposed upon the Department of Energy by law. The Committee will operate in accordance with the provisions of the Federal Advisory Committee Act, the Department of Energy Organization Act (Public Law 95–91), and rules and regulations issued in implementation of those Acts.

Further information regarding this Advisory Committee can be obtained from Mrs. Rachel Murphy Samuel at (202) 586–3279.

Issued in Washington, D.C. on November 22, 1995.

JoAnne Whitman,

Deputy Advisory Committee Management Officer.

[FR Doc. 95–29309 Filed 11–30–95; 8:45 am]

BILLING CODE 6450–01–M

Energy Research Financial Assistance Program Notice 96–04; Energy Biosciences

AGENCY: Department of Energy (DOE).

ACTION: Notice inviting grant preapplications.

SUMMARY: The Office of Basic Energy Sciences of the Office of Energy Research (ER), U.S. Department of Energy (DOE) invites preapplications from potential applicants for research funding in the Energy Biosciences program area. The intent in asking for a preapplication is to save the time and effort of applicants in preparing and submitting a formal project application that may be inappropriate for the program. The preapplication should consist of a two- to three-page concept paper on the research contemplated for an application to the Energy Biosciences program. The concept paper should focus on the scientific objectives and significance of the planned research, and include an outline of the approaches planned, and any other information relating to the planned research. No budget information or biographical data need be included; nor is an institutional endorsement necessary. The preapplication gives us the opportunity to advise potential applicants on the suitability of their research ideas to the mission of the DOE Energy Biosciences program. A response indicating the appropriateness of submitting a formal application will be sent from the Division of Energy Biosciences office in time to allow for an adequate preparation period for a formal application.

DATES: For timely consideration, all preapplications should be received by February 26, 1996. However, earlier submissions will be gladly accepted. A response to timely preapplications will be communicated by April 18, 1996. The deadline for receipt of formal applications is June 5, 1996.

ADDRESSES: Preapplications referencing Program Notice 96–04 should be forwarded to: U.S. Department of Energy, Office of Basic Energy Sciences, ER–17, Division of Energy Biosciences, 19901 Germantown Road, Germantown, MD 20874–1290, Attn: Program Notice 96–04. Fax submissions are acceptable (Fax Number (301) 903–1003).

FOR FURTHER INFORMATION CONTACT: Ms. Pat Snyder, Division of Energy Biosciences, Office of Basic Energy Sciences, ER–17, 19901 Germantown Road, Germantown, MD 20874–1290, telephone (301) 903–2873.

SUPPLEMENTARY INFORMATION: Before preparing a formal application, potential applicants should submit a brief preapplication in accordance with 10 CFR 600.10 (d)(2), which consists of two to three pages of narrative describing research objectives. These will be reviewed relative to the scope and the research needs of the Energy Biosciences program. The Energy Biosciences program has the mission of generating fundamental biological information about plants and non-medical related microorganisms that can provide support for future energy related biotechnologies. The objective is to pursue basic biochemical, genetic and physiological investigations that may contribute towards providing alternate fuels, petroleum replacement products, energy conservation measures as well as other technologies such as phytoremediation related to DOE programs. Areas of interest include bioenergetic systems, including photosynthesis; control of plant growth and development, including metabolic, genetic, and hormonal and ambient factor regulation, metabolic diversity, ion uptake, transport and accumulation, stress physiology and adaptation; genetic transmission and expression; plant-microbial interactions, plant cell wall structure and function; lignocellulose degradative mechanisms; mechanisms of fermentations, genetics of neglected microorganisms, energetics and membrane phenomena; thermophily (molecular basis of high temperature tolerance); microbial interactions; and one-carbon metabolism, which is the basis of biotransformations such as methanogenesis. The objective is to discern and understand basic mechanisms and principles.

Funds are expected to be available for new grant awards in FY 1997. The magnitude of these funds available and the number of awards which can be made will depend on the budget process. The awards made during FY 1995 ranged on the average from about $63,000 to $175,000 per year, mostly for a three-year duration. The principal purpose in using preapplications at this time is to reduce the expenditure of time and effort of all parties. Information about development and submission of applications, eligibility, limitations, evaluations and selection processes, and other policies and procedures may be found in the 10 CFR Part 605 and the Guide. The Application Guide for the Office of Energy Research Financial Assistance Program for formal submissions and copies of 10 CFR Part 605 are available from U.S. Department of Energy, Office of Basic Energy Sciences, ER–17, Division of Energy Biosciences, 19901 Germantown Road, Germantown, MD 20874–1290. Telephone requests may be made by calling (301) 903–2873. Instructions for preparation of an application are included in the application guide. Electronic access to ER's Financial Assistance Guide is possible via the

Internet using the following E-mail address: http://www.er.doe.gov/

The Catalog of Federal Domestic Assistance number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR Part 605.

Issued in Washington, D.C., on November 17, 1995.

D. D. Mayhew,

Associate Director, Office of Resource Management, Office of Energy Research.

[FR Doc. 95–29308 Filed 11–30–95; 8:45 am]

BILLING CODE 6450–01–P

Office of Fossil Energy

National Coal Council; Renewal

Pursuant to Section 14(a)(2)(A) of the Federal Advisory Committee Act and in accordance with title 41 of the Code of Federal Regulations, section 101–6.1007 and following consultation with the Committee Management Secretariat of the General Services Administration, notice is hereby given that the National Coal Council has been renewed for a two-year period ending November 23, 1997. The Council will continue to provide advice, information, and recommendations to the Secretary of Energy, on a continuing basis, regarding general policy matters relating to coal issues.

Council members are chosen to assure a well balanced representation from all sections of the country, all segments of the coal industry, including large and small companies, and commercial and residential consumers. The Council also has members who represent interests outside the coal industry, including environmental interests, labor, research, academia, and minorities. Membership and representation of all interests will continue to be determined in accordance with the requirements of the Federal Advisory Committee Act, section 624(b) of the Department of Energy Organization Act (Public Law 95–91), and implementing regulations.

The renewal of the Council has been determined essential to the conduct of the Department's business and in the public interest in connection with the performance of duties imposed upon the Department of Energy by law. The Council will continue to operate in accordance with the provisions of the Federal Advisory Committee Act (Public Law 92–463), the Department of Energy Organization Act (Public Law 95–91), and the implementing regulations.

Further information regarding this advisory committee may be obtained from Rachel M. Samuel at (202) 586–3279.

Issued at Washington, D.C. on November 22, 1995.

JoAnne Whitman,

Deputy Advisory Committee Management Officer.

[FR Doc. 95–29311 Filed 11–30–95; 8:45 am]

BILLING CODE 6450–01–M

National Petroleum Council; Renewal

Pursuant to Section 14(a)(2)(A) of the Federal Advisory Committee Act and in accordance with title 41 of the Code of Federal Regulations, section 101–6.1007 and following consultation with the Committee Management Secretariat of the General Services Administration, notice is hereby given that the National Petroleum Council has been renewed for a two-year period ending November 23, 1997. The Council will continue to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industry.

Council members are chosen to assure a well-balanced representation from all sections of the country, all segments of the petroleum industry, and from large and small companies. The Council also has members who represent interests outside the petroleum industry, including representatives from environmental, labor, research, academia, minorities, and state utility regulatory commissions. Membership and representation of all interests will continue to be determined in accordance with the requirements of the Federal Advisory Committee Act, section 624(b) of the Department of Energy Organization Act (Public Law 95–91), and implementing regulations.

The renewal of the Council has been determined essential to the conduct of the Department's business and in the public interest in connection with the performance of duties imposed upon the Department of Energy by law. The Council will operate in accordance with the Federal Advisory Committee Act (Public Law 92–463), the Department of Energy Organization Act (Public Law 95–91), and the implementing regulations.

Further information regarding this advisory committee may be obtained from Rachel M. Samuel at 202/586–3279.

Issued at Washington, DC on November 22, 1995.

JoAnne Whitman,

Deputy Advisory Committee Management Officer.

[FR Doc. 95–29310 Filed 11–30–95; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[AMS–FRL–5338–1]

Agency Information Collection Activities Up for Renewal; Request for Comments: Investigation Into Possible Noncompliance of Motor Vehicles With Federal Emission Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following proposed and/or continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before January 30, 1996.

ADDRESSES: Requests for a copy of the ICR should be sent to Karl Simon, U.S. EPA, 401 M Street S.W. (6405J), Washington, D.C., 20460. Please include a daytime telephone number, a current mailing address, and if available, an E-mail address, with any request.

FOR FURTHER INFORMATION CONTACT: Karl Simon, Vehicle Programs and Compliance Division, U.S. EPA, 401 M Street, S.W. (6405J), Washington, D.C., 20460; (202) 233–9299, FAX (202) 233–9596, E-mail address: Simon.Karl@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Affected entities: Parties potentially affected by this action are those individuals and businesses who either own cars or trucks or repair such vehicles in the Washington, D.C., Ann Arbor, Michigan, or Denver, Colorado metropolitan areas.

Title: Investigation into Possible Noncompliance of Motor Vehicles with Federal Emission Standards, OMB No. 2060–0086, Expiration Date March 31, 1996.

Abstract: This information collection is composed of instruments used by the U.S. Environmental Protection Agency in its Mobile Source Control Program to elicit information from the public needed for fulfilling its responsibilities under the Clean Air Act. The information collected, specifically motor vehicle or engine operational and maintenance histories, is used to identify properly maintained and used motor vehicles and engines that might

be subsequently tested in the Agency's in-use emissions testing programs. The self-addressed postcard and owner telephone questionnaire are completed using information readily available to and given by owner of vehicles from a vehicle class under investigation for possible emissions noncompliance. The maintenance verification form is administered to representatives of repair facilities that performed maintenance on vehicles whose owners have responded to the owner telephone questionnaire. The main method of information collection is through telephone calls between vehicle or engine owners and EPA contractor or grantee staff. Respondents are not required to develop or maintain data records solely due to this information request since requested data comes from records vehicle or engine owners would keep as part of their personal or business records. Responses to these information requests are completely voluntary. Data received under this ICR is made available only to EPA and the automobile manufacturer whose engine class is being tested.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

The EPA would like to solicit comments to:

(i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: EPA's burden estimates for this information collection are broken down according to the three different items in this collection, namely the postcard, telephone questionnaire, and the maintenance verification form. EPA estimates that the 15,000 people annually who receive a postcard will require six minutes to read and respond to it. The 2,100 people who will respond to administered telephone questionnaires, based on annual averages, will require one-half an hour on average to respond. Parties responding to the postcards and telephone questionnaires will only do so once per year. Parties responding to the maintenance verification form, an estimated total of 50 repair facility personnel, will need approximately one-quarter hour to respond, and might be required to provide the requested information twice a year. Costs to respondents associated with this ICR are attributed to individual or staff time involved in responding to the information requests. The costs of responding to the postcard, the telephone questionnaire, and the maintenance verification form are $2.00, $10.00, and $10.00, respectively. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: November 9, 1995.

Donald Zinger,

Acting Director, Office of Mobile Sources.

[FR Doc. 95–29360 Filed 11–30–95; 8:45 am]

BILLING CODE 6560–50–P

[ER–FRL–5230–9]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared November 13, 1995 Through November 17, 1995 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 14, 1995 (60 FR 19047).

Draft EISs

ERP No. D–AFS–D61044–PA Rating LO, Allegheny National Wild and Scenic River Management Plan, Implementation, Allegheny National Forest, Venango, Warren and Forest Counties, PA.

SUMMARY: EPA expressed lack of objections to the Allegheny Wild and Scenic River Management Plan Draft EIS.

ERP No. D–AFS–J65242–MT Rating EC2, Checkerboard Land Exchange, Plan of Approval and Implementation, Kootenai, Lolo and Flathead National Forests, Lincoln, Flathead and Sanders Counties, MT.

SUMMARY: EPA expressed environmental concerns about potential adverse impacts to water quality and fisheries. EPA believed that specific modifications and mitigations to protect watersheds, water quality and fisheries should be presented in the FEIS which would demonstrate compliance with Montana's Water Quality Standards and Nondegradation Policy.

ERP No. D–AFS–K67031–NV Rating EO2, Dash Open Pit and Underground Mining Project, Implementation, Expanding existing Gold Mining Operations at the Jerritt Canyon Project, Plan of Operation Approval and COE Section 404 Permit, Humboldt Toiyabe National Forest, Independence Mountain Range, Elko County, NV.

SUMMARY: EPA expressed environmental objections to the proposed project's potential impacts to water quality from design and placement of waste rock dumps in drainages. The FEIS should address impacts to water quality, waste rock handling, waste rock dump design, mitigation measures, baseline water quality, alternatives to the proposed project, air quality impacts and cumulative impacts.

ERP No. D–BLM–J02009–00 Rating EC2, Express Crude Oil Pipeline Project, Construction, Operation and Maintenance, Issuance of Right-of-Way Grant, Hill, Chouteau, Fergus, Judith Basin, Wheatland, Golden Valley, Stillwater and Carbon Counties, MT and Bighorn, Washakies, Hot Springs, Freemont and Watrona Counties, WY.

SUMMARY: EPA expressed environmental concerns regarding the proposed pipeline crossings of rivers, streams and wetlands, and asked that additional information on the proposed leak detection systems and emergency spill response plans be provided. EPA requested that the final EIS include additional resource information to fully assess and mitigate environmental impacts.

ERP No. D–BLM–K67020–AZ Rating EO2, Cyprus Bagdad Copper Mine, Mill Tailings and Waste Rock Storage Expansion, Plan of Operation Approval,

NPDES and COE Section 404 Permits Issuance, Yavapai County, AZ.

SUMMARY: EPA expressed environmental objections based on the projects potential impacts to water quality and need for additional information in the final EIS on surface water, groundwater, geochemistry, monitoring, alternatives to the proposed action, facility design and hazardous materials management.

ERP No. D–FHW–E40762–AL Rating EC2, Montgomery Outer Loop Construction, US 80 southwest of Montgomery to I–85 east of Montgomery, Funding and COE Section 404 Permit Issuance, Montgomery County, AL.

SUMMARY: EPA expressed environmental concerns with all the proposed alternatives due to potential impacts to wetland and upland forest resources and the lack of detail contained in the proposed mitigation plan. EPA requested that additional information on these issues be provided in the final document.

ERP No. D–FHW–J40212–CO Rating LO, CO–82 Highway Transportation Project, Improvements to ''Entrance to Aspen'', Funding and COE Section 404 Permit, City of Aspen, Pitkin County, CO.

SUMMARY: EPA expressed lack of objections to the proposed action.

ERP No. D–FHW–K40214–CA Rating EC2, Alternatives to Replacement of the Embarcadero Freeway and the Terminal Separator Structure, (Formerly CA–480) Implementation, Permit Approvals and Funding, San Francisco County, CA.

SUMMARY: EPA raised environmental concerns over the cumulative impacts of the project, since there are several transportation development projects in the area, as well as environmental concerns with runoff, erosion and hazardous materials found in the soils at the project site.

ERP No. D–FRC–J05076–MT Rating LO, Kerr Hydroelectric Project (FERC No. 5–021), License Modification Issuance to Existing License, Flathead River, Flathead and Lake Counties, MT.

Summary: While EPA had no objection to the proposed action it did recommend that some clarification on shore stabilization and water flows be provided in the final EIS.

ERP No. D–NPS–G61035–NM Rating LO, Petroglyph National Monument, General Management Plan and Development Concept Plan, Implementation, Bernalillo County, NM.

Summary: EPA had no objections to the proposed action described in the DEIS.

Final EISs

ERP No. F–AFS–J65222–ND, Southern Little Missouri and Cedar River Oil and Gas Leasing, Approvals, Custer National Forest, Medora Ranger District, Cedar River National Grassland, Grant River Ranger District, Billings, Golden Valley, Slope, Grant and Sioux Counties, ND.

Summary: EPA expressed environmental concerns about project impacts to air and water resources. EPA recommended a Conditions of Approval section be included in the document to describe development subsurface requirements for protecting water resources. EPA suggested that screening models be run with emissions calculated for the EIS, to evaluate potential impacts to air quality and visibility.

ERP No. F–AFS–J65228–UT, Jacob/Swale Vegetation Management Project, Implementation, Dixie National Forest, Escalante Ranger District, Garfield County, UT.

Summary: EPA expressed environmental concerns over wildlife habitat and potential adverse impacts from road management practices to elk and deer and the Northern Goshawk.

ERP No. F–BLM–J03022–WY, Greater Wamsutter Area II Natural Gas Development Project, Approvals and Permits Issuance, Carbon and Sweetwater Counties, WY.

Summary: EPA continued to express environmental concerns about cumulative effects of the anticipated intensive development through out southwest Wyoming.

ERP No. F–BOP–G81008–LA, Pollock US Penitentiary and Federal Prison Camp (FPC), Construction and Operation and Site Selection of a former World War II Military Installation, Grant Parish, LA.

Summary: EPA's previous environmental concerns have been addressed, therefore EPA has no objection to the proposed action.

ERP No. F–FAA–C51013–NJ, Expanded East Coast Plan, Changes in Aircraft Flight Patterns over the State of New Jersey, Implementation, NJ.

Summary: EPA believed that the proposed project, including the Solberg Mitigation Proposal, will not result in significant adverse environmental impacts; therefore, EPA has no objection to its implementation.

ERP No. F–FHW–E40728–AL, I–59/I–759 Interchange to US 11 and US 431/US 278, Construction, Funding, Etowah County, AL.

Summary: EPA's review found that the proposed alternative would have no major impacts on the natural environment provided Best Management Practices and mitigation are utilized.

ERP No. F–GSA–K80036–CA, Fresno—United States Courthouse, Site Selection and Construction, City of Fresno, Fresno County, CA.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–NOA–C91002–PR, U. S. Virgin Islands and Puerto Rico Corals and Reef Associated Plants and Invertebrates Fishery Management Plan, Implementation and NPDES Permit, PR and VI.

Summary: EPA believed that the proposed project will not result in significant adverse environmental impacts; therefore, EPA had no objection to its implementation.

Regulations

ERP No. R–NRC–A06177–00, 10 CFR Parts 60, 72, 73 and 75—Safeguards for Spent Nuclear Fuel or High-Level Radioactive Waste RIN–3150–AF32.

Summary: EPA had no comments to the proposed rule.

Dated: November 28, 1995.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 95–29335 Filed 11–30–95; 8:45 am]

BILLING CODE 6560–50–P

[ER–FRL–5230–8]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 OR (202) 260–5075. Weekly receipt of Environmental Impact Statements Filed November 20, 1995 Through November 24, 1995 Pursuant to 40 CFR 1506.9.

EIS No. 950546, Draft EIS, AFS, OR, Foss Perkins Analysis Area, Vegetation Management and Timber Sale, Ochoco National Forest, Snow Mountain Ranger District, Harney County, OR, Due: January 16, 1996, Contact: Bill Rice (541) 573–7292.

EIS No. 950547, Draft EIS, FHW, UT, Norman H. Bangerter Highway (Previously Known as the West Valley Highway) 12600 South Street to I–15, Funding and COE Section 404 Permit, in the Cities of Bluffdale, Riverton and Draper, Salt Lake County, UT, Due: January 16, 1996, Contact: Tom Allen (801) 963–0184.

EIS No. 950548, Draft EIS, FRC, MI, WI, Menominee River Basin Multiple Project, Application for New Licenses

and (Relicense) for Four Existings Projects, FERC Nos. 2536, 2357, 2394 and 2433, Menominee and Dickerson Cos., MI and Michigan and Marinette Cos., WI, Due: January 16, 1996, Contact: Thomas Camp (202) 219–2832.

EIS No. 950549, Final EIS, USN, IL, Glenview Naval Air Station Disposal and Reuse, Implementation, COE Section 404 Permit and EPA Permits Issuance, Cook County, IL, Due: January 02, 1996, Contact: Thomas Burst (803) 743–0590.

EIS No. 950550, Final EIS, AFS, Gypsy Moth Management in the United States: A Cooperative Approach, Implementation, UT, Due: January 02, 1996, Contact: John W. Hazel (610) 975–4150.

EIS No. 950551, Final EIS, DOE, WA, OR, Resource Contingency Program, Construction and Operation, Site Specific, Satsop Combustion Turbine Unit 1 and Chehalis Generation Facility, Lewis, Gray Harbor and Thurston Counties, WA, Due: January 02, 1996, Contact: Rob Diffely (503) 230–4213.

Amended Notices

EIS No. 950422, Draft EIS, COE, CA, Delta Wetlands Project, Construction and Operation Water Storage Project on Four Islands in the Sacramento-San Joaquin Delta, Approval of Permits, San Joaquin and Contra Costa Counties, CA, Due: December 21, 1995, Contact: Jim Monroe (916) 557–5266.

Published FR 09–22–95—Review period extended.

Dated: November 28, 1995.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 95–29336 Filed 11–30–95; 8:45 am]

BILLING CODE 6560–50–U

[FRL–5338–3]

National Environmental Justice Advisory Council Notifications of Public Advisory Committee Meeting(s); Open Meeting

Pursuant to the Federal Advisory Committee Act (FACA), Public Law 92–463, a revised notice of the National Environmental Justice Advisory Council (NEJAC) Meeting along with the subcommittees meeting will be described below. All times noted are Eastern Standard Time (EST). All meetings are open to the public. Due to limited space, seating at the NEJAC meeting will be on a first-come basis. Documents that are the subject of NEJAC reviews are normally available from the originating EPA office and are *not* available from the NEJAC. The meetings will occur at the Omni Shoreham Hotel, 2500 Calvert Street, NW, Washington, DC 20008, phone: 202/234–0700, FAX: 202/265–5333.

The full NEJAC will meet Tuesday, December 12, from 8:30 a.m. to 8:30 p.m. and Thursday, December 14 from 1 p.m. to 5 p.m. to discuss the role of the new subcommittees, follow-up on pending items from the July meeting, and discuss new business for the NEJAC. This meeting was previously announced in the October 2, 1995 Federal Register on page 51475. Today's notice of the revised public comment period for the meeting was delayed due to the exceptional circumstance of the government shutdown.

Public Comment Period

Puerto Rico: This public comment period is extended from 5:30–8:30 p.m. EST on Tuesday, December 12. There will be two downlink sites located at the University of Puerto Rico as follows:

(1) University of Puerto Rico, Central Administration Office, Apartado 4984, Correo General, San Juan, PR 00936, phone: 809/765–5610, and

(2) University of Puerto Rico, Technological University College, Box 7186, Ponce, PR 00732, phone: 809/844–8181.

Written comments of any length should be received no later than November 20, because of the need for translation, comments received after that date will be provided to the Council as logistics allow.

Washington, DC participants: This public comment period is from 11 a.m.–12 p.m. EST on Thursday, December 14. Written comments of any length (at least 35 copies) should be received no later than December 1, comments received after that date will be provided to the Council as logistics allow.

The six subcommittees will meet on Wednesday, December 13, from 8 a.m. to 5 p.m. and on Thursday, December 14, from 8 a.m. to 11 p.m. Any member of the public wishing further information on the subcommittee meetings should contact the specific Designated Federal Official at the telephone number listed below.

Members of the public who wish to make a brief oral presentation should contact Dee Richardson of PRC Environmental Management, Inc. no later than December 1, 1995 in order to have time reserved on the agenda. In general, each individual or group making an oral presentation will be limited to a total time of five minutes. Written comments of any length should be received no later than November 20 (for translation purposes for the Puerto Rico public comment period) and no later than December 1, (for the Washington, DC public comment period). Comments received after that date will be provided to the Council as logistics allow. They should be sent to PRC Environmental Management, Inc., 1593 Spring Hill Road, Suite 300, Vienna, VA 22182. Telephone number is 703/287–8808 or FAX: 703/287–8910.

Subcommittee	Federal official and telephone number
Enforcement	Ms. Sherry Milan, 202/260–9807.
Health & Research	Mr. Lawrence Martin, 202/260–0673.
International	Ms. Lorraine Frigerio, 202/260–6623.
Indigenous Peoples ..	Ms. Elizabeth Bell, 202/260–8106.
Public Participation ...	Mr. Robert Knox, 202/260–8195.
Waste/Facility Siting ..	Ms. Jan Young, 202/260–1691.

FOR FURTHER INFORMATION CONTACT: For hearing impaired individuals or non-English speaking attendees wishing to make arrangements for a sign language or foreign language interpreter, please call or fax Dee Richardson of PRC Environmental Management, Inc. at Phone: 703/287–8808 or Fax: 703/287–8910.

Dated: November 8, 1995.

Clarice E. Gaylord,

Designated Federal Official, National Environmental Justice Advisory Council.

[FR Doc. 95–29314 Filed 11–30–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Being Reviewed by the Federal Communications Commission, Comments Requested

November 22, 1995.

SUMMARY: The Federal Communications, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission,

including whether the information shall have practical utility; (b) the accuracy of the Commissions burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before [insert date 60 days after date of publication in the Federal Register]. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESS: Direct all comments to Dorothy Conway, Federal Communications, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to dconway@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: New Collection.

Title: Annual Updating of Maximum Permitted Rates for Regulated Cable Services.

Form No.: FCC Form 1240.

Type of Review: New Collection.

Respondents: Business or other for-profit; State, Local or Tribal Governments.

Number of Respondents: 5,850.

Estimated Time Per Response: 15 hours.

Total Annual Burden: 116,438 hours.

Needs and Uses: The Commission has created the FCC Form 1240 Annual Updating of Maximum Permitted Rates for Regulated Cable Services as a filing alternative to the FCC Form 1210, which is filed quarterly. The Form 1240, like the Form 1210, is filed by cable operators seeking to adjust maximum permitted rates for regulated services to reflect changes in external costs. Cable operators will submit the Form 1240 to their respective local franchising authorities upon certification to regulate basic service tier rates and associated equipment; or with the Commission (in situations where the Commission has assumed jurisdiction). The Form 1240 will also be filed with the Commission when responding to a complaint filed with the Commission about cable programming service rates and associated equipment. The data will be used by the Commission and local franchising authorities to adjudicate permitted rates for regulated cable services and equipment, for the addition of new programming tiers and to account for the addition and deletion of channels and the allowance for pass throughs of external costs and costs due to inflation.

OMB Approval Number: 3060-0536.

Title: Rules and Requirements for Telecommunications Relay Services (TRS) Interstate Cost Recovery.

Form No.: FCC Form 431.

Type of Review: Extension.

Respondents: Businesses or other for profit.

Number of Respondents: 5000.

Estimated Time Per Response: 9.26 hours.

Total Annual Burden: 46,330.

Needs and Uses: The Americans with Disabilities Act of 1990 requires the Commission to ensure that telecommunications relay services are available, to the extent possible, to individuals with hearing and speech disabilities in the united States. To fulfill this mandate, the Commission adopted rules which require the provision of TRS services, set minimum standards for TRS providers and establish a shared-funding mechanism for recovering the costs of providing interstate TRS. See 47 CFR Sections 64.601 - 64.605. FCC Form 431 is used in implementing the shared-funding program for the recovery of interstate telecommunications relay services (TRS) costs. All common carriers must contribute to the TRS Fund and complete FCC 431 form. The information is used to administer the program.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–29279 Filed 11–30–95; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL ELECTION COMMISSION

[Notice 1995–22]

Schedule of Submission Dates for Statements of Net Outstanding Campaign Obligations Required from 1996 Presidential Candidates Post Date of Ineligibility

AGENCY: Federal Election Commission.

ACTION: Notice of submission dates for statements of net outstanding campaign obligations required from 1996 Presidential candidates post Date of Ineligibility.

SUMMARY: The Federal Election Commission is publishing submission dates for statements of net outstanding campaign obligations (''NOCO statements'') which are required to be submitted by 1996 publicly funded Presidential primary candidates following their date of ineligibility (''DOI''). Candidates are required to submit a NOCO statement prior to each regularly scheduled date on which they receive federal matching funds, on dates to be determined by the Commission.

FOR FURTHER INFORMATION CONTACT:

Mr. Raymond Lisi, Audit Division, 999 E Street, N.W., Washington, D.C. 20463, (202) 219–3720 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: Under 11 CFR 9034.5, a candidate who receives federal matching funds must submit a NOCO statement to the Commission within 15 calendar days after the candidate's date of ineligibility, as determined under 11 CFR 9033.5. The candidate's net outstanding campaign obligations is equal to the difference between the total of all outstanding obligations for qualified campaign expenses plus necessary winding down costs less cash on hand, the fair market value of capital assets, and accounts receivable. 11 CFR 9034.5(a). Candidates will be notified of their DOI by the Commission.

Candidates who have net outstanding campaign obligations post-DOI may continue to submit matching payment requests as long as the candidate certifies that the remaining net outstanding campaign obligation equal or exceed the amount submitted for matching. 11 CFR 9034.5(f)(1). If the candidate so certifies, the Commission will process the request and certify the appropriate amount of matching funds.

Candidates must also file revised NOCO statements in connection with each matching fund request submitted after the candidate's DOI. These statements are due just before the next regularly scheduled payment date, on a date to be determined by the Commission. They must reflect the financial status of the campaign as of the close of business three business days before the due date of the statement and must also contain a brief explanation of each change in the committee's assets and obligations from the most recent NOCO statement. 11 CFR 9034.5(f)(2).

Please note that this is a change from past procedure. Previously, candidates were required to submit a revised NOCO statement at the same time as they submitted a matching payment request. This new approach will allow the Commission to adjust a committee's certification to reflect any change in the committee's financial position that occurs after submission of the matching

payment request and the date of the revised NOCO statement.

The following schedule includes both matching fund submission dates and the corresponding dates on which revised NOCO statements are due.

Submission dates	NOCO submission dates
December 1, 1995	December 18, 1995.
January 2, 1996	January 22, 1996.
February 1, 1996	February 20, 1996.
March 1, 1996	March 20, 1996.
April 1, 1996	April 19, 1996.
May 1, 1996	May 22, 1996.
June 3, 1996	June 19, 1996.
July 1, 1996	July 22, 1996.
August 1, 1996	August 21, 1996.
September 3, 1996	September 19, 1996.
October 1, 1996	October 22, 1996.
November 1, 1996	November 19, 1996.
December 2, 1996	December 19, 1996.
January 2, 1997	January 22, 1997.
February 3, 1997	February 19, 1997.
March 3, 1997	March 20, 1997.

Dated: November 28, 1995.

Danny L. McDonald,

Chairman, Federal Election Commission.

[FR Doc. 95–29305 Filed 11–30–95; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 800 North Capitol Street, N.W., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–010982–019.

Title: Florida-Bahamas Shipowners and Operators Association Agreement.

Parties:

Tropical Shipping and Construction Co., Ltd.
Pioneer Shipping, Ltd.
Seaxpress, Inc.
CS Med Shipping (Bahamas) Ltd.
Savoy Shipping Company
Crowley American Transport, Inc.
Kirk Line, A Division of Seaboard Marine, Ltd.

Synopsis: The proposed amendment clarifies Article 5—Agreement Authority to state that the members have the authority to meet and discuss matters relating to the Trade or sections of the Trade, and service contracts.

By order of the Federal Maritime Commission.

Dated: November 28, 1995.

Joseph C. Polking,

Secretary.

[FR Doc. 95–29317 Filed 11–30–95; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License; Revocations

The Federal Maritime Commission hereby gives notice that the following freight forwarder licenses are revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, effective on the corresponding revocation dates shown below:

License Number: 2901
Name: Marco's, Inc.
Address: 400 South 4th Street, Ste. 206, Minneapolis Grain Exchange, Minneapolis, MN 55415
Date Revoked: October 18, 1995
Reason: Failed to maintain a valid surety bond.

License Number: 3631
Name: In Joong Yoon
Address: P.O. Box 74346, Los Angeles, CA 90004
Date Revoked: October 21, 1995
Reason: Failed to maintain a valid surety bond.

License Number: 3652
Name: Lasha Enterprises, Inc. dba Lasha Cargo
Address: 3401–H NW 72nd Ave., Miami, FL 33122
Date Revoked: November 2, 1995
Reason: Surrendered license voluntarily.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 95–29315 Filed 11–30–95; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License; Rescission of Order of Revocation

Notice is hereby given that the Orders of Revocation pertaining to the licenses of the following ocean freight forwarders have been rescinded by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR 510.

License No.	Name/Address
3640	Ruben Posada dba Posada International Cargo, 9432 Bellanca Avenue, Suite 200, Los Angeles, CA 90045.
3787	Matrix Express, Inc., 154–09 146th Avenue, Jamaica, NY 11434.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 95–29316 Filed 11–30–95; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Federal Allotments to States for Social Services Expenditures, Pursuant to Title XX, Block Grants to States for Social Services; Promulgation for Fiscal Year 1997

AGENCY: Administration for Children and Families, Department of Health and Human Services.

ACTION: Notification of allocation of title XX—social services block grant allotments for Fiscal Year 1997.

SUMMARY: This issuance sets forth the individual allotments to States for Fiscal Year 1997, pursuant to title XX of the Social Security Act, as amended (Act). The allotments to the States published herein are based upon the authorization set forth in section 2003 of the Act and are contingent upon Congressional appropriations for the fiscal year. If Congress enacts and the President approves a different authorization or appropriation amount, the allotments will be adjusted proportionately.

FOR FURTHER INFORMATION CONTACT: Frank A. Burns, (202) 401–5536.

SUPPLEMENTARY INFORMATION: Section 2003 of the Act authorizes $2.8 billion for Fiscal Year 1997 and provides that it be allocated as follows:

(1) Puerto Rico, Guam, the Virgin Islands, and the Northern Mariana Islands each receives an amount which bears the same ratio to $2.8 billion as its allocation for Fiscal Year 1981 bore to $2.9 billion.

(2) American Samoa receives an amount which bears the same ratio to the amount allotted to the Northern Mariana Islands as the population of American Samoa bears to the population of the Northern Mariana Islands determined on the basis of the most recent data available at the time such allotment is determined.

(3) The remainder of the $2.8 billion is allotted to each State in the same proportion as that State's population is to the population of all States, based upon the most recent data available from the Department of Commerce.

For Fiscal Year 1997, the allotments are based upon the Bureau of Census population statistics contained in its reports ''Updated National and State Population Estimates'' (CB95–39 Table 1) released March 1, 1995, and ''1990 Census of Population and Housing'' (CPH–6–AS and CPH–6–CNMI) published April 1992, which are the most recent data available from the Department of Commerce at this time as to the population of each State and each Territory.

EFFECTIVE DATE: The allotments shall be effective October 1, 1996.

Fiscal Year 1997 Federal Allotments to States for Social Services—Title XX Block Grants

Total	$2,800,000,000
Alabama	45,122,270
Alaska	6,481,179
American Samoa	104,188
Arizona	43,582,187
Arkansas	26,234,873
California	336,155,028
Colorado	39,100,976
Connecticut	35,026,175
Delaware	7,550,681
Dist. of Col	6,096,159
Florida	149,227,549
Georgia	75,453,333
Guam	482,759
Hawaii	12,609,423
Idaho	12,117,452
Illinois	125,687,820
Indiana	61,517,728
Iowa	30,256,198
Kansas	27,315,069
Kentucky	40,929,824
Louisiana	46,148,991
Maine	13,261,819
Maryland	53,539,247
Massachusetts	64,608,588
Michigan	101,559,865
Minnesota	48,844,135
Mississippi	28,544,996
Missouri	56,448,291
Montana	9,154,933
Nebraska	17,358,010
Nevada	15,582,637
New Hampshire	12,160,232
New Jersey	84,533,401
New Mexico	17,689,555
New York	194,317,733
North Carolina	75,613,758
North Dakota	6,823,420
No. Mariana Islands	96,552
Ohio	118,736,060
Oklahoma	34,844,360
Oregon	33,004,817
Pennsylvania	128,896,325
Puerto Rico	14,482,759
Rhode Island	10,662,930
South Carolina	39,186,536
South Dakota	7,711,106
Tennessee	55,346,704
Texas	196,552,992
Utah	20,406,089
Vermont	6,203,109
Virgin Islands	482,759
Virginia	70,073,740
Washington	57,143,467
West Virginia	19,486,318
Wisconsin	54,352,068
Wyoming	5,090,827

Dated: November 21, 1995.

Dr. Thornell Page,

Special Assistant to the Director, Office of Community Services.

[FR Doc. 95–29346 Filed 11–30–95; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Establishment Prescription Drug User Fee Revenues and Rates Fiscal Year 1996

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it is establishing user fee revenues and rates for Fiscal Year (FY) 1996. The Prescription Drug User Fee Act of 1992 (the PDUFA) authorizes FDA to collect user fees for certain applications for approval of drug and biological products, on establishments where the products are made, and on such marketed products. Fees for applications, establishments, and products for FY 1993 were established by the PDUFA. Fees for future years are to be determined by FDA using criteria delineated in the statute.

FOR FURTHER INFORMATION CONTACT: Michael E. Roosevelt, Office of Financial Management (HFA–120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4872.

SUPPLEMENTARY INFORMATION:

I. Background

The PDUFA (Pub. L. 102–571) establishes three different kinds of user fees. Fees are assessed on: (1) Certain types of applications and supplements for approval of drug and biologic products, (2) certain establishments where such products are made, and (3) certain marketed products (21 U.S.C. 379h(a))). When certain conditions are met, FDA may waive or reduce fees (21 U.S.C. 379h(d)). Under the PDUFA, one-third of the total user fee revenue for each FY must come from each of the three types of fees.

For FY 1993, the total revenues to be derived from fees and the fee rates for each of the categories were established in the PDUFA (21 U.S.C. 379h(b)(1)). For FY 1994 through 1997, however, the PDUFA establishes only target total fee revenues and fees. For these years, FDA is authorized to increase the total fee revenues and to establish new fee rates for each of the three categories so that the revised total fee revenues are realized (21 U.S.C. 379h(c)).

This notice establishes total fee rates for FY 1996. These fees are retroactive to October 1, 1995, and will remain in effect through September 30, 1996. For fees already paid on applications and

supplements submitted on or after October 1, 1995, FDA will refund applicants for the difference between fees paid and fees due under the new fee schedules. For applications and supplements submitted after December 31, 1995, the new fee schedule should be used. Invoices for establishment and product fees for FY 1996 will be issued in December 1995, using the new fee schedules.

I. Revenue Increase and Fee Adjustment Process

The PDUFA provides that total fee revenues for each FY, as set out in the original fee schedule (see 21 U.S.C. 379h(b)(1)), shall be increased by notice in the Federal Register. The increase must reflect the greater of : (1) The total percentage increase that occurred during the FY in the Consumer Price Index (the CPI) (all items; U.S. city average), or (2) the total percentage pay increase for that FY for Federal employees, as adjusted for any locality-based payment applicable to employees stationed in the District of Columbia (see 21 U.S.C. 379h(c)(1)). The PDUFA also provides that within 60 days after the end of each FY, FDA shall adjust the user fee rates in each of the three categories of fees (application, establishment, and product) to achieve the revised total fee revenues. The new individual user fees must be adjusted in a manner that maintains the proportions established in the original fee schedules, so that approximately one-third of the revenues will come each from applications, establishments, and product fees (21 U.S.C. 379h(c)(2)).

III. Total Fee Revenue Adjustment

For FY 1995, the total percentage increase in the CPI was 2.54 percent, whereas the increase in applicable Federal salaries for FY 1996 is 2.54 percent. Thus, for computing the total fee revenues for FY 1996, the percentage is 2.54. The new adjusted total fee revenue is computed by applying the increase as a percentage (102.54 percent) to the FY 1996 target fee revenue amount from the PDUFA schedule ($78 million). The FY 1996 total adjusted fee revenue amount then totals $79,981,200.

IV. Fee Calculations for Application, Establishment, and Product Fees

The PDUFA provides that in making adjustments to the user fee rates, the one-third proportionality must be maintained among application, product, and establishment fees. Thus, the amount of revenues to be obtained from each category are $26,660,400 ($79,981,200 divided by 3).

A. Application Fees

Application fees are assessed on each ''human drug application,'' as defined in the PDUFA (see 21 U.S.C. 379g(1)). Application fees are levied for: (1) Review of certain new drug applications submitted after September 1, 1992, under section 505(b)(1) of the act (21 U.S.C. 355(b)(1)); (2) for review of an application for certain molecular entities or indications for use submitted after September 30, 1992, under section 505(b)(2) of the act; (3) review of applications for initial certifications or approvals of antibiotic drugs submitted after September 1, 1992, under section 507 of the act (21 U.S.C. 357); and (4) for review of applications for licensure of certain biological products under the Public Health Service Act (42 U.S.C. 262).

Fees are assessed at different rates for qualifying applications depending on whether the applications require clinical data on safety and effectiveness (other than bioavailability or bioequivalence studies) (21 U.S.C. 379h(a)(1)(A) and 379h(b)). Applications that require clinical data are subject to the full application fee. Applications that do not require clinical data and supplements that require clinical data are assessed one-half the fee of applications with clinical data.

In most cases, a first payment of 50 percent of an application or supplement fee is due at the time the application or supplement is submitted (21 U.S.C. 379h(a)(1)(B)(i)). The final payment is due 30 days from the date FDA issues an invoice after issuance of an action letter for the application (see 21 U.S.C. 379g(6)(B)), or at the time an application is withdrawn, unless FDA waives this portion of the fee (21 U.S.C. 379h(a)(1)(A)(ii)). If FDA refuses to file an application or supplement, one-half of the first payment is refunded to the applicant (21 U.S.C. 379h(a)(1)(D)).

In setting the specific rate for each type of fee, FDA is required to estimate the numbers of applications, supplements, establishments, and products that it expects will qualify for fees in FY 1996. FDA makes this estimate based on the number of products, establishments, or applications subject to fees in FY 1995.

For FY 1995, FDA received and assessed fees for 87 filed applications that require clinical data, 36 applications that did not require clinical data, and 62 supplements that require clinical data. Because applications that do not require clinical data and supplements that require clinical data are assessed only one-half the full fee (that is, one-half the fee due on an application that requires clinical data), the equivalent number of these applications subject to the full fee is determined by summing these categories and dividing by 2. This amount is then added to the number of applications that require clinical data to arrive at the equivalent number of applications subject to full application fees.

In addition, as of September 30, 1995, FDA refused to file, or there were withdrawn before filing, two applications that required clinical data, and four applications that did not require clinical data. After refunds, each of the former applications paid one-fourth the full application fee and are counted as one-fourth of an application. Similarly, after refunds, each of the latter applications paid one-eighth of the full application fee rate and are counted as one-eighth of an application.

Using this methodology, the approximate equivalent number of applications that required clinical data and were assessed fees in FY 1995 was 137, before any further decisions were made on requests for waivers or reductions. Additional waivers or reductions of FY 1995 fees are expected to account for approximately 6 equivalents of applications that require clinical data. Therefore, FDA estimates that approximately 131 equivalent applications that require clinical data will qualify for fees in FY 1996, after allowing for possible waivers or reductions. Thus, the FY 1996 application fee rate is determined by dividing the adjusted total fee revenue to be derived from applications ($26,660,400) by the equivalent number of applications projected to qualify for fees in FY 1996 (131), for a fee of $204,000 per application that requires clinical data (rounded to the nearest $1,000). A fee of one-half this amount or $102,000 applies to applications that do not require clinical data and to supplements that require clinical data. The following calculations summarize the determination of FY 1996 application fee rates:

- 87 applications that require clinical data, + (36÷2) applications that do not require clinical data, + (62÷2) supplements that require clinical data, + (2÷4) applications that require clinical data and which FDA refuses to file or the sponsor withdraws before filing, + (4÷8) other applications that FDA refuses to file or the sponsor withdraws before filing minus 6 waivers or reductions = 131 (the estimated number of ''full fee'' applications for FY 1996 based on FY 1995 experience).
- $26,660,400 (FY 1996 estimated revenue to be derived from applications)

÷131 (the estimated number of applications for FY 1996) = $204,000 per application (rounded to the nearest $1,000).

• For applications that do not require clinical data and supplements that require clinical data, the rate will be one-half the full application fee or $102,000.

B. Establishment Fees

The FY 1995 establishment fee was based on an estimate of 200 establishments subject to fees. In FY 1995, 203 establishments qualified for fees before any decisions on requests for waivers or reductions were made. FDA estimates that approximately 197 establishments will qualify for fees in FY 1996 after allowing for possible waivers or reductions. Thus, the number 197 was used in setting the new establishment fee rate. The fee per establishment is determined by dividing the adjusted total fee revenue to be derived from establishments ($26,660,400), by the estimated 197 establishments, for an establishment fee rate for FY 1996 of $135,300 (rounded to the nearest $100).

C. Product Fees

The FY 1995 product fee was based on an estimate that 2,116 products would be subject to product fees in FY 1995. For FY 1995, 2,135 products qualified for fees before any decisions on requests for waivers or reductions were made. However, FDA estimates that only 2,115 products will qualify for product fees in FY 1996, after allowing for estimated waivers or reductions. Accordingly, the FY 1996 product fee rate was determined by dividing the adjusted total fee revenue to be derived from product fees ($26,660,400) by the estimated 2,115 products for a product fee rate of $12,600 (rounded to the nearest $100).

V. Adjusted Fee Schedules for FY 1996

The fee rates for FY 1996 are set out in the following table:

Fee category	Fee rates for FY 1996
Applications	
Requiring clinical data	$204,000
Not requiring clinical data	102,000
Supplements requiring clinical data	102,000
Establishments	135,300
Products	12,600

VI. Implementation of Adjusted Fee Schedule

A. Application Fees

Any application or supplement subject to fees under the PDUFA that is submitted after December 31, 1995, must be accompanied by the appropriate application fee established in the new fee schedule. FDA will refund applicants who submitted application fees between October 1, 1995, and December 31, 1995, based on the adjusted rate schedule.

B. Establishment and Product Fees

By December 31, 1995, FDA will issue invoices for establishments and product fees for FY 1996 under the new fee schedules. Payment will be due by January 31, 1996. FDA will issue invoices in October 1996 for any products and establishments subject to fees for FY 1996 that qualify for fees after the December 1995 billing.

Dated: November 28, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–29420 Filed 11–29–95; 11:13 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[OPL–008–N]

Medicare Program; Request for Nominations for Members for the Practicing Physicians Advisory Council

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: In accordance with section 1868(a) of the Social Security Act, this notice requests nominations from medical organizations representing physicians for individuals to serve on the Practicing Physicians Advisory Council. There will be four vacancies on February 29, 1996.

DATES: Nominations from medical organizations will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on January 5, l996.

ADDRESSES: Mail or deliver nominations for membership to the following address: Health Care Financing Administration, Office of the Associate Administrator for External Affairs, Attention: Sam S. Shekar, M.D., Room 425H, Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Sam S. Shekar, M.D., (202) 260–5463.

SUPPLEMENTARY INFORMATION: Section 4112 of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508), enacted on November 5, 1990, added a new section 1868 to the Social Security Act (the Act), which established the Practicing Physicians Advisory Council (the Council). The Council advises the Secretary (the Secretary) of the Department of Health and Human Services on proposed regulations and manual issuances related to physicians' services. An advisory committee created by the Congress, such as this one, is subject to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), and, since this committee advises the Secretary, it is also subject to our regulations in 45 CFR Part 11—Committee Management.

Section 1868(a) of the Act requires the Council consist of 15 physicians, each of whom must have submitted at least 250 claims for physicians' services under Medicare in the previous year. At least 11 Council members must be physicians as defined in section 1861(r)(1) of the Act; that is, State-licensed physicians of medicine or osteopathy. The other four Council members may include dentists, podiatrists, optometrists, and chiropractors. The Council must include both participating and nonparticipating physicians as well as physicians practicing in rural and underserved urban areas. In addition, section 1868(a) of the Act provides that nominations to the Secretary for Council membership must be made by medical organizations representing physicians.

This notice is an invitation to all medical organizations representing physicians to submit nominees for membership on the Council. Current members whose terms expire in 1996 will be considered for reappointment, if renominated. The Secretary will appoint the new members to the Council from among those candidates determined to have the expertise required to meet specific agency needs and in a manner to ensure appropriate balance of membership.

Each nomination must state that the nominee has expressed a willingness to serve as a Council member and must be accompanied by a short resume or description of the nominee's experience. To permit evaluation of possible sources of conflict of interest, potential candidates will be asked to provide detailed information concerning financial holdings, consultant positions, research grants, and contracts.

Section 1868(b) of the Act provides that the Council meet once each calendar quarter, as requested by the Secretary, to discuss proposed changes in regulations and manual issuances that relate to physicians' services. Council members are expected to participate in all meetings.

Section 1868(c) of the Act provides for payment of expenses and a per diem allowance for Council members at a rate equal to payment provided members of other advisory committees. In addition to making these payments, the Department of Health and Human Services provides management and support services to the Council.

(Section 1868 of the Social Security Act (42 U.S.C. 1395ee); 5 U.S.C. App. 2; and 45 CFR Part 11)
(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: November 27, 1995.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 95–29298 Filed 11–30–95; 8:45 am]

BILLING CODE 4120–01–P

National Institutes of Health

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Clinical Sciences.
Date: November 28, 1995.
Time: 3:30 p.m.
Place: NIH, Rockledge 2, Room 4104, Telephone Conference.
Contact Person: Dr. Priscilla Chen, Scientific Review Administrator, 6701 Rockledge Drive, Room 4104, Bethesda, Maryland 20892, (301) 435–1787.

Name of SEP: Multidisciplinary Sciences.
Date: December 1, 1995.
Time: 1 p.m.
Place: NIH, Rockledge 2, Room 5112, Telephone Conference.
Contact Person: Dr. Harish Chopra, Scientific Review Administrator, 6701 Rockledge Drive, Room 5112, Bethesda, Maryland 20892, (301) 435–1169.

Name of SEP: Microbiological and Immunological Sciences.
Date: December 4, 1995.
Time: 1:30 p.m.
Place: NIH, Rockledge 2, Room 4182, Telephone Conference.
Contact Person: Dr. William Branche, Jr., Scientific Review Administrator, 6701 Rockledge Drive, Room 4182, Bethesda, Maryland 20892, (301) 435–1148.

Name of SEP: Microbiological and Immunological Sciences.
Date: December 7, 1995.
Time: 10:30 a.m.
Place: NIH, Rockledge 2, Room 4182, Telephone Conference.
Contact Person: Dr. William Branche, Jr., Scientific Review Administrator, 6701 Rockledge Drive, Room 4182, Bethesda, Maryland 20892, (301) 435–1742.

Name of SEP: Chemistry and Related Sciences.
Date: December 13, 1995.
Time: 2 p.m.
Place: NIH, Rockledge 2, Room 5150, Telephone Conference.
Contact Person: Dr. Zakir Bengali, Scientific Review Administrator, 6701 Rockledge Drive, Room 5150, Bethesda, Maryland 20892, (301) 435–1742.

Name of SEP: Behavioral and Neurosciences.
Date: December 13, 1995.
Time: 10 a.m.
Place: NIH, Rockledge 2, Room 5172, Telephone Conference.
Contact Person: Dr. Leonard Jakubczak, Scientific Review Administrator, 6701 Rockledge Drive, Room 5172, Bethesda, Maryland 20892, (301) 435–1247.

Name of SEP: Behavioral and Neurosciences.
Date: December 14, 1995.
Time: 2 p.m.
Place: NIH, Rockledge 2, Room 5172, Telephone Conference.
Contact Person: Dr. Leonard Jakubczak, Scientific Review Administrator, 6701 Rockledge Drive, Room 5172, Bethesda, Maryland 20892, (301) 435–1247.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 27, 1995.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 95–29281 Filed 11–30–95; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Behavioral and Neurosciences.
Date: December 4, 1995.
Time: 9:00 a.m.
Place: Hyatt Regency Hotel, Bethesda, Maryland.
Contact Person: Dr. Joseph Kimm, Scientific Review Administrator, 6701 Rockledge Drive, Room 5178, Bethesda, Maryland 20892, (301) 435–1249.

Name of SEP: Behavioral and Neurosciences.
Date: December 8, 1995.
Time: 2:00 p.m.
Place: NIH, Rockledge 2, Room 5172, Telephone Conference.
Contact Person: Dr. Leonard Jakubczak, Scientific Review Administrator, 6701 Rockledge Drive, Room 5172, Bethesda, Maryland 20892, (301) 435–1247.

Name of SEP: Behavioral and Neurosciences.
Date: December 11, 1995.
Time: 9:00 a.m.
Place: Hyatt Regency Hotel, Bethesda, Maryland.
Contact Person: Dr. Joseph Kimm, Scientific Review Administrator, 6701 Rockledge Drive, Room 5178, Bethesda, Maryland 20892, (301) 435–1249.

Name of SEP: Clinical Sciences.
Date: December 12, 1995.
Time: 12:00 p.m.
Place: NIH, Rockledge 2, Room 4138, Telephone Conference.
Contact Person: Dr. Anthony Chung, Scientific Review Administrator, 6701 Rockledge Drive, Room 4138, Bethesda, Maryland 20892, (301) 435–1213.

Name of SEP: Clinical Sciences.
Date: December 13, 1995.
Time: 2:00 p.m.
Place: NIH, Rockledge 2, Room 4122, Telephone Conference.
Contact Person: Dr. Krish Krishnan, Scientific Review Administrator, 6701

Rockledge Drive, Room 4122, Bethesda, Maryland 20892, (301) 435–1779.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 27, 1995.

Anna Snouffer,

Committee Management Specialist.

[FR Doc. 95–29280 Filed 11–30–95; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. FR–3778–N–64]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnson, room 7256, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the Federal Register, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses. GSA: Ed Guilford, Federal Property Resources Services, GSA, 18th and F Streets NW., Washington, DC 20405; (202) 501–2059; Dept. of Interior: Lola D. Knight, Property Management Specialist, Dept. of Interior, 1849 C St. NW., Mailstop 5512–MIB, Washington, DC 20240; (202) 208–4080; Dept. of Transportation: Ronald D. Keefer, Director, Administrative Services & Property Management, DOT, 400 Seventh St. SW., room 10319, Washington, DC 20590; (202) 366–4246; U.S. Navy: John J. Kane, Deputy Division Director, Dept. of Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–0474; U.S. Air Force: Barbara Jenkins, Air Force Real Estate Agency (Area/MI), Bolling AFB, 112 Luke Avenue, Suite 104, Building 5683, Washington, DC 20332–8020; (202) 767–4184; Dept. of Energy: Tom Knox, Realty Specialist, AD223.1, 1000 Independence Ave. SW., Washington, DC 20585; (202) 586–1191; (These are not toll-free numbers).

Note: Due to the government shutdown, a notice did not appear in the November 24, 1995, Federal Register.

Dated: November 24, 1995.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program Federal Register Report For 12/01/95

Suitable/Available Properties

Buildings (by State)

Delaware

Regional Poultry Research Lab
Georgetown Co: Sussex DE 19947–
Landholding Agency: GSA
Property Number: 549540001
Status: Excess
Comment: 5 bldgs., brick/aluminum siding, most recent use—office/laboratories/ storage poultry raising, off-site use only
GSA Number: 4–A–DE–0459

New Hampshire

Naval & Marine Corp. Rsv. Ctr.
199 North Main St.
Manchester NH 03102–
Landholding Agency: Navy
Property Number: 779530005
Status: Excess
Comment: 3 bldgs. on 2.53 acres of land, limited utilities, limited use prior to environmental cleanup

Land (by State)

California

Excess Land at Eureka Housing
Eureka Co: Humboldt CA 95501–
Landholding Agency: DOT
Property Number: 879540001
Status: Unutilized
Comment: .5 acres, encroachment by adjoining land owners, easement

Suitable/Unavailable Properties

Buildings (by State)

Puerto Rico

Bldgs. 501 & 502
U.S. Naval Radio Transmitter Facility
State Road No. 2
Juana Diaz PR 00795–
Landholding Agency: Navy
Property Number: 779530007
Status: Underutilized
Comment: Reinforced concrete structures, limited access, needs rehab, most recent use—transmitter and power house

Land (by State)

Virgin Islands

Ham's Bluff Test Site
Freddriksted Co: St. Croix VI 00840–
Landholding Agency: Navy
Property Number: 779530006
Status: Unutilized
Comment: 22.5 acres, bldg. construction underway, secured area w/alternate access, property reverts to Transportation when Navy vacates

Unsuitable Properties

Buildings (by State)

Alaska

Bldg. 21–737
Elmendorf Air Force Base
Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189540001
Status: Unutilized
Reason: Secured Area, Extensive deterioration

California

Bldg. 20186
Observation Tower, Naval Air Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779540001
Status: Excess
Reason: Extensive deterioration

Bldg. 120
Naval Air Weapons Station, Point Mugu
San Nicholas Island Co: Ventura CA 97042–
Landholding Agency: Navy
Property Number: 779540002
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Colorado

Bldg. 34
Grand Junction Projects Office
Grand Junction Co: Mesa CO 81503–
Landholding Agency: Energy
Property Number: 419540001
Status: Underutilized
Reason: Other, Secured Area
Comment: Contamination

Bldg. 35
Grand Junction Projects Office
Grand Junction Co: Mesa CO 81503–
Landholding Agency: Energy
Property Number: 419540002
Status: Underutilized
Reason: Other Secured Area
Comment: Contamination

Bldg. 36
Grand Junction Projects Office
Grand Junction Co: Mesa CO 81503–
Landholding Agency: Energy
Property Number: 419540003
Status: Underutilized
Reason: Other Secured Area
Comment: Contamination

Florida

Bldg. 243
Eglin Air Force Base
Eglin AFB Co: Okaloosa FL 32542–5000
Landholding Agency: Air Force
Property Number: 189540002
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 510
Eglin Air Force Base
Eglin AFB Co: Okaloosa FL 32542–5000
Landholding Agency: Air Force
Property Number: 189540003
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 521
Eglin Air Force Base
Eglin AFB Co: Okaloosa FL 32542–5000
Landholding Agency: Air Force
Property Number: 189540004
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 872
Eglin Air Force Base
Eglin AFB Co: Okaloosa FL 32542–5000
Landholding Agency: Air Force
Property Number: 189540005
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 30004
Eglin Air Force Base
Eglin AFB Co: Okaloosa FL 32542–5000
Landholding Agency: Air Force
Property Number: 189540006
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 12513
Eglin Air Force Base
Eglin AFB Co: Okaloosa FL 32542–5000
Landholding Agency: Air Force
Property Number: 189540007
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Alpha Site
Naval Security Group Activity
Homestead Co: Dade FL 33018–
Landholding Agency: GSA
Property Number: 549540009
Status: Excess
Reason: Floodway
GSA Number: 4–N–FL–1079

Maryland

Bldgs. 38–39, 41, 43–46, 56
U.S. Coast Guard Yard
Baltimore MD 21226–
Landholding Agency: DOT
Property Number: 879540005
Reason: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 53
U.S. Coast Guard Yard
Baltimore MD 21226–
Landholding Agency: DOT
Property Number: 879540006
Reason: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Montana

Bldg. 546, Malmstrom AFB
Malmstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 189540008
Status: Underutilized
Reason: Secured Area

Bldg. 548, Malmstrom AFB
Malmstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 189540009
Status: Underutilized
Reason: Secured Area

Bldg. 557, Malmstrom AFB
Malmstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 189540010
Status: Underutilized
Reason: Secured Area

Bldg. 666, Malmstrom AFB
Malmstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 189540011
Status: Underutilized
Reason: Secured Area

Bldg. 766, Malmstrom AFB
Malmstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 189540012
Status: Underutilized
Reason: Secured Area

Bldg. 1189, Malmstrom AFB

Malmstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 189540013
Status: Underutilized
Reason: Secured Area

Bldg. 1308, Malmstrom AFB
Malmstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 189540014
Status: Underutilized
Reason: Secured Area

Bldg. 1309, Malmstrom AFB
Malmstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 189540015
Status: Underutilized
Reason: Secured Area

New Hampshire

Bldg. 116
New Boston Air Station
Amherst Co: Hillsborough NH 03031–1514
Landholding Agency: Air Force
Property Number: 189540016
Status: Underutilized
Reason: Extensive deterioration

North Carolina

Bldg. 633, Pope Air Force Base
Fayetteville Co: Cumberland NC 28308–
Landholding Agency: Air Force
Property Number: 189540019
Status: Underutilized
Reason: Secured Area, Extensive deterioration

Oregon

Bldg. 0210
500 Nevada Street
Klamath Falls Co: Klamath OR 97601–
Landholding Agency: Interior
Property Number: 619540002
Status: Unutilized
Reason: Extensive deterioration

Bldg. 0211
500 Nevada Street
Klamath Falls Co: Klamath OR 97601–
Landholding Agency: Interior
Property Number: 619540003
Status: Unutilized
Reason: Extensive deterioration

Bldg. 0213
500 Nevada Street
Klamath Falls Co: Klamath OR 97601–
Landholding Agency: Interior
Property Number: 619540004
Status: Unutilized
Reason: Extensive deterioration

Bldg. 0214
500 Nevada Street
Klamath Falls Co: Klamath OR 97601–
Landholding Agency: Interior
Property Number: 619540005
Status: Unutilized
Reason: Extensive deterioration

Bldg. 0510
Wilson Dam Residence
Klamath Falls Co: Klamath OR 97601–
Landholding Agency: Interior
Property Number: 61954006
Status: Unutilized
Reason: Extensive deterioration

Texas

Bldg. 00153
Reese Air Force Base
Lubbock Co: Lubbock TX 79489–5000
Landholding Agency: Air Force
Property Number: 189540017
Status: Unutilized
Reason: Secured Area

Bldg. 03130
Reese Air Force Base
Lubbock Co: Lubbock TX 79489–5000
Landholding Agency: Air Force–
Property Number: 189540018
Status: Unutilized
Reason: Secured Area

Wisconsin

Rawley Point Light
Two Rivers Co: Manitowoc WI
Landholding Agency: DOT
Property Number: 879540004
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Land (by State)

Arizona

John Bevel Surplus Land
Central Arizona Project
Co: Maricopa AZ 85207–
Landholding Agency: Interior
Property Number: 619540001
Status: Excess
Reason: Other
Comment: no legal access

Missouri

86 Tracts–Lake Proj. Lands
Harry S. Truman Dam
Co: Henry, St. Clai MO
Landholding Agency: GSA
Property Number: 549540010
Status: Excess
Reason: Floodway
GSA Number: 7D–MO–607F

[FR Doc. 95–29229 Filed 11–30–95; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

National Park Service

Delaware and Lehigh Navigation Canal National Heritage Corridor Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces an upcoming meeting of the Delaware and Lehigh Navigation Canal National Heritage Corridor Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92–463).

Meeting Date and Time: Wednesday, December 13, 1995; 1:30 p.m. until 4:30 p.m.

Address: Commission Offices, 10 E. Church Street, Bethlehem, PA 18018.

The agenda for the meeting will focus on implementation of the Management Action Plan for the Delaware and Lehigh Canal National Heritage Corridor and State Heritage Park. The Commission was established to assist the Commonwealth of Pennsylvania and its political subdivisions in planning and implementing an integrated strategy for protecting and promoting cultural, historic and natural resources. The Commission reports to the Secretary of the Interior and to Congress.

SUPPLEMENTARY INFORMATION: The Delaware and Lehigh Navigation Canal National Heritage Corridor Commission was established by Public Law 100–692, November 18, 1988.

FOR FURTHER INFORMATION CONTACT: Acting Executive Director, Delaware and Lehigh Navigation Canal, National Heritage Corridor Commission, 10 E. Church Street, Room P–208, Bethlehem, PA 18018, (610) 861–9345.

Dated: November 20, 1995.

Donald M. Bernhard,

Chairman, Delaware and Lehigh Navigation Canal NHC Commission.

[FR Doc. 95–29304 Filed 11–30–95; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–463X]

Alabama Railroad Co.—Abandonment Exemption—in Monroe County, AL

Alabama Railroad Co. (AR) has filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments* to abandon a 3.68-mile portion of its rail line between milepost 662.62 at Beatrice and milepost 666.3 at Corduroy, in Monroe County, AL.

AR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on this line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line is either pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected

employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on December 31, 1995, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by December 11, 1995.[3] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 21, 1995, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423–2191.

A copy of any petition filed with the Commission should be sent to applicant's representative: Patricia E. Dietrich, 1224 Seventeenth Street NW., Washington, DC 20036.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio.*

AR has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an Environmental Assessment (EA) by December 6, 1995. Interested persons may obtain a copy of the EA by writing to SEA (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or other trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: November 27, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–29340 Filed 11–30–95; 8:45 am]

BILLING CODE 7035–01–P

[1] The Commission will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Commission in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for stay should be filed as soon as possible so that the Commission may take appropriate action before the exemption's effective date.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request so long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

[Finance Docket No. 32801]

Norfolk Southern Railway Company, Central of Georgia Railroad Company and Georgia Southwestern Division, South Carolina Central Railroad, Inc.—Joint Relocation Project Exemption—between Columbus and Albany, GA

On October 31, 1995, Norfolk Southern Railway Company (NS), Central of Georgia Railroad Company (CofG) (collectively Norfolk Southern), and Georgia Southwestern Division, South Carolina Central Railroad, Inc. (GSWR), jointly filed a notice of exemption under 49 CFR 1108.2(d)(5) to relocate a line of railroad between Columbus and Albany, GA. The proposed transaction was expected to be consummated on or after November 7, 1995.

GSWR operates a railroad line from Columbus to Bainbridge, GA, which includes a segment between Cusseta to Richland and Cuthbert, GA. GSWR also operates a line between Americus and Richland, GA. The Georgia & Alabama Division of South Carolina Central Railroad (GAD), an affiliate of GSWR, operates a line between Smithville and Cuthbert, GA.

CofG owns, and NS operates, a railroad line from Columbus to Americus and Albany, GA. From Columbus to Ochillee, GA, the CofG line runs parallel to the GSWR line. The CofG line connects with GSWR at Americus and with GAD at Smithville, GA.

Under the joint relocation project, the parties propose the following transactions: (1) Norfolk Southern will grant GSWR overhead trackage rights, including rights of ingress and egress, over its line between its yard at milepost 291.4–S in Columbus and milepost 12.0–O in Ochillee; (2) Norfolk Southern will lease its line between milepost 12.0–O in Ochillee and milepost 61.5–O, the BV&E Junction, near Americus, to GSWR; [1] (3) Norfolk Southern will grant GSWR overhead trackage rights, with rights of ingress and egress, between milepost 61.5–O, the BV&E Junction, near Americus and milepost 297.0–J in Albany; (4) GSWR will abandon its line of railroad between milepost SLB23 near Cusseta, Chattahoochee County and milepost 160, SLC746, near Cuthbert, Randolph County, a total of 38.1 miles, all in Chattahoochee, Stewart, and Randolph Counties, GA; and (5) NS and GSWR will construct a new track connection at Ochillee that will permit GSWR trains operating via trackage rights over the CofG line to enter and exit GSWR's line between Columbus and Cusseta. The notice states that service to shippers will not be disrupted and that the proposed construction and abandonment are incidental to this relocation project.

The joint relocation project will relocate GSWR's linehaul railroad operations serving the Columbus area from its existing line between Cusseta and Cuthbert, which has no active customers, to Norfolk Southern's parallel line, which though underutilized is in better physical condition. The project will allow GSWR to liquidate its investment in the Cusseta-Cuthbert segment of its existing line and to continue to provide competitive linehaul service to customers in Columbus. It will also result in more intensive utilization of Norfolk Southern's line and generate trackage rights income for Norfolk Southern.

The Commission will exercise jurisdiction over the abandonment or construction components of a relocation project, and require separate approval or exemption, only where the removal of track affects service to shippers or the construction of new track involves expansion into new territory. *See City of Detroit* v. *Canadian National Ry. Co., et al.,* 9 I.C.C.2d 1208 (1993). The Commission has determined that line relocation projects may embrace trackage rights transactions such as the one involved here. *See D.T.&I.R.—Trackage Rights,* 363 I.C.C. 878 (1981). Under these standards, the embraced incidental abandonment, construction, and trackage rights components require no separate approval or exemption when the relocation project, as here, will not disrupt service to shippers and thus qualifies for the class exemption at 49 CFR 1180.2(d)(5).

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

[1] The Commission exempted this lease from regulation under 49 U.S.C. 10505 in *Georgia Southwestern Division, South Carolina Central R. Co.—Lease and Operation Exemption—Norfolk Southern Ry. Co. and Central of Georgia Railroad Company,* Finance Docket No. 32738 (ICC served Oct. 5, 1995).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Robert J. Cooney, Norfolk Southern Railway Company, Central of Georgia Railroad Company, Three Commercial Place, Norfolk, VA 23510–2191; and Michael W. Blaszak, 211 South Leitch Avenue, LaGrange, IL 60525–2162.

Decided: November 27, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–29339 Filed 11–30–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Program Manager of the Office of Trade Adjustment Assistance, Employment and Training Administration has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Program Manager, Office of Trade Adjustment Assistance, at the address show below, not later than December 11, 1995.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than December 11, 1995.

The petitions filed in this case are available for inspection at the Office of the Program Manager, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC, this 13th day of November, 1995.

Russell Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted on 11/13/95]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
31,617	Acme Stamping & Wire (USWA)	Pittsburgh, PA	10/31/95	Leon Parts for Automobiles.
31,618	Count Romi Ltd (ILGWU)	New York, NY	10/30/95	Ladies' Raincoats.
31,619	Destec Energy, Inc. (Wkrs)	Houston, TX	10/31/95	Energy Plant.
31,620	Elaine Sportswear Inc. (UNITE)	New York NY	11/02/95	Ladies' Sportswear.
31,621	Greenwood/East-West (Wkrs)	El Paso, TX	10/23/95	Pants, Jeans, Jackets.
31,622	Hill Company, Inc. (Comp)	Forth Smith, AR	10/26/95	Western Shirts.
31,623	Hill Company, Inc. (Comp)	Charleston, AR	10/26/95	Western Shirts.
31,624	Leroy Industries, Inc (UAW)	Leroy, NY	10/31/95	Knuckles and Spindles for Pick-Up's.
31,625	Ms. Interpret (ILGWU)	Carlstadt, NJ	10/26/96	Ladies' Sportswear.
31,626	North by Northeast (Wkrs)	Pawtucket, RI	11/01/95	Fleece Outewear.
31,627	Willit's Footwear (Wkrs)	Newville, PA	11/01/95	Children's Shoes.
31,628	Cal-Style Furniture (Comp)	Compton, CA	11/02/95	Tables, Chairs and Barstools.
31,629	Vanity Fair Mills Inc. (Comp)	Robertsdale, AL	11/01/95	Intimate Apparel.
31,630	Vanity Fair Mills Inc (Comp)	Butler, AL	11/01/95	Intimate Apparel.
31,631	Thomas Industries (IBEW)	Hopskinsville, KY	11/02/95	Residential Lighting Fixtures.
31,632	Mustang Fuel Corporation (Comp)	Oklahoma City, OK	11/03/95	Crude Oil and Natural Gas.

[FR Doc. 95–29333 Filed 11–30–95; 8:45 am]

BILLING CODE 4510–30–M

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of November 1995.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–31,413; Anderson's Peanuts, Opp, AL
TA–W–31,549; Johnstown America Corp., Johnstown, PA

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–31,426; Wonder Well Service, Inc., Glenville, WV

The investigations revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–31,591; Georgia Pacific Corp., Atlanta, GA (Maderas Howrey, S.A. de C.V.) (Ciudad Juarez, Mexico)

The investigations revealed that criteria (2) and (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location for each determination references the impact date for all workers for such determination.

TA–W–31,596; Mr. T's Apparel of Wesson, Wesson, MS: October 19, 1994.
TA–W–31,471; Sterling Last Corp., Long Island City, NY: September 14, 1994.
TA–W–31,528; Meshoppen Manufacturing Co., Meshoppen, PA: September 28, 1994.
TA–W–31,406; Integrated Circuit Systems, Inc., Valley Forge, PA: August 29, 1994.
TA–W–31,582; Somerville Mills Div. of I. Appel Corp., Somerville, TN: October 30, 1994.
TA–W–31,490; Alura Fashions, Inc., Carbondale, PA: September 21, 1994.
TA–W–31,430; Pennant Service Co., Denver, CO: August 29, 1994.
TA–W–31,518; Samson International Ltd, Tulsa, OK: September 28, 1994.
TA–W–31,569, TA–W31,570; Mapa Pioneer, Willard, OH, Attica, OH: October 10, 1994.
TA–W–31,597; Niedner, Inc., York, PA: October 12, 1994.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with section 250(a) subchapter D, chapter 2, title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of November, 1995.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–00657; Georgia Pacific Corp., Atlanta, GA (Maderas Howrey, S.A. de C.V.) (Ciudad Juarez, Mexico)
NAFTA–TAA–00638; Johnstown America Corp., Johnstown, PA
NAFTA–TAA–00633; General Electric Co, GE Transportation Systems—Erie, Erie, PA

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

None.

Affirmative Determinations NAFTA–TAA

The following certifications have been issued; the date following the company name & location of each determination references are impact date for all workers for such determination.

NAFTA–TAA–00637; Twinpak (USA), Plattsburgh, NY: October 11, 1994.
NAFTA–TAA–00654; Rome Cable Corp., Rome, NY: October 17, 1994.
NAFTA–TAA–00660; ITT Automotive Aftermarket Div., Amherst, NY: October 23, 1994.
NAFTA–TAA–00668; Christian Fashions (Formerly Montana Fashions) El Paso, TXL: October 25, 1994.
NAFTA–TAA–00656; Nieder, Inc., York, PA: October 12, 1994.
NAFTA–TAA–00626 A&B; Capital Pants, Co., Woolfolk Manufacturing Louisa, VA, Urbana, VA, Fork Union, VA: October 2, 1994.
NAFTA–TAA–00628 A&B; Springtown Sportswear, Inc., Milledgeville, GA, Springtown Apparel Corp., Wrightsville, GA, Springtown Knitwear, Inc., Cartersville, GA: October 2, 1994.

I hereby certify that the aforementioned determinations were issued during the month of November, 1995. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: November 21, 1995.

Russell Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–29331 Filed 11–30–95; 8:45 am]
BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Program Manager of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations

will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than December 11, 1995.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than December 11, 1995.

The petitions filed in this case are available for inspection at the Office of the Program Manager, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 20th day of November, 1995.

Russell Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted on 11/20/95]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
31,633	Columbia Footwear Corp. (UFCW)	Hazleton, PA	11/09/95	Casual Footwear.
31,634	Carter Footwear, Inc. (UFCW)	Wilkes-Barre, PA	11/09/95	Athletic Footwear.
31,635	Distribution Auto Service (IBT)	Seattle, PA	11/08/95	Auto Accessories—Distribution.
31,636	Frank Ix and Sons (Wkrs)	Charlottesville, VA	11/07/95	Synthetic Yarn.
31,637	Guin Manufacturing Co. (Wkrs)	Guin, AL	11/07/95	Ladies' Sleepwear, Robes, Panties.
31,638	Greenfield Research, Inc. (Wkrs)	Howe, IN	11/02/95	Automobile Seating Units.
31,639	J & H Manufacturing Co. (Wkrs)	New York, NY	11/08/95	Raincoats and Coats.
31,640	Knapp Shoe (Wkrs)	Lewiston, ME	11/03/95	Work Shoes, Work Boots.
31,641	Sons Transportation (Wkrs)	Springfield, MA	11/08/95	Styrene Monomer.
31,642	Teledyne Wah Chang (Wkrs)	Albany, OR	11/06/95	Specialty Metals.
31,643	Inland Steel Company (USWA)	East Chicago, IN	11/07/95	Holt Rolled Coils.
31,644	Texaco Trading & (Wkrs)	Tulsa, OK	10/31/95	Crude oil.

Employment Standards Administration

Proposed Information Collection Request

Proposed Information Collection Request Submitted for Public Comment and Recommendations;

1. Application for Special Industrial Homeworker's Certificate (WH–2), Application for Authorization to Employ Student-Learner at Subminimum Wages (WH–205), Application for Authority to Employ Workers With Disabilities at Special Minimum Wages (WH–226–MIS), Supplemental Data Sheet for Application for Authority to Employ Workers with Disabilities at Special Minimum Wages (WH–225A–MIS);
2. Claim for Continuance of Compensation (CA–12);
3. Overpayment Recovery Questionnaire (OWCP–20);
4. Pre-Hearing Statement (LS–18);
5. Miner's Claim for Benefits Under the Black Lung Benefits Act (CM–911), Employment History (CM–911A), Miner Medical Reimbursement Form (CM–915).

AGENCY: Employment Standards Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed extension collection of: (1) Application for Special Industrial Homeworker's Certificate, Application for Authorization to Employ a Student-Learner at Subminimum Wages, Application for Authority to Employ Workers with Disabilities at Special Minimum Wages, and Supplemental Data Sheet for Application for Authority to Employ Workers with Disabilities at Special Minimum Wages; (2) Claim for Continuance of Compensation; (3) Overpayment Recovery Questionnaire; (4) Pre-Hearing Statement; Miner's Claim for Benefits Under the Black Lung Benefits Act, Employment History, and Miner Reimbursement Form.

Copies of the proposed information collection requests can be obtained by contracting the employee listed below in the addressee section of this notice.

DATES: Written comments must be submitted on or before February 1, 1996. Written comments should address whether the proposed information collection is necessary for the proper performance of the functions of the agency; the accuracy of the burden (time and financial resources) estimates; ways to minimize burden including the use of automated collection techniques or the use of other forms of information technology; and other relevant aspects of the information collection request.

ADDRESSES: Ms. Patricia A. Forkel, U.S. Department of Labor, 200 Constitution Ave., NW, Room S–3201, Washington, DC 20210, telephone (202) 219–7601 (this is not a toll-free number), fax 202–219–6592.

SUPPLEMENTARY INFORMATION:

Application for Special Industrial Homeworker's Certificate (WH–2), Application for Authorization to Employ a Student-Learner at Subminimum Wages (WH-205), Application for Authority to Employ Workers with Disabilities at Special Minimum Wages (WH–226–MIS), and Supplemental Data Sheet for Application for Authority to Employ Workers with Disabilities at Special Minimum Wages (WH–226A–MIS):

I. *Background:* Section 11(d) of the Fair Labor Standards Act authorizes the

Secretary to Labor to regulate, restrict, or prohibit industrial homework as necessary to prevent evasion of the minimum wage requirement of the Act. Employers may obtain general certificates to employ homeworkers in certain industries. The WH–2 is used by employers to obtain such certificates. Section 14(a) of the Fair Labor Standards Act provides in part that the Secretary of Labor, to the extent necessary in order to prevent curtailment of opportunities for employment, shall provide for the employment of learners at subminimum wage rates, and to set limitations on such employment as to time, number, proportion, and length of service. The WH–205 is used by employers to obtain certificates to employ student-learners at wages lower than the Federal minimum wage. Section 14(c) of the Fair Labor Standards Act provides for the employment of workers with disabilities at subminimum wages in sheltered workshops, competitive employment, and hospitals and institutions in order to prevent curtailment of employment opportunities for such individuals. The WH–226–MIS and the WH–226A–MIS are used by employers to obtain such authorization.

II. *Current Actions:* The Department of Labor seeks the extension of approval to collect this information to continue to provide employers with the certification necessary to employ individuals under the described special circumstances, in order to prevent the curtailment of employment opportunities for affected individuals.

Claim for Continuance of Compensation (CA–12)

I. *Background:* Under 5 USC 8133, eligible dependents of deceased employees receive compensation benefits after the death of the employee. The CA–12 is an annual form which is filled out by the beneficiaries and used by the Office of Workers' Compensation Programs to ensure that the eligibility status of the beneficiary has not changed and that they remain entitled to receive benefits.

II. *Current Actions:* The Department of Labor seeks the extension of this information collection in order to ensure that the death benefits continue to be paid correctly and that payments are not made to ineligible survivors.

Overpayment Recovery Questionnaire

I. *Background:* When an overpayment to a beneficiary of the Office of Workers' Compensation Programs has been made because of an error of fact of law, adjustments are to be made under regulations prescribed by their Secretary of Labor by decreasing later payments to which the individual is entitled. Under certain circumstances, recovery of the overpayment must be waived. This collection of information is used to determine whether or not the recovery of the overpayment may be waived, compromised, terminated, or collected in full.

II. *Current Actions:* The Department of Labor seeks the extension of approval to collect this information in order to provide the beneficiary the opportunity to explain why he/she is without fault in an overpayment, and to determine whether or not the recovery should be waived.

Pre-Hearing Statement (LS–18)

I. Background: Title 20, CFR 702.317 provides for the referral of claims under the Longshore and Harbor Workers' Act for formal hearings. The Pre-Hearing Statement is used to refer cases for formal hearing.

II. *Current Actions:* The Department of Labor seeks the extension of approval to collect the information. The information is necessary to establish and clarify the issues involved in the case.

Miner's Claim for Benefits Under the Black Lung Benefits Act (CM–911), Employment History (CM–911A), and Miner Reimbursement Form (CM–915)

I. Background: Title IV of the Federal Mine Safety and Health Act of 1977 as amended by the Black Lung Benefits Reform Act of 1977 and subsequent amendments, 30 USC 901 et seq, provide for the payment of benefits to a coal miner who is totally disabled due to black lung disease, and to certain survivors of the entitled miner. The CM–911 is the miner's application form for benefits. The CM–911A, completed at the same time as the CM–911, is an employment history used to establish that the miner currently works or formerly worked in a coal mine. The CM–915 is completed by miners payees who are requesting reimbursement for black lung related medical services covered under the program.

II. Current Actions: The Department of Labor seeks the extension of approval to collect this information in order to ensure that beneficiaries are paid all benefits to which they are entitled by law.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Application for Special Industrial Homeworker's Certificate (WH–2), Application for Authorization to Employ Student-Learner at Subminimum Wages (WH–205), Application for Authority to Employ Workers With Disabilities at Special Minimum Wages (WH–226–MIS), Supplemental Data Sheet for Application for Authority to Employ Workers with Disabilities at Special Minimum Wages (WH–225A–MIS).

OMB Number: 1215–0158.

Agency Numbers: WH–2, WH–205, WH–226–MIS, WH–226A–MIS.

Frequency: On occasion.

Affected Public: Individuals or households; Businesses or other for-profit; Not for-profit institutions; Farms; State, Local or Tribal Government.

Form	No. respondents	Est. time per respondent	Subtotal
WH–2	50	30 min	25 hrs.
WH–205	600	30 min	300 hrs.
WH–226–MIS	5,000	45 min	3,750 hrs.
WH–226A–MIS	7,200	45 min	5,400 hrs.

Total Estimated Cost: Unknown.

Total Burden Hours: 9,475.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Claim for Continuation of Compensation.

OMB Number: 1215–0154.

Agency Number: CA–12.

Frequency: Annually.

Affected Public: Individuals or households.

Number of Respondents: 6,537.

Estimated Time per Respondent: 5 minutes.

Total Estimated Cost: $2,091.84.

Total Burden Hours: 545.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Overpayment Recovery Questionnaire.

OMB Number: 1215–0144.

Agency Number: OWCP–20.

Frequency: On occasion.

Affected Public: Individuals or households.

Number of Respondents: 4,500.

Estimated Average Time per Respondent: 1 hour.

Total Estimated Cost: $1,440.

Total Burden Hours: 4,500.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Pre-Hearing Statement.

OMB Number: 1215–0085.

Agency Number: LS–18.

Frequency: On occasion.

Affected Public: Individuals or households; Businesses or other for-profit.

Number of Respondents: 6,800.

Estimated Time per Respondent: 10 minutes.

Total Estimated Cost: $2,176.

Total Burden Hours: 1,088.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Miner's Claim for Benefits Under the Black Lung Benefits Act (CM–911), Employment History (CM–911A), Miner Reimbursement Form (CM–915).

OMB Number: 1215–0052.

Agency Numbers: CM–911, CM911A, CM–915.

Frequency: On occasion.

Affected Public: Individuals or households; Businesses or other for-profit.

Form	No. respondents	Est. time per respondent	Subtotal
CM–911	4,800	45 min	3,600
CM–911A	5,900	40 min	3,933
CM–915	9,500	10 min	1,583

Total Estimated Cost: $3,424.

Total Burden Hours: 9,116.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: November 24, 1995.

Margaret J. Sherrill,

Chief, Branch of Management, Review and Analysis, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 95–29334 Filed 11–30–95; 8:45 am]

BILLING CODE 4510–27–M

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I

Massachusetts
MA950001 (Feb. 10, 1995)
MA950002 (Feb. 10, 1995)
MA950003 (Feb. 10, 1995)

MA950006 (Feb. 10, 1995)
MA950007 (Feb. 10, 1995)
MA950009 (Feb. 10, 1995)
MA950013 (Feb. 10, 1995)
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MA950019 (Feb. 10, 1995)
New York
NY950003 (Feb. 10, 1995)
NY950004 (Feb. 10, 1995)
NY950014 (Feb. 10, 1995)
NY950016 (Feb. 10, 1995)
NY950017 (Feb. 10, 1995)

Volume II

District of Columbia
DC950001 (Feb. 10, 1995)
Maryland
MD950048 (Feb. 10, 1995)
Pennsylvania
PA950001 (Feb. 10, 1995)
PA950002 (Feb. 10, 1995)
PA950003 (Feb. 10, 1995)
PA950004 (Feb. 10, 1995)
PA950017 (Feb. 10, 1995)
PA950018 (Feb. 10, 1995)
PA950020 (Feb. 10, 1995)
PA950022 (Feb. 10, 1995)
PA950033 (Feb. 10, 1995)
PA950042 (Feb. 10, 1995)
PA950051 (Feb. 10, 1995)
PA950065 (Feb. 10, 1995)

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None

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Illinois
IL950019 (Feb. 10, 1995)
Ohio
OH950001 (Feb. 10, 1995)
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OH950012 (Feb. 10, 1995)
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Arkansas
AR950001 (Feb. 10, 1995)
Iowa
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Volume VI

Arizona
AZ950001 (Feb. 10, 1995)
AZ950002 (Feb. 10, 1995)
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Hawaii
HI950001 (Feb. 10, 1995)
Montana
MT950001 (Feb. 10, 1995)
MT950006 (Feb. 10, 1995)
Oregon
OR950001 (Feb. 10, 1995)
Washington
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WA950008 (Feb. 10, 1995)
WA950010 (Feb. 10, 1995)
WA950011 (Feb. 10, 1995)
WA950013 (Feb. 10, 1995)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. this 24th day of November 1995.

Philip J. Gloss,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 95–29192 Filed 11–30–95; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Cross Disciplinary Activities; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Cross Disciplinary Activities (#1193).

Date and Time: December 19, 1995; 8:30 a.m. to 5 p.m.

Place: Room 320, 340, 365 and 370.

Type of Meeting: Closed.

Contact Person(s): Tse-yun Feng, Program Director, CISE/CDA, Room 1160, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1980.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Research Infrastructure proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a

proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 28, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–29362 Filed 11–30–95; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Adequacy and Compatibility for Agreement State Radiation Control Programs; Working Group

AGENCY: Nuclear Regulatory Commission.

ACTION: Establishment of Working Group on Adequacy and Compatibility Implementing Procedures.

SUMMARY: A working group consisting of representatives from Agreement States and from the Nuclear Regulatory Commission (NRC) has been formed to respond to Commission direction in Staff Requirement Memorandum (SRM) dated June 29, 1995, which instructed staff to develop implementing procedures for the Policy Statement on Adequacy and Compatibility of Agreement State Programs.

FOR FURTHER INFORMATION CONTACT: Ms. Cardelia H. Maupin, Office of State Programs (OSP), U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Telephone: 301–415–2312.

SUPPLEMENTARY INFORMATION: On August 2, 1995 (60 FR 39464), the Commission published in the Federal Register an announcement of the status and availability of the Policy Statement on Adequacy and Compatibility of Agreement State Programs. The Commission approved, in principle, the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' with the stipulations discussed below.

The Commission deferred implementation of the policy statement until implementing procedures are developed and approved by the Commission. The NRC staff is to develop the implementing procedures and any necessary changes to the policy statement and resubmit the policy statement and implementing procedures to the Commission by September 30, 1996. To respond to the Commission's direction, a working group consisting of representatives from the Agreement States and from the NRC has been formed.

Scope of Work

The common and non-common performance indicators of the Integrated Materials Performance Evaluation Program (IMPEP), discussed in 60 FR 54734, published October 25, 1995, are tied to the adequacy component under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs.'' The efforts of the Working Group will also reflect experience obtained through the interim implementation of IMPEP to ensure ease of application for the Policy Statement implementing procedures when used to conduct Agreement State program reviews. In developing implementing procedures for the Policy Statement, the Working Group will analyze all aspects (program elements and regulations) of an Agreement State regulatory program and determine which elements and regulations should be identical and which elements and regulations a State should incorporate into its program but may incorporate in a manner different from the NRC, i.e., assign each to a compatibility component, as necessary.

Tasks

In development of the implementing procedures for the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs,'' the Working Group will be performing the following tasks:

1. Identification of program elements (excludes regulations) which should be considered as being necessary for compatibility.

2. A. Analyze each NRC regulation applicable to the regulation of certain Atomic Energy Act (AEA) materials (those covered by an AEA 274b Agreement) and determine the compatibility component to be assigned to each, as necessary.

B. Analyze each program element identified in 1 above, and determine the compatibility component to be assigned to each, as necessary.

3. Develop draft implementing procedures for the Policy Statement which address the following:

A. Identification of regulations necessary for compatibility by Agreement States which should be adopted by the States as soon as possible after adoption by NRC, but in no case later than three (3) years following the effective date of the NRC final rule.

B. Identification of program elements (other than regulations) that are needed for compatibility by Agreement States within six months of notification by NRC. However, if adoption of such an element requires public notice and comment pursuant to an Agreement State's Administrative Procedures Act, the NRC and the State will establish a mutually acceptable adoption date.

C. i. Documentation of Commission-approved guidance for when an Agreement State need not adopt a specific regulation if the State has no licensees that would be subject to that regulation. The guidance will provide that in such cases the State would need to commit to adopt the regulation to impose the regulation through license conditions or through other legally binding measures, if an application for that type of license were to be received by the State.

ii. Documentation of Commission-approved guidance for when an Agreement State may adopt and implement regulatory requirements for specific classes of licensees, through imposition of the requirement as a license condition or through other legally binding measures (e.g., orders), instead of formal regulations. The guidance will provide that basic radiation protection standards in 10 CFR Part 20 and other regulations applicable to all licensees that are necessary for compatibility should be adopted by regulation.

D. Recommend modifications to the policy statement, as necessary, based upon completed implementing procedures.

Committee Organization and Operations

Cardelia H. Maupin, NRC, OSP, and Robert R. Kulikowski, New York City have been selected as co-chairs by the NRC and Agreement States, respectively. Other members are Aubrey Godwin, Arizona; Roland Fletcher, Maryland; Hampton Newsome, NRC, Office of General Counsel (OGC); John Telford, NRC, Office of Nuclear Regulatory Research (RES); Richard Woodruff, NRC, Region II; and Paul Lohaus, NRC, OSP will serve as a resource person.

Committee Meetings

Working Group meetings will be announced in advance through the NRC Public Meeting Notice System. Maximum use will be made of other appropriate media for facilitating interaction with the Working Group, e.g., conference calls, facsimiles, and electronic mail. Working Group meetings will be open to the public and will be held in the Washington, DC area, or other locations as agreed upon by the Working Group members. Persons attending Working Group meetings will

be welcome to provide comments to the Working Group for its consideration in either written form or orally at times specified by the Working Group co-chairs.

A telephonic meeting of the Working Group has been scheduled for 2:00 pm eastern time on Tuesday, December 5, 1995. All future meetings will be announced through the NRC meeting announcement schedule. The Working Group expects to meet at approximately monthly intervals. Information on future meetings will be available to the public:

- By telephone recording on the toll-free NRC Public Meeting Announcement System, 1–800–952–9674;
- By electronic bulletin board on the toll-free NRC bulletin board, 1–800–952–9676;
- By postings in the NRC Public Document Room at the Gelman Building, 2120 L St., N. W., Washington, D. C. 20037 and Local Public Document Rooms; and
- By Internet on the toll-free NRC at FedWorld, 1–800–303–9672, access through the GATEWAY option.

A conference room at the NRC One White Flint Building, 11555 Rockville Pike, Rockville, Md., 20852–2738, Room 1F7&9, has been reserved for members of the public who wish to participate in the December 5, 1995 telephonic meeting. Any questions can be directed to Ms. Cardelia Maupin at 301–415–2312. In addition, conference space has been reserved at the Arizona Radiation Regulatory Agency, 4814 South 40th Street, Phoenix, Arizona 85040 for persons wishing to participate telephonically in the meeting and the contact person is Mr. Aubrey Godwin, Director, Arizona Radiation Regulatory Agency, 602–223–2212.

Dated at Rockville, Maryland this 27th day of November, 1995.

For the Nuclear Regulatory Commission.

Richard L. Bangart,

Director, Office of State Programs.

[FR Doc. 95–29295 Filed 11–30–95; 8:45 am]

BILLING CODE 7590–01–P

Documents Containing Reporting or Recordkeeping Requirements; Notice of Pending Submittal to the Office of Management and Budget (OMB) for Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. The title of the information collection: 10 CFR Part 36, Licenses and Radiation Safety Requirements for Irradiators.

2. Current OMB Approval Number: 3150–0158.

3. How often the collection is required: There is a one-time submittal of information to receive a license. Once a specific license has been issued, there is a 5-year resubmittal of the information for renewal of the license. In addition, recordkeeping must be performed on an on-going basis, and reports of accidents and other abnormal events must be reported on an as-necessary basis.

4. Who is required or asked to report: All irradiators licensed by NRC or an Agreement State.

5. The number of annual respondents: 60 NRC licensees and 120 Agreement State licensees.

6. The number of hours needed annually to complete the requirement or request: 84,030 (approximately 467 per licensee).

7. Abstract: 10 CFR Part 36 contains requirements for the issuance of a license authorizing the use of sealed sources containing radioactive materials in irradiators used to irradiate objects or materials for a variety of purposes in research, industry, and other fields. The subparts cover specific requirements for obtaining a license or license exemption; design and performance criteria for irradiators; and radiation safety requirements for operating irradiators, including requirements for operator training, written operating and emergency procedures, personnel monitoring, radiation surveys, inspection, and maintenance. Part 36 also contains the recordkeeping and reporting requirements that are necessary to ensure that the irradiator is being safely operated so that it poses no danger to the health and safety of the general public and the irradiator employees.

Submit, by January 30, 1996, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. Members of the public who are in the Washington, DC, area can access this document via modem on the Public Document Room Bulletin Board (NRC's Advance Copy Document Library), NRC subsystem at FedWorld, 703–321–3339. Members of the public who are located outside of the Washington, DC, area can dial FedWorld, 1–800–303–9672, or use the FedWorld Internet address: fedworld.gov (Telnet). The document will be available on the bulletin board for 30 days after the signature date of this notice. If assistance is needed in accessing the document, please contact the FedWorld help desk at 703–487–4608.

Comments and questions may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 F33, Washington, DC 20555–0001, or by telephone at (301) 415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 22nd day of November, 1995.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 95–29294 Filed 11–30–95; 8:45 am]

BILLING CODE 7590–01–P

Documents Containing Reporting or Recordkeeping Requirements; Notice of Pending Submittal to the Office of Management and Budget (OMB) for Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. The title of the information collection: 10 CFR Part 26, ''Fitness for Duty Program.''

2. Current OMB approval number: 3150–0146.

3. How often the collection is required: On occasion.

4. Who is required or asked to report: All licensees authorized to construct or operate a nuclear power reactor and all licensees authorized to possess, use, or transport unirradiated Category 1 nuclear material.

5. The number of annual respondents:

a. 148 semi-annual reports (an average of 40 hours per response).

b. 74 telephonic event reports (an average of 15 minutes per response).

c. 44,000 written statements from applicants for unescorted access authorization to protected areas (an average of 30 seconds per response).

6. The number of hours needed annually to complete the requirement or request: 63,960 (7,210 hours of reporting burden and 56,750 hours of recordkeeping burden).

7. Abstract: 10 CFR Part 26, ''Fitness for Duty Program,'' requires licensees of nuclear power plants and licensees authorized to possess, use, or transport unirradiated Category 1 nuclear material to implement fitness-for-duty programs to assure that personnel are not under the influence of any substance or mentally or physically impaired, to retain certain records associated with the management of these programs, and to provide reports concerning significant events. Compliance with these requirements is mandatory for licensees subject to 10 CFR Part 26.

Submit by January 30, 1996, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street NW. (lower level), Washington, DC. Members of the public who are in the Washington, DC, area can access this document via modem on the Public Document Room Bulletin Board (NRC's Advanced Copy Document Library), NRC subsystem at FedWorld, 703–321–3339. Members of the public who are located outside of the Washington, DC, area can dial FedWorld, 1–800–303–9672, or use the FedWorld Internet address: fedworld.gov (Telnet). The document will be available on the bulletin board for 30 days after the signature date of this notice. If assistance is needed in accessing the document, please contact the FedWorld help desk at 703–487–4608.

Comments and questions may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 F33, Washington, DC 20555–0001, or by telephone at (301) 415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 22nd day of November, 1995.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 95–29296 Filed 11–30–95; 8:45 am]

BILLING CODE 7590–01–P

POSTAL RATE COMMISSION

[Docket No. A96-4; Order No. 1089]

Manchester, Wisconsin 53945 (Janice Guderski, Petitioner); Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Issued November 27, 1995.

Docket Number: A96–4

Name of Affected Post Office: Manchester, Wisconsin 53945

Name(s) of Petitioners(s): Janice Guderski

Type of Determination: Closing

Date of Filing of Appeal Papers: November 20, 1995

Categories of Issues Apparently Raised:

1. Effect on postal services [39 U.S.C. § 404(b)(2)(C)].
2. Effect on the community [39 U.S.C. § 404(b)(2)(A)].

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date this appeal was filed (39 U.S.C. § 404 (b)(5)). In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The Postal Service may incorporate by reference in its briefs or motions, any arguments presented in memoranda it previously filed in this docket. If necessary, the Commission also may ask petitioners or the Postal Service for more information.

The Commission Orders

(a) The Postal Service shall file the record in this appeal by December 5, 1995.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedural Schedule in the Federal Register.

By the Commission.

Margaret P. Crenshaw,

Secretary.

Appendix

November 20, 1995
Filing of Appeal letter
November 27, 1995
Commission Notice and Order of Filing of Appeal
December 15, 1995
Last day of filing of petitions to intervene [see 39 C.F.R. § 3001.111(b)]
December 26, 1995
Petitioner's Participant Statement or Initial Brief [see 39 C.F.R. § 3001.115(a) and (b)]
January 15, 1996
Postal Service's Answering Brief [*see* 39 C.F.R. § 3001.115(c)]
January 29, 1996
Petitioner's Reply Brief should Petitioner choose to file one [see 39 C.F.R. § 3001.115(d)]
February 5, 1996
Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [see 39 C.F.R. § 3001.116]
March 19, 1996
Expiration of the Commission's 120-day decisional schedule [see 39 U.S.C. § 404(b)(5)]

[FR Doc. 95–29341 Filed 11–30–95; 8:45 am]

BILLING CODE 7710–FW–P

[Docket No. A96–5; Order No. 1090]

Shade, Ohio 45776, (Julie Wagner, et al., Petitioners); Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. § 404(b)(5)

Issued November 27, 1995.

Docket Number: A96–5

Name of Affected Post Office: Shade, Ohio 45776

Name(s) of Petitioner(s): Julie Wagner, et al.
Type of Determination: Consolidation
Date of Filing of Appeal Papers:
November 21, 1995
Categories of Issues Apparently Raised:
1. Effect on postal services [39 U.S.C. § 404(b)(2)(C)].
2. Effect on the community [39 U.S.C. § 404(b)(2)(A)].

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date this appeal was filed (39 U.S.C. § 404 (b)(5)). In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The Postal Service may incorporate by reference in its briefs or motions, any arguments presented in memoranda it previously filed in this docket. If necessary, the Commission also may ask petitioners or the Postal Service for more information.

The Commission Orders

(a) The Postal Service shall file the record in this appeal by December 6, 1995.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedural Schedule in the Federal Register.

By the Commission.

Margaret P. Crenshaw,

Secretary.

APPENDIX

November 21, 1995
Filing of Appeal letter
November 27, 1995
Commission Notice and Order of Filing of Appeal
December 15, 1995
Last day of filing of petitions to intervene [*see* 39 C.F.R. § 3001.111(b)]
December 26, 1995
Petitioners' Participant Statement or Initial Brief [*see* 39 C.F.R. § 3001.115(a) and (b)]
January 15, 1996
Postal Service's Answering Brief [*see* 39 C.F.R. § 3001.115(c)]
January 30, 1996
Petitioners' Reply Brief should Petitioner choose to file one [*see* 39 C.F.R. § 3001.115(d)]
February 6, 1996
Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [*see* 39 C.F.R. § 3001.116]
March 20, 1996
Expiration of the Commission's 120-day decisional schedule [*see* 39 U.S.C. § 404(b)(5)]

[FR Doc. 95–29342 Filed 11–30–95; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Programmatic Environmental Assessment; Priority Mail Processing System

AGENCY: Postal Service.

ACTION: Notice of finding of no significant impact.

SUMMARY: The Postal Service intends to implement a redesign program for the processing and distribution of Priority Mail, as announced in the Federal Register on October 20, 1995 (60 FR 54265). This program is needed to improve the handling of Priority Mail for achieving a level of on-time delivery higher than current levels. An environmental assessment, prepared by the Postal Service and dated November 1, 1995, concluded that the redesign program will have no effect or only a negligible effect on the components of the physical and cultural environments examined.

EFFECTIVE DATE: December 1, 1995.

FOR FURTHER INFORMATION CONTACT: Anthony M. Pajunas, (202) 268–3669. Copies of the environmental assessment are available from Operations Networks Redesign, U.S. Postal Service, 425 L'Enfant Plaza SW, Washington, DC 20260–7165.

SUPPLEMENTARY INFORMATION: The Postal Service redesign program for its Priority Mail Processing System includes establishing Priority Mail processing centers at several new facilities along the East Coast. This program will segregate Priority Mail from other mail classes and process and distribute Priority Mail through dedicated facilities. Program performance will be evaluated during a test period, after which the Postal Service will determine further action.

An environmental assessment of the redesign program, dated November 1, 1995, was prepared by the Postal Service. The assessment concluded that, because of the small size of the proposed Priority Mail processing centers relative to the urban areas in which they are to be situated, implementation of the program is expected to have no effect or only a negligible effect on the components of the physical and cultural environments examined. The program is expected, however, to have a significant effect on improving the on-time delivery performance of Priority Mail, as well as on the remaining components of the postal environment.

Based on the environmental assessment, the Postal Service finds and declares that the proposed action will not have a significant effect on the environment and, therefore, will not require the preparation of an environmental impact statement.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 95–29324 Filed 11–30–95; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–36508; File No. 600–23]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Approving Application for Extension of Temporary Registration as a Clearing Agency

November 27, 1995.

On February 3, 1995, the Government Securities Clearing Corporation (''GSCC'') filed with the Securities and Exchange Commission (''Commission'') a request pursuant to Section 19(a)[1] of the Securities Exchange Act of 1934 (''Act'') that the Commission grant GSCC full registration as a clearing agency under Section 17A of the Act[2] or in the alternative extend GSCC's temporary registration as a clearing agency until such time as the Commission is able to grant GSCC permanent registration.[3] The Commission published notice of GSCC's request in the Federal Register on October 26, 1995.[4] No comments were received. This order extends GSCC's

[1] 15 U.S.C. 78s(a) (1988).

[2] 15 U.S.C. 78q–1 (1988).

[3] Letter from Charles A. Moran, President, GSCC, to Brandon Becker, Director, Division of Market Regulation (''Division''), Commission (February 3, 1995) (''February Registration Letter''). GSCC supplemented the February Registration letter in its letter from Charles A. Moran, President, GSCC, to Brandon Becker, Director, Division, Commission (September 15, 1995) (''September Registration Letter'').

[4] Securities Exchange Act Release No. 36398 (October 20, 1995), 60 FR 54895.

temporary registration as a clearing agency through November 30, 1996.[5]

GSCC provides clearance and settlement services for its members' transactions in government securities. GSCC offers its members services for next-day settling trades, forward settling trades, auction takedown activity, repurchase transactions (''repos''), the multilateral netting of trades, the novation of netted trades, and daily marking-to-the-market. In connection with GSCC's clearance ad settlement services, GSCC provides a centralized loss allocation procedure and maintains margin to offset netting and settlement risks.

At the time of GSCC's initial temporary registration, the Commission granted GSCC exemptions from compliance with the participation standards in Sections 17A(b)(3)(B) and 17A(b)(4)(B)[6] and with the fair representation requirements in Section 17A(b)(3)(C). GSCC has requested that the Commission rescind GSCC's exemption from the participation standards in Sections 17A(b)(3)(B) and 17A(b)(4)(B). As more fully set forth in the February Registration Letter, GSCC believes that it has adequately addressed the Commission's concerns regarding GSCC's membership eligibility standards by establishing new categories of membership.[7] In the February Registration Letter, GSCC also stated that it believes its current method of selecting its Board of Directors assures members fair representation.[8]

GSCC has made substantial progress toward satisfying the requirements enumerated in Section 17A(b) of the Act. The Commission believes that while GSCC's new categories of membership are not extensively used at this time, GSCC is in compliance with the requirements of Sections 17A(b)(3)(B) and 17A(b)(4)(B) of the Act.[9] Therefore, the Commission is eliminating GSCC's exemption from the provisions of Sections 17A(b)(3)(B) and 17A(b)(4)(B).

GSCC has recently introduced clearance and settlement services for certain repurchase agreement transactions.[10] Because institutional entities are much more involved in the repo market than in the cash market, GSCC expects much greater utilization of its nontraditional membership categories (*e.g.*, those membership categories for entities other than dealers and banks) in the coming years. The Commission believes that as the number of members in these nontraditional categories grows, GSCC should continue to review its criteria for membership in the various categories.

The Commission will continue GSCC's exemption from the fair representation standards of Section 17A(b)(3)(C) during the temporary registration period. Prior to granting permanent registration, the Commission will evaluate GSCC's criteria for selecting its Board of Directors to ensure that the selection criteria is sufficiently flexible to assure adequate representation of members in each of GSCC's membership categories consistent with Section 17A(b)(3)(C) of the Act.

It is therefore ordered that GSCC's temporary registration as a clearing agency (File No. 600–23) be and hereby is extended through November 30, 1996, subject to the terms set forth above.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–29319 Filed 11–30–95; 8:45 a.m.]

BILLING CODE 8010–01–M

[5] On May 24, 1988, the Commission granted GSCC's initial application for registration as a clearing agency pursuant to Sections 17A and 19(a) of the Act and Rule 17Ab2–1 [17 CFR 240.17Ab2–1 (1994)] thereunder for a period of three years. Securities Exchange Act Release No. 25740 (May 24, 1988), 53 FR 19639. The Commission subsequently extended GSCC's registration until November 30, 1995. Securities Exchange Act Release Nos. 29067 (April 11, 1991), 56 FR 15652; 32385 (June 3, 1993), 58 FR 32405; and 35787 (May 31, 1995), 60 FR 30324.

[6] The Commission determined that GSCC's rules did not provide for all the statutory categories of membership required by Section 17A(b)(3)(B) or the financial standards for such applicants and members as contemplated by Section 17A(b)(4)(B). 15 U.S.C. 78q–1(b)(3)(B), 78q–1(b)(4)(B) (1988).

[7] Since the Commission's original order granting GSCC temporary registration, the Commission has approved two proposed rule changes that increased the categories of those eligible for membership in GSCC's netting system. Securities Exchange Act Release Nos. 34935 (November 3, 1994), 59 FR 56100 (order approving establishing of new categories of netting system membership for futures commission merchants) and 32722 (August 5, 1993), 58 FR 42993 (order approving establishment of new categories of netting system membership for Category 2 dealers and interdealer brokers, issuers of government securities, insurance companies, registered clearing agencies, and registered investment companies). Under GSCC's rules, a Category 2 dealer netting member has a lower net worth threshold but more stringent margin requirements than Category 1 dealer members.

[8] GSCC's current selection process for its Board of Directors permits any GSCC member to nominate candidates for election to the Board and to vote for candidates so nominated. In the February Registration Letter, GSCC stated that it recognizes future membership growth may require GSCC to adjust the selection process to ensure fair member representation on the Board.

[9] Currently, GSCC has one Category 2 dealer netting member and one futures commission merchant. None of the other membership categories discussed *supra* in note 7 are being used.

[10] Securities Exchange Act Release No. 36491 (November 17, 1995).

[11] 17 CFR 200.30–3(a)(50)(i) (1994).

[Release No. 34–36509; File No. SR–CHX–95–27]

Self-Regulatory Organizations; The Chicago Stock Exchange, Incorporated; Notice of Filing of Proposed Rule Change Relating to Chicago Stock Exchange, Incorporated's Decision To Withdraw From the Clearance and Settlement and Securities Depository Businesses

November 27, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on November 16, 1995, the Chicago Stock Exchange, Incorporated (''CHX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–CHX–95–27) as described in Items I, II, and III below, which items have been prepared primarily by CHX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change involves proposed arrangements relating to a decision by CHX to withdraw from the clearance and settlement, securities depository, and branch receive businesses conducted through its subsidiaries, the Midwest Clearing Corporation (''MCC''), Midwest Securities Trust Company (''MSTC''), and Securities Trust Company of New Jersey (''STC/NJ'').[2] Parties to the proposed arrangements are The Depository Trust Company (''DTC''), CHX, MSTC, the National Securities Clearing Corporation (''NSCC''), MCC, and STC/NJ. The proposed arrangements as they relate to CHX would provide for the following:

(1) MSTC and MCC would cease providing securities depository and securities clearing services, respectively, by January 15, 1996.

(2) DTC would offer sole MSTC participants an opportunity to become DTC participants, if they meet DTC's qualifications. NSCC would offer sole

[1] 15 U.S.C. § 78s(b)(1)(1988).

[2] STC/NJ is a wholly-owned subsidiary of CHX that currently provides certain services, including a securities custody service. STC/NJ is not a clearing agency as defined in the Act and therefore is not required to register with the Commission.

MCC participants the opportunity to become NSCC participants if they meet NSCC's qualifications.

(3) DTC and MSTC would cooperate to assure the orderly transfer of securities from the custody of MSTC to the custody of DTC for DTC participants that authorize such transfers. Open positions of MCC participants that are or that become NSCC participants and that authorize the transfer of their positions will be transferred to the books of NSCC.

(4) DTC would acquire certain assets and assume certain lease and other contractual obligations of STC/NJ.

(5) DTC would assume certain lease obligations of CHX.

(6) DTC and NSCC would make certain payments to CHX, MSTC, MCC, and STC/NJ.

(7) In general, for a period of ten years CHX, MCC, MSTC, and STC/NJ would not engage in the businesses from which they have decided to withdraw (*i.e.*, the securities clearing, securities depository, and branch receive businesses). However, CHX and its subsidiaries would be free to provide specified securities depository-related and securities clearing-related services and products to CHX members and certain third-parties under certain circumstances.[3]

The proposed rule change also seeks to modify CHX's Constitution to reduce the size of the Board of Governors.[4]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the propose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CHX has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.[5]

(A) Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

CHX has determined to close its clearance and settlement and securities depository business in order to focus its resources on the operations of the exchange itself. The primary purpose of the proposed arrangements is to permit CHX to achieve this objective while affording MCC participants an opportunity to become NSCC participants and affording MSTC participants an opportunity to become DTC participants and transfer their open positions and securities to NSCC and DTC. Both MCC and MSTC participants, however, would be free to utilize any other service provider of their choosing. This is consistent with the industry's effort to eliminate redundant infrastructure costs associated with operating separate organizations.

The timing of the proposal is related to the industry's planned conversion to same-day funds settlement.[6] Currently, transactions in equities, corporate debt, and municipal debt are settled in next-day funds.[7] Transactions in commercial paper and other money market instruments are settled in same-day funds. As the Commission is aware, the registered clearing agencies have been working with the industry over the least few years to develop a system that will provide for the settlement of virtually all securities transactions in same-day funds. These efforts have been encouraged by the Commission, the Board of Governors of the Federal Reserve System, and the Federal Reserve Banks of New York and Chicago, and these plans have been monitored by the staffs of these regulatory bodies.[8] Under the conversion plan, all issues currently settling in DTC's next-day funds settlement system will be transferred to DTC's same-day funds settlement system on a single day. Several months ago, a consensus was reached that the conversion date will be February 22, 1996. As a result of this scheduled conversion date, CHX has determined to cease providing securities depository, securities clearing, and branch receive services by January 15, 1996.

The proposed arrangements should result in substantial savings for the securities industry. In connection with this proposal, former sole MSTC participants may become DTC participants if they qualify, and former sole MCC participants may become NSCC participants if they qualify or utilize any other clearing and depository service provider. Moreover, interdepository and clearing interfaces involve the maintenance of substantial facilities, communications networks, and account and inventory reconciliation mechanisms. As a result of the proposal, the substantial costs incurred by both DTC, NSCC, MCC, and MSTC in operating interfaces would be eliminated.

Another purpose of the proposed rule change is to reduce the size of the CHX's Board of Governors. This reduction conforms with the simultaneous reductions in the size of the boards of directors of MCC and MSTC. Because of its withdrawal from the businesses described above, CHX no longer believes it is necessary to maintain such a large board of directors. As a result, CHX is eliminating the Participant Governor positions. Those current board members whose slots have been eliminated may serve out the remainder of their terms.

CHX believes that proposed rule change is consistent with Section 6(b)(5) of the Act[9] in that it will enable the CHX to focus its energies on its core business, the exchange. This, in turn, will promote just and equitable principles of trade, remove impediments and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. The proposal also will foster cooperation and coordination with persons engaged in clearing and settling transactions in securities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

CHX does not believe the proposed arrangements will improve any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Securities depositories and securities clearing corporations registered under Section 17A of the Act are not conventional

[3] A more detailed description of these proposed arrangements is contained in Exhibit 2 to the filing. A copy of the filing and all exhibits is available for copying and inspection in the Commission's Public Reference Room.

[4] The text of these proposed changes is contained in Exhibit A to the filing. A copy of the filing and all exhibits is available for copying and inspection in the Commission's Public Reference Room.

[5] The Commission has modified the text of the summaries prepared by CHX.

[6] The term ''same-day funds'' refers to payment in funds that are immediately available and generally are transferred by electronic means.

[7] The term ''next-day funds'' refers to payment by means of certified check that is for value on the following day.

[8] In approving certain modifications of DTC's existing system in order to accommodate the overall conversion to same-day funds settlement, the Commission stated that it ''believes that the overall conversion to an SDFS system will help reduce systemic risk by eliminating overnight credit risk. The SDFS system also will reduce risk by achieving closer conformity with the payment methods used in the derivatives markets, government securities markets and other markets.'' Securities Exchange Act Release No. 35720 (May 16, 1995), 60 FR 27360 [File No. SR–DTC–95–06] (order granting accelerated approval to proposed rule change modifying the same-day funds settlement system).

[9] 15 U.S.C. 78f(b)(5) (1988).

businesses but utilities created to serve members of the securities industry for the purpose of providing certain services that are ancillary to the businesses in which industry members compete with one another. Operating a securities depository and securities clearing corporation requires a substantial and continuing investment in infrastructure, including securities vaults, telecommunications links with users, data centers, and disaster recovery facilities in order to meet the increasing needs of participants and respond to regulatory requirements. Both the Boston Stock Exchange in 1981 and the Pacific Stock Exchange in 1987 terminated the operations of their securities depositories and substantially terminated the operations of their securities clearing corporations.

After consummation of the proposed arrangements, securities industry members will continue to have access to high-quality, low-cost depository and clearing services provided under the mandate of the Act. The overall cost to the industry of having such services available will be reduced, thereby permitting a more efficient and productive allocation of industry resources. Furthermore, because most of a depository's and a clearing corporation's interface costs must be mutualized, thereby requiring some participants to subsidize costs incurred by others, CHX's withdrawal from maintaining depository and clearing facilities should reduce costs to participants and thereby remove impediments to competition. Finally, CHX's ability to focus its resources on the operations of its exchange should help enhance competition among securities markets.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments on the proposal have not been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of such filing also will be available for inspection and copying at the principal office of CHX. All submissions should refer to the file number SR–CHX–95–27 and should be submitted by December 22, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland.

Deputy Secretary.

[FR Doc. 95–29321 Filed 11–30–95; 8:45am]

BILLING CODE 8010–01–M

[Release No. 34–36511; File No. SR–MCC–95–04]

Self-Regulatory Organizations; Midwest Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Midwest Clearing Corporation's Decision To Withdraw From the Clearance and Settlement Business

November 27, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on November 16, 1995, the Midwest Clearing Corporation (''MCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by MCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change involves proposed arrangements relating to a decision by the Chicago Stock Exchange, Incorporated (''CHX'') to withdraw from the clearance and settlement, securities depository, and branch receive businesses conducted through its subsidiaries, MCC, Midwest Securities Trust Company (''MSTC''), and the Securities Trust Company of New Jersey (''STC/NJ'').[2] Parties to the proposed arrangements are The Depository Trust Company (''DTC''), CHX, MSTC, the National Securities Clearing Corporation (''NSCC''), MCC, and STC/NJ. The proposed arrangements as they relate to MCC, would provide for the following:

(1) MCC would cease providing securities clearing services by January 15, 1996.

(2) NSCC would offer MCC participants an opportunity to become NSCC participants if they meet NSCC's qualifications.

(3) Open positions of MCC participants that are or that become NSCC participants and that authorize the transfer of their open positions will be transferred to the books of NSCC.

(4) DTC and NSCC would make certain payments to MCC.

(5) In general, for a period of ten years MCC would not engage in the business from which it has decided to withdraw (*i.e.*, the securities clearing business). However, MCC would be free to provide specified securities clearing-related services and products to CHX members and certain third-parties under certain circumstances.[3]

The proposed rule change also seeks to modify MCC's By-Laws to reduce the size of its Board of Directors.[4]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MCC included statements concerning

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[10] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] STC/NJ is a wholly-owned subsidiary of CHX that currently provides certain services, including a securities custody service. STC/NJ is not a clearing agency as defined in the Act and therefore is not required to register with the Commission.

[3] A more detailed description of these proposed arrangements is contained in Exhibit 2 to the filing. A copy of the filing and all exhibits is available for copying and inspection in the Commission's Public Reference Room.

[4] The text of these proposed changes is contained in Exhibit A to the filing. A copy of the filing and all exhibits is available for copying and inspection in the Commission's Public Reference Room.

the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. MCC has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.[5]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

CHX has determined to close its clearance and settlement and securities depository business in order to focus its resources on the operations of the exchange. The primary purpose of the proposed arrangements is to permit CHX and MCC to achieve this objective while affording MCC participants an opportunity to become NSCC participants. MCC participants, however, would be free to utilize any other service provider of their choosing. This is consistent with the industry's effort to eliminate redundant infrastructure costs associated with operating separate organizations.

The timing of the proposal is related to the industry's planned conversion to same-day funds settlement.[6] Currently, transactions in equities, corporate debt, and municipal debt are settled in next-day funds.[7] Transactions in commercial paper and other money market instruments are settled in same-day funds. As the Commission is aware, the registered clearing agencies have been working with the industry over the least few years to develop a system that will provide for the settlement of virtually all securities transactions in same-day funds. These efforts have been encouraged by the Commission, the Board of Governors of the Federal Reserve System, and the Federal Reserve Banks of New York and Chicago, and these plans have been monitored by the staffs of these regulatory bodies.[8] Under the conversion plan, all issues currently settling in DTC's next-day funds settlement system will be transferred to DTC's same-day funds settlement system on a single day. Several months ago, an industry consensus was reached that the conversion date will be February 22, 1996. As a result of this scheduled conversion date, CHX and MCC have determined to cease providing securities clearing services by January 15, 1996.

The proposed arrangements should result in substantial savings for the securities industry. In connection with this proposal, former sole MCC participants may become NSCC participants if they qualify or utilize any other clearing service provider. Moreover, clearing interfaces involve the maintenance of substantial facilities, communications networks, and account reconciliation mechanisms. As a result of the proposal, the substantial costs incurred by both NSCC and MCC in operating an interface would be eliminated.

Another purpose of the proposed rule change is to reduce the size of MCC's board of directors. This reduction conforms with the simultaneous reductions in the size of the boards of directors of MSTC and CHX. Because of their withdrawal from the businesses described above, CHX and MCC no longer believe it is necessary to maintain such a large board of directors. As a result, MCC is elimination of the Participant Governor positions. Those current board members whose slots have been eliminated, however, may serve out the remainder of their terms.

MCC believes the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because the rule proposal will facilitate the industry's conversion to same-day funds settlement for virtually all securities transactions and thereby facilitate the prompt and accurate clearance and settlement of such transactions. The proposal will provide qualified sole MCC participants with access to NSCC's facilities and will be implemented consistently with the safeguarding of securities and funds in MCC's custody and control. In addition, the proposal will foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MCC believes the proposed arrangements will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Securities clearing corporations registered under Section 17A of the Act are not conventional businesses but utilities created to serve members of the securities industry for the purpose of providing certain services that are ancillary to the businesses in which industry members compete with one another. Operating a securities clearing corporation requires a substantial and continuing investment in infrastructure, including telecommunications links with users, data centers, and disaster recovery facilities in order to meet the increasing needs of participants and respond to regulatory requirements. Both the Boston Stock Exchange in 1981 and the Pacific Stock Exchange in 1987 substantially terminated the operation of their securities clearing corporations.

After consummation of the proposed arrangements, securities industry members will continue to have access to high-quality, low-cost clearing services provided under the mandate of the Act. The overall cost to the industry of having such services available will be reduced thereby permitting a more efficient and productive allocation of industry resources. Furthermore, because most of a clearing corporation's interface costs must be mutualized, thereby requiring some participants to subsidize costs incurred by others, CHX's and MCC's withdrawal from maintaining clearing facilities will reduce costs to participants and thereby remove impediments to competition. Finally, CHX's ability to focus its resources on the operations of the exchange should help enhance competition among securities markets.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposal have not been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory

[5] The Commission has modified the text of the summaries prepared by MCC.

[6] The term ''same-day funds'' refers to payment in funds that are immediately available and generally are transferred by electronic means.

[7] The term ''next-day funds'' refers to payment by means of certified check that is for value on the following day.

[8] In approving certain modifications of DTC's existing system in order to accommodate the overall conversion to same-day funds settlement, the Commission stated that it ''believes that the overall conversion to an SDFS system will help reduce systemic risk by eliminating overnight credit risk. The SDFS system also will reduce risk by achieving closer conformity with the payment methods used in the derivatives markets, government securities markets and other markets.'' Securities Exchange Act Release No. 35720 (May 16, 1995) 60 FR 27360 [File No. SR–DTC–95–06] (order granting accelerated approval to proposed rule change modifying the same-day funds settlement system).

organization consents, the Commission will:

(A) by order approve such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552 will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of such filing also will be available for inspection and copying at the principal office of MCC. All submissions should refer to the file number SR–MCC–95–04 and should be submitted by December 22, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–29320 Filed 11–30–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36510; File No. SR–MSTC–95–10]

Self-Regulatory Organizations; Midwest Securities Trust Company; Notice of Filing of Proposed Rule Change Relating to Midwest Securities Trust Company's Decision To Withdraw From the Securities Depository Business

November 27, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on November 16, 1995, the Midwest Securities Trust Company (''MSTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–MSTC–95–10) as described in Items, I, II, and III below, which items have been prepared primarily by MSTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change involves proposed arrangements relating to a decision by the Chicago Stock Exchange, Incorporated (''CHX'') to withdraw from the clearance and settlement, securities depository, and branch receive businesses conducted through its subsidiaries, the Midwest Clearing Corporation (''MCC''), MSTC, and the Securities Trust Company of New Jersey (''STC/NJ'').[2] Parties to the proposed arrangements are The Depository Trust Company (''DTC''), CHX, MSTC, the National Securities Clearance Corporation (''NSCC''), MCC, and STC/NJ. The proposed arrangements as they relate to MSTC would provide for the following:

(1) MSTC would cease providing securities depository services by January 15, 1996.

(2) DTC would offer sole MSTC participations an opportunity to become DTC participants if they meet DTC's qualifications.

(3) DTC and MSTC would cooperate to assure the orderly transfer of securities from the custody of MSTC to the custody of DTC for DTC participants that authorize such transfers.

(4) DTC and NSCC would make certain payments to MSTC.

(5) In general, for a period of ten years MSTC would not engage in the business from which it has decided to withdraw (*i.e.*, the securities depository business). However, MSTC would be free to provide specified securities depository-related services and products to CHX members and certain third-parties under certain circumstances.[3]

The proposed rule change also seeks to modify MSTC's By-Laws to reduce the size of its board of director.[4]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MSTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. MSTC has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.[5]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

CHX has determined to close its clearance and settlement and securities depository businesses it conducts through its subsidiaries MCC, MSTC, and STC/NJ in order to focus its resources on the operations of the exchange itself. The primary purpose of the proposed arrangements is to permit CHX and MSTC to achieve this objective while affording MSTC participants on opportunity to become DTC participants and transfer their securities to DTC. MSTC participants, however, would be free to utilize any other service provider of their choosing. This is consistent with the industry's effort to eliminate redundant infrastructure costs associated with operating separate organizations.

The timing of the proposal is related to the industry's planned conversion to same-day funds settlement.[6] Currently, transactions in equities, corporate debt, and municipal debt are settled in next-day funds.[7] Transactions in commercial paper and other money market instruments are settled in same-day funds. As the Commission is aware, the registered clearing agencies have been working with the industry over the last few years to develop a system that will provide for the settlement of virtually all securities transactions in same-day funds. These efforts have been encouraged by the Commission, the Board of Governors of the Federal Reserve System, and the Federal Reserve Banks of New York and Chicago, and these plans have been monitored by the staffs of these

[9] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] STC/NJ is a wholly-owned subsidiary of CHX that currently provides certain services, including a securities custody service. STC/NJ is not a clearing agency as defined in the Act and therefore is not required to register with the Commission.

[3] A more detailed description of these proposed arrangements is contained in Exhibit 2 to the filing. A copy of the filing and all exhibits is available for copying and inspection in the Commission's Public Reference Room.

[4] The text of these proposed changes is contained in Exhibit A to the filing. A copy of the filing and all exhibits is available for copying and inspection in the Commission's Public Reference Room.

[5] The Commission has modified the text of the summaries prepared by MSTC.

[6] The term ''same-day funds'' refers to payment in funds that are immediately available and generally are transferred by electronic means.

[7] The term ''next-day funds'' refers to payment by means of certified check that is for value on the following day.

regulatory bodies.[8] Under the conversion plan, all issues currently settling in DTC's next-day funds settlement system will be transferred to DTC's same-day funds settlement system on a single day. Several months ago, an industry consensus was reached that the conversion date will be February 22, 1996. As a result of this scheduled conversion date, CHX and MSTC have determined to cease providing securities depository services by January 15, 1996.

The proposed arrangements should result in substantial savings for the securities industry. In connection with this proposal, former sole MSTC participants may become DTC participants if they qualify or utilize any other depository service provider. Moreover, interdepository interfaces involve the maintenance of substantial facilities, communications networks, and account and inventory reconciliation mechanisms. As a result of the proposal, the substantial costs incurred by both DTC and MSTC in operating an interface would be eliminated.

Another purpose of the proposed rule change is to reduce the size of MSTC's board of directors. This reduction conforms with the simultaneous reductions in the size of the boards of directors of MCC and CHX. Because of their withdrawal from the businesses described above, CHX and MSTC no longer believe it is necessary to maintain such a large board of directors. As a result, MSTC is eliminating four board positions in conjunction with the CHX's elimination of the Participant Governor positions. Those current board members whose slots have been eliminated, however, may serve out the remainder of their terms.

MSTC believes the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because the rule proposal will facilitate the industry's conversion to same-day funds settlement for virtually all securities transactions and thereby facilitate the prompt and accurate clearance and settlement of such transactions. The proposal will provide qualified sole MSTC participants with access to DTC's facilities and will be implemented consistently with the safeguarding of securities and funds in MSTC's custody and control. In addition, it will foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MSTC believes the proposed arrangements will not impose any burden or competition not necessary or appropriate in furtherance of the purposes of the Act. Securities depositories registered under Section 17A of the Act are not conventional businesses but utilities created to serve members of the securities industry for the purpose of providing certain services that are ancillary to the businesses in which industry members compete with one another. Operating a securities depository requires a substantial and continuing investment in infrastructure, including securities vaults, telecommunications links with users, data centers, and disaster recovery facilities in order to meet the increasing needs of participants and to respond to regulatory requirements. Both the Boston Stock Exchange in 1982 and the Pacific Stock Exchange in 1987 terminated the operation of their securities depositories.

After consummation of the proposed arrangements, securities industry members will continue to have access to high-quality, low-cost depository services provided under the mandate of the Act. The overall cost to the industry of having such services available will be reduced thereby permitting a more efficient and productive allocation of industry resources. Furthermore, because most of a depository's interface costs must be mutualized, thereby requiring some participants to subsidize costs incurred by others, CHX's and MSTC's withdrawal from maintaining depository facilities will reduce costs to participants and thereby remove impediments to competition. Finally, CHX's ability to focus its resources on the operations of the exchange should help enhance competition among securities markets.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposal have not been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of such filing also will be available for inspection and copying at the principal office of MSTC. All submissions should refer to the file number SR–MSTC–95–10 and should be submitted by December 22, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–29322 Filed 11–30–95; 8:45 am]

BILLING CODE 8010–01–M

[8] In approving certain modifications of DTC's existing system in order to accommodate the overall conversion to same-day funds settlement, the Commission stated that it ''believes that the overall conversion to an SDFS system will help reduce systemic risk by eliminating overnight credit risk. The SDFS system also will reduce risk by achieving closer conformity with the payment methods used in the derivatives markets, government securities markets and other markets.'' Securities Exchange Act Release No. 35720 (May 16, 1995) 60 FR 27360 [File No. SR–DTC–95–06] (order granting accelerated approval to proposed rule change modifying the same-day funds settlement system).

[9] 17 CFR 200.30–3(a)(12) (1994).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this

notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Comments should be submitted on or before January 30, 1996.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Management Analyst, Small Business Administration, 409 3rd Street, SW., Suite 5000, Washington, DC 20416. Phone Number: 202–205–6629. Copies of these collections can also be obtained.

SUPPLEMENTARY INFORMATION:

Title: Request for Advance Payment and schedule of Advance Payment.

Type of Request: Extension of a currently approved information collection.

Description of Respondents: 8(a) firms seeking advance payments.

Annual Responses: 700.

Annual Burden: 7,000.

Title: Request for Approval of Joint Venture Agreement.

Type of Request: Extension of a currently approved information collection.

Description of Respondents: 8(a) firms entering into a joint venture agreement.

Annual Responses: 20.

Annual Burden: 100.

Comments: Send all comments regarding this information collection to Krupakar Revanna, Office of Minority Enterprise Development, 409 3rd Street, SW., Suite 8000, Washington, DC 20416. Phone Number: 202–205–6416.

Title: Application for Associate Development Company.

Type of Request: Extension of a currently approved information collection.

Description of Respondents: Certified Development Companies.

Annual Responses: 10.

Annual Burden: 200.

Title: Associate Development Company Annual Report Guide.

Type of Request: Extension of a currently approved information collection.

Description of Respondents: Associate Certified Development Companies.

Annual Responses: 100.

Annual Burden: 100.

Comments: Send all comments regarding the two information collections listed above to Learn Oliver, Small Business Administration, Office of Rural and Economic Development, Suite 8300, 409 3rd Street, SW., Washington, DC 20416. Phone Number: 202–205–6485.

Title: Small Business Investment Company (SIC) Leverage Forms and Documents.

Type of Request: Extension of a currently approved information collection.

Description of Respondents: Small Business Investment Companies.

Annual Responses: 260.

Annual Burden: 1,040.

Comments: Send all comments regarding the above collection to Johnnie Kitts, Small Business Administration, Office of Investment, Suite 6300, 409 3rd Street, SW., Washington, DC 20416. Phone Number: 202–205–6517. Send comments regarding whether these information collections are necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Dated: November 17, 1995.

Jacqueline White,

Acting Chief, Administrative Information Branch.

[FR Doc. 95–29318 Filed 11–30–95; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Forms Submitted to the Office of Management and Budget for Clearance

Normally on Fridays, the Social Security Administration publishes a list of information collection packages that will require submission to the Office of Management and Budget (OMB) for clearance in compliance with P.L. 96–511, as amended (P.L. 104–13 effective October 1, 1995), The Paperwork Reduction Act. Since the last list was published in the Federal Register on November 17, 1995, the following information collections have been proposed or will require extension of the current OMB approvals.

(Call the Reports Clearance Officer on (410) 965–4142 for a copy of the form(s) or package(s), or write to her at the address listed after the information collections.)

SSA REPORTS CLEARANCE OFFICER: Charlotte S. Whitenight.

1. *Quarterly Statistical Report on Recipients and Payments Under State-administered Assistance Programs for Aged, Blind and Disabled (Individuals and Couples) Recipients—0960–0130.* The information collected on the SSA–9741 is used to provide statistical data on recipients and assistance payments under the SSI State-administered State supplementation programs. These data are needed to complement the data available for the federally administered programs under SSA and to more fully explain the impact of the public income support programs on the needy, aged, blind and disabled. The respondents are state agencies who administer supplementary payment programs under SSI.

Number of Respondents: 23

Frequency of Response: 4 times annually

Average Burden Per Response: 1 hour

Estimated Annual Burden: 92 hours

2. *Record of SSI Inquiry—0960–0140.* The information collected on form SSA–3462 is used to document the earliest possible filing date and to determine potential eligibility for SSI benefits. The respondents are individuals who inquire about SSI eligibility for themselves or another individual.

Number of Respondents: 1,200,000

Frequency of Response: 1

Average Burden Per Response: 5 minutes

Estimated Annual Burden: 100,000

3. *Request for Workers' Compensation/Public Disability Information—0960–0098.* The information collected on form SSA–1709 is used to verify workers compensation and public disability benefits payment amounts and to compute the correct reduction to the disability insurance benefits. The respondents are state and local governments and/or business that administer workers' compensation or other disability benefits.

Number of Annual Responses: 140,000

Frequency of Response: As needed to verify changes in the amount of workers compensation/public disability benefits

Average Burden Per Response: 15 minutes

Estimated Annual Burden: 35,000 hours

4. *Employee Work Activity Questionnaire—0960–0483.* The information collected on form SSA–3033 is used to determine if a disability claimant has or has not either engaged in substantial gainful activity or received a non-specific subsidy. Such a determination is necessary in evaluating a claimant's eligibility for Social Security disability benefits. The respondents are current or former employers of disability claimants.

Number of Respondents: 12,500

Frequency of Response: 1

Average Burden Per Response: 15 minutes

Estimated Annual Burden: 3,125 hours

5. *Followup Survey for the Project Network Evaluation—0960–NEW.* Project Network is a demonstration project that tests alternative approaches to assisting people with disabilities in

finding and maintaining employment. Followup information collected from project participants (treatment and control group members) will be used to evaluate the extent to which the different demonstration service-delivery systems assisted people with disabilities to find and maintain employment. The respondents are selected participants in the initial Project Network survey.

Number of Respondents: 1,558

Frequency of Response: 1

Average Burden Per Response: 90 minutes

Estimated Annual Burden: 2,337 hours

Written comments and recommendations regarding these information collections should be sent within 60 days from the date of this publication, directly to the SSA Reports Clearance Officer at the following address: Social Security Administration, DCFAM, Attn: Charlotte S. Whitenight, 6401 Security Blvd., 1–B–22 Operations Bldg., Baltimore, MD 21235.

In addition to your comments on the accuracy of the agency's burden estimate, we are soliciting comments on the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

The following information collections, which were published in the Federal Register on October 6, 1995, have been submitted to OMB:

1. *Request To Be Selected As Payee—0960–0014.* The information collected on form SSA–11–BK is used by the Social Security Administration to help determine the proper payee for a person who cannot receive his or her own Social Security benefits. The respondents will be individuals who apply to receive Social Security benefits on behalf of someone else.

Number of Respondents: 605,000.

Frequency of Response: 1.

Average Burden per Response: 10.5 minutes.

Estimated Annual Burden: 105,875 hours.

2. *Disability Update Report—0960–0511.* The information on form SSA–455 is used by the Social Security Administration to determine if a full medical continuing disability review (CDR) should be conducted. The respondents will be Social Security disability insurance beneficiaries who are scheduled to receive a CDR.

Number of Respondents: 431,200.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 107,800 hours.

3. *Statement Regarding Marriage—0960–0017.* The information collected via form SSA–753 is used by the Social Security Administration to make determinations regarding entitlement to spouse's benefits when a common law marriage is alleged. The respondents are third parties who can supply evidence concerning the existence of a common law marriage.

Number of Respondents: 40,000.

Frequency of Response: 1

Average Burden Per Response: 9 minutes.

Estimated Annual Burden: 6,000 hours.

4. *State Contribution Return—0960–0041.* The information on form SSA–3961 is used by the Social Security Administration to identify and account for all contributions due and paid by the states (or interstate instrumentalities) under Section 218 of the Social Security Act. The respondents are state agencies.

Number of Respondents: 117.

Frequency of Response: on occasion.

Average Burden Per Response: 3 minutes.

Estimated Annual Burden: 500 hours.

5. *Statement of Death by Funeral Director—0960–0142.* The information collected on the SSA–721 is used by the Social Security Administration to verify the death of an individual insured under the Social Security Act and to determine if there is a survivor eligible for a lump sum death payment. The respondents will be funeral directors with knowledge of the death of a person insured for Social Security benefits.

Number of Respondents: 900,000.

Frequency of Response: 1.

Average Burden Per Response: 3.5 minutes.

Estimated Annual Burden: 52,500 hours.

6. *Annual Report of Earnings (long and short forms)—0960–0057.* The information on forms SSA–777 and SSA–7770 is used by the Social Security Administration to determine the amount of yearly earnings of beneficiaries so that the proper benefit amounts are paid to them. The respondents will be beneficiaries under age 70 who have earned over the exempt amount for the year and still received benefits.

Number of Respondents: (SSA–777)-200,000; (SSA–7770)–1,000,000.

	SSA–777	SSA–7770
Frequency of Response	1	1.
Average Burden per Response	17 minutes	8 minutes.
Estimated Annual Burden	190,000 hours	190,000 hours.

7. *Public Information Campaigns and News Releases—0960–0544.* The purpose of the public information campaigns and news releases is to better inform the public about the programs and activities of the Social Security Administration (SSA).

The information is used by SSA to determine media interest in airing and printing the public information materials and news releases and to determine which materials are used, how often, its effectiveness, and the need for more local announcements. The respondents are newspapers and public broadcasting systems such as television, cable, and radio stations.

Number of Respondents: TV–500, Newspaper—500, Radio—1,500, Cable—148.

Frequency of Response: Public Service Announcements—4, News Releases—4, Educational Tapes—2.

Average Burden Per Response: 1 minute (solicitation card) 2 minutes (business reply card).

Estimated Annual Burden: 298 hours.

8. *Work Reintegration Study—0960–0543.* The information on the two forms used in this study will aid the Social Security Administration in determining what steps it can take to help beneficiaries who are disabled due to a back condition to return to work.

Number of Respondents: 1,500.

Frequency of Response: 1.

Average Burden Per Response: 1 hour.

Estimated Annual Burden: 1,500 hours.

Written comments and recommendations regarding these information collections should be sent within 30 days of the date of this publication. Comments may be directed to OMB and SSA at the following addresses:

(OMB) Office of Management and Budget, OIRA, Attn: Laura Oliven, New Executive Office Building, Room 10230, Washington, DC 20503.

(SSA) Social Security Administration, DCFAM, Attn: Charlotte S. Whitenight, 6401 Security Blvd, 1–A–21 Operations Bldg., Baltimore, MD 21235.

Dated: November 21, 1995.

Charlotte Whitenight,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 95–29139 Filed 11–30–95; 8:45 am]

BILLING CODE 4190–29–P

THRIFT DEPOSITOR PROTECTION OVERSIGHT BOARD

Affordable Housing Advisory Board Meeting

AGENCY: Thrift Depositor Protection Oversight Board.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App., announcement is hereby published for a meeting of the Affordable Housing Advisory Board. The meeting is open to the public.

DATES: The Affordable Housing Advisory Board will hold its meeting on Wednesday, December 6, 1995, in Arlington, Virginia from 12:30 to 3:30 p.m.

ADDRESSES: The meeting will be held at the Key Bridge Marriott, 1401 Lee Highway, Arlington, Virginia, Room Potomac A, Lobby Level.

FOR FURTHER INFORMATION CONTACT: Jill Nevius, Committee Management Officer, Thrift Depositor Protection Oversight Board, 808 17th Street NW., Washington, D.C. 20232, 202/416–2626.

SUPPLEMENTARY INFORMATION: Section 14(b) of the Resolution Trust Corporation Completion Act, Public Law No. 103–204, established the Affordable Housing Advisory Board to advise the Thrift Depositor Protection Oversight Board (Oversight Board) and the Board of Directors of the Federal Deposit Insurance Corporation (FDIC) on policies and programs related to the provision of affordable housing. The Board consists of the Secretary of Housing and Urban Development (HUD) or delegate; the Chairperson of the Board of Directors of the FDIC, or delegate; the Chairperson of the Oversight Board, or delegate; four persons appointed by the Secretary of HUD who represent the interests of individuals and organizations involved in using the affordable housing programs, and two former members of the National housing Advisory Board. The Board's charter was issued March 9, 1994.

Agendas: A detailed agenda will be available at the meeting. Topics to be addressed include: the status of the merger of the RTC and FDIC affordable housing programs, the Affordable Housing Task Force costs analysis of the FDIC's affordable housing program and other affordable housing issues. The Board's chair or its Designated Federal Officer may authorize a member or members of the public to address the Board during the public forum portion of the meeting.

Statements: Interested persons may submit, in writing, data, information or views on the issues pending before the Affordable Housing Advisory Board prior to or at the December 6 meeting. Seating is available on a first-come first-served basis for each session of the meeting.

Dated: November 29, 1995.

Jill Nevius,

Committee Management Officer.

[FR Doc. 95–29341 Filed 11–30–95; 8:45 am]

BILLING CODE 2221–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–95–42]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before December 21, 1995.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

Comments may also be sent electronically to the following internet address: nprmcmts@mail.hq.faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. D. Michael Smith, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7470.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on November 27, 1995.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 28375.

Petitioner: Captain Cleburne F. Baker.

Sections of the FAR Affected: 14 CFR 121.383(c).

Description of Relief Sought: To permit Captain Baker to act as a pilot in operations conducted under part 121 after reaching his 60th birthday.

Docket No.: 28387.

Petitioner: Mr. Charles E. DeCosterd.

Sections of the FAR Affected: 14 CFR 121.383(c).

Description of Relief Sought: To permit Mr. DeCosterd to act as pilot in operations conducted under part 121 after reaching his 60th birthday.

Dispositions of Petitions

Docket No.: 12638.

Petitioner: Air Transport Association of America.

Sections of the FAR Affected: 14 CFR 121.99 and 121.351(a).

Description of Relief Sought/ Disposition: To extend and amend Exemption No. 2081, as amended, which permits ATA member airlines and other similarly situated part 121 operators to conduct extended overwater operations over certain oceanic areas with a single, functional HF communication system installed on the aircraft. The amendment adds condition No. 12, which permits ATA member airlines and other similarly situated part 121 operators to conduct

extended overwater operations with a single, functional HF communication system or other approved long-range communications system. *Grant, October 25, 1995, Exemption No. 2081P.*

Docket No.: 26152.

Petitioner: Sierra Academy of Aeronautics.

Sections of the FAR Affected: 14 CFR paragraphs (c)(III)(a)(2) (i) and (ii), appendix F, part 141.

Description of Relief Sought/ Disposition: To extend Exemption No. 5245, as amended, which permits the Sierra Academy of Aeronautics and the Sierra Academy of Aeronautics-Technical Institute to graduate students from the approved commercial helicopter course with 100 hours of flight instruction in helicopters and 50 hours of directed solo training in helicopters. *Grant, October 24, 1995, Exemption No. 5245D.*

Docket No.: 27372.

Petitioner: Fly BVI.

Sections of the FAR Affected: 14 CFR 61.89(a)(5).

Description of Relief Sought/ Disposition: To extend Exemption No. 5796, which permits Fly BVI's student pilots to fly between Tortola, in the British Virgin Islands, and the airports of the U.S. Virgin Islands and Puerto Rico while fulfilling the cross-country requirements for a private pilot certificate. *Grant, October 24, 1995, Exemption No. 5796A.*

Docket No.: 27754.

Petitioner: Eagle Air Transport, Inc.

Sections of the FAR Affected: 14 CFR 105.43(a).

Description of Relief Sought/ Disposition: To allow foreign parachutists to participate in parachute jumping events in which Eagle Air Transport, Inc., aircraft provide lift and drop services without complying with the parachute equipment and packing requirements of the FAR. *Denial, October 25, 1995, Exemption No. 6192.*

Docket No.: 27953.

Petitioner: Aero Sports Connection, Inc.

Sections of the FAR Affected: 14 CFR 103.1(a) and (e)(1) through (e)(4).

Description of Relief Sought/ Disposition: To extend and amend Exemption No. 6080, which permits individuals authorized by Aero Sports Connection, Inc., (ASC) to give instruction in powered ultralights that have a maximum empty weight of not more than 496 pounds, have a maximum fuel capacity of not more than 10 U.S. gallons, are not capable of 75 knots calibrated airspeed at full power in level flight, and have a power-off stall speed which does not exceed 32 knots calibrated airspeed. The amendment corrects a typographical error and permits individuals authorized by ASC to give instruction in powered ultralights that have a power-off stall speed which does not exceed 35 knots calibrated airspeed. *Grant, October 24, 1995, Exemption No. 6080A.*

Docket No.: 28218.

Petitioner: American Trans Air, Inc.

Sections of the FAR Affected: 14 CFR 121.133(c).

Description of Relief Sought/ Disposition: To allow American Trans Air, Inc., to use various electronic data storage and transfer media, such as compact disc read-only (CD-ROM); the American Trans Air Airline Maintenance Engineering Resource Inventory & Component Accounting computer; and other universally recognized and available forms of data creation, storage, extraction, and communication, to prepare certain maintenance information and instructions for aircraft operated by American Trans Air, Inc., in lieu of printed page form or microfilm, subject to certain conditions and limitations. *Partial Grant, October 25, 1995, Exemption No. 6193.*

Docket No.: 28238.

Petitioner: Louisiana Tech University.

Sections of the FAR Affected: 14 CFR 141.65.

Description of Relief Sought/ Disposition: To permit Louisiana Tech University to hold examining authority for flight instructor written tests. *Grant, October 17, 1995, Exemption No. 6189.*

Docket No.: 28292.

Petitioner: Asplund Air, Inc.

Sections of the FAR Affected: 14 CFR 43.3(g).

Description of Relief Sought/ Disposition: To allow appropriately trained employed by Asplund Air, Inc., to remove and reinstall aircraft cabin seats in its aircraft that are type certificated for nine or fewer passenger seats and used in operations conducted under part 135. *Grant, October 30, 1995, Exemption No. 6197*

Docket No.: 28317.

Petitioner: Eagle Canyon Airlines.

Sections of the FAR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit Eagle Canyon Airlines to operate the following cessna aircraft under part 135 without TSO-C112 (mode S) transponders installed: one 207A airplane (Registration No. N73426); one T207 airplane (Registration No. N1562U); two T207A airplanes (Registration Nos. N101EN and N6372H); one 402 airplane (Registration No. N3500T); four 402B airplanes (Registration Nos. N1547T, N4616G, N8049Q, and N97158); and nine 402C airplanes (Registration Nos. N26150, N2714B, N2719T, N3189M, N3283M, N5809C, N5872C, N760EA, and N763EA). *Grant, October 25, 1995, Exemption No. 6195.*

[FR Doc. 95–29337 Filed 11–30–95; 8:45 am]

BILLING CODE 4910–13–M

UNITED STATES INFORMATION AGENCY

Summer Institute for the Study of the United States: Focus on American Literature

ACTION: Notice—Request for Proposals.

SUMMARY: The Branch for the Study of the U.S. of the Office of Academic Programs of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award program for the Summer Institute for the Study of the United States: Focus on American Literature. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c)(3)–1 may apply to develop a six-week graduate-level program designed for a group of 18 foreign university educators from around the world, in order to deepen their understanding of U.S. society, culture, values and institutions, using American literature as the central vehicle, and to give them further grounding in American literature and American studies, so that textbooks, curricular materials, and courses in foreign universities will benefit.

USIA is seeking detailed proposals from colleges, universities, consortia of colleges and universities, and other not-for-profit academic organizations that have an established reputation in American literature and/or American studies and related sub-disciplines, and that can demonstrate expertise in conducting graduate-level programs for foreign educators. Applicant institutions must have a minimum of four years' experience in conducting international exchange programs. The project director or one of the key program staff responsible for the academic program must have an advanced degree in American literature, American studies, or a related discipline. Staff escorts traveling under the USIA cooperative agreement support must be U.S. citizens with demonstrated qualifications for this service.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite as with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.''

Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

Announcements Name and Number: All communications with USIA concerning this announcement should refer to the above title and reference number E/AAS–96–02.

Deadline for Proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on Monday, January 29, 1996. Faxed documents will not be accepted, nor will documents postmarked January 29, 1996 but received at a later date. It is the responsibility of each applicant to ensure that proposal submissions arrive by the deadline. Tentative program dates are June 29 to August 9, 1996. Participants will likely be booked to arrive in the U.S. on or about June 28, and depart on August 10, 1996.

FOR FURTHER INFORMATION CONTACT: To request a Solicitation Package, which includes more detailed award criteria; all application forms; and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget, applicants should contact: U.S. Information Agency, Office of Academic Programs, Branch of the Study of the United States, E/AAS, room 256, 301 4th Street SW., Washington, DC 20547, Attn: Program Officer Richard Taylor; telephone number (202) 619–4557; fax number (202) 619–6790; internet address rtaylor@usia.gov. Please specify USIA Program Officer Richard Taylor on all inquiries and correspondence. Interested applicants should read the complete Federal Register announcement before addressing inquiries to the office listed above or submitting their proposals. Once the RFP deadline has passed, USIA staff may not discuss this competition in any way with applicants until after the Bureau proposal review process has been completed.

To Download a Solicitation Package via Internet: The Solicitation Package may be downloaded form USIA's website at http://www.usia.gov, or from the Internet Gopher at gopher.usia.gov, under ''New RFPs on Educational and Cultural Exchanges.''

Submissions: Applicants must follow all instructions given in the RFP and the complete Solicitation Package. The original and 14 copies of the complete application should be sent to: U.S. Information Agency, Ref.: E/AAS–96–02, Office of Grants Management, E/XE, room 326, 301 4th Street, SW., Washington, DC 20547.

Diversity Guidelines: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character, and should be balanced and representative of the diversity and broad range of responsible views present in American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the ''Support for Diversity'' section for specific suggestions on incorporating diversity into the total proposal.

SUPPLEMENTARY INFORMATION:

Overview

The Summer Institute for the Study of the U.S.: Focus on American Literature is intended to provide foreign university teachers of American literature and/or American studies with opportunities to deepen their understanding of the U.S., especially its society, culture, values and institutions, past and present, through an in-depth examination of American literature. It is intended to encourage and support their efforts to improve the quality of teaching and curricular materials about the United States at universities abroad.

The program should be six weeks in length, including a residency segment at a U.S. college or university campus (a minimum of four weeks in length), and a study tour segment (a maximum of two weeks in length, including visits to one or two other regions of the U.S.). If desired, and if and only if it is supportive of the academic program content, the program can conclude with a visit to Washington, D.C. (including a program debriefing at USIA).

The program should offer participants a specially-designed series of lectures, presentations, discussions, and site visits, each related to a central program theme in American studies and/or American literature.

Institute Objectives

—To present an intensive, academically stimulating program that presents a multi-dimensional view of the United States, using American literature as the main vehicle, through an integrated series of lectures, readings, interactive discussions, research and independent study opportunities, and site visits.

—To deepen participants' understanding U.S. society, culture, values and institutions, in both a historical and contemporary sense;

—And, to enhance teaching about the U.S., and of American literature in particular, in foreign universities by making appropriate scholarly resources, pedagogical materials, and ideas available to participants. Participants should return home with an ability to communicate a deeper and more informed view of the U.S. to students and colleagues.

Participants

The program should be designed for a total of 18 highly-motivated foreign university educators, including teachers, administrators, department chairs, curriculum developers and textbook writers, who are interested in using American literature as a means to further the understanding of the U.S. in their home institutions and countries. They will have demonstrated a willingness and ability to include American literature and aspects of American civilization in their teaching and professional work.

Participants will be drawn from all regions of the world, and will be fluent in the English language.

Participants will be nominated by U.S. Information Service posts abroad, and selected by the staff of USIA's Branch of the Study of the United States in Washington, D.C. USIA will cover all international travel costs directly.

Guidelines

The conception and structure of the institute program is entirely the responsibility of the organizers. However, as the possibilities are quite numerous for the design of a program focusing on aspects of U.S. society, culture, values and institutions, as seen through literature, an overarching institute theme should be chosen to

focus the content and scope of the program. The best proposals will clearly articulate the overall institute theme, essential topics and sub-topics being covered, and will discuss the means by which the program content will be communicated to participants. Proposals should also provide bibliographies of texts and materials to be used in the program.

While literature must be the main program vehicle for helping the participants develop a deeper understanding of U.S. civilization, past and present, the program may also be enriched by the occasional engagement of other disciplines and sub-disciplines that make up American studies (e.g. history, political science, economics, geography, sociology, demography, etc.). The program should provide participants with a clearer understanding of the diversity, complexity, and unity of U.S. life and society.

At the outset, the program should review the recent history and current status of American literature as an academic discipline, surveying major schools of interpretation and examining the current debates within American literature and literary studies generally. The program should also explore how American literature has informed and been informed by the interdisciplinary and multi-disciplinary approaches to the study of the U.S. represented by the field of American Studies. The program itself should include a balanced mix of traditional and contemporary approaches for examining the institute theme.

It is extremely important that the institute organizers devise a way to integrate all aspects of the program. Assigned readings, lectures, discussions, and field trips should relate to and further illuminate the central institute theme, and contribute to a better understanding of the U.S.

The institute should not simply replicate an existing lecture course or a graduate seminar. Rather, through a combination of lectures, presentations, discussions, and site visits, it should be designed to facilitate the development of a collegial atmosphere in which faculty and participants discuss relevant texts, issues, and concepts.

The equivalent of one day a week should be available to participants to pursue individual research interests, curriculum development projects, or to do assigned readings. Participants should be paired with faculty mentors to guide them in their research, and assist them in adjustment to the U.S. academic environment.

The program should also provide access to leading American scholars and scholarly resources (libraries, archives, databases, etc.). An essential element of the program is the exposure to an accumulation of teaching ideas and scholarly resources, including primary texts, supplementary works, and curricular materials (including Internet resources and training). The Summer Institute should facilitate participants' acquisition of the maximum amount of such materials to take back to their home countries, to be used in the development of new courses and programs, and the improvement of existing ones.

The program should ideally bring in outside presenters (representatives from academia, community organizations, media, government) in addition to the core faculty of the host institution. Presenters must be fully briefed about the institute, its goals, general themes and content, readings, and especially the background and needs of the participants themselves. Information about presenters and how they will be utilized should be included in the proposal submission.

A residential program of a minimum of four weeks on a college/university campus is mandatory. The program should include an integrated study tour segment to one or two other regions of the country of up to two weeks in length. If appropriate, and if it contributes to the academic program content, a visit to Washington, D.C. at the conclusion of the program can be included. If this visit is arranged, it should include a half-day session at the United States Information Agency for a grantee debriefing session. The selected grantee organization would be asked to consult closely with USIA in the planning of the Washington itinerary, if included in the proposal. The study tour segment must be directly supportive of the academic program content. Day trips to various locations (historical sites, classrooms, community centers) are also encouraged if such trips will further enhance understanding of the U.S. and enrich the participants' experience.

Details of the academic residency and tour programs may be modified in consultation with USIA's Branch for the Study of the U.S. following the grant award.

The selected grant organization will be responsible for most arrangements associated with this program. This includes the organization and implementation of all presentations and program activities, arrangement of all domestic travel, lodging, subsistence, airport reception and ground transportation for participants, orientation and briefing of participants, preparation of any necessary support materials (including a pre-program mailing to participants), and working with program presenters to achieve maximum program coordination and effectiveness.

Please refer to the Solicitation Package for further details on program design and implementation.

Additional Information

Confirmation letters from U.S. co-sponsors noting their intention to participate in the program will enhance a proposal. Proposals incorporating participant/observer site visits will be more competitive if letters committing prospective host institutions to support these efforts are provided.

Visa/Insurance/Tax Requirements

Programs must comply with J–1 visa regulations. Visas will be issued by USIS posts abroad. USIA insurance will be provided to all participants, unless otherwise indicated in the proposal submission. Grantee organization will be responsible for enrolling participants in the chosen insurance plan. Please indicate in the proposal if host institutions have any special tax withholding requirements on participant or staff escort stipends or allowances.

Proposed Budget

Total USIA-funded budget award may not exceed $157,000. USIA-funded administrative costs should be as low as possible and should not exceed $47,000. The U.S. recipient should try to maximize cost-sharing in all facets of the program and to stimulate U.S. private sector (foundation and corporate) support. Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as a break-down reflecting both the administrative budget and the program budget. For better understanding or further clarification, applicants may provide separate sub-budgets for each program component, phase, location, or activity in order to facilitate USIA decisions on funding. Please refer to the ''POGI'' in the Solicitation Package for complete budget guidelines and formatting instructions for the institute program.

Review Process

The USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of

USIA officers for advisory review. All eligible proposals will also be reviewed by the Agency contracts office, as well as the USIA Area Offices and the USIA post overseas, where appropriate. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA grant officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered, and all carry equal weight in the proposal evaluation:

1. Overall Quality: Proposals should exhibit originality and substance, consonant with the highest standards of American teaching and scholarship. Program design should reflect the main currents as well as the contemporary debates within the discipline.

2. Program Planning: Proposals should demonstrate careful planning. The organization and structure of the Institute should be clearly delineated and be fully responsive to all program objectives. The travel component should be an integral and substantive part of the program, reinforcing and complementing its academic segment.

3. Institutional Capacity: Proposed personnel, including faculty and administrative staff as well as outside presenters, should be fully qualified to achieve the project's goals. Library and media resources should be accessible to participants; housing, transportation and other logistical arrangements should be fully adequate to the needs of participants and should be conducive to a collegial atmosphere.

4. Diversity: Proposals should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity throughout the program. This can be accomplished through documentation, such as a written statement, summarizing past and/or on-going activities and efforts that further the principle of diversity within the organization and its activities. Program activities that address this issue should be highlighted.

5. Experience: The proposal should demonstrate an institutional record of successful exchange program activity, indicating the experience that the organization and its professional staff have had in working with foreign educators.

6. Evaluation and Follow-up: The proposal should include a plan for evaluating activities during the Institute and at its conclusion. Proposals should comment on provisions made for follow-up with returned grantees as a means of establishing longer-term individual and institutional linkages.

7. Administration and Management: The proposals should indicate evidence of continuous on-site administrative and managerial capacity as well as the means by which program activities will be implemented.

8. Cost Effectiveness: The proposals should maximize cost-sharing through direct institutional contributions, in-kind support, and other private sector support. Overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible.

Notice: The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funding. Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about April 1, 1996. Awards made will be subject to periodic reporting and evaluation requirements.

Dated:

John P. Loiello,

Associate Director for Educational and Cultural Affairs.

[FR Doc. 95–29286 Filed 11–30–95; 8:45 am]

BILLING CODE 8230–01–M

Summer Institute for the Study of the United States for Foreign Secondary School Educators

ACTION: Notice—Request for proposals.

SUMMARY: The Branch for the Study of the U.S. of the Office of Academic Programs of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award program for the Summer Institute for the Study of the United States for Foreign Secondary School Educators. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c)(3)–1 may apply to develop a six-week graduate-level program designed for a group of 28 secondary school educators from around the world, in order to deepen their understanding of the United States so that American studies textbooks, curricula and teaching in foreign secondary schools and teacher training institutions will be improved.

USIA is seeking detailed proposals from colleges, universities, consortia of colleges and universities, and other not-for-profit academic organizations that have an established reputation in the disciplines and sub-disciplines that comprise American Studies, and that can demonstrate expertise in conducting graduate-level programs for foreign educators. Applicant institutions must have a minimum of four years' experience in conducting international exchange programs. The project director or one of the key program staff responsible for the academic program must have an advanced degree in American studies or a related discipline. Staff escorts traveling under the USIA cooperative agreement support must be U.S. citizens with demonstrated qualifications for this service.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.''

Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

Announcement Name and Number: All communications with USIA concerning this announcement should refer to the above title and reference number E/AAS–96–03.

Deadline for Proposals: All copies must be received at the U.S. Information Agency by 5:00 p.m. Washington D.C. time on Monday, January 29, 1996. Faxed documents will not be accepted, nor will documents postmarked January 29, 1996 but received at a later date. It is the responsibility of each applicant to

ensure that proposal submissions arrive by the deadline. Tentative program dates are June 22 to August 2, 1996. Participants will likely be booked to arrive in the U.S. on or about June 21, and depart on August 3, 1996.

FOR FURTHER INFORMATION CONTACT: To request a Solicitation Package, which includes more detailed award criteria; all application forms; and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget, applicants should contact: U.S. Information Agency, Office of Academic Programs, Branch of the Study of the United States, E/AAS, Room 256, 301 4th Street SW., Washington, D.C. 20547, Attn: Program Officer Richard Taylor; telephone number (202) 619–4557; fax number (202) 619–6790; internet address rtaylor@usia.gov. Please specify USIA Program Officer Richard Taylor on all inquiries and correspondence. Interested applicants should read the complete Federal Register announcement before addressing inquiries to the office listed above or submitting their proposals. Once the RFP deadline has passed, USIA staff may not discuss this competition in any way with applicants until after the Bureau proposal review process has been completed.

To Download a Solicitation Package Via Internet: The Solicitation Package may be downloaded from USIA's website at http://www.usia.gov, or from the Internet Gopher at gopher.usia.gov, under ''New RFPs on Educational and Cultural Exchanges.''

Submissions: Applicants must follow all instructions given in the RFP and the complete Solicitation Package. The original and 14 copies of the complete application should be sent to: U.S. Information Agency, Ref.: E/AAS–96–03, Office of Grants Management, E/XE, Room 326, 301 4th Street SW., Washington, D.C. 20547.

Diversity Guidelines: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character, and should be balanced and representative of the diversity and broad range of responsible views present in American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the ''Support for Diversity'' section for specific suggestions on incorporating diversity into the total proposal.

SUPPLEMENTARY INFORMATION:

Overview

The Summer Institute for the Study of the U.S. for Foreign Secondary School Educators aims to provide a deeper understanding of U.S. civilization among foreign educators who are concerned professionally with teaching about the United States. It is further intended to encourage and support their efforts to improve the quality of teaching, textbooks, and curricular materials about the United States at secondary schools and teacher training institutions abroad.

The program should offer participants a specially-designed series of lectures, presentations, discussions, site visits, and curricular research opportunities, each related to a central theme in U.S. civilization, which examine various aspects U.S. society, culture, values and institutions, past and present. It should provide an overview of the United States in the context of American studies and its constituents disciplines.

The program should be six weeks in length, including a residency segment at a U.S. college or university campus (a minimum of four weeks in length), and a study tour segment (a maximum of two weeks in length) to two or three additional regions of the U.S., including a visit to Washington, D.C. at the conclusion of the program.

Institute Objectives

—To present an intensive, academically stimulating program that presents a multi-dimensional view of the United States through an integrated series of lectures, readings, interactive discussions, individual research and study opportunities, and site visits.

—To draw from a variety of academic disciplines in order to deepen the participants' understanding of the unity, diversity, and complexity of U.S. society, culture, and institutions. Major issues, debates, and conflicts in U.S. society, past and present, including their origins and the role they have played in the development of U.S. civilization, should also be examined.

—To enhance teaching about the U.S. in foreign secondary schools and teacher training institutions by making appropriate scholarly resources, pedagogical materials and ideas available to participants. Participants should return home with an ability to communicate a deeper and more informed view of the U.S. to students and colleagues.

Participants

The program should be designed for a total of 28 highly-motivated foreign secondary school teacher trainers, textbook writers, curriculum developers, education ministry officials and classroom teachers, whose professional assignments require significant knowledge of U.S. civilization, and who have broad responsibility for curriculum design and improvement. All participants will be involved in the teaching of English language, American literature, U.S. government, history, geography, social studies, or other courses including U.S. studies content in their home countries. Participants will be drawn from all regions of the world, and will be fluent in the English language.

Participants will be nominated by U.S. Information Service posts abroad, and selected by the staff of USIA's Branch of the Study of the United States in Washington, D.C. USIA will cover all international travel costs directly.

Guidelines

The conception and structure of the institute program is entirely the responsibility of the organizers. However, as the possibilities for the design of a program on U.S. civilization are quite numerous, an overarching institute theme, and supporting sub-themes, should be chosen to focus the content and scope of the program. The best proposals will clearly articulate the institute theme(s), essential topics and sub-topics being covered, and will discuss the means by which the program content will be communicated to participants.

The program should engage the constellation of disciplines and sub-disciplines that make up American studies (e.g. literature, history, political science, economics, geography, sociology, etc.) as vehicles for helping foreign educators understand the development and current status of selected essential aspects of U.S. society, culture, values and institutions (governmental, educational, judicial, religious, media, etc.), and of broader themes associated with the U.S. experience and U.S. civilization. It should provide participants with a clearer understanding of the diversity, complexity, and unity of U.S. life and society.

It is extremely important that the institute organizers devise a way to integrate all aspects of the program. Assigned readings, lectures, discussions, and field trips should relate to and further illuminate the institute theme(s).

The institute should not simply replicate an existing lecture course or a graduate seminar. Rather, through a combination of lectures, presentations, discussions, and site visits, it should be designed to facilitate the development of a collegial atmosphere in which faculty and participants discuss relevant texts, issues, and concepts.

The equivalent of one day a week should be available to participants to pursue individual research and study interests, curriculum development projects, or to do assigned readings. The institute should provide access to leading American scholars and research resources (libraries, archives, databases, etc.). Participants should be paired with faculty mentors to assist in research and other scholarly matters.

An essential element of the institute is the exposure to and accumulation of texts, curricular materials, and teaching ideas (including Internet and computer resources training), which can be used by participants in the development and improvement of their American studies courses abroad.

The program should ideally bring in outside presenters (representatives from academia, community organizations, media, government) in addition to the core faculty of the host institution. Presenters must be fully briefed about the institute, its goals, general themes and content, readings, and especially the background and needs of the participants themselves. Information about presenters and how they will be utilized should be included in the proposal submission.

A residential program segment of a minimum of four weeks on a college/university campus is mandatory. The program should also include an integrated study tour segment (up to two weeks in length) to two or three other regions of the U.S., including a minimum of two to three days in Washington, D.C. at the conclusion of the program. This visit should include a half-day session at USIA. The selected grantee organization/institution will be asked to consult closely with USIA in the planning of the Washington itinerary. The study tour segment must be directly supportive of the academic program content. Day trips to various locations (historical sites, classrooms, community centers) are also encouraged if such trips will further enhance understanding of the U.S. and enrich the participants' experience.

Details of the academic and tour programs may be modified in consultation with USIA's Branch for the Study of the U.S. following the grant award.

The selected grant organization will be responsible for most arrangements associated with this program. This includes the organization and implementation of all presentations and program activities, arrangement of all domestic travel, provision of appropriate lodging, subsistence, and ground transportation for participants, orientation and briefing of participants, preparation of any necessary support materials (including a pre-program mailing to participants), and working with program presenters to achieve maximum program coordination and effectiveness.

Please refer to the Solicitation Package for further details on program design and implementation.

Additional Information

Confirmation letters from U.S. cosponsors noting their intention to participate in the program will enhance a proposal. Proposals incorporating participants/observer site visits will be more competitive if letters committing prospective host institutions to support these efforts are provided.

Visa/Insurance/Tax Requirements

Programs must comply with J–1 visa regulations. Visas will be issued by USIS posts abroad. USIA insurance will be provided to all participants, unless otherwise indicated in the proposal submission. Grantee organization will be responsible for enrolling participants in the chosen insurance plan. Please indicate in the proposal if host institutions have any special tax withholding requirements on participant or staff escort stipends or allowances.

Proposed Budget

Total USIA-funded budget award may not exceed $211,600. USIA-funded administrative costs should be as low as possible and should not exceed $49,000. The U.S. recipient should try to maximize cost-sharing in all facets of the program and to stimulate U.S. private sector (foundation and corporate) support. Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as a break-down reflecting both the administrative budget and the program budget. For better understanding or further clarification, applicants may provide separate sub-budgets for each program component, phase, location, or activity in order to facilitate USIA decisions on funding. Please refer to the ''POGI'' in the Solicitation Package for complete budget guidelines and formatting instructions for the institute program.

Review Process

The USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the Agency contracts office, as well as the USIA Area Offices and the USIA post overseas, where appropriate. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Education and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA grant officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered, and all carry equal weight in the proposed evaluation:

1. Overall Quality: Proposals should exhibit originality and substance, consonant with the highest standards of American teaching and scholarship. Program design should reflect the main currents as well as the contemporary debates within the discipline.

2. Program Planning: Proposals should demonstrate careful planning. The organization and structure of the Institute should be clearly delineated and be fully responsive to all program objectives. The travel component should be an integral and substantive part of the program, reinforcing and complementing its academic segment.

3. Institutional Capacity: Proposed personnel, including faculty and administrative staff as well as outside presenters, should be fully qualified to achieve the project's goals. Library and media resources should be accessible to participants; housing, transportation and other logistical arrangements should be fully adequate to the needs of participants and should be conductive to a collegial atmosphere.

4. Diversity: Proposals should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity throughout the program. This can be accomplished through documentation, such as written statement, summarizing past and/or on-going activities and efforts that further the principle of diversity within the organization and its activities. Program activities that address this issue should be highlighted.

5. Experience. The proposal should demonstrate an institutional record of successful exchange program activity, indicating the experience that the organization and its professional staff have had in working with foreign educators.

6. Evaluation and Follow-up: The proposal should include a plan for evaluating activities during the Institute and at its conclusion. Proposals should comment on provisions made for follow-up with returned grantees as a means of establishing longer-term individual and institutional linkages.

7. Administration and Management: The proposals should indicate evidence of continuous on-site administrative and managerial capacity as well as the means by which program activities will be implemented.

8. Cost Effectiveness: The proposals should maximize cost-sharing through direct institutional contributions, in-kind support, and other private sector support. Overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible.

Notice: The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funding. Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about April 1, 1996. Awards made will be subject to periodic reporting and evaluation requirements.

Dated: November 21, 1995.

John P. Loiello,

Associate Director for Educational and Cultural Affairs.

[FR Doc. 95–29287 Filed 11–30–95; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 60, No. 231
Friday, December 1, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the ''Government in the Sunshine Act'' (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:03 a.m. on Tuesday, November 28, 1995, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's supervisory activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), concurred in by Mr. Stephen R. Steinbrink, acting in the place and stead of Director Eugene A. Ludwig (Comptroller of the Currency), and Chairman Ricki Helfer, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: November 28, 1995.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 95–29428 Filed 11–29–95; 11:05 am]

BILLING CODE 6714–01–M

FEDERAL HOUSING FINANCE BOARD

Announcing an Open Meeting of the Board

TIME AND DATE: 10:00 a.m. Friday, December 8, 1995.

PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

STATUS: The entire meeting will be open to the public.

MATTERS TO BE CONSIDERED DURING PORTIONS OPEN TO THE PUBLIC:

- Approval of the 1996 Federal Home Loan Bank System Budgets
- Office of Finance Debt Issuance Authorization for 1996
- Federal Home Loan Bank Presidents' Appointments and Salaries for 1996
- Declaration of the Results of the 1995 Election of Federal Home Loan Bank System Directors
- Federal Home Loan Bank of Cincinnati Request for Exception to Limit on Charitable Contribution
- Federal Home Loan Bank of Dallas' CIP Request
- Amendment to the Financial Management Policy

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

Rita I. Fair,

Managing Director.

[FR Doc. 95–29409 Filled 11–29–95; 8:45 am]

BILLING CODE 6725–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 11:30 a.m., Wednesday, December 6, 1995, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments. (This item was originally announced for a closed meeting on November 6, 1995.)
2. Proposed 1996 Federal Reserve Board officer salary structure and merit program.
3. Proposed recommendations regarding the Federal Reserve Board's affirmative action policy.
4. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
5. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 29, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–29427 Filed 11–29–95; 11:05 am]

BILLING CODE 6210–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, December 6, 1995.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda: Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Publication for comment of proposed amendments to Regulation U (Credit by Banks for the Purpose of Purchasing or Carrying Margin Stocks).

Discussion Agenda:

2. Proposed 1996 Federal Reserve Board budget.
3. Proposed 1996 budget for the Office of Inspector General.
4. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION:
Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: November 29, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–29426 Filed 11–29–95; 11:05 am]

BILLING CODE 6210–01–P

Federal Register

Friday
December 1, 1995

Part II

Pension Benefit Guaranty Corporation

29 CFR Part 2606, et al.
Missing Participants; Final Rule

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2606, 2616, 2617, and 2629

RIN 1212–AA81

Missing Participants

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation is amending its regulations to implement the new missing participants program under section 4050 of the Employee Retirement Income Security Act of 1974. Section 4050 applies to single-employer defined benefit plans distributing benefits in accordance with the standard termination procedures of Title IV.

EFFECTIVE DATE: January 1, 1996. The missing participants program is effective for distributions in plan years beginning on or after January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or Deborah C. Murphy, Attorney, Office of the General Counsel, Suite 340, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026; 202–326–4024 (202–326–4179 for TTY and TDD).

SUPPLEMENTARY INFORMATION: On August 24, 1995, the PBGC published in the Federal Register (60 FR 44158) a proposed rule to implement section 4050 of ERISA.

When a participant or beneficiary cannot be located in a standard termination a plan administrator can either purchase an annuity or pay funds to the PBGC. If funds are paid to the PBGC, the PBGC will search for the participant or beneficiary and pay benefits to those who are located.

The missing participants regulation describes the ''diligent search'' that must be made for a missing participant before funds are paid to the PBGC. (The term ''missing participant'' includes beneficiaries as well as participants, and thus may include alternate payees under qualified domestic relations orders.) It also sets forth rules on how to determine the amount to be paid to the PBGC (the ''designated benefit''), how to pay funds and submit information to the PBGC, and how the PBGC will pay benefits when missing participants (or their survivors) are found.

There were five statements commenting on the rule.

Diligent Search

A plan administrator must conduct a diligent search before paying a missing participant's benefit to the PBGC. Commenters suggested that the PBGC should not require plan administrators to use a commercial locator service. They suggested that it should be sufficient if the plan administrator uses the Internal Revenue Service or Social Security Administration letter-forwarding programs, or simply uses the search methods required by the prudence requirements of Title I of ERISA. One commenter suggested that the PBGC should allow searches to be conducted by persons other than the plan administrator and to start before the plan begins the termination process.

The PBGC searches for participants in plans that the PBGC trustees. It is the PBGC's experience that commercial locator services are cost-effective, timely, and thorough. The IRS and SSA programs simply forward letters, and a missing participant who receives a letter may or may not contact the plan. Furthermore, IRS and SSA letter forwarding times may vary, and the forwarding area may in some cases be limited to one region of the country.

The diligent search requirement is independent of the prudence requirement of ERISA. The diligent search requirement is intended to ensure that plan administrators make every effort to search out a missing participant before turning the effort over to the government.

The PBGC is changing the regulation to allow a search by someone other than the plan administrator, as long as the plan administrator certifies on the missing participant forms that a diligent search was made, and to allow searches to commence up to six months before the termination process begins. The final regulation also makes clear that missing participants cannot be charged, nor their benefits reduced, to pay search costs.

Payments to the PBGC (Designated Benefit)

One commenter questioned the assumptions used for calculating the designated benefit. The commenter felt that the $300 administrative load was inappropriate, especially for small benefits, that the designated benefit should not be based on the ''most valuable'' benefit, and that, in most cases, the plan administrator should be able to use plan assumptions.

The regulations include an explicit $300 per participant administrative load that the plan administrator must pay when valuing the participant's benefit using the missing participant annuity assumptions. This load is a simplified version of the administrative load that must be paid under the PBGC's single-employer annuity valuation regulation. (The ''missing participant lump sum assumptions'' include an implicit load; insurance company annuity rates include similar loads.) The final regulation provides that the $300 load will not apply to benefits whose value is $3,500 or less.

The final regulation retains the proposed structure of the designated benefit determination rules. Use of the most valuable benefit is consistent with insurance company annuity pricing practices. Use of the PBGC annuity assumptions is consistent with section 4050(b)(2)(C), which makes the designated benefit equal to the greater of the lump sum (under plan assumptions) or the value of the annuity (under PBGC assumptions).

Benefit Payments by the PBGC

The PBGC received no comments on provisions regarding its payment of benefits, but is making clarifications in those provisions.

Procedural Requirements

One commenter stated that the PBGC's standard termination process already had sufficient procedural deadlines and that the PBGC should not add additional deadlines for the missing participants program. The commenter also felt that the six-year recordkeeping requirement was too long.

The regulation coordinates the missing participant filing requirements with the termination requirements. The proposed regulation's changes from the standard termination deadlines provide relief from situations where, late in the termination process, the plan administrator located a missing participant (''late-discovered participant'') or discovered that a participant was missing (''recently-missing participant''). The final regulation provides further relief for these situations by allowing the PBGC in its sole discretion, where there are unusual circumstances, to grant additional extensions.

The final regulation leaves the recordkeeping requirement as six years. This parallels the recordkeeping period for the rest of the termination program and also the recordkeeping provisions of section 107 of ERISA.

Finally, in response to a commenter's question, the PBGC reminds plan administrators that ERISA section 4071 prescribes penalties for failure to provide certain material information timely, including information under the missing participants regulation.

Forms and Instructions

One commenter claimed that the PBGC does not need the information in items 3, 4, and 5 of Attachment B to Schedule MP. This is minimal and simple information that tells the PBGC what benefit to pay and when to pay it. The information is essential to the proper functioning of the missing participants program.

In response to a comment, the PBGC has revised the instructions for Schedule MP to clarify that unavailable or inapplicable information need not be submitted. The PBGC has also made other minor modifications to the missing participant forms and instructions.

The PBGC has implemented the revisions to Forms 501 and 602 and their instructions that were published with the proposed missing participants regulation. The termination forms booklets, which will include Schedule MP (with attachments and instructions), can be obtained from the PBGC's Standard Termination Compliance Division, 1200 K Street, N.W., Suite 930, Washington, DC 20005–4026, or by calling 202–326–4000 (202–326–4179 for hearing-impaired persons).

Compliance With Rulemaking and Paperwork Guidelines

The PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

The PBGC certifies under section 605(b) of the Regulatory Flexibility Act that this regulation will not have a significant additional economic impact on a substantial number of small entities, given existing procedures. Pension plans with fewer than 100 participants have traditionally been treated as small plans. Plan administrators of terminating plans of all sizes already have a duty to determine the amounts of all benefits, to attempt to locate all persons entitled to benefits, and to annuitize or provide cash accounts for those who cannot be found. The primary effect of this regulation is to substitute a formal procedure involving the PBGC for the informal procedures already being followed. The PBGC does not expect the standardization of these procedures to have a significant effect on plan administrators' burdens. Accordingly, sections 603 and 604 of the Regulatory Flexibility Act do not apply.

The collections of information contained in this part, and the forms and instructions to be used under the missing participants program, have been approved by the Office of Management and Budget under OMB control number 1212–0036. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

List of Subjects

29 CFR Part 2606

Employee benefit plans, Pension insurance, Pensions, Administrative practice and procedure.

29 CFR Parts 2616, 2617, and 2629

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

In consideration of the foregoing, 29 CFR chapter XXVI is amended as follows.

1. Part 2629 is added to subchapter C to read as follows:

PART 2629—MISSING PARTICIPANTS

Sec.

2629.1 Purpose and scope.
2629.2 Definitions.
2629.3 Method of distribution for missing participants.
2629.4 Diligent search.
2629.5 Designated benefit.
2629.6 Payment and required documentation.
2629.7 Benefits of missing participants—in general.
2629.8 Automatic lump sum.
2629.9 Annuity or elective lump sum—living missing participant.
2629.10 Annuity or elective lump sum—beneficiary of deceased missing participant.
2629.11 Limitations.
2629.12 Special rules.
2629.13 OMB control number.

Appendix A to Part 2629—Examples of designated benefit determinations for missing participants under § 2629.5.

Appendix B to Part 2629—Examples of benefit payments for missing participants under § 2629.8 through § 2629.10.

Authority: 29 U.S.C. 1302(b)(3), 1350.

§ 2629.1 Purpose and scope.

(a) Purpose. This part prescribes rules for distributing benefits under a terminating plan for any individual whom the plan administrator has not located when distributing benefits under § 2617.28(c) of this chapter.

(b) Scope. This part applies to a plan if the plan's deemed distribution date (or the date of a payment made in accordance with § 2629.12) is in a plan year beginning on or after January 1, 1996.

§ 2629.2 Definitions.

For purposes of this part:

(a) Act means the Employee Retirement Income Security Act of 1974, as amended.

(b) Code means the Internal Revenue Code of 1986, as amended.

(c) Deemed distribution date means the date selected by the plan administrator of a terminating plan that is on or after the date when all benefit distributions have been made under the plan except for distributions to missing participants whose designated benefits are paid to the PBGC, but not later than the last day of the period in which distribution may be made (determined without regard to the provisions of this part) under § 2616.29(a) or 2617.28(a) of this chapter (whichever applies).

(d) Designated benefit means the amount payable to the PBGC for a missing participant pursuant to § 2629.5.

(e) Designated benefit interest rate means the rate of interest applicable to underpayments of guaranteed benefits by the PBGC under § 2623.11(d) of this chapter.

(f) Guaranteed benefit form means, with respect to a benefit, the form in which the PBGC would pay a guaranteed benefit to a participant or beneficiary in the PBGC's program for trusteed plans under parts 2613 and 2621 of this chapter (treating the deemed distribution date as the date of plan termination for this purpose).

(g) Late-discovered participant means a participant or beneficiary entitled to a distribution under a terminating plan whom the plan administrator locates before the plan administrator pays the individual's designated benefit to the PBGC (or distributes the individual's benefit by purchasing an irrevocable commitment from an insurer) and not more than 90 days before the deemed distribution date.

(h) Missing participant means a participant or beneficiary entitled to a distribution under a terminating plan whom the plan administrator has not located as of the date when the plan administrator pays the individual's designated benefit to the PBGC (or distributes the individual's benefit by purchasing an irrevocable commitment from an insurer). In the absence of proof of death, individuals not located are presumed living.

(i) Missing participant annuity assumptions means the interest rate assumptions and actuarial methods (using the interest rates for annuity valuation in Appendix B to part 2619 of this chapter) for valuing a benefit to be paid by the PBGC as an annuity under part 2619 of this chapter, applied—

(1) As if the deemed distribution date were the date of plan termination;

(2) Using unisex mortality rates that are a fixed blend of 50 percent of the male mortality rates and 50 percent of the female mortality rates from the 1983 Group Annuity Mortality Table as prescribed in Rev. Rul. 95–6, 1995–1 C.B. 80 (Cumulative Bulletins are available from the Superintendent of Documents, Government Printing Office, Washington, DC 20402);

(3) Without using the expected retirement age assumptions in Subpart D to part 2619 of this chapter;

(4) Without making the adjustment for expenses provided for in § 2619.49(a)(4) of this chapter; and

(5) By adding $300, as an adjustment (loading) for expenses, for each missing participant whose designated benefit without such adjustment would be greater than $3,500.

(j) Missing participant forms and instructions means PBGC Forms 501 and 602, Schedule MP thereto, and related forms, and their instructions.

(k) Missing participant lump sum assumptions means the interest rate assumptions and actuarial methods (using the interest rates for lump sum valuations in Appendix B to part 2619 of this chapter) for valuing a benefit to be paid by the PBGC as a lump sum under part 2619 of this chapter, applied—

(1) As if the deemed distribution date were the date of plan termination;

(2) Using mortality assumptions for healthy lives only (from Table I of Appendix A to part 2619 of this chapter, substituting x+1 for x); and

(3) Without using the expected retirement age assumptions in Subpart D to part 2619 of this chapter.

(l) Pay status means, with respect to a benefit under a plan, that the plan administrator has made or (except for administrative delay or a waiting period) would have made one or more benefit payments.

(m) Post-distribution certification means the post-distribution certification required by § 2616.29(b) or 2617.28(h) of this chapter.

(n) Plan administrator means the administrator as defined in section 4001(a)(1) of the Act.

(o) Recently-missing participant means a participant or beneficiary whom the plan administrator discovers to be a missing participant on or after the 90th day before the deemed distribution date.

(p) Unloaded designated benefit means the designated benefit reduced by $300; except that the reduction shall not apply in the case of a designated benefit determined using the missing participant annuity assumptions without adding the $300 load described in paragraph (i)(5) of this section.

§ 2629.3 Method of distribution for missing participants.

The plan administrator of a terminating plan shall distribute benefits for each missing participant by—

(a) purchasing from an insurer an irrevocable commitment that satisfies the requirements of § 2617.28(c) or § 2616.29(a)(1) of this chapter (whichever is applicable); or

(b) paying the PBGC a designated benefit in accordance with §§ 2629.4 through 2629.6 (subject to the special rules in § 2629.12).

§ 2629.4 Diligent search.

(a) Search required. A diligent search shall be made for each missing participant whose designated benefit (or voluntary employee contributions under § 2629.12(d)(2)) is paid to the PBGC. The search shall be made before the payment is made.

(b) Diligence. A search is a diligent search only if the search—

(1) Begins not more than 6 months before notices of intent to terminate are issued and is carried on in such a manner that if the individual is found, distribution to the individual can reasonably be expected to be made on or before the deemed distribution date (or, in the case of a recently-missing participant, on or before the 90th day after the deemed distribution date);

(2) Includes inquiry of any plan beneficiaries (including alternate payees) of the missing participant whose names and addresses are known to the plan administrator; and

(3) Includes use of a commercial locator service to search for the missing participant (without charge to the missing participant or reduction of the missing participant's plan benefit).

§ 2629.5 Designated benefit.

(a) Amount of designated benefit. The amount of the designated benefit shall be the amount determined under paragraph (a)(1), (a)(2), (a)(3), or (a)(4) of this section (whichever is applicable) or, if less, the maximum amount that could be provided under the plan to the missing participant in the form of a single sum in accordance with section 415 of the Code.

(1) Mandatory lump sum. The designated benefit of a missing participant required under a plan to receive a mandatory lump sum as of the deemed distribution date shall be the lump sum payment that the plan administrator would have distributed to the missing participant as of the deemed distribution date.

(2) De minimis lump sum. The designated benefit of a missing participant not described in paragraph (a)(1) of this section whose benefit is not in pay status as of the deemed distribution date and whose benefit has a *de minimis* actuarial present value ($3,500 or less) as of the deemed distribution date under the missing participant lump sum assumptions shall be such value.

(3) No lump sum. The designated benefit of a missing participant not described in paragraph (a)(1) or (a)(2) of this section who, as of the deemed distribution date, cannot elect an immediate lump sum under the plan shall be the actuarial present value of the missing participant's benefit as of the deemed distribution date under the missing participant annuity assumptions.

(4) Elective lump sum. The designated benefit of a missing participant not described in paragraph (a)(1), (a)(2), or (a)(3) of this section shall be the greater of the amounts determined under the methodologies of paragraph (a)(1) or (a)(3) of this section.

(b) Assumptions. When the plan administrator uses the missing participant annuity assumptions or the missing participant lump sum assumptions for purposes of determining the designated benefit under paragraph (a) of this section, the plan administrator shall value the most valuable benefit, as determined under paragraph (b)(1) of this section, using the assumptions described in paragraph (b)(2) or (b)(3) of this section (whichever is applicable).

(1) Most valuable benefit. For a missing participant whose benefit is in pay status as of the deemed distribution date, the most valuable benefit is the pay status benefit. For a missing participant whose benefit is not in pay status as of the deemed distribution date, the most valuable benefit is the benefit payable at the age on or after the deemed distribution date (beginning with the participant's earliest early retirement age and ending with the participant's normal retirement age) for which the present value as of the deemed distribution date is the greatest. The present value as of the deemed distribution date with respect to any age is determined by multiplying:

(i) The monthly (or other periodic) benefit payable under the plan; by

(ii) The present value (determined as of the deemed distribution date using the missing participant annuity assumptions) of a $1 monthly (or other periodic) annuity beginning at the applicable age.

(2) Participant. A missing participant who is a participant, and whose benefit is not in pay status as of the deemed distribution date, is assumed to be married to a spouse the same age, and the form of benefit that must be valued is the qualified joint and survivor annuity benefit that would be payable under the plan. If the participant's benefit is in pay status as of the deemed distribution date, the form and beneficiary of the participant's benefit are the form of benefit and beneficiary of the pay status benefit.

(3) Beneficiary. A missing participant who is a beneficiary, and whose benefit is not in pay status as of the deemed distribution date, is assumed not to be married, and the form of benefit that must be valued is the survivor benefit that would be payable under the plan. If the beneficiary's benefit is in pay status as of the deemed distribution date, the form and beneficiary of the beneficiary's benefit are the form of benefit and beneficiary of the pay status benefit.

(4) Examples. See Appendix A to this Part for examples illustrating the provisions of this section.

(c) Missed payments. In determining the designated benefit, the plan administrator shall include the value of any payments that were due before the deemed distribution date but that were not made.

(d) Payment of designated benefits. Payment of designated benefits shall be made in accordance with § 2629.6 and shall be deemed made on the deemed distribution date.

§ 2629.6 Payment and required documentation.

(a) Time of payment and filing—(1) General rule. The plan administrator shall pay designated benefits, and file the information and certifications (of the plan administrator and the plan's enrolled actuary) specified in the missing participant forms and instructions, by the time the post-distribution certification is due (determined in accordance with §§ 2616.7(a) and 2617.8(a) of this chapter). Except as otherwise provided in the missing participant forms and instructions, the plan administrator shall submit the designated benefits, information, and certifications with the post-distribution certification.

(2) Recently-missing participants. In the case of a recently-missing participant, the plan administrator shall pay the designated benefit by the time the amended post-distribution certification is due under paragraph (a)(2)(ii) of this section. Except as otherwise provided in the missing participant forms and instructions—

(i) Payment. The plan administrator shall submit the designated benefit with the amended post-distribution certification described in paragraph (a)(2)(ii) of this section; and

(ii) Filing. If the diligent search is not complete when the plan administrator submits the filing described in paragraph (a)(1) of this section, the plan administrator shall so indicate in that filing and submit an amended filing (including an amended post-distribution certification) within 120 days after the deemed distribution date (subject to extension under § 2629.12(h)) in accordance with the missing participant forms and instructions.

(3) Late-discovered participants. When it is impracticable for the plan administrator to include complete and accurate final information on a late-discovered participant in a timely post-distribution certification, the plan administrator shall submit an amended post-distribution certification within 120 days after the deemed distribution date (subject to extension under § 2629.12(h)) in accordance with the missing participant forms and instructions.

(b) Interest on late payments. If the plan administrator does not pay a designated benefit by the time specified in paragraph (a) of this section, the plan administrator shall pay interest as assessed by the PBGC for the period beginning on the deemed distribution date and ending on the date when the payment is received by the PBGC. Interest will be assessed at the rate provided for late premium payments in § 2610.7 of this chapter. Interest assessed under this paragraph shall be deemed paid in full if payment of the amount assessed is received by the PBGC within 30 days after the date of a PBGC bill for such amount.

(c) Supplemental information. Within 30 days after the date of a written request from the PBGC, a plan administrator required to provide the information and certifications described in paragraph (a) of this section shall file supplemental information, as requested, for the purpose of verifying designated benefits, determining benefits to be paid by the PBGC under this part, and substantiating diligent searches.

(1) Information mailed. Supplemental information filed under this paragraph (c) is considered filed on the date of the United States postmark stamped on the cover in which the information is mailed, if—

(i) The postmark was made by the United States Postal Service; and

(ii) The information was mailed postage prepaid, properly addressed to the PBGC.

(2) Information delivered. When the plan administrator sends or transmits the information to the PBGC by means other than the United States Postal Service, the information is considered filed on the date it is received by the PBGC. Information received on a weekend or Federal holiday or after 5:00 p.m. on a weekday is considered filed on the next regular business day.

§ 2629.7 Benefits of missing participants—in general.

(a) If annuity purchased. If a plan administrator distributes a missing participant's benefit by purchasing an irrevocable commitment from an insurer, and the missing participant (or his or her beneficiary or estate) later contacts the PBGC, the PBGC will inform the person of the identity of the insurer and the relevant policy number.

(b) If designated benefit paid. If the PBGC locates or is contacted by a missing participant (or his or her beneficiary or estate) for whom a plan administrator paid a designated benefit to the PBGC, the PBGC will pay benefits in accordance with §§ 2629.8 through 2629.10 (subject to the limitations and special rules in §§ 2629.11 and 2629.12).

(c) Examples. See Appendix B to this part for examples illustrating the provisions of §§ 2629.8 through 2629.10.

§ 2629.8 Automatic lump sum.

This section applies to a missing participant whose designated benefit was determined under § 2629.5(a)(1) (mandatory lump sum) or § 2629.5(a)(2) (de minimis lump sum).

(a) General rule—(1) Benefit paid. The PBGC will pay a single sum benefit equal to the designated benefit plus interest at the designated benefit interest rate from the deemed distribution date to the date on which the PBGC pays the benefit.

(2) Payee. Payment shall be made—

(i) To the missing participant, if located;

(ii) If the missing participant died before the deemed distribution date, and if the plan so provides, to the missing participant's beneficiary or estate; or

(iii) If the missing participant dies on or after the deemed distribution date, to the missing participant's estate.

(b) De minimis annuity alternative. If the guaranteed benefit form for a missing participant whose designated benefit was determined under § 2629.5(a)(2) (de minimis lump sum) (or the guaranteed benefit form for a beneficiary of such a missing participant) would provide for the

election of an annuity, the missing participant (or the beneficiary) may elect to receive an annuity. If such an election is made—

(1) The PBGC will pay the benefit in the elected guaranteed benefit form, beginning on the annuity starting date elected by the missing participant (or the beneficiary), which shall not be before the later of the date of the election or the earliest date on which the missing participant (or the beneficiary) could have begun receiving benefits under the plan; and

(2) The benefit paid will be actuarially equivalent to the designated benefit, i.e., each monthly (or other periodic) benefit payment will equal the designated benefit divided by the present value (determined as of the deemed distribution date under the missing participant lump sum assumptions) of a $1 monthly (or other periodic) annuity beginning on the annuity starting date.

§ 2629.9 Annuity or elective lump sum—living missing participant.

This section applies to a missing participant whose designated benefit was determined under § 2629.5(a)(3) (no lump sum) or § 2629.5(a)(4) (elective lump sum) and who is living on the date as of which the PBGC begins paying benefits.

(a) Missing participant whose benefit was not in pay status as of the deemed distribution date. The PBGC will pay the benefit of a missing participant whose benefit was not in pay status as of the deemed distribution date as follows.

(1) Time and form of benefit. The PBGC will pay the missing participant's benefit in the guaranteed benefit form, beginning on the annuity starting date elected by the missing participant (which shall not be before the later of the date of the election or the earliest date on which the missing participant could have begun receiving benefits under the plan).

(2) Amount of benefit. The PBGC will pay a benefit that is actuarially equivalent to the unloaded designated benefit, i.e., each monthly (or other periodic) benefit payment will equal the unloaded designated benefit divided by the present value (determined as of the deemed distribution date under the missing participant annuity assumptions) of a $1 monthly (or other periodic) annuity beginning on the annuity starting date.

(b) Missing participant whose benefit was in pay status as of the deemed distribution date. The PBGC will pay the benefit of a missing participant whose benefit was in pay status as of the deemed distribution date as follows:

(1) Time and form of benefit. The PBGC will pay the benefit in the form that was in pay status, beginning when the missing participant is located.

(2) Amount of benefit. The PBGC will pay the monthly (or other periodic) amount of the pay status benefit, plus a lump sum equal to the payments the missing participant would have received under the plan, plus interest on the missed payments (at the plan rate up to the deemed distribution date and thereafter at the designated benefit interest rate) to the date as of which the PBGC pays the lump sum.

(c) Payment of lump sum. If a missing participant whose designated benefit was determined under § 2629.5(a)(4) (elective lump sum) so elects, the PBGC will pay his or her benefit in the form of a single sum. This election is not effective unless the missing participant's spouse consents (if such consent would be required under section 205 of the Act). The single sum equals the designated benefit plus interest (at the designated benefit interest rate) from the deemed distribution date to the date as of which the PBGC pays the benefit.

§ 2629.10 Annuity or elective lump sum—beneficiary of deceased missing participant.

This section applies to a beneficiary of a deceased missing participant whose designated benefit was determined under § 2629.5(a)(3) (no lump sum) or § 2629.5(a)(4) (elective lump sum) and whose benefit is not payable under § 2629.9.

(a) If deceased missing participant's benefit was not in pay status as of the deemed distribution date. The PBGC will pay a benefit with respect to a deceased missing participant whose benefit was not in pay status as of the deemed distribution date as follows:

(1) General rule—(i) Beneficiary. The PBGC will pay a benefit to the surviving spouse of a missing participant who was a participant (unless the surviving spouse has properly waived a benefit in accordance with section 205 of the Act).

(ii) Form and amount of benefit. The PBGC will pay the survivor benefit in the form of a single life annuity. Each monthly (or other periodic) benefit payment will equal 50% of the quotient that results when the unloaded designated benefit is divided by the present value (determined as of the deemed distribution date under the missing participant annuity assumptions, and assuming that the missing participant survived to the deemed distribution date) of a $1 monthly (or other periodic) joint and 50% survivor annuity in the form described in § 2619.49(f)(1) of this chapter beginning on the annuity starting date.

(iii) Time of benefit. The PBGC will pay the survivor benefit beginning at the time elected by the surviving spouse (which shall not be before the later of the date of the election or the earliest date on which the surviving spouse could have begun receiving benefits under the plan).

(2) If missing participant died before deemed distribution date. Notwithstanding the provisions of paragraph (a)(1) of this section, if a beneficiary of a missing participant who died before the deemed distribution date establishes to the PBGC's satisfaction that he or she is the proper beneficiary or would have received benefits under the plan in a form, at a time, or in an amount different from the benefit paid under paragraph (a)(1)(ii) or (a)(1)(iii) of this section, the PBGC will make payments in accordance with the facts so established, but only in the guaranteed benefit form.

(3) Elective lump sum. Notwithstanding the provisions of paragraphs (a)(1) and (a)(2) of this section, if the beneficiary of a missing participant whose designated benefit was determined under § 2629.5(a)(4) (elective lump sum) so elects, the PBGC will pay his or her benefit in the form of a single sum. The single sum will be equal to the actuarial present value (determined as of the deemed distribution date under the missing participant annuity assumptions) of the death benefit payable on the annuity starting date, plus interest (at the designated benefit interest rate) from the deemed distribution date to the date as of which the PBGC pays the benefit.

(b) If deceased missing participant's benefit was in pay status as of the deemed distribution date. The PBGC will pay a benefit with respect to a deceased missing participant whose benefit was in pay status as of the deemed distribution date as follows.

(1) Beneficiary. The PBGC will pay a benefit to the beneficiary (if any) of the benefit that was in pay status as of the deemed distribution date.

(2) Form and amount of benefit. The PBGC will pay a monthly (or other periodic) amount equal to the monthly (or other periodic) amount, if any, that the beneficiary would have received under the form of payment in effect, plus a lump sum payment equal to the payments the beneficiary would have received under the plan subsequent to the missing participant's death and prior to the date as of which the benefit is paid under paragraph (b)(4) of this section, plus interest on the missed

payments (at the plan rate up to the deemed distribution date and thereafter at the designated benefit interest rate) to the date as of which the benefit is paid under paragraph (b)(4) of this section.

(3) Lump sum payment to estate. The PBGC will make a lump sum payment to the missing participant's estate equal to the payments that the missing participant would have received under the plan for the period prior to the missing participant's death, plus interest on the missed payments (at the plan rate up to the deemed distribution date and thereafter at the designated benefit interest rate) to the date when the lump sum is paid. Notwithstanding the preceding sentence, if a beneficiary of a missing participant other than the estate establishes to the PBGC's satisfaction that the beneficiary is entitled to the lump sum payment, the PBGC will pay the lump sum to such beneficiary.

(4) Time of benefit. The PBGC will pay the survivor benefit beginning when the beneficiary is located.

(5) Spouse deceased. If the PBGC locates the estate of the deceased missing participant's spouse under circumstances where a benefit would have been paid under this paragraph (b) if the spouse had been located while alive, the PBGC shall pay to the spouse's estate a lump sum payment computed in the same manner as provided for in paragraph (b)(2) of this section based on the period from the missing participant's death to the death of the spouse.

§ 2629.11 Limitations.

(a) Exclusive benefit. The benefits provided for under this part shall be the only benefits payable by the PBGC to missing participants or to beneficiaries based on the benefits of deceased missing participants.

(b) Limitation on benefit value. The total actuarial present value of all benefits paid with respect to a missing participant under §§ 2629.8 through 2629.10, determined as of the deemed distribution date, shall not exceed the missing participant's designated benefit.

(c) Guaranteed benefit. If a missing participant or his or her beneficiary establishes to the PBGC's satisfaction that the benefit under §§ 2629.8 through 2629.10 (based on the designated benefit actually paid to the PBGC) is less than the minimum benefit in this paragraph (c), the PBGC shall instead pay the minimum benefit. The minimum benefit shall be the lesser of:

(1) The benefit as determined under the PBGC's rules for paying guaranteed benefits in trusteed plans under parts 2613 and 2621 of this chapter (treating the deemed distribution date as the date of plan termination for this purpose); or

(2) The benefit based on the designated benefit that should have been paid under § 2629.5.

(d) Limitation on annuity starting date. A missing participant (or his or her survivor) may not elect an annuity starting date after the later of—

(1) The required beginning date under section 401(a)(9) of the Code; or

(2) The date when the missing participant (or the survivor) is notified of his or her right to a benefit.

§ 2629.12 Special rules.

(a) Late-discovered participants. The plan administrator of a plan that terminates with one or more late-discovered participants shall (after issuing notices to each such participant in accordance with §§ 2616.22 and 2616.27 or 2617.22 and 2617.23 of this chapter (whichever apply)), distribute each such late-discovered participant's benefit within the period (determined without regard to the provisions of this part) described in § 2616.29(a) or 2617.28(a) of this chapter (whichever applies) if practicable or (if not) as soon thereafter as practicable, but not more than 90 days after the deemed distribution date (subject to extension under § 2629.12(h)).

(b) Missing participants located quickly. Notwithstanding the provisions of §§ 2629.8 through 2629.10, if the PBGC or the plan administrator locates a missing participant within 30 days after the PBGC receives the missing participant's designated benefit, the PBGC may in its discretion return the missing participant's designated benefit to the plan administrator, and the plan administrator shall treat the missing participant like a late-discovered participant.

(c) Qualified domestic relations orders. Plan administrators and the PBGC shall take the provisions of qualified domestic relations orders (QDROs) under section 206(d)(3) of the Act or section 414(p) of the Code into account in determining designated benefits and benefit payments by the PBGC, including treating an alternate payee under an applicable QDRO as a missing participant or as a beneficiary of a missing participant, as appropriate, in accordance with the terms of the QDRO. For purposes of calculating the amount of the designated benefit of an alternate payee, the plan administrator shall use the assumptions for a missing participant who is a beneficiary under § 2629.5(b).

(d) Employee contributions—(1) Mandatory employee contributions. Notwithstanding the provisions of § 2629.5, if a missing participant made mandatory contributions (within the meaning of section 4044(a)(2) of the Act), the missing participant's designated benefit shall not be less than the sum of the missing participant's mandatory contributions and interest to the deemed distribution date at the plan's rate or the rate under section 204(c) of the Act (whichever produces the greater amount).

(2) Voluntary employee contributions—(i) Applicability. This paragraph (d)(2) applies to any employee contributions that were not mandatory (within the meaning of section 4044(a)(2) of the Act) to which a missing participant is entitled in connection with the termination of a defined benefit plan.

(ii) Payment to PBGC. A plan administrator, in accordance with the missing participant forms and instructions, shall pay the employee contributions described in paragraph (d)(2)(i) of this section (together with any earnings thereon) to the PBGC, and shall file Schedule MP with the PBGC, by the time the designated benefit is due under § 2629.6. Any such amount shall be in addition to the designated benefit and shall be separately identified.

(iii) Payment by PBGC. In addition to any other amounts paid by the PBGC under §§ 2629.8 through 2629.10, the PBGC shall pay any amount paid to it under paragraph (d)(2)(ii) of this section, with interest at the designated benefit interest rate from the date of receipt by the PBGC to the date of payment by the PBGC, in the same manner as described in § 2629.8 (automatic lump sums), except that if the missing participant died before the deemed distribution date and there is no beneficiary, payment shall be made to the missing participant's estate.

(e) Residual assets. The PBGC shall determine, in a manner consistent with the purposes of this part and section 4050 of the Act, how the provisions of this part shall apply to any distribution, to participants and beneficiaries who cannot be located, of residual assets remaining after the satisfaction of benefit liabilities in connection with the termination of a defined benefit plan. Unless the PBGC otherwise determines, the deadline for payment of residual assets for a missing participant and for submission to the PBGC of a Schedule MP (or an amended Schedule MP) is the 30th day after the date on which all residual assets have been distributed to all participants and beneficiaries other than missing participants for whom payment of residual assets is made to the PBGC.

(f) Sufficient distress terminations. In the case of a plan undergoing a distress termination (under section 4041(c) of the Act) that is sufficient for at least all guaranteed benefits and that distributes its assets in the manner described in section 4041(b)(3) of the Act, the benefit assumed to be payable by the plan for purposes of determining the amount of the designated benefit under § 2629.5 shall be limited to the Title IV benefit (as defined in § 2616.2 of this chapter) plus any benefit to which funds under section 4022(c) of the Act have been allocated.

(g) Similar rules for later payments. If the PBGC determines that one or more persons should receive benefits (which may be in addition to benefits already provided) in order for a plan termination to be valid (e.g., upon audit of the termination), and one or more of such individuals cannot be located, the PBGC shall determine, in a manner consistent with the purposes of this part and section 4050 of the Act, how the provisions of this part shall apply to such benefits.

(h) Discretionary extensions. The PBGC may in its sole discretion extend the 120-day amended filing periods in § 2629.6(a) (2)(ii) and (3) and the 90-day distribution period in paragraph (a) of this section—

(1) Where a recently-missing participant becomes a late-discovered participant,

(2) Where the PBGC returns the designated benefit of a missing participant who is located quickly to the plan administrator under § 2629.12(b), or

(3) In other unusual circumstances.

(i) Payments beginning after age 70½. If the PBGC begins paying an annuity under § 2629.9(a) or 2629.10(a) to a participant or a participant's spouse after the January 1 following the date when the participant attained or would have attained age 70½, the PBGC shall pay to the participant or the spouse (or their respective estates) or both, as appropriate, the lump sum equivalent of the past annuity payments the participant and spouse would have received if the PBGC had begun making payments on such January 1. The PBGC shall also pay lump sum equivalents under this paragraph (i) if the PBGC locates the estate of the participant or spouse after both are deceased. (Nothing in this paragraph (i) shall increase the total value of the benefits payable with respect to a missing participant.)

§ 2629.13 OMB control number.

The collection of information requirements contained in this part have been approved by the Office of Management under OMB Control Number 1212–0036.

Appendix A to Part 2629—Examples of Designated Benefit Determinations for Missing Participants Under § 2629.5

The calculation of the designated benefit under § 2629.5 is illustrated by the following examples.

Example 1. Plan A provides that any participant whose benefit has a value at distribution of $1,750 or less will be paid a lump sum, and that no other lump sums will be paid. P, Q, and R are missing participants.

(1) As of the deemed distribution date, the value of P's benefit is $1,700 under plan A's assumptions. Under § 2629.5(a)(1), the plan administrator pays the PBGC $1,700 as P's designated benefit.

(2) As of the deemed distribution date, the value of Q's benefit is $3,700 under plan A's assumptions and $3,200 under the missing participant lump sum assumptions. Under § 2629.5(a)(2), the plan administrator pays the PBGC $3,200 as Q's designated benefit.

(3) As of the deemed distribution date, the value of R's benefit is $3,400 under plan A's assumptions, $3,600 under the missing participant lump sum assumptions, and $3,450 under the missing participant annuity assumptions. Under § 2629.5(a)(3), the plan administrator pays the PBGC $3,450 as R's designated benefit.

Example 2. Plan B provides for a normal retirement age of 65 and permits early commencement of benefits at any age between 60 and 65, with benefits reduced by 5 percent for each year before age 65 that the benefit begins. The qualified joint and 50 percent survivor annuity payable under the terms of the plan requires in all cases a 16 percent reduction in the benefit otherwise payable. The plan does not provide for elective lump sums.

(1) M is a missing participant who separated from service under plan B with a deferred vested benefit. M is age 50 at the deemed distribution date, and has a normal retirement benefit of $1,000 per month payable at age 65 in the form of a single life annuity. M's benefit as of the deemed distribution date has a value greater than $3,500 using either plan assumptions or the missing participant lump sum assumptions. Accordingly, M's designated benefit is to be determined under § 2629.5(a)(3).

(2) For purposes of determining M's designated benefit, M is assumed to be married to a spouse who is also age 50 on the deemed distribution date. M's monthly benefit in the form of the qualified joint and survivor annuity under the plan varies from $840 at age 65 (the normal retirement age) ($1,000×(1–.16)) to $630 at age 60 (the earliest retirement age) ($1,000×(1–5×(.05))×(1–.16)).

(3) Under § 2629.5(a)(3), M's benefit is to be valued using the missing participant annuity assumptions. The select and ultimate interest rates on Plan B's deemed distribution date are 7.50 percent for the first 20 years and 5.75 percent thereafter. Using these rates and the blended mortality table described in the definition of ''missing participant annuity assumptions'' in § 2629.2(i)(2), the plan administrator determines that the benefit commencing at age 60 is the most valuable benefit (i.e., the benefit at age 60 is more valuable than the benefit at ages 61, 62, 63, 64 or 65). The present value as of the deemed distribution date of each dollar of annual benefit (payable monthly as a joint and 50 percent survivor annuity) is $5.4307 if the benefit begins at age 60. (In accordance with § 2619.49(d)(5), the mortality of the spouse during the deferral period is ignored.) Thus, without adjustment (loading) for expenses, the value of the benefit beginning at age 60 is $41,056 (12×$630×5.4307). The designated benefit is equal to this value plus an expense adjustment of $300, or a total of $41,356.

Appendix B to Part 2629—Examples of Benefit Payments for Missing Participants Under §§ 2629.8 Through 2629.10

The provisions of §§ 2629.8 through 2629.10 are illustrated by the following examples.

Example 1. Participant M from Plan B (see Example 2 in Appendix A of this part) is located. M's spouse is ten years younger than M. M elects to receive benefits in the form of a joint and 50 percent survivor annuity commencing at age 62.

(1) M's designated benefit was $41,356. The unloaded designated benefit was $41,056. As of Plan B's deemed distribution date (and using the missing participant annuity assumptions), the present value per dollar of monthly benefit (payable monthly as a joint and 50 percent survivor annuity commencing at age 62 and reflecting the actual age of M's spouse) is $4.7405. Thus, the monthly benefit to M at age 62 is $722 ($41,056/(4.7405×12)). M's spouse will receive $361 (50 percent of $722) per month for life after the death of M.

(2) If M had instead been found to have died on or after the deemed distribution date, and M's spouse wanted benefits to commence when M would have attained age 62, the same calculation would be performed to arrive at a monthly benefit of $361 to M's spouse.

Example 2. Participant P is a missing participant from Plan C, a plan that allows elective lump sums upon plan termination. Plan C's administrator pays a designated benefit of $10,000 to the PBGC on behalf of P, who was age 30 on the deemed distribution date.

(1) P's spouse, S, is located and has a death certificate showing that P died on or after the deemed distribution date with S as spouse. S is the same age as P, and would like survivor benefits to commence immediately, at age 55 (as permitted by the plan). S's benefit is the survivor's share of the joint and 50 percent survivor annuity which is actuarially equivalent, as of the deemed distribution date, to $9,700 (the unloaded designated benefit).

(2) The select and ultimate interest rates on Plan C's deemed distribution date were 7.50 percent for the first 20 years and 5.75 percent thereafter. Using these rates and the blended mortality table described in § 2629.2(i)(2), the present value as of the deemed distribution date of each dollar of annual benefit (payable monthly as a joint and 50 percent survivor annuity) is $2.4048 if the benefit begins when

S and P would have been age 55. Thus, the monthly benefit to S commencing at age 55 is $168 (50 percent of $9,700/(2.4048 x 12)). Since P could have elected a lump sum upon plan termination, S may elect a lump sum. S's lump sum is the present value as of the deemed distribution date (using the missing participant annuity assumptions) of the monthly benefit of $168, accumulated with interest at the designated benefit interest rate to the date paid.

PART 2606—RULES FOR ADMINISTRATIVE REVIEW OF AGENCY DECISIONS

2. The authority citation for part 2606 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3).

3. In § 2606.1, paragraph (b)(8) is amended by removing the word ''and''; paragraph (b)(9) is amended by removing the period at the end of the paragraph and adding in its place ''; and''; and a new paragraph (b)(10) is added to read as follows:

§ 2606.1 Purpose and scope.

* * * * *

(b) Scope. * * *

* * * * *

(10) Determinations—

(i) That the amount of a participant's or beneficiary's benefit under section 4050(a)(3) of the Act has been correctly computed based on the designated benefit paid to the PBGC under section 4050(b)(2) of the Act, or

(ii) That the designated benefit is correct, but only to the extent that the benefit to be paid does not exceed the participant's or beneficiary's guaranteed benefit.

* * * * *

§ 2606.51 [Amended]

4. Section 2606.51 is amended by removing the words ''§ 2606.1(b) (5) through (9)'' and adding in their place the words ''§ 2606.1(b) (5) through (10)''.

PART 2616—DISTRESS TERMINATIONS OF SINGLE-EMPLOYER PLANS

PART 2617—STANDARD TERMINATIONS OF SINGLE-EMPLOYER PLANS

5. The authority citations for parts 2616 and 2617 are revised to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1341, 1344, 1350.

§§ 2616.2, 2617.2 [Amended]

6. In §§ 2616.2 and 2617.2, the definition of ''date of distribution'' is amended by removing the period at the end of paragraph (2); adding in its place a semicolon; and adding after the semicolon the words ''except that date of distribution means the deemed distribution date in the case of a designated benefit paid to the PBGC, or a benefit provided after the deemed distribution date to a late-discovered participant, in accordance with part 2629 of this chapter (dealing with missing participants).''

§ 2617.3 [Amended]

7. In § 2617.3, paragraph (b)(5) is amended by removing the words ''and (f), in satisfaction'' and adding in their place the words ''and (f) (or, where applicable, within the time prescribed in part 2629 of this chapter), in satisfaction''.

§ 2616.6 [Amended]

§ 2617.6 [Amended]

8. In §§ 2616.6 and 2617.6, paragraph (a) is amended by removing the words ''this section, when a plan'' and adding in their place the words ''this section (or, where applicable, in part 2629 of this chapter), when a plan''.

§§ 2616.7, 2617.8 [Amended]

9. In §§ 2616.7 and 2617.8, paragraph (b) is amended by removing the words ''Any document'' and adding in their place the words ''Except as may otherwise be provided in applicable forms and instructions, any document''; and by removing the words ''Case Operations and Compliance Department'' and adding in their place the words ''Standard Termination Compliance Division, Insurance Operations Department''.

§ 2617.25 [Amended]

10. In § 2617.25, paragraph (b)(2)(i) is amended by removing the words ''Case Operations and Compliance Department'' and adding in their place the words ''Standard Termination Compliance Division, Insurance Operations Department''.

§ 2616.29 [Amended]

11. Paragraph (a)(1) of § 2616.29 is amended by adding before the period at the end of the first sentence the words ''or, where applicable, within the time prescribed in part 2629 of this chapter''.

§ 2617.28 [Amended]

12. Paragraph (a)(1) of § 2617.28 is amended by adding parentheses around the words ''or, if applicable, the date on which the PBGC revokes the notice of noncompliance'' and by adding before the period at the end of the paragraph the words ''or, where applicable, within the time prescribed in part 2629 of this chapter''.

§§ 2616.29, 2617.28 [Amended]

13. Paragraph (b) of § 2616.29 and paragraph (h) of § 2617.28 are amended by adding at the end of § 2616.29(b) and § 2617.28(h) the words ''The plan administrator shall be considered to have satisfied this requirement if, in accordance with § 2629.6(a) of this chapter, the plan administrator timely files an amended post-distribution certification that otherwise satisfies all applicable requirements.''

14. In § 2617.28, paragraph (c) is amended by adding at the end a new sentence to read as follows:

§ 2617.28 Closeout of plan.

* * * * *

(c) Method of distribution. * * * The plan administrator shall comply with part 2629 of this chapter (dealing with missing participants), if applicable.

* * * * *

Issued in Washington, D.C., this 22nd day of November, 1995.

Robert B. Reich,

Chairman, Board of Directors, Pension Benefit Guaranty Corporation.

Issued on the date set forth above pursuant to a resolution of the Board of Directors authorizing its Chairman to issue this final rule.

James J. Keightley,

Secretary, Board of Directors, Pension Benefit Guaranty Corporation.

[FR Doc. 95–29120 Filed 11–30–95; 8:45 am]

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Federal Register

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December 1, 1995

Part III

Department of Education

34 CFR Part 682

Federal Family Education Loan Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 682

RIN 1840–AC21

Federal Family Education Loan Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Federal Family Education Loan (FFEL) Program. The FFEL regulations govern the Federal Stafford Loan Program, the Federal Supplemental Loans for Students (Federal SLS) Program, the Federal PLUS Program, and the Federal Consolidation Loan Program, collectively referred to as the Federal Family Education Loan Program. The Federal Stafford Loan, the Federal SLS, the Federal PLUS and the Federal Consolidation Loan programs are hereinafter referred to as the Stafford, SLS, PLUS and Consolidation Loan programs. The Secretary is making changes to the FFEL Program regulations to conform the FFEL program regulations with regulations and policies in effect in the William D. Ford Federal Direct Student Loan Program, hereinafter referred to as the Direct Loan Program.

EFFECTIVE DATE: These regulations take effect on July 1, 1996. However, affected parties do not have to comply with the information collection requirements in sections 682.207, 682.209, 682.210, 682.211, 682.401, 682.412, 682.603, 682.604, and 682.605 until after the information collection requirements contained in these sections have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Patricia Newcombe, FFELP Policy Section Chief, or Barbara Bauman, FFELP Program Specialist, Loans Branch, Policy Development Division, Policy, Training, and Analysis Service, U.S. Department of Education, 600 Independence Avenue, S.W. (room 3053, ROB–3), Washington, DC 20202–5449. Telephone: (202) 708–8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

The Secretary is amending 34 CFR Part 682 of the Department's regulations to adopt certain policies and procedures that have been used in the Direct Loan Program.

On September 21, 1995, the Secretary published a Notice of Proposed Rulemaking (NPRM) in the Federal Register (60 FR 49130) proposing changes to the FFEL regulations to conform with certain regulations and policies in the Direct Loan program, wherever possible, to provide a consistent approach in both programs. Many of the proposed changes included in the NPRM were identified by commenters in response to an earlier NPRM, published on October 7, 1994, also intended to conform the two loan programs, but were outside the scope of the proposals in that NPRM. In the final regulations published on November 29, 1994, the Secretary promised to evaluate the merits and implications of these additional proposals and include some of them in future regulations. These final regulations reflect many of those proposals. These regulations contain clarifying changes to certain existing provisions of the FFEL program regulations.

The NPRM published for Part 682 in the Federal Register on September 21, 1995 (59 FR 49130–49131) included a discussion of the major issues surrounding the proposed changes, and the discussion will not be repeated here. The following list summarizes those issues and identifies the pages of the preamble to the NPRM on which a discussion of those issues may be found:

- Clarification of the definition of satisfactory repayment arrangements for a borrower to renew eligibility for Title IV student financial assistance (page 49130);
- Borrower eligibility for a FFEL Consolidation loan for a borrower in default status (page 49130);
- Codification of the existing FFEL policy to allow a loan to be disbursed in a single installment under certain circumstances (page 49130);
- Clarification of late disbursement provisions under documented exceptional circumstances in sections 682.207(d)(2)(iii) and 682.604(e)(3) through amendments to those provisions (page 49130);
- Lender application of borrower loan payments and treatment of prepayments (page 49130);
- Clarification of deferment eligibility for a borrower in default status (page 49131);
- Extension of administrative forbearance to a borrower who ends an authorized deferment period in delinquent status (page 49131);
- Treatment of loan insurance premiums when a school refunds a loan or a portion thereof to a lender on behalf of a borrower (page 49131);
- Treatment of payments received after loan discharge (page 49131);
- Minor changes to provisions governing school loan certification (page 49131); and
- Technical changes to conform provisions governing a school's determination of a borrower's withdrawal with the refund provisions of section 668.22(j) (page 49131).

Substantive Revisions to the Notice of Proposed Rulemaking

Section 682.207 Due Diligence in Disbursing a Loan

The final regulations reflect an additional provision that allows a single installment containing more than one loan disbursement to be made prior to the midpoint of the loan period if the date of the scheduled disbursement coincides with the beginning of the next scheduled term for which the school has requested a disbursement as provided for under law.

Section 682.209 Payment Application and Prepayment

The final regulations allow a lender to use a statement included in the borrower's monthly billing statement or coupon book, in lieu of a separate notice, to inform a borrower who submits full payments in excess of the scheduled payment amount (without instructions to the lender) regarding how those payments will be credited to the borrower's account and how that crediting affects the borrower's next scheduled due date for payment.

Section 682.211 Forbearance

The Secretary has changed the regulations to authorize lenders to grant administrative forbearance to borrowers to cover any period of delinquency that may exist after the close of a period of mandatory forbearance, in addition to the close of an authorized deferment period.

Section 682.607 Payment of a Refund to a Lender

The final regulations include a change to section 682.607(c)(1) to clarify the interaction between sections 682.605 and 682.607 and 668.22(j) of the General Provisions regulations.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 40 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

Substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are generally not addressed.

General

Comments: Similar to the comments received in response to the October 7, 1994 NPRM to conform the FFEL and Direct Loan programs, some commenters suggested changes to the FFEL program regulations that were not included in the NPRM. Some of the changes had nothing to do with conforming the two loan programs. For example, one commenter suggested that the Secretary revise the provisions in section 682.411(c) to change the time frame within which a lender must send the first notice of delinquency to a borrower. Some of the commenters repeated the suggestions made in response to the October 7, 1994 NPRM to conform the Direct Loan program regulations to the FFEL program regulations by incorporating into the Direct Loan regulations the various requirements in the FFEL regulations for documenting deferment and forbearance eligibility, tracking deferments with statutory time maximums, and backdating the start of deferment eligibility. Additionally, these commenters recommended that FFEL regulations be revised to provide an extended repayment option to FFEL borrowers, and to eliminate the regulatory requirement in section 682.209(a)(6)(ii) that if a borrower chooses a graduated or income-sensitive repayment schedule, the lender may not provide the borrower with a repayment schedule that contains any single installment that is more than three times greater than any other installment.

Discussion: The Secretary does not believe that he currently has the statutory authority to provide through regulations additional repayment options for FFEL borrowers. Because of the constraints presented by the statutory 10-year maximum time frame for repayment of most FFEL program loans, the Secretary also does not believe that it is advisable from a consumer protection standpoint to delete the provision that restricts a lender's ability to establish a repayment schedule that would provide for payments that are three times or more what the borrower's normally scheduled payment would be. The Secretary does not believe that an FFEL borrower is well served by establishing a graduated or income-sensitive repayment schedule that provides low payments initially only to lead to balloon payments that the borrower is unable to meet later in the repayment period despite the use of authorized forbearance. The Secretary also wishes to reiterate what he said in the November 29, 1994 final regulations in response to commenters who indicated that they believed the Secretary is required to make the regulations and processes in the Direct Loan program strictly conform to the FFEL regulations. The Secretary continues to disagree with these commenters. There is no legal requirement that the Secretary issue regulations to regulate internal agency processes in the Direct Loan Program. The Department continues to assure FFEL program participants that policies and procedures in the administration of the Direct Loan program are consistent with FFEL regulatory requirements to the extent practicable. Moreover, the Secretary is committed to continuing to examine areas that affect substantive or procedural rights of program participants that may require additional regulations to ensure conformity between the programs. In regard to the proposal to change the time frame for a lender to send the first notice of delinquency to a borrower, the Secretary does not consider this recommendation appropriate for this regulations package because it has nothing to do with conformity between the FFEL and Direct Loan programs. However, the Secretary will consider this proposal for future regulations.

Section 682.200 Definitions

Comments: Most commenters agreed with the Secretary's decision to clarify that a borrower may make satisfactory repayment arrangements on a defaulted FFEL debt for purposes of regaining Title IV eligibility only once. A couple of commenters urged the Secretary to allow a lender to make documented exceptions to this requirement. Many commenters recommended that the Secretary retain the terms ''consecutive'' and ''voluntary'' in current regulations to describe the series of full monthly payments a borrower must make to regain eligibility. The commenters believe it is necessary to clarify that a borrower cannot regain eligibility through a lump sum payment and that payments secured through involuntary means, such as wage garnishment or litigation, do not count as one of the six required payments. Several commenters also wanted the Secretary to clarify that the restriction on a borrower in default status regaining Title IV eligibility only once did not apply to that borrower's ability to make payments sufficient to move out of default status on a loan.

Discussion: The Secretary agrees with the commenters that retaining the terms ''consecutive'' and ''voluntary'' to describe the full payments that must be made by the borrower to regain eligibility for Title IV student assistance is essential for the reasons suggested by the commenters. These terms were dropped from the NPRM proposal inadvertently. The Secretary does not agree with the recommendation that the regulations should be revised to authorize lenders to allow a borrower to renew eligibility more than one time under certain circumstances. This one-time restriction is statutory. The Secretary wishes to clarify that this one-time restriction on regaining eligibility in no way restricts the same borrower from bringing a loan out of default status more than once.

Changes: A change has been made. The terms ''consecutive'' and ''voluntary'' have been reinserted into the definition to modify the consecutive full payments that must be made by the borrower to regain eligibility.

Section 682.201 Eligible Borrowers

Comments: Many commenters did not support the proposal to allow a borrower to include a defaulted loan in an FFEL Consolidation loan simply by agreeing to repay the Consolidation loan under an income-sensitive repayment plan rather than by making the currently required series of three consecutive payments on the defaulted loan. The commenters also felt strongly that the similar borrower option that exists in the Direct Loan program should be deleted from regulations. These commenters believe that such a borrower should be required to make actual payments on the defaulted loan to demonstrate an intent and ability to repay the loan before the borrower is granted an additional extension of federal credit in the form of a Consolidation Loan and, possibly, additional Title IV student assistance to return to school. These commenters also believe that this policy encourages the ''gaming of the [student loan] system'' by allowing a borrower who has already defaulted on one or more loans to avoid making any payments on any Title IV student loan debt for a considerable period of time if the borrower returns to school. One of these commenters pointed out that if such a borrower cannot afford to make the three ''reasonable and affordable'' payments on the defaulted debt, they would be equally unable and unlikely to make scheduled payments on the Consolidation loan. A couple of other commenters recommended that the regulations be revised to retain the three

payment requirement, with the lender authorized to waive the requirement based on documented exceptional circumstances if the borrower demonstrates a willingness and ability to repay the Consolidation loan. Some commenters supported the provision as proposed in order to maintain parity between the FFEL and Direct Loan programs, but some of those commenters questioned how the holder of the loan would know or be able to verify that a borrower has agreed to repay the loan under an income-sensitive repayment plan.

Discussion: The Secretary acknowledges the commenters' concerns regarding providing this option to borrowers already in default on an FFEL program loan. However, the Secretary believes that a significant number of borrowers in the past have defaulted because they could not afford to make required loan payments. When a borrower consolidates a defaulted loan or loans under an income-sensitive repayment plan (or, in the Direct Loan program, under an income-contingent repayment plan) the amount the borrower will be required to repay will be one the borrower can afford. The Secretary believes that an income-sensitive payment amount coupled with the extended repayment period generally available in the FFEL Consolidation loan program, significantly lessens the risk that the borrower will default again. The Secretary also does not believe that three consecutive monthly ''reasonable and affordable'' payments from the borrower, which could be as low, for example, as $2 per month, necessarily is a more significant indicator of whether a borrower will default on the new Consolidation loan. It is correct that borrowers paying off defaulted loans through loan consolidation regain immediate eligibility for additional Title IV student assistance and perhaps represent a slightly greater risk of default on an even larger debt load. However, this risk was created when Congress amended the HEA to allow borrowers to repay defaulted loans through a Consolidation loan. The Secretary's decision to allow defaulted borrowers to receive a Consolidation loan by agreeing to repay the loan through an income-sensitive repayment arrangement does not significantly increase that risk, and in fact, is likely to reduce defaults. The Secretary believes that borrowers consolidating their defaulted loans and regaining eligibility for Title IV student assistance in order to obtain additional education or training are worth the risk if this second chance leads to gainful employment that will ultimately translate into greater returns to the FFEL program and the federal taxpayers.

Mindful of the unease with which many in the student aid community view this conforming change in FFEL regulations, the Secretary is committed to monitoring the repayment records of these borrowers through the use of the National Student Loan Data System over the next few years. If the repayment patterns of such borrowers in the FFEL and Direct Loan programs reach an unacceptable level of repeat defaults by these borrowers, the Secretary will reconsider this policy in the FFEL and Direct Loan programs.

With regard to the question about how a loan holder asked to provide a certification to the consolidating lender is to know or verify that the borrower has agreed to an income-sensitive repayment plan option, the Secretary notes that it is the obligation of the consolidating lender to determine if the borrower qualifies for the consolidation loan. The consolidating lender will have to determine whether the borrower has chosen an income-sensitive repayment plan or needs to make the required monthly payments to the holder of the defaulted loan. The Secretary also wishes to remind those commenters who expressed concern about this approach that lenders in the FFEL program always have the option not to make an FFEL Consolidation loan.

Changes: None.

Section 682.207 Due Diligence in Disbursing a Loan

Section 682.207(c)(4)

Comments: All of the commenters agreed with the proposal to codify into the FFEL regulations the existing policy that allows a lender to include more than one disbursement of a multiply-disbursed loan in the same installment scheduled to be sent to the school if the midpoint of the loan period has expired when the first disbursement is scheduled to be made. Several commenters, however, asked that the provision be revised to reflect the exception provided in the law for term-based schools that allows a second or subsequent disbursement to be made prior to the mid-point of the loan period if that is necessary to coincide with the school's next scheduled term. The commenters pointed out that the proposed rule would prevent a term-based school from receiving two disbursements in a single installment if the start of the next scheduled term was before the mid-point of the loan period. Another commenter asked that the phrase ''for which the loan was made'' be inserted after the phrase ''loan period'' to clarify what the midpoint is based on.

Discussion: The Secretary agrees with the commenters that these revisions to the proposed provision are warranted.

Changes: Section 682.207(c)(4) has been revised to provide that such a single installment can be made on the earlier of the mid-point of the loan period for which the loan was made or the beginning of the school's next scheduled term.

Section 682.207(d)(4)

Comments: All the commenters endorsed the clarifying changes made to the late disbursement provisions in section 682.207(d)(4) and corresponding changes made in section 682.604. One commenter suggested an additional change to section 682.207(d)(2)(iii) to clarify that a lender is not required to wait for notification from the school but may presume that exceptional circumstances exist when making a disbursement from the 61st day through the 90th day after the date the student ceased enrollment on at least a half-time basis or the expiration date of the period of enrollment for which the loan was intended. Upon receipt of the disbursement, the school would be required to determine and document in the student's file that exceptional circumstances existed and deliver the loan proceeds or return the disbursement to the lender.

Discussion: The Secretary agrees that this further clarification is useful. The Secretary believes these procedures for lender and school handling of a late disbursement during this period will be simple and efficient for both the lender and school.

Changes: Section 682.207(d)(2)(iii) has been revised to reflect the respective lender and school responsibilities and processes for handling late disbursements during the last 30 days of the 90-day period during which late disbursements may be made.

Section 682.209(b) Payment Application and Prepayment

Comments: One commenter recommended an additional change to section 682.209(b)(1) to clarify that a lender has the option to apply any payment to late charges, collection costs, outstanding interest, and outstanding principal in whatever order the lender chooses. The commenter believes that the provision, as currently written, requires application of payments first to late charges and collection costs, then to outstanding interest, and finally to outstanding

principal. Most commenters supported the reduction (from three to one) in section 682.209(b)(2)(ii) of the number of full excess payments a lender must receive before the lender, absent instructions from the borrower, is authorized to interpret the borrower's intent on the handling of the prepayment and to apply them to future installment payments on the loan. Some commenters, however, objected to changing what had been a lender option in the handling of prepayments submitted without borrower instructions to a requirement that the lender treat them as intended for future installments. These commenters believe that the lender is in the best position to review the borrower's repayment pattern and to determine the borrower's intentions in making multiple payments. Several commenters also noted that they interpreted the prepayment provision of (b)(2)(ii) to apply to multiple partial payments made by the borrower that the lender accumulates as well as additional full payments. Other commenters recommended clarifying that a lender's determination of whether a prepayment amount equals one or more full scheduled payments should be made only after late charges and collection costs have been paid. These same commenters also requested that an additional sentence be added to (b)(2)(ii) to clarify that the required notice to the borrower that the borrower's due date has been advanced did not apply to borrowers making prepayments while they are in an in-school, grace, deferment, or forbearance period because they do not have a scheduled due date to which a future payment would be applied. Many commenters disagreed strongly with the requirement in (b)(2)(ii) that a lender provide the borrower with a notice informing the borrower that the payments have been applied to future installments and reminding the borrower of the repayment obligation and the next scheduled due date. The commenters believe that this requirement is overly prescriptive and burdensome to lenders and that it is unnecessary to routinely notify the borrower that the due date has been advanced. They also believe that a separate notification of this nature outside the normal billing process is confusing to borrowers, especially if the lender is generating them routinely to a borrower who continues to submit additional full payments without instructions for their handling. Many of these commenters recommended that a lender be provided the alternative of providing this information through the use of the billing statement or coupon book rather than providing a separate notification after the funds have been applied as the regulation proposes. They indicated that borrower coupon books and billing statements are already being used to provide this kind of information.

Discussion: The Secretary disagrees with the one commenter that recommended that the payment application instruction in (b)(1) should be modified to clarify that a lender may apply payments in any order to late charges, collection costs, outstanding accrued interest and principal. The language on payment application was modified, at the request of lenders, in the FFEL regulations published on December 18, 1992 to clarify that a lender had the option to apply payments or prepayments to outstanding late charges, collection costs, and outstanding accrued interest before applying the remainder to principal. The Secretary believes that the provision as currently written provides lenders with the necessary flexibility in applying payments and is consistent with how the Secretary is applying payments in the Direct Loan Program.

The Secretary also disagrees that the treatment of additional full payments submitted without instructions from the borrower for their handling (e.g., multiple payment coupons enclosed with the check, a written note on the billing statement or other written instructions, or oral instructions to the lender documented in the borrower's file) should be at the option of the lender. The Secretary now believes that, absent the borrower's instruction, the most responsible approach to handling additional full payments, and the likely intent of the borrower in the majority of cases, is to apply that amount to future installment payments on the loan and to advance the borrower's next scheduled due date. In many instances, this approach will protect a borrower who has submitted a large prepayment to cover a period when he or she will not be available to make the normally scheduled payments from entering a delinquent status. Mandating this treatment of such prepayments by lenders also provides for a consistent, standardized approach for all borrowers and is consistent with the Secretary's treatment of additional full payments submitted without borrower instructions in the Direct Loan program. The Secretary also wishes to clarify that some commenters' interpretation that the provisions in (b)(2)(ii) apply to accumulated partial payments received over time from the borrower without instructions is incorrect. The Secretary believes that a lender should only interpret that the borrower's intent, absent instructions, is to apply the excess payments to future installments if the prepayment amount submitted is at least one additional full payment. The Secretary does not believe that this is generally the borrower's intent when a borrower submits small additional amounts in excess of the scheduled payment amount. The Secretary expects these partial payment amounts, unless a lender receives specific instructions from the borrower directing the lender to accumulate them and eventually apply them to a future installment, to be applied to outstanding principal (unless the borrower has outstanding late or collection charges or outstanding accrued interest to which the lender wishes to apply the partial payment before applying the remainder to principal, as provided for under (b)(1) of this section) with no advancement of the borrower's next scheduled due date. The Secretary agrees that the determination of whether the excess payment amount is sufficient to require the handling specified in (b)(2)(ii) should be made after any late or collection charges and outstanding interest are taken care of but does not believe that this needs to be clarified in the regulations. The Secretary has made it clear that the payment application provisions in (b)(1) apply to all payments, including prepayments, so the Secretary believes any further clarification in the regulations is unnecessary. The Secretary agrees with the many commenters who recommended that the Secretary allow the use of payment coupons and billing statements as alternatives to the borrower notification required in (b)(2)(ii), provided the borrower is effectively notified of the lender's handling of the excess payment amounts and the advancement of the borrower's next scheduled due date. The Secretary also agrees that notification of the advancement of the payment due date is inappropriate for borrowers who make prepayments without instructions during in-school, grace, deferment, and forbearance periods when no payments are due.

Changes: The regulations have been revised in section 682.209(b)(2)(ii) to allow a lender to use a billing statement or a payment coupon book to provide information to the borrower on how the lender will treat additional full payment amounts if the borrower submits one or more additional payments without instructions to the lender as to their handling. The Secretary believes that a

prominent standard statement on each billing statement or in the payment coupon book informing the borrower that the lender will apply the payments to future installments and will advance the borrower's next scheduled payment due date consistent with the number of additional full payments received is comparable to the separate notification the lender may send after receipt of such additional payments. A sentence has also been added to this provision to clarify that information related to advancing the borrower's scheduled payment due date need not be provided if the borrower makes the prepayment during an in-school, grace, deferment, or forbearance period.

Section 682.210 Deferment

Comments: Many commenters objected to the proposed clarifying language that would restrict a defaulted borrower's eligibility for deferment, as a result of arrangements made with the holder of the loan, to the period up to the lender's filing of a default claim with the guaranty agency. Many of these commenters felt strongly that a lender should have the maximum flexibility in working with a borrower, at least up until the default claim is paid by the guaranty agency, to avert the claim payment, the point at which the borrower is subject to adverse consequences of the default and the default becomes a cost to the federal government. These commenters felt this more restrictive language would severely hamper supplemental preclaims assistance efforts of guaranty agencies that take place during this period. A couple of these commenters recommended that the clarifying language be revised to allow a lender to retrieve a loan from a guaranty agency even after default claim payment if satisfactory arrangements can be made with the borrower. One commenter recommended that the provision be revised to provide that a borrower is not eligible for deferment after default unless the borrower's eligibility for the deferment began prior to the default or, if that is not the case, unless the borrower makes satisfactory repayment arrangements with the lender prior to guaranty agency payment of the default claim. Another commenter recommended that language be included in this provision that clarifies that a lender's granting of a deferment after the filing of the default claim is at the lender's discretion. Several commenters recommended eliminating the word ''repayment'' from the phrase ''satisfactory repayment arrangements'' in order to clarify that the payment arrangements made with the holder for the purposes of this provision need only be acceptable to the holder, as opposed to meeting the statutory requirement for a borrower who is in default to regain eligibility for additional Title IV student assistance. Another commenter recommended that the Secretary retain the current regulatory language because the commenter interprets the provision as allowing a borrower in default to be entitled to a deferment if satisfactory repayment arrangements are made with the holder, regardless of whether the holder is a lender, a guaranty agency, or the Secretary.

Discussion: The Secretary believes that clarification of this provision is necessary because, as currently written, it suggests that a borrower who has defaulted on the repayment of a loan and whose loan is held by a guaranty agency or the Secretary can become eligible for deferment of repayment on that loan by making satisfactory repayment arrangements as that term is defined for regaining eligibility for Title IV student assistance. This has never been the Secretary's interpretation of the law with regard to deferment eligibility. The HEA excludes defaulted borrowers from certain program benefits, a major one of these being deferments. However, through this regulatory provision, lenders have always had the ability, at their option, to make payment arrangements with a borrower even after 180 days of delinquency in order to avert a default claim. After a guaranty agency has paid a claim, however, a borrower can regain eligibility for deferment on that loan only through loan rehabilitation or lender repurchase of that loan. A borrower who makes satisfactory repayment arrangements with a guaranty agency to regain eligibility for Title IV student assistance, as provided for under section 428F(b) of the HEA, does not regain deferment eligibility on that defaulted loan that remains with the agency. Borrowers are expected to continue to make payments on that loan after the six required payments necessary to regain eligibility, but guaranty agencies are strongly encouraged to provide forbearance to such borrowers on the loan during the borrower's in-school period. Only if the loan is successfully rehabilitated or a lender repurchase is arranged does the borrower regain deferment eligibility. After consideration of the comments, the Secretary has decided that lenders and guaranty agencies should be allowed to work with defaulted borrowers to avert default claim payment through the granting of deferments and other administrative methods provided in the FFEL program until the guaranty agency pays the claim. This provides borrowers with ample opportunity to avert the consequences of default. The Secretary does not believe this provision should apply after default claim payment unless the lender determines the default claim was filed in error and recalls the loan from the agency. At the point a default claim is paid, Federal taxpayer funds have been used to repay the borrower's debt and the guaranty agency has lost the use of that money for other program purposes. The Secretary agrees that the phrase ''satisfactory repayment arrangements'' needs to be modified to avoid any misinterpretation of what is required for purposes of this provision. The term satisfactory repayment arrangements, as currently defined, is intended to apply only to the requirements a defaulted borrower must meet to regain Title IV eligibility. For purposes of this provision, the arrangements must only be acceptable to the lender and are left to the lender and borrower to work out. The Secretary also agrees that a lender's acceptance of payments or granting of deferments or forbearance as part of satisfactory arrangements to avert a default claim payment at the post-180 or post-240 day stage of delinquency are strongly encouraged, but optional on the part of the lender.

Changes: A change has been made. This provision of the regulations has been revised to provide for deferment eligibility of a defaulted borrower up to the payment of a default claim on the loan if the lender agrees to make payment arrangements with the borrower. The phrase ''satisfactory repayment arrangements'' has been revised to read ''payment arrangements acceptable to the lender.''

Section 682.211 Forbearance

Comments: All commenters agreed with the Secretary's proposal to allow lenders to apply an administrative forbearance in situations when a borrower ends a period of deferment in a delinquent status. Many commenters also recommended that the provision be expanded to include those borrowers ending a period of mandatory forbearance in a delinquent status. Another commenter recommended the addition of the phrase ''until the next due date is established in accordance with section 682.209(a)(3)(ii)(B)'' at the end of the provision.

Discussion: The Secretary agrees with the commenters.

Changes: A change has been made to include borrowers who have ended a period of mandatory forbearance in a delinquent status and the recommended

phrase related to next payment due date has been added.

Section 682.401(b)(10)(vi)(B) Basic Program Agreement

Comments: Several commenters requested clarification as to whether the amount of the insurance premium to be returned was to be proportional in instances where a school refunds a portion of a loan that is less than a full disbursement to a lender, and the lender must refund the insurance premium to the borrower. Many commenters requested that the phrase ''a portion of the loan'' be replaced with the phrase ''full disbursement of the loan'' to reflect the fact that the Secretary was maintaining his existing policy that such a refund is necessary only if at least a full disbursement of the loan is returned. Another commenter requested that the regulations be revised to be consistent with the Direct Loan program by requiring that the refund of the insurance premium be applied to the borrower's loan balance rather than be refunded to the borrower. Other commenters suggested that the phrase ''within 120 days of disbursement'' be inserted to clarify the timeframe during which the refund of the insurance premium must be done.

Discussion: The Secretary clarifies that the lender should pro-rate the insurance premium fee. The Secretary also agrees that the refunds of the insurance premium should be refunded through application to the borrower's account, not a cash refund to the borrower. The Secretary does not agree that reference to ''within 120 days of disbursement'' should be inserted in section 682.401(b)(10)(vi)(B)(1) because the Secretary believes that the timing of the school's refund to the lender on behalf of the student should not prevent the borrower from receiving the benefit of the refund of the insurance premium.

Changes: The regulations have been revised to reflect that a proportional amount of the insurance premium should be refunded if the refund is less than the amount of a loan disbursement and that a refund for this purpose is an application against the borrower's loan account by the lender.

Section 682.402 (l)(1) Death, Disability, Closed School, False Certification and Bankruptcy Discharge

Comments: Many commenters agreed with the concept of the proposed regulations but requested that the regulations be revised to clarify that all payments should be returned to the sender, as is the case in the Direct Loan program, and that any notification of no further obligation to repay a loan discharged in bankruptcy or loan cancelled due to the borrower's total and permanent disability should be sent to the borrower. Many comments also recommended that the regulations be revised to provide that the lender return payments received only after the guaranty agency has paid the claim. The commenters were concerned that until the agency has reviewed and made a determination on the lender's claim, it is risky to refund payments.

Discussion: The Secretary agrees with the commenters that lenders and guaranty agencies should return payments on all discharged loans to the sender consistent with the handling of discharges in the Direct Loan program. However, the notification that there is no further obligation to repay the loan should always be directed to the borrower. The Secretary also agrees that payments received on discharged loans should not be returned until the discharge claim is paid by the guaranty agency.

Changes: The regulations have been revised to reflect the commenters' recommendations.

Section 682.412(c) Consequences of the Failure of a Borrower or Student To Establish Eligibility

Comments: Most commenters supported the Secretary's clarification to allow a borrower 30 days from the date a final demand letter is *mailed* by the lender to repay a loan amount that the borrower was ineligible to receive. One commenter disagreed with the proposal, stating that in a large agency it may be impossible to verify the date the letter is mailed unless the borrower retains the envelope with the post office cancellation stamp on it.

Discussion: The Secretary notes that lenders and guaranty agencies are currently required to maintain records establishing the dates certain collection notices are mailed (as required by 34 CFR 682.410(b)(1)(vi) and 682.411). Therefore, the Secretary believes that lenders will be able to determine when a letter is mailed for this purpose. The Secretary is concerned by the commenter's claim that large agencies are not tracking these dates and will evaluate whether reviews of lender operations in this area are necessary.

Changes: None.

Section 682.603 Certification by a Participating School in Connection With a Loan Application

Comments: All commenters agreed with the Secretary's proposal that in loan proration situations where a student is enrolled in a program of study with less than a full academic year remaining, the school will not be required to recalculate the amount of the loan if the number of hours for which an eligible student is enrolled changes after the school certifies the loan. One commenter suggested the insertion of the phrase ''or the student in the case of a PLUS loan'' in section 682.603(g) of the regulations because the commenter was concerned that in the case of the PLUS loan, the school would likely assess the dependent student any fee since they would be unable to assess the parent borrower.

Discussion: The Secretary agrees with the minor technical correction to section 682.603(g).

Change: The phrase recommended by the commenter has been inserted in section 682.603(g).

Section 682.605 Determining the Date of a Student's Withdrawal

Comments: All the commenters agreed with the Secretary's proposal to reinsert into the regulations the guidance on determining the date of a student's withdrawal in the case of a summer period of nonenrollment (''summer break'') that had been inadvertently deleted from the regulations. One commenter suggested the provision be revised to reference the fact that the summer break could include summer terms during which the school offers classes, but most students are generally not required to attend. One commenter recommended that the ''summer break'' approach be extended to other periods of nonenrollment during the regular academic year. Several commenters also pointed out that an earlier revision of the regulations in section 682.607(c), governing the school's timeframe for making a refund to a lender for a student who has withdrawn, could create, in the case of unofficial withdrawals, unintended potential liability for schools. The commenters recommended that the 60 days for a timely refund be based on the date the school determines that a student has unofficially withdrawn as it was formerly, not the date of withdrawal, which may have taken place weeks, if not months, before the school determines the student has dropped out. The commenters also suggested that section 682.607(c)(1) also be revised to clarify what constitutes timely payment to the lender under the ''summer break'' language of section 682.605.

Discussion: The Secretary does not agree that the approach to determining student withdrawal following a period of summer nonenrollment should be more broadly applied to other periods of nonenrollment during the academic

year. Since this information is used to convert a borrower to repayment in a timely manner, the Secretary believes it is not generally appropriate, except in connection with a summer period, to delay the school's determination of student withdrawal. The Secretary agrees that the summer period of nonenrollment can include summer terms during which the school offers classes, but most students are generally not expected to attend. The Secretary also agrees that the technical changes to section 682.607(c)(1) are needed for successful coordination between section 668.22(j) of the General Provisions regulations and sections 682.605 and .607 of the FFEL program regulations.

Change: None.

Assessment of Educational Impact

In the NPRM, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 682

Administrative practice and procedure, Colleges and universities, Education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

(Catalog of Federal Domestic Assistance Number 84.032, Federal Family Education Loan Program)

Dated: November 24, 1995.

Richard W. Riley,

Secretary of Education.

The Secretary amends Part 682 of Title 34 of the Code of Federal Regulations as follows:

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

1. The authority citation for Part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

§ 682.200 [Amended]

2. Section 682.200, paragraph (b) is amended by revising the definition of ''Satisfactory repayment arrangement'' by adding at the end of the paragraph (1), ''A borrower may only obtain the benefit of this paragraph with respect to renewed eligibility once.'' and by removing in paragraph (2) the reference to ''34 CFR 682.201(c)(iii)(C)'' and adding, in its place, ''34 CFR 682.201(c)(1)(iii)(C).''

3. Section 682.201 is amended by revising paragraph (c)(1)(iii)(C) to read as follows:

§ 682.201 Eligible borrowers.

* * * * *

(c) * * *

(1) * * *

(iii) * * *

(C) In a default status and has either made satisfactory repayment arrangements as defined in section 682.200(b)(2) or has agreed to repay the consolidation loan under the income-sensitive repayment plan described in § 682.209(a)(6)(viii).

* * * * *

4. Section 682.207 is amended by revising paragraph (c) introductory text; adding a new paragraph (c)(4) and revising paragraphs (d)(1) and (d)(2)(iii) to read as follows:

§ 682.207 Due diligence in disbursing a loan.

* * * * *

(c) A lender shall disburse any Stafford or PLUS loan as follows:

* * * * *

(4) If the first disbursement of a loan is scheduled to be made on the date of the second scheduled disbursement, the loan may be disbursed in a single installment. This date may be on the earlier of—

(i) The midpoint of the loan period for which the loan was made; or

(ii) A date which coincides with the beginning of the next scheduled term as provided for in the exception clause of paragraph (c)(3) of this section.

(d)(1) A lender may disburse loan proceeds after the student has ceased to be enrolled on at least a half-time basis or after the expiration date of the period of enrollment for which the loan was intended, in accordance with paragraphs (d) (2) and (3) of this section.

(2) * * *

(iii) In exceptional circumstances within 30 days after the period described in paragraph (d)(2)(ii) of this section. Between the 61st and up through the 90th day, a lender may presume that exceptional circumstances exist and make the disbursement. The school shall review the borrower's circumstances and either determine that exceptional circumstances exist or return the loan proceeds to the lender. The school shall document the exceptional circumstances in the student's file.

* * * * *

5. Section 682.209 is amended by revising paragraph (b) to read as follows:

§ 682.209 Repayment of a loan.

* * * * *

(b) *Payment application and prepayment.* (1) The lender may credit the entire payment amount first to any late charges accrued or collection costs and then to any outstanding interest and then to outstanding principal.

(2)(i) The borrower may prepay the whole or any part of a loan at any time without penalty.

(ii) If the prepayment amount equals or exceeds the monthly payment amount under the repayment schedule established for the loan, the lender shall apply the prepayment to future installments by advancing the next payment due date, unless the borrower requests otherwise. The lender must either inform the borrower in advance using a prominent statement in the borrower coupon book or billing statement that any additional full payment amounts submitted without instructions to the lender as to their handling will be applied to future scheduled payments with the borrower's next scheduled payment due date advanced consistent with the number of additional payments received, or provide a notification to the borrower after the payments are received informing the borrower that the payments have been so applied and the date of the borrower's next scheduled payment due date. Information related to next scheduled payment due date need not be provided to borrower's making such prepayments while in an in-school, grace, deferment, or forbearance period when payments are not due.

* * * * *

6. Section 682.210 is amended by revising paragraph (a)(8) to read as follows:

§ 682.210 Deferment.

(a) * * *

(8) A borrower whose loan is in default is not eligible for a deferment, unless the borrower has made payment arrangements acceptable to the lender prior to the payment of a default claim by a guaranty agency.

* * * * *

7. Section 682.211 is amended by adding a new paragraph (f)(9) to read as follows:

§ 682.211 Forbearance.

* * * * *

(f) * * *

(9) For a period of delinquency that may remain after a borrower ends a period of deferment or mandatory

forbearance until the next due date is established in accordance with § 682.209(a)(3)(ii)(B).

* * * * *

8. Section 682.401(b)(10)(vi)(B), is revised to read as follows:

§ 682.401 Basic program agreement.

* * * * *

(b) * * *

(10) * * *

(vi) * * *

(B) The premium or an appropriate prorated amount of the premium must be refunded by application to the borrower's account if—

(*1*) The loan or a portion of a loan is returned by the school to the lender;

(*2*) Within 120 days of disbursement, the loan is repaid in full;

(*3*) Within 120 days of disbursement, the loan check has not been negotiated; or

(*4*) Within 120 days of disbursement, the loan proceeds disbursed by electronic funds transfer or master check in accordance with § 682.207(b)(1)(ii) (B) and (C) have not been released from the restricted account maintained by the school.

* * * * *

9. Section 682.402 is amended by revising paragraph (c)(3) and by revising paragraphs (l)(1) and (l)(2) as set forth below; by amending paragraph (l)(3) by replacing the reference to ''(l)(2)'' with ''(l)(1).''

§ 682.402 Death, disability, closed school, false certification, and bankruptcy payments.

* * * * *

(c) * * *

(3) After being notified that the guaranty agency has paid a disability discharge claim, the lender shall return to the sender any payments received by the lender after the date that the borrower became totally and permanently disabled as certified by the physician. At the same time that the lender returns the payment, it shall notify the borrower that there is no obligation to repay a loan discharged on the basis of disability.

* * * * *

(l) * * *

(1) If the guaranty agency receives any payments from or on behalf of the borrower on or attributable to a loan that has been discharged in bankruptcy on which the Secretary previously paid a bankruptcy claim, the guaranty agency shall return 100 percent of these payments to the sender. The guaranty agency shall promptly return, to the sender, any payment on a cancelled or discharged loan made by the sender and received after the Secretary pays a closed school or false certification claim. At the same time that the agency returns the payment, it shall notify the borrower that there is no obligation to repay a loan discharged on the basis of death, disability, bankruptcy, false certification, or closing of the school.

(2) The guaranty agency shall remit to the Secretary all payments received from a tuition recovery fund, performance bond, or other third party with respect to a loan on which the Secretary previously paid a closed school or false certification claim.

* * * * *

10. Section 682.412 is amended by revising paragraph (c) to read as follows:

§ 682.412 Consequences of the failure of a borrower or student to establish eligibility.

* * * * *

(c) In the final demand letter transmitted under paragraph (a) of this section, the lender shall demand that within 30 days from the date the letter is mailed the borrower repay in full any principal amount for which the borrower is ineligible and any accrued interest, including interest and all special allowance paid by the Secretary.

* * * * *

11. Section 682.603 is amended by adding a new paragraph (f)(4) and by revising paragraph (g) to read as follows:

§ 682.603 Certification by a participating school in connection with a loan application.

* * * * *

(f) * * *

(4) In prorating a loan amount for a student enrolled in a program of study with less than a full academic year remaining, the school need not recalculate the amount of the loan if the number of hours for which an eligible student is enrolled changes after the school certifies the loan.

(g) A school may not assess the borrower, or the student in the case of a PLUS loan, a fee for the completion or certification of any FFEL Program form or information or for providing any information necessary for a student or parent to receive a loan under part B of the Act or any benefits associated with such a loan.

12. Section 682.604 is amended by removing paragraph (e)(3), redesignating paragraph (e)(4) as paragraph (e)(3), in redesignated paragraph (e)(3), in the introductory text, remove ''the lender or guaranty agency has not informed the school that it prohibits a late disbursement as permitted by § 682.207(d)(2)(i), and if''.

13. Section 682.605 is revised to read as follows:

§ 682.605 Determining the date of a student's withdrawal.

(a) Except in the case of a student who does not return for the next scheduled term following a summer break, which includes any summer term(s) in which classes are offered but students are not generally required to attend, a school shall follow the procedures in 34 CFR 668.22(j) for determining the student's date of withdrawal. In the case of a student who does not return from a summer break, the school must follow the procedures in 34 CFR 668.22(j) except that the school shall determine the student's withdrawal date no later than 30 days after the first day of the next scheduled term.

(b) The school shall use the withdrawal date determined under 34 CFR 668.22(j) for the purpose of reporting to the lender the date that the student has withdrawn from the school.

(c) For the purpose of a school's reporting to a lender, a student's withdrawal date is the month, day and year of the withdrawal date.

* * * * *

14. Section 682.607(c) is revised to read as follows:

§ 682.607 Payment of a refund to a lender.

* * * * *

(c) *Timely payment.* A school shall pay a refund that is due—

(1) Within 60 days of the date that the student officially withdraws, is expelled, or the institution determines that a student has unofficially withdrawn, as determined in accordance with 34 CFR 668.22(j) and § 682.605.

(2) In the case of a student who does not return to school at the expiration of an approved leave of absence under 34 CFR 668.22(j), within 30 days of the earlier of the date of expiration of the leave of absence or the date the student notifies the institution that the student will not be returning to the institution after the expiration of an approved leave of absence.

* * * * *

[FR Doc. 95–29179 Filed 11–30–95; 8:45 am]

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Federal Register

Friday
December 1, 1995

Part IV

Department of Education

34 CFR Part 668

Student Assistance General Provisions; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 668

RIN 1840–AC17

Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Final Regulations.

SUMMARY: The Secretary amends the Student Assistance General Provisions (General Provisions) regulations. The General Provisions regulations govern elements common to all of the Federal Student Financial Aid Programs authorized by Title IV of the Higher Education Act of 1965, as amended (HEA) (hereafter Title IV Programs). These amendments modify the Secretary's Federal Family Education Loan (FFEL) Program default reduction initiative and implement default prevention measures in the William D. Ford Federal Direct Loan (Direct Loan) Program. These regulations also streamline the limitation, suspension, and termination (L, S, and T) actions against an institution and prevent an institution from evading the consequences of a high FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate.

EFFECTIVE DATE: These regulations take effect July 1, 1996. However, affected parties do not have to comply with the information collection requirements in § 668.17 until the Department of Education publishes in the Federal Register the control number assigned by the Office of Management and Budget (OMB) to these information collection requirements. Publication of the control number notifies the public that OMB has approved these collection requirements under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas Laine, Program Specialist, Direct Loan Policy Group, Policy Development Division, U.S. Department of Education, 600 Independence Avenue, SW, room 3045, Regional Office Building 3, Washington, DC 20202–5400, telephone: (202) 708–9406. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: On September 21, 1995, the Secretary published a Notice of Proposed Rulemaking (NPRM) for part 668 in the Federal Register (60 FR 49178). The NPRM included a discussion of the major issues surrounding the proposed changes which will not be repeated here. The following list summarizes those issues and identifies the pages of the preamble to the NPRM on which a discussion of those changes can be found:

The Secretary proposed to define a measurement similar to the FFEL Program cohort default rate under the Direct Loan Program, a ''cohort rate'' for Direct Loans, and to establish institutional eligibility requirements, based on the repayment of Direct Loans by the institution's former students, that are similar to those in the FFEL Program (pages 49179–49181).

Further, the Secretary proposed that a Direct Loan institution with an excessive Direct Loan Program cohort rate or weighted average cohort rate be permitted to avoid a loss of participation by showing the existence of exceptional mitigating circumstances (pages 49182–49184).

The Secretary proposed to modify the cohort default rate appeal process and the exceptional mitigating circumstances under which an institution may appeal its statutory loss of eligibility to participate in the FFEL Program on the basis of its cohort default rate (page 49184).

Finally, the Secretary proposed to streamline the current L, S, and T procedures and to limit the grounds on which a hearing officer may decide when an L, S, and T action is unwarranted (pages 49182–49185).

The Secretary has combined in a separate new paragraph the provisions that were contained in § 668.17(d)(1)(iii) and (iv), (e) (5) through (11), and (f)(5) through (10). These paragraphs established an institution's FFEL Program cohort default rate, Direct Loan Program cohort rate, and weighted average cohort rate, respectively, when an institution changes status during a fiscal year. A change of status occurs, for example, when an institution merges with another institution or a branch of an institution joins a free-standing institution. These provisions have been consolidated into a new paragraph (g).

Substantive Changes to the NPRM

The following discussion reflects substantive changes made to the NPRM in the final regulations. The provisions are discussed in the order in which they appear in the proposed rules.

Section 668.17 Default Reduction and Prevention Measures

Participation Rate Index Formula

A change has been made to the formula used to determine the percentage of an institution's students who borrow under the FFEL or Direct Loan programs for calculating the participation rate index under § 668.17(c)(1)(ii)(A). The proposed rules provided that an institution would base the percentage of its students that borrow under the FFEL or Direct Loan programs on the number of students enrolled at least half-time at the institution.

The final rules have been changed to provide that an institution must base the percentage of its students that borrow under the FFEL or Direct Loan programs on the number of its ''regular students'' enrolled at least half-time. A ''regular student'' is a student who is enrolled or accepted for enrollment at an institution for the purpose of obtaining a degree, certificate, or other recognized educational credential offered by that institution. This definition is contained in 34 CFR 600.2.

Economically Disadvantaged Rate Formula

A change has been made to the formula used to determine the percentage of an institution's students who come from economically disadvantaged backgrounds under § 668.17(c)(1)(ii)(B). The proposed rules provided that the percentage of an institution's students coming from economically disadvantaged backgrounds would be based on all of the institution's students.

The final rules have been changed to provide that the percentage of an institution's students that come from disadvantaged economic backgrounds must be based on the institution's regular students.

Placement Rate Formula

A number of changes have been made to the formula used to calculate an institution's placement rate under § 668.17(c)(1)(ii)(B)(*2*). The formula contained in the proposed rules considered a former student who was initially enrolled full-time as successfully placed if, on the date the institution submits the appeal, the former student:

(1) is employed, or had been employed for at least 13 weeks, following his or her last day of attendance at the institution; or

(2) is enrolled or was enrolled for at least 13 weeks in a higher level program at another institution for which the institution's program provided substantial preparation.

The placement rate calculation has been revised to provide that: (a) only former regular students who were initially enrolled at least half-time be

considered in the placement rate; and (b) a student will be considered as successfully placed by the institution if the former student:

(1) has been employed in an occupation for which the institution's program provided training for at least 13 weeks within the 12-month period after the date of the student's last day of attendance; or

(2) is employed in an occupation for which the institution's program provided training on the day after 12 months following the date of the student's last day of attendance.

The final regulations provide that a student who is still enrolled in the institution on the day after 12 months after the date of the student's last day of attendance and is making satisfactory academic progress in the program in which he or she was initially scheduled to complete is excluded from the cohort of students used to determine the institution's placement rate. The proposed rules would have included such students in the placement rate.

Further, under the final regulations, a student or former student may not be considered successfully placed if the institution is the student's or former student's employer.

Finally, the final regulations provide that, in calculating the placement rate formula under § 668.17(c)(2), a student who is initially enrolled at least half-time, but less than full-time, will be considered to be scheduled to complete his or her program during the amount of time normally it would take that student to complete the program based on his or her initial enrollment.

Completion Rate Formula

A change has been made to the formula used to calculate an institution's completion rate under § 668.17(c)(1)(ii)(B)(*1*). The formula contained in the proposed rules would have based the institution's completion rate on all initially enrolled full-time students. The final rules have been amended to base the institution's completion rate on all initially enrolled full-time regular students.

Submission of Appeal Information

A change has been made to § 668.17(c)(1)(ii) to provide that an appeal on the basis of exceptional mitigating circumstances must be submitted to the Secretary in a format prescribed by the Secretary and must include data elements requested by the Secretary. The proposed rules identified specific detailed information an institution would have to provide in an appeal. The Secretary has removed this detailed information from the final regulations. Instead, the final regulations provide that any information an institution submits regarding an appeal must:

- be submitted in a format prescribed by the Secretary, and
- include information the Secretary has determined is necessary to evaluate the appeal.

The Secretary expects that institutions will be provided with the format in which the appeal must be submitted and the data elements that must be included when the institution is notified of its cohort default rate data in accordance with § 668.17(i).

The information that the Secretary may require in an appeal may include, but is not necessarily limited to, information relating to student enrollment, loan periods, expected family contributions (EFC), adjusted gross incomes, withdrawal dates, graduation dates, transfers, job placement, employer information, job titles, and dates employed. This information is the same information currently required of institutions submitting appeals. Institutions will likely be familiar with these data items since the Official Default Rate Guide (formerly Enclosure B), which is provided to institutions along with their cohort default rates, lists these data elements. The Secretary does not expect these items to change substantially.

Section 668.17(c)(6) of the final regulations has been revised to require the chief executive officer of an institution to certify, under penalty of perjury, that the appeal information is true and correct.

Completion and Placement Rate Appeals

In § 668.17(c)(1)(ii)(B), a change has been made to an institution's right to appeal using the exceptional mitigating circumstances appeal based on both the percentage of an institution's students that come from disadvantaged economic backgrounds and the institution's completion rate or placement rate. The proposed rules limited the exceptional mitigating circumstance appeal that included the completion rate to public and private nonprofit institutions, and limited the exceptional mitigating circumstances appeal that included the placement rate to proprietary institutions.

The final regulations have been revised to require degree-granting proprietary institutions as well as public or private nonprofit degree-granting institutions, to appeal using the completion rate component, whereas nondegree-granting institutions, public, private nonprofit, or proprietary, may only appeal based on the placement rate component.

Guaranty Agency Verification of Data

The final regulations have been changed in § 668.17(c)(8) to provide that an institution will not lose its eligibility to participate in the FFEL or Direct Loan programs during the appeal process if a guaranty agency does not respond in a timely manner to the institution's timely request to verify data included in the institution's FFEL Program cohort default rate that the institution believes is inaccurate. The proposed rules had provided that an institution would lose its eligibility to continue to participate in the appeal process if it did not submit all of its appeal information to the Secretary within 30 days following notification of the loss of eligibility.

Section 668.17(c)(1) now requires an institution that appeals on the basis of inaccurate data to inform the Secretary that it is appealing on this basis at the same time it submits its request to verify its FFEL Program cohort default rate data to the guaranty agency. Further, an institution must provide its verified data to the Secretary within five working days after it receives that data from the guaranty agency.

Independent Audit of Appeals

The final regulations have been changed in § 668.17(c)(7) to provide that an institution choosing to appeal its loss of eligibility on the basis of exceptional mitigating circumstances must provide a statement from an independent auditor that verifies the information included in the appeal within 60 days following the institution's notification of the loss of eligibility. The proposed rules provided that this information be submitted by the 30th day following notification of the loss of eligibility. The final rules continue to require that the rest of the appeal be submitted by that 30th day.

Further, the regulations have been amended to provide more specific guidance concerning the methodology that must be used by an independent auditor to determine if the information contained in the appeal is correct.

Data Period

The final regulations have been changed in § 668.17(c)(1)(ii)(B) to clarify that the 12-month period used to determine the percentage of the institution's student body that comes from disadvantaged economic backgrounds must be the same 12-month period the institution uses to determine its placement rate or completion rate. The proposed rules were read to allow the institution the option to choose a different 12-month

period for the placement rate or completion rate than the one used for the percentage of the institution's student body that comes from disadvantaged economic backgrounds.

Direct Loan Program Cohort Rate and Weighted Average Cohort Rate

The final regulations have been changed in §§ 668.17(e)(1)(ii) and 668.17(f)(1)(ii) to provide that a Direct Loan borrower who is in the income-contingent repayment (ICR) plan on his or her loan and, for 270 days, had scheduled monthly payments that are less than $15 and less than the interest that is accruing on the loan each month will be included in an institution's Direct Loan Program cohort rate or weighted average cohort rate. Under the proposed rules, such a borrower would be included in the Direct Loan Program cohort rate or weighted average cohort rate only if such conditions existed at the end of the fiscal year following the fiscal year the borrower entered repayment on the loan.

L, S, and T

The final regulations have been revised in § 668.17(a)(5) so that the Secretary will cease any L, S, and T action taken against an institution solely on the basis of its FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate if the institution successfully appeals under the exceptional mitigating circumstances. The proposed rules provided that the Secretary would withdraw an L, S, and T action against an institution's participation only in the FFEL Program if the institution successfully appeals under exceptional mitigating circumstances.

The final regulations have been revised in § 668.17(c)(1)(ii)(A) to provide that an institution with an FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate that exceeds 40 percent will not be eligible to appeal a loss of eligibility to participate in the FFEL or Direct Loan programs under the participation rate index.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 150 parties submitted comments on the proposed regulations. An analysis of the comments and the changes follows. Major issues are grouped according to subject, with references to the appropriate sections of the regulation. Technical and other minor changes, and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority, generally are not addressed.

General

Comments: Many commenters argued that the HEA requires that these regulations be subject to a negotiated rulemaking process.

Discussion: The Secretary does not agree with the commenters. Section 457 of the HEA requires the Secretary, to the extent practicable, to promulgate regulations that implement the provisions of Part D of the HEA (which authorizes the Direct Loan Program) through a negotiated rulemaking process. Although these rules will affect Direct Loan institutions, these regulations do not directly implement any provisions contained in Part D of the HEA. The HEA does not require the Secretary to institute a negotiated rulemaking process for every regulation that has an affect on the Direct Loan Program. Moreover, the HEA does not require negotiated rulemaking for amendments to existing regulations. In any case, it was not practicable to conduct negotiated rulemaking for these amendments.

Changes: None.

Comments: Many commenters believed that the comment period for this proposed rule was too short, especially due to the fact that the Secretary published six proposed rules during the same week. The commenters indicated that it would be more appropriate for the Secretary to provide a longer comment period to allow them to provide more complete responses to the proposed rules.

Discussion: In the six sets of proposed rules mentioned above, the Secretary proposed numerous improvements and necessary changes to the Student Financial Assistance Programs. The ''Master Calendar'' provisions contained in section 482 of the HEA require that regulations be published in final form by December 1 prior to the start of the award year for which they will become effective. Because of the importance of implementing these changes and improvements for the award year beginning July 1, 1996, the Secretary established a comment period that allows publication of these final regulations by December 1, 1995, as required by the ''Master Calendar'' timeframe. The Secretary always endeavors to provide as long a comment period as possible.

Changes: None.

Comment: A number of commenters representing proprietary institutions questioned the Secretary's decision to distinguish between non-degree-granting proprietary and public or private nonprofit institutions for purposes of calculating Direct Loan Program cohort rates and weighted average cohort rates. These commenters argued that there was no basis for this distinction because proprietary institutions offer the same programs as public institutions (such as community colleges), which offer job training in a broader educational context. These commenters criticized the proposal to include in the cohort default rate calculation for proprietary non-degree granting institutions, Direct Loans repaid through an ICR plan under which the borrower makes payments less than $15 a month and that payment results in negative amortization. Other commenters representing other types of educational institutions supported the distinctions included in the draft regulations.

Discussion: The Secretary believes it is appropriate to distinguish between different types of institutions in calculating cohort default rates. First, numerous reports by congressional committees (including the Senate's Permanent Subcommittee on Investigations) and the General Accounting Office, as well as the Department's own reviews of individual institutions, have concluded that many proprietary institutions (particularly non-degree-granting institutions) use promises of job training and placement to entice students to enroll and then the institutions fail to provide worthwhile services. Second, those commenters who urged the Secretary not to distinguish between different types of institutions are asking the Secretary to ignore the overwhelming evidence that student loan default rates (and the associated costs to students and taxpayers) are much higher in the proprietary sector than in any other sector of higher education. For example, among the institutions for whom cohort default rates were calculated for Fiscal Year 1992 (which are the most recent final rates available), 444 institutions were subject to loss of FFEL eligibility for the first time based on default rates over 25 percent for the three most recent fiscal years. Of those institutions, 396 (89 percent) were proprietary institutions. Similarly, of the 205 institutions whose loss of eligibility was extended based on excessive default rates, 186 (91 percent) were proprietary; and of the 376 institutions subject to limitation, suspension or termination from participation in all Title IV programs based on excessive default rates, 324 (86 percent) were proprietary. Propreitary institutions represented 44 percent of all institutions for whom

cohort default rates were calculated based on students and former students entering repayment on FFEL Program loans in fiscal year 1992.

Further, the Fiscal Year 1992 data show that proprietary institutions had default rates of 30.2 percent, twice the national average for all institutions, and that public two-year institutions had rates of 14.5 percent. These data do not support the commenters' arguments that public institutions that offer vocational programs similar to those offered by many proprietary institutions should be treated the same as proprietaries for purposes of calculating Direct Loan Program cohort rates or weighted average cohort rates.

In analyzing this information, the Secretary has concluded that non-degree-granting proprietary institutions present a particular risk to students and taxpayers. The Secretary believes that these institutions would have a particular incentive to encourage their student borrowers to request an ICR plan in an attempt to mask their failure to provide worthwhile training, which results in employment that only allows a borrower to make minimal loan payments while falling further behind on the loan through negative amortization.

Changes: None.

Comments: Many commenters responded to the Secretary's invitation to comment regarding whether the Secretary should implement measures to prevent an institution from evading the proposed rule under which a Direct Loan Program cohort rate and weighted average cohort rate are calculated for non-degree-granting proprietary institutions using an ICR component if such an institution switched to a nonprofit status. The commenters felt that the current Internal Revenue Service requirements to establish nonprofit status are sufficiently rigorous, costly, and lengthy so as to prevent an institution from switching from profit to nonprofit status to avoid the consequences of a high default rate. Commenters argued that this type of decision would more likely be made for business reasons rather than for the purpose of evading regulatory requirements.

Discussion: The Secretary has carefully evaluated the comments received on this issue and believes that further consideration is warranted prior to implementing any regulatory or procedural changes that would prevent an institution from switching from profit to nonprofit status to avoid the consequences of a high default rate.

Changes: None.

Comments: Many commenters responded to the Secretary's request for public comment regarding adding a measure to the default rate definition for borrowers for whom payment has been deferred for an extended period of time under the economic hardship or unemployment deferments, or a forbearance. The commenters argued that including borrowers whose payments had been deferred for an extended period of time in the default rate definition results in ''punishing'' an institution for informing students of their rights to defer or forbear payments in certain circumstances. Further, some commenters argued that the benefits to students of avoiding defaults through the use of deferments and forbearance would outweigh the potential for abuse by unscrupulous institutions that might try to artificially lower their default rates.

Discussion: The Secretary agrees with the commenters that the use of deferments and forbearances benefit students by preventing defaults. The Secretary believes that this issue warrants further consideration prior to implementing any changes. The Secretary will continue to monitor the use of deferments and forbearances in both the Direct Loan and FFEL Programs to determine if further action is needed.

Changes: None.

Comments: Many commenters suggested that if the Secretary was planning to provide Direct Loan Program institutions with tools, such as reports on delinquent borrowers, access to borrower information on a toll-free servicing telephone number, and free loan counseling materials for entrance and exit counseling, to help it reduce its default rate, similar tools should be provided to the FFEL Program institutions. The commenters stated that the Secretary has obligations to help reduce default rates in the FFEL Program.

Discussion: The Secretary assures these commenters that he is equally concerned about reducing defaults in both the FFEL and Direct Loan programs and agrees that it is in the best interests of institutions, borrowers, and taxpayers to help reduce the incidence of student loan defaults by providing institutions with default prevention tools. The HEA and the FFEL Program regulations provide FFEL institutions with numerous tools to reduce their default rates. The Secretary, guaranty agencies, and various institutional associations have offered institutions training opportunities and information designed to reduce FFEL Program cohort default rates. Direct Loan institutions will be treated similarly. Some commenters suggested specific measures that could be taken to assist institutions in reducing defaults. The Secretary will carefully consider these suggestions to enhance default prevention techniques in both the FFEL and Direct Loan programs.

Changes: None.

Section 668.17(a)(1)

Comments: Many commenters were concerned that the language in § 668.17(a)(1) implies that an institution will not be notified of its FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate if that rate is equal to or less than 20 percent. The commenters suggested that all institutions should be notified of their FFEL Program cohort default rates, Direct Loan Program cohort rates, or weighted average cohort rates.

Discussion: The Secretary notes that this language is in current regulations and was originally included in an NPRM published on February 28, 1994 (59 FR 9526, 9572) and that no commenters raised questions about this provision. The Secretary has traditionally provided default rate notices to all institutions and all institutions receive their default rate prior to publication under 34 CFR 668.17(j)(1) (ii) and (iii). However, it is most important that institutions with rates over 20 percent receive notice of their final rates since it is these institutions that may face sanctions based on their rate. The Secretary originally provided that only institutions with rates over 20 percent would be guaranteed to receive a notice because of the possibility that future budget reductions would require cuts in this area. The Secretary agrees with the commenters that, whenever feasible, all institutions should be notified of their FFEL Program cohort default rates, Direct Loan Program cohort rates, or weighted average cohort rates. The Secretary plans to notify all institutions of their rates.

Changes: None.

Section 668.17(a)(2)

Comments: Many commenters suggested that the Secretary should not take L, S, and T action against an institution that is appealing its loss of eligibility to participate in the FFEL or Direct Loan programs under exceptional mitigating circumstances until a final decision is made on the appeal. The commenters reasoned that it is unfair to eliminate an institution from participating in all of the Title IV programs before the institution has had a chance to prove to the Secretary that exceptional mitigating circumstances

justify the institution's continued participation in the FFEL or Direct Loan programs. Other institutions argued that it would be unfair to take L, S, and T action against an institution before the institution has had a chance to demonstrate to the Secretary that its rate is not accurate and that a recalculated rate would be equal to or less than 40 percent.

Other commenters suggested that the Secretary should not initiate an L, S, and T action against an institution that has few participants in the FFEL or Direct Loan programs.

Discussion: First, the Secretary notes that the initiation of an L, S, and T action is discretionary. The Secretary does not plan to initiate such action against an institution unless the FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate on which the action is based is final. Moreover, institutions are further protected since the hearing officer will find that the action is not warranted if the rate is not final. The Secretary believes that these provisions will ensure that an institution will not be harmed from action taken against it on the basis of a cohort default rate that is not final.

The Secretary does not agree with the commenters that an institution should be exempt from L, S, and T action until an institution's appeal under exceptional mitigating circumstances is decided. However, the Secretary does agree with the commenters that if an institution successfully appeals its loss of eligibility based on its FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate on the basis of exceptional mitigating circumstances, any L, S, and T action taken solely on the basis of that cohort rate should be withdrawn.

With respect to the commenter's concerns that an institution with few participants in the FFEL and Direct Loan programs should be exempt from L, S, and T action, the Secretary would like to assure the commenters that he does not intend to take L, S, and T action against an institution if that institution has less than five students borrowing under the FFEL and Direct Loan programs.

Changes: The final regulations have been revised in § 668.17(a)(5) so that the Secretary will cease any L, S, and T action taken against an institution solely on the basis of its FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate if the institution successfully appeals under the exceptional mitigating circumstances.

Comments: Many commenters believed that the Secretary should take L, S, and T action against an institution's participation in the Direct Loan Program if that institution has FFEL Program cohort default rates that are equal to or exceed 25 percent for three consecutive fiscal years. The commenters believed that this change is needed for comparability in the FFEL and Direct Loan programs, because the Secretary is proposing to take L, S, and T action against an institution's participation in the FFEL Program if it has a Direct Loan Program cohort rate or weighted average cohort rate that equals or exceeds 25 percent for three consecutive fiscal years.

Discussion: The Secretary does not agree with the commenters that a change is needed for purposes of comparability between the FFEL and Direct Loan programs. The statute provides the Secretary the authority to establish institutional participation requirements for the Direct Loan Program. Under the current Direct Loan Program regulations in 34 CFR 685.400, an institution is not eligible to continue to participate in the Direct Loan Program if it has an FFEL Program cohort default rate that equals or exceeds 25 percent for three consecutive fiscal years. The Secretary does not have the authority to establish similar institutional participation requirements for FFEL Program institutions. Therefore, the Secretary believes that the regulations already address the commenter's concerns.

Changes: None.

Section 668.17(c)

Comments: Many commenters suggested that the 30-day timeframe under which an institution may appeal a loss of eligibility under inaccurate data or exceptional mitigating circumstances be extended. The commenters argued that 30 days did not provide enough time to compile the data needed to support an appeal under exceptional mitigating circumstances, nor did it provide a guaranty agency enough time to verify any inaccurate data in the institution's rate. Many commenters also suggested that the proposed requirement to have an appeal under exceptional mitigating circumstances verified by an independent auditor would not be possible within the 30-day timeframe.

Discussion: The 30-day timeframe to appeal under exceptional mitigating circumstances or inaccurate data is mandated by section 435(a)(2) of the HEA. The Secretary does not have the authority to extend this timeframe. The Secretary believes that an institution and a guaranty agency should, in most cases, be able to comply with the 30-day timeframe, particularly in light of the draft cohort default rate review process.

However, the Secretary realizes that there may be exceptional cases in which a guaranty agency fails to respond to an institution in a timely manner. Therefore, the Secretary has decided to retain the current regulations and permit an institution to continue to participate in the FFEL Program during the appeal process when a guaranty agency's failure to respond to an institution's timely request results in the appeal being submitted later than 30-day deadline, provided the institution notifies the Secretary that it is appealing its FFEL Program cohort default rate data at the same time it requests verification of its cohort default rate data from the relevant guaranty agency(ies). An institution will be required to submit its verified data to the Secretary within five working days from the date it receives the verified data from such guaranty agency(ies).

Based on the comments received, the Secretary appreciates that an institution may have difficulty obtaining an independent auditor's verification of the information that must be submitted in the appeal within the 30-day timeframe. However, the Secretary believes that this verification is necessary. The Secretary has been persuaded that a 60-day timeframe would be more appropriate for submission of the independent auditor's verification. The institution must submit the appeal data within 30 days; only the auditor's attestation may be submitted after the 30-day deadline.

Changes: The final regulations have been amended in § 668.17(c)(8) to provide that an institution may continue to participate in the FFEL Program if that institution fails to submit an appeal based on inaccurate data by the 30-day deadline if that failure is the result of a guaranty agency's failure to respond to the institution's timely request for verification of its FFEL Program cohort default rate data. The final regulations have also been amended in § 668.17(c)(7) to provide that the independent auditor's verification of the information in the appeal must be submitted to the Secretary within 60 days after the institution is notified that it will lose its eligibility to participate in the FFEL or Direct Loan programs.

Comments: Many commenters suggested that an independent auditor should be able to verify the accuracy of the information submitted in an exceptional mitigating circumstances appeal based on a sample. The commenters indicated that this would

greatly assist them in meeting the appeal deadlines, as well as reduce the cost of an appeal.

Discussion: The Secretary believes that the verification process should be the same for all institutions. Further, the Secretary believes that requiring an independent auditor's statement on management's assertions in accordance with the Standards for Attestation Engagement #3 would ensure consistency and allow a sample as an acceptable means for an independent auditor to verify the information submitted in an appeal based on exceptional mitigating circumstances.

Changes: The final regulations have been amended in § 668.17(c)(7) to provide that an independent auditor must provide a statement on management's assertions that the information contained in the appeal is complete, accurate, and determined in accordance with the requirements of § 668.17. The examination level engagement must be performed in accordance with the Statement on Standards for Attestation Engagements #3. This authorizes an independent auditor to do whatever testing of management's assertions that the auditor feels is necessary. Sampling may be an acceptable technique for an auditor to use under this situation.

Comments: Some commenters suggested that the chief executive officer of an institution be required to certify under penalty of perjury that the information submitted in an appeal is true and correct.

Discussion: The Secretary agrees with the commenters. The Secretary believes that this additional certification is appropriate to help ensure that the information submitted in an appeal is correct. The Secretary's experience in reviewing such appeals based on exceptional mitigating circumstances has demonstrated that some institutions have submitted false or erroneous information in their appeals.

Changes: The final regulations have been changed in § 668.17(c)(6) to provide that an institution's chief executive officer must certify under penalty of perjury that the information included in the appeal is true and correct.

Section 668.17(c)(1)(ii)(A)

Comments: Many commenters suggested that the institution's participation rate index and the determination of the percent of students coming from disadvantaged economic backgrounds should be calculated based on the number of regular students at the institution rather than all the students enrolled at the institution. The commenters argued that, for purposes of the economically disadvantaged rate, it would be difficult to determine if a student who was not a regular student had an EFC of zero if that student did not apply for a Pell Grant or if the student was not eligible for a Pell Grant. Further, many of the commenters indicated that they do not maintain data relating to students who are not regular students, therefore, it would be difficult to provide data regarding such students in an appeal.

Discussion: The Secretary is willing to accommodate the commenters' concerns to the fullest extent possible and to minimize any burden associated with preparing an exceptional mitigating circumstances appeal when these changes do not undermine the integrity of the appeal process. The Secretary understands that it may be problematic for some institutions to obtain EFC data or other data relevant to an appeal for a student who is not a regular student. The Secretary believes that using data for regular students will provide an accurate assessment of an institution's students with economically disadvantaged backgrounds.

Also, the Secretary believes that it is appropriate to base the institution's participation rate index on the percentage of the institution's students who are eligible for loans and who actually borrow under the FFEL or Direct Loan programs. The Secretary agrees that the inclusion of students who are not eligible for loans would not contribute to a meaningful indicator of the percentage of an institution's students who participate in the loan programs.

Changes: The Secretary has amended the formula in § 668.17(c)(1)(ii)(A) for the participation rate index to base the index on regular students enrolled at least half-time at the institution. The Secretary has also amended the formula in § 668.17(c)(1)(ii)(B) for determining the percent of an institution's students that come from economically disadvantaged backgrounds to be based on regular students at the institution.

Comments: Many commenters objected to the Secretary's statement in the preamble of the proposed rule that only institutions with FFEL Program cohort default rates, Direct Loan Program cohort rates, or weighted average cohort rates equal to or less than 40 percent would be eligible to appeal under the participation rate index. The commenters argued that an institution with a high default rate but an extremely low percentage of students that borrow under the FFEL or Direct Loan programs was not abusing the loan programs. Commenters also argued that the establishment of the participation rate index would only help institutions with exceedingly low participation rates and, thus, would help very few institutions. For example, one commenter pointed out that an institution could have a 50 percent FFEL Program cohort default rate if, over three consecutive fiscal years, only two borrowers entered repayment and one of those borrowers defaulted.

Discussion: The Secretary does not agree with the commenters that an institution with an FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate, that exceeds 40 percent, but a participation rate index that is equal to or less than 0.0375 has such a low percentage of borrowers that it is likely the institution is not abusing the loan programs. An institution with a large number of students and a low student loan participation rate could still have a significant number of defaulters if the participation rate index were used without the 40 percent cap. For example, an institution with 10,000 students could have a low participation rate of 7 percent, which would equal 700 students. If 50 percent of these students defaulted in a given cohort that would represent 350 students. This would result in a participation rate index of 0.035. The Secretary considers this number of students to be significant. Further, given that the lowest annual loan limit is $2,625, 325 student defaults could represent hundreds of thousands of dollars in loss to the Federal government and U.S. taxpayers. The Secretary believes that it would represent an unreasonable risk to students and Federal taxpayers to permit such an institution to remain eligible to participate in the FFEL or Direct Loan programs.

Changes: The Secretary has added a provision to the final regulations in § 668.17(c)(1)(ii)(A) that prohibits an institution from appealing a loss of eligibility to participate in the FFEL or Direct Loan programs under the participation rate index criterion if that institution has an FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate, that exceeds 40 percent.

Section 668.17(c)(1)(ii)(B)

Comments: Many commenters argued that the 70 percent threshold of an institution's students coming from disadvantaged economic backgrounds is too high. Many commenters cited a study that demonstrated that only 21.6 percent of postsecondary students received Pell Grants. The commenters believed that due to such a low national

percentage of postsecondary students receiving Pell Grants, the 70 percent threshold would be too high for an institution to meet.

Many commenters also argued that the 70 percent completion rate threshold component of an exceptional mitigating circumstances appeal is too high. The commenters argued that it is inappropriate for the Secretary to require institutions with longer programs to meet a completion rate threshold that is required by the HEA for a program of study that is less than 600 hours in length. The commenters pointed out that institutions offering longer programs of study most likely would not meet this standard.

Discussion: The Secretary does not agree with the commenters that either of these thresholds is too high. The study referenced by the commenters is based on the percentage of Pell Grant recipients across all postsecondary institutions. This study does not appear to be relevant to institutions that generally have high cohort default rates. Based on the Secretary's experience in processing exceptional mitigating circumstances appeals, many institutions will not have any difficulty meeting this threshold. Almost every institution that has applied under the exceptional mitigating circumstances provisions has met the requirement that two-thirds of its students are economically disadvantaged. Further, previous appeals show that the postsecondary institutions most likely to have high FFEL Program cohort default rates are institutions that have higher percentages of low-income students than those institutions with low default rates. Because the Secretary's experience in reviewing exceptional mitigating circumstances appeals has proven that many institutions can meet this standard, the Secretary does not believe that a 70 percent threshold is too high.

In regard to the completion rate threshold, the 70 percent completion rate standard that a short-term program must meet in order to participate in the FFEL Program is a minimum eligibility standard. This standard is unrelated to the institution's FFEL Program cohort default rate. The Secretary has chosen a 70 percent completion rate threshold as a component of an exceptional mitigating circumstance because he believes that an institution that has a high FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate must be able to demonstrate that it is properly serving a large majority of its students, as evidenced by their completion of their academic program, despite having consecutively high default rates. The Secretary reminds the commenters that the purpose of exceptional mitigating circumstances is to allow institutions to continue to participate in the loan programs even though more than one out of every four students who receive loans have defaulted and that has occurred for at least three years. To protect both students and taxpayers, only institutions that can truly demonstrate unusual circumstances should be allowed to continue to participate in the loan programs.

Changes: None.

Comments: A number of commenters suggested that the completion rate component of the exceptional mitigating circumstances be revised to mirror the proposed Student-Right-to-Know regulations regarding completion rates. These commenters urged the Secretary to issue regulations with as much consistency as possible.

Discussion: The Secretary is committed to reducing regulatory burden and providing consistency in program requirements wherever possible. The Secretary does not believe that using completion rates as calculated under the Student-Right-to-Know provisions is appropriate at this time for establishing exceptional mitigating circumstances for institutions with high cohort default rates. This is because the requirements of Student-Right-to-Know include certain statutory exclusions, specific timeframes, and definitions of which students are included in the calculation. Further, the Student-Right-to-Know provisions offer institutions flexibility in determining their completion rates, which are not appropriate for an institution that is appealing its loss of eligibility due to high FFEL Program cohort default rates, Direct Loan Program cohort rates, or weighted average cohort rates.

Changes: None.

Comments: Many commenters suggested that the completion rate and placement rate formulas be amended to include only students who were regular students. The commenters agreed that an institution would be unfairly penalized if its completion or placement rate included students who initially enrolled in the institution without the intention of obtaining a degree or certificate.

Discussion: After careful consideration of the many comments received on this issue, the Secretary has determined that an institution's completion or placement rate should not include students who are not enrolled for the purpose of obtaining a degree or certificate. The Secretary believes that an institution should not be held responsible for the completion or placement of a student who did not enroll in the institution with the intent to complete a degree or certificate program.

Change: The completion rate and placement rate formulas in section 668.17(c)(1)(ii)(B) (*1*) and (*2*) have been changed. The final regulations provide that the placement and completion rates will be based on the percentage of an institution's students who initially enrolled as regular students.

Comments: Many commenters suggested that the placement rate should only include students who have actually completed their training at the institution. These commenters do not think it is reasonable for an institution to be responsible for the placement of students who do not complete their educational programs. Other commenters suggested that the Secretary should provide a five percent allowance in the placement rate for former students at the institution who are not able to work due to an injury or pregnancy.

Many commenters also suggested that the Secretary should change the placement rate calculation to permit a student who has obtained employment in an occupation for which the training is intended while the student is still enrolled in the institution's program to be considered successfully placed. The commenters indicated that this often occurs with part-time students who work and go to school at the same time. The commenters do not believe that it is fair to exclude such a student from the placement rate calculation.

Discussion: The Secretary expects that a high percentage of an institution's students will receive a job related to the training or educational program undertaken at the institution. The formula under which the placement rate is calculated provides that an institution will meet this standard if only 50 percent of the institution's students receive employment in an occupation that is related to the training they receive. For an institution that is appealing a loss of eligibility to participate in the FFEL or Direct Loan programs on the basis that it places an exceptionally high percentage of its students, the Secretary believes that a 50 percent placement rate is reasonable.

Further, the Secretary does not agree that only students who complete their programs should be included in the placement rate calculation. The Secretary believes that the placement rate formula as written in the proposed rule does not need to provide any extra allowance for an institution's former

students who do not complete the program or are unable to work.

However, the Secretary agrees with the commenters who suggested that a student who obtains employment in an occupation related to the training he or she is receiving while enrolled at the institution should not be excluded from the former students an institution may consider as successfully placed. The Secretary realizes that students are often able to obtain employment in a field for which they are receiving training while they are still enrolled. This provision was included in the NPRM. However, an institution may not consider a student as successfully placed if the institution is the student's or former student's employer.

Changes: None.

Comments: None.

Discussion: In reviewing the comments received on the placement rate calculation, the Secretary concluded that it is unnecessary to include a student who transferred to a higher level program of study as successfully placed. The Secretary believes that this is unnecessary because the institutions that may appeal under this criteria will not be offering programs that prepare its students for higher level programs.

The Secretary further believes that in order to demonstrate the effectiveness of the training an institution provides, with respect to students obtaining employment, the Secretary has limited the timeframe during which a student or former student must have received employment, or have been employed for at least 13 weeks, in order to be considered successfully placed. Under the proposed rules, a former student would be considered as successfully placed if that student had been employed for at least 13 weeks between his or her last date of attendance and the date the institution submits the appeal, which could generally occur at least two-years after the student left the institution.

Changes: The Secretary has removed from the final regulations a provision contained in § 668.17(c)(1)(ii)(B)(*2*) of the proposed rule that provided that a former student of an institution may be considered successfully placed if that former student transfers to a higher level program at another institution. The final regulations provide that a student or former student may be considered as successfully placed only if the student or former student was employed in an occupation related to the training for at least 13 weeks before, or was employed on, the day after 12 months following the date of the student's last day of attendance.

Comments: Many commenters also suggested that students enrolled less than full-time should not be counted in the placement rate calculation. The commenters suggested that students enrolled less than full-time are less likely to complete their programs than full-time students.

Discussion: The Secretary does not agree with the commenters that students enrolled less than full-time should be excluded from the institution's placement rate. The Secretary believes that the inclusion of regular students who are enrolled on at least a half-time basis will provide the most complete portrait of the success of an institution's programs. The final regulations have been changed to provide that the placement rate calculation will be based on an institution's regular students who are initially enrolled on at least a half-time basis. This change is addressed in a previous comment.

Changes: None

Comments: Many commenters suggested that the Secretary should clarify in the regulations what constitutes a week of employment. The commenters indicated that the requirement that a student be employed for 13 weeks was too vague. The commenters wanted to know if there was a minimum number of days or hours during the week a student must be employed in order to constitute a week of employment.

Discussion: The Secretary does not agree with the commenters. The Secretary's experience in working with institutions regarding the placement rate element of an exceptional mitigating circumstances appeal has shown that this issue has not been an area of confusion nor have institutions needed clarification of this issue. Further, the Secretary does not believe that it is necessary to define in regulations what constitutes a week of employment.

Changes: None.

Comments: Many commenters objected to limiting the use of the completion rate component of the exceptional mitigating circumstances to public and private nonprofit institutions and limiting the use of the placement rate component to proprietary institutions. Many commenters indicated that it is more appropriate for a public vocational institution to appeal a potential loss of eligibility to participate in the FFEL or Direct Loan programs under the placement rate component. The commenters indicated that because these institutions provide training for their students to receive employment in specific occupations, they would more likely be able to meet the placement rate threshold.

Other commenters suggested that proprietary institutions of higher education that offer associate or baccalaureate degrees should be able to appeal under the exceptional mitigating circumstances criteria that include the completion rate component. These commenters argued that it is inappropriate to distinguish the educational programs at these institutions from their public and private nonprofit institution counterparts.

Many commenters suggested that an institution should be able to appeal under any of the exceptional mitigating circumstances.

Discussion: The Secretary disagrees with the commenters that an institution should be able to appeal under either the placement rate or completion rate components of the exceptional mitigating circumstances. The Secretary believes that it is appropriate for an institution to appeal under a criterion that is designed to measure the performance of its programs. The Secretary agrees with the commenters that the type of program offered by an institution should determine whether that institution should be able to appeal under the exceptional mitigating circumstances appeal that includes the placement rate or completion rate components. Placement rate is an appropriate measure for those institutions that are non-degree-granting, whereas completion rate is a more appropriate and relevant measure for institutions that offer degrees.

Changes: The final regulations have been amended in § 668.17(c)(1)(ii)(B) to permit only a non-degree-granting institution, whether it is a public, private nonprofit, or proprietary institution, to appeal under the exceptional mitigating circumstances criterion that includes the placement rate component. The final regulations have also been amended to permit only a degree-granting institution, regardless of whether it is a public, private nonprofit, or proprietary institution, to appeal under the exceptional mitigating circumstances criterion that includes the completion rate component.

Comments: Many commenters objected to some of the data elements that must be submitted to substantiate the percentage of an institution's students that come from disadvantaged economic backgrounds. Many commenters believed that the addresses of such students were not necessary.

Discussion: The Secretary is interested in minimizing the burden associated with an appeal and is reexamining the data elements that will be required in an appeal to ensure that

information is requested only if it is essential to the appeal and only if it is not available to the Secretary in existing databases. The Secretary will notify institutions of the specific information that must be included in the appeal in the ''Pre-Publication Review Booklet'' that is sent to institutions when the Secretary provides the institution the opportunity to review its draft FFEL Program cohort default rate data. This information will also be contained in the ''Official Cohort Default Rate Guide'' which is issued to an institution when the Secretary provides notification of loss of eligibility based on a final FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate.

The Secretary expects to require institutions to submit substantially the same information that is currently requested in the Official Default Rate Guide.

Changes: The Secretary has removed from the regulations the specific description of the information an institution must submit in an appeal. These information submission requirements were contained in the proposed rules in sections 668.17(c)(7)(ii) through (v). The Secretary will inform an institution of the information that is necessary to appeal a loss of eligibility when the Secretary provides an institution the opportunity to verify its cohort default rate data and when he notifies the institution of its final rate.

Section 668.17(d)

Comments: Many commenters suggested that the Secretary should amend the date an SLS loan enters repayment. The commenters suggested that the Secretary should establish in regulations, provisions that would define when an SLS loan enters repayment if that loan is ''linked'' to a Stafford loan.

Discussion: For purposes of calculating an FFEL Program cohort default rate, Congress has mandated the parameters for establishing the date an SLS loan enters repayment. Those parameters are also contained in the regulations in section 668.17(d)(1)(ii)(D). Consistent with the parameters established by Congress, the Secretary regularly provides guaranty agencies and institutions with the rules for the application of the definition of the date an SLS loan enters repayment for purposes of an FFEL Program cohort default rate. Institutions are now apprised of the rules at least twice annually through the ''Pre-Publication Booklet'' for cohort default rates and the ''Official Cohort Default Rate Guide.''

The Secretary has found the dissemination of the rules for the application of the definition of the date an SLS loan enters repayment through the ''Pre-Publication Booklet'' and the ''Official Cohort Default Rate Guide'' provides sufficient notice to the institutions, while simultaneously allowing the definition to be refined as needed based on upon Congressional changes to the definition and changes in the information collecting capacity of the Department. The Secretary further believes that it is also appropriate to disseminate the rules for linking SLS loans to Stafford loans through the ''Pre-Publication Booklet'' and the ''Official Cohort Default Rate Guide.''

Changes: None

Sections 668.17(e)(1)(ii) and (f)(1)(ii)

Comments: Many commenters objected to the Secretary's inclusion in a Direct Loan Program cohort rate or weighted average cohort rate a loan that is in repayment under the ICR plan if the borrower's scheduled payments on that loan are less than 15 dollars and that 15 dollar payment is less than the interest that is accruing on the loan each month. The commenters argued that it is inappropriate to consider a loan that is not even delinquent as in default for purposes of an institution's Direct Loan Program cohort rate or weighted average cohort rate. Many commenters pointed out that most of the borrowers that choose ICR will be entry-level employees and will start out with low incomes that may result in the borrower having scheduled payments of 15 dollars or less, which may be less than the interest that is accruing on the loans. The commenters suggested that this would unfairly penalize institutions since ICR is a legitimate payment option for all students and an institution cannot control a borrower's selection of a repayment plan.

A commenter pointed out that, under the proposed rules, if a borrower enters into ICR at the end of the fiscal year and that borrower's monthly payment is 15 dollars and that payment is less than the interest that is accruing on the loan, the borrower would be included in the institution's Direct Loan Program cohort rate or weighted average cohort rate. The commenter indicated that it would be more appropriate to include such a borrower in an institution's rate if that borrower was in ICR and had scheduled payments of less than $15 that are less than the interest accruing on the loan for 270 days; this would more closely mirror a default.

Discussion: The Secretary appreciates the commenters' concerns that many of the borrowers who choose ICR will be entry level employees and will likely have low payments. However, the Secretary believes that even entry level employees who have received a quality education or training from an institution will be able to obtain employment that will provide them with enough income to pay back at least the interest that is accruing on their loans each month.

The Secretary also appreciates the commenters' concerns regarding the inclusion of a loan in an institution's Direct Loan Program cohort rate or weighted average cohort rate that may not even be delinquent. However, the Secretary believes that this is an appropriate performance-based measure to assess both a borrower's ability to repay a student loan and an institution's quality of training. The Secretary is concerned that, without such a measure, an institution could have a low Direct Loan Program cohort rate or weighted average cohort rate when a large proportion of its former students are making only minimal or no payments on their loans. The Secretary is concerned that this is a potential area for abuse in the Direct Loan Program and believes that it is imperative to protect students and taxpayers from such abuse.

The Secretary agrees with the commenter that, to more closely approximate a default, a borrower should have been, by the end of the fiscal year following the fiscal year the loan entered repayment, for at least 270 days, in repayment under the ICR plan with scheduled payments that were less than 15 dollars per month and those payments result in negative amortization.

Changes: The final regulations have been revised to provide that a loan that is in the ICR plan will not be included in a Direct Loan Program cohort rate or weighted average cohort rate unless, for at least 270 days, the scheduled monthly payments on that loan have been $15 dollars or less and that payment is less than the monthly interest accruing on the loan.

Section 668.17(f)

Comments: Many commenters did not understand how the proposed weighted average cohort rate would be calculated when the institution had a borrower enter repayment on both a Direct Loan and FFEL Program loan in a fiscal year. The commenters believed that the Secretary should clarify the formula.

Discussion: The weighted average cohort rate is determined by comparing the number of borrowers, both FFEL and Direct Loan, who enter repayment in a fiscal year against those borrowers who default before the end of the following

fiscal year. Each borrower and each default is counted only once even if a borrower has both FFEL and Direct Loan program loans entering repayment in a fiscal year. This has been the Secretary's practice when a borrower with multiple FFEL Program loans enters repayment on those loans in a fiscal year. The Secretary does not believe that the regulations need to be clarified in this area.

Changes: None.

Section 668.17(h)

Comments: Many commenters suggested that institutions should be able to appeal their Direct Loan Program cohort rates or weighted average cohort rates on the basis of improper servicing. The commenters argued that the appeal criteria should be parallel to the FFEL Program. In addition the commenters believed that a loan that is improperly serviced should not be included in an institution's Direct Loan Program cohort rate or weighted average cohort rate and that an institution should be given a chance to verify that such a loan is not included in its rate.

Discussion: In the FFEL Program, Congress chose to provide high default rate institutions with an appeal from the loss of eligibility to participate in that program based on loan servicing. That decision was based, in large measure, on the existence of detailed Departmental regulations governing loan servicing by lenders and a number of instances in which large lenders failed to comply with those requirements with a demonstrable effect on institutional default rates. In the Direct Loan Program, those detailed servicing rules do not exist; instead, loan servicing is controlled by contracts between the Department and its contractors. Moreover, there is no history of abuse in the Direct Loan Program and the Department's contractors do not have the same incentive or opportunity to hide non-compliance as FFEL Program lenders. Accordingly, the Secretary does not believe it is appropriate or necessary to provide a loan servicing appeal for a Direct Loan Program cohort rate or weighted average cohort rate.

Changes: None.

Section 668.90

Comments: Many commenters objected to the removal of an institution's ability to demonstrate that it has diligently administered the provisions contained in appendix D of the Student Assistance General Provisions regulations as a defense to loss of eligibility. The commenters argued that the measures contained in appendix D have been proven effective in reducing defaults. Other commenters suggested that the use of appendix D as the only defense to an L, S, and T action provides a very powerful incentive to an institution that has a high cohort default rate to take action to reduce its default rate.

Discussion: The Secretary agrees with the commenters that the measures contained in appendix D, if diligently implemented by an institution, are effective in reducing the incidence of default. However, many of the most effective measures in appendix D have become specific regulatory requirements for most institutions. Moreover, the Secretary's experience has shown that the reviews of claims of appendix D compliance are very time-consuming and rarely helpful. In fact, the Secretary believes that the removal of the use of appendix D as a defense will provide a more powerful incentive for an institution to try to keep its cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate low.

Changes: None.

Executive Order 12866

These regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering the title IV, HEA programs effectively and efficiently.

In assessing the potential costs and benefits, both quantitative and qualitative, the Secretary has determined that the benefits of the regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, or tribal governments in the exercise of their governmental functions.

Summary of Potential Costs and Benefits

The potential costs and benefits of these final regulations are discussed elsewhere in this preamble under the following heading: Analysis of Comments and Changes.

Assessment of Educational Impact

In the NPRM published on September 21, 1995, the Secretary requested comment on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency of the United States.

List of Subjects in 34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

(Catalog of Federal Domestic Assistance Numbers: 84.007 Supplemental Educational Opportunity Grant Program; 84.032 Stafford Loan Program; 84.032 PLUS Program; 84.032 Supplemental Loans for Students Program; 84.033 College Work-Study Program; 84.038 Perkins Loan Program; 84.063 Pell Grant Program; 84.069 State Student Incentive Grant Program; and 84.226 Income Contingent Loan Program; 84.268, William D. Ford Federal Direct Loan Program)

Dated: November 24, 1995.

Richard W. Riley,

Secretary of Education.

The Secretary amends part 668 of title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, and 1148, unless otherwise noted.

2. Section 668.17 is amended by redesignating paragraphs (f), (g), and (h) as paragraphs (h), (i) and (j) respectively, revising paragraphs (a) through (e), and adding new paragraphs (f) and (g) to read as follows:

§ 668.17 Default reduction and prevention measures.

(a) *Default rates.* (1) If the FFEL Program cohort default rate, Direct Loan Program cohort rate, or if applicable, weighted average cohort rate for an institution exceeds 20 percent for any fiscal year, the Secretary notifies the institution of that rate.

(2) The Secretary may initiate a proceeding under subpart G of this part to limit, suspend, or terminate the participation of an institution in the Title IV, HEA programs, if the institution has an FFEL Program cohort default rate, Direct Loan Program cohort rate, or a weighted average cohort rate that exceeds 40 percent for any fiscal year.

(3) Unless an institution is subject to loss of eligibility to participate in the FFEL Program under paragraph (b)(1) of this section, the Secretary initiates a proceeding under subpart G of this part to limit, suspend, or terminate an institution's participation in the FFEL Program if the institution, for each of the three most recent consecutive fiscal years, has any combination of an FFEL Program cohort default rate, a Direct Loan Program cohort rate, or weighted average cohort rate that is equal to or greater than 25 percent.

(4) The Secretary may require an institution that meets the criteria under paragraph (a)(2) of this section to submit to the Secretary, within a timeframe determined by the Secretary, any reasonable information to help the Secretary make a preliminary determination as to what action should be taken against the institution.

(5) The Secretary ceases any limitation, suspension, or termination action against an institution under this paragraph if the institution satisfactorily demonstrates to the Secretary that, pursuant to an appeal that is complete and timely submitted under paragraph (c) of this section, the institution meets one of the exceptional mitigating circumstances under paragraph (c)(1)(ii)(B) of this section.

(b) *End of participation.* (1) Except as provided in paragraph (b)(6) of this section, an institution's participation in the FFEL Program ends 30 calendar days after the date the institution receives notification from the Secretary that its FFEL Program cohort default rate for each of the three most recent fiscal years for which the Secretary has determined the institution's rate, is equal to or greater than 25 percent.

(2) Except as provided in paragraph (b)(6) of this section, an institution's participation in the Direct Loan Program ends 30 calendar days after the date the institution receives notification from the Secretary that for each of the three most recent fiscal years the institution has any combination of an FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate that is equal to or greater than 25 percent.

(3) Except as provided in paragraph (b)(6) of this section, an institution's participation in the FFEL Program or Direct Loan Program ends under paragraph (b) (1) or (2) of this section respectively may not participate in that program on or after the 30th calendar day after the date it receives notification from the Secretary that its FFEL Program cohort default rate, Direct Loan Program cohort rate, or, if applicable, weighted average cohort rate exceeds the thresholds specified in paragraph (b) (1) or (2) of this section and continuing—

(i) For the remainder of the fiscal year in which the Secretary determines that the institution's participation has ended under paragraph (b) (1) or (2) of this section; and

(ii) For the two subsequent fiscal years.

(4) An institution whose participation in the FFEL Program or Direct Loan Program ends under paragraph (b) (1) or (2) of this section may not participate in that program until the institution satisfies the Secretary that the institution meets all requirements for participation in the FFEL Program or Direct Loan Program and executes a new agreement with the Secretary for participation in that program following the period described in paragraph (b)(3) of this section.

(5) Until July 1, 1998, the provisions of paragraph (b) (1) or (2) of this section and the provisions of 34 CFR 668.16(m) do not apply to a historically black college or university within the meaning of section 322(2) of the HEA, a tribally controlled community college within the meaning of section 2(a)(4) of the Tribally Controlled Community College Assistance Act of 1978, or a Navajo community college under the Navajo Community College Act.

(6) An institution may, notwithstanding 34 CFR 668.26, continue to participate in the FFEL Program or Direct Loan Program until the Secretary issues a decision on the institution's appeal if the Secretary receives an appeal that is complete, accurate, and timely in accordance with paragraph (c) of this section.

(c) *Appeal procedures.* (1) An institution may appeal the loss of participation in the FFEL Program or Direct Loan Program under paragraph (b)(1) or (2) of this section by submitting an appeal in writing to the Secretary by the 30th calendar day following the date the institution receives notification of the end of participation. An appeal or any portion of an appeal under this section will not be accepted after the 30th calendar day following the date the institution receives notification from the Secretary that it has lost its eligibility to participate in the FFEL or Direct Loan programs, except that an institution may submit an appeal under section (c)(1)(i) of this section later than the 30th calendar day if the appeal is submitted in accordance with paragraph (c)(8) and the information required by paragraph (c)(7) may be submitted in accordance with that paragraph. The appeal must include all information required by the Secretary to substantiate the appeal and all information must be submitted in a format prescribed by the Secretary. The additional 30-day period specified in paragraph (c)(7) of this section is an extension for the submission of the auditor's statement only and does not affect the date by which the appeal data must be submitted. An institution that is eligible for an extension under paragraph (c)(8) of this section must submit all required data within five working days following the agency's response to the institution's request for verification of data. The institution may appeal on the grounds that—

(i)(A) The calculation of the institution's FFEL Program cohort default rate, Direct Loan Program cohort rate, or, if applicable, weighted average cohort rate, for any of the three fiscal years relevant to the end of participation is not accurate; and

(B) A recalculation of the institution's FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate, with corrected data verified by the cognizant guaranty agency or agencies for the FFEL Program loans, or the Secretary for Direct Loan Program loans would produce an FFEL Program cohort default rate, a Direct Loan Program cohort rate, or weighted average cohort rate for any of those fiscal years that is below the threshold percentage specified in paragraph (b) (1) or (2) of this section; or

(ii) The institution meets one of the following exceptional mitigating circumstances:

(A) The institution has a participation rate index of 0.0375 or less. The participation rate index is determined by multiplying the institution's FFEL Program cohort default rate, Direct Loan Program cohort rate or weighted average cohort rate, by the percentage of the institution's regular students, as defined in 34 CFR 600.2, enrolled on at least a half-time basis who received a loan made under either the FFEL Program or Direct Loan Program for a 12-month period that has ended during the six months immediately preceding the fiscal year for which the cohort of borrowers used to calculate the institution's rate is determined. An institution that has an FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate that exceeds 40 percent may not appeal its loss of eligibility under paragraphs (b) (1) or (2) of this section on the basis of its participation rate index.

(B) For a 12-month period that has ended during the six months immediately preceding the fiscal year for which the cohort of borrowers used to calculate the institution's rate is

determined, 70 percent or more of the institution's regular students, as defined in 34 CFR 600.2, are individuals from disadvantaged economic backgrounds, as established by documentary evidence submitted by the institution. Such evidence must relate to either qualification by those students for an expected family contribution (EFC) of zero for any award year that generally coincides with the 12-month period, or attribution to those students of an adjusted gross income of the student and his or her parents or spouse, if applicable, reported for any award year that generally coincides with the 12-month period, of less than the poverty level, as determined under criteria established by the Department of Health and Human Services; and,

(*1*) For a degree-granting institution, 70 percent or more of the institution's regular students who were initially enrolled on a full-time basis and were scheduled to complete their programs during the same 12-month period the institution has chosen to determine the percentage of its students that come from disadvantaged economic backgrounds under paragraph (c)(1)(ii)(B) of this section, completed the educational programs in which they were enrolled. This rate is calculated by comparing the number of regular students who were classified as full-time at their initial enrollment in the institution and were originally scheduled, at the time of enrollment, to complete their programs within the relevant 12-month period, with the number of these students who received a degree from the institution; transferred from the institution to a higher level educational program; or, at the end of the 12-month period, remained enrolled and were making satisfactory academic progress toward completion of their educational programs; or

(*2*) For a non-degree-granting institution, the institution had a placement rate of 50 percent or more with respect to its former regular students who remained in the program beyond the point the students would have received a 100 percent tuition refund from the institution. A student or former student may not be considered successfully placed if the institution is the student's or former student's employer. This rate is based on those regular students who were initially enrolled on at least a half-time basis and were originally scheduled, at the time of enrollment, to complete their educational programs during the same 12-month period the institution has chosen to determine the percentage of its students that come from disadvantaged economic backgrounds under paragraph (c)(1)(ii)(B) of this section. This rate does not include those students who are still enrolled and making satisfactory progress in the educational programs in which they were originally enrolled on the date following 12 months after the date of the student's last day of attendance. This rate is calculated by determining the percentage of all those former regular students who;

(*i*) are employed in an occupation for which the institution provided training on the date following 12 months after the date of their last day of attendance at the institution; or

(*ii*) were employed in an occupation for which the institution provided training for at least 13 weeks before the date following 12 months after the date of their last day of attendance at the institution.

(2) For purposes of the completion rate and placement rate described in paragraph (c)(1)(ii)(B) (*1*) and (*2*) of this section, a student is originally scheduled, at the time of enrollment, to complete the educational program on the date when the student will have been enrolled in the program for the amount of time normally required to complete the program. The ''amount of time normally required to complete the program'' for a student who is initially enrolled full-time is the period of time specified in the institution's enrollment contract, catalog, or other materials, for completion of the program by a full-time student, or the period of time between the original date of enrollment and the anticipated graduation date appearing on the student's loan application, if any, whichever is less. The ''amount of time normally required to complete the program'' for a student who is initially enrolled less than full-time is the amount of time it would take that student to complete the program if the student remained enrolled at that level of enrollment.

(3) The Secretary issues a decision on the institution's appeal within 45 calendar days after the institution submits a complete appeal that addresses the applicable criteria in paragraph (c)(1) (i) or (ii) of this section to the Secretary.

(4) The Secretary's decision is based on the consideration of written material submitted by the institution. No oral hearing is provided.

(5) The Secretary withdraws the notification of loss of participation in the FFEL Program or Direct Loan Program sent to an institution under paragraph (b) (1) or (2) of this section, if he determines that the institution's appeal satisfies one of the exceptional mitigating circumstances specified in paragraph (c)(1) (i) or (ii) of this section.

(6) An institution must include in its appeal a certification, under penalty of perjury, by the institution's chief executive officer that all information provided by the institution in support of its appeal is true and correct.

(7) An institution that appeals on the grounds that it meets the exceptional mitigating circumstances criteria contained in paragraph (c)(1)(ii) of this section must include in its appeal an opinion from an independent auditor on management's assertions that the information contained in the appeal is complete, accurate, and determined in accordance with the requirements of this section. The examination level engagement will be performed in accordance with Statement on Standards for Attestation Engagements #3. This opinion must be received by the Secretary within 60 days following the date the institution receives notification of its loss of eligibility under paragraph (b) of this section.

(8) An institution that appeals under paragraph (c)(1)(i) of this section will not lose its eligibility to continue to participate during the appeal process due to a guaranty agency's failure to comply with 34 CFR 682.401(b)(14) which requires the agency to respond to an institution's request for verification of data within 15 working days, provided the institution:

(i) requested such verification within 10 working days from the date it received notification of its loss of eligibility under paragraph (b) of this section; and

(ii) provided a copy of the request for verification of data to the Secretary at the same time it requested such verification by the relevant guaranty agency(ies).

(d) *FFEL Program Cohort Default Rate.* (1)(i) For purposes of the FFEL Program, except as provided in paragraph (d)(1)(ii) of this section, the term FFEL Program cohort default rate means—

(A) For any fiscal year in which 30 or more current and former students at the institution enter repayment on Federal Stafford loans or Federal SLS loans (or on the portion of a loan made under the Federal Consolidation Loan Program or Direct Consolidation Loan Program that is used to repay such loans) received for attendance at the institution, the percentage of those current and former students who enter repayment in that fiscal year on those loans who default before the end of the following fiscal year; or

(B) For any fiscal year in which fewer than 30 of the institution's current and

former students enter repayment on Federal Stafford loans or Federal SLS loans (or on the portion of a loan made under the Federal Consolidation Loan Program or Direct Consolidation Loan Program that is used to repay such loans) received for attendance at the institution, the percentage of those current and former students who entered repayment on such loans in any of the three most recent fiscal years, who default before the end of the fiscal year immediately following the fiscal year in which they entered repayment.

(C) In determining the number of students who default before the end of that following fiscal year, the Secretary includes only loans for which the Secretary or a guaranty agency has paid claims for insurance, and Direct Consolidation Loan Program loans that repaid FFEL Program loans that entered default.

(ii)(A) In the case of a student who has attended and borrowed at more than one institution, the student (and his or her subsequent repayment or default) is attributed to each institution for attendance at which the student received a loan that entered repayment in the fiscal year.

(B) A loan on which a payment is made by the institution, its owner, agent, contractor, employee, or any other affiliated entity or individual, in order to avoid default by the borrower, is considered as in default for purposes of this definition.

(C) Any loan that has been rehabilitated under section 428F of the HEA before the end of that following fiscal year is not considered as in default for purposes of this definition.

(D) For the purposes of this definition, an SLS loan made in accordance with section 428A of the HEA (or a loan made under the Federal Consolidation Loan Program or Direct Consolidation Loan Program, a portion of which is used to repay a Federal SLS loan) shall not be considered to enter repayment until after the borrower has ceased to be enrolled in an educational program leading to a degree, certificate, or other recognized educational credential at the participating institution on at least a half-time basis (as determined by the institution) and ceased to be in a period of forbearance or deferment based on such enrollment. Each eligible lender of a loan made under section 428A (or a loan made under the Federal Consolidation Loan Program, a portion of which is used to repay a Federal SLS loan) of the HEA shall provide the guaranty agency with the information necessary to determine when the loan entered repayment for purposes of this definition, and the guaranty agency shall provide that information to the Secretary.

(2) Fiscal year means the period from and including October 1 of a calendar year through and including September 30 of the following calendar year.

(e) *Direct Loan Program cohort rate.* (1) For purposes of the Direct Loan Program, except as provided in paragraph (e)(2) of this section, the Secretary calculates Direct Loan Program cohort rates using the following formulas:

(i) For public institutions, private nonprofit institutions, or proprietary degree-granting institutions—

(A) For any fiscal year in which 30 or more current and former students at the institution enter repayment on a Direct Loan Program loan (or on the portion of a loan made under the Federal Direct Consolidation Loan Program that is used to repay those loans) received for attendance at the institution, the percentage of those current and former students who enter repayment in that fiscal year on those loans who are in default before the end of the following fiscal year; or

(B) For any fiscal year in which fewer than 30 of the institution's current and former students enter repayment on a Direct Loan Program loan (or on the portion of a loan made under the Federal Direct Consolidation Loan Program that is used to repay those loans) received for attendance at the institution, the percentage of those current and former students who entered repayment on those loans in any of the three most recent fiscal years, who are in default before the end of the fiscal year immediately following the year in which they entered repayment.

(ii) For proprietary non-degree-granting institutions—

(A) For any fiscal year in which 30 or more current and former students at the institution enter repayment on a Direct Loan Program loan (or on the portion of a loan made under the Federal Direct Consolidation Loan Program that is used to repay those loans) received for attendance at the institution, the percentage of those current and former students who enter repayment in that fiscal year on those loans who are in default before the end of the following fiscal year, or who, before the end of that following fiscal year, have, for 270 days, been in repayment under the income-contingent repayment plan with scheduled payments that are less than 15 dollars per month and those payments result in negative amortization; or

(B) For any fiscal year in which fewer than 30 of the institution's current and former students enter repayment on a Direct Loan Program loan (or on the portion of a loan made under the Federal Direct Consolidation Loan Program that is used to repay those loans) received for attendance at the institution, the percentage of those current and former students who entered repayment on those loans in the three most recent fiscal years, who are in default before the end of the fiscal year immediately following the year in which they entered repayment, or who, before the end of that following fiscal year, have for 270 days, been in repayment under the income-contingent repayment plan with scheduled payments that are less than 15 dollars per month and those payments result in negative amortization.

(2)(i) In the case of a student who has attended and borrowed at more than one institution, the student (and his or her subsequent repayment or default) is attributed to each institution for attendance at which the student received a loan that entered repayment in the fiscal year.

(ii) A loan on which a payment is made by the institution, its owner, agent, contractor, employee, or any other affiliated entity or individual, in order to avoid default by the borrower, is considered as in default for purposes of this definition.

(iii) Any loan on which the borrower has made 12 consecutive monthly on-time payments under 34 CFR 685.211(e) before the end of that following fiscal year is not considered as in default for purposes of this definition.

(3) For purposes of an institution's Direct Loan cohort rate, a Direct Loan Program loan is considered in default when the borrower's or endorser's failure to make an installment payment when due has persisted for 270 days.

(f)(1) *Weighted average cohort rate.* For purposes of an institution that has former students entering repayment in a fiscal year on both Direct Loan Program and FFEL Program loans, except as provided under paragraph (f)(2) of this section, the Secretary calculates a weighted average cohort rate using the following formulas:

(i) For public institutions, private nonprofit institutions, or proprietary degree-granting institutions—

(A) For any fiscal year in which 30 or more current and former students at the institution enter repayment on an FFEL Program or Direct Loan Program loan (or on the portion of a loan made under the Federal Consolidation Loan Program or Federal Direct Consolidation Loan Program that is used to repay those loans) received for attendance at the institution, the percentage of those current and former students who enter

repayment in that fiscal year on those loans who are in default before the end of the following fiscal year; and

(B) For any fiscal year in which fewer than 30 of the institution's current and former students enter repayment on an FFEL Program or Direct Loan Program loan (or on the portion of a loan made under the Federal Consolidation Loan Program or Federal Direct Consolidation Loan Program that is used to repay such loans) received for attendance at the institution, the percentage of those current and former students who entered repayment on such loans in the three most recent fiscal years, who are in default before the end of the fiscal year immediately following the year in which they entered repayment.

(ii) For proprietary non-degree-granting institutions—

(A) For any fiscal year in which 30 or more current and former students at the institution enter repayment on an FFEL Program or Direct Loan Program loan (or on the portion of a loan made under the Federal Consolidation Loan or Federal Direct Consolidation Loan Program that is used to repay those loans) received for attendance at the institution, the percentage of those current and former students who enter repayment in that fiscal year on such loans who are in default before the end of the following fiscal year, or who, before the end of that following fiscal year, have for 270 days: been in repayment under the income-contingent repayment plan with scheduled payments that are less than 15 dollars per month and those payments result in negative amortization; or

(B) For any fiscal year in which fewer than 30 of the institution's current and former students enter repayment on an FFEL Program or Direct Loan Program loan (or on the portion of a loan made under the Federal Consolidation Loan Program or Federal Direct Consolidation Loan Program that is used to repay those loans) received for attendance at the institution, the percentage of those current and former students who entered repayment on those loans in any of the three most recent fiscal years, who are in default before the end of the fiscal year immediately following the year in which they entered repayment, or who, before the end of that following fiscal year, have for 270 days: been in repayment under the income-contingent repayment plan with scheduled payments that are less than 15 dollars per month and those payments result in negative amortization.

(2)(i) In the case of a student who has attended and borrowed at more than one institution, the student (and his or her subsequent repayment or default) is attributed to each institution for attendance at which the student received a loan that entered repayment in the fiscal year.

(ii) A loan on which a payment is made by the institution, its owner, agent, contractor, employee, or any other affiliated entity or individual, in order to avoid default by the borrower, is considered as in default for purposes of this definition.

(iii) Any Direct Loan Program loan on which the borrower has made 12 consecutive monthly on-time payments under 34 CFR 685.211(e) or has an FFEL Program loan that has been rehabilitated under section 428F of the HEA before the end of that following fiscal year is not considered as in default for purposes of this definition.

(3) For purposes of an institution's weighted average cohort rate, a Direct Loan Program loan is considered in default when a borrower's or endorser's failure to make an installment payment when due has persisted for 270 days.

(g) *Applicability of Rates to Institutions.* (1)(i) An FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate of an institution applies to all locations of the institution as the institution exists on the first day of the fiscal year for which the rate is calculated.

(ii) An FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate of an institution applies to all locations of the institution from the date the institution is notified of that rate until the institution is notified by the Secretary that the rate no longer applies.

(2)(i) For an institution that changes its status from that of a location of one institution to that of a free-standing institution, the Secretary determines the FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate, based on the institution's status as of October 1 of the fiscal year for which the rate is being calculated.

(ii) For an institution that changes its status from that of a free-standing institution to that of a location of another institution, the Secretary determines the FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate, based on the combined number of students who enter repayment during the applicable fiscal year and the combined number of students who default during the applicable fiscal years from both the former free-standing institution and the other institution. This rate applies to the new, consolidated institution and all of its current locations.

(iii) For free-standing institutions that merge to form a new, consolidated institution, the Secretary determines the FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate based on the combined number of students who enter repayment during the applicable fiscal year and the combined number of students who default during the applicable fiscal years from all of the institutions that are merging. This rate applies to the new consolidated institution.

(iv) For a location of one institution that becomes a location of another institution, the Secretary determines the FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate based on the combined number of students who enter repayment during the applicable fiscal year and the number of students who default during the applicable fiscal years from both of the institutions in their entirety, not limited solely to the respective locations.

3. Section 668.85 is amended by revising paragraph (b)(1)(ii) and revising paragraph (b)(3) to read as follows:

§ 668.85 Suspension proceedings.

* * * * *

(b)(1) * * *

(ii)(A) Specifies the proposed effective date of the suspension, which is at least 20 days after the date of mailing of the notice of intent; or

(B) In the case of a suspension action taken due to the institution's FFEL Program cohort default rate, Direct Loan Program cohort rate, or, if applicable, weighted average cohort rate, the proposed effective date of the suspension is no more than 30 days after the date of the mailing of the notice of intent.

* * * * *

(3) If the institution or servicer requests a hearing by the time specified in paragraph (b)(1)(iii) of this section, the designated department official sets the date and place. The date is at least 15 days after the designated department official receives the request. In the case of a hearing for an institution subject to suspension action because of its FFEL Program cohort default rate, Direct Loan Program cohort rate, or, if applicable, weighted average cohort rate, the hearing is set no later than 20 days after the date the designated department official receives the request. The suspension does not take place until after the requested hearing is held.

* * * * *

4. Section 668.86 is amended by revising paragraph (b)(1)(ii) and revising paragraph (b)(3) to read as follows:

§ 668.86 Limitation or termination proceedings.

* * * * *

(b)(1) * * *

(ii)(A) Specifies the proposed effective date of the limitation or termination, which is at least 20 days after the date of mailing of the notice of intent; or

(B) In the case of a limitation or termination action based on an institution's FFEL Program cohort default rate, Direct Loan Program cohort rate, or, if applicable, weighted average cohort rate, the proposed effective date of the termination is no more than 30 days after the date of the mailing of the notice of intent.

* * * * *

(3) If the institution or servicer requests a hearing by the time specified in paragraph (b)(1)(iii) of this section, the designated department official sets the date and place. The date is at least 15 days after the designated department official receives the request. In the case of a hearing for an institution subject to limitation or termination action because of its FFEL Program cohort default rate, Direct Loan Program cohort rate, or, if applicable, weighted average cohort rate, the hearing is set no later than 20 days after the date the designated department official receives the request. The limitation or termination does not take place until after the requested hearing is held.

* * * * *

5. Section 668.90 is amended by adding a new paragraph (a)(1)(iii)(D), and revising paragraph (a)(3)(iv) to read as follows:

§ 668.90 Initial and final decisions.

* * * * *

(a)(1) * * *

(iii) * * *

(D) For hearings regarding the limitation, suspension, or termination of an institution based on an institution's FFEL Program cohort default rate, Direct Loan Program cohort rate, or, if applicable, weighted average cohort rate, the 30th day after the conclusion of the hearing.

* * * * *

(3) * * *

(iv) In a limitation, suspension, or termination proceeding commenced on the grounds described in § 668.17(a) (2) and (3), if the hearing official finds that an institution's FFEL Program cohort default rate, Direct Loan Program cohort rate, or, if applicable, weighted average cohort rate meets the conditions specified in § 668.17(a) (2) and (3) for initiation of limitation, suspension, or termination proceedings, the hearing official also finds that the sanction sought by the designated department official is warranted, except that the hearing official finds that no sanction is warranted if the institution presents clear and convincing evidence demonstrating that the FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate on which the proposed action is based is not the final rate determined by the Department and that the correct rate would result in the institution having an FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate that is beneath the thresholds that make the institution subject to limitation, suspension, or termination action.

(Authority:) 20 U.S.C. 1082, 1085, 1094, 1099c.)

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Federal Register

Friday
December 1, 1995

Part V

Department of Education

34 CFR Part 668

Student Assistance General Provisions; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 668

RIN 1840–AB44

Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Final rule.

SUMMARY: The Secretary amends the Student Assistance General Provisions. These amendments are necessary to implement the Student Right-to-Know Act, as amended by the Higher Education Amendments of 1991, and the Higher Education Technical Amendments of 1993. These final regulations require an institution that participates in any student financial assistance program under Title IV of the Higher Education Act of 1965, as amended (title IV, HEA program) to disclose information about graduation or completion rates to current and prospective students. The final regulations also require an institution that participates in any title IV, HEA program and awards athletically-related student aid to provide certain types of data regarding the institution's student population, and the graduation or completion rates of categories of student-athletes, to potential student-athletes, and to the athletes' parents, coaches, and high school counselors.

EFFECTIVE DATE: These regulations take effect on July 1, 1996, and apply to the 1996–1997 and subsequent award years. However, affected parties do not have to comply with the information requirements in § 668.41, § 668.46, and § 668.49 until the Department of Education publishes in the Federal Register the control numbers assigned by the Office of Management and Budget (OMB) to these information collection requirements. Publication of the control numbers notifies the public that OMB has approved these information requirements under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Paula Husselmann or Mr. David Lorenzo, U.S. Department of Education, 600 Independence Avenue, S.W., Regional Office Building 3, Room 3053, Washington, D.C. 20202. Telephone: (202) 708–7888. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern time Monday through Friday.

SUPPLEMENTARY INFORMATION: The Student Assistance General Provisions (34 CFR part 668) apply to all institutions that participate in the student financial assistance programs authorized by Title IV of the Higher Education Act of 1965 as amended (HEA). These final regulations are necessary to implement changes to the HEA made by the Student Right-to-Know Act, Pub. L. 101–542, as amended by the Higher Education Technical Amendments of 1991, Pub. L. 102–26, and the Higher Education Technical Amendments of 1993, Pub. L. 103–208. The Secretary published a proposed rule on July 10, 1992 to implement the Student Right-to-Know and Campus Security Act. Over three hundred commenters responded to those proposed rules. Final regulations implementing the Campus Security Act were published separately on April 29, 1994. A second proposed rule addressing the Student Right-to-Know portion of Pub. L. 101–542 was published on September 21, 1995.

Background

The September 21, 1995 Notice of Proposed Rulemaking (NPRM) contained regulations that would implement the Student Right-to-Know portion of Pub. L. 101–542 for consumer information purposes only. In that NPRM the Secretary emphasized that the proposed regulations were meant to provide flexibility and create a minimum of burden to institutions, while generating useful and comparable data for student consumer information purposes. The Secretary's discussion and solicitation of comments on these and related issues are contained in 60 FR 49156–49157.

The September 21, 1995 NPRM also included a discussion of major issues regarding the proposed regulations that will not be repeated here. The following list summarizes those issues and identifies the pages of the preamble to the NPRM on which a discussion of those issues can be found.

Disclosure of information on graduation or completion rates for the general student population contained in § 668.41(a) (page 49157).

Disclosure of information on the general student population, and on the completion or graduation rates of various categories of student athletes, and the report of that information to the Secretary, contained in § 668.41(b) (page 49157).

Issues concerning the definitions of ''full-time,'' ''normal time,'' ''athletically-related student aid,'' and ''prospective student,'' as contained in § 668.41(a) (pages 49157–49158).

Issues concerning the composition of students who make up the denominator of the institution's graduation or completion rate fraction, as contained in 668.46(a) (page 49158).

Issues concerning the tracking of students, related to § 668.46(a) (page 49158).

Issues concerning the latest dates on which institutions must disclose their completion or graduation rate information, contained in § 668.46(a)(2) (pages 49158–49159).

The students an institution may include in the numerator of its completion or graduation rate fraction, and issues related to the documentation of those students, as contained in § 668.46(b) (pages 49159–49160).

The students who may be excluded from the institution's calculation of a completion or graduation rate, as contained in § 668.46(b)(2) (page 49160).

The disclosure of the components of the numerator of the institution's completion or graduation rate fraction, as contained in § 668.46(c) (page 49160).

The provisions for waivers for institutions that are members of athletic conferences or associations that provide substantially comparable data, as contained in § 668.46(d) (page 49160).

The requirement that institutions that award athletically-related student aid disclose data regarding the completion or graduation rates of student athletes, and other general information, to a student offered athletically-related student aid, and to his or her parents, coaches, and high school counselors, and send a report of that data to the Secretary, as contained in § 668.49(a) (page 49160).

The requirement that such institutions report and disclose that data by July 1 of every year, beginning July 1, 1997, as contained in § 668.49(a) (page 49160).

The kinds of general data to be reported and disclosed, and the categories of students for whom completion or graduation rates are to be calculated, reported, and disclosed, as contained in § 668.41(a) (pages 49160–49161).

The definition of ''sport'', as contained in § 668.49(a)(2) (page 49161).

The requirement that completion or graduation rates be calculated in the same manner as specified in § 668.46 (b) and (c), as contained in § 668.49(b).

The provision that an institution, if it wishes, may provide information to potential student-athletes and the Secretary regarding the completion or graduation rate of students who transfer into the institution, and the number of students who transfer out of the institution, as contained in § 668.49(c) (page 49161).

The provision that allows institutions that are members of athletic conferences

or associations to obtain waivers if the conference or association of which it is a member provides substantially comparable information, as contained in § 668.49(d) (page 49161).

Summary of Changes From the Proposed Regulations

The Secretary has added definitions of ''first-time freshman students,'' ''certificate- or degree-seeking students,'' and ''undergraduate students''. The Secretary has also changed the definitions of ''full-time students'' and ''normal time''.

The Secretary requires institutions to disclose information on completion or graduation rates and transfer-out rates for the general student body by the January 1 immediately following the expiration of 150% of normal time for the group of students on which the institution bases its completion or graduation rate calculation.

The Secretary requires an institution that offers a predominant number of programs based on standard terms (semesters, trimesters, or quarters) to establish a fall cohort, consisting of undergraduate students who are enrolled as of October 15, or the end of the institution's drop-add period, on which to calculate its completion or graduation rate. The Secretary also requires such an institution to count as an entering student an undergraduate student who is enrolled at the institution as of October 15.

The Secretary requires an institution that does not offer a predominant number of programs based on standard terms (semesters, trimesters, or quarters) to count as entering students all full-time undergraduate students who enter the institution between July 1 and June 30 for purposes of calculating its completion or graduation rate. Such an institution will consider a student to have entered for these purposes if the student attends at least one day of class.

The Secretary requires an institution to count as an entering student only first-time freshman students as defined in the regulations. An institution may calculate a completion or graduation rate or rates for students who transfer into the institution as separate and supplemental rate or rates.

The Secretary requires institutions to publish two rates: one, the rate at which students complete or graduate, and the other, the rate at which students transfer out of the institution.

The Secretary allows institutions to count as completers those students who complete a transfer preparatory program described in § 668.8(b)(1)(ii).

The Secretary is dropping the proposal that would have allowed institutions to count as completers those students still enrolled in good standing in programs longer than the program on which the institution bases its disclosure date.

The Secretary will require documentation of a transfer in order for an institution to count a student as a transfer-out, and will accept such documentation as a certification letter, electronic certification, confirmation of enrollment data from a legally-mandated tracking system, or institutional data exchange information confirming that a student has enrolled in another institution.

The Secretary is clarifying that an institution that is covered by waivers for substantially comparable data gathered by an athletic association or conference must still comply with the information dissemination provisions of the statute and these regulations.

The Secretary is including a *de minimus* exception to the disclosure requirements for the completion or graduation rates of student athletes that allows institutions not to disclose those rates for categories that include five or fewer students.

Preparation of Final Regulations

The Secretary has formulated these regulations in accordance with Executive Order 12866, the Administration's initiative on regulatory reinvention, and the Department's own Principles for Regulating.

The Secretary believes that the Student Right-to-Know Act establishes important consumer information disclosure standards for institutions. In promulgating these regulations, the Secretary's goal is to ensure that institutions provide consistent and useful information on completion and graduation rates. With this information in hand, the Secretary believes that prospective students, and prospective student athletes, will be better able to make informed choices when they choose a postsecondary institution.

The Secretary believes that these final regulations strike an appropriate balance between establishing a basic level of useful consumer information for students, and keeping burden on institutions to a minimum.

Analysis of Comments

In response to the Secretary's invitation in the September 21, 1995 NPRM, approximately 100 parties, including representatives of large and small institutions, athletic associations, college and university associations, associations of collegiate registrars and institutional researchers, student advocacy groups, and student right-to-know advocates, submitted comments on the proposed regulations. A summary of those comments, and an analysis of changes in the regulations since the publication of the NPRM, follows.

Substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

General

Comments: Some commenters agreed that the amount of flexibility contained in the proposed rules was appropriate for the purpose of providing consumer information. These commenters believed that the added flexibility of these proposed rules reduced burden, reflected the letter and spirit of the statute, or took into account changes in technology. Some of these commenters maintained that nationwide comparability of data should not be the most important factor in the implementation of the statute, and expressed appreciation that these proposed rules, unlike earlier proposals, recognized the diversity of institutions of higher education. Other commenters agreed that the level of flexibility was appropriate because the only relevant comparisons to be made were within different sectors of the higher education community, and that these proposed rules provided adequate guidance to make such comparisons possible.

Some commenters believed that any degree of flexibility defeated the purpose of the statute in providing meaningful and useful consumer information, and asked the Department to establish and require the use of a standard federal methodology and a set of standard federal definitions.

A majority of commenters appreciated the Secretary's attempt to provide flexibility, but believed the amount of flexibility contained in the proposed rules did not serve well the consumer purpose of this statute. These commenters maintained that the proposed rules would result in the provision of inconsistent, incomparable data that would be of little use to student consumers.

Of these commenters, many believed that for reasons of comparability and burden reduction, the final rules should require all institutions to report according to the definitions and methods contained in the forthcoming National Center for Education Statistics (NCES) Integrated Postsecondary Education Data System (IPEDS) Graduation Rate Survey (GRS). These

commenters maintained that only a mandatory system would generate meaningful, comparable, and useful consumer information, and that this goal would be met with the least burden by requiring the use of the GRS rather than the imposition of another, different methodology. These commenters noted that all institutions would soon be required to report to the NCES through the GRS.

Many others asked that the Secretary give serious consideration to following the recommendations of the report on graduation rates and other statistics the Joint Commission on Accountability Reporting (JCAR) is now developing. These commenters argued that (1) graduation rate statistics alone are not meaningful consumer information, and that the JCAR survey will provide better information in the form of statistics on graduation, completion, transfers, advancement, and persistence, and (2) the JCAR statistics are fair, consistent among all institutions, and easy to calculate.

A number of commenters asked that the GRS, the JCAR survey, or the National Collegiate Athletic Association (NCAA) survey be approved as ways of meeting the requirements of this statute. One commenter asked that the IPEDS GRS be adopted as the model methodology. One commenter asked that the Secretary implement final regulations that would provide consistency among those reports and the report required by this statute.

Several commenters maintained that the simple model the Secretary put forth would lead to meaningless or dishonest reporting, in that it attempts to condense necessary information into a single statistic. One of these commenters argued that the type of information needed for student consumers was more complex than that required by other types of consumers, and that such information could only be gathered by closely scrutinizing an institution's mission and programs in the context of the student's own interests, abilities, and willingness to complete a program.

Discussion: The Secretary continues to believe that the provision of graduation rate data will provide meaningful information to student consumers, and that a degree of flexibility is consonant with generating useful consumer information. However, the Secretary has been persuaded by the number and nature of comments that the degree of flexibility contained in the proposed rules may present problems of comparability.

Therefore, based on these comments, the Secretary is making changes to the final regulations that address problems of comparability. The Secretary requires institutions to use the definitions of ''certificate- or degree-seeking students,'' ''first time students,'' and ''undergraduate students'' that are based on those definitions as they are published in the IPEDS GRS Glossary, NCES 95–822. These definitions have been changed slightly from the IPEDS definition to conform to the statute, but are the functional equivalent of the IPEDS definitions. Because institutions will in the future be required to report these data according to these definitions under IPEDS, the Secretary believes that using definitions based on the IPEDS definitions that are slightly changed to fit the requirements of the statute, will increase comparability without increasing burden.

Also in the interests of comparability, the Secretary has removed from the definitions the flexible definition of ''full-time students'' included in the proposed rules. Institutions must instead use the definition of ''full-time student'' as defined in § 668.2 of the Student Assistance General Provisions regulations. This definition that is functionally equivalent to the definition found in the IPEDS Glossary.

In order to increase comparability and to decrease the possibility that institutions will need to calculate duplicate graduation or completion rates, the Department will work with organizations such as the NCES, the JCAR, athletic conferences or associations, and state agencies, or other organizations that are attempting to gather completion or graduation rate data, to help those organizations develop protocols that will generate data substantially comparable to the data required by the statute and these regulations. If these organizations do develop such protocols that meet the methodological and definitional standards set by the statute and regulations, the Secretary will inform institutions that the use of those protocols meet the requirements for the compilation of these data under the statute and the regulations. The Secretary, however, will not accept the protocols of these organizations for these purposes, nor grant waivers to athletic associations or conferences for their protocols, nor deem the protocols of any organization or institution to be in compliance with the statute and these regulations, if those protocols fail to incorporate the provisions of the statute and regulations.

Changes: Section 668.41(c) has been changed to include definitions of ''degree- or certificate-seeking student'' and ''first-time freshman student'' that are based on the definitions published by IPEDS. ''Full-time student'' is defined in accordance with the definition in § 668.2.

Comments: Many commenters expressed concern that these proposed rules would create another set of reporting criteria that institutions must meet, in addition to other reports on the same topic now required of institutions by the NCES, the NCAA, JCAR, and accrediting agencies, and that therefore these proposed rules were overly burdensome. Some of these commenters maintained that smaller institutions, which employ small staffs, would find it impossible to meet any new reporting requirements in addition to those which they must already meet. Some commenters reported that their institutions already were collecting information based on the NCAA model (in which completion or graduation rates are calculated for a cohort of first-time, full-time, baccalaureate students who enter an institution during the institution's fall term), the model set forth in the 1991 Dear Colleague letter, or another system, and that to force them to change systems to comply with new regulations would be prohibitively expensive and extremely burdensome. One commenter asked that the final rules not differ significantly from the guidance provided by Dear Colleague Letter GEN–91–27. One commenter reported that the flexibility of the rules allowing institutions to set their own definitions would prevent coordinating bodies from collecting information from groups of institutions.

One commenter believed that the provision of graduation rate information as a regulatory issue was moot, given that several athletic associations and news publications now provide statistics, and expressed the belief that a regulatory system for providing this information would only add to the current confusion.

Discussion: The Secretary recognizes that the calculation of these rates in different ways as required by different organizations would represent a burden on institutions. However, the Secretary is bound by statute to require that these rates be calculated and published, and that they be calculated according to statutory requirements. Insofar as is possible within the terms of the statute, the Secretary is providing flexibility for institutions to report according to protocols by which institutions will be required to calculate completion or graduation rates in the future, notwithstanding these regulations, e.g., the IPEDS GRS and the JCAR survey, as well as surveys by state agencies and the NCAA. However, if any particular

organization on this list fails to develop protocols that accord with the statute and these regulations, the Secretary cannot simply waive the requirements of this statute or change the specifics of the statutory calculation to fit those circumstances. Institutions must calculate and publish these rates, and do so in accordance with the statute and regulations.

With regard to the particular case of the GRS survey to be conducted by the NCES, the Secretary appreciates that while the Statement of Educational Impact contained below is technically correct in maintaining that no agency of the federal government is currently gathering this information, commenters were concerned that the forthcoming NCES GRS and these regulations may in the future require institutions to submit the same types of information, compiled in different ways, to the Federal Government. Because the NCES is a federal entity, the Secretary will insure that the results of future NCES GRS surveys will be acceptable for purposes of this statute and these regulations.

The Secretary also notes that the definitions and suggested protocols included in these final regulations substantially mirror the provisions of Dear Colleague Letter GEN–91–27.

Changes: None.

Comments: Several commenters suggested that the Secretary encourage institutions to supply additional information to place their graduation rate reports in context, as a way of providing greater comparability and usefulness without significantly increasing burden. One commenter asked that all institutions be required to provide such contextual information.

Discussion: The Secretary strongly encourages institutions to provide contextual information. There is, however, no statutory authority to require institutions to provide such information.

Changes: None.

Comments: Several commenters asked that the disclosure requirements for short-term programs at proprietary schools regarding job placement, licensure requirement, and licensure pass rate information that had been previously included in the Student Assistance General Provisions regulations be reinstated as part of these final regulations. One of these commenters argued that the types of students who enter these programs tended to be the consumers most in need of information and protection. This commenter maintained that such provisions would embody the spirit and intent of both the statute and other Congressional commentary on consumer information issues regarding short-term programs. This commenter also recommended that the information generated by such requirements be reported to a government agency to be compiled and published.

Discussion: Because these provisions are no longer included in the statute, the Secretary will not include them in these regulations.

Changes: None.

Section 668.41 Information Disclosure

Comments: Several commenters proposed that the Department mandate the Campus Security model for the placement of this information in publications. These commenters maintained that this model was not burdensome.

Several commenters opposed the Campus Security model. Several commenters opposed any regulation of the placement of this information, besides the general requirement that it be published in publications that students and prospective students receive. These commenters maintained that each individual institution was the best judge of where such information be published. One commenter believed that no regulation was necessary so long as institutions provided the information before the student entered into any financial obligation. One commenter asked that nonbinding guidance rather than regulations be promulgated in this matter. One commenter objected to the Campus Security model as now formulated in the regulations, in that it requires the distribution of information.

One commenter asked that the Department mandate publication in the institution's catalog or other similar publication that provides meaningful context to this information. One commenter maintained that trade schools be required to publish this information in their catalog. One commenter asked that the Secretary clarify that publication in a catalog or other such publication meets the requirements of the statute.

One commenter maintained that the requirement to make this information available through publications and mailing to prospective students would be overly burdensome. This commenter argued that general availability through literature racks and provision upon request should be deemed as fulfilling the requirements of this statute.

Discussion: The Secretary agrees that the level of specificity contained in the Campus Security model of disclosure need not apply to these regulations. The Secretary believes that such publications as catalogs, admission literature, or other similar types of publication are appropriate places for this material. Because the statute requires that this material be available in ''appropriate mailings,'' the Secretary disagrees that the mere maintenance of this material in literature racks would satisfy the requirements of the statute.

Changes: None.

Comments: One commenter maintained that the suggestion that institutions also provide this information to secondary schools and guidance counselors was too expensive and burdensome.

Discussion: The Secretary will not require institutions to provide this information automatically to secondary schools and guidance counselors, but strongly encourages institutions to provide this information on request to parties such as guidance counselors.

Changes: None.

Comments: One commenter asked for a clarification of the standard that students have this information before they enter into ''financial obligation,'' and inquired whether payment of an application fee would count as a financial obligation, as opposed, for example, to the payment of tuition. This commenter argued that if the former were the case, insurmountable problems would arise, since some students apply for admission without first contacting the institution.

Discussion: The Secretary interprets ''financial obligation'' to mean any agreement that obliges the student to pay significant sums of money. This would include, for example, tuition or room and board deposits, advance payments for tuition, room and board, and books and supplies. The Secretary does not interpret the tacit agreement to pay an application fee when submitting an application to fall within the scope of ''financial obligation'' as that term is used in the statute.

Changes: None.

Section 668.41 Disclosures of Information on Student-Athletes

Comments: One commenter asked the Secretary to reformulate the requirement that institutions provide the graduation rate data for athletes to the student's parents, given that locating and providing materials to both parents in cases of separation or divorce was very burdensome. This commenter recommended that the relevant language be changed to indicate that provision of these data to a single parent or a guardian, when appropriate, would satisfy this requirement.

Several commenters asked that only general guidelines regarding the medium in which the information is transmitted be promulgated, as

institutions are attempting to move away from paper formats to electronic means of transmitting and disseminating information.

Discussion: The Secretary interprets this provision of the statute to require the notification of the parent who acts as the student's guardian.

The Secretary agrees that general guidelines will allow institutions flexibility in adapting to technological changes, and believes the regulatory text is consistent with that intent. However, the Secretary also believes that institutions should have paper copies available for parties who do not have electronic access.

Changes: None.

Definitions

Comments: Most commenters requested the Secretary to require the use of standard definitions. Their reasoning was to ensure uniformity, comparability among institutions, and ease of understanding for the consumer of this information. The commenters stated that flexibility with many of the definitions proposed in the NPRM is undesirable because it will produce noncomparable data that would be confusing to the consumer.

Most of the commenters recommended that the regulations require the use of IPEDS definitions. The commenters explained that institutions are already familiar with these definitions, that they are already being used by the Secretary, and they would not require additional classifications of students beyond those already used. As such, these definitions would significantly reduce burden on institutions.

A much smaller number of commenters appreciated the flexibility provided by the NPRM to use varying definitions so long as the definitions were part of the information disclosed. A considerable number of commenters recommended that the Secretary require the definitions used by JCAR. JCAR also uses some of the IPEDS definitions. In particular, most commenters recommended the IPEDS definitions for the following terms: full-time, certificate or degree-seeking, first-time freshman student, and undergraduate student.

Discussion: Upon reviewing the comments, the Secretary agrees that statutory definitions of key terms will increase comparability and benefit consumers. The Secretary also agrees that any definitions promulgated in these regulations should be definitions with which institutions are already familiar.

Changes: Particular changes to the ''definitions'' section of these regulations are addressed below.

Comments: A majority of commenters argued that the amount of flexibility in these proposed rules with regard to the definition of ''normal time'' would result in incomparable data. Many of these commenters asked that the sector (less than two year, two year, and four year) definitions promulgated by IPEDS be placed in the regulations. Many others asked that the JCAR definitions of catalog award-time, extended award-time, and eventual award-time be adopted as mandatory definitions.

One commenter believed that defining ''normal time'' as ''minimal time'' is inappropriate, given the number of students who enter institutions with a large number of credits by means such as Advanced Placement Tests and summer sessions, as well as the number of students who take overloads and independent study courses. This commenter believed that normal time instead be defined as ''designated completion time.'' One commenter maintained that normal time should be the advertised time to graduation or completion published in an institution's advising worksheets, catalog, or similar publications, and that if the institution does not publish such information, that normal time for that institution be one year (twelve months) for a certificate program, two years (twenty-four months) for an associate degree, and four years (forty-eight months) for a bachelor's degree.

One commenter supported the use of normal time rather than average time, because the latter would tend to change. One commenter supported the definition of normal time as minimal time to complete or graduate from a certificate or degree program, but asked that this be clarified to exclude summer terms.

Several commenters supported the use of some type of ''average'' time rather than minimal time as the definition of normal time, given that outside factors, such as family commitments, work time, and availability of funds, affect the time students need to graduate or complete. These commenters suggested that institutions be permitted to determine ''normal time'' using other means, for example, measuring the ''normal time'' to completion experienced by the most recent cohort of students, or using sampling techniques of student populations. One commenter believed that the concept of normal time itself as used in the statute and defined in these regulations was a misnomer, given that students now routinely switch between full-time and part-time status, and are affected by a whole range of non-academic factors.

Several commenters believed that the definition of normal time should not include the term full-time, given that full-time represents only a minimum number, not a particular number, and so two students who take different full-time loads would have different normal times to graduation or completion. One commenter believed that the definition of normal time could contain the term full-time only if the latter term was clarified to mean the greater of the institution's definition of full-time, or the title IV, HEA definition of full-time.

Several commenters asked the Department to mandate that institutions report their definition of normal time as part of their graduation rate report.

Discussion: The Secretary agrees that the term ''normal time'' should not include the term ''full-time'' because the meaning of the term ''full-time'' with regard to academic workloads may vary from student to student.

The Secretary agrees with the commenters who concurred that ''normal time'' not be defined to mean ''average time.'' The Secretary believes that Congress meant to address such issues as stop outs, work, remediation, and other factors when it set the time for graduation or completion at 150% of normal time. The Secretary also believes that Congress meant ''normal time'' itself to be the standard, traditional time to degree, *e.g.*, four years for a bachelor's degree, two years for an associate degree, and the scheduled time for clock hour programs. The Secretary agrees that to make these points clear, the definition of ''normal time'' in the regulations should make reference to an institution's catalog time. The Secretary also agrees to include the specific time in standard terms (semesters, trimesters, or quarters, not including summer terms) to completion that have been traditionally associated with degrees. The Secretary acknowledges that measuring time to completion in standard terms (semesters, trimesters, or quarters) rather than months for degree programs is a change from earlier guidance, but believes this change is necessary in order for this information to be provided in a timely fashion. Time to completion measured in months, for example, for a four year institution, would end after the July 30 date for completors or graduates to count, and would therefore delay disclosure for up to 15 months after the end of the students' 150% of normal time, given the change to the January 1 disclosure date discussed below. Measured in standard terms, the data will only be six

months old by the December 1 disclosure date.

With regard to completion or graduation rate, or transfer-out rate calculations based on ''extended catalog time'' (more than 150% of normal time), the statute does not require that such rates be calculated or disclosed. Institutions may always disclose such rates as supplemental information.

Changes: A definition of ''normal time,'' based on the JCAR definition of normal time, has been inserted in § 668.41(c), which defines normal time as the time necessary for a student to complete all requirements for a degree or certificate according to an institution's catalog. This is typically 4 years (8 semesters or trimesters, or 12 quarters, excluding summer terms) for a bachelor's degree, 2 years (4 semesters or trimesters, or 6 quarters, excluding summer terms) for an associate's degree, and the scheduled times for certificate programs.

Comments: A majority of commenters believed that the degree of flexibility permitted institutions to define full-time would lead to non-comparable data. Most of these commenters supported the mandatory use of the IPEDS definition of full-time.

Several commenters supported the proposed regulatory definition. One commenter asked that an institution be required to disclose any differences between its definition of full-time for academic purposes and its definition of full-time for tuition purposes. Several commenters asked that the Secretary require institutions to publish their definitions with their graduation rate data.

Discussion: Upon further consideration, the Secretary agrees with the commenters who asked that a definition of ''full-time'' be included in the regulations. Because the definition of ''full-time'' in § 668.2 is familiar to all institutions, was the definition provided in Dear Colleague Letter GEN–91–27, and is functionally the same as the IPEDS definition of ''full-time,'' the Secretary applies that definition to this section of the regulations. The Secretary believes that for these reasons referring to this definition in the regulations will increase comparability and decrease potential confusion.

Changes: The definition of ''full-time student'' has been removed from § 668.41(c). Institutions are required to use the definition of ''full-time student'' found in § 668.2.

Comments: Most commenters recommended the use of the first-time freshman student definition under IPEDS. This definition provides for a student attending any institution for the first time at the undergraduate level; this includes students enrolled in the fall term who attended college for the first time in the prior summer term, and also includes students who entered with advanced standing.

Discussion: The Secretary agrees with the commenters that for reasons of comparability, consistency, and burden reduction, the regulations should mandate the use of a particular definition of ''first-time freshman student,'' and that the definition should be the IPEDS' definition or its functional equivalent. Promulgating such a definition will ensure consistency of data among institutions, and is less burdensome to institutions because institutions are already familiar with the IPEDS definitions.

Changes: Section 668.41(c) has been changed to require institutions to use a definition of ''first-time freshman student'' that is based on the IPEDS definition found in the IPEDS Glossary, NCES 95–22.

Comments: Many commenters asked that the IPEDS definition of ''undergraduate student'' be included in the final regulations.

Discussion: For reasons of consistency and familiarity, the Secretary agrees to include the IPEDS definition of ''undergraduate student'' in the final regulations.

Changes: The definition of ''undergraduate student'' as found in the IPEDS Glossary, NCES95–822, has been added to § 668.41(c).

Section 668.46 Information on Completion or Graduation Rates and Transfer-Out Rates

Comments: Many commenters objected to the October 1 disclosure date for this information. In general these commenters maintained that the amount of time between June 30 and October 1 was insufficient for institutions to calculate these graduation rates. Several of these commenters maintained that the statute provided institutions with one year between the point in time when a group's 150% of normal time elapsed and the required disclosure date. Several other commenters suggested disclosure dates in the November or December immediately following the elapse of 150% of normal time.

Discussion: The Secretary agrees to allow a disclosure date in the next calendar year following the expiration of 150% of normal time. However, in the interest of consumers, the Secretary believes that this date should be the earliest possible. Therefore, the Secretary changes the disclosure date to the first January 1 following the expiration of 150% of normal time for the entire group of students on which the institution bases its completion or graduation rate calculation.

Changes: Section 668.46(a)(5) has been changed to require that an institution, beginning with the group of students who enter the institution on or after July 1, 1996, disclose this information no later than the January 1 immediately following the point in time that 150% of normal time has elapsed for the entire group of students on which the institution bases its completion or graduation rate, and every January 1 thereafter.

Comments: Most commenters recommended that the Secretary require the use of a snapshot approach for tracking students, that is, taking a snapshot of a cohort that does not change for the entire length of the analysis. Electronically, this methodology means comparing only two files. For institutions that will make calculations from paper records, the ''snapshot'' methodology requires looking at records from only two academic years. The commenters explained that a snapshot methodology will limit the requirement to comparison of a cohort's file for only two years—at the time of entry and at the time of disclosure. The commenters' concern is that continuous tracking would be an added and unnecessary burden on institutions. The commenters also indicated that the snapshot methodology is sufficient to produce the required information under the statute. Very few commenters supported the concept of tracking individual students.

Discussion: The Secretary agrees that a snapshot methodology is appropriate for purposes of these regulations. To help institutions implement this methodology, the Secretary is adjusting other elements of the methodology, such as the characterization of an entering student.

Changes: None.

Comments: The commenters almost unanimously recommended that the Secretary require the use of a fall cohort to calculate an institution's graduation rate. Most institutions' believe that students entering in this term will be a representative sample of students entering during the entire year. Institutions argue that using the same methodology will produce more consistent and comparable data. The commenters stated that using a full-year cohort would dramatically increase data tracking and reporting burden on institutions. Moreover, use of the fall cohort methodology is consistent with both the IPEDS GRS under development and the JCAR methodology, and many

institutions and state-level agencies have already developed data systems using the fall cohort methodology recommended by Dear Colleague Letter GEN–91–27. A number of institutions opposed extrapolation to a full-year rate; a small number supported such extrapolation. Some institutions believe flexibility should be given to institutions for whom a fall cohort is not representative.

Discussion: The Secretary accepts the commenters' assertion that the use of a fall cohort is the best approach for some institutions, namely standard term-based (semester, trimester, quarter) institutions, which primarily commented on this issue. To be a standard term-based institution for these purposes, the institution must offer predominantly standard term-based programs, that is, greater than 50% of its programs must be term-based. In order to accommodate institutions for whom a fall cohort may not suffice, the regulations require the use of a year-long cohort (July 1-June 30) for institutions that do not operate on a standard term basis.

Changes: Section 668.46(a)(2) has been added to require institutions that offer a predominant number of semester, trimester, or quarter based programs to use a fall cohort of students entering between every July 1 and October 15. An institution using a snapshot methodology may use a census date of October 15 or another appropriate date to identify that cohort. Institutions that do not have a predominant number of programs based on standard semesters, trimesters, and quarters must use a year-long cohort of students who enter between every July 1 and June 30. The Secretary believes this is a reasonable differentiation because most non-term based institutions are proprietary schools, and the Secretary understands that these institutions are now required by their accrediting agencies to track all their students.

Comments: All commenters who addressed the concept of an entering student's attendance for at least one day of class opposed the proposal. The commenters explained that many students register, add and drop courses, and withdraw after the first day of class. Moreover, institutions generally use an enrollment date or census date to record a snapshot of their enrollment. Typically this date is at least ten days to thirty-five days after the beginning of a term; some states mandate the actual census date. The commenters indicated that, realistically, institutions simply do not have mechanisms to know if a student attends only one day of class. Therefore, the commenters feel the Secretary should refer institutions to the definition of entering (or first-time) student under the IPEDS Fall Enrollment Survey (the count of students by the NCES that counts the number of students enrolled as of October 15 for the purpose of providing annual projections of college enrollment for the NCES publications *Condition of Education* and *The Digest of Education*). As previously indicated, institutions are generally familiar with these definitions.

Discussion: The Secretary is concerned by the issues raised by the commenters, in part because it is important for other parts of the regulations governing the title IV, HEA programs (e.g., refunds) that institutions know when students withdraw or drop out of an institution. However, given the number and nature of the comments received on this issue, the Secretary agrees that it will reduce burden and increase comparability to require institutions to use the enrollment date (October 15) set by the IPEDS Fall Enrollment Survey, or the end of the institution's drop-add period, for purposes of identifying an entering student for institutions that are required by these regulations to use a fall cohort.

For institutions that use a year-long cohort, an entering student is a student who attends at least one day of class. The Secretary believes that this differentiation among schools on this issue is logical since non-term based schools are better able to track their students from the first day because such institutions do not have drop-add periods.

Changes: A change has been made in § 668.46(a) that mandates institutions that offer a predominant number of programs based on semesters, trimesters, or quarters to base their calculations on the students who enter during the institution's fall term, beginning July 1, 1996. An entering student shall be considered to have entered for these purposes if that entering student is enrolled as of October 15 or the end of the institution's drop-add period. All other institutions must count all students who enter between every July 1 and June 30, and attend at least one day of class, beginning July 1, 1996.

Comments: The primary concern raised by the commenters concerning the definition of entering students was the treatment of students transferring into an institution. Almost unanimously the commenters favored a separate cohort and graduation rate for these students. The commenters believed that including students who transfer into colleges and universities in the same cohort with first-time freshman students will lead to inconsistent and noncomparable data among institutions, because institutions evaluate transfer students differently and at different times, and different levels of credit may be awarded for different curriculum choices. Some commenters recommended that the progress of transfers-in should be accounted for by using a snapshot methodology at 150% of the normal time to complete from their time of entrance into the new institution. That is, their status should be measured at the time of entry and at the time of disclosure and be reported separately. Other commenters noted that the inclusion of transfers-in with first-time freshman students requires a continuing adjustment to the entering cohort. This approach would violate the snapshot methodology recommended by so many commenters. Moreover, some commenters believe that such a methodology complicates the calculations, creates a burden on the institutions, and ultimately confuses the consumer. Other commenters note that separate reporting for first-time freshman students and transfers-in is consistent with established tracking methodologies in the states, which for the most part concentrate on tracking first-time freshmen.

Discussion: In response to the commenters' concerns, the Secretary has reconsidered the position taken in the NPRM and excludes from the definition of ''entering'' students those students who transfer into an institution. The Secretary will now consider reporting on students who transfer into an institution to be an optional disclosure for Student Right-to-Know purposes. If an institution does choose to establish a cohort of transfers-in, the calculation of the completion or graduation rate of these students must be separate from the calculation of the completion or graduation rate of the first-time cohort, and the two rates must be published and labeled as two separate rates.

Changes: Section 668.46(a) is revised to make optional and separate the reporting on students transferring into an institution.

Comments: Many commenters urged the Secretary to consider adopting the JCAR methodology, which includes the disclosure of completion or graduation rates, and other information, on part-time as well as full-time undergraduate students. These commenters maintained that information on part-time students was necessary to meet the needs of a large number of student consumers who do not fit into the traditional category of full-time students.

Discussion: The statute only requires that institutions compile and disclose information on full-time, certificate- or degree-seeking undergraduate students. Institutions may always disclose completion or graduation rates and other information on part-time students or other types of students as supplemental information.

Changes: None.

Comments: Many commenters recommended that the Secretary not consider students who transfer to a new institution to be completers. These commenters believed that considering transfers-out to be completers is inaccurate because an individual could be counted as a completer by two separate institutions. These commenters also asserted that students who transfer out of an institution are not equivalent to completers, since their final outcome is unknown.

Many other commenters recommended that the Secretary should regulate what types of documentation the Secretary will accept to define ''substantial preparation.'' Moreover, these commenters recommended that the Secretary not define substantial preparation because these definitions would place a burden on institutions, since they would require evaluation of transfer credits at entry, an uncommon practice in higher education. The absence of a standard practice for evaluating transfer credits and the varying definitions of academic standing minimizes the comparability of data from one institution to another and introduces the possibility of data manipulation. Both produce poor consumer information in the eyes of these commenters.

Some commenters appreciated the flexibility to allow transfers-out in good standing to be completers and request that the institutions be allowed to define good standing.

A number of commenters consider a request for a transcript an insufficient indicator of students' transfer behavior; transcript requests do not provide the necessary certification, as they are generated for many reasons unrelated to a student's intent to transfer.

Some commenters indicate that surveys are also insufficient. Such estimates introduce considerable uncertainty and variation in the data. Other commenters support the idea of surveys as a viable means of dealing with this statutory requirement.

Many commenters recommended that the regulations allow one of four types of documentation that a student has transferred to another institution. First, a certification letter or document from the registrar of the receiving institution that a student is enrolled is evidence of transfer. Second, an electronic certification, such as a SPEEDE/ExPRESS or a secure e-mail message, from the registrar of the receiving institution is evidence of transfer. Third, the confirmation of enrollment data from a legally-mandated, statewide or regional tracking system (or shared information from such systems) is evidence of transfer. Fourth, other documentation of enrollment at the receiving institution, such as institutional data exchanges of students enrolled as of the official enrollment date, is evidence of transfer. Some commenters requested that the Secretary specify these means of evidence in the regulations. A number of commenters believed that enrollment at a new institution alone is evidence of substantial preparation. Further, institutions should be permitted to use a variety of sources for this rate, without being required to have documented proof of transfer on a student-by-student basis. It must be emphasized that an approximate rate is more useful to the student than a rate which is clearly underrepresented because of difficulties in student-by-student data collection and documentation.

Most commenters urged the Secretary to adopt separate reporting of completion and transfer-out rates if it is legally necessary to address transfers-out. The resulting statistics represent distinct pieces of consumer information depending upon an entering student's own objective. The commenters indicate that combining these rates into a single statistic will not help students make the choices that actually face them.

Many of the commenters petitioned the Secretary to work with the academic community to devise procedures which would facilitate the transfer of data among institutions which chose to participate in such data transfer mechanisms. A significant number of commenters recommended that the Secretary consider the method employed by the GRS because of its flexibility in reporting students who transfer out of an institution. Some commenters recommended that transfers-out be considered completers if they are ''transfer-ready.'' In other words, if the student enrolled in a transfer preparation program had achieved a certain grade point average and completed a certain number of credits, the student could be considered to have received ''substantial preparation'' and therefore, be ''transfer-ready.'' This student, the commenters maintained, is a completer.

Discussion: The Secretary agrees that combining graduates with transfers-out in a single rate will lead to confusing and sometimes misleading information. Therefore, the Secretary requires that institutions publish separately its transfer-out rate.

The Secretary recognizes the variety of serious problems associated with the statutory provision that transfers-out be reported. Because the provision is mandated by law, institutions may not ignore it. However, the Secretary wishes to provide institutions with flexibility to address transfers-out. Therefore, consistent with the treatment of transfers-out in the GRS, an institution is only required to report on those students the institution knows have transferred to another institution.

For the reasons cited by the commenters, the Secretary agrees that merely requesting a transcript is insufficient evidence of transfer. There must be reasonable evidence of a transfer in order for an institution to consider a student a transfer-out. The four examples of valid documentation suggested by many of the commenters have been incorporated into the regulations per their request.

Moreover, in order to resolve the conflict between the transfer-out provision and the particular mission of community colleges in preparing students for transfer to other institutions, these regulations provide that institutions that offer transfer preparatory programs as described in § 668.8(b)(1)(ii) may consider a student who is ''transfer-ready'' to be a completer. A transfer-ready student is a student who has successfully completed his or her transfer program.

With respect to the Student Right-to-Know Act disclosures, in response to the commenters' concerns, an institution must disclose the transfer-out rate separately from its graduation rate, but may provide additional information that combines the completion or graduation rate with its transfer-out rate.

Changes: A change has been made in § 668.46(c) that mandates that institutions report their transfer-out rate separately. Section 668.46(c) has also been changed to require an institution to document that a student has transferred to another institution, and provides examples of the types of documentation necessary to document a transfer-out.

A change has been made to § 668.46(b) which allows an institution to count in its completion or graduation rate a student who has successfully completed a transfer-preparatory program as described in § 668.8(b)(1)(ii).

Comments: Some commenters believe the use of a persistence rate for programs longer than the predominant

program is necessary because it shows recognition that not all programs are defined in the same way among all institutions. Other commenters believe that persistence rates should not be allowed to substitute for graduation rates in any cases because an institution cannot determine whether a persister will graduate. These commenters believe that counting persisters as completers distorts the graduation rate. These commenters therefore believe that students who are enrolled in a program that is longer than the program on which the institution bases its disclosure, should not be counted as completers. These commenters recommended use of the GRS.

Other commenters recommended that institutions be given an option of calculating a persistence rate until they are able to calculate a graduation rate.

Discussion: While the Secretary is concerned that graduation rates be disclosed as early as is legally possible so that students may receive current information, the Secretary has been persuaded by the commenters that any type of equation of persisters with graduates is misleading. Therefore, the Secretary has eliminated the proposal that an institution consider students in good standing who are enrolled in programs longer than the predominant programs' length as completers for the purpose of disclosing its graduation or completion rate.

As for the disclosure of a persistence rate in general, either before a disclosure date, or at the disclosure date, an institution may disclose such a rate as supplemental information, but must clearly mark the rate as a persistence rate.

Changes: A change has been made to § 668.46(b) that eliminates the inclusion of students persisting in programs longer than the program on which the disclosure date is based as completers.

Comments: Most commenters support the cohort's exclusion of students who die or become permanently and totally disabled. A number of commenters pointed out the small number of these students would have little effect on graduation rates.

Some commenters expressed serious concern that the graduation rates at institutions with a significant number of legal exclusions may appear artificially low. For example, an institution with a large percentage of its students who serve on church missions will report a low graduation rate if those students do not complete within the statutory time frame. Many commenters objected to the statutory exclusions and believe that any post-hoc adjustment of the cohort based on subsequent student behavior will affect comparability of data. These commenters recommend use of the GRS to allow reporting these students as not enrolled if the time of reporting coincides with the time of the special circumstance, and separate statistics for students who have left the institution for various reasons, *e.g.,* performing church missions, joining the Armed Forces, etc. One commenter argued that in order to be excluded, the student must leave school for the express purpose of joining the Armed Forces, going on a church mission, etc., and not just subsequently join such an endeavor after leaving school for another reason.

Discussion: In response to the commenters' support, the regulations retain the exclusions for students who die or become totally and permanently disabled.

The Secretary appreciates the concerns raised regarding the other statutory exclusions, such as church missionary activity. However, the Secretary is unable to extend the time frame within which graduation or completion may take place for the student to be counted as a completor or graduate in the institution's completion or graduation rate, because this time frame (150% of normal time) is a statutory provision. An institution, however, may choose to deal with the difficulties of this situation in several ways. It could explain the reasons why only a few students are in its cohort, if it excludes these students through the statutory provisions. Or it could include these students in its cohort, and supplement the required calculation with additional information on the graduation rate of those students when an extended time frame is applied. The Secretary encourages institutions to provide supplementary information and data concerning these and other limitations of its graduation rate disclosure.

The Secretary also agrees that a student must leave the institution due to one of the circumstances described in § 668.46(d) in order to be excluded from the denominator of the completion or graduation rate fraction.

Changes: None.

Comments: Most commenters recommended that institutions not report a single graduation rate number based on a ratio of completers, transfers and persisters. Institutions strongly recommend the reporting of separate rates for graduates, students still enrolled, transfers-out, transfers-in and students not enrolled or graduated. The commenters believe that combining these rates will lead to a meaningless statistic.

Discussion: As noted above, the Secretary has dropped the proposal that institutions be allowed to count students persisting in programs longer than the program on which the institution bases its disclosure date as completers. The Secretary also mandates a separate completion or graduation rate, and a separate transfer-out rate. Therefore, the provisions in the proposed § 668.46(c) that required the break out of the different factors of the institution's graduation or completion rate have been eliminated.

As noted above, an institution may also supply supplemental information describing the transfer rate of the students who transfer into the institution. It may also publish supplemental information describing the rate of those who complete or graduate when combined with the rate of those students who transferred-out.

Changes: Section 668.46(c) is revised as described above.

Comments: Several commenters supported the provisions that allow the Secretary to waive the requirements of §§ 668.46 and 668.49 if an athletic association or conference of which it is a member satisfies the Secretary that it compiles and publishes substantially comparable data. Some of these commenters asked that the standard process for obtaining a waiver be published with the final regulations. One of these commenters also expressed the belief that the granting of the waiver should be *pro forma.* One of these commenters asked that an institution that is a member of such an athletic association or conference be allowed to maintain, publish, and distribute its own set of data as well. One commenter asked that an athletic conference or association be allowed to apply on behalf of all its members at once, rather than for each institution individually.

One commenter asked that state higher education agencies be given the opportunity to request similar waivers for their member institutions. This commenter argued that such additional waivers would not result in any more incomparability than would already be generated under the flexible rules the Secretary is proposing.

Several commenters argued that the Secretary should not give institutions the opportunity to obtain a waiver. These commenters maintained that in the interests of accurate and comparable consumer information, the Department recognize only the GRS as an acceptable method for gathering this information, and that athletic associations or conferences not be allowed to determine the methodology by which any of these data is gathered.

Several commenters asked that waivers granted to institutions for substantially comparable data supplied to athletic conferences or associations not exempt those institutions from the requirement to supply information to students, prospective students, the public, or high school counselors and coaches, as stipulated in §§ 668.41(a)(3) and 668.41(b).

One commenter asked that small institutions be allowed to request waivers exempting them entirely from these regulations. This commenter argued that small denominators in graduation rate fractions would lead to huge variances in rates from year to year. If waivers could not be granted, this commenter asked that such institutions be permitted to report data for several years together in order to cure this problem.

Discussion: The statute provides institutions the opportunity to ask for waivers through their athletic conferences or associations. The Secretary does not have the authority to remove this opportunity, or to withhold waivers to associations or conferences that submit applications that meet reasonable criteria. The Secretary will not approve waivers if the application does not specify that the methodology by which the conference or association is to gather these data meets the criteria set forth by the statute and these regulations. The Secretary believes that these approval criteria will provide comparable data between those institutions that report according to athletic association or conference protocols, and those that do not.

As noted above, the Secretary will also consider the protocols of state higher education agencies or other associations as acceptable methodologies if those protocols meet the requirements set by the statute and these regulations.

The statute is clear in requiring that all institutions that participate in any title IV, HEA program must comply with the requirements for supplying completion or graduation rate information and transfer-out rate information for their undergraduate populations, and that all institutions that participate in any title IV, HEA program and award athletically-related student aid must comply with the requirements to supply information on their general student population and the completion or graduation rate and transfer-out rate of their student-athletes. The statute only allows waivers for substantially comparable data submitted to an athletic conference or association. It does not empower the Secretary either to exempt an institution from these requirements, or to allow institutions to make these disclosures and reports on any but an annual basis.

In response to the concerns of small schools, institutions are always able to provide additional information, such as prior years' data, and explanations of factors affecting their completion or graduation rates.

The Secretary does not construe the statute to prohibit institutions from compiling and publishing these data even if its athletic conference or association has successfully requested waivers on its behalf, so long as the institution generates the information in compliance with the requirements of the statute, these regulations, and other Departmental guidance regarding acceptable protocols.

The Secretary agrees with the commenter that the successful application for waivers of data collection requirements on behalf of an institution by an athletic association or conference does not also exempt that institution from supplying this information to the parties identified in the statute. Institutions that obtain such waivers must still comply with the information dissemination requirements set by § 668.41.

The Secretary will publish at a later date the procedures by which an athletic association or conference may request waivers for its member institutions.

Changes: A change has been made to § 668.46(e) that clarifies that an institution that obtains waivers through its athletic association or conference for the generation of this data must still comply with the provisions of § 668.41.

Section 668.49 Graduation or Completion Rate and Transfer-out Rates of Student-athletes

Comments: Several commenters expressed concern over the July 1, 1997 reporting date for the data on graduation and completion rates of student athletes. These commenters contended that requiring institutions to meet this date would entail gathering information on students who had entered as far back as 1993, and because institutions who were not members of the NCAA are not tracking those students, the result would be inaccurate and flawed data, as well as a heavy burden on those institutions. These commenters believed that the tracking of these students should begin with the students entering after July 30, 1996, and that the Department not require the first report to be compiled and issued until after the 150% of the time for graduation or completion for that group of students has elapsed.

Discussion: The Secretary appreciates the concerns of these commenters with regard to the issue of disclosing completion or graduation rates for students entering before July 1, 1996.

With regard to the students on which institutions must compile completion or graduation rate information, the Secretary will not require institutions to provide this information for students who enter before July 1, 1996, subject to the regulatory provisions regarding the provision of average rates for previous years. However, the Secretary is aware that a large number of schools will have in hand data on students entering prior to that date as a result of complying with the requirements of organizations such as the NCAA. The Secretary strongly encourages those institutions to report those data.

All institutions must disclose the information other than the completion or graduation rate data required by this section beginning July 1, 1997. Institutions affected by these regulations must disclose the information on completion or graduation rates for student-athletes beginning on the July 1 immediately following the expiration of 150% of normal time for the group of students entering on or after July 1, 1996 on which the institution bases its completion or graduation rate, in accordance with § 668.46(a)(2).

The Secretary also wishes to clarify that the disclosure and reporting date for this information is the July 1 of the calendar year following the expiration of the 150% of normal time for the students whose graduation or completion rate performance is measured. Institutions thus will not be required to disclose this information for approximately one year after the expiration of the 150% period. The Secretary encourages institutions to disclose earlier, for example, along with the January 1 disclosures for non-student athletes.

Changes: None.

Comments: Several comments expressed concern that the level of detail the statute requires regarding the gender and race of athletes within particular sports will result in the possibility that particular students will be identifiable from the data an institution reports. These commenters contended that such a situation would violate the privacy provisions of the Buckley Amendment (Family Educational Rights and Privacy Act), and therefore asked that the Department allow institutions to leave blank those categories in their reports in which the status of a very few students (less than five) would be reported.

Discussion: The Secretary agrees with the commenters, and will not require institutions to report this information if five or fewer students are involved. The institution must supply a note stating that the disclosure was not made due to privacy concerns.

Changes: A change has been made in § 668.49 to add a provision that an institution need not disclose a completion or graduation rate or a transfer-out rate for categories that include five or fewer students.

Comments: Several commenters supported the provision that the same cohort of students be the subject of the reports in both §§ 668.46 and 668.49.

Discussion: The Secretary appreciates these commenters' support.

Changes: None.

Comments: Several commenters noted the absence of a definition of the term ''athlete'' in the proposed rules, and maintained that such a definition should be supplied in the final rules in order for the regulations to generate comparable data among institutions. One of these commenters inquired whether the term referred only to athletes who receive athletically-related student aid, whether it would include only participants in intercollegiate athletic sports, and how long participants need participate before being deemed ''athletes.''

Discussion: The Secretary does not agree that it is necessary to define the term ''athlete.'' The Secretary notes that the statutory term ''athletically-related student aid'' governs the selection of students upon whose performance completion or graduation rates are reported, and to whom information on performance is provided. The Secretary believes that for the purposes of the information required by § 668.49(a)(1)(ii), students who receive athletically-related student aid are all students who receive that aid at any time during the previous reporting year. For purposes of § 668.49(a)(1)(iv), entering students who receive athletically-related student aid are those students who receive athletically-related student aid for any period of time between July 1 and June 30 of their entering year. The Secretary notes that this is a methodology similar to that now employed for these purposes by the NCAA.

Changes: None.

Executive Order 12866

These regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of the regulatory action.

The potential costs associated with the regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of these regulations, the Secretary has determined that the benefits of the regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal government in the exercise of their governmental functions.

Summary of Potential Costs and Benefits

The potential costs and benefits of these final regulations are discussed elsewhere in this preamble under the following heading: *Analysis of Comment and Changes.*

Paperwork Reduction Act of 1995

Sections 668.41, 668.46 and 668.49 all contain information collection requirements. As required by the Paperwork Reduction Act of 1995, the Department of Education has submitted a copy of these sections to the Office of Management and Budget (OMB) for review.

Collection of Information: Student Right-to-Know

These regulations affect the following types of entities eligible to participate in the Title IV, HEA programs: Educational institutions that are public or nonprofit institutions, and businesses and other for-profit institutions.

Institutions of higher education that participate in title IV, HEA programs will need and use the information required by these regulations to meet the eligibility requirements for participation in those programs that were added by the Student Right-to-Know Act.

Section 668.41—Institutions must make available to students and potential students information on the completion or graduation rates and transfer out rates of the general full-time undergraduate population.

Institutions that award athletically-related student aid must provide the potential student athlete, and his or her parents, coaches, and high school counselor information on the completion or graduation rates and transfer-out rates of student-athletes. Institutions must also provide a copy of this information to the Secretary. The Secretary needs and uses this report to fulfill statutory requirements under the Student Right-to-Know Act to publish that information broken down by institution and athletic conference.

Section 668.46—The information to be collected includes the completion or graduation rate, and the transfer-out rate of full-time, certificate- or degree-seeking undergraduate students entering the institution.

Section 668.49—The information to be collected includes the number of students attending the institution who received athletically related student aid, broken down by race and gender; the completion or graduation rate and transfer-out rate of full-time, certificate- or degree-seeking undergraduate students broken down by race and gender; the completion or graduation rate and transfer-out rate of full-time, certificate- or degree-seeking undergraduate students who received athletically related student aid, broken down by race and gender with each sport; and the average graduation or completion rate and transfer-out rate of full-time, certificate- or degree-seeking undergraduate students for the four most recent graduating or completing classes, broken down by race and gender.

Information is to be collected and disclosed once each year for institutions covered by §§ 668.41(a) and 668.46, and collected, disclosed, and reported to the Secretary once each year for institutions covered by §§ 668.41(b) and 668.49. Annual public reporting and recordkeeping burden is estimated to average 24.5 hours for each response for 8,000 respondents for § 668.46 and 24.5 hours for each response for 1,800 respondents for § 668.49. Thus the total annual reporting and recordkeeping burden for this collection is estimated to be 240,100 hours. These hours include the time needed for searching existing data sources and gathering, maintaining, and disclosing the data.

OMB is required to make a decision concerning the collections of information contained in these final regulation between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for U.S. Department of Education.

Regulatory Flexibility Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. Small entities affected by these regulations are small institutions of higher education.

Assessment of Educational Impact

In the Notice of Proposed Rulemaking, the Secretary solicited comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency of the United States.

Based on the response to the proposed rule, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs— education, Loan programs— education, Reporting and recordkeeping requirements, Student aid.

(Catalog of Federal Domestic Assistance Numbers: 84.007 Federal Supplemental Educational Opportunity Grant Program: 84.032 Federal Stafford Loan Program; 84.032 Federal PLUS Program; 84.032 Federal Supplemental Loans for Students Program; 84.033 Federal Work-Study Program; 84.038 Perkins Loan Program; 84.063 Federal Pell Grant Program; 84.069 Federal State Student Incentive Grant Program; 84.268 Federal Direct Student Loan Program; and 84.272 National Early Intervention Scholarship and Partnership Program.)

Dated: November 24, 1995.

Richard W. Riley,

Secretary of Education.

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, 1099c and 1141, unless otherwise noted.

2. Section 668.41 is amended by adding a new paragraph (a)(3); redesignating paragraph (b) as paragraph (c) and revising the redesignated paragraph (c); and by adding new paragraph (b) to read as follows:

§ 668.41 Scope and special definitions.

(a) * * *

(3) The institution's completion or graduation rate and its transfer-out rate, produced in accordance with § 668.46.

(b)(1) Each institution participating in any title IV, HEA program, when it offers a potential student-athlete athletically-related student aid, shall provide to the potential student-athlete, and his or her parents, high school coach, and guidance counselor, the information on completion and graduation rates, transfer-out rates, and other data produced in accordance with § 668.49.

(2) The institution shall also submit to the Secretary the report produced in accordance with § 668.49 by July 1, 1997 and by every July 1 every year thereafter.

(c) The following definitions apply to this subpart:

Athletically-related student aid means any scholarship, grant, or other form of financial assistance, offered by an institution, the terms of which require the recipient to participate in a program of intercollegiate athletics at the institution.

Certificate or degree-seeking student means a student enrolled in a course of credit who is recognized by the institution as seeking a degree or certificate.

First-time freshman student means an entering freshman who has never attended any institution of higher education. Includes a student enrolled in the fall term who attended a postsecondary institution for the first time in the prior summer term, and a student who entered with advanced standing (college credit earned before graduation from high school).

Normal time is the amount of time necessary for a student to complete all requirements for a degree or certificate according to the institution's catalog. This is typically four years (8 semesters or trimesters, or 12 quarters, excluding summer terms) for a bachelor's degree in a standard term-based institution, two years (4 semesters or trimesters, or 6 quarters, excluding summer terms) for an associate degree in a standard term-based institution, and the various scheduled times for certificate programs.

Prospective students means individuals who have contacted an eligible institution requesting information concerning admission to that institution.

Undergraduate students, for purposes of this section only, means students enrolled in a 4- or 5-year bachelor's degree program, an associate's degree program, or a vocational or technical program below the baccalaureate.

(Authority: 20 U.S.C. 1092)

3. Section 668.46 is added to subpart D, to read as follows:

§ 668.46 Information on completion or graduation rates.

(a)(1) An institution shall prepare annually information regarding the completion or graduation rate and the transfer-out rate of the certificate- or degree-seeking, full-time undergraduate students entering that institution on or after July 1, 1996.

(2)(i) An institution that offers a predominant number of programs based on semesters, trimesters, or quarters shall base its completion or graduation rate and transfer-out rate calculations on the group of certificate- or degree-seeking, full-time undergraduate students who enter the institution during the fall term.

(ii) An institution not covered by the provisions of paragraph (a)(2)(i) of this section shall base its completion or graduation rate and transfer-out rate calculations on the group of certificate- or degree-seeking, full-time undergraduate students who enter the institution between every July 1st of one year and June 30th of the following year.

(3)(i) For purposes of the completion or graduation rate and transfer-out rate calculations required in paragraph (a)(1) of this section, an institution shall count as entering students only first-time freshman students, as defined in § 668.41(c).

(ii) An institution may also calculate the completion or graduation rate of students who transfer into the institution as a separate, supplemental rate.

(4)(i) An institution covered by the provisions of paragraph (a)(2)(i) of this section shall count as an entering student a first-time freshman student who is enrolled as of October 15, or the end of the institution's drop-add period.

(ii) An institution covered by the provisions of paragraph (a)(2)(ii) of this section shall count as an entering student a first-time freshman student who has attended at least one day of class.

(5)(i) Beginning with the group of students who enter the institution between July 1, 1996 and June 30, 1997, an institution shall disclose its completion or graduation rate and transfer-out rate information no later than the January 1 immediately following the point in time that 150% of the normal time for completion or graduation has elapsed for all of the students in the group on which the institution bases its completion or graduation rate and transfer-out rate calculations.

(ii) An institution shall disclose no later than January 1 each year thereafter its completion or graduation rate information for each succeeding group

of students who completed or graduated within 150% of the normal time for completion or graduation from their programs as of June 30 of the preceding year.

(b) In calculating the completion or graduation rate under paragraph (a) of this section, an institution shall count as completed or graduated—

(1) Students who have completed or graduated within 150% of the normal time for completion or graduation from their program;

(2) Students who have completed a transfer program as described in § 668.8(b)(1)(ii) within 150% of normal time for completion from that program may be counted as completers.

(c)(1) In calculating the transfer-out rate under section paragraph (a) of this section, an institution shall count as students who have transferred out those students who, within 150% of the normal time for completion or graduation from the program in which the student was enrolled, subsequently enroll in any program of an eligible institution for which the prior program provides substantial preparation;

(2) An institution shall document that its program provided substantial preparation to a student by obtaining a copy of any of the following:

(i) Certification letter from the receiving institution stating that a student is enrolled in that institution;

(ii) Electronic certification from the receiving institution stating that a student is enrolled in that institution;

(iii) Confirmation of enrollment data from a legally-authorized statewide or regional tracking system (or shared information from those systems) confirming that a student has enrolled in another institution;

(iv) Institutional data exchange information confirming that a student as enrolled in another institution; or

(v) An equivalent level of documentation.

(d) For the purpose of calculating a completion or graduation rate and a transfer-out rate, an institution may exclude from the calculation of its completion or graduation rate and its transfer-out rate students who—

(1) Have left school to serve in the Armed Forces;

(2) Have left school to serve on official church missions;

(3) Have left school to serve with a foreign aid service of the Federal Government, such as the Peace Corps; or

(4) Are deceased, or totally and permanently disabled.

(e)(1) The Secretary grants a waiver of the requirements of this section to any institution that is a member of an athletic association or conference that has voluntarily published completion or graduation rate data, or has agreed to publish data, that the Secretary determines are substantially comparable to the data required by this section.

(2) An institution that receives a waiver of the requirements of this section must still comply with the requirements of §§ 668.41(a)(3) and 668.41(b) of this subpart.

(3) An institution, or athletic association or conference applying on behalf of an institution that seeks a waiver under paragraph (e)(1) of this section shall submit a written application to the Secretary that explains why it believes the data the athletic association or conference publishes are accurate and substantially comparable to the information required by this section.

(Authority: 20 U.S.C. 1092)

4. Section 668.49 is added to subpart D, to read as follows:

§ 668.49 Report on completion or graduation rates for student-athletes.

(a)(1) By July 1, 1997, and by every July 1 every year thereafter, each institution that is attended by students receiving athletically-related student aid shall produce an annual report containing the following information:

(i) The number of students, categorized by race and gender, who attended that institution during the year prior to the submission of the report.

(ii) The number of students described in paragraph (a)(1)(i) of this section who received athletically-related student aid, categorized by race and gender within each sport.

(iii) The completion or graduation rate and transfer-out rate of all the entering, certificate- or degree-seeking, full-time, undergraduate students described in § 668.46(a) (1), (2), (3) and (4).

(iv) The completion or graduation rate and transfer-out rate of the entering students described in § 668.46(a) (1), (2), (3)and (4) who received athletically-related student aid, categorized by race and gender within each sport.

(v) The average completion or graduation rate and transfer-out rate for the four most recent completing or graduating classes of entering students described in § 668.46(a) (2), (3), and (4) categorized by race and gender. If an institution has completion or graduation rates and transfer-out rates for fewer than four of those classes, it shall disclose the average rate of those classes for which it has rates.

(2) For purposes of this section, *sport* means—

(i) Basketball;

(ii) Football;

(iii) Baseball;

(iv) Cross-country and track combined; and

(v) All other sports combined.

(3) If a category of students identified in paragraph (a)(1)(iv) above contains five or fewer students, the institution need not disclose information on that category of students.

(b) The provisions of § 668.46 (a), (b) and (c) apply for purposes of calculating the completion or graduation rates and transfer-out rates required under paragraphs (a)(1)(iii), (a)(1)(iv), and (a)(1)(v) of this section.

(c) Each institution of higher education described in paragraph (a) of this section may also provide to students and the Secretary supplemental information containing—

(1) The graduation or completion rate of the students who transferred into the institution; and

(2) The number of students who transferred out of the institution.

(d) Section 668.46(d) applies for purposes of this section.

(Authority: 20 U.S.C. 1092)

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Part VI

Department of Education

34 CFR Part 685

William D. Ford Federal Direct Loan Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 685

RIN 1840–AC22

William D. Ford Federal Direct Loan Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary of Education amends the William D. Ford Federal Direct Loan (Direct Loan) Program regulations. The regulations apply to loans under the Federal Direct Stafford/Ford Loan (Direct Subsidized Loan) Program, the Federal Direct Unsubsidized Stafford/Ford Loan (Direct Unsubsidized Loan) Program, the Federal Direct PLUS Loan (Direct PLUS Loan) Program, and the Federal Direct Consolidation Loan (Direct Consolidation Loan) Program, collectively referred to as the Direct Loan Program. These regulations provide schools with more flexibility in performing origination functions, and clarify the date of loan origination. Further, these regulations set timelines for the submission of promissory notes, disbursement records, and origination records.

EFFECTIVE DATE: These regulations take effect July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Katrina Ingalls, Program Specialist, Direct Loan Policy Group, Policy Development Division, U.S. Department of Education, Room 3053, ROB–3, 600 Independence Avenue, SW., Washington, DC 20202–5400. Telephone: (202) 708–9406. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

The Secretary is amending the Direct Loan Program regulations to improve the program based on experience gained during the first year of operation. These amended regulations reflect programmatic changes that the Secretary believes will improve services to student and parent borrowers, increase institutional flexibility, and enhance the Department's administrative and fiscal oversight capabilities.

On September 20, 1995, the Secretary published the proposed amended regulations in a notice of proposed rulemaking (NPRM) for part 685 in the Federal Register (60 FR 48858). The major issues surrounding the proposed changes were discussed in the NPRM and thus will not be repeated here.

The following section summarizes the two revisions to the proposed rule.

Substantive Revisions to the Proposed Rule

Section 685.215(h)(2) Repayment Plans

The NPRM proposed to revise the repayment plan regulations to reflect the Secretary's current operational practice regarding repayment plan selection for certain Direct Consolidation Loan borrowers. Under the NPRM, borrowers who consolidate only one FFEL Program loan into the Direct Loan Program would be required to select initially a repayment plan other than the standard repayment plan. The Secretary has determined that this restriction will not be included in the final regulations.

Section 685.301 Origination of a Loan by a Direct Loan Program School

The NPRM proposed that the date of loan origination be the earlier of the date the promissory note is printed or the date the origination record is accepted by the Secretary. The Secretary has revised § 685.301(a)(5) to provide that the date of loan origination is the date the school creates the electronic loan origination record for a borrower. Beginning with the 1996–1997 academic year, enhanced loan origination software will record the date of origination permanently on the borrower's loan file when the borrower's origination record is created by the school. Modifying the Direct Loan school software to record automatically the date the school creates the origination record will ensure that a school is able to document clearly the date that it certified the borrower's eligibility for the loan, the loan amount, and anticipated disbursement dates. The date the electronic origination record is created occurs earlier in loan processing than either printing the promissory note or the origination record being accepted by the Secretary. This change will result in improved service to schools by automatically generating the information necessary to document the origination process and will improve services to borrowers by promoting flexibility in processing loans.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, ten parties submitted comments on the proposed regulations. An analysis of the comments appears below, beginning with a general discussion of the comments received concerning the length of the comment period. This is followed by a general discussion of the comments received regarding the Secretary's consideration of establishing foreign school participation requirements for the Direct Loan Program.

A discussion of the major issues that generated comments follows. The major issues are grouped according to subject, with references to the appropriate sections of the regulations. Technical and other minor changes, and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority, generally are not addressed.

General Discussion of Length of Comment Period

Several commenters argued that the comment period was too short, especially considering that the Department published six NPRMs, all with comment periods ending at approximately the same time.

In the six NPRMs referred to above, the Secretary proposed numerous improvements and necessary changes to the Student Financial Assistance Programs. The ''Master Calendar'' provisions contained in section 482 of the Higher Education Act of 1965 (HEA) require that regulations be published in final form by December 1 prior to the start of the award year for which they will become effective. Because of the importance of implementing these changes and improvements for the award year beginning July 1, 1996, the Secretary established a comment period that would allow publication of these final regulations by December 1, 1995, consistent with the ''Master Calendar'' timeframe. The Secretary always endeavors to provide as long a comment period as possible.

General Discussion of Foreign School Participation Comments

In the preamble of the NPRM, the Secretary asked for comments and supporting arguments on:

- What, if any, additional standards should be established for foreign schools that participate in the Direct Loan Program;
- Potential financial risks as well as benefits of admitting foreign schools into the Direct Loan Program; and
- Potential losses or benefits to students related to foreign school participation in the Direct Loan Program.

One foreign school responded to the Secretary's invitation for comments. This school expressed enthusiasm about the Direct Loan Program because it

views potential participation as a way to solve some of the problems the school is currently experiencing in receiving loan funds under the FFEL Program. The commenter supported foreign school participation in the Direct Loan Program.

Further, the commenter suggested that the Secretary should not group all foreign schools together for purposes of participation in the Direct Loan Program and recommended that a separate category be established for schools that are located outside of the U.S. but are U.S. accredited. It is the school's opinion that this group would present a lower potential financial risk for the Federal Government since these schools maintain a U.S. Admissions Office and a U.S. dollar bank account. This commenter also pointed out the importance of making sure that foreign schools have trained individuals processing loans for their students.

Another commenter felt that it was premature to consider foreign school participation in the Direct Loan Program and recommended that processing system changes be implemented prior to allowing foreign school participation.

A third commenter recommended that foreign schools be allowed to participate, but not allowed to originate loans. This commenter suggested that foreign schools be required to use an alternative originator. This suggestion was made based on the commenter's opinion that all foreign schools are not uniform in their ability to administer the Title IV programs.

The Secretary understands and appreciates the issues raised by these commenters. As discussed in the NPRM, the Secretary is aware that, due to the nature of the Direct Loan Program, additional fiscal oversight and administrative requirements are warranted for participating foreign schools. The Direct Loan Program is unique among the financial aid programs with respect to its funds disbursement processes and requirements. Because there is no authorized limit to the amount of funds that schools may draw down in the Direct Loan Program, the Department must rigorously oversee the funds disbursement process. To prevent potential program abuse, the Secretary is committed to the careful monitoring of the drawdown of funds to schools and the disbursement to students.

Based on the comments received, the Secretary has determined that the issue of foreign school participation in the Direct Loan Program warrants further consideration. Therefore, no specific provisions related to foreign school participation are included in these regulations.

Discussion of Major Issues

Section 685.102 Definitions

School Origination Option 1, School Origination Option 2, and Standard Origination

Section 685.102(b)

Comments: Several commenters responded to the proposed revisions of the current definitions of school origination option 1, school origination option 2, and standard origination. These commenters viewed these changes as a positive step that would allow institutions greater flexibility to have the origination process modified based on the their unique capabilities and individual needs.

Several other commenters did not support the proposed change. These commenters argued that the Secretary should not amend the ''origination requirements.''

Discussion: It appeared from the comments that there may be some confusion regarding the proposed change. The Secretary is not changing the origination criteria, nor is the Secretary redesignating the functions performed at a given level of origination. The purpose of this amendment is to allow a school the flexibility to ask the Secretary to perform a function that the school must, under current regulation, perform, at a given origination level. If the Secretary approves the school's request, the Secretary will perform the functions, but the school would not be required to change its origination level.

For example, during the 1996–1997 academic year, an origination option 2 level school is fully qualified to perform all loan origination functions and to draw down loan funds. If a school wanted to ask the Secretary to handle the promissory note functions, but still wanted to be able to draw down funds (for which the school is fully qualified), current regulations would not allow this option. The proposed change would allow the Secretary to establish this type of individual agreement with the school.

The proposed regulatory amendment would not undermine the integrity of the program or the Secretary's ability to provide sound oversight. Furthermore, the change is consistent with the Secretary's current initiative to promote regulatory flexibility and reduce unnecessary burden on institutions. The Secretary is confident that this regulatory change allows schools to customize the origination process in a manner that would be beneficial for schools, as well as the Direct Loan Program.

Change: For clarity, the word ''status'' has been changed to ''options'' in each of the definitions.

Comments: A number of commenters recommended that any revisions to the origination criteria be established through negotiated rulemaking. These commenters noted that the existing origination criteria were developed through extensive negotiated rulemaking.

Discussion: Section 457 of the HEA requires the Secretary to conduct negotiated rulemaking for the Direct Loan Program only to the extent practicable. This section does not require negotiated rulemaking for amendments to existing regulations. Further, the Secretary does not believe that it is practicable to conduct negotiated rulemaking for amendments to these regulations. Negotiated rulemaking is a lengthy process that would have prevented implementation of the revised definitions of school origination option 1, school origination option 2, and standard origination for the 1996/1997 academic year. For these amendments, the Secretary has decided not to use the negotiated rulemaking process to solicit input from the higher education community. In the Secretary's opinion, these changes are a positive step that allow institutions the flexibility to modify the origination process based on their individual needs and capabilities. Because this is an improvement over the existing process, schools should be able to benefit from these regulatory revisions as soon as possible. The majority of the commenters supported the Secretary's proposal to revise these definitions of origination criteria.

Changes: None.

Section 685.208 Repayment Plans, Section 685.210 Choice of Repayment Plans, and Section 685.215 Consolidation

Comments: None of the commenters supported these proposed amendments. One commenter argued that borrowers with one FFEL Program loan should not be precluded from initially consolidating into the Direct Loan Program using the standard repayment plan. The commenter felt that a borrower's repayment options should not be limited by the number of loans the borrower wishes to consolidate. The commenter also asserted that, if the standard repayment plan offered the best terms for that Direct Consolidation Loan borrower, that option should be available to the borrower.

Discussion: The Departmental practice of requiring borrowers who consolidate only one FFEL Program loan into the Direct Loan Program to initially select a repayment plan other than the standard repayment plan had been implemented in response to the concerns of the FFEL community. However, none of the commenters wrote in support of this provision. Further, the only specific comment addressing this proposal was received from a member of the FFEL community, and that commenter urged the Secretary to delete this provision.

Change: Proposed amendments to §§ 685.208, 685.210 and 685.215 have been removed.

Section 685.301 Origination of a Loan by a Direct Loan Program School

Section 685.301(a)(5) Determining Eligibility and Loan Amount

Comments: Several commenters supported the amendment to clarify the date of loan origination. One commenter objected to the Secretary's clarification of the date of loan origination for the Direct Loan Program. This commenter felt that both the Direct Loan and FFEL Programs should establish the same definition for the ''date of origination.'' If this is not possible, the commenter suggested the Secretary create another term for ''the date of origination'' in the Direct Loan Program to avoid possible confusion among Direct Loan and FFEL Program participants.

Discussion: It is important to establish clearly the date of origination, because a school may only originate a loan while the borrower meets the eligibility requirements. The NPRM proposed that the date of loan origination be the earlier of the date the promissory note is printed or the date the origination record is accepted by the Secretary. Beginning with the 1996–1997 academic year, enhanced loan origination software will record the date of origination permanently on the borrower's loan file when the borrower's origination record is created by the school. Modifying the Direct Loan school software to record automatically the date the school creates the origination record will ensure that the school is able to document clearly the date that it certified a borrower's eligibility for a loan, the loan amount, and anticipated disbursement dates. Further, because the electronic origination record is created earlier in loan processing than either printing the promissory note or the origination record being accepted by the Secretary, this change will result in improved service to both schools and borrowers. Service to schools is improved because the information necessary to document the origination process is automatically generated in the student's electronic file; service to borrowers is improved by promoting flexibility in processing loans.

The Secretary is making every effort to ensure conformity between the Direct Loan and the FFEL Programs whenever possible. However, there is no definition of ''date of origination'' in the FFEL Program. Further, the programs operate differently and it is impossible to attain absolute conformity between the programs in all aspects. For example, loan origination in the Direct Loan Program is similar to certification of the loan application in the FFEL Program but because of the inherent operational differences between the program, the two events are not necessarily identical. In the FFEL Program, school officials certify borrower information on a combined application and promissory note. In the Direct Loan Program, the application process is separate from certification of loan information. Therefore, Direct Loan eligibility is certified by means of the electronic origination record and a written statement provided by the school after submitting the origination record. On the origination record, a school certifies a borrower's eligibility, the loan amount, and the anticipated disbursement dates. Due to these operational differences, it is not appropriate to have the same provision in both loan programs. Further, because very few schools participate in both the Direct Loan and FFEL Programs, the Secretary does not believe that this terminology will cause confusion.

The Secretary wants to clarify that the use of the phrase ''date of loan origination'' in the Direct Loan Program is intended for operational purposes only and does not constitute a commitment on the part of the Federal Government to make a loan. This distinction is important to avoid possible confusion with the use of the term ''origination'' for Federal budgetary purposes.

Changes: The regulation has been revised to reflect that the date of loan origination is the date a school creates an electronic loan origination record.

Section 685.301(d) Reporting to the Secretary

Comments: Three commenters felt that the requirement for schools to submit the promissory note, disbursement record, and origination record no later than 30 days following the date of disbursement of loan funds was too restrictive. One of these commenters asked the Secretary to reconsider this timeline because the 30-day deadline would be too burdensome to adhere to in light of other program requirements, such as reconciliation reporting requirements. Another of these commenters suggested that the timeline be extended to 45 days to aid financial aid administrators during their demanding Fall season. This commenter felt that the extra 15 days would make a significant difference in the management of financial aid processes.

Several other commenters strongly endorsed the 30-day reporting requirement. They argued that if schools are required to submit these documents to the Secretary quickly, borrowers will be better served. Additionally, these commenters felt this requirement would result in the reconciliation processing working more smoothly and occurring on a more timely basis—ultimately leading to better fiscal control over federal funds.

One commenter recommended that regulations be added to limit a school's ability to draw down funds until the school had reconciled the funds it had already disbursed. Another commenter recommended that, even though the commenter supported the 30-day reporting requirement, the Secretary should grant schools a brief extension if this requirement presents unanticipated compliance difficulties.

Discussion: The Secretary disagrees with the commenters that assert that this requirement is too restrictive and overly burdensome for the schools. In previous guidance, the Department has advised all Direct Loan schools that they should reconcile and submit all loan origination records, promissory notes, and disbursement records on a monthly basis [see the April 26, 1994, Announcement of Criteria for Loan Origination—1995–1996 Academic Year (59 FR 21804) and Chapter 7 of the *Direct Loan School Guide*]. This requirement is needed to ensure that borrowers receive disbursement disclosure information and loan servicing information shortly after the loan is disbursed. Further, Direct PLUS Loan borrowers enter repayment when the loan is fully disbursed and the Department must receive disbursement information in a timely manner in order to establish repayment terms. Requiring the timely submission of program data by schools to the Direct Loan Servicer will enhance the Department's administrative and fiscal oversight capabilities and will help ensure that up-to-date data are maintained in the National Student Loan Data System.

After a year of experience in administering the Direct Loan Program,

the Secretary is convinced that services to borrowers would be substantially improved by requiring schools to submit the promissory note, disbursement record, and origination record no later than 30 days following the date of disbursement of loan funds. The implementation of this 30-day requirement is in the best interest of federal taxpayers as well as Direct Loan schools. Furthermore, the timely submission of origination records, promissory notes, and initial and subsequent disbursement records is particularly critical at the end of the Federal fiscal year (September 30).

Ultimately, the result of this requirement will be that borrowers will have fewer questions and problems in the initial phase of the loan process. Also, schools will benefit from this change because schools that do not report disbursements in a timely manner appear to have excess cash even when they have properly disbursed funds to borrowers in compliance with the cash management regulations. The Secretary is confident that the 30-day reporting requirement will help the reconciliation process to work more smoothly and on a more timely basis, ultimately leading to better fiscal control over federal funds and improved services to borrowers.

The Secretary understands that, particularly for Direct Loan schools during their first year of participation in the program, the Department may initially need to extend reasonable lenience when enforcing this requirement. These schools may need additional time or assistance until they become familiar with the Direct Loan processes and procedures. Furthermore, the Secretary has already committed to current program participants that the Secretary will assist any schools having difficulty in complying with this requirement. The Secretary is ready to provide technical support to schools and is willing to review a school's on-site operations, if requested, to make suggestions regarding changes that will enable the school to meet this requirement.

Based on the comments received on this issue, it appears that some commenters are confused about when a borrower receives the disclosure of loan information in the Direct Loan Program. Every Direct Loan borrower receives disclosure information on the Direct Loan promissory note prior to disbursement. The disclosure that is mailed from the Direct Loan Servicing Center following any disbursement is in addition to the initial disclosure.

Changes: None.

Executive Order 12866

These final regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those determined by the Secretary as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, the Secretary has determined that the benefits of the regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Summary of Potential Costs and Benefits

The potential costs and benefits of these final regulations are discussed elsewhere in this preamble under the following heading: *Analysis of Comments and Changes.*

Assessment of Educational Impact

In the NPRM, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by, or is available from, any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by, or is available from, any other agency or authority of the United States.

List of Subjects in 34 CFR Part 685

Administrative practice and procedure, Colleges and universities, Education, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

(Catalog of Federal Domestic Assistance Numbers: 84.268, William D. Ford Federal Direct Loan Program)

Dated: November 22, 1995.

Richard W. Riley,

Secretary of Education.

The Secretary amends part 685 of title 34 of the Code of Federal Regulations to read as follows:

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

1. The authority citation for Part 685 continues to read as follows:

Authority: 20 U.S.C. 1087a et seq., unless otherwise noted.

2. Section 685.102, paragraph (b) is amended by revising the definition of ''School origination option 1,'' ''School origination option 2,'' and ''Standard origination.''

§ 685.102 Definitions.

* * * * *

(b) * * *

School origination option 1: In general, under this option the school performs the following functions: creates a loan origination record, transmits the record to the Servicer, prepares the promissory note, obtains a completed and signed promissory note from a borrower, transmits the promissory note to the Servicer, receives the funds electronically, disburses a loan to a borrower, creates a disbursement record, transmits the disbursement record to the Servicer, and reconciles on a monthly basis. The Servicer initiates the drawdown of funds for schools participating in school origination option 1. The Secretary may modify the functions performed by a particular school.

School origination option 2: In general, under this option the school performs the following functions: creates a loan origination record, transmits the record to the Servicer, prepares the promissory note, obtains a completed and signed promissory note from a borrower, transmits the promissory note to the Servicer, determines funding needs, initiates the drawdown of funds, receives the funds electronically, disburses a loan to a borrower, creates a disbursement record, transmits the disbursement record to the Servicer, and reconciles on a monthly basis. The Secretary may modify the functions performed by a particular school.

* * * * *

Standard origination: In general, under this option the school performs the following functions: creates a loan origination record, transmits the record to the Servicer, receives funds electronically, disburses funds, creates a disbursement record, transmits the disbursement record to the Servicer, and reconciles on a monthly basis. The Servicer prepares the promissory note, obtains a completed and signed promissory note from a borrower, and initiates the drawdown of funds for schools participating in standard

origination. The Secretary may modify the functions performed by a particular school.

(Authority: 20 U.S.C. 1087a *et seq.*)

3. Section 685.201 is amended by revising paragraph (a)(2) introductory text, and paragraph (b) to read as follows:

§ 685.201 Obtaining a loan.

(a) * * *

(2) If the student is eligible for a Direct Subsidized Loan or a Direct Unsubsidized Loan, the Secretary or the school in which the student is enrolled shall perform specific functions. Unless a school's agreement with the Secretary specifies otherwise, the school shall perform the following functions:

* * * * *

(b) *Application for a Direct PLUS Loan.* To obtain a Direct PLUS Loan, the parent shall complete the application and promissory note and submit it to the school at which the student is enrolled. The school shall complete its portion of the application and promissory note and submit it to the Servicer, which makes a determination as to whether the parent has an adverse credit history. Unless a school's agreement with the Secretary specifies otherwise, the school shall perform the following functions: A school participating under school origination option 2 shall draw down funds and disburse the funds. For a school participating under school origination option 1 or standard origination, the Servicer initiates the drawdown of funds, and the school disburses the funds.

* * * * *

(Authority: 20 U.S.C. 1087a *et seq.,* 1091a)

4. Section 685.301 is amended by redesignating paragraphs (a)(5) and (a)(6) as paragraphs (a)(6) and (a)(7), respectively, adding a new paragraph (a)(5) and by adding a new paragraph (d) to read as follows:

§ 685.301 Origination of a loan by a Direct Loan Program school.

(a) * * *

(5) The date of loan origination is the date a school creates the electronic loan origination record.

* * * * *

(d) *Reporting to the Secretary.* (1) A school that originates a loan must submit the promissory note, loan origination record, and initial and subsequent disbursement records to the Secretary no later than 30 days following the date of disbursement. A school must submit the loan origination record and disbursement record to the Secretary no later than 30 days following the date of disbursement for each subsequent disbursement.

(2) A school that participates under standard origination must submit the initial and subsequent disbursement record to the Secretary no later than 30 days following the date of disbursement. A school must submit the disbursement record to the Secretary no later than 30 days following the date of disbursement for each subsequent disbursement.

(Authority: 20 U.S.C. 1087a *et seq.*)

(Approved by the Office of Management and Budget under Control Number 1840–0672)

[FR Doc. 95–29126 Filed 11–30–95; 8:45 am]

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Part VII

Department of Education

34 CFR Part 668, et al.

Higher Education Act of 1965; Student Financial Assistance Programs; Federal Regulatory Review; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 668, 674, 675, 676, 682, 685, and 690

RIN 1840–AC20

Student Assistance General Provisions, Federal Perkins Loan Program, Federal Work-Study Programs, Federal Supplemental Educational Opportunity Grant Program, Federal Family Education Loan Programs, William D. Ford Federal Direct Loan Program, and Federal Pell Grant Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the student financial assistance programs authorized under title IV of the Higher Education Act of 1965, as amended (title IV, HEA programs). These programs include the campus-based programs (Federal Perkins Loan, Federal Work-Study (FWS), and Federal Supplemental Educational Opportunity Grant (FSEOG) programs), the Federal Family Education Loan (FFEL) programs, the William D. Ford Federal Direct Loan (Direct Loan) programs, the Federal Pell Grant Program, and the State Student Incentive Grant (SSIG) program. These amendments, which eliminate unnecessary regulations and improve the existing regulations, are part of a planned series of regulatory reform and relief measures for the title IV, HEA programs. The Secretary is making these changes in response to the President's Regulatory Reform Initiative.

The title IV, HEA programs support the National Education Goals by enhancing opportunities for postsecondary education. The National Education Goals call for increasing the rate at which students graduate from high school and pursue high quality postsecondary education, and for supporting life-long learning.

EFFECTIVE DATE: These regulations take effect on July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Harold McCullough or Rachael Sternberg, U.S. Department of Education, 600 Independence Avenue SW., Regional Office Building 3, Room 3053, Washington, D.C. 20202, (202) 708–7888; or

1. For the Student Assistance General Provisions: Claude Denton, Student Eligibility and Verification Section, General Provisions Branch at (202) 708–7888;

2. For the Federal Perkins Loan Program: Sylvia R. Ross, Campus-Based Loan Programs Section, Loans Branch at (202) 708–8242;

3. For the FWS and FSEOG programs: Kathy S. Gause, Campus-Based Programs Section, Grants Branch at (202) 708–4690;

4. For the FFEL Programs: Ralph Madden, GSL Programs Section, Loans Branch at (202) 708–8242;

5. For the Direct Loan Programs: Doug Laine, Direct Loan Policy Group at (202) 708–9406; and

6. For the Federal Pell Grant Program: Mike Oliver, Pell and State Grant Section, Grants Branch at (202) 708–4607. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time Monday through Friday.

SUPPLEMENTARY INFORMATION: On March 4, 1995, the President directed every Federal agency to review its rules and procedures to reduce regulatory and paperwork burden, and directed Federal agencies to eliminate or revise those regulations that are outdated or otherwise in need of reform. Responding to the President's Regulatory Reform Initiative, the Secretary announced plans to eliminate or revise 93 percent of the Department's regulations. To launch the Department's reinvention effort, the Secretary published a notice in the May 23, 1995 Federal Register (60 FR 27223–27226) eliminating more than 30 percent of the Department's regulations, primarily in areas not related to student financial assistance.

The Secretary is conducting a page-by-page review of all student financial assistance regulations to identify those that should be eliminated or improved. The Secretary is also considering developing proposals for statutory amendments to eliminate unnecessary administrative burden.

As part of his response to the President's regulatory reinvention initiative, on September 21, 1995 the Secretary published a Notice of Proposed Rulemaking (NPRM) for parts 668, 674, 675, 676, 682, 685, and 690 in the Federal Register (60 FR 49114). The NPRM included a discussion of the proposed changes that will not be repeated here. The following list summarizes those changes and identifies the pages of the preamble to the NPRM on which the discussion can be found.

Part 668—Student Assistance General Provisions

Subpart A—General

The Secretary proposed to remove and reserve § 668.7 ''Student Eligibility,'' and move the ''eligible student'' provisions to a revised subpart C of 34 CFR 668 (page 49114).

Subpart B—Standards for Participation in Title IV, HEA Programs

The Secretary proposed to allow institutions to obtain information from the National Student Loan Data System (NSLDS) that would otherwise be found on a financial aid transcript, once the Secretary publishes a notice in the Federal Register informing institutions that the NSLDS can be used to satisfy this purpose (pages 49114–49115).

Subpart C—Student Eligibility

The Secretary proposed to expand the data match with the Social Security Administration (SSA), starting in the 1996–97 award year, in order to confirm claims of U.S. citizenship by applicants for title IV, HEA program assistance on the Free Application for Federal Student Aid (FAFSA) (page 49115).

The Secretary proposed to allow students to satisfy the requirement of filing a Statement of Educational Purpose with the institution by completing the FAFSA, which will include this statement starting with the 1996–97 award year.The Secretary's proposal did not affect current FFEL requirements with regard to this statement on loan applications (page 49115).

The Secretary proposed to eliminate the model Statement of Educational Purpose. A model statement would be duplicative because the statement will appear on the FAFSA (page 49115). The Secretary proposed to eliminate the Statement of Registration Status. A male student's Selective Service registration status is now confirmed through a data match with the Selective Service System. This data match eliminates the need for the collection of a separate statement (page 49115).

The Secretary proposed to amend and reorganize the provisions under which a student who owes a debt under the HEA or to the United States may nevertheless be eligible to receive title IV, HEA program assistance. The Secretary also proposed to conform the regulations to existing statutory requirements pertaining to bankruptcy (pages 49115–49116).

Subpart I—Immigration Status Confirmation

The Secretary proposed to amend § 668.133(b) to remove the requirements for requesting secondary confirmation from the Immigration and Naturalization Service for a student if (1) the student presents documents to his or her institution verifying his or her immigration status that are identical to documents presented to that institution in a previous year, (2) that institution determined the student to be an eligible noncitizen using secondary confirmation of those same documents in a previous award year, and (3) the institution does not have conflicting information or reason to doubt the student's claim of eligible noncitizen status (page 49116).

Subpart K—Cash Management

The Secretary proposed to amend § 668.164(a)(2) to eliminate the UCC–1 filing requirement for institutions that (1) disclose clearly in the name of the account in which Federal funds are deposited that Federal funds are maintained in that account, or (2) are backed by the full faith and credit of a State (page 49116).

The Secretary proposed to modify § 668.165(b)(1) to provide an institution with as much flexibility as possible with respect to how it notifies a student or parent borrower that FFEL or Direct Loan program funds have been credited to the student's account. That flexibility allows an institution to provide notification electronically or through the use of telecommunication devices (page 49116).

The Secretary proposed to amend § 668.165(b)(1) and (3) to provide that under certain circumstances, and with the student's permission, an institution may use current year title IV, HEA program funds to pay for minor charges from a prior year (pages 49116–49117).

Parts 674, 675, and 676—Campus-Based Programs

The Secretary proposed to eliminate the duplicative definitions of ''full-time graduate or professional student'' and ''full-time undergraduate student from §§ 674.2(b), 675.2(b), and 676.2(b), as applicable, and instead incorporate the definition of ''full-time student'' set forth in § 668.2(b) for all three of the campus-based programs (page 49117).

The Secretary proposed to eliminate the provisions of §§ 674.17(a), 675.17, and 676.17 which provide that title IV, HEA program funds are held in trust for the Secretary and intended student beneficiaries and cannot be used or hypothecated for any other purpose, because these very provisions are included in § 668.161(b) of the Student Assistance General Provisions regulations (page 49117).

The Secretary proposed to amend §§ 674.19(e)(4)(v), 675.19(c)(3), and 676.19(c)(3) to allow institutions the additional flexibility of using optical disk technology in complying with record retention requirements (page 49117).

Part 674—Federal Perkins Loan Program

The Secretary proposed to amend the definition of ''making of a loan'' under § 674.2(b) by removing the reference to a borrower signing for each advance of funds (page 49117).

The Secretary proposed to eliminate the requirement under § 674.16 that a student sign for each loan advance, and require instead that the institution simply must obtain the borrower's signature on a promissory note for each award year before it disburses any loan funds under that promissory note for that award year (page 49117).

The Secretary proposed to amend § 674.31(a) to indicate that the Secretary will provide sample promissory notes to institutions, and that institutions may add items to the sample notes so long as the new items do not alter the substance of these sample notes (page 49117).

The Secretary proposed to amend § 674.33(a)(2) by allowing institutions to combine the last scheduled Federal Perkins loan payment with the next-to-the-last payment if the last payment is $25 or less (page 49117).

The Secretary proposed to amend § 674.47(g) to allow an institution to cease collection activity on a defaulted account with a balance of less than $25, while continuing to require the institution to consider the loan as in default for purposes of calculating its cohort default rate. The Secretary further proposed to amend § 674.47 by adding a new paragraph (h) to allow institutions to cease collection activity and write off loan accounts with a balance of less than $1, including outstanding principal, accrued interest, collection costs, and late fees (pages 49117–49118).

Part 675—Federal Work-Study Programs

Appendix B—Model Off-Campus Agreement

The Secretary proposed to eliminate this sample agreement as an appendix to the FWS regulations. The Secretary will include a model off-campus agreement in the Federal Student Financial Aid Handbook (page 49118).

Parts 682 and 685—Federal Family Education Loan Program and Direct Loan Program

The Secretary proposed to expand the pool of borrowers under §§ 682.201 and 685.200 of the Federal PLUS and Federal Direct PLUS programs, respectively, to include the spouse of a student's parent if that parent remarried (page 47118).

The Secretary proposed to eliminate § 682.600 (a) through (c) because they duplicate provisions in 34 CFR part 600 or 668. The provisions of § 682.600(d) that deal with foreign schools, however, are necessary and the Secretary proposed to include those provisions in a new section, § 682.611 (page 49118).

The Secretary proposed to eliminate the provisions contained in § 682.602 that deal with students enrolled in correspondence programs, because those students are not eligible to receive FFEL program funds unless they are enrolled in a program that leads to an associate, bachelor's, or graduate degree (page 49118).

Part 690—Federal Pell Grant Program

Subpart A—Scope, Purpose and General Definitions

The Secretary proposed to revise § 690.7 by deleting paragraph (a)(1) because the provisions contained in that paragraph duplicate provisions in 34 CFR part 600 or 668 (page 49118).

Subpart G—Administration of Grants Payments

The Secretary proposed to eliminate the last sentence in §§ 690.71, 690.72, 690.73, and 690.74, respectively, because they duplicate provisions contained in 34 CFR part 668 (page 49118).

The Secretary proposed to revise § 690.83 by consolidating in one paragraph the procedures that allow institutions to receive payment or credit for Federal Pell Grants they previously disbursed if that situation is disclosed by an initial audit or program review (page 49118).

Substantive Changes to the NPRM

The following discussion reflects substantive changes made to the NPRM in the final regulations. The provisions are discussed in the order in which they appear in the proposed rules.

Student Assistance General Provisions

Subpart C—Student Eligibility

The proposed subpart C is further reorganized to clarify the difference between what the general provisions for student eligibility are, and how each of

those elements of student eligibility are established.

Subpart I—Immigration-Status Confirmation

Section 668.133 Conditions Under Which an Institution Shall Require Documentation and Request Secondary Confirmation

Currently, in the absence of a data match with the Immigration and Naturalization Service (INS) confirming a student as an eligible noncitizen, institutions are required to use the secondary confirmation process to determine if a student is an eligible noncitizen in accordance with section 484(a)(5) of the HEA. Secondary confirmation requires institutions to mail requests for immigration status information to the INS and to use INS responses (also by mail) in determining the student's noncitizen eligibility. This determination has been required for each award year that the student applies for title IV, HEA assistance. The NPRM proposed to delete secondary confirmation requirements, in most cases, if the student produces immigration status documents that are identical to documents received by the institution in a previous award year. In response to comments received, this section is further revised to eliminate the need for the student to produce immigration status documents in subsequent award years if the documents previously submitted by the student remain valid.

Subpart K—Cash Management

Section 668.163 Requesting Funds

The Secretary amends this section to require that for any request for cash, an institution must identify the title IV, HEA program under which it requests funds by its Catalog of Federal Domestic Assistance (CFDA) number and the total amount of funds for each CFDA number included in that request.

Section 668.164 Maintaining Funds

In response to public comment, this section is revised to exclude all public institutions from the UCC–1 filing requirement.

Section 668.165 Disbursing Funds

In response to public comment, this section is revised to clarify that if an institution provides an electronic notice to a student or parent that title IV, HEA loan program funds were credited to the student's account, it must request confirmation from the student or parent of the receipt of that notice and maintain a record of that confirmation. In addition, this section is revised to provide that an institution may consider prior-year charges that do not exceed $100 to be minor charges.

Federal Perkins Loan Program

Section 674.5 Definitions

The definition of ''satisfactory arrangements to repay the loan'' for purposes of the Federal Perkins Loan Program will be amended to include those loans that are ''paid in full.'' This change allows an institution to exclude a defaulted loan that has been paid in full from the institution's cohort default rate.

Section 674.31 Promissory Note

The proposal to provide ''sample'' Federal Perkins loan promissory notes to participating institutions has been removed. A national promissory note will be maintained for the Federal Perkins Loan Program. Institutions may make only nonsubstantive changes to these notes.

Section 674.47 Costs Chargeable to the Fund

The September 21, 1995 NPRM offered a proposal to allow an institution to cease collection activity on a defaulted account with a balance of less than $25. In an effort to reduce administrative burden on institutions that are handling defaulted accounts with balances larger than $25, the cessation of collection activity provision has been modified. Institutions will be allowed to cease collection activity on a defaulted account with a balance of less than $200, if all due diligence has been performed in attempting to collect the defaulted account and there has not been any activity on the account for at least four years.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 74 parties submitted comments on the proposed reform and relief regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows. Major issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under applicable statutory authority—are not addressed.

Comments and Responses

Regulatory Reform and Relief Effort

Comments: Numerous commenters indicated support for the Secretary's efforts to eliminate unnecessary regulations and to improve the existing regulations. However, some commenters stated that more needs to be done to streamline the regulations for the title IV, HEA programs.

Discussion: The Secretary is encouraged by the expression of support from the public for the reform and relief regulation activities that are part of the Department's reinvention effort. The Secretary realizes that additional amendments to the regulations for the title IV, HEA programs are possible. The amendments in this regulatory package represent only one part of a planned series of regulatory reform and relief amendments for the student financial assistance regulations. The Secretary restates his plans to propose additional reform and relief regulatory changes for the title IV, HEA programs in the upcoming months.

Changes: None.

Part 668—Student Assistance General Provisions

Subpart B—Standards for Participation in Title IV, HEA Programs

Section 668.19 Financial Aid Transcript

Comments: Most commenters supported the Secretary's proposal to allow use of the National Student Loan Data System (NSLDS) in lieu of the financial aid transcript when the NSLDS becomes operational. A few commenters were concerned about the accuracy of the NSLDS and urged the Secretary to fully test the system before requiring its use and suggested the National Student Loan Clearinghouse as an acceptable alternative while the testing takes place. One commenter requested sufficient notice before the NSLDS is placed into operation to allow institutions with limited computer resources to obtain the necessary equipment and expertise. One commenter questioned the frequency with which the Secretary would require institutions to access the NSLDS, and expressed concern that NSLDS inquiries would be required at the time of each disbursement. Several commenters suggested that the terms ''loan period or period of enrollment for which the loan is made'' be used in lieu of ''award year'' as it pertains to FFEL and Direct Loans because annual loan limits are not based on award years. They also suggested that annual loan limits could be affected by loans made in the preceding award year, and that the financial aid transcripts should include this information. One commenter was concerned about obtaining information from institutions that are unable to use, or fail to meet requirements for providing information to, the NSLDS. One commenter asked whether an

institution could assume, if the NSLDS contains no financial data on a particular student, that the student did not receive aid from any previously-attended institution, or if no data appears for a given institution, that the student did not receive aid from that particular institution. One commenter inquired as to whether the NSLDS will provide data regarding the student's receipt of title IV, HEA assistance at a closed institution, and whether the NSLDS will provide notice that the institution is closed. One commenter expressed concern that institutions would not be able to ascertain from the NSLDS that a student transferred during the current award year. One commenter questioned why paragraph (a)(3) continues to address the withholding or limited disbursement of title IV, HEA assistance pending receipt of financial aid transcripts, but does not address those issues for the NSLDS, and whether the Secretary intends to provide for limited disbursements in the event the NSLDS becomes temporarily inoperative. The same commenter suggested that the Secretary provide regulatory instructions with regard to how the institution should proceed when NSLDS data conflicts with other information available to the institution.

Discussion: With regard to the concerns expressed about the accuracy of NSLDS data, the Secretary notes that the NSLDS underwent extensive testing of its executable programs and support functions and successfully passed those initial test reviews prior to becoming operational in November, 1994. The National Student Loan Clearinghouse would not be an acceptable alternative because it serves only a few of the institutions currently participating in title IV, HEA programs, and because it contains information pertaining to students who are not title IV, HEA recipients in addition to those who are. The Clearinghouse also does not include any financial aid history information but only enrollment data.

With regard to the concern about limited computing resources at some institutions, the Secretary specifically designed the NSLDS to require minimal computer equipment. The NSLDS can be accessed using a personal computer with 486 megahertz of processing power, eight megabytes of random access memory, and 50 megabytes of hard disk storage space. In addition, the NSLDS will be available as an alternative to, not as a replacement for, the paper financial aid transcript, so that institutions with insufficient computer equipment can continue to use the paper financial aid transcript. An institution receiving a paper financial aid transcript request will continue to be required to complete and return it to the requesting institution, in accordance with 34 CFR 668.19.

With regard to the comment concerning required frequency of access, the Secretary has taken steps to include NSLDS financial aid history information in the Student Aid Report/Institutional Student Information Record (SAR/ISIR). The SAR/ISIR will, at a minimum, inform the institution as to whether the student previously received title IV, HEA financial aid. If there is no financial aid history, the institution will not be required to obtain a financial aid transcript or access the NSLDS since it can be assumed that the student either did not attend another school or attended but did not receive any title IV aid. With regard to the comments that suggested that the proposed financial aid transcript does not provide the necessary information on FFEL loan history to compute annual loan limits, the Secretary agrees with these commenters' concerns and will reinstate provisions requiring inclusion of ''period of enrollment'' or ''loan period'' and loans made in preceding award years under the FFEL as well as the Direct Loan programs. With regard to the concern about institutions who are unable to use, or fail to meet requirements for providing information to, the NSLDS, the Secretary assures the commenter that complete guidance to institutions will be provided in using the NSLDS, and that compliance with regular reporting requirements will be monitored and enforced. With regard to closed institutions, the NSLDS contains the cumulative loan history of title IV, HEA aid recipients, including aid awarded at institutions that are closed at the time of inquiry. The NSLDS will not, however, provide specific notification that any particular institution has closed. With regard to the concern about whether institutions will be able to determine from the NSLDS that a student has transferred during the current award year, the Secretary assures the commenter that the NSLDS will receive information on current year awards from guaranty agencies, the Direct Loan servicers, and from institutions. However, the Secretary notes that the flexible reporting requirements of data providers does present a problem with so called ''mid-year transfers'' and is committed to keeping any burden related to the accessing of financial aid history for such students to a minimum. With regard to the applicability of the withholding and limited disbursement provisions to the NSLDS, the Secretary believes that the provisions of § 668.19 are applicable only to the paper financial aid transcript process. If the NSLDS becomes temporarily inoperative, the paper financial aid transcript process could be used and these provisions would apply. However, the Secretary believes that any such ''downtime'' of the NSLDS would be brief and encourages institutions to re-query the NSLDS as soon as it is available. If NSLDS data conflicts with other information available to the institution, the conflict must be resolved before any title IV, HEA disbursement can be made.

Changes: Paragraph (c) is revised to provide that a financial aid transcript must include the loan period covered by each loan made under the FFEL and Direct Loan programs, and the loan history must also include information concerning loans made in preceding award years. Paragraph (a)(2)(ii) is revised to clarify that in a Federal Register Notice, the Secretary will inform institutions both when, and under what conditions, the NSLDS may be used.

Subpart C—Student Eligibility

Comments: Many commenters expressed support for the proposal to move the student eligibility regulations to subpart C.

Discussion: The Secretary appreciates the favorable comments received regarding the reorganization of the student eligibility provisions. After further examination, the Secretary believes that additional refinements are warranted to minimize any confusion that may be caused by the proposed organization. In particular, the Secretary believes that the basic requirements for establishing a student's eligibility for title IV, HEA assistance (formerly § 668.7(a)) should be clearly separated from requirements placed on institutions (formerly § 668.7(b)) for assessing the student's compliance with these requirements.

Changes: The Secretary has made technical revisions that establish a general student eligibility section, followed by sections addressing, in detail, how each of the elements of student eligibility are established.

Section 668.32 Student Eligibility—General (Section 668.33 in NPRM)

Compulsory School Attendance

Comments: Several commenters noted that the Secretary has removed provisions requiring students to be above the age of compulsory school attendance to be eligible for title IV, HEA assistance. One commenter

questioned the wisdom of allowing very young students to borrow these funds. Another commenter expressed concern that the removal of these provisions would increase the potential of abuse in the use of title IV, HEA funds.

Discussion: In proposing this deletion of regulatory language, the Secretary had no intention of removing the policy regarding compulsory school attendance. Since the definitions of ''institution of higher education'' in § 600.4 and ''proprietary institution of higher education'' in § 600.5 include provisions containing this requirement, the Secretary believes there is no reason to duplicate the requirement in the student eligibility regulations.

Changes: None.

Statement of Educational Purpose

Comments: Most commenters supported the Secretary's proposal to provide a Statement of Educational Purpose on the Free Application for Student Aid (FAFSA) that satisfies § 668.33(e) requirements for filing the Statement of Educational Purpose. One commenter suggested that the regulations specifically authorize use of the FAFSA in this manner.

Discussion: The Secretary prefers to use non-specific regulatory language to minimize the potential of redrafting regulations each time the application delivery system changes.

Changes: None.

Section 668.33 Citizenship/Residency Requirements U.S. Citizenship Match

Comments: Several commenters expressed support for the proposed enhancement of the existing social security match to include matching on U.S. citizenship data. They predicted that this enhancement would improve the integrity of the title IV, HEA application process by making it more difficult to avoid checking eligibility status with the INS. Other commenters, however, expressed concern that the proposed enhancement represents an additional unjustified burden caused by the need to collect evidence of U.S. citizenship. These commenters suggested that the Secretary should provide data to support the claim that misreporting of U.S. citizenship is a significant problem. If misreporting exists, one commenter questioned whether detection of a few such cases justifies the additional burden that would be imposed on the many applicants who complete this item truthfully. Another commenter questioned the accuracy of the Social Security Administration (SSA) data to be used for this matching program in light of information received by the commenter that citizenship data has only been collected by SSA since the early 1980's. Several commenters expressed concern that a student's U.S. citizenship status that was not confirmed would also prevent or delay that student from receiving confirmation of the accuracy of the student's social security number, or that such interference could also occur in reverse order.

Discussion: The Secretary disagrees with the comments portraying the U.S. citizenship match as an unjustified burden. On September 9, 1994, the Department's Office of Inspector General issued an audit report indicating that, during the 1992–1993 award year, 45,000 Federal Pell Grant awards were made to students claiming U.S. citizenship on their applications for federal student assistance who were not confirmed as U.S. citizens by the Social Security Administration (SSA). Since SSA records do not contain alien registration numbers, it is virtually impossible to track the status of these 45,000 individuals to determine whether they were naturalized citizens or eligible noncitizens at the time they applied. However, if even only 10% of the 45,000 applications were completed by ineligible aliens, the savings more than offset the expense of matching, and will provide additional grant funds for eligible students. The Secretary disagrees with the commenters who are concerned about additional burden being placed on students who will be required to provide evidence of U.S. citizenship. The vast majority of students will be confirmed by SSA as U.S. citizens, and no further action will be required. Many noncitizens who falsely claim U.S. citizenship will provide alien registration numbers, and their applications will be processed using the INS data match in the same manner as other noncitizen applications. Undocumented illegal aliens will tend to drop out of the application process without burden to the institution. For the most part, the Secretary believes that only naturalized citizens who have not kept their records updated with SSA are likely to be affected by this new requirement. With regard to the commenter's concern that SSA has only collected citizenship data since the early 1980's, the Secretary confirms this fact. However, SSA has collected ''place of birth'' data for many years, and the match will access both ''place of birth'' and ''citizenship'' data elements before issuing match results. With regard to concerns about delays and other impacts of U.S. citizenship matching on social security number matching, the Secretary wishes to assure the commenter that there will be no impact of one match on the other. Social security numbers and U.S. citizenship status are generated from separate data fields within the SSA data base, and will generate separate messages.

Changes: None.

Section 668.35 Student Debts Under the HEA and to the U.S. (Section 668.34 in NPRM)

Comments: One commenter suggested that the Secretary reverse the order of proposed paragraphs (b)(2)(i) and (b)(2)(ii) to prevent the possibility of a student making six consecutive monthly payments on a defaulted loan before approaching a lender to make satisfactory repayment arrangements. Another commenter noted that the definition of ''satisfactory repayment arrangement'' in § 682.200 already provides for six consecutive monthly payments, and that the language proposed in paragraph (b)(2) could be interpreted as requiring twelve consecutive monthly payments. One commenter suggested that proposed paragraph (d)(1)(ii) be revised to include the phrase ''satisfactory to the holder'' instead of ''satisfactory to the institution,'' which the commenter believes is inappropriate for the FFEL and Direct Loan programs. Several commenters urged the Secretary to reinstate references in proposed paragraph (d)(2) to the specific title IV, HEA programs for which overpayments are applicable, asserting that such a correction would alleviate confusion concerning the relevance of overpayments to the FFEL and William D. Ford Federal Direct Loan programs.

Discussion: The Secretary agrees with the commenters' concerns with regard to the order of proposed paragraphs (b)(2)(i) and (b)(2)(ii). Although the phrase ''makes arrangements, satisfactory to the holder'' used in this paragraph is not identical to the phrases used in the individual title IV, HEA loan programs, the Secretary emphasizes that those specific provisions that govern how a defaulted borrower can regain eligibility are found in the individual title IV, HEA loan program regulations. The Secretary also agrees with the comment suggesting that proposed paragraph (d)(1)(ii) be revised to require a student who has received a grant or loan overpayment to make arrangements, satisfactory to the holder of the overpayment debt, to pay the overpayment. With regard to the comment requesting reinstatement in proposed paragraph (d)(2) of the specific programs for which overpayments are applicable, the Secretary agrees and has

included specific references to the Federal Perkins Loan Program to eliminate any confusion.

Changes: The Secretary reverses the order of proposed paragraphs (b)(2)(i) and (b)(2)(ii) and revises proposed paragraph (b)(2)(i) to clarify that the six consecutive monthly payments are to be incorporated as part of satisfactory arrangements to repay the loan balance, and that those arrangements are to be made in accordance with the individual title IV, HEA loan program. Proposed paragraph (d)(1)(ii) is revised to clarify that a student who receives a grant or Federal Perkins loan overpayment is to make arrangements, satisfactory to the holder of the overpayment debt, to repay the overpayment.

Section 668.36 Social Security Number Verification (Section 668.33 NPRM)

Comments: One commenter supported the change to proposed § 668.33(d)(3)(iii) which clarifies that the student bears primary responsibility for reporting corrected social security numbers to the Secretary. In addition, the commenter also expressed support for the change to proposed § 668.33(d)(4), which relaxes the prohibition from disbursing or certifying aid if the student fails to meet the institution's deadline for submission of a correct social security number. The commenter suggested that the Secretary provide similar ''waiver'' authority to institutions in regulations governing the other data matches.

Discussion: As explained in the discussion regarding the selective service match, the Secretary is amending regulatory sections governing data matches to consistently implement provisions of the Computer Matching and Privacy Protection Act of 1988. In particular, the revised provisions will clarify the Secretary's policy with respect to the 30-day due process standard and the setting of deadlines by institutions for students submitting documents in order to contest match results.

Changes: Proposed paragraph (b)(2) is revised to provide that the institution must give a student at least 30 days from the date the institution is notified of the results of the data match, or until the end of the award year, whichever is later, to produce evidence of an accurate social security number.

Section 668.37 Selective Service Registration (Sections 668.33(b) and 668.36 in NPRM)

Statement of Registration Status

Comments: One commenter requested a clarification concerning whether the Statement of Registration Status may be necessary if the Selective Service data match does not confirm the student's status, or if some other statement is required. Two commenters suggested that proposed § 668.33(b)(1) be corrected to remove the unintended requirement that a student must provide evidence of exemption from the selective service registration requirement when the student's output document already confirms the student's exemption status. Another commenter requested that the model Statement of Registration Status be retained as an efficient way of collecting information concerning a student's exemption from selective service registration.

Discussion: The Secretary envisions no circumstances in which the Statement of Registration Status would continue to be required. If the student's claim to have registered with Selective Service is not confirmed by the Selective Service data match, the student bears responsibility for submitting evidence to the institution that he registered, or is exempt from registration. The institution may consult the *Federal Student Financial Aid Handbook* to determine if this evidence is valid, or it may require the student to obtain a Status Information Letter from Selective Service to further clarify the student's status. Instructions for interpreting Status Information Letters are also available in the Handbook. Given the thorough procedures in place for verifying evidence of registration or exemption, the Secretary does not wish to retain vestiges of an earlier system based primarily on self-certification, and would prefer to completely eliminate the Statement of Registration Status. The Secretary finds little validity to the commenter's concern that the regulations would require students, confirmed as exempt from registration requirements by the data match, to nevertheless provide evidence of exemption. The data match is designed to automatically screen out certain applicants who are clearly exempt from these requirements. An output document containing a message attesting to the applicant's exemption is quite sufficient to establish that ''the student is not, or was not required to be, registered with Selective Service,'' as provided in proposed § 668.33(b)(2)(i).

Changes: None.

Selective Service Data Match

Comments: One commenter noted that the Secretary has changed proposed paragraph (b)(2) with regard to the time period for providing documentation of Selective Service registration status. As currently worded, the student has 30 days from the date the institution is notified of the results of the data match or the end of the award year, whichever is later, to provide such documentation. The commenter noted that this language differs from § 668.33(b)(2), which does not provide the ''end of the award year'' option.

Discussion: In practice, the ''end of the award year'' option is not new. The institution can set its deadline for receiving documentation of Selective Service registration status on any date, as long as it allows the student the statutorily-required minimum of 30 days to produce the documents. By rephrasing the requirement in this manner, the Secretary is clarifying that institutions need not impose arbitrary deadlines that prevent the student from establishing eligibility later in the award year and receiving title IV, HEA assistance for that award year, if the institution's overall policy would not normally set such deadlines for all students. The Secretary is aware that the phrasing of this requirement is inconsistent among the various regulatory provisions governing the data matches, and will revise all applicable sections to resolve this inconsistency.

Changes: The Secretary is revising sections that govern data matches to include the requirement that the student must provide evidence of his or her eligibility, within 30 days from the date the institution is notified of the results of the data match, or until the end of the award year, whichever is later.

Subpart I—Immigration Status Confirmation

Section 668.133 Conditions Under Which an Institution Shall Require Documentation and Request Secondary Confirmation

Comments: Many commenters supported the Secretary's proposal to limit secondary confirmation requirements. Many also suggested that the Secretary should take the additional step of waiving collection of immigration status documents if the documents collected in a previous award year remain valid.

Discussion: The Secretary agrees with commenters who questioned the need for students to present immigration status documents in subsequent award years if they had been confirmed as eligible noncitizens in a previous award year. The Secretary cautions institutions, however, that some eligible noncitizen statuses are subject to expiration and that institutions should consult the student's file from that previous award year to determine if the

student's immigration status remains valid.

Changes: Section 668.133(b) is revised to delete the provision requiring a student to present evidence of immigration status in years subsequent to an award year in which secondary confirmation with INS was used to confirm the student's eligible noncitizen status.

Subpart K—Cash Management

Section 668.163 Requesting Funds

Comments: None. Proposed rulemaking waived under 5 U.S.C. 553 (b)(A).

Discussion: The Secretary amends § 668.163, which describes the procedures under which institutions request and receive title IV, HEA program funds The amendment requires an institution to include in any request for cash (1) the Catalog of Federal Domestic Assistance (CFDA) number identifying the source of program funds, and (2) the amount of funds for each CFDA number included in that request. Under current practice, an institution reports its expenditure of title IV, HEA funds, by program, on a quarterly basis. However, to monitor the expenditure of Federal appropriations, the Department of the Treasury and the Office of Management and Budget require the Department of Education to report on a monthly basis the amount and source of program funds provided to participating institutions. Obviously, the Secretary cannot provide to Treasury and OMB an accurate and timely report of the Department's use of appropriated funds, unless institutions identify the title IV, HEA funds by program and amount when those funds are requested.

The Secretary will use the information provided by this new report format not only to give more timely reports of amounts provided to institutions, but will consider whether this information can be used to reduce the number of expenditure reports institutions would otherwise be required to make. Moreover, this minor procedural change poses almost no additional burden on institutions.

In accordance with this subpart and the procedures contained in the *Recipients Guide for the Department of Education Payment Management System,* under the advance payment method, an institution must first determine its immediate disbursement needs before submitting a request for cash; under the reimbursement payment method, an institution requests funds for specific students whom the institution demonstrates to the satisfaction of the Secretary are eligible to receive the requested amount of program funds. In either case, the institution will know both the program for which it seeks funds and the amount needed to make disbursements to students. This change merely requires the institution to disclose that information on a standardized form.

Changes: Section 668.163(a)(2) and (3) are amended to require that in any request for cash, an institution must identify the title IV, HEA program under which the institution requests funds by its appropriate Catalog of Federal Domestic Assistance (CFDA) number and the total amount of program funds for each CFDA number included in the request.

Section 668.164 Maintaining Funds

Comments Regarding UCC–1 Filings

Comments: Most of the commenters agreed with the proposal to eliminate the UCC–1 filing requirement for institutions that are backed by the full faith and credit of a State, and for bank accounts that do not contain the phrase ''Federal funds'' in their name.

One commenter writing on behalf of business officers opined that the term ''backed by the full faith and credit of the State'' is a poor designator of institutional control, estimating that about one-half of all public institutions would not meet this requirement due to the diversity of governing arrangements for State-supported institutions. According to the commenter, these State-supported institutions pose no greater risk to Federal funds than other public institutions that technically satisfy the proposed requirement. One other commenter echoed these sentiments, adding that a UCC–1 filing is not appropriate for government agencies. Another commenter expressed concern that many State auditors and offices of general counsel are interpreting the phrase ''backed by the full faith and credit of the State'' quite literally and concluding that it does not apply to State schools. All of these commenters recommend that the Secretary modify the proposed requirement to exempt all public institutions from having to file UCC–1 statements.

One commenter writing on behalf of business officers stated that a UCC–1 filing is unnecessary for any institution because institutions are otherwise required to provide written notification to their bank of the accounts that contain Federal funds.

Discussion: The commenters have convinced the Secretary that for the purpose of protecting Federal funds, a UCC–1 filing is not necessary for public institutions, regardless of whether these institutions are backed by the full faith and credit of the State.

The Secretary disagrees with the commenter that written notification to the bank in which the account is maintained provides sufficient protection of Federal funds. The abuse cited by the Secretary in the final regulations for the cash management regulations (see, 59 FR 61724), that certain institutions have used or misrepresented Federal funds to obtain a loan or secure credit, may continue to occur where an institution seeks to obtain a loan or credit from a bank other than the bank to which it provided written notification. It is this situation where a UCC–1 filing provides an additional safeguard because it serves to alert other banks or potential creditors that the institution's account contains Federal funds.

Changes: Section 668.164(a)(2) is revised to exempt all public institutions from filing a UCC–1 statement.

Section 668.165 Disbursing Funds

Comments Regarding Electronic Notification of Student and Parent Borrowers

Comments: Most commenters supported the proposal under which an institution could notify a student or parent borrower that his or her account was credited with Direct Loan or FFEL Program funds electronically or through the use of telecommunications devices. Two commenters contended that the ''return receipt'' requirement for documenting notifications transmitted via electronic mail (e-mail), as discussed in the preamble to the proposed rules, departs from and exceeds the documentation requirements for written notifications delivered by regular mail. The commenters saw no reason why a return receipt should be required for e-mail transmissions when no corresponding proof of delivery is required for notifications sent by regular mail.

For the following reasons, one commenter writing on behalf of a student legal services organization strongly urged the Secretary to delete the proposed electronic notification provisions. First, the commenter contended that electronic notification would allow schools short on time or resources to cut corners on notice to students, thereby diminishing a borrower's rights. At worst, it would open the door to abuse by unscrupulous schools or individuals who want to minimize borrower knowledge about his or her control over loan funds. Given the increasing use of electronic funds

transfers (EFT), the commenter contended that students have lost their key means of control over loan proceeds, *i.e.*, their power to refuse to endorse the loan check. Amplifying this point, the commenter asserted that when the EFT process is used, timely, clear notice that the loan proceeds have been credited to the student's account is the equivalent of requesting a check endorsement—it triggers the student's ability to refuse the loan in whole or part. Thus, the commenter concluded that adequate, verifiable notice of receipt of loan proceeds has serious legal and financial implications for borrowers. Moreover, the commenter implied that adequate and verifiable notice is notably absent in the proposed rules, despite the preamble explanation that the Secretary expects schools to ''have a means of documenting that the student or parent received this information.'' According to the commenter, the reality is that schools will use, or purport to use, telephone or in-person conversations as the means of notification and document that notification with notes to a borrower's file. Armed with only notes of such alleged contacts, the Secretary would be hard pressed to prove violations of the disclosure rule. The commenter concluded by saying the minimal requirement that schools notify a student in witting that his or her account has been credited—implicit notice that the borrower's legal liability for loan has begun—should not be abandoned.

Discussion: The Secretary disagrees that requiring a ''return receipt'' for e-mail transmissions expands any documentation requirements. In fact, the Secretary believes the opposite is true.

As a general rule, in the absence of any documentation specified by the Secretary to satisfy a particular requirement, an institution must be able to document that it satisfied that requirement. Thus, the Secretary believes that the burden and cost of documenting that a written notification was mailed to a student far exceed the burden and cost of a receipted e-mail notification.

With regard to whether e-mail should be subject to a return receipt requirement because there is no corresponding proof of delivery for notices sent by regular mail, the Secretary notes that the courts have developed a presumption that mail deposited with the U.S. Postal Service is actually received (*See, Cook* v. *Providence Hospital,* 820 F.2d 176,n.3 (6th Cir. 1987); and *McPartlin* v. *Commissioner,* 653 F.2d 1185, 1191 (7th Cir. 1981)). The same presumption does not apply to e-mail messages.

In response to the comment by student legal services, the Secretary disagrees that the proposed change minimizes borrower rights. Rather, in recognition of the less burdensome and more cost effective methods afforded by electronic technologies, the Secretary sought only to expand the means by which an institution may notify a student or parent. That the notice may now be provided by additional, equivalent means has no bearing on borrower rights.

The purpose of the notice, whether that notice is provided in writing or electronically, is to remind students of their loan obligation and to give students the opportunity to replace credited loan proceeds with other funds thereby reducing their loan when an institution return the loan proceeds. The Secretary wishes to make clear that an institution cannot be compelled to return loan proceeds that were properly disbursed or delivered to the student solely at the request of a student.

On the other hand, the Secretary agrees that telephonic and in-person conversations are not adequate and verifiable methods of providing notice.

The Secretary did not propose that this requirement apply to Federal Perkins Loan Program funds because under that program the student had to sign for each loan advance. However, since the Secretary has decided to eliminate this Federal Perkins Loan Program requirement, this section is amended to provide that an institution must also notify a borrower that his or her account was credited with Federal Perkins loan funds.

Changes: Section 668.165(b)(1) is amended to clarify that an electronic notice must be the equivalent of a written notice by incorporating the NPRM preamble statement that if an institution notifies a student or parent electronically, it must request a return receipt and maintain a record of that receipt. In addition, the phrase ''by other means'' is removed to preclude the use of telephone or in-person conversations as the sole means by which an institution may notify a student. Also, this section is revised to include notification to Federal Perkins Loan Program borrowers.

Comments Regarding Prior-Year Charges

Comments: Most of the commenters supported the proposal allowing an institution, under limited circumstances and with a student's permission, to use a student's current year title IV, HEA program funds to pay for minor prior year charges. A few of these commenters, mostly business officers, stated that the current prohibition on the payment of prior-year charges has created difficulties for many students and institutions, resulting in increased transaction costs. These commenters believed that the proposed change will allow for smoother processing of student accounts and expedite the registration process. One commenter, writing on behalf of a higher education association, suggested that a student be asked to approve a specific amount of funds that an institution could use to pay for prior-year charges when the institution obtains the student's permission. The commenter believed that this would protect the student's need to have sufficient current year funds to pay for living and other necessary expenses. Another commenter suggested that after this provision is tested, some room for refinement may become evident, such as whether it is necessary to actually credit funds for current year charges before identifying that funds will be left over to pay prior year balances. Still another commenter questioned the role and authority of an aid officer in determining whether the payment of ''minor prior-year charges'' would hamper a student's ability to satisfy current year obligations, particularly when the aid officer and the student are not in agreement as to the amount of funds needed for current obligations.

While the majority of commenters appreciated that the Secretary did not specify a dollar amount for minor prior-year charges, a few commenters lamented this lack of specificity. One of these commenters argued that the small dollar amount involved in most cases where this provision would apply does not warrant the administrative burden associated with obtaining a student's permission. Instead, the commenter suggested that the Secretary define minor prior-year charges as falling between $250 to $500 and not require written permission from the student.

Two commenters argued that the cost and burden imposed by this proposal on students and institutions is unwarranted since any outstanding balance must be paid before a student is allowed to enroll or continue at an institution. These commenters suggested that the Secretary either simplify the process under which prior-year charges may be paid or, notwithstanding the concerns expressed by the Secretary in the NPRM, allow these charges to be paid without restriction.

One commenter writing on behalf of a student legal services organization contended that schools should not be allowed to control student credit

balances (particularly if those balances contain loan proceeds) in this manner even with the student's permission. The commenter's contention was based on the following reasons.

The commenter's first reason was based on the Secretary's failure to specify a dollar amount of prior-year charges. As a result, the commenter believed that fly-by-night schools, whose motivation is to maximize profits rather than maintain credibility with the Department, would take advantage of this provision. The commenter indicated that while a university might define a ''minor charge'' as up to $10 in library fines, a high-cost trade school could define it as several hundred dollars of overpriced vocational equipment. The commenter warned that the Secretary will be left to assess the reasonableness of school practices in program reviews, *i.e.*, after the fact and after the student's loan proceeds have been used.

The commenter's second reason was that prior-year charges may have been unpaid because they were contested by the student. The commenter saw no valid reason to allow the school to determine the validity of the charges and then use loan proceeds to cover them. The commenter asserted that the fact that the borrower has to give permission for these sorts of charges provides little comfort since the authorization will probably be a generic, blanket authorization given at the beginning of the term with a sheaf of other forms before specific charges are ever incurred.

Further, the commenter noted that in order to accommodate this change in the regulation, § 668.165(b)(1) has also been amended to delete the current generic bar on applying title IV, HEA program funds ''to any charges assessed the student in a prior award year or period of enrollment.'' Thus, it appeared to the commenter that the proposed rules open the door to using current year funds to pay for prior year tuition, room, board, or other miscellaneous charges. For these reasons, the commenter urged the Secretary to leave the regulation as currently written.

Discussion: The Secretary offers the following guidance with respect to the comments dealing with student authorizations. An authorization must contain an explanation of the provisions regarding the activities that an institution seeks to perform on behalf of a student. This does not mean that the authorization must detail every aspect pertaining to an activity. On the other hand, the Secretary does not consider acceptable a blanket authorization which only identifies the activities to be performed.

Regarding the comment that an institution must first credit a student's account with title IV, HEA program funds before the institution may use any balance that remains to pay for prior-year charges, the Secretary notes that while this is technically correct, it has broader implications. The proposed language ''provided that a student has or will have a title IV, HEA program credit balance'' was intended to extend the benefits of this provision to institutions that draw down funds after a student starts classes. These institutions would have the assurance that agreed-to prior-year charges will be paid.

The Secretary has carefully considered the arguments made by student legal services asking the Secretary to retract the proposed prior-year charges provisions. The Secretary acknowledges that while it may be possible for an unscrupulous school to benefit from an abuse of these provisions, the Secretary notes that prior-year balances occur mainly at established two- and four-year schools—such schools can not be characterized as ''fly-by-night.''

In response to comment that the current prohibition on the payment of prior-year charges has now created problems for students and institutions, the Secretary reminds institutions that title IV, HEA program funds have never been permitted to be used to pay prior-year charges. However, it appears from these comments, and from comments previously received on the cash management regulations, that some institutions were either unaware of or ignored this prohibition. The Secretary does not wish to admonish institutions that otherwise administer the title IV, HEA programs properly, but believes that had these institutions structured student billing and accounting systems that identified and prevented the payment of prior-year charges with current year funds, they would not now be experiencing difficulties brought about by the policy change allowing for the payment of these charges under limited circumstances.

Moreover, the Secretary cannot in these regulations make the changes that would be necessary to allow institutions to use a student's funds without restriction. To do so would require changes in the statutory provisions that limit, without permission, the use of a student's title IV, HEA program funds to specified allowable charges and in the Secretary's longstanding interpretation of the precepts underlying need analysis and award determinations. The proposal to allow for the payment of prior-year charges under limited circumstances is consistent with current law and, as a policy matter, was formulated merely as an administrative convenience to students and institutions in recognition of a problem that the Secretary believes should not occur with regularity or involve large sums of money. The Secretary did not intend to take sides in disputes between students and institutions regarding the legitimacy of prior-year charges. In putting forth this proposal, the Secretary was mindful of the need to protect student rights while at the same time meeting the administrative needs of institutions.

To this end, the Secretary will keep the general prohibition against using a student's current year title IV, HEA program funds to pay for prior-year charges. The Secretary will allow for payment of minor prior-year charges as proposed, but with one modification. The modification addresses the comments regarding whether a student may authorize in advance a specific amount of funds to pay for prior-year charges and whether the Secretary will establish a dollar amount for these charges. The Secretary believes that it would be difficult to determine in advance what the specific amount should be, and whether the payment of that amount in a future period would create financial problems for a student. Such a determination should be made in view of the student's circumstances when the situation arises. However, an institution may consider prior-year charges that do not exceed $100 to be minor without making this determination and may obtain a student's authorization in advance to pay for these charges should they occur.

Changes: Section 668.165(b)(1) is revised to reinstate the general prohibition that a student's current year title IV, HEA program funds may not be used to pay for prior-year charges. This section is also amended by removing proposed paragraph (b)(3)(iv)(C) and adding a new paragraph (e) that provides that an institution may use a student's current year funds to pay for minor prior-year charges if the student's current year institutional charges are satisfied and the institution obtains the student's permission. In addition, an institution may consider prior-year charges that do not exceed $100 to be minor. To pay prior-year charges for amounts over $100, an institution must determine if that payment would prevent the student from paying for his or her educational expenses.

Campus-Based Programs

Sections 674.2, 675.2, and 676.2 Definitions

Comments: Two commenters expressed their support for the proposal to delete the duplicative definitions of the terms ''full-time graduate or professional student'' and ''full-time undergraduate student'' from § 674.2(b) and § 675.2(b) and the term ''full-time undergraduate student'' from § 676.2(b). One commenter felt clarification was needed in the ''full-time student'' definition in § 668.2 of the Student Assistance General Provisions regulations to distinguish a full-time course load for undergraduate students from that of graduate/professional students.

Discussion: The Secretary believes that the definition of ''full-time student'' in the Student Assistance General Provisions regulations adequately addresses the determination of a full-time course load for both undergraduates and graduate/professional students. As stated in § 668.2, in the definition of a ''full-time student,'' ''* * * academic workload (other than by correspondence) as determined by the institution under a standard applicable to all students enrolled in a particular educational program. The student's workload may include any combination of courses, work, research, or special studies that the institution considers sufficient to classify the student as a full-time student.'' This part of the definition provides the institution with the discretion to determine a full-time course load for all classifications of students. The definition then proceeds to provide *minimum* standards for an undergraduate student.

Changes: None.

Sections 674.17, 675.17, and 676.17 Federal Interest in Allocated Funds

Comments: Several commenters supported the proposal to delete the provisions in § 674.17(a), § 675.17, and 676.17 that provide that Federal Perkins Loan, FWS, and FSEOG program funds are to be held in trust for the intended students and the Secretary and cannot be used or hypothecated for any other purpose. The commenters agreed that the elimination of these sections reduces redundancy since this provision is contained in the Student Assistance General Provisions regulations, § 668.161(b).

One commenter, while agreeing that regulations should not be repetitive, pointed out that § 668.161(b) of the General Provisions regulations only excepts funds used for administrative expenses, whereas § 675.17 of the FWS Program regulations, includes other allowable uses besides awards to students, such as use of funds for establishment of a Job Location and Development (JLD) Program.

The commenter also observed that under the Federal Perkins Loan Program regulations certain collection costs may also be charged to the fund; these charges are outside of the administrative expense allowance. The commenter further indicated that § 674.17(a) also reinforces the requirement that funds received by the institution includes repayments on loans. The commenter suggested clarifying § 668.161(b) to include other uses of campus-based funds.

Discussion: Federal Perkins Loan Program. The Secretary does not agree with the comment that § 668.161(b) needs clarification if § 674.17(a) is deleted. Section § 668.161(b) provides for uses of title IV, HEA allocated funds. Once loans are made and students begin making repayments, the repayments on these loans become part of the Federal Perkins Loan Program Fund (Fund). Also the charges for certain costs incurred in collecting a loan, when not paid by the borrower, are to be made against the Fund. Uses of the Fund are provided for in other sections of the Federal Perkins Loan Program regulations.

Federal Work-Study Program. The Secretary agrees with the commenter that § 668.161(b) excepts only funds used for administrative expenses, whereas § 675.17 allows funds allocated under the FWS Program to also be used for establishment of a Job Location and Development Program; and that if § 675.17 is deleted, § 668.161(b) needs clarification.

Changes: The Secretary is amending the language of this provision in § 668.161(b) to incorporate the uses of allocated FWS funds for certain activities under the Job Location and Development Program.

Sections 674.19, 675.19 and 676.19 Fiscal Procedures and Records

Comment: Several commenters commended the Secretary for the proposal to allow institutions the additional flexibility of using optical disk technology in complying with recordkeeping requirements. The commenters viewed this as additional proof of the Department's goal to simplify and modernize the regulations, and they commended the Secretary on his recognition of the importance of paper reduction. One of these commenters stated that this change will greatly enhance their ability to comply with the regulations to maintain records while utilizing their personnel and physical spaces more efficiently.

One commenter, while recognizing the benefit to schools in reducing the paper they have to retain, expressed concern of the danger for borrowers and the Department in having records that are more difficult to read or use as proof in legal cases. This commenter pointed out the fact that forgeries and alterations are not likely to be discernible under these alternative formats. The commenter recommended against allowing alternative forms of record retention for key Federal Perkins loan documents, such as promissory notes.

Discussion: The Secretary appreciates the commenters' support for new technology for the maintenance of records. However, the Secretary recognizes that he needs to allow for future technologies that provide an actual image of the original document. In response to the one commenter who was concerned about alternative forms of record retention, it has never been the Secretary's intention to allow alternative means of recordkeeping for key documents. Section 674.19(e)(4)(i) of the Federal Perkins Loan Program regulations provides that institutions must keep the *original* promissory notes and repayment schedules in a locked, fireproof container. These provisions remain and are not affected by the addition of the use of optical disk technology for maintaining other records.

Changes: The Secretary is amending this provision to provide for additional optical imaging technology.

Federal Perkins Loan Program

Section 674.2 Definitions

Comments: The commenters supported the Secretary's proposal to redefine the term ''making of a loan.'' However, several commenters requested that the Secretary clarify when a Federal Perkins loan is made, because the date on which the student signs the promissory note and the date on which the funds are disbursed may differ.

Discussion: In response to the commenters' clarification requests, under the provisions of this regulation, the Secretary considers that a Federal Perkins loan has been ''made'' when two events have occurred: the borrower has signed the Federal Perkins loan promissory note *and* the institution makes the first disbursement of loan funds to the borrower under that note. This new definition represents a significant departure from long-standing Federal Perkins Loan Program policy, because under the old policy, each

disbursement of a Federal Perkins loan to a borrower was considered a separate Federal Perkins loan.

Changes: The Secretary is modifying the definition of ''making of a loan'' to state that a Federal Perkins loan is ''made'' when the borrower has signed the promissory note and the first disbursement of loan funds has occurred.

Section 674.16 Making and Disbursing Loans

Comments: Many commenters strongly supported the Secretary's proposal to eliminate the requirement that a student sign for each loan advance. Most commenters agreed that this was the single most important proposal to reduce burden in the administration of the Federal Perkins Loan Program. One commenter strongly objected to the elimination of the requirement that a student sign for each loan advance. This commenter stated that signing for each advance reinforced in the students' minds the amounts they borrowed. This commenter was also concerned that, without the borrower's signature authorizing each loan advance, the institution may not be able to obtain a judgment or assign the loan without incurring additional legal costs to prove that the student had actually borrowed the total amount owed on the loan.

Discussion: The Secretary appreciates the support the community has shown for this regulatory effort. The Secretary respects the commenter's concern for the integrity of the Federal Perkins Loan Program. However, the Secretary believes that the value of the borrower's signing for each advance is outweighed by the burden this requirement imposes on institutions and borrowers. On the other hand, under the regulations, an institution may choose to continue to require that the borrower sign for each advance. Moreover, the Secretary disagrees with the commenter that the failure to obtain a signature for each advance will preclude the institution from assigning the note or obtaining a judgment against the borrower.

The Secretary notes that § 668.165(b)(1) is being amended to require an institution to notify a student that a disbursement of Federal Perkins loan funds is being credited to the student's account.

Changes: None.

Section 674.31 Promissory Note

Comments: While many commenters supported the proposal to allow the Secretary's promissory note under the Federal Perkins Loan Program to be used as a sample note, thereby allowing institutions to add items to the note as long as the substance of the note remains unchanged, many also requested clarification of this provision. Commenters asked whether changing the ''substance'' of the note meant changing the format of the note. Several commenters asked the Secretary to define ''substance.'' Several commenters asked whether new items on the promissory note that imposed additional requirements, penalties, or benefits were acceptable to the Secretary, and if not, what was an acceptable additional item. One commenter recommended that the Secretary not make the proposed change. This commenter stated that other federal loan programs use a national note that requires no additions by the schools. This commenter felt strongly that the language and provisions used in the Federal Perkins Loan Program promissory notes should be consistent across the Program and urged the Secretary to maintain § 674.31 unchanged.

Discussion: The Secretary has reevaluated his proposal to amend § 674.31(a). The Secretary agrees with commenters that the proposed change allowing institutions to make nonsubstantive additions to the sample promissory notes is too vague. The Secretary believes that the addition of provisions to the promissory note that would impose additional requirements, penalties, or benefits constitutes a substantive change to the note.

The Secretary agrees with the commenter who recommended that the promissory note should remain a national note and with consistent provisions. The Secretary is, therefore, requiring institutions to use the promissory notes approved by the Secretary, rather than providing ''sample'' promissory notes. An institution may not change the text of the promissory note or rearrange the order of the text. An institution may make nonsubstantive changes, such as changing the size or style of the type or requiring a student to include his or her driver's license number.

Changes: The Secretary is changing § 674.31(a) to provide that institutions must use the promissory note provided by the Secretary and that institutions may only make changes to the notes provided that are nonsubstantive.

Section 674.33 Repayment

Comments: Commenters unanimously supported the Secretary's proposal to combine the last scheduled Federal Perkins loan payment with the next-to-last payment if the last payment is $25 or less, an increase from $15. One commenter suggested that institutions be allowed to combine the last scheduled payment with the next-to-last payment if the last payment is $50 or less.

Discussion: The Secretary's purpose in amending § 674.33 is to remove administrative burden and to improve an institution's success in collecting small loan balances. However, the Secretary does not wish to overly burden student borrowers. The Secretary believes that combining the last scheduled payment with the next-to-last payment if the last payment is $50 or less may place a financial strain on student borrowers, thereby compromising the borrower's ability to pay off his or her loan.

Changes: None.

Section 674.47 Costs Chargeable to the Fund

Section 674.47 (g)

Comments: Of all the Federal Perkins Loan Program proposals in the NPRM, the Secretary's proposals related to ceasing collection activity generated the most comments. Most of these commenters made suggestions on ways to amend this provision. One commenter felt that, rather than ceasing collection activity, this provision should be modified to permit the write-off of defaulted accounts with outstanding balances between $5 and $25 after sending a first overdue notice. The commenter further noted that the proposed rule would require institutions to maintain accounts which would continue to accrue interest and would age over the years. Thus, loans under $25 would eventually reach $25. At that point the institution would have to perform due diligence on that loan under subpart C. The commenter noted that as a result there is no net gain to the institution in terms of administrative costs.

A commenter applauded the Secretary's attempt to provide relief for institutions handling defaulted accounts with outstanding balances of less than $25, but the commenter felt the regulations should reflect a higher amount, *i.e.* $100 or less.

Discussion: The Secretary does not agree with the commenter's suggestion to write off defaulted accounts with outstanding balances between $5 and $25 because it is inappropriate to write off debts of that amount. These are borrowers who are in default on a Federal loan. The borrower owes these amounts and the failure to collect these funds affects the future level of the Fund. However, the Secretary agrees with other commenters' suggestions to

raise the level at which an institution can stop collection efforts on a loan.

The Secretary agrees with the commenters that it may not be cost effective for an institution to continue collection efforts on small loan balances. Therefore, the Secretary will allow an institution to cease collection activity on defaulted accounts with balances of between $25 and $200, if the institution carried out the subpart C due diligence requirements and the account has not had any activity for four years. The Secretary chose a $200 threshold because $200 is the level at which an institution must make an annual determination to litigate a defaulted account.

If an institution chooses this option, these accounts may be included in its cohort default rate, if applicable. The borrower will still be in default and ineligible for further title IV, HEA program funds.

The Secretary agrees with the commenter's point regarding an institution's election to cease collection efforts on an account under $25. Therefore, the institution will not have to exercise due diligence required under subpart C, even though interest will continue to accrue and may put the account over $25, if it documents that it ceased collection activity when the account was under $25. However, the institution would not be able to assign the account to the Secretary and the borrower will remain responsible for repaying the account, including accrued interest. In addition, the Secretary notes that these accounts will still be included in the institution's cohort default rate, if applicable, and the borrower is still in default and ineligible for title IV, HEA program funds.

Changes: The Secretary has modified paragraph (g)(1) to reflect the noted changes.

Comments: One commenter felt that there should be some way for an institution to use its own funds to pay off larger balance accounts with outstanding balances as high as $100. The commenter did not feel it was cost effective to continue to track small amounts as defaults.

Discussion: An institution may pay off loan balances of its borrowers. However, under section 462(h)(2)(D) of the HEA, any such loans will be considered in default for purposes of calculating the institution's cohort default rate.

Changes: None.

Comments: A few commenters wanted a further explanation from the Secretary regarding proposed § 674.47(g)(2). These commenters did not understand how a loan which is not closed or paid-in-full could reduce the assets of the Fund. One commenter felt that this proposal would not only be counter-intuitive, since loans in this category would remain as balances due, accruing interest and carrying penalties associated with default, but would also create a new area of administrative complexity for this new category of loans ''in limbo.'' These commenters indicated that this change would burden institutions with additional costs in order to maintain this category of ''due'' but ''non-asset'' loans.

Discussion: The Secretary agrees with the commenters' points and apologizes for any confusion this proposed provision might have caused. It was the Secretary's intent to reduce burden in the administration of the Federal Perkins Loan Program. It was not the Secretary's intent to burden institutions with additional costs and a new systems design. Because these accounts are still ''open,'' institutions must include the amounts of these accounts as assets of the Fund when they choose to cease collection activities of defaulted accounts. However, when an institution writes off an account, in accordance with paragraph (h) of this section, these accounts would not remain an asset of the Fund.

Changes: The Secretary is amending paragraph (g) to remove the provision that would require an account on which the institution has chosen to cease collection activity to no longer be considered as an asset of the Fund.

Section 674.47(h)

Comments: While most commenters appreciated the Secretary's proposal to allow institutions to write off loan accounts with balances of less than $1.00, all commenters were unanimously opposed to the proposed write-off amount. Commenters felt that $1.00 was too stringent, that it was not cost effective in terms of real administration and collection costs, and that it would not accomplish the proposal's intended purpose: to provide relief to institutions in the administration of the Federal Perkins Loan Program. Commenters encouraged the Secretary to consider a higher amount, with the commenters suggesting amounts ranging from $2 to $25. A few commenters stated that the majority of their accounts with small remaining balances were $5.00 or less, and that it would be clearly more effective and efficient to raise the amount to $5.00.

Discussion: The commenters have convinced the Secretary that the proposed $1 figure was too low. The Secretary has adopted the commenters' suggestions that the amount be raised to $5. Once these accounts have been written off, the account is considered as paid-in-full. The account will no longer be considered as an asset to the Fund, the account will not be counted in the institution's cohort default rate, if applicable, and the promissory note will be returned to the borrower marked as paid-in-full.

Changes: The Secretary is amending 674.47(h) to increase the write-off threshold to $5.00. The Secretary is also amending paragraph (h) to provide that an account that has been written off may not be considered as an asset to the Fund.

Federal Work-Study Programs

Appendix B—Model Off-Campus Agreement

Comments: Four commenters supported the Secretary's proposal to remove the model off-campus agreement from regulation and include the agreement in the Federal Student Financial Aid Handbook. They felt that the Handbook is a more appropriate document and that this will make the sample agreement more easily accessible by aid administrators. One of these commenters suggested that the Secretary also include a model community service agreement in the Handbook.

Discussion: The off-campus agreement in Appendix B is a suggested model for the development of a written agreement between an institution of higher education and a federal, state, or local public agency or private nonprofit organization which employs students participating in the FWS Program. As stated in the model, institutions and agencies or organizations may devise additional or substitute paragraphs that are consistent with the statute or regulations and add any pertinent information that orients the agreement towards community services. Therefore, one sample off-campus agreement will be provided in the *Federal Student Financial Aid Handbook* for use in the FWS Program.

Changes: None.

Federal Family Educational Loan Program, and Direct Loan Program

Sections 682.201 and 685.200 Eligible Borrowers

Comments: Many commenters supported the proposal in the FFEL and Direct Loan Programs to allow a student's stepparent to borrow under the PLUS and Federal Direct PLUS Programs.

One commenter suggested that a stepparent should remain eligible to borrow on behalf of a stepchild if the

natural or adoptive parent to whom the stepparent is married, dies. The commenter indicated that a situation may arise where, if the other natural parent is still alive, the student will not become an independent student. The commenter indicated that the student's relationship with the surviving stepparent may be more akin to a parental bond than is the student's relationship with the surviving parent.

Another commenter suggested that the language of the regulations be amended to provide that a stepparent would be eligible to borrow on behalf of a stepchild if the stepparent's income was not used to determine the expected family contribution (EFC) of the stepchild. The commenter indicated that a parent could marry after the Free Application for Federal Student Aid (FAFSA) had been filed. The commenter believed that the new stepparent should be eligible to borrow a PLUS loan on behalf of the student.

Discussion: The Secretary appreciates the mostly positive comments he received on his proposal to allow stepparents to borrow under the FFEL and Direct Loan PLUS programs. While the Secretary agrees that the situation suggested by the commenter could, on rare occasions happen, he points out that he would expect that, in most instances, the financial aid officer would use professional judgement and make the student independent, while perhaps assessing some amount of untaxed income to the student as a result of support received from the stepparent. In this instance the student would be considered eligible for additional unsubsidized loans to replace whatever PLUS proceeds are not available. For these reasons, the Secretary does not believe there is need to make additional changes to the eligibility criteria for stepparents to borrow under the title IV PLUS programs.

The Secretary acknowledges, as pointed out by the second commenter, that the proposed language could have been interpreted to exclude certain stepparents from participation in PLUS Loan Programs because their income and assets were not taken into account when determining the student's EFC. Such a condition could exist when the student did not complete a FAFSA or in the case cited by the commenter when the natural parent married after the FAFSA was filed. The Secretary will change the eligibility requirement under which a stepparent may borrow a PLUS loan to include the income and assets ''that would have been taken into account'' rather than ''are taken into account'' when determining the student's EFC.

Changes: Sections 682.201 and 685.200 are changed to allow a stepparent to borrow under the FFEL and Direct Loan PLUS programs ''if that spouse's income and assets would have been taken into account when calculating a dependent student's expected family contribution.''

Section 682.600 Agreement Between an Eligible School and the Secretary for Participation in the FFEL Programs

Comments: All commenters supported the proposal to eliminate the provisions of § 682.600 (a) through (c) and to include the provisions that deal with foreign schools (§ 682.600(d)) in a new § 682.611. One commenter requested clarification of the Secretary's intent to eliminate § 682.600.

Discussion: The Secretary noted in the preamble of the NPRM (60 FR 49118) that the provisions of § 682.600(a) through (c) are unnecessary because they duplicate existing provisions found in 34 CFR Part 600 (Institutional Eligibility Under the Higher Education Act of 1965, As Amended) and 34 CFR Part 668 (Student Assistance General Provisions). The Secretary also noted that the provisions included in § 682.600(d) that deal with foreign schools are needed and would be retained in a new section, § 682.211.

Changes: None.

Section 682.602 Schedule Requirements for Courses of Study by Correspondence

Comments: All commenters supported the proposal to eliminate the provisions contained in § 682.602.

Discussion: Commenters agreed with the Secretary that the provisions of § 682.602 are no longer needed since students enrolled in correspondence programs are not eligible to receive FFEL Program loans unless they are enrolled in a program that leads to an associate, bachelor, or graduate degree.

Changes: None.

Federal Pell Grant Program

Comments: Various commenters expressed support for the proposed changes to the Federal Pell Grant Program.

Discussion: The Secretary appreciates the commenters' support of efforts to eliminate duplicative provisions from the regulations.

Changes: None.

Executive Order 12866

These regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of the regulatory action.

The potential costs associated with the regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering the title IV, HEA programs effectively and efficiently. Burdens specifically associated with information collection requirements, if any, are identified and explained elsewhere in the preamble under the heading *Paperwork Reduction Act of 1995.*

In assessing the potential costs and benefits—both qualitative and quantitative—of these regulations, the Secretary has determined that the benefits of the regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Summary of Potential Costs and Benefits

The potential costs and benefits of these final regulations are discussed elsewhere in this preamble under the following heading: *Analysis of Comments and Changes.*

Regulatory Flexibility Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. Small entities affected by these regulations are small institutions of higher education.

Waiver of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education provisions Act, 20 U.S.C. 1232(b)(2)(A), and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed rules and regulations. However, the Secretary amends § 668.163(a)(2) and (3) as a final rule to revise the procedure for presenting cash requests to the Department under the exemption from rulemaking requirements in 5 U.S.C. 553(b)(A) for rules of agency procedure.

Assessment of Educational Impact

In the NPRM published September 21, 1995, the Secretary requested comment on whether the proposed regulations in this document would require transmission of information that is being gathered by, or is available from, any other agency or authority of the United States.

Based on the response to the proposed rules on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by, or is available from, any other agency or authority of the United States.

List of Subjects

34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs— education, Loan programs—education, Reporting and recordkeeping requirements, Student aid.

34 CFR Part 674

Loan programs—education, Student aid, Reporting and recordkeeping requirements.

34 CFR Part 675

Loan programs—education, Student aid, Reporting and recordkeeping requirements.

34 CFR Part 676

Loan programs—education, Student aid, Reporting and recordkeeping requirements.

34 CFR Part 682

Administrative practice and procedure, Colleges and universities, education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

34 CFR Part 685

Administrative practice and procedure, Colleges and universities, education, Loan programs—education, Reporting and recordkeeping requirements, Student aid.

34 CFR Part 690

Grant programs—education, Reporting and recordkeeping requirements, Student aid.

(Catalog of Federal Domestic Assistance Numbers: 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.032 Consolidation Program; 84.032 Federal Stafford Loan Program; 84.032 Federal PLUS Program; 84.032 Federal Supplemental Loans for Students Program; 84.033 Federal Work-Study Program; 84.038 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; 84.069 Federal State Student Incentive Grant Program; 84.268 William D. Ford Federal Direct Loan Program; and 84.272 National Early Intervention Scholarship and Partnership Program.)

Dated: November 24, 1995.

Richard W. Riley,

Secretary of Education.

The Secretary amends parts 668, 674, 675, 676, 682, 685, and 690 of title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, 1099c, and 1141, unless otherwise noted.

§ 668.2 [Amended]

2. In § 668.2, paragraph (b) is amended by revising paragraph (1) of the definition of ''Payment period'' and by adding a sentence to the end of the definition of ''Federal Perkins Loan Program'' to read as follows:

§ 668.2 General definitions.

* * * * *

Federal Perkins Loan Program: * * * Unless otherwise noted, as used in this part, the Federal Perkins Loan Program includes the National Direct Student Loan Program and the National Defense Student Loan Program.

* * * * *

Payment period: (1) With respect to the Federal Pell Grant Program, a payment period as defined in 34 CFR 690.3;

* * * * *

§ 668.7 [Removed and Reserved]

3. Section 668.7 is removed and reserved.

4. Section 668.19 is revised to read as follows:

§ 668.19 Financial aid transcript.

(a) (1) An institution shall determine whether a student who is applying for assistance under any title IV, HEA program has previously attended another eligible institution.

(2) Before a student who previously attended another eligible institution may receive any title IV, HEA program assistance the institution the student is, or will be, attending—

(i) Must request each eligible institution the student previously attended to provide to it a financial aid transcript; or

(ii) May use information it obtains from the National Student Loan Data System (NSLDS) to satisfy the requirements of paragraphs (a)(1) and (a)(2)(i) of this section, after the Secretary informs institutions through a Notice in the Federal Register that the NSLDS is available for this purpose, and information on how the NSLDS can be used.

(3) Except as provided in paragraph (b)(5) of this section, if an institution requests a financial aid transcript from any institution a student previously attended, until the institution receives each requested financial aid transcript; the institution—

(i) May withhold payment of Federal Pell Grant and campus-based funds to the student;

(ii) May disburse Federal Pell Grant and campus-based funds to the student for one payment period only;

(iii) May decline to certify the student's Federal Stafford Loan application or the parent's Federal PLUS application under the FFEL Program;

(iv) May decline to originate the student's Federal Direct Stafford Loan or the parent's Federal Direct PLUS under the Direct Loan Program;

(v) May not deliver Federal Stafford or disburse Federal Direct Stafford Loan proceeds to a student; and

(vi) May not deliver Federal PLUS or disburse Federal Direct PLUS proceeds to a parent or student.

(4) (i) An institution may not hold Federal Stafford or Federal PLUS loan proceeds under paragraph (b)(3) of this section for more than 45 days. If an institution does not receive all required financial aid transcripts for a student within 45 days of the receipt of such proceeds, the institution shall return the loan proceeds to the appropriate lender.

(ii) An institution that certifies a Federal Stafford or Federal PLUS loan application before receiving all required financial aid transcripts shall return to the lender the appropriate amount of any Federal Stafford or Federal PLUS proceeds if it receives a financial aid transcript indicating that the student is not eligible for all, or a part, of the loan proceeds.

(5) An institution may disburse title IV, HEA program funds to a student without receiving a financial aid transcript from an eligible institution the student previously attended if the institution the student previously attended—

(i) Has closed, and information concerning the student's receipt of title IV, HEA program assistance for attendance at that institution is not available;

(ii) Is not located in a State; or

(iii) Provides the disbursing institution with the written certification described in paragraph (b)(2)(ii) of this section.

(b) Upon request, each institution located in a State shall promptly

provide to the institution that requested a financial aid transcript—

(1) All information in its possession concerning whether the student in question attended institutions other than itself and the requesting institution; and

(2) (i) A financial aid transcript for that student, if the student received or benefitted from any title IV, HEA program assistance while attending the institution; or

(ii) A written certification that—

(A) The student did not receive or benefit from any title IV, HEA program assistance while attending the institution; or

(B) The transcript would cover only years for which the institution no longer has records and is no longer required to keep records under the applicable title IV, HEA program recordkeeping requirements.

(c) An institution must disclose on a financial aid transcript for a student—

(1) The student's name and social security number;

(2) To the extent the institution is aware, whether the student is in default on any title IV, HEA program loan;

(3) To the extent the institution is aware, whether the student owes an overpayment on any title IV, HEA program grant or Federal Perkins Loan;

(4) For the award year for which a financial aid transcript is requested, the student's Scheduled Federal Pell Grant and the amount of Pell Grant funds disbursed to the student;

(5) The aggregate amount of loans made to the student under each of the title IV, HEA loan programs for attendance at the institution;

(6) For the award year in which a financial aid transcript is requested, the total amount of Federal Perkins loan funds disbursed to the student;

(7) Whether the student owed an outstanding balance on July 1, 1987 on either a National Direct Student Loan made for attendance at the institution;

(8) Whether the student owed an outstanding balance on October 1, 1992 on either a Federal Perkins loan or a National Direct Student Loan made for attendance at the institution; and

(9) The amount of, and period of enrollment for, the most current loan made to the student under the FFEL, and Direct Loan programs for attendance at the institution.

(d) (1) A financial aid transcript must be signed by an official authorized by the institution to disclose information in connection with title IV, HEA programs.

(2) An institution must base the information it includes on financial aid transcripts on records it maintains under the title IV, HEA programs recordkeeping requirements.

(Approved by the Office of Management and Budget under control number 1840–0537)

(Authority: 20 U.S.C. 1091, 1094)

5. The heading for § 668.21 is revised to read as follows:

§ 668.21 Treatment of Federal Perkins Loan, FSEOG, and Federal Pell Grant program funds if the recipient withdraws, drops out, or is expelled before his or her first day of class.

6. Section 668.22 is amended by removing paragraph (h)(1)(i) and redesignating paragraphs (h)(1)(ii) through (xiii) as paragraphs (h)(1)(i) through (xii), respectively; and by revising paragraph (d)(1)(i) to read as follows:

§ 668.22 Institutional refunds and repayments.

* * * * *

(d) * * *

(1) * * *

(i) If a student withdraws, drops out, or is expelled from the institution before the first day of classes for the period of enrollment for which the student was charged, the institution must follow the provisions under § 668.21 for the treatment of Federal Perkins Loan, FSEOG, and Federal Pell Grant Program funds, the provisions under § 682.604(d)(3) or (4) for the treatment of FFEL Program funds, and the provisions under § 685.303(b)(3) for the treatment of Direct Loan Program funds, as appropriate;

* * * * *

7. Subpart C is revised to read as follows:

Subpart C—Student Eligibility

Sec.

668.31 Scope.
668.32 Student eligibility - general.
668.33 Citizenship and residency requirements.
668.34 Satisfactory progress.
668.35 Student debts under the HEA and to the U.S.
668.36 Social security number.
668.37 Selective Service registration.
668.38 Enrollment in telecommunications and correspondence courses.
668.39 Study abroad programs.

Subpart C—Student Eligibility

§ 668.31 Scope.

This subpart contains rules by which a student establishes eligibility for assistance under the title IV, HEA programs. In order to qualify as an eligible student, a student must meet all applicable requirements in this subpart.

(Authority: 20 U.S.C. 1091)

§ 668.32 Student eligibility—general.

A student is eligible to receive title IV, HEA program assistance if the student—

(a)(1) (i) Is a regular student enrolled, or accepted for enrollment, in an eligible program at an eligible institution;

(ii) For purposes of the FFEL and Direct Loan programs, is enrolled for no longer than one twelve-month period in a course of study necessary for enrollment in an eligible program; or

(iii) For purposes of the Federal Perkins Loan, FWS, FFEL, and Direct Loan programs, is enrolled or accepted for enrollment as at least a half-time student at an eligible institution in a program necessary for a professional credential or certification from a State that is required for employment as a teacher in an elementary or secondary school in that State;

(2) For purposes of the FFEL and Direct Loan programs, is at least a half-time student;

(b) Is not enrolled in either an elementary or secondary school;

(c)(1) For purposes of the Federal Pell Grant, FSEOG, and SSIG programs, does not have a baccalaureate or first professional degree; and

(2)(i) For purposes of the Federal Perkins Loan, FFEL, and Direct Loan programs, is not incarcerated; and

(ii) For purposes of the Federal Pell Grant program, is not incarcerated in a Federal or State penal institution;

(d) Satisfies the citizenship and residency requirements contained in § 668.33 and subpart I of this part;

(e)(1) Has a high school diploma or its recognized equivalent;

(2) Has obtained within 12 months before the date the student initially receives title IV, HEA program assistance, a passing score specified by the Secretary on an independently administered test in accordance with subpart J of this part; or

(3) Is enrolled in an eligible institution that participates in a State ''process'' approved by the Secretary under subpart J of this part;

(f) Maintains satisfactory progress in his or her course of study according to the institution's published standards of satisfactory progress that satisfy the provisions of § 668.16(e), and, if applicable, the provisions of § 668.34;

(g) Except as provided in § 668.35—

(1) Is not in default, and certifies that he or she is not in default, on a loan made under any title IV, HEA loan program;

(2) Has not obtained loan amounts that exceed annual or aggregate loan limits made under any title IV, HEA loan program;

(3) Does not have property subject to a judgment lien for a debt owed to the United States; and

(4) Is not liable for a grant or Federal Perkins loan overpayment. A student

receives a grant or Federal Perkins loan overpayment if the student received grant or Federal Perkins loan payments that exceeded the amount he or she was eligible to receive; or if the student withdraws, that exceeded the amount he or she was entitled to receive for non-institutional charges;

(h) Files a Statement of Educational Purpose in accordance with the instructions of the Secretary, or in the case of a loan made under the FFEL Program, with the lender;

(i) Has a correct social security number as determined under § 668.36, except that this requirement does not apply to students who are residents of the Federated States of Micronesia, Republic of the Marshall Islands, or the Republic of Palau;

(j) Satisfies the Selective Service registration requirements contained in § 668.37, and, if applicable, satisfies the requirements of § 668.38 and § 668.39 involving enrollment in telecommunication and correspondence courses and a study abroad program, respectively; and

(k) Satisfies the program specific requirements contained in—

(1) 34 CFR 674.9 for the Federal Perkins Loan program;

(2) 34 CFR 675.9 for the FWS program;

(3) 34 CFR 676.9 for the FSEOG program;

(4) 34 CFR 682.201 for the FFEL programs;

(5) 34 CFR 685.200 for the Federal Direct Student Loan programs;

(6) 34 CFR 690.75 for the Federal Pell Grant program; and

(7) 34 CFR 692.40 for the SSIG program.

(Authority: 20 U.S.C. 1091, 28 U.S.C. 3201(e))

§ 668.33 Citizenship and residency requirements.

(a) Except as provided in paragraph (b) of this section, to be eligible to receive title IV, HEA program assistance, a student must—

(1) Be a citizen or national of the United States; or

(2) Provide evidence from the U.S. Immigration and Naturalization Service that he or she—

(i) Is a permanent resident of the United States; or

(ii) Is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident;

(b) (1) A citizen of the Federated States of Micronesia, Republic of the Marshall Islands, or the Republic of Palau is eligible to receive funds under the FWS, FSEOG, and Federal Pell Grant programs if the student attends an eligible institution in a State, or a public or nonprofit private eligible institution of higher education in those jurisdictions.

(2) A student who satisfies the requirements of paragraph (a) of this section is eligible to receive funds under the FWS, FSEOG, and Federal Pell Grant programs if the student attends a public or nonprofit private eligible institution of higher education in the Federated States of Micronesia, Republic of the Marshall Islands, or the Republic of Palau.

(c) (1) If a student asserts that he or she is a citizen of the United States on the Free Application for Federal Student Aid (FAFSA), the Secretary attempts to confirm that assertion under a data match with the Social Security Administration. If the Social Security Administration confirms the student's citizenship, the Secretary reports that confirmation to the institution and the student.

(2) If the Social Security Administration does not confirm the student's citizenship assertion under the data match with the Secretary, the student can establish U.S. citizenship by submitting documentary evidence of that status to the institution. Before denying title IV, HEA assistance to a student for failing to establish citizenship, an institution must give a student at least 30 days notice to produce evidence of U.S. citizenship.

(Authority: 20 U.S.C. 1091, 5 U.S.C. 552a)

§ 668.34 Satisfactory progress.

(a) If a student is enrolled in an program of study of more than two academic years, to be eligible to receive title IV, HEA program assistance after the second year, in addition to satisfying the requirements contained in § 668.32(f), the student must be making satisfactory under the provisions of paragraphs (b), (c) and (d) of this section.

(b) A student is making satisfactory progress if, at the end of the second year, the student has a grade point average of at least a ''C'' or its equivalent, or has academic standing consistent with the institution's requirements for graduation.

(c) An institution may find that a student is making satisfactory progress even though the student does not satisfy the requirements in paragraph (b) of this section, if the institution determines that the student's failure to meet those requirements is based upon—

(1) The death of a relative of the student;

(2) An injury or illness of the student; or

(3) Other special circumstances.

(d) If a student is not making satisfactory progress at the end of the second year, but at the end of a subsequent grading period comes into compliance with the institution's requirements for graduation, the institution may consider the student as making satisfactory progress beginning with the next grading period.

(e) At a minimum, an institution must review a student's academic progress at the end of each year.

(Authority: 20 U.S.C. 1091(d))

§ 668.35 Student debts under the HEA and to the U.S.

(a) A student who is in default on a loan made under a title IV, HEA loan program may nevertheless be eligible to receive title IV, HEA program assistance if the student—

(1) Repays the loan in full; or

(2) (i) Makes arrangements, that are satisfactory to the holder of the loan and in accordance with the individual title IV, HEA loan program regulations, to repay the loan balance; and

(ii) Makes at least six consecutive monthly payments under those arrangements.

(b) A student who is not in default on a loan made under a title IV, HEA loan program, but has inadvertently obtained loan funds under a title IV, HEA loan program in an amount that exceeds the annual or aggregate loan limits under that program, may nevertheless be eligible to receive title IV, HEA program assistance if the student—

(1) Repays in full the excess loan amount; or

(2) Makes arrangements, satisfactory to the holder of the loan, to repay that excess loan amount.

(c) A student who receives an overpayment under the Federal Perkins Loan Program, or under a title IV, HEA grant program may nevertheless be eligible to receive title IV, HEA program assistance if the student—

(1) Pays the overpayment in full; or

(2) Makes arrangements, satisfactory to the holder of the overpayment debt, to pay the overpayment.

(d) A student who has property subject to a judgement lien for a debt owed to the United States may nevertheless be eligible to receive title IV, HEA program assistance if the student-

(1) Pays the debt in full; or

(2) Makes arrangements, satisfactory to the United States, to pay the debt.

(e) (1) A student is not liable for a Federal Pell Grant overpayment received in an award year if the institution can eliminate that overpayment by adjusting subsequent

Federal Pell Grant payments in that same award year.

(2) A student is not liable for a FSEOG or SSIG overpayment or Federal Perkins loan overpayment received in an award year if the institution can eliminate that overpayment by adjusting subsequent title IV, HEA program (other than Federal Pell Grant) payments in that same award year.

(f) A student who otherwise is in default on a loan made under a title IV, HEA loan program, or who otherwise owes an overpayment on a title IV, HEA program grant or Federal Perkins loan, is not considered to be in default or owe an overpayment if the student—

(1) Obtains a judicial determination that the debt has been discharged or is dischargeable in bankruptcy; or

(2) Demonstrates to the satisfaction of the holder of the debt that—

(i) When the student filed the petition for bankruptcy relief, the loan, or demand for the payment of the overpayment, had been outstanding for the period required under 11 U.S.C. 523(a)(8)(A), exclusive of applicable suspensions of the repayment period for either debt of the kind defined in 34 CFR 682.402(m); and

(ii) The debt otherwise qualifies for discharge under applicable bankruptcy law.

(Authority: 20 U.S.C. 1091 and 11 U.S.C. 523 and 525)

§ 668.36 Social security number.

(a) (1) Except for residents of the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, the Secretary attempts to confirm the social security number a student provides on the Free Application for Federal Student Aid (FAFSA) under a data match with the Social Security Administration. If the Social Security Administration confirms that number, the Secretary notifies the institution and the student of that confirmation.

(2) If the student's verified social security number is the same number as the one he or she provided on the FAFSA, and the institution has no reason to believe that the verified social security number is inaccurate, the institution may consider the number to be accurate.

(3) If the Social Security Administration does not verify the student's social security number on the FAFSA, or the institution has reason to believe that the verified social security number is inaccurate, the student can provide evidence to the institution, such as the student's social security card, indicating the accuracy of the student's social security number. An institution must give a student at least 30 days, or until the end of the award year, whichever is later, to produce that evidence.

(4) An institution may not deny, reduce, delay, or terminate a student's eligibility for assistance under the title IV, HEA programs because verification of that student's social security number is pending.

(b) (1) An institution may not disburse any title IV, HEA program funds to a student until the institution is satisfied that the student's reported social security number is accurate.

(2) The institution shall ensure that the Secretary is notified of the student's accurate social security number if the student demonstrates the accuracy of a social security number that is not the number the student included on the FAFSA.

(c) If the Secretary determines that the social security number provided to an institution by a student is incorrect, and that student has not provided evidence under paragraph (a)(3) of this section indicating the accuracy of the social security number, and a loan has been guaranteed for the student under the FFEL program, the institution shall notify and instruct the lender and guaranty agency making and guaranteeing the loan, respectively, to cease further disbursements of the loan, until the Secretary or the institution determines that the social security number provided by the student is correct, but the guaranty may not be voided or otherwise nullified before the date that the lender and the guaranty agency receive the notice.

(d) Nothing in this section permits the Secretary to take any compliance, disallowance, penalty or other regulatory action against—

(1) Any institution of higher education with respect to any error in a social security number, unless the error was the result of fraud on the part of the institution; or

(2) Any student with respect to any error in a social security number, unless the error was the result of fraud on the part of the student.

(Authority: 20 U.S.C. 1091)

§ 668.37 Selective Service registration.

(a) (1) To be eligible to receive title IV, HEA program funds, a male student who is subject to registration with the Selective Service must register with the Selective Service.

(2) A male student does not have to register with the Selective Service if the student—

(i) Is below the age of 18, or was born before January 1, 1960;

(ii) Is enrolled in an officer procurement program the curriculum of which has been approved by the Secretary of Defense at the following institutions:

(A) The Citadel, Charleston, South Carolina;

(B) North Georgia College, Dahlonega, Georgia;

(C) Norwich University, Northfield, Vermont; or

(D) Virginia Military Institute, Lexington, Virginia; or

(iii) Is a commissioned officer of the Public Health Service and/or a member of the Reserve of the Public Health Service who is on active duty as provided in section 6(a)(2) of the Military Selective Service Act.

(b) (1) When the Secretary processes a male student's FAFSA, the Secretary determines whether the student is registered with the Selective Service under a data match with the Selective Service.

(2) Under the data match, Selective Service reports to the Secretary whether its records indicate that the student is registered, and the Secretary reports the results of the data match to the student and the institution the student is attending.

(c) (1) If the Selective Service does not confirm through the data match, that the student is registered, the student can establish that he—

(i) Is registered;

(ii) Is not, or was not required to be, registered;

(iii) Has registered since the submission of the FAFSA; or

(iv) Meets the conditions of paragraph (d) of this section.

(2) An institution must give a student at least 30 days, or until the end of the award year, whichever is later, to provide evidence to establish the condition described in paragraph (c)(1) of this section.

(d) An institution may determine that a student, who was required to, but did not register with the Selective Service, is not ineligible to receive title IV, HEA assistance for that reason, if the student can demonstrate by submitting clear and unambiguous evidence to the institution that—

(1) He was unable to present himself for registration for reasons beyond his control such as hospitalization, incarceration, or institutionalization; or

(2) He is over 26 and when he was between 18 and 26 and required to register—

(i) He did not knowingly and willfully fail to register with the Selective Service; or

(ii) He served as a member of one of the U.S. Armed Forces on active duty

and received a DD Form 214, ''Certificate of Release or Discharge from Active Duty,'' showing military service with other than the reserve forces and National Guard.

(e) For purposes of paragraph (d)(2)(i) of this section, an institution may consider that a student did not knowingly and willfully fail to register with the Selective Service only if—

(1) The student submits to the institution an advisory opinion from the Selective Service System that does not dispute the student's claim that he did not knowingly and willfully fail to register; and

(2) The institution does not have uncontroverted evidence that the student knowingly and willfully failed to register.

(f) (1) A student who is required to register with the Selective Service and has been denied title IV, HEA program assistance because he has not proven to the institution that he has registered with Selective Service may seek a hearing from the Secretary by filing a request in writing with the Secretary. The student must submit with that request—

(i) A statement that he is in compliance with registration requirements;

(ii) A concise statement of the reasons why he has not been able to prove that he is in compliance with those requirements; and

(iii) Copies of all material that he has already supplied to the institution to verify his compliance.

(2) The Secretary provides an opportunity for a hearing to a student who—

(i) Asserts that he is in compliance with registration requirements; and

(ii) Files a written request for a hearing in accordance with paragraph (f)(1) of this section within the award year for which he was denied title IV, HEA program assistance or within 30 days following the end of the payment period, whichever is later.

(3) An official designated by the Secretary shall conduct any hearing held under paragraph (f)(2) of this section. The sole purpose of this hearing is the determination of compliance with registration requirements. At this hearing, the student retains the burden of proving compliance, by credible evidence, with the requirements of the Military Selective Service Act. The designated official shall not consider challenges based on constitutional or other grounds to the requirements that a student state and verify, if required, compliance with registration requirements, or to those registration requirements themselves.

(g) Any determination of compliance made under this section is final unless reopened by the Secretary and revised on the basis of additional evidence.

(h) Any determination of compliance made under this section is binding only for purposes of determining eligibility for title IV, HEA program assistance.

(Authority: 20 U.S.C. 1091 and 50 App. 462)

§ 668.38 Enrollment in telecommunications and correspondence courses.

(a) If a student is enrolled in correspondence courses, the student is eligible to receive title IV, HEA program assistance only if the correspondence courses are part of a program that leads to an associate, bachelor's, or graduate degree.

(b) (1) For purposes of this provision, the Secretary considers that a student enrolled in a ''telecommunications course'' is enrolled in a correspondence course unless the total number of telecommunication and correspondence courses the institution provides is fewer than 50 percent of the courses the institution provides during an award year and the student is enrolled in a program that leads to an associate, bachelor's, or graduate degree.

(2) In making the determination required under paragraph (b)(1) of this section, the institution shall use its latest complete award year, and shall calculate the number of courses using the provisions contained in 34 CFR 600.7(b)(2).

(Authority: 20 U.S.C. 1091)

§ 668.39 Study abroad programs.

A student enrolled in a program of study abroad is eligible to receive title IV, HEA program assistance if—

(a) The student remains enrolled as a regular student in an eligible program at an eligible institution during his or her program of study abroad; and

(b) The eligible institution approves the program of study abroad for academic credit. However, the study abroad program need not be required as part of the student's eligible degree program.

(Authority: 20 U.S.C. 1091(o))

8. Section 668.133 is amended by revising paragraph (b) to read as follows:

§ 668.133 Conditions under which an institution shall request documentation and request secondary confirmation.

* * * * *

(b) *Exclusions from secondary confirmation.* (1) An institution may not require the student to produce the documentation requested under § 668.33(a)(2) and may not request that INS perform secondary confirmation, if the student—

(i) Demonstrates eligibility under the provisions of § 668.33 (a)(1) or (b); or

(ii) Demonstrated eligibility under the provisions of § 668.33(a)(2) in a previous award year as a result of secondary confirmation and the documents used to establish that eligibility have not expired; and

(iii) The institution does not have conflicting documentation or reason to believe that the student's claim of citizenship or immigration status is incorrect.

* * * * *

(Approved by the Office of Management and Budget under control number 1840–0650)

9. Section 668.161 is amended by revising paragraph (b) to read as follows:

§ 668.161 Scope and purpose.

* * * * *

(b) *Federal interest in title IV, HEA program funds.* Except for funds received by an institution for administrative expenses and for funds used for the Job Location and Development Program, under the Federal Work-Study Programs, funds received by an institution under the title IV, HEA programs are held in trust for the intended student beneficiaries and the Secretary. The institution, as a trustee of Federal funds, may not use or hypothecate (i.e., use as collateral) title IV, HEA program funds for any other purpose.

(Authority: 20 U.S.C. 1094)

* * * * *

10. Section 668.163 is amended by adding a new paragraph (a)(2)(iii); and by revising paragraph (a)(3)(i)(A) to read as follows:

§ 668.163 Requesting funds.

* * * * *

(a) * * *

(2) * * *

(iii) In submitting a request for cash, an institution must identify the title IV, HEA program under which the institution requests funds by its appropriate Catalog of Federal Domestic Assistance (CFDA) number and the total amount of program funds for each CFDA number included in the request.

* * * * *

(3) * * *

(i) * * *

(A) Identify the students for whom the institution is seeking reimbursement that will be included in the institution's request for cash. The institution's request for cash must identify the title IV, HEA program under which the institution seeks reimbursement by its appropriate CFDA number and the total

amount of program funds for each CFDA number included in the request;

* * * * *

11. Section 668.164, paragraph (a)(2)(iii) is revised to read as follows:

§ 668.164 Maintaining funds.

* * * * *

(a) * * *

(2) * * *

(iii) Except for public institutions, file with the appropriate State or municipal government entity a UCC–1 statement disclosing that the account contains Federal funds and maintain a copy of that statement in its records.

* * * * *

(Approved by the Office of Management and Budget under control number 1840–0697)

12. Section 668.165 is amended by revising paragraph (b)(1); and by adding a new paragraph (e) to read as follows:

§ 668.165 Disbursing funds.

* * * * *

(b) *Crediting a student's account at the institution* (1) *General.* An institution may disburse title IV, HEA program funds by crediting the student's account at the institution. Except as provided in paragraph (e) of this section, in crediting the student's account with title IV, HEA program funds, the institution may use those funds only to satisfy allowable charges described under paragraph (b)(3) of this section for the current award year or period of enrollment. An institution must notify expeditiously a student or parent borrower in writing or by equivalent electronic means that the institution has credited the student's account with Direct Loan, FFEL, or Federal Perkins Loan program funds. If an institution notifies a student or parent electronically, it must request the student or parent to confirm the receipt of the notice and maintain a record of that confirmation.

* * * * *

(e) *Prior-year charges.* An institution may use a student's title IV, HEA program funds to pay minor prior-year institutional charges if—

(1) The student has, or will have, a title IV, HEA credit balance as determined under paragraph (b)(2) of this section;

(2) The institution obtains the student's authorization to pay these charges; and

(3) The prior-year charges do not exceed $100; or

(4) The payment of these charges does not, or will not, prevent the student from paying his or her current-year education costs.

* * * * *

(Approved by the Office of Management and Budget under control number 1840–0697)

PART 674—FEDERAL PERKINS LOAN PROGRAM

13. The authority citation for part 674 continues to read as follows:

Authority: 20 U.S.C. 1087aa–1087ii and 20 U.S.C. 421–429, unless otherwise noted.

§ 674.2 [Amended]

14. Section 674.2 paragraph (a) is amended by adding, in alphabetical order, ''Full-time student''.

15. Section 674.2 paragraph (b) is amended by removing the definitions of ''Full-time graduate or professional student'', ''Full-time undergraduate student'', and ''Satisfactory arrangements to repay the loan'' and by revising the definition of ''making of a loan'' to read as follows:

§ 674.2 Definitions.

* * * * *

(b) * * *

Making of a loan: When the borrower signs the promissory note for the award year and the institution makes the first disbursement of loan funds under that promissory note for that award year.

* * * * *

16. Section 674.5 is amended by redesignating paragraph (e) as paragraph (f), by adding new paragraph (e), and by revising redesignated paragraph (f) to read as follows:

§ 674.5 Federal Perkins loan program cohort default rate and penalties.

* * * * *

(e) *Satisfactory arrangements to repay the loan.* The Secretary considers that the borrower has made satisfactory arrangements to repay the loan when the borrower has—

(1) Paid the loan in full; or

(2) Executed a new written repayment agreement; and

(3) Made one payment each month for six consecutive months.

(f) *Loan rehabilitation.* (1) The Secretary considers that the borrower has rehabilitated the loan when the borrower has—

(i) Paid the loan in full; or

(ii) Executed a new written repayment agreement; and

(iii) Made one payment each month for 12 consecutive months.

(2) Within 30 days of the date of the rehabilitation, the institution shall report the rehabilitation to any national credit bureau.

17. Section 674.16 is amended by revising paragraph (d) to read as follows:

§ 674.16 Making and disbursing loans.

* * * * *

(d)(1) The institution shall disburse funds to a student or the student's account in accordance with 34 CFR 668.165.

(2) The institution shall obtain the borrower's signature on a promissory note for each award year before it disburses any loan funds to the borrower under that note for that award year.

* * * * *

(Approved by the Office of Management and Budget under control number 1840–0535)

§ 674.17 [Amended]

18. Section 674.17 is amended by removing paragraph (a) and by redesignating paragraphs (b)(1) introductory text, (b)(1)(i), (b)(1)(ii), (b)(1)(iii), (b)(2), (b)(3), (b)(4) introductory text, (b)(4)(i), (b)(4)(ii), and (b)(5) as paragraphs (a) introductory text, (a)(1), (a)(2), (a)(3), (b), (c), (d) introductory text, (d)(1), (d)(2), and (e), respectively.

19. Section 674.19 is amended by revising paragraph (e)(4)(v) to read as follows:

§ 674.19 Fiscal procedures and records.

* * * * *

(e) * * *

(4) * * *

(v) An institution may keep the records required in this section on microforms, optical disk, other comparable imaging technology, or in computer format. If an institution keeps its records in computer format, it shall maintain, in either hard copy, microforms, optical disk, or other comparable imaging technology, the source documents supporting the computer input.

* * * * *

(Approved by the Office of Management and Budget under control number 1840–0535)

20. Section 674.31 is amended by revising paragraph (a)(1) to read as follows:

§ 674.31 Promissory note.

(a) *Promissory note.* (1) An institution may use only the promissory note that the Secretary provides. The institution may make only nonsubstantive changes, such as changes to the type style or font, or the addition of items such as the borrower's driver's license number, to this note.

* * * * *

(Approved by the Office of Management and Budget under control number 1840–0535)

§ 674.33 [Amended]

21. Section 674.33 paragraph (a)(2) is amended by removing ''$15'' and adding in its place ''$25'', by redesignating the second paragraph

(d)(3) as paragraph (d)(6), by redesignating the second paragraph (d)(4) as paragraph (d)(7), and by removing ''(d)(2)(i)'' in redesignated paragraph (6) and adding in its place ''(d)(5)(i)''.

22. Section 674.34 paragraphs (e)(4) and (e)(6)(ii) are amended by changing the reference to ''(e)(8)'' to read ''(e)(9)''; the introductory text of paragraph (e)(6) is amended by adding ''or (e)(5)'' after ''(e)(4)''; paragraph (e)(7) is amended by removing ''or (4)'' and adding in its place ''(e)(4), or (e)(5)''; and by revising paragraph (e)(5) to read as follows:

§ 674.34 Deferment of repayment—Federal Perkins loans and Direct loans made on or after July 1, 1993.

* * * * *

(e) * * *

(5) Is working full-time and has a Federal education debt burden that equals or exceeds 20 percent of the borrower's total monthly gross income, and the borrower's income minus such burden is less than 220 percent of the amount calculated under paragraph (3) of this section.

* * * * *

23. Section 674.47 is amended by revising paragraph (g) and by adding a new paragraph (h) to read as follows:

§ 674.47 Costs chargeable to the fund.

* * * * *

(g) *Cessation of collection activity of defaulted accounts.* (1) An institution may cease collection activity on a defaulted account with a balance of less than $25, including outstanding principal, accrued interest, collection costs, and late charges, if the borrower has been billed for this balance in accordance with section 674.43(a).

(2) An institution may cease collection activity on a defaulted account with a balance of less than $200, including outstanding principal, accrued interest, collection costs, and late charges, if—

(i) The institution has carried out the due diligence procedures described in subpart C of the part with regard to this account; and

(ii) For a period of at least 4 years, the borrower has not made a payment on the account, converted the account to regular repayment status, or applied for a deferment, postponement, or cancellation on the account.

(h) *Write-offs of accounts of less than $5.* (1) Notwithstanding any other provision in this subpart, an institution may write off an account with a balance of less than $5, including outstanding principal, accrued interest, collection costs, and late charges.

(2) An institution that writes off an account under this paragraph may no longer include the amount of the account as an asset of the Fund.

* * * * *

(Approved by the Office of Management and Budget under control number 1840–0581)

PART 675—FEDERAL WORK-STUDY PROGRAMS

Subpart A—Federal Work-Study Program

24. The authority citation for part 675 continues to read as follows:

Authority: 42 U.S.C. 2571–2756b, unless otherwise noted.

§ 675.2 [Amended]

25. Section 675.2, paragraph (a) is amended by adding in alphabetical order, the term ''Full-time student''.

26. Section 675.2, paragraph (b) is amended by removing the definitions of ''Full-time graduate or professional student'' and ''Full-time undergraduate student''.

§ 675.17 [Removed and Reserved]

27. Section 675.17 is removed and reserved.

28. Section 675.19 is amended by revising paragraph (c)(3) to read as follows:

§ 675.19 Fiscal procedures and records.

* * * * *

(c) * * *

(3) An institution may keep the records required in this section on microforms, optical disk, other comparable imaging technology, or in computer format. If an institution keeps its records in computer format, it shall maintain, in either hard copy, microforms, optical disk, or other comparable imaging technology, the source documents supporting the computer input.

* * * * *

(Approved by the Office of Management and Budget under control number 1840–0535)

Appendix B to Part 675—[Removed]

29. Appendix B—Model Off-Campus Agreement is removed.

PART 676—FEDERAL SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

30. The authority citation for part 676 continues to read as follows:

Authority: 20 U.S.C. 1070b-1070–3, unless otherwise noted.

§ 676.2 [Amended]

31. Section 676.2, paragraph (a) is amended by adding in alphabetical order, the term ''Full-time student''.

32. Section 676.2, paragraph (b) is amended by removing the definition of ''Full-time undergraduate student''.

§ 676.17 [Removed and Reserved]

33. Section 676.17 is removed and reserved.

34. Section 676.19 is amended by revising paragraph (c)(3) to read as follows:

§ 676.19 Fiscal procedures and records.

* * * * *

(c) * * *

(3) An institution may keep the records required in this section on microforms, optical disk, other comparable imaging technology, or in computer format. If an institution keeps its records in computer format, it shall maintain, in either hard copy, microforms, optical disk, or other comparable imaging technology, the source documents supporting the computer input.

* * * * *

(Approved by the Office of Management and Budget under control number 1840–0535)

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

35. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

36. Section 682.201, paragraph (b) is amended by removing ''and'' at the end of paragraph (b)(6); redesignating paragraphs (b)(1) through (b)(6) as paragraphs (b)(1)(i) through (b)(1)(vi), respectively; by designating the undesignated introductory text following ''(b) *Parent borrower*.'' as the introductory text of paragraph (b)(1); by redesignating paragraphs (b)(7)(i) through (b)(7)(vi) as (b)(1)(vii)(A) through (b)(1)(vii)(F), respectively, and paragraphs (b)(7)(iii)(A) and (b)(7)(iii)(B) as (b)(1)(vii)(C)(*1*) and (b)(1)(vii)(C)(*2*), respectively; by redesignating paragraph (b)(8) as paragraph (b)(1)(viii) and removing the reference to ''(7)(iii)'' and adding, in its place ''(b)(1)(vii)(C)''; and by adding a new paragraph (b)(2) to read as follows:

§ 682.201 Eligible borrowers.

* * * * *

(b) * * *

(2) For purposes of paragraph (b)(1) of this section, a ''parent'' includes the individuals described in the definition of ''parent'' in 34 CFR 668.2 and the spouse of a parent who remarried, if that spouse's income and assets would have been taken into account when calculating a dependent student's expected family contribution.

§ 682.600 [Removed and Reserved]

37. Section 682.600 is removed and reserved.

§ 682.602 [Removed and Reserved]

38. Section 682.602 is removed and reserved.

39. A new § 682.611 is added to Subpart F to read as follows:

§ 682.611 Foreign schools.

A foreign school is required to comply with the provisions of this part, except to the extent that the Secretary states in this part or in other official publications or documents that those schools need not comply with those provisions.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1082, 1088, and 1094)

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

40. The authority citation for part 685 continues to read as follows:

Authority: 20 U.S.C. § 1078a *et seq.*, unless otherwise noted.

41. Section 685.200, paragraph (b) is amended by redesignating paragraphs (b)(1) through (b)(6) as paragraphs (b)(1)(i) through (b)(1)(vi), respectively; redesignating paragraph (b)(7) as (b)(1)(vii), paragraphs (b)(7)(i) through (b)(7)(iii) as (b)(1)(vii)(A) through (b)(1)(vii)(C), respectively, (b)(7)(i)(A) through (b)(7)(i)(C) as (b)(1)(vii)(A)(*1*) through (b)(1)(vii)(A)(*3*), respectively, and (b)(7)(ii)(A) and (b)(7)(ii)(B) as (b)(1)(vii)(B)(*1*) and (b)(1)(vii)(B)(*2*), respectively; by designating the undesignated introductory text following ''(b) *Parent borrower.*'' as the introductory text of paragraph (b)(1); by removing the references to ''(b)(7)(i)'' in redesignated paragraphs (b)(1)(vii)(B) and (b)(1)(vii)(C) and adding, in their place ''(b)(1)(vii)(A)''; and by adding a new paragraph (b)(2) to read as follows:

§ 685.200 Borrower eligibility.

* * * * *

(b) * * *

(2) For purposes of paragraph (b)(1) of this section, a ''parent'' includes the individuals described in the definition of ''parent'' in 34 CFR 668.2 and the spouse of a parent who remarried, if that spouse's income and assets would have been taken into account when calculating a dependent student's expected family contribution.

* * * * *

PART 690—FEDERAL PELL GRANT PROGRAM

42. The authority citation for part 690 continues to read as follows:

Authority: 20 U.S.C. § 1070a, unless otherwise noted.

43. Section 690.2 is amended by removing the definition of ''Payment Voucher'' and by adding, in alphabetical order, the definition of ''Payment Data'' to read as follows:

§ 690.2 Definitions.

* * * * *

(b) * * *

Payment Data: An electronic or magnetic record that is provided to the Secretary by an institution showing a student's expected family contribution, cost of attendance, enrollment status, and student disbursement information.

§ 690.7 [Amended]

44. Section 690.7, paragraph (a)(1) is removed and paragraph (a)(2) is redesignated as paragraph (a).

§ 690.71 [Amended]

45. Section 690.71 is amended by removing the second sentence.

§§ 690.72, 690.73, 690.74 [Removed and Reserved]

46. Sections 690.72, 690.73, and 690.74 are removed and reserved.

47. Section 690.83 is amended by revising paragraphs (a) through (d) to read as follows:

§ 690.83 Submission of reports.

(a) (1) An institution may receive either a payment from the Secretary for an award to a Federal Pell Grant recipient, or a corresponding reduction in the amount of Federal funds received in advance for which it is accountable, if—

(i) The institution submits to the Secretary the student's Payment Data for that award year in the manner and form prescribed in paragraph (a)(2) of this section by September 30 following the end of the award year in which the grant is made, or, if September 30 falls on a weekend, on the first weekday following September 30; and

(ii) The Secretary accepts the student's Payment Data.

(2) The Secretary accepts a student's Payment Data that is submitted in accordance with procedures established through publication in the Federal Register, and that contain information the Secretary considers to be accurate in light of other available information including that previously provided by the student and the institution.

(3) An institution that does not comply with the requirements of this paragraph may receive a payment or reduction in accountability only as provided in paragraph (d) of this section.

(b) (1) An institution shall report to the Secretary any change in enrollment status, cost of attendance, or other event or condition that causes a change in the amount of a Federal Pell Grant for which a student qualifies by submitting to the Secretary the student's Payment Data that discloses the basis and result of the change in award for each student. Through publication in the Federal Register, the Secretary divides the award year into periods and establishes the deadlines by which the institution shall report changes occurring during each period. The institution shall submit the student's Payment Data reporting a change to the Secretary by the end of that reporting period that next follows the reporting period in which the change occurred.

(2) An institution shall submit in accordance with deadline dates established by the Secretary, through publication in the Federal Register, other reports and information the Secretary requires in connection with the funds advanced to it and shall comply with the procedures the Secretary finds necessary to ensure that the reports are correct.

(3) An institution that timely submits, and has accepted by the Secretary, the Payment Data for a student in accordance with this section shall report a reduction in the amount of a Federal Pell Grant award that the student received when it determines that an overpayment has occurred, unless that overpayment is one for which the institution is not liable under § 690.79(a).

(c) In accordance with 34 CFR 668.84 the Secretary may impose a fine on the institution if the institution fails to comply with the requirements specified in paragraphs (a) or (b) of this section.

(d) (1) Notwithstanding paragraphs (a) or (b) of this section, if an institution demonstrates to the satisfaction of the Secretary that the institution has provided Federal Pell Grants in accordance with this part but has not received credit or payment for those grants, the institution may receive payment or a reduction in accountability for those grants in accordance with paragraphs (d)(4) and either (d)(2) or (d)(3) of this section.

(2) The institution must demonstrate that it qualifies for a credit or payment by means of a finding contained in an audit report of an award year that was the first audit of that award year and that was conducted after December 31, 1988 and timely submitted to the Secretary under 34 CFR 668.23(c).

(3) An institution that timely submits the Payment Data for a student in accordance with paragraph (a) of this section but does not timely submit to the Secretary, or have accepted by the Secretary, the Payment Data necessary

to document the full amount of the award to which the student is entitled, may receive a payment or reduction in accountability in the full amount of that award, if—

(i) A program review demonstrates to the satisfaction of the Secretary that the student was eligible to receive an amount greater than that reported in the student's Payment Data timely submitted to, and accepted by the Secretary; and

(ii) The institution seeks an adjustment to reflect an underpayment for that award that is at least $100.

(4) In determining whether the institution qualifies for a payment or reduction in accountability, the Secretary takes into account any liabilities of the institution arising from that audit or program review or any other source. The Secretary collects those liabilities by offset in accordance with 34 CFR part 30.

* * * * *

(Approved by the Office of Management and Budget under control number 1840–0688)

[FR Doc. 95–29180 Filed 11–30–95; 8:45 am]

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Federal Register

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December 1, 1995

Part VIII

Department of Education

34 CFR Part 685

William D. Ford Federal Direct Loan Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 685

RIN 1840–AC19

William D. Ford Federal Direct Loan Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary of Education amends provisions of the regulations governing the income contingent repayment plan under the William D. Ford Federal Direct Loan (Direct Loan) Program regulations. The Secretary is amending these provisions to provide benefits to borrowers and protect the taxpayers' interests.

EFFECTIVE DATE: These regulations take effect July 1, 1996. However, affected parties do not have to comply with the information collection requirements in § 685.209 until the Department of Education publishes in the Federal Register the control number assigned by the Office of Management and Budget (OMB) to these information collection requirements. Publication of the control number notifies the public that OMB has approved these information collection requirements under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Rachel Edelstein, Program Specialist, Direct Loan Policy Group, Policy Development Division, U.S. Department of Education, Room 3053, ROB–3, 600 Independence Avenue, SW, Washington, D.C. 20202–5400. Telephone: (202) 708–9406. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 1994, the Secretary published final regulations that included provisions for the income contingent repayment plan during Year One of the Direct Loan Program. The Higher Education Act of 1965, as amended (HEA), directed the Secretary, to the extent practicable, to develop proposed rules for the Direct Loan Program through a negotiated rulemaking process for the second and subsequent years of the program (1995–1996 and beyond). Therefore, following negotiated rulemaking, the Secretary published a Notice of Proposed Rulemaking (NPRM) on August 18, 1994, and final regulations on December 1, 1994, both of which included new provisions for the income contingent repayment plan of the Direct Loan Program. On December 22, 1994, the Secretary published regulations that revised the July 1, 1994, regulations to provide that provisions for income contingent repayment would be identical for Year One and Year Two of the Direct Loan Program.

On September 20, 1995, the Secretary published a notice of proposed rulemaking (60 FR 48848), proposing to make improvements to the existing income contingent repayment plan. These changes were proposed for Year Three of the program and beyond. The following section summarizes the major revisions to the proposed rule.

Substantive Revisions to the Proposed Rule

Section 685.209(a)(3)

- The definition of ''discretionary income'' under the proposed income contingent repayment plan has been revised. Under these final regulations, discretionary income is now defined as the borrower's adjusted gross income (AGI) minus the United States Department of Health and Human Services (HHS) poverty level appropriate to the borrower's family size. This is the same definition of discretionary income as in existing regulations.

Appendix A

- The income percentage factor chart has been revised so that there are only two categories of borrowers: single and married/head of household. Therefore, married and head-of-household borrowers with the same family size, income, and debt make the same payments. Under the proposed income contingent repayment plan, head-of-household borrowers actually made higher payments than married borrowers with the same income and debt levels; the Secretary has determined that head-of-household borrowers should not be required to make higher payments than married borrowers with the same debt and income.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 19 parties submitted comments on the proposed regulations. An analysis of the comments and the changes follows. Major issues are grouped according to subject, with references to the appropriate sections of the regulations. Technical and other minor changes, and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority, generally are not addressed.

Revising Income Contingent Repayment

Comments: A number of commenters recommended that any revisions to the plan be brought about through negotiated rulemaking. These commenters noted that the existing repayment plan was developed through extensive negotiated rulemaking.

Discussion: Section 457 of The HEA requires the Secretary to conduct negotiated rulemaking for the Direct Loan Program only to the extent practicable. This section does not require negotiated rulemaking for amendments to existing regulations. Further, the Secretary does not believe that it is practicable to conduct negotiated rulemaking for amendments to these regulations. Negotiated rulemaking is a lengthy process that would have prevented implementation of the revised income contingent repayment plan for the 1996–1997 academic year. For these amendments, the Secretary has decided not to use the negotiated rulemaking process to solicit input from the higher education community. In the Secretary's opinion, the revised income contingent repayment plan is an improvement over the existing plan, and borrowers should be able to benefit from these regulatory revisions as soon as possible. Further, a number of commenters supported the Secretary's proposal to revise the existing plan.

Changes: None.

Required Minimum Payment

Comments: In response to the Secretary's request for comments regarding a required minimum payment for all borrowers, one commenter recommended establishing a minimum payment of $15.00 for all borrowers, including those with a calculated repayment amount of $0. Another commenter advocated establishing a minimum payment of $2.00, if the Secretary were to require a minimum payment from all borrowers. A third commenter suggested that borrowers simply send in a coupon on a monthly basis in place of a payment amount.

Most commenters argued against requiring a payment from a borrower whose calculated repayment amount is $0. In addition, many commenters questioned whether collecting $2.00 payments would be cost-effective. One commenter stated that borrowers with a calculated payment of less than $2.00 would not likely have a checking account and that the requirement to make these minimal payments would,

therefore, be burdensome. To reduce burden and improve the cost-effectiveness of collection efforts, several commenters suggested that the Secretary bill borrowers with minimal monthly payments on a quarterly or annual basis.

One commenter questioned whether the Secretary would send delinquency notices to borrowers with $2.00 monthly payments who are $4.00 behind in payments (that is, two months behind in payments).

Discussion: The Secretary agrees with those commenters who argued that borrowers with a calculated monthly payment amount of $0 should not be required to make monthly payments. In addition, the Secretary agrees with commenters that collecting $2.00 monthly payments may not be cost-effective. The Secretary has determined that requiring a $5.00 minimum monthly payment of borrowers whose calculated monthly payment amount is greater than $0 but less than or equal to $5.00 would be more cost-effective and would better promote responsible repayment practices than establishing a minimum $2.00 payment amount. In addition, the Secretary believes that this change in policy will not impose a significant burden on borrowers. Therefore, the Secretary has decided to require a $5.00 minimum monthly payment of borrowers whose calculated monthly payment amount is greater than $0 but less than or equal to $5.00.

In response to concerns that monthly billing will be burdensome for borrowers with minimal monthly repayment amounts, the Secretary will consider carefully the option of billing these borrowers on a quarterly or other less frequent basis. The Secretary has not prescribed billing cycles or billing frequency in these regulations and thus has the flexibility to change billing frequency if this action is warranted.

The Secretary considers a borrower to be delinquent after the borrower has missed a monthly payment. Therefore, a borrower with required $5.00 monthly payments who is $10.00 behind in payments is considered to be delinquent, and the Secretary would send a delinquency notice to the borrower.

Changes: None.

Comment Period

Comments: Several commenters were concerned that the comment period was too short, especially considering that the Department published six NPRMs, all with comment periods ending at approximately the same time.

Discussion: In the six NPRMs referred to above, the Secretary proposed numerous improvements and necessary changes to the Student Financial Assistance Program. The ''Master Calendar'' provisions contained in section 482 of the HEA require that regulations be published in final form by December 1 prior to the start of the award year for which they will become effective. Because of the importance of implementing these changes and improvements for the award year beginning July 1, 1996, the Secretary established a comment period that would allow publication of these final regulations by December 1, 1995, consistent with the ''Master Calendar'' timeframe. The Secretary always endeavors to provide as long a comment period as possible.

Changes: None.

Section 685.209(a) Repayment Amount Calculation

Comments: Several commenters expressed support for the new repayment amount calculation provisions. Many commenters approved of the Secretary's simplifying the existing income contingent repayment plan, which requires borrowers to choose between two formulas, so that there is only one formula. However, several commenters expressed objections to the new formula. For example, in response to the Secretary's statement in the preamble to the NPRM that the revised income contingent repayment plan will discourage over-borrowing, several commenters argued that the Secretary should not attempt to discourage over-borrowing through the income contingent repayment plan. One commenter suggested that the Secretary's efforts to discourage over-borrowing will result in a repayment plan that will prevent borrowers from entering public service and will discourage borrowers from choosing high-tuition institutions, even if they wish to attend such institutions.

With regard to specific problems commenters identified in the new income contingent repayment plan, numerous commenters noted that the new formula makes no adjustment for family size. To address this problem, several commenters recommended that the Secretary incorporate into the new plan the current income contingent repayment plan's definition of discretionary income, which takes family size into account. Another commenter suggested offering forbearance to borrowers with larger households. Similarly, several commenters were concerned that the levels of discretionary income the plan established are well below the poverty level for borrowers with dependents. In addition, commenters argued that the level of discretionary income for single borrowers and head-of-household borrowers should not be identical.

Other commenters noted that head-of-household borrowers would make higher payments than married borrowers with the same level of income and debt, due to the income percentage factors applicable to the two categories of borrowers. These commenters questioned whether this outcome of the proposed formula is appropriate. Another commenter who commented on the income percentage factors asked when the Secretary would apply the annually updated income percentage factors—each January 1st or when the Secretary obtains updated income data.

One commenter stated that the proposed revision to the income contingent repayment plan violates section 455(e)(4) of the HEA because the proposed calculation amount is relative to income and debt, and the statute states only that payments should be relative to income.

Finally, one commenter questioned whether the effect of the revised income contingent repayment plan would result in middle-class borrowers supporting lower-income borrowers.

Discussion: The Secretary agrees with the commenters that using only one formula to calculate repayment under the income contingent repayment plan will simplify the income contingent repayment option. While several commenters objected to the Secretary's attempt to discourage over-borrowing, the Secretary believes that it is fiscally irresponsible to structure an income contingent repayment plan that encourages over-borrowing. As stated in the preamble to the September 20, 1995, NPRM, the Secretary believes that the existing income contingent repayment plan may encourage over-borrowing because borrowers' payments increase only negligibly as debt increases. To remove this incentive to over-borrow, the Secretary believes it is appropriate to revise the plan so that payments increase significantly with amounts borrowed.

The Secretary disagrees with the commenter who stated that the proposed revision to the income contingent repayment plan is in violation of the HEA because it bases payments on income and debt. The existing plan also bases payments on income and debt. The new plan simply takes the amount borrowed into greater consideration than the existing plan. Contrary to this commenter's suggestion, section 455(e)(4) of the HEA does not prohibit the Secretary from taking into account a borrower's debt

level when determining repayment schedules. The statute requires that income be included but does not address the factors which the Secretary may, in his discretion, include.

The Secretary agrees with the commenters that payments should be adjusted for family size, that discretionary income levels for single and head-of-household borrowers should not be identical, and that payments for head-of-household borrowers should not be higher than those for married borrowers with the same income and debt levels. In order to revise the regulations accordingly, the Secretary has amended the definition of discretionary income. Under the revised regulations, discretionary income is now defined as AGI minus poverty levels established by HHS; these poverty levels take family size into account.

In response to the commenter's question as to when the Secretary would apply the adjusted income percentage factor, the Secretary will apply new income percentage factors and new HHS Poverty Guidelines at the same time that new interest rates are applied: each July 1st.

Finally, the Secretary assures the commenter who suggested that middle-income borrowers may be supporting lower-income borrowers that there is no cross-subsidization under either the existing or the revised income contingent repayment plan.

Changes: The income percentage chart has been revised to reflect only two categories of borrowers: single and married/head of household. Because the income percentage factors applicable to married and head-of-household borrowers will be identical, married and head-of-household borrowers with the same family size, income, and debt make the same monthly payments.

Section 685.209(a)(3) has been revised so that discretionary income is now defined as AGI minus the amount of the ''HHS Poverty Guidelines for all States (except Alaska and Hawaii) and the District of Columbia'' as published by the United States Department of Health and Human Services on an annual basis. For residents of Alaska and Hawaii, discretionary income is defined as a borrower's AGI minus the amounts in the ''HHS Poverty Guidelines for Alaska'' and the ''HHS Poverty Guidelines for Hawaii'' respectively. These guidelines adjust for family size.

Comments: One commenter stated that the Secretary should make the new income contingent repayment plan formula available on software, so that borrowers can calculate their payments. This commenter suggested extending the comment period until 30 days after this software becomes available. In addition, this commenter suggested that the final regulation should include charts showing typical repayments over 25 years. In these charts, the commenter suggested that the Secretary show both the accrual and capitalization of interest during periods of negative amortization and during periods of positive amortization.

Discussion: The Secretary is considering making available to the public software for income contingent repayment calculations. However, the Secretary cannot extend the comment period until this software is available without seriously delaying the effective date of the regulations. In addition, the Secretary is not including charts showing typical repayments over 25 years. The Secretary will make such charts available in informational repayment materials provided to borrowers.

Changes: None.

Section 685.209(b) Treatment of Married Borrowers

Comments: Several commenters approved of the Secretary's treatment of married borrowers under the new income contingent repayment plan. However, one commenter argued against the Secretary's requiring borrowers who file their income tax separately from their spouse to obtain consent to disclosure of tax return information from their spouse. This commenter stated that the proposed policy would prohibit borrowers whose spouses are unwilling to provide this consent to disclosure from repaying under the income contingent repayment plan. Also, this commenter asked how the Secretary would determine whether the borrower is married.

One commenter suggested an alternative to the wording in the NPRM that provides that married borrowers who are legally separated are not required to obtain their spouse's consent to tax return disclosure. This commenter stated that the regulations should provide that the borrower is not required to obtain this consent to disclosure if the borrower provides proof that he or she is living apart from the spouse and has filed for divorce. According to this commenter, some states do not recognize the status of being legally separated.

One commenter questioned whether there were any provisions for married couples who choose to repay their loans jointly under the income contingent repayment plan and subsequently divorce and wish to separate their payments.

Discussion: The Secretary feels strongly that repayment amounts for married borrowers must be based on the income of the borrower and the borrower's spouse. This policy will ensure that payments from married borrowers are calculated based on an accurate assessment of the borrower's ability to repay. The Direct Loan Program offers borrowers a variety of repayment plans; therefore, a married borrower who is unable to repay under the income contingent repayment plan because the spouse is unwilling to provide consent to disclosure of tax return information would be eligible to repay under any of the other Direct Loan repayment plans. Further, the Secretary intends to update income information concerning borrowers' spouses annually.

To respond to the commenter's concern regarding how the Secretary would determine whether or not the borrower is married, the Secretary obtains a borrower's filing status (married, single, or head of household) from the Internal Revenue Service (IRS) when AGI information is reported. The Secretary acknowledges that some states do not recognize the status of ''legally separated'' and has made a change accordingly. Finally, with regard to the commenter's concern that married borrowers who have been repaying jointly should be able to begin repaying separately should they divorce, the Secretary assures the commenter that borrowers in joint repayment can always begin repaying separately at any time by changing their repayment plan option.

Changes: Section 685.209(b)(1) has been revised so that a married borrower who has filed taxes separately from his or her spouse and is ''separated'', rather than ''legally separated'', is not required to provide his or her spouse's written consent to disclosure of tax return information.

Section 685.209(c)(2) Alternative Documentation of Income

Comments: One commenter advocated allowing all borrowers to submit alternative documentation of income to establish monthly payments under the income contingent repayment plan while the Direct Loan Servicer is waiting for adjusted gross income (AGI) information from the IRS. Another commenter asked the Secretary to clarify whether the Secretary would require alternative documentation of income from borrowers who have been in repayment for a number of years but are in their first year of repayment under a Direct Consolidation Loan. In addition, this commenter noted that a

borrower may be in the first two years of repayment on some loans but may have been in repayment for a longer period of time on other loans. Finally, this commenter asked whether the Secretary would collect alternative documentation of income from a borrower and the borrower's spouse, if the borrower is in his or her first or second year of repayment and is married.

Discussion: With regard to the comment that all borrowers be allowed to submit alternative documentation of income while the Servicer is waiting for AGI, the Secretary may use other documentation of income provided by the borrower if AGI is not available or if, in the Secretary's opinion, the borrower's reported AGI does not reasonably reflect current income. Therefore, if a borrower's AGI will not reflect current income, the borrower can submit alternative documentation of income to the Servicer before IRS-reported AGI becomes available.

The Secretary intends to collect alternative documentation of income from borrowers in their first and second years of repayment, when IRS-reported AGI does not reasonably reflect the borrower's current income. The Secretary will likely collect alternative documentation of income from borrowers who are in their first and second years of repayment on any of their loans, even if they have been in repayment for a longer period of time on other loans. These borrowers have recently completed school and, therefore, the prior year's AGI is unlikely to reflect current income.

On the other hand, the Secretary does not intend to collect alternative documentation of income from borrowers who have been in repayment for more than two years but have recently changed into the income contingent repayment plan or from borrowers who have recently consolidated and chosen to repay under this plan. These borrowers have not recently left school and have likely been working. For these borrowers, the prior year's AGI will probably reflect the current year's income.

Finally, the Secretary intends to collect alternative documentation of income from the borrower and the borrower's spouse if the borrower is in his or her first or second year of repayment and AGI does not, in the Secretary's opinion, accurately reflect the borrower's current income. The Secretary will collect this alternative documentation of income from the spouse of these borrowers in order to assess accurately the borrower's ability to repay.

Changes: None.

Section 685.209(c)(5) Limitation on Capitalization of Interest

Comments: One commenter mistakenly believed that the Secretary has removed the existing limit on capitalization.

Discussion: The Secretary has not removed the existing limit on capitalization, which provides that unpaid interest is capitalized only until the outstanding principal amount is ten percent greater than the original principal amount. While the Secretary has revised certain provisions under the income contingent repayment plan, the Secretary has not altered the provision that limits interest capitalization under the income contingent repayment plan.

Changes: None.

Section 685.209(c)(4)(iv) Forgiveness after 25 Years of Repayment

Comments: Several commenters asked whether the Secretary is pursuing a legislative solution to the current tax problem under the income contingent repayment plan (that is, the problem that any amount forgiven at the end of 25 years is treated as income).

Discussion: The Secretary is working with the Department of the Treasury to pursue a legislative solution to the tax liability problem under the income contingent repayment plan. The Department included its proposal to remove the tax liability under the income contingent repayment plan in the Administration's Sallie Mae privatization bill that was submitted to Congress.

Changes: None.

Executive Order 12866

These final regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those determined by the Secretary as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, the Secretary has determined that the benefits of the regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Summary of Potential Costs and Benefits

The potential costs and benefits of these final regulations are discussed elsewhere in this preamble under the following heading: *Analysis of Comments and Changes.*

Assessment of Educational Impact

In the NPRM, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States. Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by, or is available from, any other agency or authority of the United States.

List of Subjects in 34 CFR Part 685

Administrative practice and procedure, Colleges and universities, Education, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

(Catalog of Federal Domestic Assistance Number 84.268, William D. Ford Federal Direct Loan Program)

Dated: November 27, 1995.

Richard W. Riley,

Secretary of Education.

The Secretary amends Part 685 of Title 34 of the Code of Federal Regulations as follows:

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

1. The authority citation continues to read as follows:

Authority: 20 U.S.C. 1087a et seq.

2. Section 685.209 is amended by revising paragraphs (a) and (b); removing paragraph (c) and redesignating paragraph (d) as paragraph (c); redesignating newly redesignated paragraphs (c)(2) through (5) as (c)(4) through (7), respectively; and adding new paragraphs (c)(2) and (c)(3) to read as follows:

§ 685.209 Income contingent repayment plan.

(a) *Repayment amount calculation.* (1) The amount the borrower would repay is based upon the borrower's Direct Loan debt when the borrower's first loan enters repayment, and this basis for calculation does not change unless the borrower obtains another Direct Loan or the borrower and the borrower's spouse obtain approval to repay their loans jointly under paragraph (b)(2) of this

section. If the borrower obtains another Direct Loan, the amount the borrower would repay is based on the combined amounts of the loans when the last loan enters repayment. If the borrower and the borrower's spouse repay the loans jointly, the amount the borrowers would repay is based on both borrowers' Direct Loan debts at the time they enter joint repayment.

(2) The annual amount payable under the income contingent repayment plan by a borrower is the lesser of—

(i) The amount the borrower would repay annually over 12 years using standard amortization multiplied by an income percentage factor that corresponds to the borrower's adjusted gross income (AGI) as shown in the income percentage factor table in Appendix A to this part; or

(ii) 20 percent of discretionary income.

(3) For purposes of this section, discretionary income is defined as a borrower's AGI minus the amount of the ''HHS Poverty Guidelines for all States (except Alaska and Hawaii) and the District of Columbia'' as published by the United States Department of Health and Human Services on an annual basis.[1] For residents of Alaska and Hawaii, discretionary income is defined as a borrower's AGI minus the amounts in the ''HHS Poverty Guidelines for Alaska'' and the ''HHS Poverty Guidelines for Hawaii'' respectively. If a borrower provides documentation acceptable to the Secretary that the borrower has more than one person in the borrower's family, the Secretary applies the HHS Poverty Guidelines for the borrower's family size.

(4) For exact incomes not shown in the income percentage factor table in Appendix A, an income percentage factor is calculated, based upon the intervals between the incomes and income percentage factors shown on the table.

(5) Each year, the Secretary recalculates the borrower's annual payment amount based on changes in the borrower's AGI, the variable interest rate, the income percentage factors in the table in Appendix A, and updated HHS Poverty Guidelines (if applicable).

(6) For purposes of the annual recalculation described in paragraph (a)(5) of this section, after periods in which a borrower makes payments that are less than interest accrued on the loan, the payment amount is recalculated based upon unpaid accrued interest and the highest outstanding principal loan amount (including amount capitalized) calculated for that borrower while paying under the income contingent repayment plan.

(7) For each calendar year after calendar year 1996, the Secretary publishes in the Federal Register a revised income percentage factor table reflecting changes based on inflation. This revised table is developed by changing each of the dollar amounts contained in the table by a percentage equal to the estimated percentage changes in the Consumer Price Index (as determined by the Secretary) between December 1995 and the December next preceding the beginning of such calendar year.

(8) Examples of the calculation of monthly repayment amounts and tables that show monthly repayment amounts for borrowers at various income and debt levels are included in Appendix A to this part.

(b) *Treatment of married borrowers.* (1) A married borrower who wishes to repay under the income contingent repayment plan and who has filed an income tax return separately from his or her spouse must provide his or her spouse's written consent to the disclosure of certain tax return information under paragraph (c)(5) of this section (unless the borrower is separated from his or her spouse). The AGI for both spouses is used to calculate the monthly repayment amount.

(2) Married borrowers may repay their loans jointly. The outstanding balances on the loans of each borrower are added together to determine the borrowers' payback rate under (a)(1) of this section.

(3) The amount of the payment applied to each borrower's debt is the proportion of the payments that equals the same proportion as that borrower's debt to the total outstanding balance, except that the payment is credited toward outstanding interest on any loan before any payment is credited toward principal.

(c) * * *

(2) *First and second year borrowers.* The Secretary requires alternative documentation of income from borrowers in their first and second years of repayment, when in the Secretary's opinion, the borrower's reported AGI does not reasonably reflect the borrower's current income.

(3) *Adjustments to repayment obligations.* The Secretary may determine that special circumstances, such as a loss of employment by the borrower or the borrower's spouse, warrant an adjustment to the borrower's repayment obligations.

* * * * *

3. Appendix A to part 685 is revised to read as follows:

Appendix A to Part 685—Income Contingent Repayment

Examples of the Calculation of Monthly Repayment Amounts

Example 1. A single borrower with $12,500 of Direct Loans, 8.25 percent interest, and an AGI of $25,000.

Step 1: Determine annual payments based on what the borrower would pay over 12 years using standard amortization. To do this, multiply the principal balance by the constant multiplier for 8.25% interest (0.1315452). The constant multiplier is a factor used to calculate amortized payments at a given interest rate over a fixed period of time. (See the constant multiplier chart below to determine the constant multiplier you should use for the interest rate on the loan. If the exact interest rate is not listed, choose the next highest rate for estimation purposes.)

■ 0.1315452×12,500=1,644.315

Step 2: Multiply the result by the income percentage factor shown in the income percentage factor table that corresponds to the borrower's income (if the income is not listed, you can calculate the applicable income percentage factor by following the instructions under the interpolation heading below):

■ 85.55% (0.8555)×1,644.315=1,406.7115

Step 3: Determine 20 percent of discretionary income. To do this, subtract the lowest income for single borrowers shown in the income percentage factor table (HHS poverty level for a family of one) from the borrower's income and multiply the result by 20%:

■ $25,000 − $7,470=$17,530

■ $17,530×0.20=$3,506

Step 4: Compare the amount from step 2 with the amount from step 3. The lower of the two will be the borrower's annual payment amount. This borrower will be paying the amount calculated under step 2. To determine the monthly repayment amount, divide the annual amount by 12.

■ 1,406.7115÷12=$117.23

Example 2. Married borrowers both repaying under the income contingent repayment plan with a combined Adjusted Gross income (AGI) of $30,000. The husband has a Direct Loan balance of $5,000, and the wife has a Direct Loan balance of $15,000. This couple has no children.

Step 1: Add the Direct Loan balances of the husband and wife together to determine the aggregate loan balance.

■ $5,000+$15,000=$20,000

Step 2: Determine the annual payments based on what the couple would pay over 12 years using standard amortization. To do this, multiply the aggregate principal balance by the constant multiplier for 8.25% interest (0.1315452). (See the constant multiplier chart to determine the constant multiplier you should use for the interest rate on the

[1] The HHS Poverty Guidelines are available from the Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services (HHS), Room 438F, Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. 20201

loan. If the exact interest rate is not listed, choose the next highest rate for estimation purposes.)

■ 0.1315452×20,000=2630.904

Step 3: Multiply the result by the income percentage factor shown in the income percentage factor table that corresponds to the couple's income (if the income is not listed, you can calculate the applicable income percentage factor by following the instructions under the interpolation heading below):

■ 82.74% (0.8274)×2,630.904=2,176.80997

Step 4: Determine 20 percent of the couple's discretionary income. To do this, subtract the lowest income for married borrowers shown in the income percentage factor table (HHS poverty level for a family of 2) from the couple's income and multiply the result by 20%:

■ $30,000 − $10,030=$19,970

■ $19,970×0.20=$3,994

Step 5: Compare the amount from step 3 with the amount from step 4. The lower of the two will be the annual payment amount. The married borrowers will be paying the amount calculated under step 3. To determine the monthly repayment amount, divide the annual amount by 12.

■ $2,176.80997÷12=$181.40

Interpolation: If your income does not appear on the income percentage factor table, you will have to calculate the income percentage factor through interpolation. For example, let's say you are single and your income is $26,000. To interpolate, you must first find the interval between the closest income listed that is less than $26,000 and the closest income listed that is greater than $26,000 (for this discussion, we'll call the result ''the income interval''):

■ $27,112 − $25,000=$2,112

Next, find the interval between the two income percentage factors that are given for these incomes (for this discussion, we'll call the result, the ''income percentage factor interval''):

■ 88.77 − 85.55=3.22

Subtract the income shown on the chart that is immediately less than $26,000 from $26,000:

■ $26,000 − $25,000=1,000

Divide the result by the number representing the income interval:

■ 1,000÷2,112=0.4735

Multiply the result by the income percentage factor interval:

■ 0.4735×3.22=1.52

Add the result to the lower income percentage factor used to calculate the income percentage factor interval for $26,000 in income:

■ 1.52+85.55=87.07%

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Income Percentage Factors
(Based on Annual Income)

Single		Married and Head of Household	
Income	% Factor	Income	% Factor
7,470	55.40%	10,030	54.95%
9,752	57.79%	11,183	56.68%
10,000	58.03%	13,328	59.56%
12,548	60.57%	15,000	62.92%
15,000	65.42%	17,424	67.79%
15,409	66.23%	20,000	72.39%
18,139	71.89%	21,585	75.22%
20,000	76.44%	25,000	82.87%
21,585	80.33%	27,112	87.61%
25,000	85.55%	30,000	92.80%
27,112	88.77%	34,003	100.00%
30,000	93.48%	35,000	100.00%
34,003	100.00%	40,000	100.00%
35,000	100.00%	40,895	100.00%
40,000	100.00%	50,000	108.28%
40,895	100.00%	51,233	109.40%
49,152	111.80%	60,000	117.34%
50,000	112.52%	68,462	125.00%
60,000	121.01%	70,000	125.99%
62,935	123.50%	80,000	132.46%
70,000	128.27%	90,000	138.93%
80,000	135.03%	92,583	140.60%
89,137	141.20%	100,000	142.49%
90,000	141.78%	129,481	150.00%
100,000	148.52%	150,000	162.50%
102,205	150.00%	200,000	192.95%
150,000	179.93%	211,581	200.00%
182,045	200.00%		

CONSTANT MULTIPLIER CHART FOR 12-YEAR AMORTIZATION

Interest Rate	7.00%	7.25%	7.43%	7.50%	7.75%	8.00%	8.25%	8.38%	8.50%	8.75%	9.00%
Annual Constant Multiplier	0.1234056	0.1250112	0.126174	0.1266276	0.1282548	0.129894	0.1315452	0.132408	0.1332072	0.13488	0.1365636

Income Contingent Repayment Plan
Sample First Year Monthly Repayment Amounts for a Single Borrower at Various Income and Debt Levels

	Initial Debt																						
Income	$2,500	$5,000	$7,500	$10,000	$12,500	$15,000	$17,500	$20,000	$22,500	$25,000	$30,000	$35,000	$40,000	$45,000	$50,000	$55,000	$60,000	$65,000	$70,000	$75,000	$80,000	$85,000	$90,000	$100,000
$1,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
2,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
3,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
4,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
5,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
6,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
7,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
8,000	9	9	9	9	9	9	9	9	9	9	9	9	9	9	9	9	9	9	9	9	9	9	9	9
9,000	16	26	26	26	26	26	26	26	26	26	26	26	26	26	26	26	26	26	26	26	26	26	26	26
10,000	16	32	42	42	42	42	42	42	42	42	42	42	42	42	42	42	42	42	42	42	42	42	42	42
12,500	17	33	50	66	83	84	84	84	84	84	84	84	84	84	84	84	84	84	84	84	84	84	84	84
15,000	18	36	54	72	90	108	125	126	126	126	126	126	126	126	126	126	126	126	126	126	126	126	126	126
17,500	19	39	58	77	97	116	135	155	167	167	167	167	167	167	167	167	167	167	167	167	167	167	167	167
20,000	21	42	63	84	105	126	147	168	189	209	209	209	209	209	209	209	209	209	209	209	209	209	209	209
22,500	22	45	67	90	112	134	157	179	202	224	251	251	251	251	251	251	251	251	251	251	251	251	251	251
25,000	23	47	70	94	117	141	164	188	211	234	281	292	292	292	292	292	292	292	292	292	292	292	292	292
30,000	26	51	77	102	128	154	179	205	231	256	307	359	376	376	376	376	376	376	376	376	376	376	376	376
35,000	27	55	82	110	137	164	192	219	247	274	329	384	438	459	459	459	459	459	459	459	459	459	459	459
40,000	27	55	82	110	137	164	192	219	247	274	329	384	438	493	542	542	542	542	542	542	542	542	542	542
45,000	29	58	87	116	145	174	203	232	261	290	348	406	464	522	580	626	626	626	626	626	626	626	626	626
50,000	31	62	93	123	154	185	216	247	278	308	370	432	493	555	617	678	709	709	709	709	709	709	709	709
55,000	32	64	96	128	160	192	224	256	288	320	384	448	512	576	640	704	768	792	792	792	792	792	792	792
60,000	33	66	99	133	166	199	232	265	298	332	398	464	531	597	663	730	796	862	876	876	876	876	876	876
65,000	34	68	103	137	171	205	240	274	308	342	411	479	548	616	685	753	821	890	958	959	959	959	959	959
70,000	35	70	105	141	176	211	246	281	316	352	422	492	562	633	703	773	844	914	984	1,042	1,042	1,042	1,042	1,042
75,000	36	72	108	144	180	216	253	289	325	361	433	505	577	649	722	794	866	938	1,010	1,082	1,126	1,126	1,126	1,126
80,000	37	74	111	148	185	222	259	296	333	370	444	518	592	666	740	814	888	962	1,036	1,110	1,184	1,209	1,209	1,209
85,000	38	76	114	152	190	228	266	303	341	379	455	531	607	683	759	834	910	986	1,062	1,138	1,214	1,290	1,292	1,292
90,000	39	78	117	155	194	233	272	311	350	389	466	544	622	699	777	855	933	1,010	1,088	1,166	1,243	1,321	1,376	1,376
95,000	40	80	119	159	199	239	278	318	358	398	477	557	636	716	796	875	955	1,034	1,114	1,193	1,273	1,352	1,432	1,459
100,000	41	81	122	163	204	244	285	326	366	407	488	570	651	733	814	895	977	1,058	1,140	1,221	1,302	1,384	1,465	1,542

Sample repayment amounts are based on an interest rate of 8.25%.

Income Contingent Repayment Plan

Sample First-Year Monthly Repayment Amounts for a Married or Head-of-Household Borrower at Various Income and Debt Levels

(Family Size = 3)

	Initial Debt																							
Income	$2,500	$5,000	$7,500	$10,000	$12,500	$15,000	$17,500	$20,000	$22,500	$25,000	$30,000	$35,000	$40,000	$45,000	$50,000	$55,000	$60,000	$65,000	$70,000	$75,000	$80,000	$85,000	$90,000	$100,000
$1,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
2,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
3,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
4,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
5,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
6,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
7,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
8,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
9,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
10,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
12,500	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
15,000	17	34	40	40	40	40	40	40	40	40	40	40	40	40	40	40	40	40	40	40	40	40	40	40
17,500	19	37	56	74	82	82	82	82	82	82	82	82	82	82	82	82	82	82	82	82	82	82	82	82
20,000	20	40	60	79	99	119	124	124	124	124	124	124	124	124	124	124	124	124	124	124	124	124	124	124
22,500	21	42	64	85	106	127	148	165	165	165	165	165	165	165	165	165	165	165	165	165	165	165	165	165
25,000	23	45	68	91	114	136	159	182	204	207	207	207	207	207	207	207	207	207	207	207	207	207	207	207
30,000	25	51	76	102	127	153	178	203	229	254	290	290	290	290	290	290	290	290	290	290	290	290	290	290
35,000	27	55	82	110	137	164	192	219	247	274	329	374	374	374	374	374	374	374	374	374	374	374	374	374
40,000	27	55	82	110	137	164	192	219	247	274	329	384	438	457	457	457	457	457	457	457	457	457	457	457
45,000	28	57	85	114	142	171	199	227	256	284	341	398	455	512	540	540	540	540	540	540	540	540	540	540
50,000	30	59	89	119	148	178	208	237	267	297	356	415	475	534	593	624	624	624	624	624	624	624	624	624
55,000	31	62	93	124	155	185	216	247	278	309	371	433	495	556	618	680	707	707	707	707	707	707	707	707
60,000	32	64	96	129	161	193	225	257	289	322	386	450	515	579	643	707	772	790	790	790	790	790	790	790
65,000	33	67	100	134	167	200	234	267	301	334	401	468	534	601	668	735	802	868	874	874	874	874	874	874
70,000	35	69	104	138	173	207	242	276	311	345	414	483	552	622	691	760	829	898	957	957	957	957	957	957
75,000	35	71	106	142	177	212	248	283	319	354	425	496	567	637	708	779	850	921	992	1,040	1,040	1,040	1,040	1,040
80,000	36	73	109	145	182	218	254	290	327	363	436	508	581	653	726	799	871	944	1,016	1,089	1,124	1,124	1,124	1,124
85,000	37	74	112	149	186	223	260	298	335	372	446	521	595	669	744	818	893	967	1,041	1,116	1,190	1,207	1,207	1,207
90,000	38	76	114	152	190	228	267	305	343	381	457	533	609	685	761	838	914	990	1,066	1,142	1,218	1,290	1,290	1,290
95,000	39	77	116	155	194	232	271	310	348	387	464	542	619	697	774	851	929	1,006	1,084	1,161	1,238	1,316	1,374	1,374
100,000	39	78	117	156	195	234	273	312	351	390	469	547	625	703	781	859	937	1,015	1,093	1,171	1,250	1,328	1,406	1,457

Sample repayment amounts are based on an interest rate of 8.25%.

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Part IX

Department of Education

34 CFR Part 668

Student Assistance General Provisions; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 668

RIN 1840–AB84

Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the Student Assistance General Provisions regulations by adding a new Subpart J. These regulations govern the approval and administration of tests that may be used to determine a student's eligibility for assistance under the student financial assistance programs authorized under Title IV of the Higher Education Act of 1965, as amended (Title IV, HEA programs), if that student does not have a high school diploma or its recognized equivalent. The regulations also provide for a passing score for each approved test. The regulations implement changes made to section 484(d) of the Higher Education Act of 1965 (HEA), as amended by the Higher Education Amendments of 1992, Public Law 102–325.

EFFECTIVE DATE: These regulations take effect on July 1, 1996 and apply to the 1996–97 and subsequent award years. However, affected parties do not have to comply with the information collection requirements in §§ 668.143, 668.144, 668.145, 668.146, 668.147, 668.148, 668.149, 668.150, 668.151, 668.152, 668.153, and 668.155 until the Department of Education publishes in the Federal Register the control numbers assigned by the Office of Management and Budget (OMB) to these information collection requirements. Publication of the control numbers notifies the public that OMB has approved these information collection requirements under the Paperwork Reduction Act of 1995. The incorporation by reference of the publication listed in the regulations is approved by the Director of the Federal Register as of July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Lorraine Kennedy, U.S. Department of Education, 600 Independence Avenue, S.W., Regional Office Building 3, Room 3045, Washington, DC 20202–5451. Telephone: (202) 708–7888. Individuals that use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: These regulations implement section 484(d) of the HEA which provides that a student who does not have a high school diploma or its recognized equivalent is eligible to receive Title IV, HEA program funds only if—

- The student takes an independently administered examination and achieves a score specified by the Secretary, demonstrating that the student has the ability to benefit from the education or training being offered; or
- The student is determined to have the ability to benefit from the education or training being offered in accordance with a ''process'' prescribed by the State in which the institution the student is attending or plans on attending is located and that has been approved by the Secretary.

The Secretary estimates that each year there are approximately 150,000 individuals without a high school diploma or its recognized equivalent who take ability to benefit tests under section 484(d) of the HEA in order to become eligible to receive Title IV, HEA Program funds. There are also approximately another 150,000 individuals without a high school diploma or its recognized equivalent who enroll in postsecondary educational institutions who do not apply for Title IV, HEA Program funds or who enroll in educational programs that do not qualify as eligible programs under the Title IV, HEA programs. (In addition, there are many other people who take basic skills tests for reasons other than seeking Title IV, HEA program assistance.) However, these regulations apply only to the first group.

The Secretary published a notice of proposed rulemaking in the Federal Register on August 16, 1994, 52 FR 42134–42144. The NPRM included a discussion of the major issues involving the proposed regulations that will not be repeated here. The following list summarizes those issues and identifies the pages in the preamble to the NPRM on which a discussion of those issues can be found.

The Secretary proposed that students had to provide documentation to institutions that they had high school diplomas or the recognized equivalent (52 FR 42134–5);

The Secretary proposed that approved tests assess secondary school level basic verbal and quantitative skills and general learned abilities (52 FR 42136);

The Secretary proposed that students without a high school diploma or a GED should be eligible for Title IV, HEA program funds because they demonstrate on that test secondary school level basic verbal and quantitative skills and general learned abilities comparable to the range of scores of students who have a high school diploma or GED (52 FR 42136);

The Secretary proposed that the passing score on a test be one standard deviation below the mean for students with high school diplomas who have taken the test within three years before the date on which the test was submitted for approval (52 FR 42136);

The Secretary proposed a scheme for test administration that provided for tests being administered independent of the institutions that use the test (52 FR 42136–42137); and

The Secretary proposed to approve a State ''process'' based upon the ''success rate'' of students enrolled in that State process as compared to the success rate of high school graduates. (page 42137).

Substantive Changes to the NPRM

The following discussion reflects substantive changes made to the NPRM in the final regulations. The provisions are discussed in the order in which they appeared in the proposed rule.

Section 668.7 Eligible Student

In response to public comments, the Secretary has withdrawn the proposed requirement that institutions document that their students have high school diplomas or GEDs. Moreover, the Secretary is recodifying the provisions of § 668.7 in Subpart C of part 668 in another regulations package.

Section 668.143 Approval of State Tests or Assessments (No Comparable Provision in NPRM)

In response to public comments and the Secretary's proposal in the preamble, the Secretary has included an additional type of approved tests. Those approved tests are tests that have been developed by States to measure a student's skills and abilities for the purpose of determining whether the student has the skills and abilities the State expects of a high school graduate in that State. These tests will supplement rather than substitute for the other type tests discussed in this regulation.

Section 668.146 Criteria for Approving Tests (Section 668.145 in NPRM)

In response to public comment, the Secretary will approve tests that consist of a series of subtests. If a test publisher does not provide for a composite passing score for a series of basic verbal tests and a composite passing score for a series of basic quantitative tests, the test publisher must present evidence that allows the Secretary to prescribe a cut score for each subtest. To pass that test, a student must score at or above the cut score for each of the subtests.

Agreement Between the Secretary and a Test Publisher, and Agreement Between an Institution and a Certified Test Administrator (Sections 668.150 and 668.151 in NPRM)

In response to public comment, the Secretary eliminated the requirements that a test publisher enter into an agreement with a certified test administrator and that the certified test administrator also enter into an agreement with an institution whose students are to be tested. The sections that contained those requirements in the NPRM, §§ 668.150 and 668.151 were also eliminated.

The important aspects of those sections that related to the integrity and independence of test administration were incorporated into § 668.151 *Test administration.*

Section 668.152 Administration of Tests by Assessment Centers (No Comparable Provision in NPRM)

In response to public comment, a new section dealing with test administration at assessment centers was added.

Section 668.155 Transitional Rule for the 1996–97 Award Year (No Comparable Provision in NPRM)

The Secretary has added a rule to facilitate the transition from the old to the new system.

These regulations go into effect on July 1, 1996 and govern the determination of student eligibility for Title IV, HEA programs under section 484(d) of the HEA starting with the 1996–97 award year. The Secretary strongly encourages test publishers that wish to have their tests approved for use in the 1996–97 award year to submit an application that satisfies the requirements of this subpart as soon as possible. Upon receipt of such an application, the Secretary will evaluate it to determine if it meets the requirements of this subpart.

If the test meets the requirements of this subpart, the Secretary will notify the test publisher. The Secretary will also publish in the Federal Register the name of the test, the passing score for that test, and the name of the test publisher.

To allow for a smooth transition from the current practice to the new regulatory practice, the Secretary will permit institutions to continue to use the current system for making an ability-to-benefit determination for a student until 60 days after the Secretary publishes in the Federal Register the first approved test and passing score that is appropriate for that student. Therefore, an institution may continue to use a test and test score that was an approved test and test score as of June 30, 1996, the day before the new regulatory provisions go into effect, until 60 days after the Secretary publishes in the Federal Register the first test and passing score for each general category of test approved under these regulations. For example, if the Secretary approves a test in Spanish on August 1, 1996, an institution may continue to use a test in Spanish that was approved as of June 30, 1996 until October 1, 1996.

If an institution properly based a student eligibility determination under the current system, it does not have to redetermine the student's eligibility under the new system.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 142 parties submitted comments on the proposed regulations. An analysis of the comments and any changes made in the regulations in response to those comments follows.

Substantive issues are discussed under the regulations to which they pertain. If comments apply to more than one regulatory provision, they will be discussed under the first mentioned provision. Technical and other minor changes—and suggested changes that the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

General Comments

Comments: In the preamble to the NPRM, 59 FR 42134–42135, the Secretary solicited comments with regard to an alternative method of implementing section 484(d) of the HEA. This alternative method would link the ability-to-benefit (ATB) testing system to State educational practices under the Goals 2000: Educate America Act. The Secretary invited public comment on these alternatives. Three comments were received in support of this alternative approach.

Discussion: The Secretary agrees with these commenters that there is merit to an approach that links an ability-to-benefit testing system under section 484(d) of the HEA with State educational practices under the Goals 2000: Educate America Act and other State education reform initiatives. The Secretary believes, however, that such an approach should supplement rather than replace the testing system described in the NPRM.

Therefore, in developing the criteria for approved examinations and the passing scores for those examinations, the Secretary took cognizance of the focus and purpose of the Goals 2000: Educate America Act in raising the educational standards of the country. Accordingly, to the extent that States have developed educational standards that reflect the skills and abilities expected of a high school graduate in that State, and have developed tests or other assessments to measure whether a student meets those standards, the Secretary will approve those tests and assessments for purposes of the provisions of section 484(d) of the HEA as well as the passing scores on those tests and assessments.

Because each State is responsible for determining the educational standards that reflect the skills and abilities expected of a high school graduate in that State, State standards may differ. Moreover, States also may choose different tests or assessments to measure whether students meet those standards, and may also differ on the passing scores on those tests and assessments. Therefore, if the Secretary approves a State's tests and assessments and passing scores, that test or assessment, and the passing score on that test or assessment, may be used for purposes of section 484(d) of the HEA only for students who attend eligible institutions located in that State. In this way, the Secretary will not impose one State's standards on another State.

If the Secretary approves a State's tests or assessments and the passing scores for those tests or assessments, a student must obtain a passing score on each required test or assessment in order to qualify for Title IV, HEA program funds under section 484(d) of the HEA.

Moreover, the educational standards that a State develops, and the tests or assessments that a State establishes to measure those standards, apply to all students in the State. Therefore, the tests that the Secretary approves to measure whether a student meets those standards for Title IV, HEA programs purposes do not include tests that are used solely for admission to a State public postsecondary institution or for admission to an institution that is part of a State system of public postsecondary institutions.

Changes: Sections 668.143 to 668.149 were redesignated as §§ 668.144 to 668.150, respectively, and a new section, § 668.143, was added. That new section provides for the approval of State tests or other assessments submitted by a State that the State uses to determine whether a student has the skills and abilities the State expects of a high school graduate in that State. The new section also provides for the approval of the State's passing scores on

the State tests, and further provides that an approved State test may be used as an ability-to-benefit test for Title IV, HEA program purposes only by institutions located in that State.

Comments: In their introduction to comments on specific sections of the proposed rule, roughly one-third of the commenters stated that in their opinion the statutory phrase ''benefit from the education or training offered'' refers to specific educational or training programs and the relative cognitive demands of those programs. The commenters concluded that ability-to-benefit is dependent on existing cognitive demands of occupations, and must be measured and judged individually for each of the hundreds of occupation-specific training programs in postsecondary education, even if the current cognitive demands of an occupation are not ''postsecondary.''

Discussion: The Secretary disagrees with the commenters. The Secretary believes that there is a basic minimum competency that a student must achieve to benefit from any postsecondary education program. That basic competency is appropriately measured in terms of secondary school level basic skills and general learned abilities. Therefore, the Secretary requires approved tests to measure those skills and abilities. Further, as indicated in the preamble to the NPRM, the Secretary believes that earning a high school diploma or GED certificate should be the primary basis for qualifying to receive Title IV, HEA program assistance. The Secretary believes that students who do not have those credentials and qualify to receive such assistance by taking a test should demonstrate through that test a level of verbal and quantitative skills and general learned abilities at least comparable to those other categories of students.

Moreover, the Secretary objects to the position expressed by the commenters on the grounds that it is an approach that accustoms people to the lowest level of functioning in an occupation. It excuses institutions from critical aspects of instruction that will enable individuals to advance in their jobs or to change careers, and it falsely assumes that the nature of specific occupations will never change. The approach thus does not advance the quality of the nation's workforce. When the expenditure of Federal funds for education and training is at issue, the Secretary wishes to encourage more than a minimalist approach that only reinforces social and labor market stratification. The Secretary has encouraged generic academic competence in the School-to-Work transition programs, and is taking a consistent position here.

Changes: None.

Comments: Nearly half the commenters contended that the receipt of a high school diploma is no guarantee that a student possesses minimum basic skills necessary to pursue postsecondary education, and that the regulations make an assumption about achievement associated with a secondary school credential that is unfounded.

Discussion: The Secretary agrees with the commenters that a high school diploma may not necessarily indicate that the holder of that diploma has sufficient skills to successfully pursue postsecondary education. However, students with a high school diploma or its recognized equivalent are statutorily eligible to receive Title IV, HEA Program funds. The Secretary interprets section 484(d) of the HEA as requiring students who do not have a high school diploma or its equivalent to be comparable to those that do in order to be eligible to receive Title IV, HEA program funds. Therefore, the Secretary established the passing score on ATB tests to reflect the scores received by high school graduates.

Changes: None.

Section 668.7 Eligible Student

Comments: Many commenters argued that the paperwork requirement to document receipt of a high school diploma was onerous, particularly at institutions to which students apply while they are still in high school and at open door institutions that, under state law, are required to admit anyone. Two other commenters pointed to the difficulty older students sometimes have in obtaining copies of records, and two commenters asked why students who had attended secondary school in another country were required to provide affidavits in both their native language and English. With few exceptions, commenters questioned whether there was sufficient evidence that students improperly claimed to have a high school diploma or its equivalent to warrant a rule affecting all students in postsecondary education.

One commenter asserted that the requirements weaken current federal standards and advocated stricter provisions for documenting evidence of receipt of a high school diploma or its equivalent. Another commenter, indirectly concurring with this position, suggested that, if an applicant for Title IV, HEA Program funds graduated from a secondary school in the United States but was unable to secure a copy of his or her diploma or transcript, a statement from the state or local education agency confirming that the records were unavailable should be required.

Discussion: The Secretary is persuaded by the commenters that the added burden of documenting a student's declaration that he or she has a high school diploma or its recognized equivalent outweighs the benefit of requiring institutions to document that claim and has, therefore, decided not to require documentation of a high school diploma at this time. However, the Secretary will continue to investigate any alleged abuses in this area and, after consulting with the postsecondary education community and others, may pursue alternative means of ensuring that this student eligibility requirement is being enforced.

Changes: The Secretary has deleted the requirements relating to the documentation of a student's claim that he or she has a high school diploma. Moreover, the Secretary is recodifying the provisions of § 668.7 in Subpart C of part 668 in another regulations package.

Comments: Two commenters took opposite positions on the requirement that a student could use a passing score on an approved ATB test for 12 months. One commenter recommended a shorter period on the grounds that the most current score is the most valid measure. The other commenter recommended that a passing score should be used indefinitely since a test score on a valid ATB test reflects a permanent level of verbal and quantitative skills. Another commenter asserted that the NPRM fails to incorporate changes made to the definition of a ''recognized equivalent of a high school diploma'' in § 600.2 of the Institutional Eligibility regulations, 34 CFR 600.2.

Discussion: The Secretary believes that a passing score should not be used indefinitely because psychometric research demonstrates that the ''current status'' of knowledge is a more reliable predictor of imminent performance than previous status of such knowledge. However, such research also indicates that a period shorter than a year does not measurably increase the predictive power of a test.

The commenter is correct in the observation that proposed § 668.7 did not take into account the change in the definition of ''recognized equivalent of a high school diploma'' in § 600.2 of the Institutional Eligibility regulations, 34 CFR 600.2. However, since the Secretary is deleting the requirements for documenting a student's claim to have a high school diploma or its equivalent, the Secretary is not amending § 668.7 in this regulation package.

Changes: Changes to § 668.7 have been deleted from these final regulations.

Section 668.142 Special Definitions

Comments: One commenter suggested that the definition of the term ''assessment center'' be changed so that the location of an assessment center be at a neutral site rather than at an educational site. Another commenter suggested that ''assessment centers'' be located only at public institutions because public governing authorities would serve as an additional guarantee of integrity.

Discussion: The Secretary's definition of the term ''assessment center'' describes an organizational unit at an eligible institution that offers two-year or four-year degrees or qualifies as an eligible public vocational institution, *i.e.* a postsecondary vocational institution. The Secretary believes that the integrity of tests given at assessment centers will not be compromised by the geographical location of the center, or if they are given at private institutions that offer a two year or four year degree, given the long-term nature of those programs.

Changes: None.

Section 668.144 Application for Test Approval (Section 668.143 in NPRM)

Comments: Some commenters requested the Secretary's approval of placement examinations already used by their institutions. One commenter requested that the requirements for the populations participating in norming studies explicitly exclude students from schools at which the test publisher has received notice that improper test administrations have taken place.

Discussion: The Secretary will approve placement examinations used by an institution if the institution using that test submits an acceptable application and the examination satisfies all the regulatory requirements for test approval. In such a case, the institution would be considered the test publisher.

The Secretary believes that test publishers will be careful when selecting a norming sample to avoid invalidating the results of that sample. Therefore, the Secretary believes that the commenter's suggestion is not needed to obtain valid norming studies.

Changes: None.

Comments: One commenter requested that the Secretary clarify the requirement that an approved test be ''validated,'' and pointed out that a test is validated with respect to a criterion, not a population.

Discussion: The Secretary acknowledges a confusion in the grouping of requirements listed under the ''application for test approval,'' and has changed the verb, ''validated'' to ''normed'' in describing the contents of the technical manual in § 668.144(c)(11)(iv). In a narrow sense, validation is the process of determining the accuracy of inferences made from a test score, *e.g.,* if a student scores above a given percentage, the more likely he or she is to complete a subsequent course. In a broader sense, validation is the process of determining the soundness of all interpretations made of the test. The Secretary notes that there are many kinds of validity, and all of them are at stake in the review of tests submitted under § 668.144.

Changes: Section 668.144(c)(11)(iv) is amended to change ''validated'' to ''normed.''

Section 668.145 Test Approval Procedures (Section 668.144 in NPRM)

Comments: One commenter suggested that when the Secretary chooses experts to evaluate tests, the Secretary only choose experts who have substantial experience in psychometrics, familiarity with the *Standards for Educational and Psychological Testing* (Standards) prepared by a joint committee of the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education, and membership in one of those three organizations. This commenter also recommended that if a test did not satisfy the criteria for test approval and the test publisher appealed that decision, the test publisher would have to submit only those sections of a test subject to question and that a different group of experts be assembled to judge the appeal. The commenter further suggested that any appeal by a test publisher of the disapproval of a test be subject to the provisions of the Administrative Procedure Act.

Discussion: The Secretary agrees that professional credentials and experience are important criteria in selecting reviewers of tests, and will select experts who have substantial experience in psychometrics and familiarity with the *Standards*. The Secretary assumes that anyone who holds a graduate degree in psychometrics or evidences substantial experience in test development is familiar with the *Standards.* The Secretary believes that membership in a specific organization should not be a prerequisite to being selected as a test evaluator.

If a test is disapproved for specific discrete reasons applicable to a particular portion of a test and the test publisher appeals that result, the appeal would be based on the portion of the test that caused the disapproval. Therefore, the test publisher would presumably limit its appeal to that portion of its test, and if the appeal was successful the entire test would be approved without the need for reapplication.

The Secretary believes that the review of a test and any appeal of that review should not be conducted, and is not required to be conducted, in an adversarial, formal, or legalistic setting. Therefore, the Secretary will not subject those processes to the provisions of the Administrative Procedure Act. Moreover, the Secretary believes it is unnecessary to select another panel of experts to advise the Secretary when a test publisher appeals an adverse decision regarding its test. The Secretary makes a decision in response to an appeal, and wishes to retain the discretion to seek the advice of experts the Secretary considers appropriate to analyze the test publisher's arguments on appeal.

In most instances, the Secretary will seek the advice of the original panel of experts regarding those arguments. In reviewing over 100 tests since January 1991, the Secretary has found that when the original panel of experts reviewed an appeal, they focused on only those issues that were not satisfactorily addressed in the original submission and provided fair and valuable advice with regard to those issues.

Changes: None.

Section 668.146 Criteria for Approving Tests (Section 668.145 in NPRM)

Comments: Many commenters from community colleges objected that approved tests must measure ''knowledge of high school curricula,'' claiming that this was inappropriate.

Discussion: The Secretary disagrees with the commenters' interpretation of the questioned regulatory provision. The provision does not state that approved tests are based on ''knowledge of high school curricula.'' Rather, the provision states that the tests will assess basic verbal and quantitative skills and general learned abilities at the secondary school level. These skills and general learned abilities can be acquired anywhere. The tests will not be equivalent to final exams in specific high school subject areas, such as Algebra 1, Chemistry, or Civics.

Changes: The term knowledge has been deleted as redundant.

Comments: Some test publishers asked whether a reading test would suffice to cover the assessment of secondary school level verbal skills, or whether tests of usage and, particularly, writing samples must also be included. Some of the publishers of tests that provide subtest scores, but not composite scores, objected to the use of a single composite score for verbal skills and quantitative skills.

A few commenters addressed the point of reference of the passing score, namely, the performance of high school graduates on a specific test, and pointed out that the educational background of test-takers is not always known, particularly in norming studies that may have been conducted prior to changes in the law. One commenter expressed a similar concern with respect to ESL test-takers since the normed students must be ESL test-takers who have entered high school equivalency programs. The commenter pointed out that this latter group was very small, and the mean scores for them would not be very reliable.

Discussion: Verbal skills, such as usage, mechanics, and comprehension, must be assessed. If, however, a test measured only one language skill, such as punctuation or word recognition, that test would not be appropriate. A reading test is appropriate because it is highly correlated with other verbal skills and is a fundamental measurement of verbal ability. Writing is highly related to reading comprehension and to other verbal skills, and would, therefore, be redundant for this purpose. Therefore, an approved test does not have to have a writing sample.

The Secretary will approve a test that consists of a series of subtests. However, if the test publisher does not establish a composite verbal score and a composite quantitative score, the test publisher must present evidence that allows the Secretary to prescribe a cut score for each subtest. To pass that test, a student must score at or above the cut score for each of the subtests.

Based on existing evidence from a number of major testing programs, the Secretary believes that all test publishers can gather information on the educational background of test-takers in the ordinary course of test administration, *e.g.*, on the cover sheet of an examination. More critically, for data necessary for setting a passing score, the educational background of participants in a norming sample can easily be ascertained, and in the case of tests requiring new norming studies, there has been ample time since the law was passed to conduct such studies.

The Secretary is persuaded by data on ESL test-takers to enlarge the reference group beyond those who have entered high school equivalency programs, but believes that entrance into some kind of formal education or training program is an important criterion with which to define this group for purposes of setting a passing score.

Changes: Section 668.146(c)(5) has been changed. The Secretary will continue to approve a test that consists of a series of subtests. However, if the test publisher does not establish a composite verbal score and a composite quantitative score, the test publisher must present evidence that allows the Secretary to prescribe a cut score for each subtest.

The Secretary has also amended § 668.148(b)(2) to enlarge the reference population for setting the passing score on ESL tests by including not only ESL test-takers who have entered high school equivalency programs, but also ESL test-takers who have entered other education or training programs, including bilingual vocational programs.

The Secretary has also modified the wording of § 668.148(a)(2)(v)(A) so that, in cases where the test is in Spanish, the test publisher provides tables of distributions of test scores with a clear indication of the mean score and standard deviation for Spanish-speaking students with high school diplomas so that the Secretary will be able to indicate the passing score. The reference to the most recent three-year period is changed to a five-year period to allow a sample of sufficient size.

Comments: Several commenters expressed confusion with regard to the establishment of a passing score in proposed § 668.145(c)(3).

Discussion: The Secretary acknowledges a misprint, hence an understandable confusion, in the proposed § 668.145(c)(3). This section should have read, and is corrected in § 668.146(c)(3) of the final regulation to read, as follows:

> Except as indicated in §§ 668.148 and 668.149, provide tables of distributions of test scores that clearly indicate the mean score and standard deviation for high school graduates who have taken the test within three years before the date on which the test is submitted to the Secretary for approval;

The misprint led to a more general confusion as to who has the responsibility for designating the passing score on tests used for ability-to-benefit determinations and communicating those scores to the public. For the general population of test-takers for whom § 668.147 is applicable, the Secretary determines the passing score for which the publisher has provided the data. For special populations and special types of administration such as those described in §§ 668.148 and 668.149, the Secretary requests the publisher to ''recommend'' a passing score based on the publisher's experience with the special population and/or type of administration. The Secretary reviews the recommendation, and either certifies it or, if necessary, requests clarifications prior to certification. The Secretary recognizes that this procedure needs to be modified in the case of tests given in Spanish.

The Secretary will publish the approved passing scores in the Federal Register.

Changes: Section 668.145(c)(1) has been amended to indicate that the Secretary will publish in the Federal Register the names of approved tests and the passing scores on those tests.

Section 668.147 Passing Score (Section 668.146 in NPRM)

Comments: The majority of comments received from commenters on the passing score formula took five positions. The first position was that the proposed score was too low and inconsistent with the standards included in Title IV of the Goals 2000: Educate America Act and in the School-to-Work Opportunities Act. The second position was that the proposed score was too high. The third was that the proposed score was right. The fourth position was that the proposed score should vary by program of study. The fifth position was that the proposed score should be determined by predictive validity studies using program completion as a criterion.

Two commenters also advocated using the performance of students with GEDs as the reference point for the passing score on the grounds that these people have passed a de facto national high school equivalency examination. Their performance is thus more public than that of high school graduates, hence it offers a more reliable point of comparison. And one commenter presented a plan for a ''documented qualification process'' that would allow institutional variations on passing scores.

Discussion: As noted earlier, the Secretary believes that there is a basic minimum competency that a student must achieve to benefit from any postsecondary education program. That basic competency is measured in terms of secondary school level basic skills and general learned abilities. Further, the Secretary believes that under section 484(d) of the HEA, in order for a person without a high school diploma or its

recognized equivalent to receive Title IV, HEA Program funds, that person should enter postsecondary education with roughly the same comparable secondary school level basic skills and general learned abilities as those of the typical range of high school graduates.

The Secretary established the passing score on approved tests as the score that represents one standard deviation below the mean for students with high school diplomas who took the test. The score means theoretically that 84 percent of the high school graduates who took the test passed the test. The Secretary established this score based upon a recognition that the secondary school level basic skills and general learned abilities of high school graduates in the United States vary widely.

As noted earlier in the general comments, the Secretary disagrees with the commenters who contended that passing scores should be established on a program-by-program basis. The Secretary also disagrees with those commenters who contended that the passing score was either too high or too low, or was inconsistent with the Goals 2000: Educate America Act and the School-to-Work Opportunity Act. The Secretary believes it is difficult to make definitive judgments regarding whether a passing score is too high or too low until tests are approved and test-takers take the test. Moreover, until performance standards are set for ''Certificate of Initial Mastery'' under school-to-work models, it is premature to contend that the Secretary's passing score is inconsistent with those standards. When that information is forthcoming, the Secretary may revisit the question of the appropriate passing score for these ATB tests.

The Secretary acknowledges the commenters' point that there is a logic to using the performance of students with GEDs as the reference point for the passing score. However, the Secretary chose not to use that group as a reference because the GED population that subsequently takes the types of examinations used for ability-to-benefit determinations is small and not representative of the general postsecondary school population in the United States. As for the suggestion to adopt institutional variations on the passing score for institutions that provide sufficient remediation and instructional resources for ATB students, the Secretary suggests that this approach is better suited for the ''state process'' as described in § 668.156.

Finally, the Secretary agrees that the fifth position, basing the passing score on predictive validity studies using program completion as the criterion, is theoretically the best approach to take in establishing a passing score. However, the Secretary chose not to use that approach because it was impossible to administer, given the small size of the ATB population, the cost of predictive validity studies, and the additional time that would be necessary to review and approve that approach. Moreover, adopting that suggestion would further delay the publication of these regulations implementing section 484(d) of the HEA.

Changes: None.

Section 668.148 Additional Criteria for the Approval of Performance-Based Tests, Tests for Non-Native Speakers of English, Modified Tests for Persons With Disabilities, and Computer-Based Tests and Tests for ESL Programs (Section 668.47 in NPRM)

Comments: One commenter suggested that performance assessments, as described in proposed § 668.147, not be included in the potential pool of approved tests, because the commenter asserted that these tests ''are still in a developmental stage, with substantial false negative and false positive reports.'' Another commenter recommended additional security measures, including the requirement that a student show a photo identification for computer-based tests.

Discussion: The validity and reliability of any assessment tests will be based upon the evidence provided by the test publisher, and the Secretary will not rule, *a priori,* that any category of tests is inappropriate. The Secretary will rely on the security requirements of test publishers with regard to the use of photo identification for computer-based tests.

Changes: None.

Section 668.150 Agreement Between the Secretary and a Test Publisher (Section 668.149 in NPRM)

Comments: Two commenters saw no necessity for this or any of the agreements specified in proposed §§ 668.149, 668.150, and 668.151 on the grounds that the practices specified in these agreements and the abuses they are designed to address are already accounted for in normal industry practice.

Discussion: In the Secretary's opinion, test publishers are key to the integrity of the ability-to-benefit testing process, and the agreement between the Secretary and the test publisher is designed to assure that the tests are being independently administered in a proper and impartial manner. Past practice has indicated that integrity in the administration of ability-to-benefit tests is not uniform throughout the industry, and that this agreement is necessary to protect both students and the public interest.

However, the Secretary agrees with the commenters that formal agreements between a test publisher and a test administrator and between a test administrator and an institution are not necessary to the integrity of test administration. Therefore, the Secretary has eliminated those two agreements although key provisions in those agreements have been incorporated in the section dealing with test administration, § 668.151.

Changes: The Secretary has deleted the requirement that a test publisher enter into an agreement with a test administrator and that the test administrator also enter into an agreement with an institution. In fact, the Secretary has deleted the proposed regulatory sections in which those requirements were contained, proposed §§ 668.150 and 668.151.

Comments: One commenter asked that language be added to ensure that test publishers exercise equal employment opportunity principles in certifying test administrators. Another commenter suggested language be inserted to require the publisher to decertify a test administrator if he or she is found to have compromised the integrity of the testing process. Another commenter asked whether decertified test administrators could appeal and whether they could subsequently be recertified.

Discussion: The Secretary believes that it would be inappropriate to include a provision in the agreement regarding the test publisher's employment practices because it is not within his legal jurisdiction to do so.

The proposed rule included a provision for decertifying a test administrator for violating the integrity of the test. The Secretary has revised this provision to indicate that the decertification would coincide with the period for which the test publisher's test was approved. During this period, the test administrator could not be recertified. No appeal is provided for a test publisher's decision to decertify a test administrator.

Changes: Section 668.150(b)(3) is revised to provide that if a test publisher decertifies a test administrator, the decertification coincide with the period for which the test publisher's test was approved.

Comments: Half the commenters suggested that institutions should be allowed to score the ATB test at the educational location, rather than send the test to the publisher for scoring.

These commenters cited the extra time and costs associated with test-publisher scoring.

Discussion: The purpose of the regulatory scheme regarding test administration is to remove institutions from giving or scoring tests. In return, the Secretary will not hold institutions financially responsible if they award Title IV, HEA Program funds to an ability-to-benefit students who present evidence that they passed approved tests as long as the institutions did not interfere with the independence of the testing process and were not involved in the testing process. Therefore, the Secretary strongly disagrees with the commenter's suggestion that an institution should be able to score a test. Moreover, the Secretary anticipates that there will be little delay between the time a student takes a test and the time the institution and the student receive the test results.

Changes: None.

Comments: Test publishers objected to the Secretary's requirement that an analysis of scoring patterns be performed every two years to determine irregularities. One commenter asked that the agreement between the Secretary and a test publisher explicitly forbid the publisher from requiring institutions to administer instruments in addition to those required and approved by the Secretary.

Discussion: The Secretary believes that quality control is a critical aspect of test administration, and an analysis of scoring patterns of tests is useful tool for that purpose. However, to reduce burden, the Secretary is requiring that an analysis of scoring patterns of tests be performed every three years.

The Secretary is not including in the agreement between the Secretary and a test publisher a provision that precludes the publisher from requiring institutions to administer tests in addition to those approved by the Secretary because he believes that such a provision is beyond the scope of his authority. Moreover, the Secretary notes that when faced with such a test publisher, an institution can simply choose another test and another test publisher.

Changes: The Secretary is requiring that an analysis of scoring patterns of tests be performed every three years.

Proposed Section 668.150 Agreement Between a Test Publisher and a Test Administrator

Comments: One commenter recommended that test publishers, and not educational institutions, retain the power to hire and dismiss on-site test administrators. The commenter also suggested that test publishers be responsible for training test administrators. Another commenter suggested that the test publisher make an agreement with the institution and independent test administrators under which the institution would agree to respect the security and integrity of test administration by selling the administrators an annual license. The commenter believes that the purchase of a license will ensure proper administration of the test.

Discussion: The Secretary believes that an institution should have the option of selecting a test administrator that has been certified by a test publisher to give its students an approved ATB test. Therefore, the Secretary disagrees with the suggestion made by the first commenter.

Since a test publisher certifies test administrators to give its tests, a test publisher would presumably provide whatever training it felt necessary to obtain a sufficient number of certified test administrators for its test.

Finally, the Secretary does not see the need to have test publishers sell licenses to test administrators.

Changes: The Secretary has deleted this section, but the provisions discussed by the commenters have been incorporated into § 668.151(a) dealing with test administration.

Comments: Many commenters expressed confusion about the role of an assessment center in the test administration process. Commenters requested clarification regarding the rights and responsibilities of assessment centers. At least one commenter representing a test publisher requested the right to enter into agreements with an assessment center as a condition for the assessment center to give its test.

Discussion: The Secretary agrees with the commenters that the role of an assessment center was not sharply defined in the proposed regulations. The Secretary envisions that an assessment center may give tests to ATB students without threatening the integrity and independence of the test. An assessment center may give an approved test to students without necessarily entering into an agreement with the test publisher. However, the Secretary agrees with the suggestion of the commenter that the test publisher should have the right to control the use of its test by allowing an assessment center to give its test only if the assessment center enters into an agreement with the test publisher.

If a student takes a test at an assessment center, the test administrator must be certified by the test publisher whose test is being given. The test administrator must also give the test only in accordance with the test publisher's instructions, must make the test available only to a test taker during a regularly scheduled test, must collect the test from the test taker after the test is given, and must secure the test against disclosure or release.

An assessment center may, however, score the test and notify the institution and the test taker of the test results instead of forwarding the test to the publisher for scoring and notification. If the assessment center scores tests, it must provide a copy of the test takers' performances and test scores to the test publisher on at least an annual basis.

Changes: A new section, § 668.152, has been added to describe the role and responsibilities of an assessment center.

Proposed § 668.151 Agreement Between the Institution and a Certified Test Administrator

Comments: One commenter recommended that, as part of this agreement, the institution must keep complete records of all testing activity conducted by a test administrator on its behalf, including situations in which testing was not completed.

Discussion: The purpose of the regulatory scheme regarding test administration is to remove institutions from giving or scoring tests. Therefore, the Secretary disagrees with the commenter's recommendation.

Changes: The agreement between an institution and a test administrator in § 668.151 has been deleted, as has the section dealing with this relationship. However, the important aspects of this section relating to the integrity and independence of test administration were incorporated into § 668.151 *Test administration.*

Section 668.151 Administration of Tests (Section 668.152 in the NPRM)

Comments: A number of commenters objected to the proposed procedures for scoring tests by the test publishers in those cases in which ''assessment centers'' are not available. Those who objected claimed that the process was inequitable and would result in considerable delays in determining student eligibility. One commenter objected to the policy that allows repeated taking of tests on the grounds that repetition compromises the validity of the tests. Two commenters requested clarification about the roles of assessment centers with respect to recordkeeping, reporting of scores and background information on test takers to test publishers, and whether agreements between assessment centers and institutions that wish to use their services are required.

Discussion: The Secretary believes that it is not inequitable to require test publishers to score tests and that considerable delays will not be the result of such a requirement. A test administrator must send the test publisher the test taker's examination within two days of administration of the test, and the test publisher must ''immediately'' generate a test score and ''promptly'' notify the test taker and the institution of the test results. If the test is a computer-based test, the test taker and the institution will receive the test results even more quickly. With regard to the retaking of tests, the Secretary points out that many people retake major national examinations and licensing examinations every year without compromising the validity of those tests. However, the Secretary recognizes that the practice of retesting can be abused, and that the criteria for test approval in proposed § 668.145 were not explicit in the matter of acceptable retesting procedures.

Changes: The Secretary has modified § 668.146(b) to add the requirement that the publishers have guidelines for retesting, including time between test-taking, and that such guidelines be based on empirical analyses.

Section 668.154 Institutional Accountability

Comments: One commenter suggested that those professionals who abuse the system be accountable for their actions, and institutions without a history of abuse should be permitted to continue their practices of local administration and scoring of ATB tests. Another commenter felt that the institutional accountability section was too lenient, and suggested strengthening the language so that students would not be liable for repayment of fraudulently disbursed funds unless the student knowingly caused the erroneous determination.

Discussion: As indicated earlier, the Secretary has developed a regulatory scheme that eliminates institutions from test administration. In return, the Secretary will not make institutions financially responsible if an institution awards Title IV, HEA Program funds to a student who presents evidence that he or she passed an approved test, if the institution does not interfere with the independence of the testing process. Therefore, the Secretary strongly disagrees with the commenters' suggestion that an institution should be able to administer and score a test.

Changes: None.

Section 668.156 Approved State Process (Section 668.155 in NPRM)

Comments: All commenters from community colleges and several other commenters objected to the 95% ''success rate'' criterion as both arbitrary and too high and suggested that the Secretary use an 85% ''success rate'' as an alternative. Some commenters added that this requirement does not reflect the statutory mandate that the judgment of success take into account the diversity of the populations served by participating institutions. Nearly all commenters from community colleges requested consistency of calculation of ''success rate'' with that of the Student Right-to-Know Act. A few commenters also interpreted the ''State process'' provisions as excluding students at for-profit institutions. One commenter pointed out that the data required for such a calculation were not immediately available, and that State agencies submitting applications for approval of a ''State process'' should be allowed three years to assemble the data necessary to support their case.

Discussion: In the NPRM provisions governing the ''State process'' alternative to ATB testing, the Secretary proposed that the ''success rate'' for students without a high school diploma or its equivalent must, in effect, be equal to the success rate for students who possess a high school diploma. ''Success'' was defined as the sum of program completion and continued enrollment, although this definition was not explicit in including successful transfers in the category of continued enrollment. The 95% rate was chosen since it represents an equivalency minus a theoretical standard error of measurement. The Secretary wishes to make sure that institutions participating in a State process are truly serious and not casual in their execution of responsibilities to ATB students. If a special State process for students without high school diplomas is truly effective, the success rate of the students it services should at least equal the success rate of students with high school diplomas who did not receive the special services under the process. To account for variances in the measurement of this outcome, the Secretary chose a standard rule of chance that 1 out of 20 results might be attributable to faulty measurement. One out of 20 is 5%. An equivalency minus 5% is 95%.

The commenters who objected to the 95 percent rate claimed that such a rate was too high and arbitrary and suggested that the rate be reduced to 85%. However, those commenters provided no justification for that lower percentage.

The Secretary disagrees with the commenters who contended that the regulation does not take into account the diversity of the population served by institutions included in the State process. The regulations give States maximum flexibility to design their processes under which States are free to choose how to respond to the needs of the diverse group of students served by the process. The Secretary measures whether the process is successful in satisfying the needs of these students by evaluating whether the success rate of these students, and all the others in the State process, are equal to the success rate of high school graduates.

As for the calculation of the ''success rate'' in terms similar to those required under the Student Right-to-Know Act, the Secretary proposed a simple ''success rate'' to avoid the complexities necessitated by implementing that Act.

The Secretary is not requiring any condition or limitation with regard to the type of institutions that may or must participate in a State process. Therefore, the type of institutions that may or must participate will be determined by the State.

Finally, the Secretary believes that a State does not need three years to collect data to support the approval of its State process. The Secretary believes that when this regulation goes into effect on July 1, 1996, the States will have had adequate lead-time to assemble data to support the approval of their State processes. States may, of course, wait a longer period of time before applying to the Secretary for approval of their State process.

Changes: The Secretary amends § 668.157(h)(1) to provide that the transfer of a student who remains enrolled in another institution at the end of that award year can be included in the ''success rate'' for the institution from which the student transferred.

Executive Order 12866

These regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering this program effectively and efficiently. Burdens specifically associated with information collection requirements, if any, are identified and explained

elsewhere in this preamble under the heading

Paperwork Reduction Act of 1995

In assessing the potential costs and benefits—both quantitative and qualitative—of these regulations, the Secretary has determined that the benefits of the regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Summary of Potential Costs and Benefits

The potential costs and benefits of these final regulations are discussed elsewhere in this preamble under the following heading: *Analysis of Comments and Changes.*

Paperwork Reduction Act of 1995

Sections 668.143, 668.144, 668.145, 668.146, 668.147, 668.148, 668.149, 668.150, 668.151, 668.152, 668.153, and 668,155 contain information collection requirements.

Collection of information: Student Assistance General Provisions—

These regulations contain records that would affect test publishers, postsecondary institutions, and students that do not have high school diplomas or recognized equivalents and that wish to apply for Title IV, HEA programs.

The collection activity associated with the State Process is incorporated in various sections throughout these final regulations. All other burden associated with the maintenance of records of the student's ability-to-benefit is already cleared under the individual programs of Federal financial assistance for which these students may be applying.

Institutions are to collect this information annually. An estimate of the total annual reporting and recordkeeping burden that will result from the collection of the information is 0.5 hours per response for 158,180 respondents, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The total annual recordkeeping and reporting burden equals 79,090 hours.

The Department considers comments by the public on these proposed collections of information in—

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have a practical use;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

The Department request comments concerning the collection of information contained in these final regulations by January 30, 1996.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to Patrick Sherrill, U.S. Department of Education, 600 Independence Avenue, S.W., Room 5624, ROB–3, Washington, D.C. 20202.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs-education, Incorporation by reference, Loan programs-education, Reporting and recordkeeping requirements, Student aid.

(Catalog of Federal Domestic Assistance Number: 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.032 Federal Family Educational Loan Program; 84.032 Federal PLUS Program; 84.032 Federal Supplemental Loans for Students Program; 84.033 Federal Work-Study Program; 84.038 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; 84.069 Federal State Student Incentive Grant Program.)

Dated: November 24, 1995.

Richard W. Riley,

Secretary of Education.

The Secretary amends Part 668 of Title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for Part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, 1099c, and 1141, unless otherwise noted.

2. Part 668 is amended by adding a new Subpart J to read as follows:

Subpart J—Approval of Independently Administered Tests; Specification of Passing Score; Approval of State Process

Sec.

668.141 Scope.
668.142 Special definitions.
668.143 Approval of State tests or assessments.
668.144 Application for test approval.
668.145 Test approval procedures.
668.146 Criteria for approving tests.
668.147 Passing score.
668.148 Additional criteria for the approval of certain tests.
668.149 Special provisions for the approval of assessment procedures for special populations for whom no tests are reasonably available.
668.150 Agreement between the Secretary and a test publisher.
668.151 Administration of tests.
668.152 Administration of tests by assessment centers.
668.153 Administration of tests for students whose native language is not English or for persons with disabilities.
668.154 Institutional accountability.
668.155 Transitional rule for the 1996–97 award year.
668.156 Approved State process.

Subpart J—Approval of Independently Administered Tests; Specification of Passing Score; Approval of State Process

§ 668.141 Scope.

(a) This subpart sets forth the provisions under which a student who has neither a high school diploma nor its recognized equivalent may become eligible to receive Title IV, HEA program funds by—

(1) Achieving a passing score, specified by the Secretary, on an independently administered test approved by the Secretary under this subpart; or

(2) Being enrolled in an eligible institution that participates in a State process approved by the Secretary under this subpart.

(b) Under this subpart, the Secretary sets forth—

(1) The procedures and criteria the Secretary uses to approve tests;

(2) The basis on which the Secretary specifies a passing score on each approved test;

(3) The procedures and conditions under which the Secretary determines that an approved test is independently administered; and

(4) The procedures and conditions under which the Secretary determines that a State process demonstrates that students in the process have the ability to benefit from the education and training being offered to them.

(Authority: 20 U.S.C. 1091(d))

§ 668.142 Special definitions.

The following definitions apply to this subpart:

Assessment center: A center that—

(1) Is located at an eligible institution that provides two-year or four-year degrees, or qualifies as an eligible public vocational institution, *i.e.* a ''postsecondary vocational institution;''

(2) Is responsible for gathering and evaluating information about individual students for multiple purposes, including appropriate course placement;

(3) Is independent of the admissions and financial aid processes at the institution at which it is located;

(4) Is staffed by professionally trained personnel; and

(5) Does not have as its primary purpose the administration of ability-to-benefit tests.

Computer-based test: A test taken by a student on a computer and scored by a computer.

Disabled student: A student who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

General learned abilities: Cognitive operations, such as deductive reasoning, reading comprehension, or translation from graphic to numerical representation, that may be learned in both school and non-school environments.

Non-native speaker of English: A person whose first language is not English and who is not fluent in English.

Secondary school level: As applied to ''content,'' ''curricula,'' or ''basic verbal and quantitative skills,'' refers to basic knowledge or skills generally learned in the 9th through 12th grades in United States secondary schools.

Test administrator: An individual who may give tests under this subpart.

Test item: A question on a test.

Test publisher: An individual, organization, or agency that owns a registered copyright of a test, or is licensed by the copyright holder to sell or distribute a test.

(Authority: 20 U.S.C. 1091(d))

§ 668.143. Approval of State tests or assessments.

(a) The Secretary approves tests or other assessments submitted by a State that the State uses to measure a student's skills and abilities for the purpose of determining whether the student has the skills and abilities the State expects of a high school graduate in that State.

(b) The Secretary approves passing scores or other methods of evaluation established by the State for each test or assessment described in paragraph (a) of this section.

(c) If the Secretary approves a State's tests and assessments and the passing scores on those tests and assessments under paragraphs (a) and (b) of this section, that test or assessment may be used, for purposes of section 484(d) of the HEA, only for students who attend eligible institutions located in that State.

(d) If a State wishes to have the Secretary approve its tests or assessments under this section, the State shall—

(1) Submit to the Secretary those tests and assessments, its passing scores on those tests and assessments, and the educational standards those tests and assessments measure at such time and in such manner as the Secretary may prescribe;

(2) Provide the Secretary with an explanation of how the tests, assessments, and passing scores are appropriate in light of the State's educational standards; and

(3) Provide the Secretary with an assurance that the tests and assessments will be administered in an independent, fair, and secure manner.

(Authority: 20 U.S.C. 1091(d))

§ 668.144 Application for test approval.

Except as provided in § 668.143—

(a) The Secretary only reviews tests under this subpart that are submitted by the publisher of that test;

(b) A test publisher that wishes to have its test approved by the Secretary under this subpart must submit an application to the Secretary at such time and in such manner as the Secretary may prescribe. The application shall contain all the information necessary for the Secretary to approve the test under this subpart, including but not limited to, the information contained in this section; and

(c) A test publisher shall include with its application—

(1) A summary of the precise editions, forms, levels, and (if applicable) sub-tests and abbreviated tests for which approval is being sought;

(2) The name, address, and telephone number of a contact person to whom the Secretary may address inquiries;

(3) Each edition and form of the test for which the publisher requests approval;

(4) The distribution of test scores for each edition, form, level, sub-test, or partial battery, for which approval is sought, that allows the Secretary to prescribe the passing score for each test in accordance with § 668.147;

(5) Documentation of test development, including a history of the test's use;

(6) Norming data and other evidence used in determining the distribution of test scores;

(7) Material that defines the content domains addressed by the test;

(8) For tests first published five years or more before the date submitted to the Secretary for review and approval, documentation of periodic reviews of the content and specifications of the test to ensure that the test continues to reflect secondary school level verbal and quantitative skills;

(9) If a test has been revised from the most recent edition approved by the Secretary, an analysis of the revisions, including the reasons for the revisions, the implications of the revisions for the comparability of scores on the current test to scores on the previous test, and data from validity studies of the test undertaken subsequent to the revisions;

(10) A description of the manner in which test-taking time was determined in relation to the content representativeness requirements in § 668.146(b)(2), and an analysis of the effects of time on performance;

(11) A technical manual that includes—

(i) An explanation of the methodology and procedures for measuring the reliability of the test;

(ii) Evidence that different forms of the test, including, if applicable, short forms, are comparable in reliability;

(iii) Other evidence demonstrating that the test permits consistent assessment of individual skill and ability;

(iv) Evidence that the test was normed using—

(A) Groups that were of sufficient size to produce defensible standard errors of the mean and were not disproportionately composed of any race or gender; and

(B) A contemporary population representative of persons who are beyond the usual age of compulsory school attendance in the United States;

(v) Documentation of the level of difficulty of the test;

(vi) Unambiguous scales and scale values so that standard errors of measurement can be used to determine statistically significant differences in performance; and

(vii) Additional guidance on the interpretation of scores resulting from any modifications of the tests for persons with documented disabilities.

(12) The manual provided to test administrators containing procedures and instructions for test security and administration, and the forwarding of tests to the test publisher;

(13) An analysis of the item-content of each edition, form, level, and (if applicable) sub-test to demonstrate compliance with the required secondary school level criterion specified in § 668.146(b);

(14) For performance-based tests or tests containing performance-based sections, a description of the training or certification required of test administrators and scorers by the test publisher;

(15) A description of retesting procedures and the analysis upon which the criteria for retesting are based; and

(16) Other evidence establishing the test's compliance with the criteria for approval of tests as provided in § 668.146.

(Authority: 20 U.S.C. 1091(d))

§ 668.145 Test approval procedures.

Except as provided in § 668.143—

(a)(1) When the Secretary receives a complete application from a test publisher, the Secretary selects experts in the field of educational testing and assessment, who possess appropriate advanced degrees and experience in test development or psychometric research, to determine whether the test meets the requirements for test approval contained in §§ 668.146, 668.147, 668.148, or 668.149, as appropriate, and to advise the Secretary of their determinations;

(2) If the test involves a language other than English, the Secretary selects at least one individual described in paragraph (a)(1) of this section who is fluent in the language in which the test is written to advise the Secretary on whether the test meets the additional criteria, provisions, and conditions for test approval contained in §§ 668.148 and 668.149;

(b) The Secretary determines whether the test publisher's test meets the criteria and requirements for approval after taking the advice of the experts into account;

(c)(1) If the Secretary determines that a test satisfies the criteria and requirements for test approval, the Secretary notifies the test publisher of the Secretary's decision, and publishes the name of the test and the passing scores in the Federal Register.

(2) If the Secretary determines that a test does not satisfy the criteria and requirements for test approval, the Secretary notifies the test publisher of the Secretary's decision, and the reasons why the test did not meet those criteria and requirements.

(3) The test publisher may request that the Secretary reevaluate the Secretary's decision. Such a request must be accompanied by—

(i) Documentation and information that address the reasons for the non-approval of the test; and

(ii) An analysis of why the information and documentation submitted meet the criteria and requirements for test approval notwithstanding the Secretary's earlier decision to the contrary.

(d)(1) The Secretary approves a test for a period not to exceed five years from the date of the Secretary's written notice to the test publisher.

(2) The Secretary extends the approval period of a test to include the period of review if the test publisher re-submits the test for review and approval under § 668.144 at least six months before the date on which the test approval is scheduled to expire;

(e) The approval of a test may be withdrawn if the Secretary determines that the publisher violated any terms of the agreement described in § 668.150, or that the information the publisher submitted as a basis for approval of the test was inaccurate;

(f) If the Secretary revokes approval of a previously approved test, the Secretary publishes a notice of that revocation in the Federal Register. The revocation becomes effective 120 days from the date the notice of revocation is published in the Federal Register; and

(g) For test batteries that contain multiple sub-tests measuring content domains other than verbal and quantitative domains, the Secretary reviews only those subtests covering verbal and quantitative domains.

(Authority: 20 U.S.C. 1091(d))

§ 668.146 Criteria for approving tests.

Except as provided in § 668.143—

(a) Except as provided in § 668.148, the Secretary approves a test under this subpart if the test meets the criteria set forth in paragraph (b) of this section and the test publisher satisfies the requirements set forth in paragraph (c) of this section;

(b) To be approved under this subpart, a test shall—

(1) Assess secondary school level basic verbal and quantitative skills and general learned abilities;

(2) Sample the major content domains of secondary school level verbal and quantitative skills with sufficient numbers of questions to—

(i) Adequately represent each domain; and

(ii) Permit meaningful analyses of item-level performance by students who are representative of the contemporary population beyond the age of compulsory school attendance and have earned a high school diploma;

(3) Require appropriate test-taking time to permit adequate sampling of the major content domains described in paragraph (a)(2) of this section;

(4) Have all forms (including short forms) comparable in reliability;

(5) If the test is revised, have new scales, scale values, and scores that are demonstrably comparable to the old scales, scale values, and scores; and

(6) Meet all primary and applicable conditional and secondary standards for test construction provided in the 1985 edition of the *Standards for Educational and Psychological Testing,* with amendments dated June 2, 1989, prepared by a joint committee of the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education incorporated by reference in this section. Incorporation by reference of this document has been approved by the Director of the Office of the Federal Register pursuant to the Director's authority under 5 U.S.C. 552(a) and 1 CFR part 51. The incorporated document is on file at the Department of Education, Office of Postsecondary Education, Room 4318, ROB–3, 600 Independence Avenue, S.W., Washington, D.C. 20202 and at the Office of the Federal Register, 800 North Capitol Street, N.W., Suite 700, Washington, DC. The standards may be obtained from the American Psychological Association, Inc., 750 First Street, N.W., Washington, DC 20026.

(7) Have publisher's guidelines for retesting, including time between test-taking, be based on empirical analyses that are part of the studies of test reliability; and

(c) In order for a test to be approved under this subpart, a test publisher shall—

(1) Include in the test booklet or package—

(i) Clear, specific, and complete instructions for test administration, including information for test takers on

the purpose, timing, and scoring of the test; and

(ii) Sample questions representative of the content and average difficulty of the test;

(2) Have two or more secure, equated, alternate forms of the test;

(3) Except as provided in §§ 668.148 and 668.149, provide tables of distributions of test scores which clearly indicate the mean score and standard deviation for high school graduates who have taken the test within three years prior to the date on that the test is submitted to the Secretary for approval under § 668.144;

(4) Norm the test with—

(i) Groups that were of sufficient size to produce defensible standard errors of the mean and were not disproportionately composed of any race or gender; and

(ii) A contemporary population representative of persons who are beyond the usual age of compulsory school attendance in the United States; and

(5) If test batteries include sub-tests assessing different verbal and/or quantitative skills, a distribution of test scores as described in paragraph (c)(3) of this section that allows the Secretary to prescribe either—

(i) A passing score for each sub-test; or

(ii) One composite passing score for verbal skills and one composite passing score for quantitative skills.

(Authority: 20 U.S.C. 1091(d))

§ 668.147 Passing scores.

Except as provided in §§ 668.143, 668.148 and 668.149, to demonstrate that a test taker has the ability to benefit from the education and training offered, the Secretary specifies that the passing score on each approved test is one standard deviation below the mean for students with high school diplomas who have taken the test within three years before the date on which the test is submitted to the Secretary for approval.

(Authority; 20 U.S.C. 1091(d))

§ 668.148 Additional criteria for the approval of certain tests.

Except as provided in § 668.143—

(a) In addition to satisfying the criteria in § 668.146, to be approved by the Secretary, a test or a test publisher must meet the following criteria, if applicable:

(1) In the case of a test that is performance-based, or includes performance-based sections, for measuring writing, speaking, listening, or quantitative problem-solving skills, the test publisher must provide—

(i) A minimum of four parallel forms of the test; and

(ii) A description of the training provided to test administrators, and the criteria under which trained individuals are certified to administer and score the test.

(2) In the case of a test developed for a non-native speaker of English who is enrolled in a program that is taught in his or her native language, the test must be—

(i) Linguistically accurate and culturally sensitive to the population for which the test is designed, regardless of the language in which the test is written;

(ii) Supported by documentation detailing the development of normative data;

(iii) If translated from an English version, supported by documentation of procedures to determine its reliability and validity with reference to the population for which the translated test was designed;

(iv) Developed in accordance with guidelines provided in the 1985 edition of the ''Testing Linguistic Minorities'' section of the *Standards for Educational and Psychological Testing,* with amendments dated June 2, 1989, prepared by a joint committee of the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education incorporated by reference in this section. Incorporation by reference of this document has been approved by the Director of the Office of the Federal Register pursuant to the Director's authority under 5 U.S.C. 552(a) and 1 CFR part 51. The incorporated document is on file at the Department of Education, Office of Postsecondary Education, Room 4318, ROB–3, 600 Independence Avenue, S.W., Washington, D.C. 20202 and at the Office of the Federal Register, 800 North Capitol Street, N.W., Suite 700, Washington, DC. The standards may be obtained from the American Psychological Association, Inc., 750 First Street, N.W., Washington, DC 20026; and

(v)(A) If the test is in Spanish, accompanied by a distribution of test scores that clearly indicates the mean score and standard deviation for Spanish-speaking students with high school diplomas who have taken the test within 5 years before the date on which the test is submitted to the Secretary for approval; and

(B) If the test is in a language other than Spanish, accompanied by a recommendation for a provisional passing score based upon performance of a sample of test takers representative of the intended population and large enough to produce stable norms.

(3) In the case of a test that is modified for use for persons with disabilities, the test publisher must—

(i) Follow guidelines provided in the ''Testing People Who Have Handicapping Conditions'' section of the *Standards for Educational and Psychological Testing;*

(ii) Provide documentation of the appropriateness and feasibility of the modifications relevant to test performance; and

(iii) Recommend passing score(s) based on the previous performance of test-takers.

(4) In the case of a computer-based test, the test publisher must—

(i) Provide documentation to the Secretary that the test complies with the basic principles of test construction and standards of reliability and validity as promulgated in the *Standards for Educational and Psychological Testing,* as well as specific guidelines set forth in the American Psychological Association's *Guidelines for Computer-based Tests and Interpretations* (1986);

(ii) Provide test administrators with instructions for familiarizing test takers with computer hardware prior to test-taking; and

(iii) Provide two or more parallel, equated forms of the test, or, if parallel forms are generated from an item pool, provide documentation of the methods of item selection for alternate forms; and

(b) If a test is designed solely to measure the English language competence of non-native speakers of English—

(1) The test must meet the criteria set forth in § 668.146(b)(6), and § 668.146 (c)(1), (c)(2), and (c)(4); and

(2) The test publisher must recommend a passing score based on the mean score of test takers beyond the age of compulsory school attendance who entered U.S. high school equivalency programs, formal training programs, or bilingual vocational programs.

(Authority: 20 U.S.C. 1091(d))

§ 668.149 Special provisions for the approval of assessment procedures for special populations for whom no tests are reasonably available.

If no test is reasonably available for persons with disabilities or students whose native language is not English and who are not fluent in English, so that no test can be approved under §§ 668.146 or 668.148 for these students, the following procedures apply:

(a) *Persons with disabilities.* (1) The Secretary considers a modified test or testing procedure, or instrument that

has been scientifically developed specifically for the purpose of evaluating the ability to benefit from postsecondary training or education of disabled students to be an approved test for purposes of this subpart provided that the testing procedure or instrument measures both basic verbal and quantitative skills at the secondary school level.

(2) The Secretary considers the passing scores for these testing procedures or instruments to be those recommended by the test developer, provided that the test administrator—

(i) Uses those procedures or instruments;

(ii) Maintains appropriate documentation, including a description of the procedures or instruments, their content domains, technical properties, and scoring procedures; and

(iii) Observes recommended passing scores.

(b) *Students whose native language is not English.* The Secretary considers a test in a student's native language for a student whose native language is not English to be an approved test under this subpart if—

(1) The Secretary has not approved any test in that native language;

(2) The test was not previously rejected for approval by the Secretary;

(3) The test measures both basic verbal and quantitative skills at the secondary school level; and

(4) The passing scores and the methods for determining the passing scores are fully documented.

(Authority: 20 U.S.C. 1091(d))

§ 668.150 Agreement between the Secretary and a test publisher.

(a) If the Secretary approves a test under this subpart, the test publisher must enter into an agreement with the Secretary that contains the provisions set forth in paragraph (b) of this section before an institution may use the test to determine a student's eligibility for Title IV, HEA program funds.

(b) The agreement between a test publisher and the Secretary provides that the test publisher shall—

(1) Allow only test administrators that it certifies to give its test;

(2) Certify test administrators who have—

(i) The necessary training, knowledge, and skill to test students in accordance with the test publisher's testing requirements; and

(ii) The ability and facilities to keep its test secure against disclosure or release;

(3) Decertify a test administrator for a period that coincides with the period for which the publisher's test is approved if the test publisher finds that the test administrator—

(i) Has repeatedly failed to give its test in accordance with the publisher's instructions;

(ii) Has not kept the test secure;

(iii) Has compromised the integrity of the testing process; or

(iv) Has given the test in violation of the provisions contained in § 668.151;

(4) Score a test answer sheet that it receives from a test administrator;

(5) If a computer-based test, provide the test administrator with software that will:

(i) Immediately generate a score report for each test taker;

(ii) Allow the test administrator to send to the test publisher a secure write-protected diskette copy of the test taker's performance on each test item and the test taker's test scores; and

(iii) Prohibit any changes in test taker responses or test scores.

(6) Promptly send to the student and the institution the student indicated he or she is attending or scheduled to attend a notice stating the student's score for the test and whether or not the student passed the test;

(7) Keep for a period of three years each test answer sheet or electronic record forwarded for scoring and all other documents forwarded by the test administrator with regard to the test;

(8) Three years after the date the Secretary approves the test and for each subsequent three-year period, analyze the test scores of students to determine whether the test scores produce any irregular pattern that raises an inference that the tests were not being properly administered, and provide the Secretary with a copy of this analysis; and

(9) Upon request, give the Secretary, a guaranty agency, or an accrediting agency access to test records or other documents related to an audit, investigation, or program review of the institution, test publisher, or test administrator.

(c)(1) The Secretary may terminate an agreement with a test publisher if the test publisher fails to carry out the terms of the agreement described in paragraph (b) of this section.

(2) Before terminating the agreement, the Secretary gives the test publisher the opportunity to show that it has not failed to carry out the terms of its agreement.

(3) If the Secretary terminates an agreement with a test publisher under this section, the Secretary notifies institutions through publication in the Federal Register when they may no longer use the publisher's test(s) for purposes of determining a student's eligibility for Title IV, HEA program funds.

(Authority: 20 U.S.C. 1091(d))

§ 668.151 Administration of tests.

(a)(1) To establish a student's eligibility for Title IV, HEA program funds under this subpart, if a student has not passed an approved state test, under § 668.143, an institution must select a certified test administrator to give an approved test.

(2) An institution may use the results of an approved test to determine a student's eligibility to receive Title IV, HEA programs funds if the test was independently administered and properly administered.

(b) The Secretary considers that a test is independently administered if the test is—

(1) Given at an assessment center by a test administrator who is an employee of the center; or

(2) Given by a test administrator who—

(i) Has no current or prior financial or ownership interest in the institution, its affiliates, or its parent corporation, other than the interest obtained through its agreement to administer the test, and has no controlling interest in any other educational institution;

(ii) Is not a current or former employee of or consultant to the institution, its affiliates, or its parent corporation, a person in control of another institution, or a member of the family of any of these individuals;

(iii) Is not a current or former member of the board of directors, a current or former employee of or a consultant to a member of the board of directors, chief executive officer, chief financial officer of the institution or its parent corporation or at any other institution, or a member of the family of any of the above individuals; and

(iv) Is not a current or former student of the institution.

(c) The Secretary considers that a test is not independently administered if an institution—

(1) Compromises test security or testing procedures;

(2) Pays a test administrator a bonus, commission, or any other incentive based upon the test scores or pass rates of its students who take the test;

(3) Otherwise interferes with the test administrator's independence or test administration.

(d) The Secretary considers that a test is properly administered if the test administrator—

(1) Is certified by the test publisher to give the publisher's test;

(2) Administers the test in accordance with instructions provided by the test publisher, and in a manner that ensures the integrity and security of the test;

(3) Makes the test available only to a test-taker, and then only during a regularly scheduled test;

(4) Secures the test against disclosure or release;

(5) Submits the completed test to the test publisher within two business days after test administration in accordance with the test publisher's instructions; and

(6) Upon request, gives the Secretary, guaranty agency, licensing agency, accrediting agency, and law enforcement agencies access to test records or other documents related to an audit, investigation, or program review of the institution, or test publisher.

(e) Except as provided in § 668.152, a certified test administrator may not score a test.

(f) A student who fails to pass a test approved under this subpart may not retake the same form of the test for the period prescribed by the test's publisher.

(g) An institution shall maintain a record for each student who took a test under this subpart of—

(1) The test taken by the student;

(2) The date of the test; and

(3) The student's scores as reported by the test publisher, assessment center, or State.

(Authority: U.S.C. 1091(d))

§ 668.152 Administration of tests by assessment centers.

(a)(1) If a test is given by an assessment center, the assessment center shall properly administer the test as described in § 668.151(d).

(b)(1) Unless an agreement between a test publisher and an assessment center indicates otherwise, an assessment center scores the tests it gives and promptly notifies the institution and the student of the student's score on the test and whether the student passed the test.

(2) If the assessment center scores the test, it must provide annually to the test publisher—

(i) All copies of completed tests; or

(ii) A report listing all test-takers' scores and institutions to which the scores were sent.

(Authority: U.S.C. 1091(d))

§ 668.153 Administration of tests for students whose native language is not English or for persons with disabilities.

Except as provided in § 668.143—

(a) *Students whose native language is not English.* For a student whose native language is not English and who is not fluent in English, the institution shall use the following tests, as applicable:

(1) If the student is enrolled in a program conducted entirely in his or her native language, the student must take a test approved under §§ 668.146 and 668.148(a)(2), or 668.149(b).

(2) If the student is enrolled in a program that is taught in English with an ESL component, and the student is enrolled in that program and the ESL component, the student must take either an ESL test approved under § 668.148(b), or a test in the student's native language approved under §§ 668.146, 668.148 or 668.149.

(3) If the student is enrolled in a program that is taught in English without an ESL component, or the student does not enroll in the ESL component if the institution offers such a component, the student must take a test in English approved under § 668.146.

(4) If the student enrolls in an ESL program, the student must take an ESL test approved under § 668.148(b); and

(b) *Persons with disabilities.* (1) An institution shall use a test described in § 668.148(a)(3) or 668.149(a) for a student with a documented impairment who has neither a high school diploma nor its equivalent and who is applying for Title IV, HEA program funds.

(2) The test must reflect the student's skills and general learned abilities rather than reflect the student's impairment.

(3) The institution shall document that a student is disabled and unable to be evaluated by the use of a conventional test from the list of tests approved by the Secretary.

(4) Documentation of a student's impairment may be satisfied by—

(i) A written determination, including a diagnosis and recommended testing accommodations, by a licensed psychologist or medical physician; or

(ii) A record of such a determination by an elementary or secondary school or a vocational rehabilitation agency, including a diagnosis and recommended testing accommodations.

(Authority: U.S.C. 1091(d))

§ 668.154 Institutional accountability.

An institution shall be liable for the Title IV, HEA program funds disbursed to a student whose eligibility is determined under this subpart only if the institution—

(a) Used a test administrator who was not independent of the institution at the time the test was given;

(b) Compromises the testing process in any way; or

(c) Is unable to document that the student received a passing score on an approved test.

(Authority: U.S.C. 1091(d))

§ 668.155 Transitional rule for the 1996–97 award year.

(a) Notwithstanding any other provision of this part, an institution may continue to base an eligibility determination under section 484(d) of the HEA for a student on a test that was an approved test as of June 30, 1996, and the passing score on that test, until 60 days after the Secretary publishes in the Federal Register the name of an approved test and the passing score on that test that is appropriate for that student.

(b) If an institution properly based a student's eligibility determination for purposes of section 484(d) of the HEA on a test and passing score that was in effect on June 30, 1996, the institution does not have to redetermine the student's eligibility based upon a test and passing score that was approved under §§ 668.143 through 668.149.

(Authority: U.S.C. 1091(d))

§ 668.156 Approved State process.

(a)(1) A State that wishes the Secretary to consider its State process as an alternative to achieving a passing score on an approved, independently administered test for the purpose of determining a student's eligibility for Title IV, HEA program funds must apply to the Secretary for approval of that process.

(2) To be an approved State process, the State process does not have to include all the institutions located in that State, but must indicate which institutions are included.

(b) The Secretary approves a State's process if—

(1) The State administering the process can demonstrate that the students it admits under that process without a high school diploma or its equivalent, who enroll in participating institutions have a success rate as determined under paragraph (h) of this section that is within 95 percent of the success rate of students with high school diplomas; and

(2) The State's process satisfies the requirements contained in paragraphs (c) and (d) of this section.

(c) A State process must require institutions participating in the process to provide each student they admit without a high school diploma or its recognized equivalent with the following services—

(1) Orientation regarding the institution's academic standards and requirements, and student rights;

(2) Assessment of each student's existing capabilities through means other than a single standardized test;

(3) Tutoring in basic verbal and quantitative skills, if appropriate;

(4) Assistance in developing educational goals;

(5) Counseling, including counseling regarding the appropriate class level for that student given the student's individual's capabilities; and

(6) Follow-up by teachers and counselors regarding the student's classroom performance and satisfactory progress toward program completion.

(d) A State process must—

(1) Monitor on an annual basis each participating institution's compliance with the requirements and standards contained in the State's process;

(2) Require corrective action if an institution is found to be in noncompliance with the State process requirements; and

(3) Terminate an institution from the State process if the institution refuses or fails to comply with the State process requirements.

(e)(1) The Secretary responds to a State's request for approval of its State's process within six months after the Secretary's receipt of that request. If the Secretary does not respond by the end of six months, the State's process becomes effective.

(2) An approved State process becomes effective for purposes of determining student eligibility for Title IV, HEA program funds under this subpart six months after the date on which the State submits the process to the Secretary for approval, if the Secretary approves, or does not disapprove, the process during that six month period.

(f) The Secretary approves a State process for a period not to exceed five years.

(g)(1) The Secretary withdraws approval of a State process if the Secretary determines that the State process violated any terms of this section or that the information that the State submitted as a basis for approval of the State process was inaccurate.

(2) The Secretary provides a State with the opportunity to contest a finding that the State process violated any terms of this section or that the information that the State submitted as a basis for approval of the State process was inaccurate.

(h) The State shall calculate the success rates as referenced in paragraph (b) of this section by—

(1) Determining the number of students with high school diplomas who, during the applicable award year described in paragraph (i) of this section, enrolled in participating institutions and—

(i) Successfully completed education or training programs;

(ii) Remained enrolled in education or training programs at the end of that award year; or

(iii) Successfully transferred to and remained enrolled in another institution at the end of that award year;

(2) Determining the number of students with high school diplomas who enrolled in education or training programs in participating institutions during that award year;

(3) Determining the number of students calculated in paragraph (h)(2) of this section who remained enrolled after subtracting the number of students who subsequently withdrew or were expelled from participating institutions and received a 100 percent refund of their tuition under the institutions' refund policies;

(4) Dividing the number of students determined in paragraph (h)(1) of this section by the number of students determined in paragraph (h)(3) of this section;

(5) Making the calculations described in paragraphs (h)(1) through (h)(4) of this section for students without a high school diploma or its recognized equivalent who enrolled in participating institutions.

(i) For purposes of paragraph (h) of this section, the applicable award year is the latest complete award year for which information is available that immediately precedes the date on which the State requests the Secretary to approve its State process, except that the award year selected must be one of the latest two completed award years preceding that application date.

(Authority: 20 U.S.C. 1091(d))

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Part X

Department of Housing and Urban Development

24 CFR Part 81

The Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) Regulations; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 81

[Docket No. FR–3481–F–03]

RIN 2501–AB56

The Secretary of HUD's Regulation of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac)

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule implements the Secretary's regulatory authorities respecting the Federal National Mortgage Association (''Fannie Mae'') and the Federal Home Loan Mortgage Corporation (''Freddie Mac'') (collectively the ''Government-Sponsored Enterprises'' or ''GSEs'') under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (''FHEFSSA''). FHEFSSA's purpose is to establish a new regulatory framework for the GSEs that reflects their unique status as shareholder-owned corporations that receive substantial public benefits. FHEFSSA substantially overhauled the regulatory authorities and structure for GSE regulation and required the issuance of this rule.

FHEFSSA directs the Secretary to establish three separate housing goals for the GSEs' mortgage purchases financing: housing for low- and moderate-income families; housing located in central cities, rural areas, and other underserved areas; and special affordable housing to meet the unaddressed needs of low-income families in low-income areas and very-low-income families. Under this rule, the Secretary sets the level of each goal and specifies the requirements for counting mortgage purchases toward meeting the goals. The rule also includes procedures for monitoring and enforcing performance under the goals.

In addition, FHEFSSA requires the Secretary to prohibit discrimination by the GSEs in their mortgage purchases and establishes new responsibilities for the Secretary and the GSEs with respect to the Fair Housing Act and the Equal Credit Opportunity Act. This rule implements these authorities. The rule also sets forth requirements for the Secretary's review and approval of new programs of the GSEs, GSE submission of mortgage purchase data and reports to the Secretary, the Secretary's dissemination of data and protection of proprietary information, and enforcement and other proceedings under this rule.

EFFECTIVE DATE: January 2, 1996, except that § 81.62(c) shall not be effective until April 1, 1996, so that the first mortgage report required to be submitted by the GSEs under that section will cover mortgage purchases through the second quarter of 1996 and will not be due until September 1, 1996.

FOR FURTHER INFORMATION CONTACT: Janet Tasker, Director, Office of Government-Sponsored Enterprises, Room 6154, telephone (202) 708–2224; or, for questions on data or methodology, Harold Bunce, Director, Financial Institutions Regulation, Office of Policy Development and Research, Room 8204, telephone (202) 708–2770; or, for legal questions, Kenneth A. Markison, Assistant General Counsel for Government Sponsored Enterprises/RESPA, Office of the General Counsel, Room 9262, telephone (202) 708–3137. The address for all of these persons is: Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. A telecommunications device for deaf persons (TDD) is available at (202) 708–9300. (The telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), as implemented by OMB in regulations at 5 CFR part 1320. No person may be required to respond to, or may be subjected to a penalty for failure to comply with, these information collection requirements until they have been approved and HUD has announced the assigned OMB control number. The OMB control number, when assigned, will be announced by separate notice in the Federal Register. In accordance with § 1320.11(h) of the implementing regulations, OMB has 60 days from today's publication date in which to approve, disapprove, or instruct HUD to make a change to the information collection requirements in this rule.

The final rule addresses comments submitted to OMB and HUD on the collection of information requirements in the proposed rule. In addition, HUD has consulted with members of the public and affected agencies regarding these collections of information. In revising the requirements from those that appeared in the proposed rule, HUD has evaluated the necessity and usefulness of the collection of information; reevaluated HUD's estimate of the information collection burden, including the validity of the underlying methodology and assumptions; and minimized the burden on respondents for the information collection requirements, to the extent compatible with the Secretary's responsibilities under the authorizing statute. This final rule provides for the use of electronic collection techniques.

General

Purpose

This final rule establishes new regulations implementing the Secretary of Housing and Urban Development's (''the Secretary's'') authority to regulate the GSEs. The authority exercised by the Secretary is established under:

(1) The Federal National Mortgage Association Charter Act (''Fannie Mae Charter Act''), which is Title III of the National Housing Act, section 301 *et seq.* (12 U.S.C. 1716 *et seq.*);

(2) The Federal Home Loan Mortgage Corporation Act (''Freddie Mac Act''), which is Title III of the Emergency Home Finance Act of 1970, section 301 *et seq.* (12 U.S.C. 1451 *et seq.*);[1] and

(3) FHEFSSA, enacted as Title XIII of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992, and codified, generally, at 12 U.S.C. 4501–4641). FHEFSSA substantially changed the Secretary's authorities respecting the GSEs, requiring the Secretary to promulgate new regulations.

This rule implements these authorities and authorities under the Charter Acts, replaces the Secretary's current regulations governing Fannie Mae and, for the first time, establishes regulations governing Freddie Mac.

Background

Fannie Mae and Freddie Mac are congressionally chartered, shareholder-owned corporations that have been regulated by HUD since 1968 and 1989, respectively. The GSEs were chartered by Congress to:

(1) Provide stability in the secondary market for residential mortgages;

(2) Respond appropriately to the private capital market;

(3) Provide ongoing assistance to the secondary market for residential mortgages (including activities relating to mortgages on housing for low- and moderate-income families involving a

[1] This rule refers to the Fannie Mae Charter Act and the Freddie Mac Act collectively as the ''Charter Acts.''

reasonable economic return that may be less than the return earned on other activities) by increasing the liquidity of mortgage investments and improving the distribution of investment capital available for residential mortgage financing; and

(4) Promote access to mortgage credit throughout the Nation (including central cities, rural areas, and other underserved areas) by increasing the liquidity of mortgage investments and improving the distribution of investment capital available for residential mortgage financing.[2]

In exchange for carrying out their public purposes, the GSEs enjoy substantial public benefits not provided to other private corporations in the secondary mortgage market, which include: (1) Conditional access to a $2.25 billion line of credit from the U.S. Treasury; [3] (2) exemption from securities registration requirements of the Securities and Exchange Commission and the States; [4] and (3) exemption from all State and local taxes, except property taxes.[5] In addition to these benefits, the GSEs enjoy the implicit benefit of the financial market's assumption that, even though no Federal guarantee exists,[6] should a GSE fail to meet its obligations, the Federal Government and, ultimately, the American taxpayer would stand behind the obligations of the GSEs. As a result of their Government-sponsored status, the GSEs borrow at approximately the same rates as the Department of Treasury,[7] and their cost of doing business is less than that of other competitors in the mortgage market. In return for the substantial benefits that the GSEs receive, they are expected to serve certain public purposes, and are subject to congressionally imposed limitations on their undertakings and to HUD's regulation.

Provisions of FHEFSSA

Because Congress perceived a need to increase protection to the taxpayers from any potential financial losses or risks posed by the GSEs, FHEFSSA established an independent financial regulator within HUD—the Office of Federal Housing Enterprise Oversight (OFHEO)—which is responsible for the financial safety and soundness of the GSEs.

At the same time, to assure that the GSEs accomplish their public purposes, Congress clarified and expanded the Secretary's specific powers and authorities respecting the GSEs. FHEFSSA provides that, except for the authority of the Director of OFHEO over all matters related to financial safety and soundness, the Secretary has general regulatory power over the GSEs and is required to make all rules and regulations necessary to ensure that the purposes of FHEFSSA and the Charter Acts are carried out.[8]

FHEFSSA specifically requires the Secretary to establish, monitor, and enforce three separate goals for the GSEs' mortgage purchases on:

(1) Housing for low- and moderate-income families (Low- and Moderate-Income Housing Goal);

(2) Housing located in central cities, rural areas, and other underserved areas (Geographically Targeted Goal); and

(3) Special affordable housing meeting the ''unaddressed housing needs of low-income families in low-income areas and very low-income families'' (Special Affordable Housing Goal).

Under FHEFSSA, the Secretary is to establish each of the housing goals after consideration of certain statutorily prescribed factors relevant to the particular goal. The Secretary's findings concerning each of these factors are set forth in the appendices to this rule, which are published in today's Federal Register after the text of the rule. These appendices will not be codified in the Code of Federal Regulations.

FHEFSSA also establishes new fair lending requirements for the GSEs. Under FHEFSSA, the Secretary must, by regulation, prohibit the GSEs from discriminating in their mortgage purchases because of ''race, color, religion, sex, handicap, familial status, age, or national origin, including any consideration of age or location of the dwelling or the age of the neighborhood or census tract where the dwelling is located in a manner that has a discriminatory effect.'' [9] The Secretary must also:

(1) By regulation, require the GSEs to submit data to assist the Secretary in investigating whether a mortgage lender has failed to comply with the Fair Housing Act and the Equal Credit Opportunity Act (''ECOA'');

(2) Obtain and make available to the GSEs information from other regulatory and enforcement agencies on violations by lenders of the Fair Housing Act and ECOA;

(3) Direct the GSEs to take various remedial actions against lenders found to have engaged in discriminatory lending practices in violation of the Fair Housing Act or ECOA; and

(4) Periodically review and comment on the GSEs' underwriting and appraisal guidelines, to ensure that the guidelines are consistent with the Fair Housing Act and FHEFSSA.

FHEFSSA also details the Secretary's authority to review and approve new programs of the GSEs and establishes procedures under which the GSEs may contest determinations on new program requests. FHEFSSA maintains the Secretary's authority to require reports from the GSEs on their activities and requires the GSEs to submit detailed, specific data on their mortgage purchases. FHEFSSA assigns the Secretary other responsibilities, including establishing a public-use database containing data gathered from the GSEs on mortgage purchases, and protecting proprietary information provided by the GSEs. FHEFSSA terminates the former regulations governing Fannie Mae and requires that the Secretary issue new regulations governing both GSEs.

Transition Period

FHEFSSA established a transition period of calendar years 1993 and 1994, to provide time for the Secretary to collect data and implement FHEFSSA's provisions. For the transition period, FHEFSSA established targets for mortgage purchases by the GSEs on housing for low- and moderate-income families and housing located in central cities, rural areas, and other underserved areas. For the transition years, the targets for both of these goals were set at 30 percent of the GSEs' mortgage purchases. The target amounts were the same as the percentage goals established under HUD's Fannie Mae regulations, which were originally promulgated in 1979 and codified under the former Fannie Mae regulations in 24 CFR part 81. During the transition, only mortgages located in central cities, as designated by the Office of Management and Budget (OMB), counted toward the Geographically Targeted Goal. FHEFSSA required that the Secretary establish interim goals to improve the GSEs' performance relative to these targets, so that the GSEs would meet the targets by the end of the transition

[2] Sections 301(b) of the Freddie Mac Act and 301 of the Fannie Mae Charter Act.

[3] Sections 306(c)(2) of the Freddie Mac Act and 304(c) of the Fannie Mae Charter Act.

[4] Sections 306(g) of the Freddie Mac Act and 304(d) of the Fannie Mae Charter Act.

[5] Sections 303(e) of the Freddie Mac Act and 309(c)(2) of the Fannie Mae Charter Act.

[6] The GSEs' obligations are not guaranteed by the United States. See, e.g., sections 1302(4), 1381(f), and 1382(n) of FHEFSSA (requiring each GSE to state in its obligations and securities that such obligations and securities ''are not guaranteed by the United States'').

[7] Congressional Budget Office, *Controlling the Risks of Government-Sponsored Enterprises*, at 10 (April 1991).

[8] Section 1321 of FHEFSSA.

[9] Section 1325(1).

period. FHEFSSA also established specific dollar amounts for purchases by the GSEs of mortgages under the Special Affordable Housing Goal. For the transition years, the legislative history of FHEFSSA indicates that the goal should be higher than the GSEs' 1992 performance.

Interim Notices

As required by FHEFSSA, on October 13, 1993, the Secretary published notices of interim housing goals establishing requirements necessary to implement the transition housing goals;[10] the GSEs reviewed and commented on the notices prior to publication.

The Interim Notice for Fannie Mae established that, of the dwelling units financed by Fannie Mae's mortgage purchases: (1) In 1993 and 1994, 30 percent should be affordable to low- and moderate-income families; (2) in 1993, 28 percent and, in 1994, 30 percent should be located in central cities; and (3) during the 1993–94 period, at least $16.4 billion in mortgages should meet the Special Affordable Housing Goal.

The Interim Notice for Freddie Mac established that, of the dwelling units financed by Freddie Mac's mortgage purchases: (1) In 1993, 28 percent and, in 1994, 30 percent should be affordable to low- and moderate-income families; (2) in 1993, 26 percent and, in 1994, 30 percent should be located in central cities; and (3) during the 1993–94 period, at least $11.9 billion in mortgages should meet the Special Affordable Housing Goal.

In late 1994, when it became apparent that this rulemaking would not be completed in time to establish new housing goals for 1995, the Secretary issued a final regulation extending the 1994 goals for both GSEs into 1995.[11]

The Proposed Rule

On February 16, 1995 (60 FR 9154), HUD published a proposed rule to implement the Secretary's authorities under FHEFSSA and the Charter Acts. The proposed rule raised the level of the goals. It also provided that, in accordance with FHEFSSA, the Geographically Targeted Goal would be expanded to include rural and other underserved areas, and that the goal would be directed to the underserved portions of these areas. The proposal reformulated the categories of the Special Affordable Housing Goal and proposed new counting requirements based on experience gained in the transition period. The proposed rule also would have established procedures for review of new programs, detailed prohibitions against discrimination, scaled back reporting requirements from the former Fannie Mae regulations and the Interim Notices, and included detailed requirements for book entry of GSE securities and procedures under FHEFSSA.

Final Rule

In response to the proposed rule, HUD received 163 comments. The comments came from the GSEs; individuals; representatives of lending institutions, community, and consumer groups; Members of Congress; local and State governments; and others. Following full consideration of the comments and discussions with the GSEs and outside entities, HUD developed this final rule. The final rule is consistent with the approach announced in the proposed rule, but includes significant revisions in light of the comments. The final rule:

(1) Establishes housing goals that are greater than those established under the regulations for the transition and will ensure that the GSEs continue and strengthen their efforts to carry out Congress's intent that the GSEs provide the benefits of a secondary market to families throughout the Nation;

(2) Requires the GSEs to take appropriate steps to facilitate fair housing for all citizens, recognizing the GSEs' leadership role in the lending industry without forcing the GSEs to act in an enforcement capacity better left to the Government;

(3) Establishes conditions and procedures by which the Secretary will exercise his or her statutory authority to review new programs of the GSEs, but in a manner that will not create a disincentive for the GSEs to be innovative in developing new mortgage finance initiatives;

(4) Implements reporting requirements for the GSEs that are not unduly burdensome and will allow the Secretary and Congress to monitor the GSEs' activities appropriately;

(5) Requires dissemination of information on the GSEs' activities to the public, while protecting the GSEs' legitimate commercial interests in proprietary data; and

(6) Establishes fair procedures for enforcement actions and other regulatory procedures under FHEFSSA.

Discussion Of Public Comments

Overview of the Public Comments

Of the 163 comments received, by far the most detailed were the submissions of the two directly affected GSEs—Fannie Mae and Freddie Mac. Each GSE submitted comments of more than 200 pages, supported by numerous appendices, exhibits, and footnotes. Although occasionally voicing approval of provisions of the proposed rule, the GSEs' comments, in the main, registered substantial opposition to key features.

In addition, comments were received from 26 national or regional industry-related groups or associations; 26 nonprofit organizations; 10 Members of Congress; 22 governors and mayors, 10 State and local agencies; 24 banks, lenders, or other real estate professionals; 40 individuals;[12] and 3 legal organizations. HUD reviewed and considered all of these comments in writing the final rule.

The portion of the rule most frequently discussed by the commenters was Subpart B—Housing Goals, some aspect of which attracted comments from 146 of the 163 commenters. Eighty-three of these comments reflected general approval of the proposed rule's approach to the goals. Fifty-three others were in opposition, in whole or in part, while 10 contained mixed statements of support and opposition.

Other major subject areas of the proposed rule (subpart C—Fair Housing, subpart D—New Program Approval,and Subpart E—Access to Information) attracted the attention of only a minority of the commenters. Fifty-five of the 62 commenters who addressed the new program approval provisions opposed them in whole or in part, with only 3 commenters setting out unqualified approval, and 4 others expressing a mixture of favorable and unfavorable comments.

Thirty commenters opposed one or more major elements of the rule's treatment of fair housing concerns, while 11 favored the rule. Two comments featured well-mixed supporting and opposing views. The majority of the institutional commenters and lenders who did address the issues of fair housing stated their opposition to the rule's treatment. Only among the nonprofit organizations did a majority of the commenters addressing the issue express support for the proposed rule's handling of the subject. Commenters often addressed Subpart E, Reporting Requirements, in the context of other statements pertaining to housing goals, fair housing, or both. Accordingly, the commenters' views on reporting are

[10] 58 FR 53048 and 53072.

[11] 59 FR 61504 (November 30, 1994).

[12] The 40 comments from individuals were form letters, signed by persons from several different States but containing identical information except for, in a few instances, written-in additional observations. These comments were limited to housing goals issues and generally favored, and recommended strengthening of, the rule.

largely included in the discussion of subparts B and C.

Only 10 commenters addressed the access to information issue. Of these, six (including the GSEs) were substantially opposed to the rule's provisions, while four supported the rule or urged stronger provisions in favor of broader public disclosure of GSE information.

In all subject areas, the GSEs' expressions of opposition to important features of the rule were backed by a majority of the national or regional industry associations submitting comments, as well as by commenters representing banks and other lenders. On the other hand, several associations expressed notable support for some of the same features.

A higher proportion of the commenting nonprofit organizations supported important aspects of the rule as proposed, although many of these commenters also opposed individual features of the proposal and offered suggestions for modifications or compromises that would accomplish similar aims. A number of nonprofit organizations also recommended further strengthening of the rule, especially as it relates to housing goals.

Comments from Governors and Mayors tended to concentrate on the goals. In general, these comments opposed the definitions in the proposed rule of ''central city,'' ''rural area,'' and other key terms that determine the transactions that count toward achievement of the housing goals. Twelve of the 22 State and local political leaders who commented expressed opposition to the program approval portions of the rule. The 10 comments from State and local governmental agencies focused largely on housing goals issues, but were more diverse in their views, with 5 agencies generally supporting the rule, 4 opposing significant portions of it, and 1 expressing a mixture of favorable and unfavorable comments.

Members of Congress submitting comments mainly addressed housing goals issues, with 6 of the 10 criticizing the rule. Six Members also opposed aspects of the new program approval subpart. Three Members voiced support for the proposed rule's approach to housing goals, and one expressed support for the rule's fair housing provisions.

A discussion of general and specific comments on the rule follows. HUD has read and considered all of the comments received from the public in developing this final rule. Although not all of the comments are addressed explicitly in this preamble, often because HUD's response is implicit in the general discussion of the rule or other comments or because the comments were minor, HUD acknowledges the value of all of the comments submitted in response to the proposed rule.

Other Public Input

In addition to the comments received, HUD sought information from the GSEs and other market participants to verify or revise assumptions and data HUD used in developing the rule. During this rulemaking, HUD held numerous meetings with the GSEs, lenders, developers, nonprofit groups, public-interest representatives, and other Federal agencies to discuss issues related to the rule, including the methodology used to establish market shares, current conditions in rural lending, and current conditions in the multifamily market. Additional information on these meetings is contained in the public docket file of this rule in Room 10276 at HUD Headquarters. HUD also conducted a series of detailed analyses of various technical issues raised in the comment letters. To assist in analyzing these issues, HUD contracted with researchers and academicians in universities and the private sector to carry out independent evaluations of HUD's methodology. HUD also consulted broadly with researchers and economists at other Government agencies, the GSEs, and housing trade groups to critique and refine the underlying analytical work used in establishing the housing goals.

Subpart A—General

Overview

The GSEs commented that various parts of the proposed rule were not legally sustainable because the Secretary's actions were, for example, ''unreasonable,'' ''arbitrary,'' ''capricious,'' ''not supported by a cogent rationale,'' ''in direct conflict with the plain meaning of the Act,'' or ''an improper exercise of the Secretary's discretion.'' HUD has carefully reviewed these concerns and applicable case law,[13] and has concluded that its exercise of regulatory authority in promulgating this final rule is, in all respects, well within the discretion accorded to HUD by Congress under FHEFSSA and is well-supported by ample evidence and considered reasoning.

Section 81.2—Definitions

Many of the definitions remain the same as in the proposed rule or have been modified for purposes of clarity only. This final rule, however, does change some definitions substantially in response to comments. This section of the preamble mainly discusses changes in definitions relating to housing goals. The preamble text concerning subpart D discusses the definition of ''new program'', and the text concerning subpart F discusses the definitions of ''proprietary information'' and ''public data''.

Contract Rent. Freddie Mac asked that the definition of ''contract rent'' be revised to allow the GSEs to decrease contract rent by the amount of any ''rent concessions.'' Supporting, generally, the rule's contract rent definition, Freddie Mac commented that: underwriting determinations are based on post-concession rents; Freddie Mac adheres to that general practice; and allowing rent concessions to be taken into account would materially increase affordability of some units.

Under FHEFSSA, the affordability of housing units and their eligibility for counting towards a goal is based on their rents. Rent concessions are relatively short-term in nature. Their consideration in calculating rents would result in unrealistically low levels of rent, considering that after the rent concession period ends, the rents are increased. Accordingly, it is not appropriate to consider rent concessions in defining or determining rent.

Dwelling unit. Freddie Mac objected to the inclusion of a definition for ''dwelling unit'' in the rule. Freddie Mac asserted that under section 302(h) of the Freddie Mac Act, which defines ''residential mortgage,'' Freddie Mac is authorized to define ''dwelling unit.''

Although Freddie Mac is authorized to define the term ''dwelling unit'' under the Freddie Mac Act, it is appropriate that this final rule define the term under FHEFSSA. The Secretary is charged with measuring the extent of compliance with the housing goals under section 1336 of FHEFSSA. Because FHEFSSA specifically authorizes the Secretary to consider units in formulating the goal, a definition of the term ''unit'' or ''dwelling unit'' is integral to counting GSEs' purchases toward achievement of the goals.

The GSEs also commented that, if ''dwelling unit'' is defined under the rule, the definition of ''dwelling unit'' should include the following types of housing: (1) A single-family dwelling with a home office; (2) dwelling units in an apartment complex with retail space or a day care center; and (3) single-room-occupancy buildings and group homes that may lack separate kitchens

[13] *See, e.g., Chevron, U.S.A., Inc.* v. *Natural Resources Defense Council,* 467 U.S. 837 (1984).

or bathrooms for each unit of residence. In response to this point, the definition of ''dwelling unit'' is changed in the final rule to include single room properties, dwellings that include offices, and dwellings located in mixed-use properties.

Median Income. Freddie Mac, addressing the Low- and Moderate-Income Goal, commented that the definition of ''median income'' should be revised to permit household income in nonmetropolitan areas to be measured against the greater of the county median income or the statewide nonmetropolitan median. Freddie Mac noted that ''the proposed rule would classify a borrower with an income of $12,000 living in a county with median income of $11,000 as 'upper income.''' The final rule (in § 81.15) clarifies that ''median income'' for families outside of metropolitan statistical areas (MSAs) means the greater of the county median income or the statewide nonmetropolitan median income for the area where the property is located.

Mortgages and Interests in Mortgages. The GSEs commented that, in tracking the Freddie Mac Act, the definition of ''mortgage'' appears to have dropped a line relating to interests in mortgages. Freddie Mac suggested adding to the rule's definition ''* * * and includes interests *in mortgages. Such term shall also include a mortgage, lien, or other security interest on* the stock or membership certificate.'' (Emphasis in original.)

FHEFSSA requires the Secretary to establish goals for the ''purchases of mortgages.'' The proposed and final rules specifically allow certain interests in mortgages, such as participations and credit enhancements, to count toward achievement of the goals, because these transactions are essentially the same as mortgage purchases. The final rule provides that ''interests in mortgages'' are mortgages and count toward achievement of the housing goals. Because defining mortgages to include all ''interests in mortgages'' is potentially over-inclusive and may encompass transactions or activities that are not equivalent and should not appropriately count toward achievement of the goals, the counting provisions in § 81.16(b) list specific types of transactions that do not count toward achievement of the goals, including certain ''interests in mortgages.''

Refinancing. Freddie Mac commented that, by excluding from the definition of ''refinancing'' the renegotiation of a multifamily mortgage when a balloon payment is due within one year, it is not clear whether the excluded activity is intended to be treated as a ''mortgage purchase.'' The final rule includes as new mortgages multifamily mortgages that have balloon payments due within 1 year after the date of closing of the renegotiated mortgages.

Very-low-Income. Freddie Mac commented that the term ''very-low-income'' should be defined consistently with certain other HUD regulations and programs. Freddie Mac noted that these programs' formulas for determining eligibility sets the ''very-low-income'' limit above 60 percent of the local area median income in 48 metropolitan areas and 1,502 nonmetropolitan counties with either unusually low income or unusually high housing costs. Freddie Mac urged HUD to create exceptions to the definition of ''very-low-income'' for multifamily projects benefiting from a Federal assistance program, where such projects are located in areas with either unusually low income or unusually high housing costs.

As part of the Special Affordable Housing Goal, Congress specifically required the Secretary to establish a housing subgoal that targets very-low-income families. Section 1303(19) of FHEFSSA defines ''very low-income'' as:

(1) In the case of owner-occupied units, income not in excess of 60 percent of area median income; and

(2) In the case of rental units, income not in excess of 60 percent of area median income, with adjustments for smaller and larger families, as determined by the Secretary.

In certain HUD programs the Secretary has statutory authority to make the type of adjustments that Freddie Mac has requested HUD to make under FHEFSSA. However, FHEFSSA does not provide similar authority. The only adjustments to the definition of ''very-low-income'' that are permissible under FHEFSSA are adjustments for smaller and larger families in the case of rental units.

Subpart B—Housing Goals

Overview

The greatest amount of controversy in the public comments centered on the housing goals. Fannie Mae and a number of commenters focused on the levels of the goals, the concept of ''leading the industry,'' and the methodology used to estimate the size of the conventional market for each of the goals. In its critique of the housing goals portion of the proposed rule, Freddie Mac advanced six major concerns: (1) The market estimates are flawed and will result in infeasible goals over time; (2) the proposed rule does not establish a link between identified housing needs and the housing goals; (3) HUD has not adequately taken market volatility into account in establishing the goals; (4) the GSEs' previous performance is incorrectly assessed; (5) the proposed rule presents too narrow a concept of leading the industry; and (6) the proposed rule does not adequately address the risks posed by increased levels of multifamily purchases. Freddie Mac also expressed concern that in establishing the goals as proposed, HUD would micromanage the type and location of the GSEs' mortgage purchases, severely limiting the GSEs' ability to respond to the market in a timely manner.

General comments on the housing goals are discussed in this section. More detailed analyses of some of these issues are presented in four technical appendices immediately following the text of the rule, as well as in an economic analysis of the rule prepared by HUD.

Levels of the Goals

Fannie Mae requested that the levels of the goals be set lower than in the proposed rule, commenting that the housing goals should be set at a ''reasonable and appropriate share'' of Fannie Mae's business. Fannie Mae also urged HUD to refrain from frequent adjustments in the goals and to avoid increasing the goals if Fannie Mae exceeded them. Similarly, Freddie Mac stressed the necessity of setting ''conservative'' goals that are capable of being met under a variety of economic conditions.

Both GSEs agreed that HUD had not adequately considered the impact that changes in national economic conditions could have on the size of the conventional, conforming market. The GSEs commented that HUD was assuming, in its market estimates, that the unusually favorable economic and housing market conditions of 1993–1994 would continue in the future.

A number of commenters, mainly representing public-interest organizations, asked for more aggressive goal-setting, urging that the levels of the goals were too low, given the benefits provided to the GSEs by virtue of their Federal charters, their current levels of performance, and the scope of the nation's housing problems.

Some commenters, primarily industry representatives, expressed concern with the proposed rule's stated intention to set future goals at higher levels. A number of commenters joined with the GSEs in recommending that goals remain stable over the long term and be imposed at reasonable levels that not

only assure the GSEs will increase their support of low- and moderate-income housing, but also reflect that economic conditions may influence the capacity of the GSEs to support such housing in any given year.

The GSEs held differing views on how far into the future the goals should be fixed. Fannie Mae commented that the goals should be fixed for a substantial period of time, to allow the GSEs to incorporate the goals into their long-range business plans and corporate strategies. Freddie Mac expressed serious doubt that meaningful goals could be established for a period more than two years into the future.

Under the rule, the following goals are established: the annual goal for each GSEs' purchases of mortgages on housing for low- and moderate-income families is—for 1996, 40 percent of the total number of dwelling units financed by that GSE's mortgage purchases in 1996 and, for each of the years 1997–99, 42 percent of the total number of dwelling units financed by that GSE's mortgage purchases in each of those years; the annual goal for each GSEs' purchases of mortgages on housing located in central cities, rural areas, and other underserved areas is—for 1996, 21 percent of the total number of dwelling units financed by that GSE's mortgage purchases in 1996 and, for each of the years 1997–99, 24 percent of the total number of dwelling units financed by that GSE's mortgage purchases in each of those years; and the annual goal for each GSEs' purchases of mortgages on special affordable housing is—for 1996, 12 percent of the total number of dwelling units financed by that GSE's mortgage purchases in 1996 and, for each of the years 1997–99, 24 percent of the total number of dwelling units financed by that GSE's mortgage purchases in each of those years; additionally, the special affordable housing goal for each of these years shall include mortgage purchases financing dwelling units in multifamily housing totalling not less than 0.8 percent of the dollar volume of mortgages purchased by the respective GSE in 1994. For 2000 and thereafter the Secretary shall establish new annual goals; pending establishment of goals for 2000 and thereafter, the annual goal for each of those years for each of the three goals shall be the same as the 1999 goals.

The levels of the housing goals established in this final rule meet the following objectives: they are reasonable and appropriate, they reflect consideration of the statutory factors for establishing housing goals, and they are set far enough into the future to allow the GSEs to engage in long-term planning.

First, the levels of the three housing goals are reasonable and appropriate, as summarized below in the discussion of each of the housing goals and detailed further in the appendices. The goals have been set judiciously in relation to reasonable estimates of the market share of the mortgages originated that would qualify under the goals. The levels of the goals also reflect the cyclical nature of the mortgage markets and the need to provide a margin for unforeseen macroeconomic impacts.

Second, the levels of the goals reflect a full consideration of all factors for consideration under FHEFSSA. The GSEs expressed concern that the process used by the Secretary for establishing the levels of the goals was too rigid, driven primarily by the market-share estimates for each of the goals. This concern is unfounded. In establishing the goals, the Secretary carefully considered the factors mandated by FHEFSSA. These factors, which encompass more than just the estimate of the market for each goal, include housing needs, the financial conditions of the GSEs, economic and demographic conditions, previous performance, and the GSEs' leadership role within the industry. The appendices that accompany this rule explain in detail the evaluation of these factors.

The levels of the goals represent a benchmark against which the GSEs' performance can be measured. The levels are designed to be standards, not ceilings. They are not so high that the GSEs are likely to fail to meet the goals. Instead, the levels of the goals represent a reasonable and appropriate share of the GSEs' business that—at a minimum—should be devoted to meeting the needs of lower-income renters and home buyers and of residents of areas underserved by the mortgage markets. The final rule has been revised to allow the GSEs maximum flexibility in choosing how they achieve the goals. The levels of the goals also reflect careful consideration of the concerns expressed by the GSEs and other commenters that economic and demographic conditions be taken into account. The levels of the goals have been set so that they should be attainable in economic conditions more adverse than those experienced in the past few years.

Third, HUD considered carefully the comments expressing concern about the future levels of the goals. To provide the GSEs with the predictability needed to manage their operations, the levels of the goals have been established for the next four years. The Secretary can, by regulation, change the level of the goals for the years 2000 and beyond based on the experience of the previous years. If the Secretary elects not to change them, they will be left at the 1999 levels for future years.

Leading the Industry

The proposed rule asserted that the GSEs have a responsibility because of their Federal charters to lead the industry in expanding housing opportunities for low-income home buyers and renters and for residents of underserved areas. The proposed rule requested comment on how the Secretary should consider ''leading the industry'' in establishing the levels of the housing goals.

Freddie Mac commented that the proposed rule's presentation of ''leading the industry'' was too narrow. Freddie Mac argued that HUD, in suggesting that leading the industry only be judged on percentage terms, ignored the GSEs' non-goal-related activities that provide stability and liquidity to the mortgage markets. Freddie Mac suggested that HUD should view industry leadership to include GSE activities that broaden the entire market, including ''pioneering innovation, the establishment of new business practices and programs, and the generation of market efficiencies.'' Further, HUD should evaluate the GSEs' charge to lead the industry in qualitative, and not just quantitative, terms.

Several industry commenters echoed Freddie Mac's concerns about considering ''leading the industry'' in merely percentage terms. They commented that Congress had included the ability of the GSEs to lead the industry as one of several factors to be considered. Further, they noted that leading the industry can be demonstrated in many ways beyond just the level of mortgage purchases. Reaching reasonable goals would be a component of leadership, the Mortgage Bankers Association (''MBA'') commented, but ''the attainment of steadily increasing benchmarks should not be regarded as a prerequisite for leadership.''

Other commenters differed with this approach. The National Training and Information Center (''NTIC'') commented that the proposed goals were ''too low'' and ''do not ensure that the GSEs will 'lead the market' in the production of affordable housing and housing in underserved areas.'' NTIC stated that, although the GSEs achieved the 1993 goals, the goals and the GSEs ''ha[d] not made a significant presence in these neighborhoods.'' The Los Angeles Housing Department argued

that the GSEs ought to purchase ''a higher percentage of mortgages than are originated by the market under each housing goal.''

The GSEs' efforts to create liquidity and stability in the mortgage markets, as well as the introduction of innovative products, technology, and processes, clearly demonstrate their leadership role within the industry. These activities have strengthened the mortgage industry and increased its ability to serve homeowners and renters of all incomes throughout the country. Congress chartered the GSEs to carry out four public purposes: (1) To provide stability; (2) to respond appropriately to the mortgage markets; (3) to assist the residential mortgage market, including serving low- and moderate-income families; and (4) to promote access to mortgage credit throughout the nation. In FHEFSSA, Congress acknowledged, as does HUD, the substantial contributions the GSEs have made and continue to make in creating liquidity and stability in the overall mortgage market. However, in FHEFSSA, Congress developed a mechanism to ensure that the GSEs served lower-income families and underserved areas. HUD, through its focus on the housing goals and performance-based measurements, is carrying out that congressional intent.

Purpose of the Goals

Freddie Mac commented that HUD had premised the proposed rule on the mistaken belief that the GSEs are not fulfilling their statutory purposes. Freddie Mac asserted that its 1993 and 1994 performance under the housing goals ''demonstrate[s] that Freddie Mac is strongly committed to fulfilling its obligation to serve [lower-income households and residents of specific areas].''

Both GSEs commented that a clear connection had not been established between the general housing needs of low- and moderate-income households and those needs that can be addressed by the GSEs. Freddie Mac stated that it is not a problem of availability of mortgage credit that dominates the unaddressed needs of low-income families, but a lack of sufficient incomes or subsidies to support homeownership or rental payments.

Freddie Mac expressed concern that the proposed rule was based upon a ''fundamental misinterpretation'' of what Congress had intended to achieve through FHEFSSA. Freddie Mac denied that FHEFSSA's passage reflected a congressional presumption that the GSEs had failed to serve lower-income households or certain geographic areas adequately.

Both GSEs suggested that the goals amounted to using the GSEs to allocate credit. Fannie Mae also suggested that the goals were being used to assign to the GSEs the responsibility for alleviating specific housing needs. Both GSEs argued that Congress had no such intent.

The GSEs' comments that the housing goals result in credit allocation by the Secretary are difficult to understand. Congress created the GSEs and provided them federally derived benefits to achieve national housing purposes. Congress also required the establishment of explicit goals for the GSEs' purchases of mortgages financing housing for lower-income households and in communities underserved by the mortgage markets. Congress created the GSEs to develop liquidity and stability in the mortgage markets, and Congress specifically charged the GSEs to provide credit to low- and moderate-income households and to all areas. Congress clearly believed that doing so was not inconsistent with the GSEs' operation as profitmaking, shareholder-owned entities.

Criticism that HUD failed to establish a clear connection between identified housing needs and the proposed housing goals reflects a misunderstanding of the requirements placed on the Secretary by FHEFSSA. FHEFSSA directs the Secretary to establish the housing goals after analyzing a number of factors, including national housing needs. HUD's analysis, set forth in the appendices, describes the decline in homeownership rates and the loss of affordable rental stock, and provides background information on the current state of the nation's housing needs. These analyses are not designed as a blueprint for the GSEs' achievement of the housing goals. Nor do they suggest that all those needs identified can or should be met through GSE activities. These analyses do, however, set forth the bases for establishing these goals.

Credit Risk of Multifamily Purchases

Freddie Mac commented that the proposed rule had not adequately addressed the higher credit risk it might face in meeting higher housing goals. Freddie Mac claimed that it would have to purchase ''significantly higher levels'' of multifamily mortgages, a business with a different and higher level of risk than single-family lending. Further, Freddie Mac argued that any additional losses it might experience in order to achieve higher goals would be a direct subsidy on the part of Freddie Mac—something not required by FHEFSSA.

HUD agrees that multifamily financing is a different business than single-family financing, posing a different level of risk. In considering the issue of credit quality in the multifamily market, HUD finds it instructive to compare the levels of activity between the two GSEs. In 1994, Fannie Mae purchased five times as many multifamily mortgages as Freddie Mac. Even after factoring in the relative sizes of the businesses of each GSE—Fannie Mae's overall dollar volume of business is about 25 percent larger than Freddie Mac's—a substantial disparity still exists. Fannie Mae's significantly greater volume of multifamily purchases has not impaired the company's financial health. Further, the economic analysis prepared for this rule does not support the argument that the goals will expose the GSEs to unacceptably high levels of credit risk. Sufficient investment-quality opportunities exist in the marketplace to allow Freddie Mac to achieve all of the housing goals without resorting to the purchase of riskier mortgages.

HUD recognizes that Freddie Mac experienced losses on its multifamily business in the late 1980s, in part because of flawed corporate oversight mechanisms, resulting in Freddie Mac's withdrawal from the multifamily market. However, half a decade has passed since that experience, providing Freddie Mac with sufficient time to develop a multifamily business. Indeed, Freddie Mac has publicly committed itself to this market. Leland Brendsel, Chairman and Chief Executive Officer of Freddie Mac, articulated the GSE's attitude toward this market segment, noting that ''our re-entry into the multifamily market [is] * * * our most important next step in meeting our nation's housing needs. We are committed to having the right people, programs, and systems in place so that our multifamily mortgage purchases will be sustainable over the long term.'' [14] HUD accepts as sincere Freddie Mac's repeated public statements and representations that it is committed to a long-term, meaningful role in the multifamily market; the housing goals take that commitment into account.

[14] Prepared statement of Leland C. Brendsel before the Subcommittee on General Oversight, Investigations, and the Resolution of Failed Financial Institutions of the Committee on Banking, Finance and Urban Affairs, U.S. House of Representatives, April 20, 1994, pp. 4–5.

Market Estimates in Establishing the Goals

In establishing the goals, the Secretary is required to assess, among a number of factors, the size of the conventional market for each goal. HUD developed a straightforward technique for estimating the size of the conventional conforming market for each of the goals. This technique draws on the existing major sources of data on mortgage market activity.

Both GSEs expressed strong criticism of HUD's use of specific data elements in constructing its estimates of market size; for example, estimates of the proportion of 1- to 4-unit rental properties or the levels of multifamily originations. Although both GSEs criticized how data had been interpreted in HUD's market-share models, neither GSE, nor any other commenter, objected to HUD's basic model for calculating the size of the markets relevant to each of the housing goals. However, Freddie Mac provided a detailed set of objections to the use of certain data sources or assumptions, concluding that HUD's market estimates were ''fatally flawed.'' Fannie Mae argued that market estimates employed by HUD ''created an artificial market description based on interpretations of the data available to [HUD], which are not consistent.'' Fannie Mae commented that the Secretary deliberately selected existing data interpretations to yield higher goals. Several other commenters, all industry trade groups, also criticized aspects of HUD's market-share estimates.

Freddie Mac maintained that the flaws in HUD's estimation process would result in goals that were too high, because HUD had overestimated the size of the rental market. Freddie Mac presented a comparison of available market-share estimates, explained deficiencies it believed were present in the data employed by HUD, and claimed that HUD had chosen the least-favorable of the databases that could have been employed in reckoning appropriate goals for the GSEs.

Both GSEs argued that the role of multifamily financing in the mortgage market was consistently overstated in the proposed rule. Freddie Mac provided data to support its assertion that the rule's estimates of multifamily originations overstated both the total amount of originations to be expected and the degree to which multifamily originations are available to the secondary market.

Both GSEs commented that HUD's analysis ignored the impact that changes in national economic conditions can have on the size of the mortgage market. The GSEs noted that their recent efforts to expand the reach of the secondary market in support of lower-income households were assisted by highly favorable interest rates and economic conditions that will likely not persist. Several commenters suggested that HUD consider more fully the impact of changing economic conditions.

In considering the levels of the goals, HUD examined carefully the comments on the methodology used to establish the market share for each of the goals. HUD contracted with the Urban Institute to conduct an independent review that drew upon its resources of well-respected academicians and others in evaluating HUD's methodology. Based on that thorough evaluation, as well as HUD's additional analysis, the basic methodology employed by HUD is a reasonable and valid approach to estimating market share, and Freddie Mac's claim that the methodology is ''fatally flawed'' is without merit.

HUD agrees that a comprehensive source of information on mortgage markets is not available. HUD considered and analyzed a number of data sources for the purpose of estimating market size, because no single source could provide all the data elements needed. In the appendices, HUD has carefully defined the range of uncertainty associated with each of these data sources and has conducted sensitivity analyses to show the effects of various assumptions. Technical papers prepared by the Urban Institute and other academicians support HUD's analysis.

A number of technical changes have been made in response to the comments and the evaluation by outside experts, but the approach for determining market size has not been modified substantially. The detailed evaluations show that the methodology, as modified, produces reasonable estimates of the market share for each goal.

In response to concerns expressed about the volatility of the mortgage markets over time, HUD has taken three steps with regard to the methodology. First, HUD conducted detailed sensitivity analyses for each of the housing goals to reflect economic conditions that are less conducive to homeownership than those that existed during 1993 and 1994. Second, HUD elaborated further on the impact of increased interest rates on long-term affordability and the ability of lower-income households to become homeowners. Third, with regard to volatility in the multifamily market, the Urban Institute, at HUD's request, designed a ''steady-state'' multifamily originations model that produces an alternative means of estimating multifamily originations. This alternative model is designed to generate conservative forecasts of future multifamily loan originations because it omits refinancing activity and balloon loans due to mature in the next several years. This model is less sensitive to year-to-year fluctuations in the historical volume of mortgage originations.

Criticism of the methodology focused, in part, on the estimated size of the multifamily market. The GSEs proposed that HUD use the volume of originations as reported in the Home Mortgage Disclosure Act (''HMDA'') database—$15 billion in 1994—as the accurate number of multifamily originations, as opposed to HUD's $30 billion estimate derived from other data sources. Four of the studies HUD commissioned from the Urban Institute considered various aspects of the multifamily market. HUD also consulted with experts at the Federal Reserve Board, at the Bureau of the Census, and in industry trade groups to assist HUD in carefully evaluating the GSEs' claim that HMDA data provide an accurate number of total multifamily originations.

HUD found a consensus that HMDA data underreports multifamily originations. HMDA, alone, is not an accurate survey of the total market; it was not designed to be one. It includes only information reported by a subset of institutions that originate multifamily loans: large commercial banks, thrifts, and mortgage bankers in metropolitan areas. In addition, HMDA underestimates multifamily lending by both mortgage bankers and commercial banks. The additional analyses conducted in response to the comments support the $30 billion multifamily estimate used by HUD.

Three-Year Rolling Average

Fannie Mae and an industry commenter suggested that HUD measure performance against each goal using a 3-year rolling average. Fannie Mae contended that a 3-year average ''will ameliorate the difficulty that can arise in managing to a specific goal when major factors in the marketplace that are outside of our control can heavily influence our ability to manage to a specific goal level.''

FHEFSSA and the legislative history do not support use of a 3-year rolling average. Instead, they provide a scheme whereby the Secretary is to set goals for each year and performance is to be evaluated during and at the end of each year by the Secretary. FHEFSSA provides that the housing goals are

''annual'' goals. Moreover, if the Secretary determines that there is a substantial probability that the GSE will fail to meet a goal ''*in the current year*'' and a housing plan is required, the housing plan is to describe the actions the GSE will take ''to make such improvements as are reasonable in the remainder of such year.'' [15] Similarly, if the Secretary determines that a GSE has failed to meet a housing goal, the requisite housing plan is to describe the actions the GSE will take ''to achieve the goal for the next calendar year.'' [16] The legislative history also refers to the goals as annual goals.[17]

Interpreting the statute to allow the use of a 3-year rolling average, instead of an annual goal with performance assessed by whether the GSE meets each year's individual goal, would render the statutory provisions insignificant or inoperative. Such a structure would ignore an ''elementary rule of [statutory] construction that effect must be given, if possible, to every word clause and sentence of a statute.'' [18] Accordingly, the Secretary has determined that using a 3-year rolling average was not intended by or permitted under FHEFSSA and, therefore, the final rule contains annual goals. Fannie Mae's root concern—that macroeconomic and other conditions outside its control may render a goal infeasible—is addressed in those provisions of the rule concerning evaluation of GSE performance; these conditions are considered in determining whether a goal was or is feasible. The Secretary can modify a goal, or determine that it was infeasible, if economic conditions change.

Low- and Moderate-Income Goal, Section 81.12

The proposed rule provided that 38 percent of the total number of dwelling units financed by each GSE's 1995 mortgage purchases and 40 percent of their 1996 purchases finance housing for low- and moderate-income families. In 1994, Fannie Mae reported that its performance was 45.83 percent under the Low- and Moderate-Income Goal in the Interim Notice of Housing Goals; Freddie Mac reported its performance as 37.46 percent. As detailed in the appendices, the Secretary determined that the conventional conforming market for this goal is 48–52 percent. This final rule requires that 40 percent of the total number of dwelling units financed by each GSE's mortgage purchases in 1996 and 42 percent in 1997–1999 be affordable to low- and moderate-income families.

Fannie Mae objected to the goal set forth in the proposed rule, recommending a permanent goal of 38 percent, unless and until the economic environment changes significantly. Other commenters stated that the goal was not high enough to challenge the GSEs to increase their mortgage purchases for low- and moderate-income housing. These commenters emphasized the leadership capacity of the GSEs and indicated that an increase in secondary market activity by Fannie Mae and Freddie Mac would help the industry as a whole, because the GSEs' business decisions influence the rest of the market.

The Low- and Moderate-Income Housing Goal established in the final rule is reasonable and appropriate considering the factors set forth in FHEFSSA. HUD addressed the comments on the potential for fluctuations in the market by setting the level of the goal conservatively, relative to market estimates, with the understanding that dramatic changes in the market may require reevaluation of the level of the goal. However, current examination of the size of the market available to the GSEs demonstrates that the number of mortgages secured by housing for low- and moderate-income families is more than sufficient for the GSEs to achieve the goal. Appendices A and D provide extensive detail on the statutory factors considered in establishing the level of the goal.

A number of commenters also requested that the goal include subgoals, targeting a portion of the GSEs' business to multifamily housing and a portion to single-family housing. One commenter also requested the establishment of subgoals to focus a percentage of the GSEs' business on low-income households and another percentage on moderate-income households. Such subgoals would ensure that the GSEs undertake more complex and more time-consuming, and less standard, business to achieve the goal. Subgoals are not established at this time because: (1) The statute provides that subgoals under the Low- and Moderate-Income Goal are unenforceable; (2) subgoals suggest micromanagement of the GSEs' business decisions and unnecessary regulatory interference by HUD; and (3) the Low- and Moderate-Income Goal was designed to focus a portion of the GSEs' business on housing for both low- and moderate-income families, whether that housing is single-family or multifamily, rental or owner-occupied: a unitary goal should achieve this purpose.

Central Cities, Rural Areas, and Other Underserved Areas Goal, Section 81.13

This section of the preamble discusses the public comments on the Central Cities, Rural Areas, and Other Underserved Areas Goal (''Geographically Targeted Goal''), first for urban and then for rural mortgage purchases financing housing in these areas. It also addresses a cross-cutting issue of the legal basis for defining the Geographically Targeted Goal in the manner implemented by this rule.

Level of Geographically Targeted Goal

The Central Cities, Rural Areas, and Other Underserved Areas Goal (''Geographically Targeted Goal'') is established in this rule at 21 percent of GSE business in 1996, and 24 percent in 1997–1999. Under the proposed rule, the Geographically Target Goal would have been established: for 1995, at 18 percent; for 1996, at 21 percent; for 1997 and 1998, a percentage ranging from 21 percent to the proportion or percentage or mortgages qualifying under the goal that are originated in that year's market (''the amount of the market'') or the amount of the market plus an additional percentage; and for each year after 1998, a percentage ranging from 21 percent to the amount of the market or the amount of the market plus an additional percentage or, if HUD does not set an annual goal for those years, the goal for such years shall be the same as the most recent goal established by HUD pending further adjustment by HUD through rulemaking. In Appendix D, HUD estimates that the mortgage market in the areas covered by this goal will account for 25–28 percent of the total number of newly mortgaged dwelling units. In 1994, 29 percent of Fannie Mae's purchases financed dwelling units located in all underserved areas, as defined in the final rule, compared with 24.2 percent of Freddie Mac's purchases.

Mortgage Purchases in Metropolitan Areas, Including Central Cities and Other Underserved Areas

The rule provides that for properties in metropolitan areas, mortgage purchases will count toward the goal when such purchases finance properties that are located in census tracts where either the median income of families in the tract does not exceed 90 percent of the area median income, *or* minorities comprise 30 percent or more of the

[15] Section 1336(c)(2)(B).

[16] Section 1336(c)(2)(A).

[17] *See, e.g.*, S. Rep. No. 282, 102d Cong., 2d Sess, at 5 (1992) (S. Rep.); H.R. Rep. No. 206, 102 Cong., 1st Sess., at 34 and 36 (1991) (H. Rep.); 138 Cong. Rec. S8607 (daily ed. June 23, 1992) (statement of Sen. Riegle); 138 Cong. Rec. S17908 (daily ed. Oct. 8, 1992) (statement of Sen. Cranston).

[18] 2A Norman J. Singer, *Sutherland on Statutory Construction* § 46.06 (5th ed. 1993).

residents and the median income of families in the tract does not exceed 120 percent of the area median income. This definition has been revised from that in the proposed rule which encompassed areas at 80 percent (rather than 90 percent) of median income.

As detailed in Appendix B, this goal emerges from HUD's consideration of the six statutorily mandated factors for establishing the goal, supported by HUD's and other researchers' analyses of mortgage lending data. The final rule's use of a census-tract-based approach to identify underserved metropolitan areas is supported by the legislative history of FHEFSSA.

The final rule's definitions of central cities and other underserved areas, as the underserved census tracts of these areas, encompass 47 percent of metropolitan census tracts and 44 percent of metropolitan residents. The average mortgage denial rate in these tracts is 21 percent—almost twice the denial rate in the non-included tracts. The definition in the final rule adds 3,657 tracts to the definition in the proposed rule. These added tracts also have significant problems with access to mortgage credit, as evidenced by relatively high mortgage denial rates.

The commenters' recommendations for the underserved area definition as it applies to central cities and other underserved areas can be organized into three categories: (1) count all mortgages in OMB-defined central cities; (2) count mortgages in certain census tracts, as in the proposed rule or defined more broadly than under the proposed rule; and (3) modify the list of OMB-defined central cities to include or exclude various cities.

Tract-Based Versus Whole-City Approaches

Fannie Mae strongly objected to HUD's census-tract-based formulation of this goal, insisting that the goal should include ''central cities,'' as defined as such on lists issued periodically by OMB, in addition to high-minority or low-income census tracts in the remaining portions of metropolitan areas as well as rural areas. Fannie Mae's objections were based on both policy and legal arguments; the discussion of the policy issues follows immediately and the legal arguments are considered at the end of this section of the preamble.

Fannie Mae commented that its experience in developing partnerships with central cities demonstrates that including only underserved segments of central cities and rural areas, thereby focusing Fannie Mae's attention especially on low-income or minority communities, would be a mistake. Fannie Mae stated that ''community leaders, Congress, and many national policy makers argue that the health of low-income and minority communities within central cities is tied directly to the overall health of the community.''

A number of commenters also disagreed with the proposed rule's use of a census-tract-based approach, arguing that it did not reflect the manner in which political leaders, real estate professionals, and lenders work in cities. According to the Mortgage Insurance Companies of America, ''rewriting the geographic goals to narrow them substantially is inconsistent with the objective of improving cities.'' The MBA expressed concern that the criteria for the Geographically Targeted Goal would exclude areas that are experiencing or are about to experience ''transitioning minority and low-income demographic patterns''; MBA recommended that HUD broaden the areas covered. The National Association of Realtors (NAR) noted that, conceptually, excluding certain parts of central cities from the definition should not result in less mortgage activity for those cities, because ''such an approach could actually improve overall credit flows by focusing GSE attention on those specific areas most in need.'' However, NAR went on, ''actual marketplace dynamics are more complex than the theory,'' and called for a ''more holistic approach to addressing the mortgage credit needs of the central cities.''

Other commenters supported the idea of targeting by means of census tracts, as proposed. Although Freddie Mac commented that the scope of the goal should be broadened, Freddie Mac ''applaud[ed] the Secretary's general methodological approach in defining what areas should be included'' in the Geographically Targeted Goal. Representative Joseph P. Kennedy ''strongly support[ed] the idea of not using the OMB definition of central cities for this goal, since it is clear that the OMB definition does not identify areas underserved by the mortgage markets.'' The American Bankers Association (ABA) commented that using the OMB list of central cities ''has not done enough to focus the GSEs on the truly underserved portions of urban markets;'' it favored targeting the GSEs' activities on underserved areas, rather than entire cities. The Local Initiatives Support Corporation (LISC) agreed that jurisdictional boundary lines were not particularly useful in identifying places that need better access to mortgage credit and noted with approval that the proposed rule ''dovetails with new regulations implementing the Community Reinvestment Act which also focus on low-income geographies.''

HUD's Analysis of Metropolitan Underserved Areas

Under FHEFSSA, HUD may define the terms ''central cities'', ''rural areas'', and ''other underserved areas''. The research conducted by the GSEs, other mortgage-market economists, and HUD supports the premise that the location of a census tract—whether it is within a central city or not—has minimal impact on whether the tract is underserved. Instead, these studies have found that mortgage availability in a census tract is strongly correlated with the minority concentration or median income of that tract. The most thorough studies available demonstrate that areas with lower incomes and higher shares of minority residents consistently have poorer access to mortgage credit, with higher denial rates and lower origination rates for mortgages. With income, minority composition, and other relevant census tract variables controlled for, differences in credit availability between central cities and suburbs are minimal.

Under its contract with HUD, the Urban Institute evaluated the proposed definition of central cities and underserved areas, as well as the use of various alternatives advanced by commenters. The Urban Institute researchers criticized the use of the OMB definition of central cities—encompassing all areas of designated cities—because that definition treats all areas in central cities as if they have equal mortgage-access problems, when, in fact, areas within central cities are not homogeneous in this regard.[19] Use of the OMB definition of central cities, as advanced by Fannie Mae, would add 8,833 central city tracts to the 13,554 central city tracts included under this final rule's definition. Credit access is not a problem in these added tracts—their mortgage denial rate is 11 percent, or half of the average denial rate in the tracts covered by this final rule. Based on comparisons such as these, HUD has concluded that a targeted approach for defining underserved areas is required, to target the goal and the GSEs' activities to assuring access to mortgage credit in central cities.

HUD considered the comments that this goal should facilitate coordination of GSE outreach with the efforts of city governments to expand investment in

[19] Urban Institute, George Galster, ''Comments on Defining 'Underserved' Areas in Metropolitan Regions,'' prepared for the U.S. Department of Housing and Urban Development, August 15, 1995.

their jurisdictions. The Secretary does not believe the more targeted approach adopted in this rule inhibits such valuable coordination. Many urban revitalization programs and reinvestment efforts, in fact, target specific neighborhoods and areas, rather than an entire city. These programs operate on the common-sense premise that targeting all areas would result in no meaningful targeting. Cities use a neighborhood-based approach, for example, in implementing their Community Development Block Grant programs, defining enterprise communities and empowerment zones, and focusing the activities of redevelopment authorities.

HUD also considered the argument that the lending industry is oriented toward market areas defined in city-wide terms. However, the lending industry does not generally approach lending activity from a city-wide perspective. Lenders generally try to achieve geographic diversification within a city, making distinctions among submarkets. Further, the efforts of lenders to comply with the Community Reinvestment Act[20] are clearly census-tract-based and are targeted to neighborhoods, not to all parts of a city.

Broaden Tract-Based Approach

Freddie Mac's major observation on the scope of the goal was that the definition of underserved areas should be expanded to include census tracts where: (1) the median income of families is not greater than 100 percent of the area median income; or (2) 20 percent or more of the residents in the census tracts are minority.

This alternative definition would add substantially more tracts to the goal, and these tracts have substantially lower denial rates than the tracts included under the final rule. This is noteworthy because it indicates that Freddie Mac believes that access to credit is more limited in more areas throughout the nation than does HUD. The mortgage credit denial rate for the tracts added by the Freddie Mac definition is 15 percent, which is only slightly higher than the denial rate for all metropolitan areas and is significantly less than the 21 percent denial rate in the tracts covered by the goal established in the final rule.

Freddie Mac commented further that if the Secretary increased the scope of the goal to include moderate-income census tracts, a broad, geographically-based goal would be established, which would be consistent with the Low- and Moderate-Income Goal and Congress's intention not to ''force the enterprises to 'target' to meet niche markets.'' HUD does not believe that the final rule's definition, which covers nearly half of all metropolitan residents, defines a niche market.

Finally, HUD notes in response to criticism that the goals overlap, that the three goals established by Congress are distinct. In contrast to the other goals, income of borrowers is not used in the Geographically Targeted Goal as a requirement, but as a proxy for those areas that are underserved by mortgage markets, based on the lower origination and higher denial rates found in low-income census tracts. The Geographically Targeted Goal does not depend on the income or minority status of the individual borrower; the location of the property determines whether units count under the goal. Some overlap, however, among the goals can be expected, given the close relationship between the purposes of serving low- and moderate-income families and promoting ''access to mortgage credit throughout the Nation (including central cities, rural areas, and underserved areas) * * *.''[21] To the extent that overlap exists, the rule takes this into account, by providing that mortgage purchases may count toward each of the goals.

Modify OMB List of Central Cities

Fannie Mae suggested that HUD could exclude from the OMB ''central cities'' list some central cities that do not qualify, statistically, as underserved. MBA, which recognized problems with the OMB list, and the National Association of Affordable Housing Lenders recommended developing criteria for excluding well-served cities from the OMB list. A large mortgage company commented that the Secretary should use OMB's list of central cities and then add other cities that clearly have underserved needs, but are not on OMB's list. The National Association of Home Builders (NAHB) recommended that HUD develop a formula for excluding from the OMB list the higher-income cities, and then adding ''underserved'' areas of other central cities and certain other non-rural jurisdictions.

The Secretary has carefully considered whether modifying the OMB list of Central Cities will address the fundamental concern with continued use of the OMB definition: is it consistent with the congressional intent to focus a portion of the GSEs' business on communities that are underserved by the mortgage markets? Modifying the OMB list to eliminate well-served cities, or retaining the OMB list and adding distressed non-central cities, does not meet this fundamental concern. In most cities, some parts are not underserved. Retaining the bulk of OMB-defined central cities would include many well-off areas that are not experiencing mortgage credit problems, and it would not appropriately focus the GSEs on those urban neighborhoods that require particular attention from the mortgage markets.

Mortgage Purchases in Nonmetropolitan Areas

The final rule provides that for properties in non-metropolitan areas, mortgage purchases will count toward the Geographically Targeted Goal where such purchases finance properties that are located in counties where: either minorities comprise at least 30 percent of the residents and the median income in the county does not exceed 120 percent of the State nonmetropolitan median income; *or* the median income does not exceed 95 percent of the greater of the State or nationwide nonmetropolitan median income.[22]

This section of the preamble briefly discusses the nature of rural lending, describes the basic characteristics of HUD's definition of rural areas, and provides HUD's responses to comments received on the definition of rural areas.

Problems in Rural Lending

Defining ''rural areas'' requires a different approach than defining ''central cities'' and ''other underserved areas'' because of the lack of mortgage data in nonmetropolitan areas, differences in housing needs between urban and rural areas, and the difficulty of implementing mortgage programs at the census tract-level[23] in rural areas. As discussed in Appendix B, evaluating which rural locations are underserved in terms of access to mortgage credit cannot be done with HMDA data, on which HUD mainly relied in defining urban underserved areas. There are few conclusive studies on access to mortgage credit in rural areas, and the studies that do exist only suggest broad

[20] The Community Reinvestment Act, 12 U.S.C. 2901 *et seq.*, generally requires financial institutions to meet the credit needs of the communities in which the institutions are located.

[21] Sections 1381(a)(4) and 1382(a)(4) of FHEFSSA.

[22] In New England, portions of counties that are outside metropolitan areas are used in place of counties.

[23] Block Numbering Areas (BNAs) in rural areas correspond to census tracts in metropolitan areas. For the sake of simplicity, in this section this rule refers to BNAs as census tracts.

conclusions about credit flows in these areas.

For this reason, HUD consulted with researchers from academia, the Department of Agriculture (USDA), the Census Bureau, and the Housing Assistance Council (HAC). HUD also conducted a series of forums to solicit information on rural mortgage markets from rural lenders, rural housing groups, and the GSEs. The discussions at the forums focused on the unique nature of mortgage lending and the role of the secondary market in rural areas.

Mortgage lending in rural areas is very different from lending in urban areas. The heterogeneity of housing types, the nontraditional and often seasonal incomes of rural borrowers, and the lack of credit history for many rural borrowers make underwriting in rural areas difficult for lenders. Appraisers lack comparable sales data or must rely on comparables over 1-year old or in a nearby town in order to determine the value of a property.

Participation of rural lenders in the secondary market is limited. The low volume of loans originated by rural lenders serving smaller rural communities makes rural lending business less profitable, and thus less attractive, to secondary market firms. Based on 1991 Residential Finance Survey data, which is supported by information from rural lenders and the USDA, rural lenders are more likely than urban lenders to make short-term loans, 3- to 5-year balloon mortgages, or adjustable rate mortgages and to hold mortgages in portfolio. Larger financial institutions, which have experience with the secondary market, often target the larger rural communities and focus less on remote areas.

Some studies report significant barriers to accessing mortgage credit in remote areas and areas with high concentrations of minorities and low-income households. Barriers include lower lender participation in Federal mortgage credit programs such as those of the Rural Housing and Community Development Service, the Federal Housing Administration, and the Department of Veterans Affairs, lack of financial capacity among lenders, lack of private mortgage insurance, and a decreasing number of lending institutions located in rural communities as a result of the savings and loan crisis of the 1980s.

Characteristics of HUD's Rural Areas Definition

Recognizing both the difficulty in defining rural areas and the need to encourage GSE activity in such areas, HUD has chosen a relatively broad, county-based definition of rural areas as the underserved areas outside of a metropolitan area. HUD's definition includes 1,511 of the 2,305 counties in nonmetropolitan areas and accounts for 54 percent of the nonmetropolitan population.

Response to Public Comments

County-Based Definition. Most commenters, including the GSEs, had argued that a definition based on rural census tracts was ill-advised because lenders in rural areas do not understand or lend on the basis of census tracts. Fannie Mae commented that census tracts have ''no practical meaning'' in rural areas from a marketing standpoint and that geographic measurements used in the rule should be ''widely understood, easily measured, and practical from a marketing point of view,'' but that census tracts in rural areas ''fail these tests.''

Freddie Mac joined Fannie Mae in arguing that the use of a rural definition based on census tracts was ill-advised because of geocoding inaccuracies.[24] Freddie Mac added that the rule, as proposed would have automatically excluded single census-tract counties, such as parts of Texas, which, Freddie Mac noted, include some of the poorest counties in the country.[25]

In contrast, some commenters, such as HAC, noted that a county-based definition is not as targeted as a tract definition, because it excludes tracts that could be considered underserved in otherwise-served counties and includes tracts that could be considered adequately served in underserved counties. HAC cited its own analysis of a multitude of data and commented that the appropriate criterion for rural underserved areas would be census tracts with at least 20 percent minority residents and not more than 100 percent of area-wide median income, and that the secondary ''income-only'' criterion should be 90 percent of area-wide median. HAC presented statistical evidence to show that its recommended definitions would: (1) capture a higher percentage of underserved nonmetropolitan areas; and (2) solve the problem of omission of census tracts with predominantly white populations. HAC also recommended supplementing the income and income/minority population criteria with a special rural area criterion related to remoteness (such as the Beale codes[26]) and sparse population.

This final rule uses the county designation, rather than a census tract-based definition. Counties are easy to identify and geocode, which will simplify the reporting process for lenders who provide the GSEs with loan-level data on mortgages. County boundaries in rural areas are commonly recognized by housing industry representatives involved in the loan and marketing process, including lenders and appraisers.

Even though HUD recognizes that a census-tract definition better targets underserved areas, HUD has decided to use a county-based definition in rural areas because the operational difficulties associated with applying census tract boundaries outweigh the benefits of improved targeting of underserved rural areas. HUD recognizes that, under its county-based definition, the GSEs could achieve the goal by purchasing mortgages primarily located in the parts of underserved counties that have higher incomes. Although 21 percent of the homeowners who live in underserved counties under this definition reside in served tracts, these tracts accounted for 39 percent of GSE purchases in 1994. HUD will require the GSEs to continue to report nonmetropolitan mortgage purchases at the tract level as they have done for 1993 and 1994, to enable HUD to assess the desirability of refinement of the definition in the future.

Area for Median Income. Both Freddie Mac's and Fannie Mae's comments on the proposed rule's census tract definition in non-metropolitan areas recommended that tract median income be compared to the greater of county median income or statewide nonmetropolitan median income, to ensure the inclusion of poor tracts in poor counties. Freddie Mac noted that using only county median income could have the result that census tracts ''that would be considered poor by any realistic measure * * * would nonetheless be excluded from the goal's coverage because they happen to be in a very poor county.'' Accordingly, for purposes of the definition of ''rural areas,'' the rule's new definition of ''underserved areas'' provides that the median income for a county is compared to the greater of State or nationwide nonmetropolitan median

[24] Geocoding is the process by which a lender or the GSE identifies the location of a property's address by census tract, postal code, or some other geographic identifier.

[25] Freddie Mac noted that, by definition, these tracts will have median family income equal to 100 percent of the county [tract] median, thus making them, under the proposed rule, ineligible for the Geographically Targeted Goal based on income.

[26] Beale codes are used by the Economic Research Service (ERS) to classify nonmetropolitan counties according to urban population size and adjacency to metropolitan areas.

income. Comparing county median income to the greater of statewide nonmetropolitan or nationwide nonmetropolitan median income ensures that poor counties in poor States will be included in the definition of rural areas.

Moreover, the addition of the nationwide designation of median income addresses a concern expressed by HAC that the proposed definition cover states that have counties with high poverty rates but low minority concentrations. With the nationwide designation, counties in poor States, such as Fulton County, Kentucky, which has a 30 percent poverty rate, will be included as rural areas. The county median income is low relative to national median income, but not low relative to State median income. Without availability of comparison to nationwide income, Fulton County would not be considered a rural area.

Remote Areas. HAC expressed concern that remote rural areas are more likely to be underserved than those closer to urban areas. NAHB also addressed the issue of rural remoteness and recommended that HUD include counties in certain Beale Codes based on their rural character, low urbanization, and non-adjacency to a metropolitan area. The rule's revised nonmetropolitan county definition adequately targets remote counties. The definition picks up 84 percent of the population that reside in remote counties, as determined by Beale Codes.

Geographic Coverage of Rural Areas and Demographic Indicators. HUD uses two demographic indicators—median income and minority concentration—to identify rural areas. These two indicators correlate with the common characteristics of underservedness. Fannie Mae recommended that the rural definition include no demographic indicators, stating ''the geographic goal was not supposed to focus on fractions of geographic areas.'' Fannie Mae's definition of rural areas, therefore, would include all nonmetropolitan counties. As noted below, HUD does not agree that the Geographically Targeted Goal was meant to include all rural areas.

Freddie Mac suggested that HUD use a definition covering rural areas where median income was at or below 100 percent of State median or where 20 percent of the population was minority. Under Freddie Mac's definition, 221 counties in addition to those covered by the definition on the final rule, covering an additional 5.97 million people, would be considered rural areas. Because HUD does not consider these additional counties as being underserved by the mortgage market, HUD is not including these additional counties in its definition of rural areas.

Legal Authority To Limit Goal to Underserved Portions

As noted above, part of Fannie Mae's justification of a definition using whole ''central cities'' as defined by OMB was based on Fannie Mae's interpretation of FHEFSSA. HUD believes that Fannie Mae has interpreted the statutory language too narrowly, and that FHEFSSA did grant HUD latitude to select from among reasonable definitional approaches to establish a goal that is appropriately targeted toward areas underserved by the mortgage lending industry.

Fannie Mae's comments and an opinion prepared for Fannie Mae by the law firm of Arnold and Porter, and submitted with Fannie Mae's comments, raised several legal objections to the proposed rule. One argument was that HUD cannot apply the qualifier ''underserved'' to limit central cities or rural areas to only portions of central cities or rural areas that are underserved.

While FHEFSSA does not refer to ''underserved areas of central cities'' or ''underserved areas in rural areas,'' a general rule of statutory construction provides that, to determine the word or words to which the antecedent applies, one may look to legislative history.[27] ''Where the sense of the entire act requires that a qualifying word or phrase apply to several preceding or even succeeding sections, the word or phrase will not be restricted to its immediate antecedent.'' [28]

The legislative history of FHEFSSA makes clear that the goal is to address underserved areas. In explaining the conference bill on the floor of the Congress, then-Chairman Gonzalez stated: ''In establishing the definition of a central city and in determining compliance with such a goal, the Secretary should, to the extent possible, exclude purchases made in non-low income census tracts that happen to otherwise be within the central cities area.'' [29] Focusing on ''inner-cities'' rather than entire OMB cities, the legislative history provides that ''[t]he purpose of these goals is * * * to service the mortgage finance needs of low- and moderate-income persons, racial minorities and *inner-city* residents,'' and noted that ''mortgage discrimination and redlining have effectively disadvantaged certain geographic areas, particularly *inner city* and rural areas.'' [30]

The ''Plain Meaning''

Fannie Mae commented that the plain meaning of FHEFSSA had been breached by HUD in changing the definition of ''central cities'' from the transition definition and that Congress did not intend that HUD revise that definition in the years following the 2-year transition period. For the transition years of 1993–94, FHEFSSA mandated that the Geographically Targeted Goal be directed only to ''central cities'' as defined by OMB, and HUD extended this approach to 1995 by regulation. However, following the transition, FHEFSSA authorized the Secretary to define central cities and to expand the goal to target ''rural areas'' and ''other underserved areas.'' Fannie Mae commented that Congress intended that only ''other'' underserved areas—that is, areas in addition to central cities and rural areas generally (which, Fannie Mae declared, also were to be considered ''underserved'')—be subject to HUD redefinition in the rule. Fannie Mae commented that ''Congress actually provided the definition of 'central cities' in the subsection on the two-year transition period. . . . There is no indication in the statute that Congress intended the definition of 'central cities' to be restricted or narrowed after the two-year transition period.''

Section 1334(d)(3) of FHEFSSA did define ''central cities'' as the OMB list of central cities. Congress, however, placed that definition in the transitional provisions of the Geographically Targeted Goal and thereby limited it to the transition period (1993–94). Had Congress chosen for HUD to continue using that definition after the transition period, Congress could have placed the definition in the general definition section of FHEFSSA. Congress did not do so.

Fannie Mae's argument that HUD must continue with the transition period definition of central cities would effectively render superfluous the language of the statute that explicitly limits the application of the definition to the transition period. The argument,

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[27] *United States v. Brandenburg,* 144 F.2d 656, 660–61 (3d Cir. 1944) (''a clause modifies that antecedent which the draftsman intended it to modify'').

[28] *Sutherland* §§ 47.33 and 47.26. *See also State v. McGee,* 122 Wash.2d 783, 864 P.2d 912, 914 (1993); *Nemzin v. Sinai Hospital,* 143 Mich. App. 798, 372 N.W.2d 667, 668–69 (1985).

[29] 138 Cong. Rec. H11453, H11457 (daily ed. Oct. 5, 1992). Rep. Gonzalez made the identical statement at 138 Cong. Rec. H11077, H11099 (daily ed. Oct. 3, 1992).

[30] S. Rep. at 32, 34, and 41 (emphases added). *See also* 138 Cong. Rec. S8606 (daily ed. June 23, 1992) (statement of Sen. Riegle) (''inner-city lending * * * is a very important part of this legislation'').

thus, would controvert the general rule of statutory construction that effect must be given, if possible, to every word, clause and sentence of a statute.[31] ''A statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant, and so that one section will not destroy another unless the provision is the result of obvious mistake or error.'' [32]

''Rural Areas'' and ''Central Cities'' Are Not Terms of Art

Fannie Mae also asserted that ''central cities'' is a term of art in housing legislation and that ''rural areas'' has a clear meaning. Fannie Mae commented that OMB has never limited its list of cities in the manner contemplated by the proposed rule. HUD's definition, therefore, is inconsistent with commonly understood meaning and contradicts FHEFSSA's purpose. Fannie Mae argued that the definition of ''central cities'' for the transition period ''is a clear indication of the type of definition that Congress had in mind when considering this goal.''

The terms ''central cities'' and ''rural areas'' are not terms of art and do not have clear meanings. While other statutes and regulations contain definitions of ''central cities'' and ''rural areas,'' these definitions are not uniform. With respect to ''central cities,'' the fact that Congress felt the need to define ''central cities'' for the transition period indicates that the term may have more than one reasonable interpretation. In fact, different Federal agencies define central cities differently.[33]

Fannie Mae's comments concede that the term ''rural areas'' has no established meaning in housing legislation. While other statutes and regulations contain definitions of ''rural areas,'' these are not uniform.[34] Moreover, while the terms ''central cities'' and ''rural areas'' have been used in other statutes, the purposes of those statutes have been very different, *i.e.*, they have not been designed to set goals for providing mortgage credit to such areas. For example, OMB's statutory authority for defining central cities is the Paperwork Reduction Act, and OMB's purpose is to define areas that are ''central'' to a large geographic area. OMB established criteria for central cities which were relevant to this charge. Were HUD to focus on the same criteria, HUD would be taking into account factors that are not directly relevant to determining whether an area is underserved by mortgage credit.

The construction given to a term in one statute is not to be imparted to the construction of the same or similar term in another act, or even another section of the same act, if the purposes of the two acts or sections are different.[35] Given the different purposes of the statutes and regulations defining ''central cities'' and ''rural areas,'' those definitions do not bar HUD from, and in fact mitigate in favor of HUD's, adopting definitions for these terms more consistent with the overall structure and purposes of FHEFSSA and its legislative history.

Special Affordable Housing Goal, Section 81.14

FHEFSSA requires the Secretary to establish Special Affordable Housing Goals for the GSEs' mortgage purchases on rental and owner-occupied housing to meet the then-existing unaddressed needs of, and to be affordable to, low-income families in low-income areas and very-low-income families. Under the proposed rule, the goal was equally divided between rental (single-family and multifamily) and owner-occupied housing. The rental portion of the goal was targeted to very-low-income families while the owner-occupied portion targeted very-low-income families in addition to low-income families in low-income areas.

In response to comments received and upon further consideration by the Secretary, this final rule substantially changes the proposed rule's formulation of the Special Affordable Housing Goal. First, mortgage purchases financing housing for low-income renters in low-income areas now count toward achievement of the goal. Second, the equal division between rental and owner-occupied housing has been removed. Instead, each GSE may choose the type of housing (rental, owner-occupied, single-family, or multifamily) to finance to achieve the goal. However, the goal does require a set minimum of each GSE's purchases to be multifamily mortgages. Finally, the goal allows dwelling units affordable to low-income families in multifamily properties to count where thresholds, based on the LIHTC thresholds, are met.

The final rule provides that the Special Affordable Housing Goal for 1996 is 12 percent of the total number of dwelling units financed by each GSE's mortgage purchases. The goal for 1997–1999 and pending new goals is 14 percent. Of the total Special Affordable Housing Goal, each GSE must annually purchase multifamily mortgages in an amount at least equal to 0.8 percent of the total dollar volume of mortgages purchased by the respective GSE in 1994. In Appendix D, HUD estimates that 20–23 percent of the conventional conforming mortgage market would qualify under the Special Affordable Housing Goal. In 1994, 16.7 percent of Fannie Mae's purchases financed dwelling units that would count toward the achievement of this goal, as defined in the final rule, compared with 11.4 percent of Freddie Mac's purchases. In 1994, Fannie Mae purchased $1.91 billion of mortgages on multifamily housing that would have counted toward the achievement of this goal, or 1.25 percent of its total 1994 business. In 1994, Freddie Mac purchased $425 million of mortgages on multifamily housing that would have counted toward this goal, or 0.36 percent of its total 1994 business.

Rental and Owner Subgoals

Both GSEs' objected to the fact that the proposed rule would have imposed a 50–50 split between rental and owner-occupied housing for the Special Affordable Housing Goal. Fannie Mae commented that the Secretary ''failed to provide an acceptable rationale'' for dividing the Special Affordable Housing Goal equally between rental and owner-occupied dwelling units and provided ''no compelling justification'' for such a split. Freddie Mac also commented that the creation of subgoals for rental and owner-occupied housing made it more difficult to attain the overall goal—even under circumstances in which performance on the owner-occupied subgoal might far surpass the level set by the regulation.

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[31] *Sutherland* § 46.06. *See also United States v. Menasche*, 348 U.S. 528, 538–39 (1955); *Moskal v. United States*, 498 U.S. 103, 109–10 (1990).

[32] *Sutherland* § 46.06. *See also United States v. Talley*, 16 F.3d 972, 975–76 (8th Cir. 1994); *Bridger Coal Co./Pacific Minerals, Inc. v. Director, Office of Workers' Compensation Programs, United States Dept. of Labor*, 927 F.2d 1150, 1153 (10th Cir. 1991).

[33] *Compare* 55 Fed. Reg. 12155 (Mar. 30, 1990) (definition of ''central cities'' used by the Statistical Policy Office of OMB) *with* 41 C.F.R. § 101–17.003–35 (General Services Administration's Federal Property Management Regulations).

Related definitions used by the Bureau of the Census, define ''urbanized area central places'' in a manner which indicates that the ''central'' area could be only a portion of a political unit. The Bureau of the Census provides that for extended cities, an ''urbanized area central place'' includes those metropolitan area central cities entirely or partially within the urbanized area, but that only the urban portion of an extended city is classified as central. 55 Fed. Reg. 42593 (Oct. 22, 1993).

[34] *See, e.g.*, 42 U.S.C. 11501(a)(2)(B); 24 CFR 596.3 (definition based on having population of less than 50,000 and being outside of a Metropolitan Statistical Area (MSA)); 12 U.S.C. 2019(b)(3) (definition based simply on having a population of 2500 or less); 42 U.S.C. 294o(e) (definition based simply on being outside of an MSA).

[35] *Laffey v. Northwest Airlines, Inc.*, 567 F.2d 429, 461–62 n. 230 (D.C. Cir. 1976), *cert. denied*, 434 U.S. 1086 (1978).

Fannie Mae also commented that the even split between rental and owner-occupied housing would ''significantly alter'' the basic character of the goal. While Fannie Mae achieved all four subgoals during the transition years 1993–1994, Fannie Mae stated that it had done so by ''significantly larger margins'' in its single-family business, and that this relative ease in meeting subgoals in owner-occupied housing reflected the relative shares of Fannie Mae business represented by single-family and multifamily acquisitions.

Congress intended that the Secretary have broad authority to redesign the sub-categories under the goal. The Senate Report states, ''During a transition period, specific dollar amounts are set for four separate income and housing categories to emphasize that each of these areas needs attention. After the experience of the first two years, the [Secretary] may redesign the categories to target more effectively low-income family needs and reflect any gaps in GSE performance.'' [36] Moreover, FHEFSSA provides that goals should be established for ''rental and owner occupied housing.'' [37] The Secretary considered the statutorily prescribed factors in section 1333(a)(2) prior to establishing the proposed goal and, therefore, the Secretary's actions were neither arbitrary nor capricious. Notwithstanding the fact that the proposed rule would have withstood judicial scrutiny, the Secretary determined for policy reasons to revise the Special Affordable Housing Goal. These revisions include removing the 50–50 split between renter and owner-occupied housing, and replacing it with a more flexible division.

Level of Special Affordable Housing Goal

Freddie Mac commented that the Special Affordable Housing Goals proposed for 1995 and 1996 are ''unrealistically high and very likely infeasible within the meaning of the Act.'' Fannie Mae agreed, arguing that the proposed level of the goal is unreasonable and recommending that the Secretary establish the Special Affordable Housing Goal at no more than 8 percent. Fannie Mae considered the proposed 11 and 12 percent goals ''less unreasonable'' if the Special Affordable Housing Goal included low-income renters in low-income areas. Other commenters, largely nonprofit organizations, felt that the proposed goals both for home ownership and rental housing were too low.

The levels of the Special Affordable Housing Goal in the proposed and final rules are both feasible and reasonable. The Special Affordable Housing Goal is consistent with updated and further refined market share data and analyses, and is reasonable given the GSEs' past performance. While the specifics of the analyses are detailed in Appendices C and D, the major findings supporting this goal level are summarized below.

The proposed rule contained an appendix that analyzed market share data from the American Housing Survey and HMDA. That analysis demonstrated that the GSEs were purchasing much smaller proportions of mortgages of very-low-income families originated by the market than they were purchasing loans of higher-income families. Based on additional and updated analysis of the market data, the original conclusion, discussed in the proposed rule—that there are available mortgages in the very-low-income end of the mortgage market for the GSEs to increase the share of very-low-income mortgage originations they purchase—is unchanged. Additionally, analysis of market share estimates indicates that approximately 20–23 percent of the conventional conforming mortgage market would qualify under the Special Affordable Housing Goal as it is defined in the final rule. This analysis provides further support that the Special Affordable Housing Goal is both feasible and eminently reasonable.

The GSEs' 1994 performance also indicates that the goal is achievable. Using the final rule's conventions for what will count toward the goal, 16.7 percent of Fannie Mae's 1994 business and 11.4 percent of Freddie Mac's would have qualified under the goal.

Authority To Establish Special Affordable Subgoals

Freddie Mac commented that FHEFSSA provides that the Secretary shall establish ''a'' Special Affordable Housing Goal. Freddie Mac argued that the Secretary's proposed approach to implementing the Special Affordable Housing Goal was not authorized by law because, as proposed, it was either two completely separate goals (one for rental housing and one for owner-occupied housing) or one goal with two subgoals.

FHEFSSA authorizes the Secretary, both during the transition and thereafter, to establish the goal and define portions thereof. It does not indicate that subgoals are unenforceable or otherwise prevent the Secretary from defining enforceable portions. For the transition period, FHEFSSA itself subdivided the Special Affordable Housing Goal into two separate portions—single-family and multifamily—and went on to define specifically what counted towards each portion. For the period following the transition, FHEFSSA provides that the Secretary ''shall establish a special affordable housing goal.'' [38] FHEFSSA did not define the structure of the goal, but specified that it should meet the then-existing unaddressed needs of low-income families in low-income areas and very-low-income families. The legislative history indicated that, following the transition, the Secretary was to redefine the goal. Under FHEFSSA and legislative intent, the Secretary has adequate flexibility to adjust the goals ''to target more effectively low-income family needs and reflect any gaps in GSE performance.'' [39]

Freddie Mac also commented that section 1333 of FHEFSSA, in establishing the Special Affordable Housing Goal, does not refer to subgoals. Freddie Mac emphasized that, in contrast, section 1332 of FHEFSSA, establishing the Low- and Moderate-Income Housing Goal, and section 1334, establishing the Geographically Targeted Goal, specifically provided that the Secretary may establish subgoals. To Freddie Mac, the omission of a similar provision from section 1333 means that such subgoals are not authorized. Freddie Mac relies on the doctrine of *in pari materia*, which provides that statutes dealing with the same matter or subject shall be construed together. Thus, Freddie Mac argues that sections 1332–34 deal with the same matter, *i.e.*, housing goals, and that the Secretary failed to construe those sections together.

The provisions on subgoals referred to by Freddie Mac at sections 1332 and 1334 concerning the Low- and Moderate-Income Housing Goal and the Geographically Targeted Goal provide that while the Secretary may establish subgoals, they are not enforceable. The omission of a similar provision in section 1333 is not an indication that subgoals or subcategories within the overall goal are prohibited; rather, such omission indicates that to the extent that subgoals or subcategories are promulgated for the Special Affordable Housing Goal, no bar exists to enforcing them. Since section 1333 contemplates the use of enforceable subgoals or subcategories, section 1333 does not include the same type of restriction against enforcing subgoals as do sections 1332 and 1334.

[36] S. Rep. at 37.

[37] Paragraph 1333(a)(1).

[38] Section 1333(a)(1) (emphasis added).

[39] S. Rep. at 37.

Rental Versus Multifamily

A number of commenters, including the MBA, the Enterprise Foundation, the NTIC, the National Low Income Housing Coalition (NLIHC), and the California Reinvestment Committee, expressed concern that the proposed Special Affordable Housing Goal did not have an explicit focus on the multifamily market. They argued that the GSEs should have some explicit regulatory requirement to purchase multifamily mortgages, in order to sustain a secondary market for affordable multifamily loans. These commenters and others recommended that the Secretary establish a subgoal for the purchase of multifamily mortgages. Other commenters, including CANICCOR, the National League of Cities, and the City of Los Angeles, while not recommending an explicit multifamily subgoal, urged the Secretary to require that the GSEs support an active secondary market for multifamily loans.

In light of these comments and additional analysis, the Secretary reconsidered the proposed rule's focus on rental—as opposed to multifamily—mortgages and has revised the goal. The final rule provides that a relatively small portion of the goal must be achieved through the purchase of multifamily mortgages. The remainder of the goal can be achieved through the purchase of multifamily or single-family mortgages—whether owner-occupied or 1- to 4-unit rental properties. A secondary market providing liquidity for financing of 1- to 4-unit rental properties already exists. In the multifamily arena, however, a secondary market for affordable multifamily mortgages is still developing. Given the GSEs' overall experience and financial strength, it is reasonable to expect that they play major roles in the development of a stable secondary market for affordable multifamily mortgages.

Freddie Mac raised concerns that an increased level of multifamily purchases within the Special Affordable Housing Goal could lead to credit risk problems. Freddie Mac argued that a higher level of multifamily purchases may not be possible without relaxing underwriting standards and purchasing higher-risk properties.

It is the Secretary's intention that the goal ensure that the GSEs maintain a consistent focus on the very-low-income portion of the housing market where housing needs are great. Clearly, the intention of the goal is not to promote or encourage the undertaking of unnecessary credit risks on the part of the GSEs. The market data presented and analyzed demonstrates that the level of the Special Affordable Housing Goal is attainable, and the structure of the goal provides the GSEs with adequate flexibility to achieve it without taking unnecessary credit risk. In addition, the Secretary notes that Congress indicated that ''Freddie Mac should be expected to implement strong multifamily programs in the near future. The Committee intends that the [goals] be set at levels consistent with each enterprise having a significant multifamily program.'' [40]

Units Versus Dollars

Freddie Mac argued that the Secretary's decision to express the Special Affordable Housing Goal as a percentage of overall units financed by a GSE is not supported by FHEFSSA and that the statute requires the Special Affordable Housing Goal to be established in dollars of mortgage purchases. NAHB provided a critique of a percent-of-business measurement and urged HUD to retain a dollar-volume target that could be reset each year based on ''assessment of need, subsidy availability, and refined market estimates.'' NAHB's concern grows out of its belief that the Special Affordable Housing Goal, because of its focus on very-low-income mortgages, is tied to the availability of public subsidies, which are not market-driven.

Fannie Mae, on the other hand, did not oppose the change to a percentage-of-business goal and stated that such a goal will ''more accurately reflect contemporaneous market trends because it is 'self-adjusting'. It is a more equitable and sensible approach to a changing, and sometimes volatile, market.'' Other commenters, including the National Council of State Housing Agencies and America's Community Bankers agreed, describing the percentage-of-business approach as a more appropriate way to measure the impact of the GSEs' mortgage purchases.

The Secretary has concluded that the statute permits the Secretary to set the goals as a percentage of units financed by the GSEs, as long as the percentage arrived at exceeds the dollar floor prescribed in FHEFSSA. Section 1333(a)(1) of FHEFSSA provides: ''The special affordable housing goal established under this section for [a GSE] shall *not be less than* one percent of the dollar amount of the mortgage purchases by the [GSE] for the previous year.'' (emphasis added)

When interpreting a statute, a court should only go beyond the text of a statute if the text is ambiguous.[41] Such interpretation of FHEFSSA reveals that it requires the Secretary to: (1) Establish a Special Affordable Housing Goal; and (2) establish the Special Affordable Housing Goal so that it will equal or exceed the one percent dollar amount in section 1333(a)(1). Courts will not reject the literal meaning of a statute unless such an interpretation ''leads to absurd results when applied.'' [42] In this case, the Secretary's interpretation of section 1333(a)(1)—to allow the Secretary to establish the Special Affordable Housing Goal as a percentage of dwelling units financed, while ensuring that the Special Affordable Housing Goal will be set high enough to meet the floor or minimum required under section 1333(a)(1)—is consistent with FHEFSSA and appropriate policy.

The Secretary recognizes the validity of the concerns expressed by Freddie Mac and several other commenters that financing for affordable multifamily units is tied to the availability of public subsidies, which are not market-driven. Therefore, the final rule establishes the multifamily portion of the goal as a percentage of each GSE's business in 1994, rather than for each year. The Secretary believes that 1994 was a reasonable baseline year for the GSEs, given the decline in mortgage originations. Consequently, 1994 represents a reasonable baseline from which to calculate a portion of the Special Affordable Housing Goal that should be devoted to multifamily mortgages.

Low-Income Renters in Low-Income Areas

Under the proposed rule, the Special Affordable Housing Goal would have been directed to rental housing for very-low-income families and to owner-occupied housing for low-income families in low-income areas and very-low-income families. Both GSEs argued that the Special Affordable Housing Goal must also be targeted to mortgage purchases on housing for low-income renters in low-income areas and that this category was improperly excluded from the proposed goal.

The Secretary agrees that the statute requires the inclusion of low-income rental units in low-income areas. Section 1333 of FHEFSSA provides that the goal should address ''the then-existing unaddressed needs of, and affordable to, low-income families in low-income areas and very low-income

[40] S. Rep. at 35–36.

[41] *National Tax* v. *Havlik,* 20 F.3d 705 (7th Cir. 1994).

[42] *Blue Cross* v. *Weitz,* 913 F.2d 1544, 1548 (11th Cir. 1990).

families.'' Inasmuch as there are unaddressed needs of low-income renters in low-income areas and of very-low-income renters, the Secretary has determined that mortgages for low-income renters in low-income areas should be included under the goal. The final rule reflects this change.

Counting of Rental Units

The proposed rule specified that only rental units affordable to very-low-income families (i.e., families whose incomes are 60 percent of area median income or less) would count toward the goal. This altered a convention applicable to the Special Affordable Housing Goal in 1993–1995 that any low-income rental unit in a multifamily property where at least 20 percent of the units are affordable to especially low-income families (i.e., families whose incomes are 50 percent of area median income or less) or where at least 40 percent of the units are affordable to very-low-income families (i.e. families whose incomes are 60 percent of area median income or less) would count toward the goal.

A number of commenters, including both GSEs, the MBA, the Association of Local Housing Finance Agencies, and the Enterprise Foundation, argued that the proposed rule's approach would create a regulatory incentive for the GSEs to focus only on mortgage purchases for buildings that are entirely occupied by very-low-income tenants, at the expense of financing mixed-income buildings. These commenters argued that an exclusive focus on 100-percent very-low-income buildings is contrary to HUD policy established in other contexts emphasizing mixed-income rental developments as more beneficial for residents and communities. The Secretary concluded that the comments have validity and has revised the final rule to use the transition-period convention of counting all low-income units in buildings where the percentage of such units meets the thresholds used during the transition which, in turn, were modeled on the LIHTC.

Refinancings From Portfolio

Under the Interim Notices establishing transition goals, HUD did not allow any credit toward the Special Affordable Housing Goal for the refinancing of mortgages held by the GSEs in portfolio. The proposed rule provided credit for these refinancings—as long as they were economically motivated transactions initiated by the borrower—to count toward the goal. Both Fannie Mae and Freddie Mac supported this approach. Several commenters expressed concern that including refinancings would create a disincentive for the GSEs to focus on new originations for lower-income households.

The exclusion of refinancings, as provided in the Interim Notices, imposed significant compliance burdens on the GSEs in order to identify those purchases of refinanced mortgages that represented mortgages previously purchased by the GSEs. Further, this provision was contrary to the common method of financing multifamily properties using relatively short-term balloon mortgages, which by their nature must be refinanced frequently to maintain project viability. Refinancings in this context serve the goal of continued availability of housing meeting the goals. For these reasons, the final rule maintains that economically motivated, arm's-length refinancings will count toward the Special Affordable Housing Goal.

General Requirements, Section 81.15

Insufficient Information

Performance under each of the housing goals is based on a fraction that is converted into a percentage. The numerator of this fraction is the number of dwelling units that count toward the achievement of a particular housing goal. The denominator is the number of dwelling units (for all mortgages purchased) that could, under appropriate circumstances, count toward achievement of a goal. Under § 81.15(b) of the proposed rule, dwelling units with insufficient information to determine whether the unit scored toward a GSE's goal performance would be excluded from the numerator, but included in the denominator. Freddie Mac objected that this provision was too strict and ''distorts the reports to Congress on * * * purchases of mortgages counted within * * * the goals.'' Freddie Mac recommended that, when a given threshold of completeness of data is met, the GSE be permitted to eliminate from the denominator up to a given percentage of units lacking sufficient data.

HUD is aware that the GSEs have incomplete data for mortgages originated before 1993. Consequently, when a GSE lacks sufficient information to determine whether a mortgage originated before 1993 counts toward achievement of any of the housing goals, the purchase of that mortgage may be excluded from the denominator for purposes of measuring goal performance. However, the goals must be structured in a manner that will create incentives for the GSEs to obtain and provide the data necessary to determine whether the purchase of mortgages originated during or after 1993 count toward the housing goals. Permitting the GSEs to exclude from the denominator, because a GSE lacked complete information, mortgage purchases (of post-1992 originations) that did not meet the goals would create a disincentive to the collection of such information. This result is contrary to the legislative history, which emphasizes the importance of accurate and comprehensive data. Accordingly, the final rule requires all mortgages originated after 1992 to be included in the determination of the GSE's performance under each of the housing goals.

Double-Counting

Some dwelling units financed by a GSE mortgage purchase count toward achievement of one, two, or all three housing goals under § 81.15(d) of the proposed rule. Two commenters objected to permitting double- or triple-counting. One commenter noted that the GSEs may not have to alter their ''programmatic focus to any great extent'' to meet the goals. In the final rule, HUD has allowed counting mortgage purchases toward one or more of the goals, because double counting is consistent with congressional intent. The Senate Report on FHEFSSA [43] provides that the goals be ''overlapping, in that each [GSE] activity counts toward the achievement of each goal, if any, for which the activity qualifies.''

Use of Rent

Freddie Mac commented that § 81.15(f)(5) should be clarified so that use of average rent-by-unit-type continues to be an acceptable means for reporting rent levels and determining affordability of non-owner-occupied units. Freddie Mac claimed that requiring it to obtain individual unit rent data would be a large drain on resources and would place Freddie Mac at a competitive disadvantage relative to its non-GSE competitors. Because the current reporting system has worked satisfactorily and the GSEs' reporting burden is an important consideration, the rule has been changed to conform to Freddie Mac's suggestion.

Seasoned Mortgages

In determining whether mortgages count toward the goals, Freddie Mac asked for revision of §§ 81.15(f)(6) and 81.16(c)(6), to allow the GSEs to use tenant information (for 2- to 4-unit mortgages) and income or rent level information (for single-family

[43] S. Rep. at 63.

mortgages) as of the time of origination, regardless of the age of the mortgages when acquired by the GSE. According to Freddie Mac, the rule would then conform to industry practice and would avoid requiring the modification of data collection and underwriting practices for these types of units. This practice was also allowed under the Notice of Interim Housing Goals published in October 1993, to avoid costly reverification of information. For the same reasons, the final regulation continues this requirement.

Split Areas

Freddie Mac criticized § 81.15(g) of the proposed rule, which would have provided an allocation formula for split census tracts in measuring performance under the Geographically Targeted Goal, as ''cumbersome and inconsistent with HMDA requirements'' in its treatment of determining area median income in census tracts that cross metropolitan area boundaries in New England. Freddie Mac stated that the additional precision in reporting that HUD was apparently seeking was not worth the cost. Freddie Mac recommended that where the ''area'' cannot be determined and the census tract or property lies in a ''split area,'' the GSEs should be permitted to use the convention adopted by the Federal Financial Institutions Examination Council (FFIEC) for HMDA reports. The final rule adopts this suggestion, which uses an allocation that distinguishes only portions of the county within a metropolitan area from those portions outside of a metropolitan area.

Special Counting Requirements, Section 81.16

Low-Income Housing Tax Credit Purchases (LIHTC) and Mortgage Revenue Bonds (MRB)

Fannie Mae objected to §§ 81.16(b) (1) and (2) of the proposed rule, which would have provided that the GSEs' LIHTC equity investments and MRB purchases would not count toward any of the goals, including the Special Affordable Housing Goal. Fannie Mae commented that the Secretary's position on these forms of investment is ''inconsistent and counter-productive.'' Several other commenters agreed with Fannie Mae. One commented that the Secretary should at least give credit for LIHTCs in central cities and underserved areas. Another commenter stated that LIHTC equity investments are not mortgage purchases and, therefore, it might be appropriate to place ''an upper limit on the amount of credit to be taken for such activities.''

The final rule does not change the provision that the purchase of LIHTCs will not count toward the housing goals. The GSEs' support of affordable housing through the provision of equity in exchange for tax benefits is an important activity. Although the legislative history states that equity investments should not count toward the achievement of the Special Affordable Housing Goal, the legislative history indicates that it is the Secretary's decision whether the purchase of LIHTCs should count toward achievement of the other two housing goals.[44] Because the purchase of LIHTCs is not the equivalent of the purchase of a mortgage, equity investments in LIHTCs do not count toward achievement of any of the housing goals.

Freddie Mac commented that the purchase of MRBs should receive full credit. Freddie Mac commented that:

> * * * where revenue bonds are issued that are not supported by any pledge or promise from the state or local issuer of the bonds, or by any other credit enhancement or collateral, other than the payments from the mortgage itself, the purchaser of these bonds would be in the exact same economic position as the purchaser of the mortgage itself.

The final rule allows units financed by a mortgage revenue bond purchased by the GSEs to count under the housing goals with certain restrictions to assure that such MRB purchases are the functional equivalent of mortgage purchases by the GSEs. Under the rule, purchases of MRBs count only where the MRB is to be repaid from the principal and interest of the underlying mortgages originated with funds made available by the MRB. Purchase of an MRB which is either a general obligation of a state or local government or agency or is otherwise credit enhanced, by any government or agency, third party guarantor or surety, will not count.

Risk-Sharing Arrangements

Freddie Mac commented that the exception in § 81.16(b)(3) should be modified so that mortgages purchased by the GSEs under risk-sharing arrangements with HUD or other Federal agencies would receive full credit under the Special Affordable Housing Goal. Freddie Mae stated that such an approach would better comport with the statutory language and would provide an incentive for completing mortgage purchases that may entail greater underwriting risks and a higher level of monitoring. Freddie Mac commented that HUD's rationale in the proposed rule for denying full credit under risk-sharing arrangements of the kind described was ''flawed,'' and that the Secretary lacked authority under FHEFSSA to refuse to give credit, or to provide for only partial credit.

NTIC disagreed with Freddie Mac's comment and with the proposed rule's provision of partial credit for risk-sharing activities. NTIC asserted that the GSEs' risk-sharing activities should supplement affordable housing programs, not replace them. NTIC stated: ''The legislation was enacted to ensure regular, conventional business is available to all citizens and neighborhoods. Allowing Fannie and Freddie to use the government's money to make their goals is unacceptable!''

Under section 1333(b)(1)(A) of FHEFSSA, the Secretary is required to give full credit toward the Special Affordable Housing Goal for the purchase or securitization of federally-insured or guaranteed mortgages where: (1) such mortgages cannot be readily securitized through the Government National Mortgage Association or any other Federal agency; (2) the GSEs' participation substantially enhances the affordability of the housing subject to such mortgages; and (3) the mortgages involved are on housing that otherwise qualifies under the Special Affordable Housing Goal to be considered for purposes of that goal. The Secretary has determined that the GSEs' current risk-sharing activities meet the requirements in (1) and (2). To the extent the third requirement is satisfied, risk-sharing activities will receive full credit toward achievement of the Special Affordable Housing Goal under the final rule, as long as the dwelling units financed meet the other requirements of the goal.

Furthermore, the final rule provides full credit under the Low- and Moderate-Income Goal and the Geographically Targeted Goal for mortgages purchased under risk-sharing arrangements where the GSE assumes substantial risk, which serve to increase available housing opportunities. HUD intends to monitor future GSE purchases under risk-sharing arrangements to assure that providing full credit for such purchases remains warranted.

Forward Commitments

Freddie Mac commented that § 81.16(b)(4) should be revised to permit commitments to purchase mortgages to count as mortgage purchases in the year the commitments were made. Freddie Mac stated that such revision would make the rule consistent with requirements imposed under FHEFSSA, which mandate that Freddie Mac hold

[44] *See, e.g.,* S. Rep. at 38; H. Rep. at 60 and 61.

capital against forward commitments. Freddie Mac added that the rule could add language to ensure against ''double counting.''

Under FHEFSSA, the Secretary is to establish housing goals for mortgage purchases. Section 1303(11) of FHEFSSA defines mortgage purchases to include mortgages purchased for portfolio or securitization. The use of the past tense of the verb, i.e., ''purchased,'' rather than the future tense, i.e., ''purchased or to be purchased,'' indicates that a transaction does not constitute a mortgage purchase simply because a mortgage may be purchased in the future based on a commitment, but that the mortgage must actually have been ''purchased.'' Accordingly, this section of the rule has not been revised.

Second Homes

Freddie Mac commented that § 81.16(b)(5) should be eliminated so that the purchase of mortgages on secondary residences would receive full credit toward the goals. Freddie Mac stated that the majority of secondary residences are located in low- and moderate-income census tracts and ''serve an important role in bolstering local housing markets and providing a supplement to the local housing stock.''

Many second homes, which are frequently owned by affluent families, are located in predominantly low- or moderate-income areas. These second homes provide few, if any, affordable housing opportunities for the permanent residents of areas defined as underserved. Accordingly, the final rule does not provide goal credit for secondary residences.

Credit Enhancements

Freddie Mac expressly supported the Secretary's decision to allow credit enhancements to count toward achievement of the housing goals. However, Freddie Mac commented that certain revisions should be made to § 81.16(c)(1): (1) the requirement that the GSE provide specific mortgages as collateral should be dropped because it does not relate to the economic substance of a credit enhancement or to the rating of the bonds; (2) in a credit enhancement, Freddie Mac does not ''guarantee bonds,'' but ensures that payments are made on the underlying mortgages; thus, the reference to guaranteeing should be omitted; (3) the proposed rule was unclear because it referred to ''State or local housing finance agency'' in one place and ''any entity'' in another place; Freddie Mac commented that ''any entity'' should be used; and (4) the rule should include credit enhancements where a GSE '''reinsures' mortgage insurance provided by a public purpose mortgage insurance entity or fund.'' Freddie Mac provided revised language for this section consistent with its comments.

The National Council of State Housing Agencies stated that it was ''pleased'' that HUD proposed to count the GSEs' credit enhancement transactions, and it opposed the rule's limitation of this credit to transactions in which a GSE provides specific mortgages as collateral.

The counting of a credit enhancement should not depend on whether a GSE's insurance of mortgage payments is provided through collateralizing specific mortgages. This section of the rule has been modified to require the GSE to provide only a specific contractual obligation to ensure mortgage payments. In addition, the Secretary agrees with Freddie Mac that reinsurance of mortgage insurance provided by a public purpose mortgage insurance entity or fund is beneficial to the mortgage markets. Accordingly, the Secretary has decided that, on a case-by-case basis, a GSE may seek the Secretary's approval for counting such transactions toward the achievement of the housing goals.

The Secretary does not want to create a regulatory distortion of corporate decisions on how to develop and initiate credit enhancement transactions. The inconsistency in the proposed rule—limiting credit enhancement transactions to State and local agencies—referred to by Freddie Mac has been removed, and the broader language that it recommended has been adopted.

Real Estate Mortgage Investment Conduits (REMICS)

Freddie Mac commented that § 81.16(c)(2) should be drafted so that purchases of REMICs would count toward fulfillment of all three housing goals ''to the extent that the purchase of the mortgages underlying the REMICs would provide credit under the goals and there is no resulting 'double counting' of these mortgages.'' Freddie Mac stated that this type of transaction increases the liquidity of the mortgage-backed securities market and lowers costs for borrowers.

Fannie Mae commented that the purchase of REMICs should count toward the goals because such activity is functionally equivalent to a mortgage purchase. Fannie Mae commented: ''REMICs that do not contain MBS [Mortgage-Backed Securities] or mortgages purchased by Fannie Mae, Freddie Mac, or a government insured entity do not cause 'double counting' . . . .'' Fannie Mae noted that it has never purchased a REMIC that contained anything other than mortgages and property related to mortgages. (Under the Internal Revenue Service (IRS) Code, 26 CFR 1.860G–2(a)(4) and 1.856–3(c), REMICs may include other interests in real property such as ''options to acquire land or improvements thereon'' and ''timeshare interests.'')

In large measure, HUD agrees with these comments concerning purchases of REMICs. Accordingly, the purchase of REMICs by the GSEs may count toward the goals as long as the underlying mortgages or mortgage-backed securities were not previously purchased or issued by the GSEs or otherwise would result in double counting. Subject to the same restrictions, the guarantee of a REMIC by a GSE may also count toward the goals.

HUD recognizes that the development of new and distinct REMIC structures is dynamic and HUD does not in any manner seek to impede these developments. However, the GSEs are advised that when there is any question about whether a new structure meets these restrictions for counting under the goals, the GSEs should seek the advice of HUD before counting the transaction.

Participations

Instead of counting participations in mortgages toward achievement of the housing goals based on the percentage of the participation purchased by a GSE, as proposed under § 81.16(c)(4), Freddie Mac commented that the rule should provide for full credit whenever the GSE's participation percentage is 50 percent or more and no credit when a participation is below 50 percent.

Freddie Mac's proposal would reduce the reporting and compliance burden, and the final rule adopts this proposal. Participations have played, and are expected to play, a *de minimis* role in the GSEs' purchases, and for that reason the counting approach adopted should have little impact on housing goal performance.

Second Mortgages

In response to the proposed rule's questions concerning whether and how to count second mortgages, Freddie Mac commented that second mortgages should receive full, rather than partial, credit under the goals, because of the difficulty in arriving at an appropriate means of allocating partial credit and because second mortgages frequently fulfill the same purpose as refinancing, at lesser cost to the borrower. Fannie

Mae generally agreed. The Los Angeles Housing Department commented:

> If a second mortgage loan is made to a low income or minority borrower who otherwise would have had to resort to the loan companies which charge exorbitant interest rates and points (''hard money lenders'') the loan should carry full GSE credit. Otherwise, the loan is being made to borrowers who have already shown themselves to be a good risk, and should not generate full credit.

To simplify counting and monitoring for goals purposes and encourage the GSEs to purchase second mortgages, including low- and moderate-income rehabilitation loans, the final rule, by revising the definition of ''mortgage,'' provides that second mortgages will receive full credit toward achievement of the housing goals. This change will be monitored closely by HUD, to assure, for example, that a GSE does not purchase an excessive number of second mortgages with low unpaid principal balances solely to enhance goal performance.

Income Level Definitions—Tenants (Family Size Not Known), Section 81.18

Freddie Mac commented that § 81.18 (determining affordability for rental units where family size is not known) should apply to actual tenants because Freddie Mac normally has data on unit size, instead of family size, for actual tenants.

HUD agrees and has inserted ''actual or'' before the word ''prospective'' where it appears in § 81.18. Unit size serves as an adequate proxy for family size in instances where the data on family size is not readily available, and requiring family size information could, in some cases, impose an unnecessary cost on the GSEs in exchange for very little information.

Rent Level Definitions for Tenants (Income Not Known), Section 81.19

Freddie Mac objected to § 81.19(d), which would have provided that, for purposes of determining whether a rental unit is affordable, units without data on the number of bedrooms must be counted as efficiency units in making affordability calculations. Freddie Mac commented that this assumption would have the effect of understating the GSEs' performance against the goals, and if information is available on the number of bedrooms of a high percentage of units in a property, the GSE should be allowed to apply the known percentages of efficiencies, one-bedrooms, etc., to the unknown units.

The formulation in the proposed rule has been maintained has been maintained in the final rule. It provides an incentive for the GSEs to secure necessary information regarding bedroom size. Freddie Mac's suggestion would increase HUD's burden in monitoring performance without improving accuracy of the data, and this is contrary to the intent in estimating affordability. Therefore, the assumption respecting efficiency units is not changed.

Additional Goals/Subgoals

Several commenters suggested that the Secretary should, in some manner, provide for additional goals and subgoals. One commenter advocated additions to the regulation to ensure that members of minority communities have access to housing finance from the GSEs commensurate with the minority groups' locally determined percentage shares of single-family mortgage purchases. Similarly, several other commenters suggested subgoals for purchases of mortgages on properties occupied by minority households. Another commenter recommended that regional goals be set, taking into account the variation in housing markets from city to city, as well as urban-rural variations. In a similar vein, another commenter suggested that the Secretary ''require the GSEs to increase their . . . purchases in areas of acute need.''

Two commenters recommended that the Secretary establish a goal under which the GSEs would receive full credit toward achievement of the goals for the disposition of real property to nonprofits.

HUD is refraining from establishing a range of subgoals in this final rule. HUD is concerned about micromanaging the GSEs' efforts to achieve the housing goals. In addition, the objectives sought by the commenters can be served through the three existing goals.

Notice and Determination of Failure To Meet Goals, Section 81.21

Although Freddie Mac supported the proposed rule's ''close adherence'' to the language of FHEFSSA in §§ 81.21 and 81.22 of the proposed rule on monitoring and enforcement, Freddie Mac commented on several points. Under the proposed § 81.21(a), the Secretary, in determining whether a GSE has failed or there is a substantial probability that a GSE will fail to meet a housing goal, will consider the GSEs' reports and ''other data available to the Secretary.'' Freddie Mac noted that it did not understand what ''other data'' referred to and Freddie Mac commented that the phrase should be clarified or removed.

In response to this comment and to mirror FHEFSSA, § 81.21 no longer refers to the information that the Secretary will consider in making the determination.

Freddie Mac commented that § 81.21(b)(1) should be revised to track section 1336(b)(2) of FHEFSSA so that a GSE has 30 days from the date of notice to respond to a preliminary determination from the Secretary. The final regulation has been revised to reference the requirement of section 1336(b).

Housing Plans, Section 81.22

In determining feasibility of a housing goal under § 81.22(a), Fannie Mae commented that the final rule should note specifically that the economic environment and fiscal and monetary policies outside Fannie Mae's control will sometimes determine a particular goal's feasibility.

Section 1336(b)(3)(A)(ii) of FHEFSSA provides that, in determining the feasibility of a housing goal, the Secretary must consider market and economic conditions and the GSE's financial condition. The regulation includes this language and the specific reference suggested by Fannie Mae is not needed.

Under § 81.22(b)(4), the proposed rule would have allowed the Secretary to require a GSE's housing plan to address additional matters as required by the Secretary. Freddie Mac objected to the ''any additional matters'' language and insisted that only the statutory description should be used.

The final rule does not make this change because the Secretary may find it necessary and proper to require the GSE to include specific additional matters relevant to achieving the goal in a housing plan.

Citing section 1336(c)(3) of FHEFSSA, which provides that the Secretary shall, by regulation, establish a deadline for submission of housing plans and that such deadline may not be longer than 45 days after notice to the GSE, Freddie Mac asked for 45 days for submission of a housing plan, rather than the 30-day period provided for in § 81.22(c).

FHEFSSA allows the Secretary to establish a time period of less than 45 days and the Secretary has determined that 30 days is necessary to avoid further delay in achieving the housing goal.

Under § 81.22(e), where the first two housing plans submitted by a GSE are disapproved by the Secretary, Freddie Mac commented that the GSEs be granted 30 days to submit a third housing plan, rather that the 15-day period provided for in § 81.22(e).

In the event that a GSE's housing plans are so deficient that the Secretary disapproves the first two submitted by

the GSE, the Secretary notes that the GSE will have already had a total of 60 days to develop the first two plans. At that point, the GSE's plan should be sufficiently developed so that an additional 30 days is unnecessary to develop a third plan. Accordingly, this provision has not been changed.

Subpart C—Fair Housing

The GSEs' Role

While expressing their strong commitment to participating in the elimination of discriminatory practices in the mortgage lending process, both GSEs, in similar arguments, objected to certain features of Subpart C—Fair Housing.

Both enterprises outlined their efforts to encourage fair lending practices by primary mortgage lenders through outreach, consumer education, and innovative products. The GSEs stressed their interest in contributing to the elimination of unlawful discrimination in the mortgage finance industry. However, both objected to a fair housing enforcement role which they argued the proposed rule would have imposed on them.

Fannie Mae saw its appropriate role in fair lending as being a provider of outreach, consumer education, and flexible, innovative mortgage products to its customers. Freddie Mac also maintained that its primary role should be to provide a ready source of financing for all creditworthy borrowers and to provide market leadership. Freddie Mac took issue with what it saw as the proposed rule's implication that it should be doing more with respect to fair lending.

Several other commenters endorsed the GSEs' position in this regard and stated that, for the GSEs, the role of regulator is inconsistent with the business partnership relationship that exists between the GSEs and their customers. A major mortgage company commented that GSEs ought not be required to develop fair lending plans, because such plans would, in effect, establish the GSEs as ''primary market regulators.'' Referencing its long established business partnership with both GSEs, the commenter said it did not want these entities ''to also be our regulators.''

On the other hand, the San Diego Housing Commission had no objection to an expanded role for GSEs associated with fair housing:

> The proposed rule essentially requires the GSEs to cooperate with HUD in providing data and other information to assist in the investigation of mortgage discrimination by a lender with which either does business. * * *
>
> In general Fannie Mae and Freddie Mac have been successful in expanding the availability of credit, lowering interest rates, and in stabilizing and liquefying the finance market. However, there have been shortcomings in the extent to which they help meet the housing needs of households at the lower end of the housing market. Given their size and the key role they play in housing finance, they are in a position to wield a significant amount of influence.

This final rule follows the clearly expressed intention of Congress that the GSEs comply with the Fair Housing Act and the Equal Credit Opportunity Act (''ECOA'') and aid the efforts of investigators.[45] HUD does not intend that the GSEs will become the Federal government's regulatory or enforcement operation for the primary mortgage market. The Federal fair lending enforcement agencies, not the GSEs, enforce the fair lending laws.

HUD has carefully examined the various points made by the GSEs and other commenters on subpart C of the proposed rule. This final rule contains modifications which respond to the commenters' concerns about the proposed rule's nondiscrimination requirements, assessment of disparate results, and information and recordkeeping requirements. Additionally, many suggestions made by the commenters for language changes and modifications of other aspects of the proposal have been accepted and incorporated. These revisions are discussed elsewhere in this preamble.

Disparate Impact

Freddie Mac argued that section 1325(1) of FHEFSSA reaches only *intentional* discrimination and that application of a disparate impact test is therefore unauthorized. Both GSEs claimed that, even if the disparate impact standard was supported by FHEFSSA, HUD had misstated the standard as articulated by the courts, and had shifted the burden of proof from the plaintiff to the GSE. Other commenters shared this view, although there was little comment in support of Freddie Mac's assertion that FHEFSSA prohibits only intentional discrimination. Fannie Mae claimed that there is no statutory basis and little case law in support of applying a disparate impact analysis to matters arising under ECOA or the Fair Housing Act.

Several other industry commenters joined in this criticism of the proposed rule. The ABA, the MBA, the Western League of Savings Institutions and a major mortgage lender all characterized the application of disparate impact analysis or an ''effects test'' standard in this particular rule as premature and a potential source of marketplace uncertainty.

Both GSEs urged HUD to postpone application of the disparate impact standard in this rule until the issue is addressed in the HUD's broader Fair Housing Act regulations. Adopting the standard in FHEFSSA rules first, the GSEs claimed, would create confusion and increase the likelihood of the development of divergent standards governing mortgage finance. Both GSEs and several major industry organizations argued that subpart C would result in a dual enforcement mechanism, applicable to their operations but not to other segments of the housing marketplace, and would subject them to the application of legal theories that are ''largely untested in mortgage finance.'' The GSEs urged the Secretary not only to delay implementation of a disparate impact standard in advance of a fair lending addition to HUD's Fair Housing regulations, but also to coordinate the development of any such revisions with primary market financial institution regulators and the Department of Justice. Fannie Mae claimed that none of these regulators or enforcers has provided industry-wide guidance to date.

The American Bankers Association questioned the proposed rule's explanation of business necessity, suggesting that it failed to afford the GSEs adequate guidance. It further maintained that HUD's position on the meaning of business necessity was inconsistent with and constituted a more difficult legal test than the understanding of the term reflected in the Interagency Policy Statement on Discrimination in Lending (''Interagency Policy Statement'').[46]

Fannie Mae also claimed that the proposed rule would create a potential ''litigation and enforcement nightmare'' for the GSEs and that the rule would inhibit innovation. Freddie Mac argued that the rule would also inhibit the GSEs' efforts to identify and eradicate barriers in their underwriting guidelines.

Section 1325(1) of FHEFSSA requires the Secretary to prohibit the GSEs from discriminating ''in any manner''—including a prohibition on any consideration of the age or location of a dwelling or neighborhood in a manner that has a ''discriminatory effect.'' The use of the phrases ''in any manner'' and ''discriminatory effect'' in section 1325(1) makes clear Congress's intent

[45] *See* S. Rep. at 43–44.

[46] 59 FR 18266 (1994).

that the statute's prohibitions extend beyond intentional discrimination. The Senate Report states that Congress intended to proscribe ''policies and practices, including inappropriate underwriting guidelines, [which] may *unintentionally* yield discriminatory patterns in mortgage lending.'' [47] The Senate Committee report cited testimony that ''. . .there are other business practices of the enterprises which have the *effect of discriminating* against minorities . . . .'' [48] Examples cited by the Senate Report included differential pricing and fee structures for mortgage products which effectively discouraged lending in minority and low-income communities.[49]

However, HUD has taken into account the considerable comments it received from the GSEs and others, and has determined to track the statutory prohibition as enacted by Congress.

In response to the GSEs' comments regarding a lack of guidance, the disparate impact (or discriminatory effect) theory is firmly established by Fair Housing Act case law. That law is applicable to all segments of the housing marketplace, including the GSEs. All of the circuit courts, except for the D.C. Circuit which has not considered the issue, have held that the Fair Housing Act includes claims based upon the disparate impact theory.[50]

All the Federal financial regulatory and enforcement agencies recognize the role that disparate impact analysis plays in scrutiny of mortgage lending. In the Interagency Policy Statement, the bank, thrift, and credit union regulators, the Justice Department, Treasury, OFHEO, Federal Trade Commission (FTC), and HUD jointly recognized the disparate impact standard as a means of proving lending discrimination under the Fair Housing Act and ECOA. The disparate results assessment requirement included in this final rule mirrors the statutory requirement and is consistent with the Interagency Policy Statement, which explicitly applies a similar ''disparate impact'' standard to proving violations of the Fair Housing Act and ECOA.[51]

Congress, in enacting FHEFSSA, expressly stated that it was concerned with the subtle, often ''*unintentional*'' forms of discrimination that are the hallmark of present-day unlawful conduct, and that the law was enacted to ensure that the enterprises would in no way contribute to the continuance of such discrimination in mortgage lending.[52]

Prohibitions Against Discrimination

Freddie Mac objected to the use, in § 81.42(b)(1) of the proposed rule, of the term ''*based on* race, color . . .'' (etc.), suggesting that the statutory phrase ''because of'' be substituted. This final rule, which now mirrors the language of the statute, incorporates this suggestion. Section 81.43 of this final rule also follows the language of the statute in requiring assessments ''based on'' protected status. In the context of this rule, HUD considers the terms ''based on'' and ''because of'' to be synonymous.

Appraisals

Freddie Mac found the proposed rule's treatment of age and location troubling, even where the purpose of the rule was to set forth specific exemptions allowing consideration of such factors. Freddie Mac stated that the listed exemptions might be limiting and that the exemption as set out conflicted with the appraisal exemption in the Fair Housing Act. Freddie Mac also asked that the age/location-related exemption be removed from this final rule, asserting that the use of age or location in underwriting is appropriate so long as it is not used to discriminate.

In this final rule, § 81.42 parallels the language of the statute and no longer contains the list of examples of location factors which may properly be considered in an appraisal and in other aspects of the underwriting process. Section 805(c) of the Fair Housing Act, 42 U.S.C. 3605(c) addresses appraisals. The HUD regulation which implements this section provides that ''nothing in this section prohibits a person engaged in the business of making or furnishing appraisals of residential real property from taking into account factors other than race, color, religion, sex, handicap, familial status or national origin.'' 24 CFR 100.135. It is HUD's view that the Fair Housing Act and FHEFSSA allow the consideration of the age or location of a dwelling as long as that consideration is not used in a manner that discriminates unlawfully.

Assessment of Disparate Results

Both GSEs objected to conducting a disparate results assessment as part of the Annual Housing Activities Report (AHAR) required by FHEFSSA, a report further discussed in § 81.63 of subpart E. Both GSEs objected to the manner in which the disparate results assessment would have been implemented by § 81.43 of the proposed rule, insofar as that section would have required the GSEs to set forth fully the basis for their conclusions that a business necessity exists for any policies and practices which yield disparate results. Freddie Mac contended that the Secretary has no authority to require the assessments. Freddie Mac also stated that the business practices assessment requirement would result in a massive diversion of resources from Freddie Mac's core business activities and detract from its abilities to fulfill its mission.

Fannie Mae stated that the proposed rule, as well as HUD administrative law decisions, suggest that Fannie Mae must accompany the demonstration of business necessity with a showing that no less discriminatory alternative exists for serving that business necessity, and that this would involve proving a negative assumption. Similar objections were stated with reference to the provisions requiring the GSEs to assess their underwriting and appraisal guidelines. Fannie Mae also claimed that the proposed rule provided no effective guidance to the GSEs concerning how to apply this test to their operating procedures and how to measure whether facially-neutral policies have a disparate impact on a protected class.

The GSEs further asserted that the business practices assessment and underwriting appraisal guidelines requirements place an excessive burden on the GSEs and that HUD underestimated this burden in its Regulatory Impact Analysis. Fannie Mae and Freddie Mac both objected to what they perceived as a shift in responsibility for analysis of data and enforcement from HUD to the GSEs.

MBA opposed the inclusion of the ''less discriminatory alternative'' prong of the disparate impact analysis set out in the rule, arguing that making it the GSE's burden to establish this prong would be unfair and inconsistent with case law on which the theory is based. Although opposing any requirements for GSEs to develop fair lending plans, and joining the objections to the disparate impact provisions, MBA nevertheless saw it as the proper function of the GSEs to develop a business practices assessment along the lines required by subpart D.

Finally, Freddie Mac claimed that the system of ''self-testing'' required by the business practices assessment conflicts with the clear trend set by the

[47] S. Rep. at 43 (emphasis added).

[48] Id. at 31 (emphasis added).

[49] *See id.*

[50] No courts have ever held in Fair Housing Act or ECOA cases that the disparate impact standard does not apply to lenders.

[51] Additionally, the Federal Reserve, in its Regulation B, recognizes the role of disparate impact analysis under ECOA. 12 CFR 202.6(a)(2); Federal Reserve System Handbook at 1–24.

[52] S. Rep. at 42–43.

Department of Justice and federal financial regulatory institutions.

The Fair Housing Act and its implementing regulations, which were promulgated in 1989, apply to the GSEs and include a detailed prohibition against discrimination in the purchasing of loans and set forth the business necessity defense to a disparate impact claim involving the purchasing of loans.[53] Thus, when taken together, the Fair Housing Act regulations and case law, the Civil Rights Act of 1991, and the Interagency Policy Statement provide sufficient guidance concerning the application of the statutorily required assessment of disparate results.

The GSEs' assertions concerning the regulatory burden of compliance with the requirements outlined in § 81.43 of the proposed rule have been given careful consideration. Accordingly, HUD has substantially modified this section of the rule, which, as revised, now largely tracks the statutory language of sections 1381 and 1382 of FHEFSSA. These sections of the statute require the GSEs to include, in their AHAR to the Secretary and Congress, assessments of disparate results of various types of policies and practices. The GSEs are directed specifically to ''assess underwriting standards, business practices, repurchase requirements, pricing, fees, and procedures * * * that may yield disparate results based on the race of the borrower'' in their annual reports.[54]

The disparate results assessment is a statutorily-mandated part of the AHAR under FHEFSSA. This final rule implements that statutory mandate by requiring that the GSEs assess whether their business practices are discriminatory on the bases of race, color, religion, sex, handicap, familial status, age or national origin, since all of these are prohibited bases listed in section 1325(1) of FHEFSSA and the Secretary is charged with prohibiting the GSEs from discriminating in any manner based on all of these prohibited factors. The Secretary is authorized to implement the statute's disparate results assessment requirement in this manner. Sections 1381(p) and 1382(s) of FHEFSSA authorize the Secretary to require the GSEs to submit any other information in their AHARs that the Secretary considers appropriate. However, the Secretary recognizes that data may not be currently available to assess whether certain practices are discriminatory on the bases of handicap, familial status and religion.

This rule does not impose a requirement upon the GSEs to ask lenders to report information regarding the religion or handicap of potential borrowers. Nor is it intended, for purposes of this section, that the GSEs ask lenders to report any information other than that which the lenders currently report, or any information which lenders may not inquire about under ECOA or the Fair Housing Act. ECOA regulations generally prohibit creditors from inquiring about an applicant's race, color, religion, or national origin. The Fair Housing Act also generally prohibits inquiries regarding an applicant's race, color, national origin, religion, sex, familial status or handicap. However, ECOA regulations do allow a creditor to collect information regarding an applicant's race, national origin, sex, marital status, and age for monitoring purposes. Additionally, HMDA regulations require lenders to collect information on race or national origin and sex of an applicant or borrower.

These revisions address the GSE's concerns regarding undue regulatory burden. The streamlining of the reporting requirements included in § 81.43 of this final rule reduces the GSEs' compliance burden and requires fewer submissions to HUD. The AHARs under subpart E already require the GSEs to assess the impact of their own decisions with a conscious goal of ensuring that they do not violate the law, and to include, as the statute requires, ''revisions thereto to promote affordable housing and fair lending.''

In developing this final rule, HUD has recognized that regulatory provisions intended as guidance may sometimes become prescriptive and can lead unnecessarily to micromanagement. The GSEs themselves should be afforded the opportunity to use their capabilities to develop a functional assessment method that ensures the fulfillment of the precise statutory directive. The regular assessment by the GSEs of policies and practices to determine whether they may be yielding disparate results, and the evaluation of that assessment by HUD, will carry out FHEFSSA's mandate to prohibit discrimination in any manner.

Additionally, section 1325(6) of FHEFSSA requires review by the Secretary of the GSEs' underwriting and appraisal guidelines to ensure that they are consistent with the Fair Housing Act and that section. The language in § 81.43(b) mirrors the language of the statute.

Data Submission

Freddie Mac raised a series of concerns about the proposed rule's implementation of sections 1325(2) and (3) of FHEFSSA, authorizing the Secretary to require submission of information to assist the Secretary to determine whether a lender with which the enterprise does business has failed to comply with the Fair Housing Act and ECOA. Freddie Mac objected to being required to respond to requests from any agency other than the Secretary, pointing out that § 81.44(b) of the proposed rule suggested that other Federal agencies might make direct requests to the GSEs.

Freddie Mac objected to the rule's suggestion that information could be requested by the Secretary pertaining to the mortgage sales of lenders operating in the ''same or similar areas'' as a lender about whom a request for data had been made. Freddie Mac objected on cost and resources grounds, and requested that the rule be limited to requiring only the provision of data pertaining to lenders (a) against whom a complaint has been filed; (b) where other evidence supports an investigation; and (c) where the data in Freddie Mac's possession is not otherwise publicly available.

Freddie Mac also objected to HUD's characterization, in the proposed rule, of materials to be sought from it as ''information.'' Freddie Mac argued that ''data'' meant facts that were a matter of direct observation, while ''information'' included ''knowledge gained through communication, research, instruction, etc.'' Insisting on the distinction, Freddie Mac objected to the creation of ''an unfettered right of the Secretary to require the enterprises to conduct sophisticated statistical analyses that * * * might be helpful to complete an investigation * * *.'' Fannie Mae asked that the rule be revised to state that GSEs are required to provide only data: (a) owned by the GSE; (b) in response to requests by the Secretary; (c) in connection with an ongoing investigation by the Secretary (rather than other organizations); (d) pertaining only to a particular lender pursuant to specific allegations of discrimination; and (e) that has not already been supplied and is not readily obtainable from other sources.

Other housing industry commenters also requested that investigative data sought by HUD be limited to active investigations already in progress, because requiring the GSEs to produce an analysis of each of their lenders could poison the business relationship between GSEs and their customers, and

[53] 24 CFR 100.125.

[54] Sections 1381(p) and 1382(s) of FHEFSSA.

involve high additional costs for the GSEs. The National Association of Mortgage Brokers (NAMB), the California Association of Realtors, the Western League of Savings Institutions, the ABA, the NAR, and a major mortgage company all joined in protesting what they considered the prospect of excessive information collection, employing GSE resources. NAR raised concerns about ''privileged data on lenders'' and indicated that the organization's concern was ''magnified when the proposed requirement to provide information is coupled with a request that the GSEs conduct an analysis of the data.'' It urged that HUD's requests for data and analysis be limited to situations involving allegations of discrimination.

To address these concerns, § 81.44(b)(1) of this final rule has been modified to clarify that other Federal agencies responsible for ECOA enforcement which wish to request information from the GSEs pursuant to FHEFSSA must do so by submitting that request through the Secretary. The words ''without limitation'' referencing, in the proposed rule, the types of information that may be requested, have been removed in this final rule at § 81.44(b)(1) and (2). Section 81.44(a) also has been modified to make it clear that the GSEs are only required to submit such information under FHEFSSA after it has been requested by the Secretary.

Additionally, in accordance with the President's initiative on regulatory reform, the examples provided in § 81.44(b)(1) and (2) of information which may be requested have been removed from this final rule. By removing those examples, HUD does not intend to limit, in any way, the information it may request pursuant to section 1325 of FHEFSSA and § 81.44 regarding violations by lenders of the Fair Housing Act and ECOA. Requested information may include information on mortgages sold to the GSE by the lender or lenders under investigation, the mortgage sales of lenders operating in the same or similar areas, and information on representations and certifications to the GSEs by the lender or lenders under investigation. Information requested from the GSEs' established data systems may include comparing the loans purchased by the GSE from a particular lender to data on the racial composition of census tracts or providing data on loans sold to the GSE by lenders operating in the same geographical area. In the interests of regulatory reform, the reference to comparative and other data that would be collected under § 81.44(b)(1) and (2) has been removed, but HUD will seek such data when appropriate.

Where comparative data about the performance of other lenders is considered relevant to an ongoing investigation, HUD has the authority under the Fair Housing Act to require anyone, including the GSEs, to provide material or testimony. 24 CFR 103.200, 103.215, 103.220. It is consistent for the GSEs to provide such information pursuant to this section.

Although no other commenters repeated Freddie Mac's distinction between ''data'' and ''information,'' several joined Fannie Mae in arguing that only information about an identified object of investigation, and not available from other sources, should be sought through the GSEs. Freddie Mac also asserted that HUD has grossly underestimated the resource drain on Freddie Mac that § 81.44 would entail. Again referencing the Regulatory Impact Analysis for the proposed rule, Freddie Mac objected that HUD had misstated and oversimplified the work burden associated with the GSE's provision of required data. Several industry commenters echoed Freddie Mac's position on this issue.

Section 1325(3) of FHEFSSA uses the terms ''data'' and ''information'' interchangeably. The legislative history shows that the Congress intended that the GSEs would actively assist HUD by providing data for ''investigative purposes.'' [55] Nor does the statute, or its goals, support Fannie Mae's suggestion that the rule be revised to state that the GSEs are required to provide only information owned by them and not readily available from another source. Congress intended that the GSEs submit information that they are ''privy to and collect,'' and there is no requirement that the GSEs own such information.[56] That language indicates Congress' intent that the Secretary have access, upon request, to information other than that owned by the GSEs.

HUD is sensitive to the need to limit reporting burdens upon both lenders and the GSEs to the minimum level consistent with effectively implementing statutory requirements. As a practical matter, HUD does not anticipate that requests for information from the GSEs pursuant to an investigation will generally require the GSEs to seek additional information from lenders, nor does it expect that it generally will seek information from the GSEs when that information is readily available from other sources. Rather, as mandated by the statute, the GSEs will assist HUD in investigations by providing existing and available data and information upon request by HUD. HUD does not expect that § 81.44 will result in new reporting burdens on lenders, and does not expect that it will impose onerous burdens on the GSEs. Nor does HUD intend for the GSEs to conduct fair lending investigations or otherwise act as an enforcement arm of the Federal government.

For matters involving the Fair Housing Act, the Secretary will only issue requests for information about lender-based data in circumstances involving investigations, as defined by the Fair Housing Act regulations found at 24 CFR part 100, subpart D. For matters involving only ECOA, § 81.44(b)(1) provides that the Secretary will only issue requests for information from the GSEs upon a request from the responsible Federal financial regulatory agency.

In response to comments, the revised § 81.44 omits the provisions in the proposed rule which would have required the GSEs to volunteer information regarding potential violations of the Fair Housing Act or ECOA and which would have required the GSEs to submit other information to HUD or the other lending regulators.[57]

Finally, Freddie Mac objected that HUD ought to revise § 81.44 to assure that any data-providing burdens fall equally on the two competing GSEs.

HUD anticipates that regular reporting and data-provision requirements imposed upon the GSEs will not differ. However, the subject matter of § 81.44 is the provision of information to assist in investigations. The nature of each particular investigation will determine what information is necessary. Because information will only be sought as needed, it would be unnecessarily burdensome, both for the GSEs and HUD, for the Secretary routinely to make duplicate requests for information to both GSEs when it is not otherwise necessary.

Evidentiary Value of Data

Freddie Mac argued strongly that it could not make determinations, in any event, concerning whether its practices produced disparate results among its lenders, since Freddie Mac has no means of collecting data for loans that were declined as a proximate result of Freddie Mac requirements. There was

[55] *See* S. Rep. at 43–44.

[56] *See* S. Rep. at 43–44.

[57] While the requirement to volunteer information about violations has been removed from the rule, this change does not shield the GSEs from potential legal liability if they participate in discrimination. *See* section 1325(1) of FHEFSSA; sections 804 and 805 of the Fair Housing Act, 42 U.S.C. 3604–3605; and 24 CFR 100.125.

support among the other industry commenters concerning what they considered the limited evidentiary value of GSE application data. MBA noted that information solely from the GSEs would ''give a distorted view of a lender's performance since lenders originate loans for other investors and loans with FHA insurance are sold into the secondary market through Ginnie Mae.''

HUD is aware that lender information received from the GSEs generally will include only those transactions in which a GSE has been a participant. However, that is not a basis for concluding that there is no evidentiary value in information provided by the GSEs in accordance with the requirements of FHEFSSA and this final rule. The legislative history of FHEFSSA clearly indicates that Congress considered information possessed by the GSEs to be of potential value in investigations.[58]

Submission of Information to the GSEs

HUD will make information regarding violations of ECOA or the Fair Housing Act available to the GSEs pursuant to § 81.45. Information to be made available regarding violations will include decisions by Administrative Law Judges, Federal courts, the Secretary, or decisions of other courts applying Federal, State or local fair lending laws. HUD recognizes that the information to be made available to the GSEs will be limited by applicable law, memoranda of understanding between the agencies and other arrangements regarding such issues as confidentiality, the right to privacy, and the protection of supervisory information.

HUD recognizes that because the GSEs may take action pursuant to their own policies and agreements, the clause in the proposed rule at § 81.45(b) which authorized them to do so was not necessary. Therefore, the clause has been deleted from this final rule.

In consultations, the federal financial regulators raised concern that § 81.45 of the proposed rule, which directed the Secretary to obtain information from federal financial regulators and others regarding violations of the Fair Housing Act and ECOA, would require the reporting of violations which might be unrelated to mortgage lending discrimination.

In response to these concerns, § 81.45(b) of this final rule limits the information required to be obtained from other Federal regulatory or enforcement agencies to violations by lenders involving discrimination with respect to the availability of credit in a residential real-estate-related-transaction. This change more clearly describes the scope of the data required by this final rule.

In addition, while the rule directs the Secretary to obtain information regarding single violations of the Fair Housing Act in real-estate-related transactions, in response to federal financial regulator concerns involving ECOA violations, the Secretary will obtain information from regulators regarding violations of ECOA by lenders only in circumstances in which there is either more than a single ECOA violation, or the ECOA violation could also be a violation of the Fair Housing Act.

Remedial Actions

Section 1325(5) of FHEFSSA authorizes the Secretary to direct the GSEs to take various remedial actions against lenders that have been found to have engaged in discriminatory lending practices in violation of the Fair Housing Act or ECOA, pursuant to a final adjudication on the record, and after opportunity for an administrative hearing. Freddie Mac commented that HUD had not defined ''final adjudication on the record'' in the proposed rule, and had employed the term ''final determination'' in its place, contrary to section 1325(5) of FHEFSSA. Freddie Mac requested that the term ''final adjudication on the record'' be defined to include recognition that such an adjudication could only result from a United States court or established administrative proceeding, with an unappealable decision on the merits having found a lender to have violated substantive (i.e., not technical or recordkeeping) provisions of ECOA or the Fair Housing Act.

Congress intended that remedial actions would be imposed only on lenders that had been found to have violated the Fair Housing Act or ECOA by a court or administrative law judge, after a trial on the merits, and after that decision was no longer subject to appeal.[59]

Section 81.46(c)(1) provides that the Secretary shall direct a GSE to take remedial action only after a final determination has been made that a lender has violated ECOA or the Fair Housing Act. The term ''final determination'' means, within the context of § 81.46, a final administrative or judicial decision, after hearing or trial on the merits, which is not subject to appeal. For the purposes of finding that there has been a final determination that a lender violated the Fair Housing Act, the implementing regulations at 24 CFR 104.930 and 104.950 establish that a final decision may be made by the Secretary or a HUD Administrative Law Judge, and that a final decision becomes conclusive unless appealed within the statutory period. If a party to the case elects to have that case heard in U.S. District Court pursuant to section 812(o) of the Fair Housing Act, 42 U.S.C. 3612(o), the District Court may decide the case, and that decision becomes conclusive unless appealed within the period established by the Federal Rules of Appellate Procedure. For the purposes of finding a violation of ECOA, a final determination means that a final decision on a complaint must have been made by an appropriate United States District Court or any other court of competent jurisdiction, and that decision must be no longer subject to appeal.

Congress also indicated that after a final determination has been made that a lender violated the Fair Housing Act or ECOA, HUD should conduct a hearing on the record before imposing any remedial action.[60] The term ''final adjudication on the record,'' as used in section 1325(5) of the statute, provides for the use of the formal adjudicative process set forth in §§ 554–557 of the Administrative Procedure Act.

Freddie Mac objected to the phrase ''indefinite suspension'' as used in the rule. Freddie Mac claimed that, as used in the statute, ''suspension'' clearly implied a temporary (and definite) remedial action, and that HUD's use of the term ''indefinite'' suspension constituted a rule-created additional, more severe, form of remedy.

MBA addressed a related concern. In light of the broad scope of remedies outlined in the statute, MBA objected to the rule's use of the phrase ''other remedial action,'' saying that it was inappropriate for the Secretary to assert general discretion to take any other action against lenders without providing

[58] ''In the course of their day-to-day operations the enterprises are privy to and collect certain data which may be instructive regarding the practices of mortgage lenders. The reporting of such data should aid investigative efforts.'' S. Rep. at 43–44; *see also* sections 1325(2) and (3) of FHEFSSA.

[59] ''This section also provides for remedial actions against lenders who have been found to have violated the Fair Housing Act or the Equal Opportunity Act [sic] by the appropriate administrative agency with enforcement responsibility . . . . Any hearing regarding a remedial action should be held only after there has been a final administrative or judicial decision, after hearing or trial on the merits, and not subject to appeal, as provided in the applicable statute.'' S. Rep. at 44.

[60] ''Before imposing any remedial action, HUD shall conduct a hearing on the record in accordance with the Administrative Procedure Act.'' S. Rep. at 44.

the opportunity for notice and comment rulemaking as to what that action might be.

This final rule no longer includes the phrase ''other remedial action.'' However, HUD does not agree with Freddie Mac's assertion that the statutory term ''suspension'' is a limiting one. The terms ''temporary'' and ''indefinite'' clarify the statutory term, which did not provide any time limits for suspensions to be applied. Accordingly, this final rule continues to provide for temporary suspension or indefinite suspension as alternative remedial actions, depending upon the severity of the discriminatory conduct.

Freddie Mac also objected to the fact that the rule does not provide it with a role in connection with any administrative hearing concerning remedial action against a lender. In contrast, the ABA, although supportive of GSE positions on several issues, found no fault with the procedural protections in the proposed rule, and stated its belief that the rule provides necessary and appropriate procedural safeguards for lenders. The statute does not provide a role for the GSEs in connection with an administrative hearing concerning remedial action against a lender.

Additionally, Freddie Mac regarded the list of factors to be considered in determining whether to apply a remedial action, found at § 81.46(c)(3) of the proposed rule, as excessively broad, inclusive of potentially irrelevant considerations, and in contravention of the statute's express intent to limit remedial actions to final adjudications. This final rule provides useful guidance in carrying out the statutory requirement, in section 1325(5), that the Secretary shall direct the GSEs to undertake appropriate remedial actions. The rule states that before giving the GSEs and the lender notice of any remedial action to be taken, the Secretary shall, as a threshold matter, solicit and fully consider the views of the Federal financial regulatory agency responsible for the subject lender. If such responsible Federal financial regulatory agency makes a written determination that a particular remedial action will threaten the financial safety and soundness of the lender, the Secretary shall consider other remedial actions. For the purposes of § 81.46, ''remedial actions'' will include only those actions relating to the business relationship between the GSE and the lender.

The rule provides a list of factors to be considered when directing remedial action. This list has been shortened in this final rule to combine similar factors, in accordance with the President's initiative on regulatory reform. For example, in determining the appropriate remedial action, the Secretary may consider a lender's history with respect to enforcement actions or lawsuits brought against it under ECOA, the Fair Housing Act, or substantially equivalent state or local laws, including cases that are conciliated, settled, or otherwise resolved, as well as private fair housing lawsuits and judgments, settlements, conciliations, or other resolutions. Conciliations and settlements may be considered as mitigating or aggravating factors. For example, a broad class settlement with comprehensive remedial relief may evidence a lender's good faith and affirmative attempts to correct discrimination and may be a mitigating factor when determining whether to impose a remedial action pursuant to § 81.46 against that lender based on an adjudicated finding involving isolated discriminatory acts of a single employee. On the other hand, if a lender enters into a similar settlement, but fails to adhere to it, that may be viewed as an aggravating factor when determining whether to impose a remedial action based on an adjudicated finding that the lender has engaged in discrimination. Similarly, if a GSE has taken action against a lender under its own policies or contractual agreements, such action may also be considered as a mitigating or aggravating factor, depending upon the circumstances and the remedial action under consideration.

HUD recognizes that in selling loans to the secondary market, lenders are required to use the secondary market's underwriting guidelines. Under § 81.46(c)(3)(viii) of this final rule, to the extent that a primary lender is found liable under the Fair Housing Act or ECOA for use of a facially neutral, appropriately applied underwriting guideline that is required in order to sell loans to a secondary mortgage market, the Secretary will take that into account in determining the appropriate sanction, if any, to direct the GSE to impose on the primary lender. In such instances, the Secretary will generally direct a settlement or a reprimand as a remedial action.

The statute did not provide for any special consideration of the effect of remedial actions on the GSEs. However, as provided in § 81.46(c)(3), where warranted, the Secretary shall solicit and fully consider the views of the Director regarding the effect of the action(s) that are contemplated on the safety and soundness of the GSE. In addition, § 81.46(c)(3)(ix) of this final rule provides that ''[a]ny other information deemed relevant by the Secretary'' may be taken into account in determining the level of remedial action, and information concerning the impact on the GSEs may be relevant in particular cases.

Additional Fair Lending Issues

The Western League of Savings Institutions encouraged HUD to approach the task of overseeing fair lending practices from an entirely different perspective. HUD, the commenter said, should be concerned with marketplace entities ''not currently subject'' to Federal regulation, and objected to what it perceived as ''dual oversight'' of some depositary institutions. It also recommended that, since HUD will review and comment on existing and revised GSE underwriting guidelines under the regulation, lenders who rely on those underwriting guidelines should be provided a ''safe harbor'' in the regulation.

Regarding the commenter's concern about ''dual oversight,'' FHEFSSA requires HUD to assume certain enforcement responsibilities, and it does not permit HUD to limit this oversight to particular institutions. In response to the request for a ''safe harbor,'' HUD does not believe this regulation is the appropriate vehicle to address the liability of lenders under the Fair Housing Act. The statute speaks only to the sanctions which the Secretary shall mandate that a GSE impose on a primary lender after an adjudication that the primary lender has discriminated. In directing a sanction under FHEFSSA, the Secretary relies on a prior judicial or administrative determination of a Fair Housing Act or ECOA violation. HUD recognizes that lenders are subject to the investigative and enforcement powers under the fair lending laws of HUD, the Department of Justice, the federal financial regulatory agencies and the FTC. To limit duplicative enforcement activities, HUD will ordinarily ensure that remedial actions the Secretary directs a GSE to take against a lender will not be in the nature of those which could have been, but were not, imposed directly against a lender in the course of an enforcement action by HUD, the Department of Justice, or the lender's primary regulator. HUD will consider, as factors in this determination, whether HUD, the Department of Justice, or the lender's primary regulator took an enforcement action, whether the sanction was a result of private litigation, whether additional facts have come to light, and whether the law has changed.

Industry commenters generally opposed the ''fair lending plan'' suggestion on which HUD sought comment and posed questions. Other commenters asserted that the GSEs should be required to prepare a fair lending plan. In the interest of reducing regulatory burden, HUD has not included a fair lending plan as a requirement in the final rule.

Subpart D—New Program Approval

In General

Section 1322(a) of FHEFSSA charges the Secretary with ''requir[ing] each [GSE] to obtain the approval of the Secretary for any new program of the [GSE] before implementing the program.''

The provisions of the proposed rule which sought to implement this authority met with strong objections from the GSEs and others. In light of the comments, which are detailed below, these provisions have been significantly revised to assure that: (1) the program review process is *not* unnecessarily burdensome; (2) ambiguity in the definition of terms cannot conceivably lead to required HUD approval of undertakings other than those reasonably recognizable as ''new programs''; and (3) constructive innovations by the GSEs, involving variations on existing programs, will be neither delayed nor derailed by HUD review processes. The revision of subpart D consists, in large measure, of conforming its language in key areas with the provisions of the statute with only the addition of necessary housekeeping provisions.

In light of the significant changes in the provisions on new program approval included in this final rule, this preamble summarizes the positions of the GSEs and other commenters in less detail than would be necessary were the proposed rule to have been adopted with only minor alteration. However, all of the comments on the proposal have been thoroughly reviewed by HUD. In general, the comments argued that: (1) HUD did not have statutory authority to promulgate the new program approval provisions of the proposed rule; and (2) these provisions would result in inappropriate micromanagement of the GSEs by HUD, which would inhibit the GSEs' flexibility and ability to adopt new products quickly. The Secretary is confident that: (1) HUD does have the statutory authority to establish new program approval procedures as described in the proposed rule; and (2) these procedures would not have inevitably led to micromanagement. Nonetheless, substantial changes were made to this section to address the concern of the GSEs and other commenters with the proposed procedures. The changes should not be interpreted as reflecting concurrence with the bulk of the comments but rather as an effort toward streamlining the final rule.

The Comments

Both entities read the proposal's definitions of ''new program'' and ''significantly different programs'' as effectively requiring that the Secretary's approval be sought for ''product variations, pilots, and demonstrations'' within existing GSE programs. Based on this expansive interpretation, the GSEs argued that the proposal would exceed the Secretary's authority.[61] Each GSE recommended that the Secretary withdraw the entire subpart,[62] or, in the alternative, simply track the statutory language, without embellishment.

Fannie Mae claimed that these provisions were: (1) arbitrary and capricious, and failed to consider relevant ''business necessities''; (2) an impermissible attempt by the Secretary to ''micro-manage'' the GSEs; (3) inconsistent with expressed congressional intent; (4) not contemplated by FHEFSSA, and unauthorized under the Secretary's general regulatory authority; and (5) inconsistent with the ''general principles'' set out by HUD as governing its own approach to rulemaking in this instance. Fannie Mae also argued that, during its 20 years of experience with HUD's existing program approval process, no evidence exists that a detailed regulation similar to that proposed was necessary.

Freddie Mac's comments were nearly identical. Freddie Mac concluded that the definitions contained in the proposed rule would lead to an enormous expansion of GSE activities subject to Secretarial review. Freddie Mac's comments suggested that: (1) The only threshold for submission of matters for new program review should be whether they are ''significantly different'' from prior programs; (2) only section 305 of the Freddie Mac Charter may serve as a basis for denying a new program approval request; (3) the term ''program'' should be defined to refer only to ''any broad and general plan or course of action for the purchasing, servicing, selling, lending on the security of, or otherwise dealing in conventional mortgages;'' (4) any reference to ''pilot or demonstration program''—the only part of the proposed definition that does not appear in the statute—be stricken; and (5) no attempt should be made to define when a program is ''significantly different,'' relying, instead, on the GSEs' to submit ''truly significant new initiatives'' for prior approval.

Some industry commenters, including the ABA, that joined the GSEs in questioning the scope of subpart D clearly believed that a more carefully tailored version of the approval provisions would be useful. These commenters believed it important that HUD ensure that ''the GSEs' activities are restricted to those activities they were chartered to do—purchase and securitize mortgages.''

Commenters, whether supportive of the GSE position or concerned about restricting the GSEs to Charter Act purposes, consistently argued that flexibility and the ability to move quickly to adopt new products were essential elements of the GSEs' contribution to affordable housing. A few commenters suggested that the Secretary allow the GSEs greater latitude to begin implementation of new programs, but to review the new activity ''as it is being introduced, to determine if it should be curtailed or modified.''

The Secretary's Response

Section 1322—new program approval—is an essential responsibility of HUD and the Federal Government to ensure that the GSEs remain faithful to their statutory purposes and serve the public interest. Accordingly, while significant revisions have been made, the final rule does not diminish the importance of this function. The GSEs argued that no regulation was required to carry out this function. The Secretary believes the final rule properly recognizes this statutory duty and establishes a mechanism for carrying out the responsibility assigned.

The Final Rule

The rule has been streamlined considerably to address the GSEs' apprehension about micromanagement to which the proposed rule apparently

[61] Comments from NAR took a different view: ''We are not contesting the Department's authority to conduct such program approval, since we believe the statute is very clear on this point.'' Nevertheless, NAR believed the proposed rule's new program review authority was ''too broad and ambiguous'' and recommended that the ''parameters for identifying new programs need to be clarified.''

[62] Although many other commenters also were critical of features of the New Program Approvals subpart, only a few joined the GSEs in recommending the subpart's total withdrawal. The MBA, NAMB, and the California Association of Realtors did recommend withdrawal of the subpart. MBA recommended, alternatively, elimination of the New Program Approvals provisions or limiting them to the precise terms of FHEFSSA, which, MBA declared, ''are self-implementing.''

gave rise. The Secretary has removed the definition of ''significantly different programs'' contained in § 81.52(e) of the proposed rule and will use only the statutory definition of new program. Although many believed the proposed definition included virtually all new GSE activities in new products, the definition was intended to clarify that the Secretary's authority extended only to genuinely new programs—and not to new products. Because the definition seems to have added to, not reduced, the confusion, the definition has been dropped.

The final rule also eliminates, in the definition of ''new program'' in § 81.2, the reference to *pilot or demonstration program*(s). The proposed § 81.52(d) has been eliminated. That section provided that ''grandfathered'' programs remained subject to any limitations and requirements included in the Secretary's approval of the new programs. This concept is inherent in FHEFSSA's definition of ''new program'' and was superfluous. For similar reasons, the rule also eliminates specific reference to activities carried out under sections 309(h) of the Fannie Mae Charter Act or 303(d) of the Freddie Mac Act.

In lieu of the proposed requirement that the GSEs submit requests for programs that ''reasonably raise questions'' as to whether they are significantly different, the final rule maintains only, in § 81.52(d), the provision that the Secretary may request information about a program where the Secretary believes that the program may be subject to HUD review. Where, based on the information submitted, the Secretary determines such a request is warranted under the statute, the rule preserves the Secretary's authority to require that the GSE submit a request. This provision is consistent with the legislative intent that a new program that differs significantly ''must be submitted for prior approval.'' [63]

Freddie Mac commented that the GSEs have a ''right * * * not to submit matters for approval that are beyond the scope of * * * the Act.'' Submissions for programs will only be required where the program is within the scope of FHEFSSA's review requirements. In the course of any such submission, the regulation invites the affected GSE to indicate in its response its views respecting whether the program is, in fact, subject to the Secretary's review.

Section 1322(c)(1) of FHEFSSA requires that a GSE ''submit to the Secretary a written request for approval * * * that *describes* the program.'' This final rule sets out the precise information the Secretary regards as necessary for the ''description'' of a new program. The information requested in § 81.53(b) of the final rule is the minimum necessary to carry out the Secretary's statutory duty. These are essential housekeeping requirements; they place no excessive burdens on the GSEs and are tailored to the principal goals of the Secretary's review: assurance that new program initiatives comport with the Charter Acts and are in the public interest. Under FHEFSSA, unless additional information is required, the Secretary must complete a new program review within 45 days. The housekeeping requirements will facilitate the review process and likely obviate the need for additional information.

With the substantial revisions that have been made, the final rule represents an effort to demonstrate that the Secretary will act in the least intrusive manner possible. The Secretary does not want to promulgate a regulation that imposes excessive burdens on the GSEs, or that addresses problems that are not expected to arise. The Secretary believes that new program requests can be acted upon in a less intrusive manner than the procedures set out in the proposed rule may have suggested.

The Secretary has reason to believe, based on experience, that the GSEs will act properly. In the event the Secretary believes that a GSE has undertaken a ''new program'' within the meaning of the statute without prior approval, FHEFSSA and the final rule contain adequate mechanisms for effective inquiry. Furthermore, the Secretary has adequate statutory and regulatory authority to revise this rule in the future, should events prove that a more detailed rule is necessary to carry out the Secretary's mandate.

Subpart E—Reporting Requirements

Sections 309(m) and (n) of the Fannie Mae Charter Act and 307(e) and (f) of the Freddie Mac Act require that the GSEs submit data about their mortgage purchases to the Secretary and submit reports to Congress and the Secretary concerning the GSEs' housing activities. FHEFSSA, at section 1326, mandates that the Secretary require each GSE ''to submit reports on its activities to the Secretary as the Secretary considers appropriate.'' Section 1324 of FHEFSSA requires that the Secretary report to Congress by June 30 of each year on the activities of the GSEs. This final rule implements all of the applicable reporting requirements, to enable the Secretary to monitor the GSEs' activities and report to Congress appropriately.

In promulgating the proposed rule, the Secretary reviewed the reporting requirements for Fannie Mae, contained in the then-existing Fannie Mae regulation, which required Fannie Mae to submit numerous reports to the Secretary. The Secretary determined that a simpler, more effective and less burdensome reporting system should be instituted for both GSEs.

Mortgage Reports, Section 81.62

Although reporting requirements in the proposed rule were streamlined compared to earlier requirements imposed by the Secretary, Freddie Mac found the reporting requirements ''excessive.'' In particular, Freddie Mac objected to submitting loan-level data on a quarterly basis. Freddie Mac asserted that quarterly loan-level data submissions were never contemplated by Congress and that Congress intended that a level of information equivalent only to that obtained from annual reporting under HMDA would be required. Fannie Mae argued that quarterly reports of loan-level data could potentially provide a misleading picture of performance.

Consistent with the Administration's efforts to streamline regulations and reduce reporting requirements, the Secretary has further reduced the frequency and the volume of data submissions. Section 81.62 requires the following information:

- First- and third-quarters reports—tables aggregating loan-level mortgage data; and
- Second- and fourth-quarter reports—tables aggregating loan-level mortgage data as well as loan-level data.

Thus, instead of requiring the submission of the loan-level data with each quarterly report, as proposed, the final rule now requires submission of loan-level data only with the second and fourth quarter reports. (The fourth quarter mortgage report also now serves as the Annual Mortgage Report and is designated as such.) In response to GSE comments, the final rule also clarifies that the quarterly mortgage reports need only include year-to-date data, not quarterly data plus year-to-date data as suggested in the proposed rule.

FHEFSSA charges the Secretary with responsibility for monitoring and enforcing the GSEs' compliance with the housing goals during the course of each year, and requires that the Secretary take action where a GSE fails—or there is a substantial probability that a GSE will fail—to meet any housing goal. The Secretary has determined that quarterly reports, with semiannual reporting of loan-level data, are essential to ensuring that the

[63] S. Rep. at 2.

Secretary has the minimum information needed to carry out these monitoring, compliance, and other regulatory responsibilities.

Requiring quarterly reporting is well within the Secretary's authority under FHEFSSA. The Secretary, under section 1321, has ''general regulatory power over each enterprise and shall make such rules and regulations as shall be necessary and proper to ensure that this part and the purposes of the [Charter Acts] are accomplished.'' Section 1327 mandates that the Secretary require reports on the GSEs' activities ''as appropriate,'' and FHEFSSA's amendments to the Charter Acts specifically require the GSEs to collect, maintain, and provide to the Secretary detailed data on mortgages purchased financing both single-family and multifamily properties ''in a form determined by the Secretary.'' [64]

No convincing indication [65] exists that Congress intended the HMDA schedules or procedures to serve as a controlling model.[66] FHEFSSA did not seek to lessen reporting. Indeed, FHEFSSA required detailed reporting of mortgage data and extensive annual reporting on GSE housing activities to both Congress and the Secretary. In enacting FHEFSSA, Congress was particularly concerned about the lack of information on the GSEs' mortgage purchases. The legislative history describes FHEFSSA's reporting requirements and states:

> * * * an information vacuum has severely impeded Congressional efforts to measure Fannie Mae's compliance with regulatory housing goals that have been in force since 1978. The committee believes that enactment of this bill will fill this vacuum on an expeditious basis by mandating the creation of modern state of the art data systems by both enterprises.[67]

Freddie Mac also expressed concern about the disclosure of mortgage data on less than an annual basis; *e.g.*, if Freddie Mac provided first-quarter loan-level data, it did not want that data released until after the end of the year, and Freddie Mac wanted the data included with all other data from that year so that the timing of its mortgage purchases could not be determined.

It was not intended that quarterly or semi-annual loan-level data be placed in the public-use database. Loan-level data submitted with the second-quarter report are required only so that the Secretary can assess the GSE's current condition under the goals, to facilitate the Secretary's monitoring functions; the final rule so indicates. Because other-than-year-end loan-level data are by nature preliminary, submitted as a condition report, subject to revision, and may cause substantial harm if prematurely released, the inclusion of such data in the public-use database would be inappropriate. Of the mortgage data submitted under section 309(m) of the Fannie Mae Charter Act and section 307(e) of the Freddie Mac Act, the only loan-level mortgage data that shall be placed in the public-use database is year-end data, consistent with subpart F of this rule.

Freddie Mac stated that developing and modifying its systems to comply with these reporting requirements would take some time and, because of this, Freddie Mac requested an exemption from reporting for a reasonable time following the issuance of final regulations. In response, notwithstanding the effective date for other provisions of this rule, the second-quarter mortgage report for 1996 is the first such report required.

Annual Housing Activities Report, Section 81.63

FHEFSSA requires the GSEs to submit an Annual Housing Activities Report (AHAR) to Congress and the Secretary. Under FHEFSSA, the AHAR must, among other things, describe actions that the GSE has undertaken during the preceding year or is planning to undertake to: promote and expand its attainment of its statutory purposes; standardize credit terms and underwriting guidelines for multifamily housing and securitize multifamily housing mortgages; and promote and expand opportunities for first-time home buyers. FHEFSSA also requires that, for the AHAR, the GSEs assess underwriting standards and other business practices and procedures that affect the purchase of mortgages for low- and moderate-income families or that may yield disparate results. The AHAR also must include annual compilations of year-to-date mortgage data (but not loan-level data) and any other information that the Secretary considers necessary for the report and requests in writing.

Fannie Mae objected to the requirement that the AHAR provide information on the extent to which the mortgages purchased ''have been used in conjunction with public subsidy programs.'' Fannie Mae argued that it was only required to report on subsidy programs ''under Federal law'' and that the proposed ''public subsidy'' requirement was too broad, administratively burdensome, time-consuming, and unreliable, because lenders frequently do not report the presence of State/local subsidy programs.

While the Charter Act amendments do specifically require the GSEs to provide information on the extent to which mortgage purchases have been used in conjunction with public subsidy programs under Federal law, the Secretary may require information concerning the presence of non-Federal subsidies under FHEFSSA's authorization to the Secretary to ''request other information [for the AHAR] that the Secretary considers appropriate.'' Nevertheless, HUD has decided to remove this requirement because information on public subsidies is frequently unavailable and often inaccurate, and generally cannot be obtained in sufficient detail to be useful.

The proposed rule would have required each GSE to provide an AHAR within 60 days after the end of each calendar year. Fannie Mae asked that this period be extended to 90 days. Since FHEFSSA requires that the Secretary report to Congress by June 30 of each year on the activities of each GSE, the GSEs' AHARs are needed substantially prior to that date in order to allow sufficient time for HUD to develop the Secretary's report. In an attempt to address the needs of the GSEs and HUD, the final rule provides that AHARs will be due 75 days after the end of the calendar year. The first AHAR required under this rule will be the report covering calendar year 1996 (due in 1997).

Periodic Reports, Section 81.64

Fannie Mae objected to the requirement in § 81.64 of the proposed rule that all releases of information disclosed to entities outside the GSE be submitted to HUD. Fannie Mae argued that the requirement: was excessive, expensive, and of no practical use to HUD; violated the principles of Executive Order 12866; and could compromise the GSE's competitive position and the need for confidentiality. Fannie Mae suggested that the requirement be removed from the regulation or modified to specify that the GSEs need provide to HUD only ''significant announcements'' and could provide those simultaneously with public announcement.

While the burden of compliance with § 81.64 has been exaggerated, no necessity exists for transmittal of

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[64] Sections 307(e)(1)(E) of the Freddie Mac Act and 309(m)(1) of the Fannie Mae Charter Act.

[65] The House Bill, H.R. 2900, 102d Cong., 1st Sess., did require ''annual'' reporting in the HMDA manner. However, sections 121(l) and 122(k) of that bill were changed substantially before the law was enacted.

[66] The Senate Report expressed Congressional intent that the Secretary should be more aggressive in monitoring the GSEs' activities. *See* S. Rep. at 33.

[67] S. Rep. at 38–39.

insignificant data. For this reason, HUD has revised § 81.64 to create a self-policing mechanism. The specific categories of information listed in the section—*i.e.,* Housing Advisory Council material, press releases, investor reports, proxy statements, and seller-servicer guides—must all be provided to the Secretary. For all other information released to entities outside the GSE, if the GSE determines that such information is relevant to the Secretary's regulatory responsibilities under FHEFSSA or its Charter Act, the GSE must provide the information to the Secretary. At the same time, the Secretary continues to have the authority to request information on an as-needed basis.

Other Information and Analyses, Section 81.65

Freddie Mac opposed § 81.65 of the proposed rule, which stated that ''GSEs shall furnish to the Secretary the data underlying the reports required under this subpart.'' Freddie Mac called such ''open-ended'' requirements burdensome, costly, and not reasonably related to the Secretary's mission. Freddie Mac said that any additional reports the Secretary may wish to require must be related to Charter Act activities of the GSEs. Fannie Mae also objected to this requirement and suggested that ''underlying data'' should instead be requested by HUD on a case-by-case and ''as-needed'' basis.

The Secretary's broad authority to require reports under section 1327 of FHEFSSA encompasses the authority to require additional analyses and reports that the Secretary considers ''appropriate.'' However, requirements in the proposed rule for the GSEs to submit ''underlying data'' were not intended to require that the GSEs submit a massive quantity of data as a matter of course in support of each report. In fact, underlying data will only be sought by the Secretary on a case-by-case basis. Therefore, any required submission of underlying data will be the subject of a specific request from the Secretary to one or both GSEs and will be based on an actual need for supporting data in order to fulfill the Secretary's responsibilities. The final rule has been clarified to this effect.

Other Reporting Issues

Published simultaneously with this final rule is an Appendix E which is a list entitled ''Required Loan-level Data Elements'' which details the reporting formats and the loan-level data elements required to be collected and compiled by each GSE on each single-family and multifamily mortgage purchased. The Secretary may revise the list of loan-level data by notice to the GSEs. Fannie Mae, referencing the proposed rule's loan-level data listings, objected to submitting the following data elements, identified by their numerical listing in the Appendix to the proposed rule:

- For single-family mortgage purchases—Number 24, Refinancing Loan from Own Portfolio; Number 31, Lender Institution; Number 38, Public Subsidy Program; Numbers 45 and 46, Family size of borrower (and co-borrower); and Numbers 54 and 55, Low- and Moderate-Income Goal flag and Special Affordable Housing Goal flag; and
- For multifamily mortgage purchases—Number 26, Lender institution; Number 36, Low and Moderate-Income Goal flag; and Number 37, Special Affordable Housing Goal flag.

Fannie Mae's objections to these data elements were based, variously, on relevancy, unavailability of the data in existing information databases, unreliability of data furnished by lenders, and availability of the data to HUD by other means. In addition, Fannie Mae commented that the furnishing of ''lender institution'' data would violate confidentiality between Fannie Mae and its lenders.

Data Element Number 24, Refinancing Loan from Own Portfolio, is not required in the final rule, because these data were required under the interim notices for technical monitoring purposes that no longer apply.

Data Elements Number 31 (Single-family) and Number 26 (Multifamily), designating Lender Institution (Element Number 27 in Appendix E of this final rule), are important elements for the monitoring of GSE reporting. The name of the lender institution will facilitate the Secretary's verification of loans reported as being sold to the GSEs. Since these data are already reported by lenders under HMDA, disclosing the lender institution would not violate confidentiality between the GSEs and their lenders.

Data Element Number 38, Public Subsidy Program data (for single-family properties), have not been reported by Fannie Mae because it asserts that the data are of such poor quality that the data are not meaningful. Freddie Mac has reported public subsidy data to HUD, but Freddie Mac's data indicates that public subsidies are involved in less than one-quarter of one percent of its single-family mortgage purchases. Given the available data, this data element has been deleted from the list of required data elements.

Data Elements Numbers 45 and 46, Family size of borrower (and co-borrower), are not currently collected by the GSEs, and the final rule does not require the GSEs to collect these data at this time. However, because family size is an important element for determining the affordability of units, the Secretary reserves the right to collect these data at a later date.

Data Elements Numbers 54 and 55 (Single-family) and Numbers 36 and 37 (Multifamily), Low- and Moderate-Income Goal flag and Special Affordable Housing Goal flag, are not required fields under the final rule. The Secretary has determined that this information can be derived from other data elements.

Although HAC commented that the Secretary should use census tracts/BNAs instead of counties, in the definition of rural areas, HAC also commented that, if a county-based definition is used, the Secretary should insist that the GSEs at least report their progress under the Geographically Targeted Goal by census tract/BNA, ''so that HUD can determine the extent to which the GSEs are meeting the goal in purchasing mortgages in 'served' portions of counties.'' Accordingly, although the Secretary has changed the definition of rural areas from a census tract to a county basis (as discussed above), the final rule (at Data Element Number 7) requires the BNA locations for mortgage purchases, to facilitate research and analyses of GSE purchases in non-metropolitan areas. Since 1993, the GSEs have been reporting to HUD BNA locations of mortgages located in non-metropolitan areas.

Subpart F—Access to Information

FHEFSSA requires the Secretary to establish a public-use database and release to the public certain categories of information submitted by the GSEs concerning their mortgage purchases. The statute also requires protection of proprietary information the GSEs submit to the Secretary.

FHEFSSA requires a public-use database so that the public will have access to data and information on the GSEs' performance toward meeting the Charter Act purposes of providing mortgage credit to the broadest range of families throughout the nation. Congress indicated its intent that the GSE public-use database supplement HMDA data.[68] In complying with the public-use database requirements, HUD will make publicly available maximum nonproprietary mortgage purchase data and information to the widest range of

[68] *See, e.g.,* S. Rep. at 39.

housing groups, State and local governmental entities, academicians, and other persons and entities, so that, for example, these entities may monitor the efforts of the GSEs toward meeting their Charter Act purposes.

''Balancing'' Test

The preamble to the proposed rule stated that, in making as much data as possible available, the Secretary would engage in ''balancing the proprietary concerns of the GSEs.'' Freddie Mac commented, however, that Congress did not intend the Secretary to balance the public interest to determine whether information was proprietary; rather Congress encouraged the Secretary to ''be creative in finding ways to release certain types of information—without revealing proprietary information.''

Neither the preamble nor the final rule incorporates a balancing test for determining whether information is proprietary. While the legislative history of FHEFSSA does discuss ''balanc[ing] the sometimes competing interests of the enterprises against the public's interest in access to information,'' it also provides that HUD should ''whenever possible develop disclosure and access methods that take into account any proprietary concerns, while continuing public access to information.'' [69] Therefore, the Secretary has determined that the public interest in knowing about the GSEs' activities must be addressed through the careful and considered design of a public-use database that makes maximum appropriate data and information available to the public in creative ways—including aggregating—while protecting proprietary information.

Definition of ''Proprietary Information''

Section 1326 of FHEFSSA authorizes the Secretary to provide, by regulation or order, that certain information shall be treated as ''proprietary information'' and not subject to disclosure to the public either (1) in the public-use database established pursuant to section 1323 (which consists of mortgage data submitted by the GSEs under section 309(m) of the Fannie Mae Charter Act and section 307(e) of the Freddie Mac Act); or (2) through public dissemination of the AHARs of the GSEs (which the GSEs submit to the Secretary and Congress pursuant to sections 309(n)(3) of the Fannie Mae Charter Act and 307(f)(3) of the Freddie Mac Act). Section 81.2 of the proposed rule defined the term ''proprietary information'' as ''all categories of information and data submitted to the Secretary by a GSE that contain trade secrets or privileged or confidential, commercial or financial information that, if released, would cause the GSE substantial competitive harm.''

Consistent with the statutory language of section 1326 of FHEFSSA and in light of the comments by the GSEs, the final rule clarifies that the designation ''proprietary information'' for purposes of this rule applies only to mortgage data (that the GSEs submit to the Secretary under sections 309(m) of the Fannie Mae Charter Act and 307(e) of the Freddie Mac Act), and AHAR information (that the GSEs submit to the Secretary under sections 309(n) of the Fannie Mae Charter Act and 307(f) of the Freddie Mac Act), since other types of information are not candidates for inclusion in the public-use data base. However, as discussed more fully below, where a GSE seeks to protect from disclosure confidential business information that is not mortgage data that the GSE submits to the Secretary under section 309(m) of the Fannie Mae Charter Act or section 307(e) of the Freddie Mac Act, and is not information that the GSE submits to the Secretary in the AHARs under section 309(n) of the Fannie Mae Charter Act or section 307(f) of the Freddie Mac Act, the GSE may seek protection of such confidential business information under HUD regulations at 24 CFR Part 15. This final rule clarifies and supplements Part 15 with respect to GSE information. FHEFSSA's specific designation of data and information as ''proprietary information'' is designed to distinguish that mortgage data and AHAR information that is to be included in the public-use database and disseminated to the public and data that may be withheld. It is not to be confused with the function that the designation of information as ''confidential business information'' serves under Part 15. (That term distinguishes business information, as defined in 24 CFR 15.54, which a submitter may seek to have withheld from public disclosure under the Freedom of Information Act (FOIA) [70], from other information.)

The issue of the scope of mortgage data that should be treated as ''proprietary'' and withheld from public disclosure drew only limited comment. Only ten of the 163 public comments treated the issue in any level of detail.

Both GSEs commented extensively on this subpart of the rule, recommending protections against the release of certain identified data elements the GSEs considered proprietary. Six of the other ten commenters (including MBA and NAHB) supported the GSEs' position favoring strong controls on release of proprietary information. In contrast, the American Civil Liberties Union Foundation (ACLU), in comments filed on behalf of ACLU, the NAACP Legal Defense and Educational Fund, Inc., the Puerto Rican Legal Defense and Education Fund, and the National Council of La Raza, favored strict limitations on treating information provided by the GSEs under FHEFSSA as proprietary.

The Prospect of Competitive Harm

While Freddie Mac indicated that the definition of proprietary information in the proposed rule was ''generally consistent'' with definitions of the term in similar contexts, Freddie Mac proposed several additions to the scope of the definition. Freddie Mac, citing FHEFSSA's legislative history, contended that it was the intention of Congress that the Secretary withhold data if it ''would be likely to cause the GSE substantial competitive or financial harm, or substantial harm to the GSE's ability to fulfill its statutory purposes.'' In suggesting that the term ''financial harm'' be added, Freddie Mac criticized the use of the term ''competitive harm'' by itself as too narrow. In suggesting that the ability to fulfill statutory purposes be added, Freddie Mac argued that because the GSEs have ''express public purposes,'' it is not merely competitive harm that must be averted, but also the possibility that disclosure of data could ''frustrate the GSEs' ability to fulfill their statutory purposes, by decreasing the liquidity of the secondary mortgage market and [thus] decreasing market stability.''

Fannie Mae pointed out that it had asked for proprietary protection for only 23 of 80 database elements. Fannie Mae, in supplementary comments dated July 24, 1995, urged the adoption of the revisions to the definition of ''proprietary information'' indicated in Freddie Mac's comments.

The final rule adopts the GSEs' comment that the definition include a ''likely to cause competitive harm'' standard. HUD finds this formulation to be consistent with the body of case law interpreting Exemption 4 of FOIA,[71] which focuses on likely competitive harm,[72] as well as related regulations of other Federal financial regulators governing the confidentiality of business information.[73]

[69] S. Rep. at 44.

[70] 5 U.S.C. 552.

[71] 5 U.S.C. 552(b)(4); 24 CFR 15.21(a)(4).

[72] *See Critical Mass Energy Project v. NRC*, 975 F.2d 871 (D.C. Cir. 1992), *cert. denied*, 113 S. Ct. 1579 (1993).

[73] *See, e.g.*, 40 CFR 2.208(e)(1); 19 CFR 201.6(a).

Exemption 4 of FOIA authorizes the withholding of ''trade secrets and commercial or financial information obtained from a person and privileged or confidential.'' Accordingly, the exemption covers material that is substantively very similar to the information protected as proprietary under FHEFSSA. Because the case law interpreting the FOIA exemption is well-developed and FHEFSSA does not define the term ''proprietary,'' HUD has chosen to formulate a definition that largely tracks interpretations of the FOIA exemption, so that interpretation of the term as it applies to mortgage data and AHAR information under FHEFSSA may draw upon the body of FOIA law.

It is not necessary to add a specific reference to ''financial'' harm to the definition of ''proprietary information.'' The exclusion of this term from the definition keeps the definition more consistent with FOIA provisions respecting confidential business information and related law. Section 81.74(b)(1) of the rule provides that the Secretary will consider information on adverse financial consequences that would result from disclosure, in determining what information is proprietary. In general, ''financial'' harm will also involve ''competitive'' harm. Even where the disclosure of information would not harm one GSE relative to the other, the disclosure may nonetheless cause competitive harm, because the GSEs also compete with other private-sector firms, as well as individuals seeking an advantage with respect to the GSEs. The definition, as modified, will protect against financial harm by protecting the GSEs against substantial competitive harm.

It is not necessary to expand the definition to refer specifically to the GSE's ability to fulfill statutory purposes. Again, exclusion of this terminology avoids inconsistency with FOIA and similar definitions. The final rule allows the GSEs to advance arguments, for the Secretary's consideration, regarding any effect that disclosure would have on the GSEs' ability to fulfill statutory purposes.

Plain Meaning

In its original comments—prior to its July 24, 1995, letter endorsing much of Freddie Mac's approach to the definition of ''proprietary''—Fannie Mae's comments on the definition of ''proprietary information'' focused on an assertion that the term ''proprietary'' has a settled ''plain'' meaning which should be incorporated into the rule, i.e., the entire range of business information that a GSE holds closely as an owner of private property. Fannie Mae supported its claim based on the definition in *Webster's* dictionary.

Supreme Court precedent, however, reveals that the established approach under case law is more complicated. The mere fact that a statutory term is defined in a dictionary does not establish the term's plain meaning or deny the agency charged with administration of the statute the authority to provide a reasonable interpretation.[74]

The term ''proprietary'' has several alternative dictionary definitions, depending on the dictionary consulted. Aside from the fact that the designation as ''proprietary information'' for purposes of FHEFSSA only applies to mortgage data and AHAR information, HUD's definition, as revised in this final rule, is similar to the definition Congress has ascribed to the term in other legislation, including statutes enacted just days before FHEFSSA's October 28, 1992, enactment date.[75] In addition, HUD's definition is generally consistent with the definitions of other Federal administrative agencies.[76]

The definition that Fannie Mae advanced is not legally supported and is too broad. If any information obtained and held by a person by virtue of being an owner of property qualifies as proprietary, all such information submitted to HUD would have to be withheld from disclosure. Such a definition would effectively undermine the Secretary's ability to release nonproprietary information; it would allow the GSEs to force proprietary treatment of any information by merely labeling it as such. Such a definition would also improperly apply the specific designation ''proprietary information'' under FHEFSSA to materials other than mortgage data and AHAR information.

Other Comments on Definition

Freddie Mac also asked that § 81.73 be augmented to provide that HUD take into account the extent to which particular information, when taken together with other information, could reveal proprietary information. This final rule has been modified to specify that this is one of the additional facts that the Secretary will consider.[77]

Public-use Database

Consistent with section 1323(a) of FHEFSSA, this final rule establishes a public-use database of mortgage data concerning the characteristics of individual mortgage purchases of the GSEs, including census tract, location, race, and gender of mortgagors.

In accordance with FHEFSSA, this final rule provides that the Secretary may not, by regulation or order, make available to the public information that the Secretary determines is proprietary information. The Secretary, however, may not restrict access to the income, census tract location, race, and gender data of single-family properties. When the Secretary grants a GSE's request for proprietary treatment of mortgage data, the Secretary will issue an order or promulgate a regulation providing that the mortgage data is proprietary and shall not be included in the public-use database.

In addition to mortgage data, the Secretary will make publicly available in the public-use database information in the GSEs' AHARs, which are submitted to the Secretary and Congress, and comprise a detailed picture of the GSEs' activities. Proprietary information in the AHARs may be withheld from the public if the GSE requests, and the Secretary agrees with, designation of the information as proprietary information, pursuant to a regulation or order.

On June 7, 1994, the Secretary published a Temporary Order[78] protecting GSE data and information deemed to be proprietary, pending public comment and further review. Published simultaneously with this final rule and adopted by the Secretary through this rule, is an Appendix 7 containing an Order entitled ''GSE Mortgage Data and AHAR Information: Proprietary Information/Public-use Data'' which Appendix F of this final rule contains the most current listing of data and information deemed proprietary by the Secretary and supersedes the Temporary Order. The Secretary may revise this list by regulation or order.

The public-use database also will not include information the release of which would invade personal privacy,[79]

[74] *See, e.g., National R.R. Passenger Corp.* v. *Boston & Me. Corp.*, 503 U.S. 407, 418–19 (1992).

[75] *See, e.g.*, 42 U.S.C. 13293 (Energy Policy Act of 1992, enacted Oct. 24, 1992); 10 U.S.C. 2506(e)(3) (Defense Conversion Reinvestment and Transition Assistance Act of 1992, enacted Oct. 23, 1992); 15 U.S.C. 5104(a) (Steel and Aluminum Energy Conservation and Technology Competitiveness Act of 1988).

[76] *See, e.g.*, 48 CFR 1805.202(d); 10 CFR 51.16(a); 10 CFR 1504.204(a).

[77] *See* § 81.74(b)(6).

[78] 59 FR 29514.

[79] A bank commented that it was concerned about ''right to privacy issues'' regarding communication between HUD and the GSEs: ''We hope that rights of individual borrowers are not compromised due to creative interpretations of the laws and regulations for the sake of political expediency.''

The Privacy Act of 1974, 5 U.S.C. 552a, and FOIA exemption 6, 5 U.S.C. 552(b)(6), pertain to the disclosure of information on individuals. HUD may

Continued

or information required to be withheld under the Trade Secrets Act.[80]

Availability of ''Public Data''

Section 81.2 of the rule revises the proposed rule's definition of ''public data'' to clarify that it only includes mortgage data submitted to the Secretary by the GSEs (under section 309(m) of the Fannie Mae Charter Act or 307(e) of the Freddie Mac Act) relating to the GSEs' mortgage purchases, and AHAR information (submitted to the Secretary by the GSEs under sections 309(n) of the Fannie Mae Charter Act or 307(f) of the Freddie Mac Act), to the extent that the Secretary determines such mortgage data or AHAR information is not proprietary and should be made publicly available. Freddie Mac was concerned that the definition in the proposed rule could be misconstrued to require HUD to disclose all nonproprietary mortgage data submitted to HUD, including data submitted for reasons unrelated to the rule's reporting requirement in § 81.62. Similarly, Fannie Mae had recommended that the definition be revised to limit its scope.

Under section 1323 of FHEFSSA, HUD has authority to include in the public-use database mortgage data required under section 309(m) of the Fannie Mae Charter Act or section 307(e) of the Freddie Mac Act. In addition, HUD will make publicly available the information in the GSEs' AHARs, except for information the Secretary determines to be proprietary.[81]

HUD's public-use database will only include mortgage data submitted by the GSEs under section 309(m) of the Fannie Mae Charter Act or section 307(e) of the Freddie Mac Act and information in the GSEs' AHARs, except for information the Secretary determines to be proprietary, and only where the Secretary determines that it ''should be made publicly available.'' Since other information or data that the GSEs may submit pursuant to subpart E would not fit the definitions of ''mortgage data'' or ''public data'' used in the rule, that information or data will not be included in the public-use database.

Timing of Disclosure

In its comments on the proposed rule, Fannie Mae addressed public comments on the June 7, 1994, Temporary Order. Fannie Mae regarded as unpersuasive arguments that competitive harm to the GSEs would not occur because data would be outdated when finally released publicly. Fannie Mae commented that, for single-family products, a time lag of less than 12 months would be insufficient to allow adequate recovery of investment. In the case of multifamily products, Fannie Mae claimed that even the passage of 2 years would be insufficient protection, because competitive harm is caused by affording competitors crucial information allowing them to ''pick the loans off at liquidation, thereby eroding our market share and investment return on the market research and development that preceded our booking the loan initially.''

NAHB strongly supported the creation of a public-use database, but suggested compromise on the question of release of proprietary information. To address the GSEs' concerns regarding confidentiality of data, NAHB suggested that the Secretary grant requests for proprietary treatment for a specified time period, such as two years.

In analyzing whether information is proprietary, the Secretary will, when appropriate, consider the effect of the passage of time in determining if the release of information would likely cause substantial competitive harm.

Requests for Proprietary Treatment

The regulation establishes procedures for the GSEs to request proprietary treatment of mortgage data and AHAR information submitted to the Secretary and clarifies and supplements HUD regulations at 24 CFR Part 15 as they apply to GSE requests for confidential treatment of other business information. When a GSE submits information to the Secretary, the GSE shall designate what part of the information the GSE deems to be mortgage data or AHAR information that is ''proprietary information'' under FHEFSSA or other types of confidential business information for purposes of FOIA. Depending on the type of information submitted, HUD either will process the request in accordance with the procedures in §§ 81.73–81.75, or upon a FOIA request, in accordance with the procedures in 24 CFR Part 15 as clarified and supplemented in this subpart.

Section 81.73(d) of this final rule makes clear that while any request for proprietary treatment is pending, none of the information that is the subject of the request will be disclosed. Part 15 contains a similar protection, which applies to GSE submissions designated as confidential. HUD will not release material marked confidential except in accordance with Part 15 and this final rule.

Fannie Mae objected to the requirement in § 81.73 of the proposed rule that the GSE submit a certification and justification for the Secretary to designate mortgage data or information as ''proprietary information'' under FHEFSSA.

In response to Fannie Mae's comment, HUD has greatly streamlined the regulation. First, under § 81.73, it is now optional for the GSE to submit a statement explaining the bases for the GSE's assertion that mortgage data or AHAR information is proprietary. In instances in which HUD has not previously issued an order or regulation determining the data or information to be proprietary, HUD urges the GSEs to provide such a supporting statement and address in the statement the factors that the Secretary will consider in making determinations of whether data or information is proprietary. Conclusory statements that particular data or information would aid competitors or would impair business dealings, or similar statements, will not provide the kind of views that will be useful to the Secretary.

Second, the final rule eases the requirements by providing that where there is an existing regulation or order designating mortgage data or AHAR information as proprietary, it is sufficient for the GSE to stamp the information as proprietary and reference the order or regulation. When a GSE supports a request for proprietary treatment by citing an existing order or regulation, HUD will determine whether the data or information comes within the order or regulation. If the data or information is proprietary under such order or regulation, it will not be disclosed except in accordance with other provisions in this subpart, *e.g.*, Congressional requests.

The factors the Secretary will apply in making a determination in response to a request for proprietary treatment are identified in § 81.74. The factors in § 81.74(b) will be applied where the request for proprietary treatment pertains to data submitted by the GSEs in the reports required under section 309(m) of the Fannie Mae Charter Act or section 307(e) of the Freddie Mac Act, or AHAR information for which there is no order or regulation covering the materials for which proprietary treatment is requested.

withhold information from the public pursuant to the Privacy Act or FOIA Exemption 6.

[80] 18 U.S.C. 1905.

[81] The GSEs are required by sections 309(n)(3)(B) and 307(f)(3)(B) their Charter Acts to make available publicly reports they provide to HUD pursuant to sections 309(n) and 307(f) of the Charter Acts, unless HUD has determined such information to be proprietary under section 1326 of FHEFSSA. HUD will facilitate this requirement by providing public access to this information.

When the Secretary accords proprietary treatment to mortgage data or AHAR information, the rule establishes procedures for the Secretary to issue a temporary order, an order, or a regulation to withhold proprietary information and to inform the public of the withholding. If the Secretary does not determine such mortgage data or AHAR information to be proprietary information, the Secretary will provide the GSE with an opportunity for a meeting on the matter, during which the GSE may provide comments and additional views. After the meeting, the Secretary will determine, in writing, which data or information is proprietary and will notify the GSE 10 working days before the data or information is made available to the public. The rule is now more consistent with HUD FOIA regulations regarding protections for confidential business information in general.[82]

FOIA Requests

Information on the GSEs may be requested by the public pursuant to FOIA. Subpart F of this rule clarifies and supplements HUD's FOIA regulations[83] with respect to information submitted by the GSEs.

FOIA provides that several classes of records are exempt from mandatory disclosure. A memorandum dated October 4, 1993, from the President to Heads of Departments and Agencies, emphasizes the importance of public disclosures under FOIA. The implementing memorandum from the Attorney General, attached to the President's memorandum, instructed agencies to disclose information unless disclosure would harm an interest protected by a FOIA exemption.

Additional Safeguards for Proprietary and Confidential Information

FOIA Exemption 8 protects from mandatory disclosure information ''contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of the Department in connection with its responsibility for the regulation or supervision of financial institutions.''[84] Section 1319F of FHEFSSA specifically provides that HUD is an agency responsible for the regulation and supervision of financial institutions for purposes of this exemption. Accordingly, where appropriate, the Secretary may invoke this exemption to withhold GSE information.

To address comments of Fannie Mae requesting additional safeguards for the protection of information, the rule also has been revised to clarify that while HUD may make information available for the confidential use of other government agencies in their official duties or functions, all such information remains the property of HUD, and unauthorized use or disclosure of information may be subject to the penalties provided in 18 U.S.C. 641.

FOIA Exemption 4 covers ''trade secrets and commercial or financial information obtained from a person and privileged or confidential.''[85] When appropriate, the Secretary may invoke this exemption to withhold GSE information in response to a FOIA request. In addition, the Trade Secrets Act forbids Government officers and employees from releasing trade secrets and other confidential business information. HUD will not disclose information in violation of the Trade Secrets Act, notwithstanding the indication in 24 CFR 15.21 that a requested record will not be withheld under FOIA unless it both comes within one of the FOIA exemptions and there is need in the public interest to withhold the record.

Fannie Mae commented that the Secretary should review the rules of the financial institution regulators governing the confidentiality of materials, and should incorporate the same protections for proprietary information. Fannie Mae commented that OFHEO was adopting its own confidentiality rules to parallel financial institution regulators' protections, and HUD and OFHEO should assure that all submitted materials receive ''consistent protection.''

On March 3, 1995, HUD promulgated new amendments to its FOIA regulations that incorporate explicit protections for business information in accordance with Executive Order 12600.[86] Part 15 regulations are fully applicable to GSE data and information provided to HUD. Indeed, Part 15 applies to a broader range of information that the GSEs submit to HUD, since they are not limited in applicability to mortgage data that the GSEs submit under section 309(m) of the Fannie Mae Charter Act or section 307(e) of the Freddie Mac Act and AHAR information the GSEs submit under section 309(n) of the Fannie Mae Charter Act or section 307(f) of the Freddie Mac Act. HUD has carefully reviewed the safeguards afforded by these new FOIA regulation amendments and this subpart and has concluded that many of the concerns raised by Fannie Mae regarding the protection of proprietary information were previously addressed through those amendments.

As indicated in the preamble to the revised FOIA rules, ''[t]he amendment consolidates the FOIA process under the supervision of a designated officer, which assures more consistent and prompt response to FOIA requests.'' Centralized control also serves to protect against erroneous disclosure. The FOIA amendments state that, except as otherwise provided, HUD officers and employees are prohibited from disclosing business information, except to other HUD officers or employees who are properly entitled to such information for the performance of their official duties.[87] This provision is similar to that of other financial regulators.[88]

In response to another Fannie Mae comment about disclosures by HUD's agents, HUD notes that its amended FOIA rules prohibit HUD officers and employees from directly or indirectly using or allowing the use of business information obtained through or in connection with Government employment that has not been made available to the general public.[89] Also, § 81.76(e) of this final rule includes safeguards against disclosure of GSE data and information by contractors. The FOIA regulations also provide other safeguards consistent with Executive Order 12600, which Fannie Mae commented should be included in HUD's regulations.[90]

When a GSE desires that HUD accord confidential treatment to information other than the mortgage data submitted by the GSEs in the reports required under section 309(m) of the Fannie Mae Charter Act or section 307(e) of the Freddie Mac Act, and other than AHAR information, the GSE should follow the procedures for protection from disclosure of such information in 24 CFR Part 15, as clarified and supplemented by this subpart.

Release of Information to Congress, Comptroller General, or Pursuant to Legal Process

Paragraph 81.76(d) of the proposed rule stipulated that the Secretary would provide information requested by Congress, the Comptroller General, or pursuant to subpoena or other legal process ''without regard to the provisions of this section.'' Both GSEs

[82] *See* 24 CFR 15.54(g).

[83] 24 CFR Part 15.

[84] 5 U.S.C. 552(b)(8); 24 CFR 15.21(a)(8).

[85] 5 U.S.C. 552(b)(4), 24 CFR 15.21(a)(4).

[86] *See* 24 CFR part 15, subpart F.

[87] 24 CFR 15.54(l)(2).

[88] *See, e.g.,* 12 CFR 309.6(b) (FDIC).

[89] 24 CFR 15.54(l)(1).

[90] *See* 24 CFR 15.54(f), (g), (i).

objected to this provision, and were supported by the MBA. Freddie Mac commented that the Secretary has a fiduciary duty to maintain the confidentiality of GSE proprietary information and that duty would be breached by proposed § 81.76(d) to the extent the provision allowed disclosure without any exercise of judgment on the part of the Secretary. Furthermore, Freddie Mac argued that materials disclosed based on a subpoena should be safeguarded to the extent possible against further disclosure to third parties. Freddie Mac asked for provisions, similar to those found in existing HUD regulations,[91] to the effect that the Secretary and his or her counsel would determine whether to honor particular subpoenas or requests. Fannie Mae asserted that HUD's ''unconditional commitment'' to provide congressional access to all committees and subcommittees ''totally conflicts with practices observed by other financial institution regulators.''

The intention of the proposed rule was not that HUD would provide GSE data or information to Congress without any appropriate safeguards; rather, that nothing in this subpart of the rule should be construed to grant authority to the Secretary to withhold information from or to prohibit the disclosure of information to Congress, the Comptroller General, a court of competent jurisdiction pursuant to a subpoena, or where otherwise required by law. HUD safeguards for handling such requests would still apply. Accordingly, § 81.77 of the final rule provides that ''nothing in this subpart F may be construed to grant authority to the Secretary under FHEFSSA to withhold any information from or to prohibit the disclosure of any information'' to Congress, the Comptroller General, or pursuant to a subpoena or legal process. This formulation is in keeping with the practice of other agencies.[92] HUD notes that Congress, the Comptroller General, and the courts all have procedures to safeguard proprietary and confidential information.[93]

This final rule specifies that HUD—in providing data or information in response to requests from Congress, the Comptroller General, and the courts—will, where applicable, include a statement to the effect that the GSE regards the data or information as proprietary or confidential, public disclosure of the information may cause competitive harm to the GSE, and the Secretary has determined that the information is proprietary or confidential. In addition, the rule provides that, to the extent practicable, HUD will provide notice to the GSEs after such a request for proprietary or confidential information is received and before HUD provides information in response to the request.

The revised rule makes clear that HUD's discretion to take additional steps to protect GSE data or information in appropriate circumstances is not precluded. These steps could include, for example, seeking on a GSE's behalf, or supporting a GSE motion for, a protective order when a court subpoenas HUD to produce GSE data or information.

Section 81.77 also clarifies the scope of requests that are to be considered official requests from Congress. This change responds to a specific GSE comment that the request must be from a committee with appropriate jurisdiction, to conform more closely to FOIA procedures and similar authorities. The rule has also been modified to conform language concerning HUD disclosures to the Comptroller General to the language in other HUD regulations.[94]

Furthermore, in response to a comment by Fannie Mae, § 81.77(c) of the final rule now makes clear that safeguards under HUD regulations at 24 CFR 15.71–15.74 apply. These provisions govern the production of documents or testimony when a subpoena, order, or other demand of a court or other authority is issued. The rule extends these protections to situations in which demands are made on non-HUD employees (including contractor employees) who have custody of exempt records, and is modeled after regulations of other financial regulators.[95] The Secretary notes that a recent decision [96], may limit the ability to withhold information pursuant to such a regulation and that case law on this issue is evolving. In response to Fannie Mae's comment that OFHEO and HUD should adopt consistent procedures on this point, the Secretary notes that OFHEO is in the process of promulgating rules applicable to OFHEO employees.[97]

Pro-Disclosure Comments

Comments received from the ACLU, which dealt exclusively with proprietary information issues, advocated more expansive disclosure of GSE data. The ACLU argued that only information elements that both GSEs considered proprietary should even be considered for designation as proprietary. The ACLU commented that, even then, proprietary treatment frequently should be declined in an exercise of the Secretary's discretion. The ACLU asserted the public-interest purposes of the Fair Housing Act, ECOA, and FHEFSSA, and stated:

> Given these factors, we believe that Fannie Mae and Freddie Mac cannot be considered similar to purely private, profit-making enterprises. The true measure of the effectiveness of the GSEs is not their maximization of profit, but their compliance with mandates established by the Congress and the Secretary. ''Proprietary'' for the GSEs should not mean ''will harm competition'' but rather ''will harm the ability to carry out governmental mandates. * * *''

The ACLU favored a presumption that information is not proprietary and suggested a standard for determining whether information is proprietary. Under the ACLU formulation, the burden would be on the GSEs to establish the need for nondisclosure. To meet this burden, the GSEs would have to establish that disclosure would frustrate the goals set by the statute or the Secretary, not ''merely'' that disclosure would hurt the GSEs' competitive positions.

HUD, however, must recognize congressional intent, as expressed through the Charter Acts and legislative history, that the GSEs be self-supporting, profit-making entities. Although the GSEs receive substantial Federal benefits, they are not Government agencies. The GSEs do face competition from each other and from other private sector firms and, accordingly, have legitimate proprietary interests that the Congress explicitly intended to be respected. The ACLU's definition would unjustifiably dismiss any competition-based arguments for withholding sensitive information.

The ACLU also objected to the possibility that the Secretary would make determinations that particular material was proprietary solely on the basis of submissions by the GSEs. Such determinations, the ACLU insisted, should be subjected to public

[91] 24 CFR 15.71–15.74.

[92] *See* 12 CFR 309.6(c)(8) (Federal Deposit Insurance Corporation); *see also* 40 CFR 2.209(b)(1) and 2.209(d); 15 CFR 325.16; 21 CFR 20.86 and 20.87.

[93] *See, e.g., United States v. American Tel. & Tel. Co.,* 551 F.2d 384, 386–87 and nn.2–3 (D.C. Cir. 1976) (discussing congressional rules); 4 CFR Part 81–83 (General Accounting Office regulations governing the disclosure of information); Fed. R. Civ. Proc. 26(c) (judicial protective orders).

[94] *See* 24 CFR 16.11(a)(5).

[95] *See, e.g.,* 12 CFR 792.41 and 792.42.

[96] *In re Bankers Trust Co.,* 61 F.3d 465 (6th Cir. 1995).

[97] *See* 60 FR 25162 (1995) (proposed rule May 11, 1995).

participation and comment before any information is deemed ''proprietary.''

Under FHEFSSA, there is no requirement that any party other than the GSEs be afforded a right to comment before determining that GSE information is proprietary. To the extent that the Secretary employs the rulemaking process in making determinations of the proprietary nature of mortgage data submitted by the GSEs, the Secretary will follow applicable Administrative Procedure Act procedures.

Issues Regarding Specific Data Elements

Freddie Mac commented that information on pricing, fees and other key aspects of business strategy were to be considered proprietary and protected from disclosure to the public. Information on pricing, fees, and other key aspects of business strategy will be withheld to the extent they are proprietary under this rule or otherwise protected from public disclosure under other authorities and HUD regulations.

NAHB suggested that some of the ''data fields'' sought to be protected by the GSEs as proprietary have been provided in HMDA data ''with apparently little harm to either the borrowers or the lending institutions.'' These fields, NAHB added, would be very helpful, in utilizing HUD and HMDA databases together. These fields include: Purpose of Loan; Occupancy Code; Loan Balance at Acquisition.

Additionally, NAHB asserted, certain fields claimed as possibly proprietary were needed for use in research by academicians and governmental entities. NAHB requested, ''at a minimum,'' that the following data fields be included:

For single-family housing:

- Loan to Value Ratio at Origination
- Purpose of Loan, Product Type, and Loan Term
- Occupancy Code, Number of Units.

And for multifamily housing:

- Purpose of Loan, Loan Type, and Loan Term
- Mortgagor Type
- Average Reported Rent OR Rent Plus Utilities OR Rent Affordability Level
- Public Subsidy Program.

With respect to single-family loan-level data, HUD must consider the GSEs' proprietary concerns in determining whether a data element can be released at the census tract level or whether some form of aggregation would be sufficient to protect the proprietary nature of the data in a public release. HUD developed a national-level database file structure that has no geographic identifiers. Certain data elements are recoded into categories to prevent exact identification of specific elements. The national data files are used to supplement census-tract-based public use data files.

For single-family purchases by the GSEs, the national data files contain purpose of the loan, occupancy code, number of units, and the loan-to-value ratio at origination which are recoded into five categories (0–60, 60–80, 80–90, 90–95, and over 95). The census tract and national files do not contain Product Type or Loan Term data since, taken together, these two elements have been deemed proprietary by the Secretary.

For multifamily purchases by the GSEs, a number of elements were deemed proprietary because of the nature of the multifamily market—the size of the market and the way multifamily properties are financed. The fact that these data elements were proprietary led the Secretary to deem Loan Type, Loan Term, Mortgagor Type, and Public Subsidy Program fields as proprietary to protect these data elements. HUD does release the Purpose of the Loan and the affordability of the units, by category, on the national multifamily public use data file.

CANICCOR, an Interfaith Council on Corporate Accountability, urged that, at a minimum, the public be provided all the information that is provided for each loan by primary market lenders under HMDA. This data, CANICCOR said, includes:

- Geocoding to the census tract level;
- Income of borrower;
- Borrower's/Co-borrower's race or national origin;
- Borrower's/Co-borrower's gender or sex;
- Whether owner or non-owner occupancy;
- Purchaser (i.e., which GSE);
- Type of loan (e.g., conventional);
- Purpose (i.e., home purchase, refinance, home improvement);
- Dollar amount of loan; and
- Seller identification.

HUD, in its development of the public-use database, considered the availability of the data to the public through sources outside of the GSE data, including HMDA. The public-use database, either through the census tract file or the national data file, contains all of the above elements.

Subpart G—Procedures for Actions and Review of Action

This subpart establishes procedures for hearings, disclosures of orders and agreements between the Secretary and the GSEs in enforcement actions, and judicial review. Generally, these procedures concern actions by the Secretary to enforce housing goal-related matters under subpart B of the rule and reporting requirements under subpart E. In addition, this portion of the preamble addresses certain procedural issues involving the approval of new programs.

As stated in the proposed rule's preamble, the housing goal requirements of this rule are enforced through the imposition of cease-and-desist orders and civil money penalties. FHEFSSA is prescriptive because of the seriousness of these actions; therefore this final rule often references or restates the statutory requirements. However, in a few instances, which are discussed in more detail throughout this portion of the preamble, the final rule augments the statutory procedures to promote the purposes of the legislation and to better recognize the legitimate interests of the GSEs in these proceedings.

Both GSEs submitted detailed comments on the provisions of subpart G. The arguments and suggestions for change submitted by the two GSEs were markedly similar. On this subject matter, Freddie Mac presented the more detailed objections, so the Freddie Mac comments will be the principal focus of the discussion of the subpart.

Closely Following the Statutory Text

Freddie Mac asserted that this subpart of the regulation should mirror the procedural requirements set forth in FHEFSSA. However, Freddie Mac commented that the proposed rule's provisions ''variously depart from [FHEFSSA], or from the Administrative Procedure Act.'' Additionally, to avoid the ''inefficiencies of litigation,'' Freddie Mac recommended an explicit provision in HUD's enforcement procedures for a HUD/GSE exchange of views before any enforcement action is initiated.

Freddie Mac objected to provisions in §§ 81.82 and 81.83 on the grounds that cease-and-desist orders and imposition of civil penalties were limited to violations of the statute, whereas provisions of the rule could be read as authorizing sanctions for violations of the procedural rule itself. Freddie Mac commented that FHEFSSA permits the Secretary to seek an order only for violations of the statute—not its implementing regulations. Similarly, Freddie Mac urged, the Administrative Procedure Act (APA) requires that no sanction or order may be imposed

''except within jurisdiction delegated to the agency and as authorized by law.'' [98]

While HUD agrees that it is the statute, and not the regulations, that serves as the foundation for any order sought by the Secretary, Freddie Mac's argument suggests that regulatory elaboration may never properly be employed to augment the recitation of statutory authority in connection with an enforcement provision. This is incorrect; it is clear that regulatory references legitimately may be included. Only reference to a regulatory section that exceeds the Secretary's authority would raise a valid legal issue; the references Freddie Mac refers to are reasonably related to the purposes of the enabling legislation. Rather than causing ''confusion,'' these regulatory references help to clarify, and even to limit, the statutory language. The change sought might itself create confusion. Accordingly, the rule retains the regulatory cross-references, and cites both them and the statutory references.

Freddie Mac suggested that the final rule include various procedures to avoid enforcement actions. Freddie Mac cited Executive Order 12778 on Civil Justice Reform in support of its argument that the rule should mandate a preenforcement process, which could include informal discussions, negotiations, and compromise.

HUD expects that, in connection with a pending enforcement action against a GSE, it will frequently be appropriate to solicit the GSE's views in order to explore mutually agreeable resolutions of perceived problems. This option is always available to the Secretary; every reason exists to expect it will be used. However, Freddie Mac's suggestion that the rule should provide expressly for preenforcement procedures in every case—that is, to turn an existing option of the Secretary into a right of the GSEs—is unwarranted. Fact situations may differ too markedly to expect that obligatory preenforcement procedures would always be the proper course. Under § 81.21, the GSE already is afforded an opportunity to respond to the Secretary's preliminary determination that it has failed to meet its housing goals—a response that will precede any HUD requirement for submission of a housing plan. Settlement following the issuance of charges also is permitted under hearing procedures at 24 CFR 30.420. (Part 30 procedures are incorporated by reference into this final rule.)

Given the already-available procedures that will foster the amicable resolution of most disputes, the change Freddie Mac has proposed is unnecessary and is contrary to the spirit of the Administration's efforts to simplify regulations. Potentially, the change could result in institutionalized delay in the hearing process.

Executive Order 12278 is, in relevant part, directed at encouraging techniques to avoid full litigation after charges have been filed. By its own terms, the Executive Order creates no obligation on an agency's part to alter its standards for the acceptance of settlements, or to change existing delegations of settlement or litigation authority. While the Secretary shares the GSEs' interest in minimizing needless litigation, the existing authority to attempt a voluntary pre-charge resolution on a case-by-case basis will accomplish this goal as well as Freddie Mac's suggested procedure.

Freddie Mac also asked for modification of the rule to allow a GSE to recommend and request the appointment (at the GSE's expense and with the Secretary's approval) of ''special expert'' hearing officers to hear all or part of any enforcement action. These special officers would then sit in lieu of, or under the supervision of, a HUD Administrative Law Judge (ALJ).

Freddie Mac commented that these enforcement actions are likely to involve ''highly technical statistical and financial proof on arcane issues * * *.'' While the Secretary hopes and believes that the ALJs will not be called upon to hear these matters often, the ALJs do have experience with handling technical, statistical, and financial matters; there is every reason to believe they will make well-reasoned decisions in any enforcement actions brought under this rule.

Furthermore, the option suggested by Freddie Mac is not available: the person who must preside over the taking of evidence in these proceedings is prescribed by the APA. While procedures authorized under the Alternative Dispute Resolution Act [99] could be used in particular instances—when the parties agreed to their use—a regulatory procedure calling for unilateral Secretarial designation of a special expert at the behest of a GSE would conflict with the APA, as applicable under FHEFSSA. No necessity exists to cite in the rule the existence of alternatives that are available via agreement of the parties.

The Public Interest

Freddie Mac commented that § 81.83(c) (calling for the Secretary's consideration of ''other factors that the Secretary determines in the public interest warrant consideration'' in the course of imposing civil money penalties) cannot be adopted in the manner set out in the proposed rule. Rather, Freddie Mac claimed, FHEFSSA required the Secretary to establish, by rule, following notice and comment, those ''other factors'' to be considered in measuring the conduct of violators.

The reference in the proposed rule to ''other factors * * *'' is too broad, and that formulation has been deleted. However, inasmuch as the Secretary is authorized to consider the nature of the injury to the public in establishing the amount of the penalty and other factors that the Secretary may determine by regulation to be appropriate, the final rule eliminates the ''other factors'' phrase in favor of a ''public interest'' formulation like that contained in FHEFSSA.

Freddie Mac also commented that the statutory language permits the Secretary to consider only ''actual'' injury to the public, and that the use of the term ''nature of the injury to the public'' in the proposed rule is unacceptably subjective. Clearly, under the Secretary's authority to adopt other factors through rulemaking, the rule could include ''nature of the injury to the public'' as a separate factor, if necessary. The final rule, however, returns to the concise statutory formulation, ''injury to the public,'' without regulatory elaboration. HUD does not intend to place narrow limits on the interpretation of the statutory phrase, and will consider, in evaluating a particular fact situation, reasonable application of this factor, including the nature of the injury involved.

Consultation

Freddie Mac also requested that the Secretary limit consultation with the Director of OFHEO concerning any enforcement proceeding against a GSE to consultation before the enforcement proceeding is actually undertaken. Freddie Mac suggested that the proposed rule's formulation allowing the Director's participation in an ongoing enforcement proceeding would be ''inconsistent with the Director's independence from the Secretary, and would be in the nature of a prohibited *ex parte* contact.'' However, Freddie Mac said, *ex parte* problems could be avoided if the consultation (which Freddie Mac favored) took place only before institution of an enforcement proceeding.

Freddie Mac asserted that once an adversary proceeding has commenced, due process requires that any review by the Director be conducted openly, in writing, and included in the

[98] 5 U.S.C. 558(b).

[99] 5 U.S.C. 571–583.

administrative record. Further, the affected GSE should be provided an opportunity to supplement the record and to respond.

Limiting the Secretary's consultations with the Director of OFHEO to communications that occur before the institution of an action would needlessly limit the Secretary's authority in a manner not contemplated by FHEFSSA. Section 81.83(d)(5) of the rule, cited by Freddie Mac as the source of its comments on the subject matter, is, with one minor exception, a recitation of the statutory language.[100]

Freddie Mac's suggestion that these communications between the Secretary and the Director would be ''in the nature of'' *ex parte* communications prohibited by the APA simply is off the mark. Section 1345(c)(1)(C) of FHEFSSA provides that, in establishing standards and procedures governing the imposition of civil money penalties, the Secretary may provide for such review by the Director. Under this provision, Congress intended that open communication between the Secretary and the Director of OFHEO be permitted without implicating the *ex parte* prohibitions in 5 U.S.C. 557(d)(1).

With reference to Freddie Mac's due process concerns, the Secretary is mindful of the need for fairness and openness throughout the process leading to a possible imposition of penalties. An affected GSE would have full access to discovery procedures that will permit review of any decisionmaking process that involves the Director of OFHEO. Accordingly, the final rule does not place limits on Secretary/Director communications.

Standard of Proof

Both GSEs commented on the standard of proof in cease-and-desist and civil money penalty proceedings. Freddie Mac cited *Steadman* v. *SEC*, 450 U.S. 91 (1981) as authority for application of the ''preponderance of the evidence'' standard of proof to both types of proceedings. Fannie Mae stated that the APA's standard of proof is ''substantial evidence,'' and that this standard should be made consistent in provisions governing both cease-and-desist and civil money penalty proceedings.[101]

Under FHEFSSA, the standard of proof to be applied is governed by the APA.[102] As Freddie Mac noted in its comments, the Supreme Court in *Steadman* has found the statutory ''substantial evidence'' phrase to mean a ''preponderance of the evidence'' burden of proof for the proponent of an order, and the final rule reflects this change.

General Procedural Questions

Freddie Mac asked for a variety of other revisions affecting § 81.84 on Hearings:

Freddie Mac requested a ''clarification'' to the effect that the ALJ must modify a hearing schedule at the GSE's request, unless HUD can show good reason why the GSE's request should be denied. Freddie Mac urged that the GSE, rather than the hearing officer, is in the best position to judge the feasibility of a particular hearing schedule. Furthermore, Freddie Mac argued, FHEFSSA ''suggests a congressional determination that such requests should ordinarily be allowed.''

The proposed rule at § 81.84(c) provided that the ALJ would set a hearing schedule ''[u]nless an earlier or later date is requested by a GSE and is granted by the Administrative Law Judge * * *.'' The regulatory formulation is similar to the statute, which provides, at section 1342(a)(2), ''* * * unless an earlier or later date is set by the hearing officer at the request of the enterprise * * *.'' Therefore, on its face, the statute provides for the setting of the date by the ALJ, with an opportunity for the GSE to ''request'' a change. The Secretary sees no basis for limiting the ALJ's discretion, and the rule is unchanged.

Freddie Mac also asked that the rule be modified to provide a procedure for a GSE to request the Secretary to seek enforcement of a subpoena issued and served in connection with a hearing or in discovery proceedings under the rule. The Secretary is sympathetic to the thrust of this comment by Freddie Mac, i.e., that the GSE should have the same right to enforcement of a subpoena as does the Secretary. However, FHEFSSA does not grant a right to subpoenaing parties to apply directly for a judicial order requiring compliance with a subpoena. The Secretary, under FHEFSSA, can only request that the Attorney General bring judicial actions to enforce subpoenas. Because direct judicial enforcement by either party is not specifically provided as a matter of law, HUD has developed an administrative mechanism in the final rule providing for recognition of the GSEs' interest in requesting enforcement action through the Secretary. Consistent with the availability of remedies under the statute, this will improve equity between HUD and the GSEs in discovery.

Freddie Mac asked that the final rule be amended to specify that waiver, by a GSE, of an ALJ hearing on the disapproval of a new program on public interest grounds would not constitute a ''failure to appear'' within the meaning of § 81.84(g). (As proposed, the rule stated that a failure to appear by a GSE shall be taken as consent to the disapproval of a new program.) Freddie Mac said that, in cases involving program disapprovals, a GSE may sometimes wish to expedite judicial review, and urged that the GSE's waiver of an administrative hearing on program disapproval not be treated as a consent to the HUD action.

The final rule does not adopt the change. The statute requires, in section 1322, that HUD provide the GSEs with ''notice of, and opportunity for, a hearing on the record'' after the Secretary submits a report to the Congress to the effect that a new program has been disapproved. The Secretary concludes that this language indicates a preference for providing the GSEs with administrative remedies. Therefore, if the Secretary has refused to approve a new program because the Secretary believes it is not in the public interest, HUD should provide the forum in which appeal of the Secretary's initial disapproval is heard and in which the GSE can offer further evidence on the matter.

Both GSEs requested language indicating more expressly that conduct is only ''alleged'' in notices of charges for cease-and-desist proceedings. (The proposed rule at § 81.82(b)(1)(i), in describing the content of a ''charge'' notification, made reference to a ''* * * concise statement of the facts constituting the conduct upon which the Secretary has relied * * *.'') The final rule includes the word ''alleged'' before ''conduct'' where the reference is to conduct that remains to be proven. However, it is not necessary to reiterate in the rule that the conduct remains to be proven in a hearing.

Fannie Mae recommended revising § 81.84(e) of the rule to increase its specificity regarding how the Secretary will serve notices and filings required under this subpart G. Fannie Mae suggested that HUD follow the Federal Reserve Board rules of service—rules that provide, among other things, details on what types of U.S. mail may be used, and when electronic transmission is acceptable.

[100] Only a reference to the Notice of Intent—a reference to which Freddie Mac made no objection—contains material not found in the text of FHEFSSA.

[101] The proposed rule set out the preponderance of the evidence standard to govern civil money penalty cases, and the substantial evidence standard for other administrative proceedings under FHEFSSA.

[102] 5 U.S.C. 556(d).

The proposed rule adopted by incorporation the requirements of 24 CFR 30.425(c)(3) governing how service is to be made. The final rule has been revised to accept the GSEs' suggestion and to model the rule governing service after the provisions in the Uniform Rules of Practice and Procedure that have been adopted by the Federal financial regulators.

Closed Proceedings

Freddie Mac requested that the final rule provide explicitly for motions by the GSE to close a hearing, with any ALJ determination on that question to be made reviewable by the Secretary on an interlocutory basis. Freddie Mac argued that the affected GSE is more likely than the ALJ to appreciate how an open hearing would affect its employees, shareholders, customers and borrowers, and its ability to perform its public mission. Freddie Mac proposed that the motion first be made before the ALJ, with discretionary review by the Secretary during an established, brief time period before the hearing is permitted to continue.

FHEFSSA permits the Secretary to determine that a hearing should be closed to the public, or that a document or part of a document should be sealed. The proposed rule implemented this authority in §§ 81.84(h) and 81.85(c), but did not provide additional procedures, beyond those available under the statute or part 30, subpart E, as incorporated.

Under 24 CFR part 30, subpart E, a GSE may move for an order from the ALJ providing for a closed hearing or sealed document. In response to Freddie Mac's comment, the final rule also provides an additional mechanism for interlocutory review by the Secretary of an ALJ's decision in both of these situations. Section 81.84(h) allows a GSE to request the Secretary to review an ALJ's denial of a timely motion for a closed hearing. The hearing is stayed while the Secretary makes a determination on the need to close the hearing. Section 81.85(c) provides that a party may request immediate review by the Secretary of an ALJ's denial of a protective order relating to documents for which disclosure would be contrary to the public interest. However, unless request for protection of the documentary evidence meets specific timing requirements or the Secretary directs otherwise, the obligation to produce the documents at a hearing will not be affected by the request for review by the Secretary of the ALJ's decision on disclosure.

Appeal-Related Issues

Freddie Mac urged that provisions in the final rule ''conform to statutory requirements'' limiting the Secretary to 90 days to decide an appeal of an ALJ ruling. Proposed § 81.84(k) allowed the Secretary an additional 30 days, at his or her discretion, in addition to the statutory 90-day period set out in section 1342(b)(1). Additionally, Freddie Mac objected to the provision in § 81.84(l), permitting remand of a case to an ALJ for additional proceedings, to the extent that remand might have the effect of extending the 90-day time provision established for a final decision. Freddie Mac asked that the Secretary's authority to remand to an ALJ be limited, unless the parties consent to any remand that extends the time for an ultimate decision. The final rule eliminates any reference to a discretionary extension of time triggered by written notice to the parties. However, under the final rule the Secretary's remand of a case to an ALJ for additional proceedings is a ''decision'' within the meaning of FHEFSSA. This approach is consistent with recent case law.[103]

Freddie Mac also commented on the proposed rule's procedural provisions on time-to-file and page limitations on appeals. Freddie Mac stated that procedures set out in § 30.910 for the Secretary's review of ALJ decisions were inadequate in cases involving the GSEs, because of the complex, fact-intensive nature of anticipated cases and the broad public policy implications likely to be involved. Freddie Mac requested that the rule make clear that provisions of § 30.910, including 15-day time and 10-page statement limits for appeals, may be waived by the Secretary upon the motion of a party. Although Freddie Mac agreed that expeditiousness and simplicity are ''generally desirable,'' it asserted that such limits may not be appropriate in cases involving national housing policies.

As a general matter the Secretary has authority to waive HUD regulations, including those provisions to which Freddie Mac has raised objection, as well as other procedural rules from 24 CFR part 30 that are incorporated by reference. Nevertheless, the page-limit, and, in some cases, the time-limit, provisions set out in § 30.910 might be inadequate in cases arising under this rule. For that reason, the final rule makes waiver of those specific provisions easier, by providing that any such waiver of the part 30 page- and time-limits for notices of appeal or any other waivers under this subpart will not trigger publication requirements for general waivers. Waiver requests, when reasonable in light of the subject matter of a particular proceeding and other factors, can be expected to be dealt with suitably by an ALJ or the Secretary.

Freddie Mac asked that, because of the importance of these decisions, the Secretary provide for oral argument on appeal at the request of a GSE. Predicting that cases arising under FHEFSSA will be rare, Freddie Mac argued that providing for oral argument by right would not impose a significant burden on the Secretary.

Nothing in the proposed rule would prevent the Secretary from granting a right to oral argument in connection with a particular appeal of an ALJ decision. A GSE may petition for such an opportunity and the Secretary may, in an appropriate case, agree to it. However, it is unnecessary to provide in the regulation for additional mandatory procedural rights that may be provided in the Secretary's discretion, when necessary.

Freddie Mac commented that the rule need not repeat FHEFSSA's provisions governing judicial review of HUD enforcement actions. For example, Freddie Mac criticized the provisions of proposed § 81.83(e), which detailed the procedures through which the Secretary could seek the aid of the U.S. District Court to collect a civil money penalty. Provisions that only detail functions of the reviewing court have been stricken in the final rule. The final rule now cross-references statutory provisions governing judicial procedures.

Fannie Mae asked for clarification on an ''apparent inconsistency'' between FHEFSSA and the proposed rule concerning who is responsible for filing the record of an administrative proceeding with the appellate court. The statute says the Secretary shall file, while the proposed rule stated the Office of Administrative Law Judges shall file. The provision Fannie Mae questioned is an intentional delegation to the Office of Administrative Law Judges, in the interest of efficiency, and is unchanged in the final rule.

Commenting on § 81.86 of the proposed rule, Freddie Mac said that the rule ignored the fact that FHEFSSA treats enforcement of cease-and-desist orders and civil money penalties orders differently. Freddie Mac argued that the two enforcement actions had been dealt with differently in FHEFSSA to reflect a congressional judgment that fact

[103] *Mountain Side Mobile Estates Partnership v. Secretary of HUD,* 56 F.3d 1243, 1248 (10th Cir. 1993). Furthermore, under the rule, if a decision is remanded for further proceedings, the ALJ is required to issue an initial decision on remand within 60 days of the date of issuance of the final decision, unless it is impractical to do so.

situations involving cease-and-desist orders may require immediate action, while the collection of a civil money penalty might more readily be deferred. The rule has been revised to reflect the statutory language.

Freddie Mac also questioned the inclusion of a provision in § 81.86(c) providing that the Secretary ''may obtain such other relief as may be available, including attorney fees and other expenses * * *.'' FHEFSSA, Freddie Mac asserted, made explicit reference to attorney fees only in instances where a GSE has refused, after adjudication, to pay a civil money penalty. The final rule eliminates, from § 81.86, the reference to attorney fees. The provision more specifically addressing failures to comply with an order imposing a civil money penalty (§ 81.83(e)) cross-references the statutory provision.

New Program Procedures

The proposed rule provided, under the procedures for review of the Secretary's disapproval of a program request on grounds that the program is not authorized, that the GSE may request an opportunity to review and supplement the record, or may request a meeting with the Secretary. The final rule allows the GSE to supplement the record timely in writing and/or through a meeting. Freddie Mac expressed concern in its comments about the procedures outlined in § 81.54. The proposed rule provided that such a meeting ''shall not be on the record * * *.'' Freddie Mac's concern was that materials furnished in response to the invitation to supplement the record—or statements made at the meeting with the Secretary or his designee—might belong on the record, because they might help a court to decided that the Secretary's decision was not arbitrary and capricious, or would otherwise assist in pinpointing the issues in dispute. Additionally, Freddie Mac said, a record would help to avoid arguments about what happened at such a meeting.

Because there is no statutory requirement that any opportunity be provided for a meeting with an affected GSE to review a program disapproval on these grounds, the question of how such a meeting should be conducted is one solely within the Secretary's discretion.[104] The intention of the proposed ''off the record'' provision was to afford GSE representatives some assurance that statements made by them at such a meeting would not be used in a manner adverse to the interests of the GSE.

While the Secretary does not want to reverse the position taken in the proposed rule and provide that all such post-decision meetings will be held on the record, the final rule removes the above-quoted negative declaration from § 81.54(a). Instead, the Secretary will establish procedures for any such meeting on a case-by-case basis.[105]

Subpart H—Book Entry Procedures

Both the GSEs and the Book-Entry Treasury Regulations Task Force of the Investment Securities Subcommittee of the UCC Committee of the Business Law Section of the American Bar Association (''ABA Task Force'') stated that revising book-entry procedures would be premature in light of continuing work on a comprehensive revision of the Treasury Department book-entry regulations.[106] The Federal Reserve Bank of New York—which operates the book-entry system—also urged HUD to delay implementation of new book-entry provisions.

Fannie Mae discussed the book-entry provisions briefly, indicating that the proposed rule's revisions to the book-entry provisions were so minor that any revision was unnecessary. Pending the overhaul of the book-entry system by Treasury, Fannie Mae recommended preserving the current book-entry regulations to ''avoid confusion and certain regulatory inefficiency.'' However, Fannie Mae recommended deleting § 81.45(b) of the current book-entry regulations, consistent with the proposed rule, because without this deletion, Fannie Mae must request a waiver whenever it issues securities in definitive form.

Freddie Mac commented that it ''strongly opposes'' adoption of proposed Subpart H, calling it ''at best premature and at worst potentially destructive.'' Freddie Mac requested that, if HUD determines it is necessary to promulgate subpart H at this time, §§ 81.94(d) and 81.95 be ''recast'' to allow Freddie Mac to maintain its ability to decide whether to allow conversion of its securities to definitive form. Current Freddie Mac regulations allow a depositor to withdraw securities from the book-entry system and convert to definitive form *only* if the securities provide for such conversion pursuant to the offering materials. Since 1985, Freddie Mac's offering materials have not provided such a right of conversion—a practice it comments is in keeping with current market practice. Freddie Mac said that while the proposed HUD rules appear to mirror part O of Treasury's regulations, the Treasury Department has informed Freddie Mac ''that in practice it has not issued its own offerings in definitive form since 1986, notwithstanding the language of Part O, unless the offering circular specifically allows.'' Freddie Mac therefore concluded that the HUD proposal could put the GSEs at a competitive disadvantage respecting other competing issuers, including Treasury.

The GSEs' current book-entry regulations date back to the late 1970s and are codified in separate parts of the CFR.[107] These regulations are essential to permit the GSEs to avail themselves of Federal Reserve book-entry systems. Under HUD's general regulatory power respecting the GSEs, the proposed rule sought to establish a uniform, modern set of book-entry regulations applicable to both Fannie Mae and Freddie Mac modelled on the current book-entry procedures established by the Treasury.[108] Recently, by regulation and at the request of Fannie Mae, the Secretary specifically extended the Fannie Mae book-entry regulations to allow Fannie Mae to continue to use the book-entry system pending the issuance of this comprehensive rule.[109]

Based on the comments, the Secretary has decided to postpone adopting uniform book-entry regulations for the GSEs pending completion of the revised Treasury Department book-entry regulations. For HUD to act now to finalize a complete set of regulations for both GSEs, and then shortly to revise them, would only lead to confusion. HUD will work with the Treasury Department to adopt revised regulations simultaneously. These regulations will be substantively identical for both GSEs and will provide a level playing field. In the interim, Fannie Mae and Freddie Mac book-entry regulations shall remain effective, essentially in their current form. The final rule makes only three changes.

The Fannie Mae book-entry regulations are modified to delete § 81.45(b), as requested by Fannie Mae.

[104] However, written materials submitted at such a meeting, or in lieu of requesting a meeting, are considered as having been submitted with the intention of supplementing the record, as permitted under § 81.54(a)(1).

[105] As a note of further clarification, the final rule continues to permit a GSE freely to supplement the record in writing, either at the meeting with the Secretary or designee, or in a separate submission.

[106] The Treasury Department is revising its book entry regulations to reflect a major revision to Article 8 of the Uniform Commercial Code (UCC). Treasury withdrew proposed changes to its own regulations pending the completion of additional UCC work. *See* 57 FR 12244 (Apr. 9, 1992), and 58 FR 59972 (Nov. 12, 1993).

[107] 24 CFR part 81, subpart E (Fannie Mae) and 1 CFR part 462 (Freddie Mac).

[108] *See* 31 CFR 306.115 *et seq.*

[109] 59 FR 54366 (Oct. 28, 1994).

This provision requires use of book-entry procedures and has necessitated that Fannie Mae formally request a waiver each time definitive certificates are to be issued. Fannie Mae's requests for waivers under this section have always been granted. Nonetheless, work on these requests has frequently tied up both HUD and Fannie Mae staff. In removing this section, HUD recognizes that under Freddie Mac's regulations, securities may be issued in definitive form only where the offering circular so provides. While HUD considered adding this provision to current Fannie Mae regulations, it determined instead to await Treasury Department revisions before addressing the matter.

In addition, the current Fannie Mae book-entry regulations are moved to subpart H and renumbered, using the numbering scheme in the proposed regulation, §§ 81.91–99. HUD explored the possibility of maintaining the book-entry procedures as subpart E, and redesignating and renumbering subparts E through I of the proposed rule, as had been suggested by Fannie Mae. HUD determined, however, that the organization of the regulation was more sensible if the book-entry provisions were placed near the end of the part, because other subparts were of more universal interest. Moreover, moving and redesignating five sections of the proposed rule would be more confusing to the public than moving the book-entry procedures. Finally, in the interest of consistency, the term ''Fannie Mae'' is substituted for the term ''Federal National Mortgage Association'' in this subpart.

Subpart I—Other Provisions

Both GSEs commented on a provision of HUD's proposed rule that provided that the Secretary could conduct regulatory examinations of the GSEs at any time, to determine whether the GSEs were complying with statutory requirements. The primary argument made by both GSEs was that the Secretary does not possess examination authority, because Congress specifically took this authority away from the Secretary under FHEFSSA and gave it to the Director of OFHEO. Freddie Mac also argued that the Secretary does not possess this authority pursuant to FHEFSSA's grant to the Secretary of ''general regulatory authority,'' because examination authority may only be implied if that authority is necessary, indispensable, and essential. Freddie Mac argued that the authority is not necessary, indispensable, or essential, because the Secretary may monitor the GSEs' compliance by using the reports and data that the GSEs provide to HUD.

The section on regulatory examinations has been removed. However another provision, making clear the Secretary's authority to verify information, has been added to the rule at § 81.102. Sections 1381(k) and 1382(e) of FHEFSSA removed the Secretary's explicit statutory authority to ''examine and audit the books and financial transactions'' of the GSEs. However, that elimination of the Secretary's explicit statutory grant of authority to conduct examinations does not mean that the Secretary has no alternative but to accept, as accurate and complete, whatever data, information, or reports the GSEs may provide. Rather, the Secretary may independently verify the accuracy and completeness of the data, information, and reports, including conducting on-site verification, when verification is reasonably related to determining whether the GSEs are complying with the law. The Secretary does not anticipate exercising this authority often, but only where such verification is necessary.

The authority to verify information when necessary is derived from section 1321 of FHEFSSA, which accords the Secretary ''general regulatory power over each enterprise,'' as well as the enumerated powers conferred on the Secretary by FHEFSSA. The Supreme Court has repeatedly held that a grant to an agency of ''general regulatory authority,'' extends to the agency those unenumerated powers that are ''reasonably related to the purposes of the enabling legislation.'' [110] This standard has been accepted by every Federal Court of Appeals.[111] Independent verification of the information provided by the GSEs is reasonably related to the Secretary's performing out his or her statutory duties.

Freddie Mac acknowledged in its comments that ''HUD could have implicit examination authority only if that authority were necessary, indispensable and essential to monitor GSE compliance with'' provisions of the Charter Acts. In support of its ''necessary, indispensable, and essential'' standard, Freddie Mac cited one Circuit Court decision,[112] which involved the authority of bankruptcy judges to conduct jury trials. That case is distinguishable on several grounds and does not represent the correct standard to apply here, in light of Supreme Court holdings adopting a ''reasonably related'' standard, which every Federal Circuit Court has followed.

In a landmark decision, the Supreme Court specifically addressed the scope of an agency's authority to investigate a regulated entity absent an explicit grant of statutory authority to conduct such investigations.[113] In that case, the Court held that the Federal Trade Commission (FTC) possessed authority to require additional reports from a corporation it regulated, even though the FTC did not have specific authority to require such reports under applicable law or the consent decree that it sought to enforce.

In reaching its decision, the Court rejected Morton Salt's argument that enforcing compliance with the decree had to ''rest upon respondents' honor unless evidence of a violation fortuitously comes to the Commission.'' Rather, ''the Commission, in view of its residual duty of enforcement,'' could ''affirmatively satisfy itself that the decree is being observed.'' [114] The Court indicated that the FTC's authority to investigate compliance with consent decrees in this manner derived from its authority to initiate contempt proceedings for the violation of such decrees, concluding that the authority to initiate contempt proceedings ''must have contemplated that the Commission could obtain accurate information from time to time on which to base a responsible conclusion that there was or was not cause for such a proceeding.'' [115]

The Secretary, like the FTC, is charged with the authority to initiate enforcement actions upon determining that the law has been violated. This enforcement responsibility contemplates that the Secretary will obtain accurate information on which to base a responsible conclusion that there is or is not cause for such a proceeding. The Secretary, like the FTC, is accorded a number of investigative functions. For the Secretary, these investigatory functions include the authority to require reports (*e.g.*, FHEFSSA, section 1327), gather data from the GSEs on their mortgage purchases (FHEFSSA, sections 1381(o) and 1382(r)), [116]

[110] *Mourning* v. *Family Publications Service, Inc.*, 411 U.S. 356, 369 (1973) (quoting *Thorpe* v. *Housing Authority of City of Durham*, 393 U.S. 268, 280–81 (1969)).

[111] *See, e.g., Action on Smoking and Health* v. *CAB*, 699 F.2d 1209, 1212 (D.C. Cir. 1983).

[112] *In re United Mo. Bank of Kansas City, N.A.*, 901 F.2d 1449, 1456 (8th Cir. 1990).

[113] *United States* v. *Morton Salt Co.*, 338 U.S. 632 (1950).

[114] 338 U.S. at 640.

[115] *Id.* at 639.

[116] Sections 1381(o) and 1382(r) of FHEFSSA require that the GSEs ''collect, maintain, and provide to the Secretary, in a form determined by the Secretary,'' mortgage data pertaining to single-family and multifamily mortgages. These provisions provide the Secretary with broad discretion to

monitor compliance with the housing goals (FHEFSSA, section 1336), and issue subpoenas (FHEFSSA, section 1348).[117] The Secretary's functions, like the FTC's functions, include making factual determinations. For the Secretary these determinations include: (1) Whether a GSE is complying with the housing goals; (2) whether a GSE has made a good-faith effort to comply with a housing plan; and (3) whether a GSE has submitted the mortgage information and reports required under sections 1381(o), 1382(r), or 1337 of FHEFSSA. Under *Morton Salt*, these functions, along with the Secretary's general regulatory powers, support the Secretary's authority to verify independently the completeness and accuracy of data, information, and reports submitted by the GSEs, including conducting on-site verification when doing so is reasonably related to determining whether the GSEs are complying with the law.

Freddie Mac maintains that the Secretary can sufficiently monitor compliance through the extensive data and reports that the GSEs are required to provide. Freddie Mac points out that the Secretary can use the mortgage purchase data required to be submitted to verify the accuracy of the housing goal performance reported in the annual reports. Freddie Mac asserts, ''If a GSE fails to submit required reports or data required under the Act or its charter, HUD can initiate enforcement proceedings and, incidental to those proceedings, can issue subpoenas for the production of documents and witnesses.''

However, without the authority to verify the completeness and accuracy of the data, information, or reports submitted by each GSE, the Secretary would be hampered in making the determinations that are required. Such a situation could result in the Secretary erroneously concluding that the GSEs are complying with FHEFSSA's requirements when they are not, or that they are not complying with FHEFSSA's requirements when they are. Thus, where the Secretary determines that it is necessary to verify independently the data, information, or reports provided by the GSEs, including conducting on-site verification, such verification is ''reasonably related to the purposes of the enabling legislation.''

Information Collection and Cost/Benefit Analysis

Freddie Mac argued that HUD's estimates of the cost of GSE compliance with the reporting requirements were grossly understated in the analysis provided with the proposed rule. Freddie Mac noted that HUD's estimate of its own costs to review the data was much higher than the costs estimated for the GSEs.

HUD did not act arbitrarily in estimating its own costs to review data as substantially higher than the costs to the GSEs of providing the data. HUD's estimates of costs did not include the GSEs' costs of amassing the data, including systems costs, because the cost estimates were intended to measure the incremental costs associated with compiling the data from the GSEs data systems, i.e., producing the tables, reports, and loan-level data tapes. The estimates also are not intended to reflect costs associated with data elements that the GSEs would collect in the absence of the final rule. Moreover, the costs should not reflect any analytical research conducted by the GSEs with respect to the data or the housing goals.

However, the Secretary does appreciate the GSEs' commitment to diligence in checking the accuracy of the data, and those costs have been accounted for in reviewing the information collection provisions in the final rule. In addition, after reviewing the comments on all areas of the rule in which information collection considerations were a factor, HUD revised its cost estimates to reflect more accurately the costs of producing each of the reports required by the rule. These revised cost estimates have been provided to OMB, and the Economic Analysis that analyzes the costs and benefits associated with the provisions of this final rule is available to the public, as noted under ''Significant Regulatory Action'' in the ''Other Matters'' section of this preamble.

Other Matters

Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20 of the HUD regulations, the policies and procedures contained in this rule do not affect a physical structure or property and relate only to statutorily required accounting and reporting procedures, and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

Executive Order 12866

This rule constitutes a ''significant regulatory action'' as that term is defined in subsection 3(f) of Executive Order 12866 on Regulatory Planning and Review issued by the President on September 30, 1993. A preliminary review of the rule indicated that it might, as defined in that Order, have an annual effect on the economy of $100 million or more. Accordingly, an economic Analysis was prepared and is available for review and inspection in Room 10276, Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule would not have a significant economic impact on a substantial number of small entities. The requirements of the proposed rule are directed toward the accounting procedures used in the mortgage servicing industry and the disclosure to consumers of related information.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under subsection 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule would not have substantial direct effects on States or their political subdivisions, or the relationship between the federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the Order. The requirements of the rule are directed toward the accounting procedures used in the mortgage servicing industry and the disclosure to consumers of related information.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have the potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those

determine the ''form'' in which the data is to be provided, as well as what information, other than the mortgage characteristics indicated in the statute, the Secretary may also require.

[117] ''Administrative authority to inspect and copy business records was implied as a reasonable projection of a principle reflected in a statutory grant of subpoena power.'' 2B Norman J. Singer, *Sutherland on Statutory Construction* § 55.04 (5th ed. 1992) (citing *Porter* v. *Gantner & Mattern Co.,* 156 F.2d 886 (9th Cir. 1946)).

policies and programs relate to family concerns.

List of Subjects in 24 CFR Part 81

Accounting, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Securities.

1. For the reasons set out in the preamble, part 81 of Title 24 of the Code of Federal Regulations is revised to read as follows:

PART 81—THE SECRETARY OF HUD'S REGULATION OF THE FEDERAL NATIONAL MORTGAGE ASSOCIATION (FANNIE MAE) AND THE FEDERAL HOME LOAN MORTGAGE CORPORATION (FREDDIE MAC)

Subpart A—General

Sec.
81.1 Scope of part.
81.2 Definitions.

Subpart B—Housing Goals

Sec.
81.11 General.
81.12 Low- and Moderate-Income Housing Goal.
81.13 Central Cities, Rural Areas, and Other Underserved Areas Housing Goal.
81.14 Special Affordable Housing Goal.
81.15 General requirements.
81.16 Special counting requirements.
81.17 Affordability—Income level definitions—family size and income known (owner-occupied units, actual tenants, and prospective tenants).
81.18 Affordability—Income level definitions—family size not known (actual or prospective tenants).
81.19 Affordability—Rent level definitions—tenant income is not known.
81.20 Actions to be taken to meet the goals.
81.21 Notice and determination of failure to meet goals.
81.22 Housing plans.

Subpart C—Fair Housing

Sec.
81.41 General.
81.42 Prohibitions against discrimination.
81.43 Reports; underwriting and appraisal guideline review.
81.44 Submission of information to the Secretary.
81.45 Obtaining and disseminating information.
81.46 Remedial actions.
81.47 Violations of provisions by the GSEs.

Subpart D—New Program Approval

Sec.
81.51 General.
81.52 Requirement for program requests.
81.53 Processing of program requests.
81.54 Review of disapproval.

Subpart E—Reporting Requirements

Sec.
81.61 General.
81.62 Mortgage reports.
81.63 Annual Housing Activities Report.
81.64 Periodic reports.
81.65 Other information and analyses.
81.66 Submission of reports.

Subpart F—Access to Information

Sec.
81.71 General.
81.72 Public-use database and public information.
81.73 GSE request for proprietary treatment.
81.74 Secretarial determination on GSE request.
81.75 Proprietary information withheld by order or regulation.
81.76 FOIA requests and protection of GSE information.
81.77 Requests for GSE information on behalf of Congress, the Comptroller General, a subpoena, or other legal process.

Subpart G—Procedures for Actions and Review of Actions

Sec.
81.81 General.
81.82 Cease-and-desist proceedings.
81.83 Civil money penalties.
81.84 Hearings.
81.85 Public disclosure of final orders and agreements.
81.86 Enforcement and jurisdiction.
81.87 Judicial review.

Subpart H—Book-Entry Procedures

Sec.
81.91 Definitions.
81.92 Authority of Reserve Bank.
81.93 Scope and effect of book-entry procedure.
81.94 Transfer or pledge.
81.95 Withdrawal of Fannie Mae securities.
81.96 Delivery of Fannie Mae securities.
81.97 Registered bonds and notes.
81.98 Servicing book-entry Fannie Mae securities; payment of interest; payment at maturity or upon call.
81.99 Treasury Department regulations; applicability to Fannie Mae.

Subpart I—Other Provisions

Sec.
81.101 Equal employment opportunity.
81.102 Independent verification authority.

Authority: 12 U.S.C. 1451 *et seq.*, 1716–1723h, and 4501–4641; 42 U.S.C. 3535(d) and 3601–3619.

Subpart A—General

§ 81.1 Scope of part.

(a) *Authority.* The Secretary has general regulatory power respecting the Federal National Mortgage Association (''Fannie Mae'') and the Federal Home Loan Mortgage Corporation (''Freddie Mac'') (referred to collectively as Government-sponsored enterprises (''GSEs'')) and is required to make such rules and regulations as are necessary and proper to ensure that the provisions of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (''FHEFSSA''), codified generally at 12 U.S.C. 4501–4641; the Fannie Mae Charter Act, 12 U.S.C. 1716–1723h; and the Freddie Mac Act, 12 U.S.C. 1451–59, are accomplished.

(b) *Relation between this part and the authorities of OFHEO.* The Director of the Office of Federal Housing Enterprise Oversight (''OFHEO'') will issue separate regulations implementing the Director's authority respecting the GSEs. In this part, OFHEO and the Director are only referenced when the Director's responsibilities are connected with the Secretary's responsibilities.

§ 81.2 Definitions.

(a) *Statutory terms.* All terms defined in FHEFSSA (12 U.S.C. 4502) are used in accordance with their statutory meaning unless otherwise defined in paragraph (b) of this section.

(b) *Other terms.* As used in this part, the term—

AHAR means the Annual Housing Activities Report that a GSE submits to the Secretary under sections 309(n) of the Fannie Mae Charter Act or 307(f) of the Freddie Mac Act.

AHAR information means data or information contained in the AHAR.

AHS means the American Housing Survey published by HUD and the Department of Commerce.

Balloon mortgage means a mortgage providing for payments at regular intervals, with a final payment (''balloon payment'') that is at least 5 percent more than the periodic payments. The periodic payments may cover some or all of the periodic principal or interest. Typically, the periodic payments are level monthly payments that would fully amortize the mortgage over a stated term and the balloon payment is a single payment due after a specified period (but before the mortgage would fully amortize) and pays off or satisfies the outstanding balance of the mortgage.

Central city means the underserved areas located in any political subdivision designated as a central city by the Office of Management and Budget of the Executive Office of the President.

Charter Act means the Federal National Mortgage Association Charter Act (12 U.S.C. 1716 *et seq.*) or the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451 *et seq.*).

Contract rent means the total rent that is, or is anticipated to be, specified in the rental contract as payable by the tenant to the owner for rental of a dwelling unit, including fees or charges for management and maintenance services and those utility charges that are included in the rental contract. In determining contract rent, rent concessions shall not be considered, *i.e.*, contract rent is not decreased by any

rent concessions. Contract rent is rent net of rental subsidies.

Conventional mortgage means a mortgage other than a mortgage as to which a GSE has the benefit of any guaranty, insurance or other obligation by the United States or any of its agencies or instrumentalities.

Day means a calendar day.

Director means the Director of OFHEO.

Dwelling unit means a room or unified combination of rooms intended for use, in whole or in part, as a dwelling by one or more persons, and includes a dwelling unit in a single-family property, multifamily property, or other residential or mixed-use property.

ECOA means the Equal Credit Opportunity Act (15 U.S.C. 1691 *et seq.*).

Familial status has the same definition as is set forth at 24 CFR 100.20.

Family means one or more individuals who occupy the same dwelling unit.

Fannie Mae means the Federal National Mortgage Association and any affiliate thereof.

FHEFSSA means the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, codified generally at 12 U.S.C. 4501–4651.

FOIA means the Freedom of Information Act (5 U.S.C. 552).

Freddie Mac means the Federal Home Loan Mortgage Corporation and any affiliate thereof.

Freddie Mac Act means the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451 *et seq.*).

Government-sponsored enterprise or *GSE* means Fannie Mae or Freddie Mac.

Handicap has the same definition as is set forth at 24 CFR 100.201.

HUD means the United States Department of Housing and Urban Development.

Lender means any entity that makes, originates, sells, or services mortgages, and includes the secured creditors named in the debt obligation and document creating the mortgage.

Low-income area means a census tract or block numbering area in which the median income does not exceed 80 percent of the area median income.

Median income means, with respect to an area, the unadjusted median family income for the area, as most recently determined and published by the Secretary.

Metropolitan area means a metropolitan statistical area (''MSA''), primary metropolitan statistical area (''PMSA''), or consolidated metropolitan statistical area (''CMSA''), designated by the Office of Management and Budget of the Executive Office of the President.

Minority means any individual who is included within any one of the following racial and ethnic categories:

(1) American Indian or Alaskan Native—a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition;

(2) Asian or Pacific Islander—a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands;

(3) African-American—a person having origins in any of the black racial groups of Africa; and

(4) Hispanic—a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.

Mortgage means a member of such classes of liens, including subordinate liens, as are commonly given or are legally effective to secure advances on, or the unpaid purchase price of, real estate under the laws of the State in which the real estate is located, or a manufactured home that is personal property under the laws of the State in which the manufactured home is located, together with the credit instruments, if any, secured thereby, and includes interests in mortgages. ''Mortgage'' includes a mortgage, lien, including a subordinate lien, or other security interest on the stock or membership certificate issued to a tenant-stockholder or resident-member by a cooperative housing corporation, as defined in section 216 of the Internal Revenue Code of 1986, and on the proprietary lease, occupancy agreement, or right of tenancy in the dwelling unit of the tenant-stockholder or resident-member in such cooperative housing corporation.

Mortgage data means data obtained by the Secretary from the GSEs under subsection 309(m) of the Fannie Mae Charter Act and subsection 307(e) of the Freddie Mac Act.

Mortgage purchase means a transaction in which a GSE bought or otherwise acquired with cash or other thing of value, a mortgage for its portfolio or for securitization.

Multifamily housing means a residence consisting of more than 4 dwelling units. The term includes cooperative buildings and condominium projects.

New England means Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

OFHEO means the Office of Federal Housing Enterprise Oversight.

Ongoing program means a program that is expected to continue for the foreseeable future.

Other underserved area means any underserved area that is in a metropolitan area, but not in a central city.

Owner-occupied unit means a dwelling unit in single-family housing in which a mortgagor of the unit resides.

Participation means a fractional interest in the principal amount of a mortgage.

Portfolio of loans means 10 or more loans.

Proprietary information means all mortgage data and all AHAR information that the GSEs submit to the Secretary in the AHARs that contain trade secrets or privileged or confidential, commercial, or financial information that, if released, would be likely to cause substantial competitive harm.

Public data means all mortgage data and all AHAR information that the GSEs submit to the Secretary in the AHARs, that the Secretary determines are not proprietary and may appropriately be disclosed consistent with other applicable laws and regulations.

Real estate mortgage investment conduit (REMIC) means multi-class mortgage securities issued by a tax-exempt entity.

Refinancing means a transaction in which an existing mortgage is satisfied or replaced by a new mortgage undertaken by the same borrower. The term does not include:

(1) A renewal of a single payment obligation with no change in the original terms;

(2) A reduction in the annual percentage rate of the mortgage as computed under the Truth in Lending Act, with a corresponding change in the payment schedule;

(3) An agreement involving a court proceeding;

(4) A workout agreement, in which a change in the payment schedule or collateral requirements is agreed to as a result of the mortgagor's default or delinquency, unless the rate is increased or the new amount financed exceeds the unpaid balance plus earned finance charges and premiums for the continuation of insurance;

(5) The renewal of optional insurance purchased by the mortgagor and added to an existing mortgage; and

(6) A renegotiated balloon mortgage on a multifamily property where the balloon payment was due within 1 year after the date of the closing of the renegotiated mortgage.

Rent means, for a dwelling unit:

(1) When the contract rent includes all utilities, the contract rent; or

(2) When the contract rent does not include all utilities, the contract rent plus:

(i) The actual cost of utilities not included in the contract rent; or

(ii) A utility allowance.

Rental housing means dwelling units in multifamily housing and dwelling units that are not owner occupied in single-family housing.

Rental unit means a dwelling unit that is not owner-occupied and is rented or available to rent.

Residence means a property where one or more families reside.

Residential mortgage means a mortgage on single-family or multifamily housing.

Rural area means any underserved area located outside of any metropolitan area.

Seasoned mortgage means a mortgage on which the date of the mortgage note is more than 1 year before the GSE purchased the mortgage.

Second mortgage means any mortgage that has a lien position subordinate only to the lien of the first mortgage.

Secondary residence means a dwelling where the mortgagor maintains (or will maintain) a part-time place of abode and typically spends (or will spend) less than the majority of the calendar year. A person may have more than one secondary residence at a time.

Secretary means the Secretary of Housing and Urban Development and, where appropriate, any person designated by the Secretary to perform a particular function for the Secretary, including any HUD officer, employee, or agent.

Single-family housing means a residence consisting of one to four dwelling units. Single-family housing includes condominium dwelling units and dwelling units in cooperative housing projects.

Underserved area means:

(1) For purposes of the definitions of ''central city'' and ''other underserved area,'' a census tract having:

(i) A median income at or below 120 percent of the median income of the metropolitan area and a minority population of 30 percent or greater; or

(ii) A median income at or below 90 percent of median income of the metropolitan area.

(2) For purposes of the definition of ''rural area'':

(i) In areas other than New England, a county having:

(A) A median income at or below 120 percent of the State nonmetropolitan median income and a minority population of 30 percent or greater; or

(B) A median income at or below 95 percent of the greater of the:

(*1*) State non-metropolitan median income; or

(*2*) Nationwide non-metropolitan median income; and

(ii) In New England, an entire county having the characteristics in paragraph (2)(i)(A) or (B) of this definition or the remainder of a county, where a portion of the county is in a metropolitan area and the remainder of the county has the characteristics in paragraph (2)(i)(A) or (B) of this definition.

Utilities means charges for electricity, piped or bottled gas, water, sewage disposal, fuel (oil, coal, kerosene, wood, solar energy, or other), and garbage and trash collection. Utilities do not include charges for telephone service.

Utility allowance means either:

(1) The amount to be added to contract rent when utilities are not included in contract rent (also referred to as the ''AHS-derived utility allowance''), as issued annually by the Secretary; or

(2) The utility allowance established under the HUD Section 8 Program (42 U.S.C. 1437f) for the area where the property is located.

Very-low-income has the same definition as ''very low-income'' has in FHEFSSA.

Wholesale exchange means a transaction in which a GSE buys or otherwise acquires mortgages held in portfolio or securitized by the other GSE, or where both GSEs swap such mortgages.

Working day means a day when HUD is officially open for business.

Subpart B—Housing Goals

§ 81.11 General.

This subpart establishes: three housing goals, as required by FHEFSSA; requirements for measuring performance under the goals; and procedures for monitoring and enforcing the goals.

§ 81.12 Low- and Moderate-Income Housing Goal.

(a) *Purpose of goal.* This annual goal for the purchase by each GSE of mortgages on housing for low- and moderate-income families (''the Low- and Moderate-Income Housing Goal'') is intended to achieve increased purchases by the GSEs of such mortgages.

(b) *Factors.* In establishing the Low- and Moderate-Income Housing Goals, the Secretary considered the factors in 12 U.S.C. 4562(b). A statement documenting the Secretary's considerations and findings with respect to these factors, entitled ''Secretarial Considerations to Establish the Low- and Moderate-Income Housing Goal,'' was published in the Federal Register on December 1, 1995.

(c) *Goals.* The annual goals for each GSE's purchases of mortgages on housing for low- and moderate-income families are:

(1) For 1996, 40 percent of the total number of dwelling units financed by that GSE's mortgage purchases in 1996;

(2) For each of the years 1997–99, 42 percent of the total number of dwelling units financed by that GSE's mortgage purchases in each of those years; and

(3) For 2000 and thereafter the Secretary shall establish annual goals; pending establishment of goals for 2000 and thereafter, the annual goal for each of those years shall be 42 percent of the total number of dwelling units financed by that GSE's mortgage purchases in each of those years.

§ 81.13 Central Cities, Rural Areas, and Other Underserved Areas Housing Goal.

(a) *Purpose of the goal.* This annual goal for the purchase by each GSE of mortgages on housing located in central cities, rural areas, and other underserved areas is intended to achieve increased purchases by the GSEs of mortgages financing housing in areas that are underserved in terms of mortgage credit.

(b) *Factors.* In establishing the Central Cities, Rural Areas, and Other Underserved Areas Goals, the Secretary considered the factors in 12 U.S.C. 4564(b). A statement documenting the Secretary's considerations and findings with respect to these factors, entitled ''Secretarial Considerations to Establish the Central Cities, Rural Areas, and Other Underserved Areas Housing Goal,'' was published in the Federal Register on December 1, 1995.

(c) *Goals.* The annual goals for each GSE's purchases of mortgages on housing located in central cities, rural areas, and other underserved areas are:

(1) For 1996, 21 percent of the total number of dwelling units financed by that GSE's mortgage purchases in 1996;

(2) For each of the years 1997–99, 24 percent of the total number of dwelling units financed by that GSE's mortgage purchases in each of those years; and

(3) For 2000 and thereafter the Secretary shall establish annual goals; pending establishment of goals for 2000 and thereafter, the annual goal for each of those years shall be 24 percent of the total number of dwelling units financed by that GSE's mortgage purchases in each of those years.

(d) *Measuring performance.* The GSEs shall determine on a mortgage-by-mortgage basis, through geocoding or any similarly accurate and reliable method, whether a mortgage finances

one or more dwelling units located in a central city, rural area, or other underserved area.

§ 81.14 Special Affordable Housing Goal.

(a) *Purpose of the goal.* This goal is intended to achieve increased purchases by the GSEs of mortgages on rental and owner-occupied housing meeting the then-existing unaddressed needs of, and affordable to, low-income families in low-income areas and very-low-income families.

(b) *Factors.* In establishing the Special Affordable Housing Goals, the Secretary considered the factors in 12 U.S.C. 4563(a)(2). A statement documenting the Secretary's considerations and findings with respect to these factors, entitled ''Secretarial Considerations to Establish the Special Affordable Housing Goal,'' was published in the Federal Register on December 1, 1995.

(c) *Goals.* The annual goals for each GSE's purchases of mortgages on rental and owner-occupied housing meeting the then-existing, unaddressed needs of and affordable to low-income families in low-income areas and very-low-income families are:

(1) For 1996, 12 percent of the total number of dwelling units financed by each GSE's mortgage purchases in 1996. The goal shall include mortgage purchases financing dwelling units in multifamily housing totalling not less than 0.8 percent of the dollar volume of mortgages purchased by the respective GSE in 1994;

(2) For each of the years 1997–99, 14 percent of the total number of dwelling units financed by each GSE's mortgage purchases in each of those years. The goal for each year shall include mortgage purchases financing dwelling units in multifamily housing totalling not less than 0.8 percent of the dollar volume of mortgages purchased by the respective GSE in 1994; and

(3) For 2000 and thereafter the Secretary shall establish annual goals. Pending establishment of goals for 2000 and thereafter, the annual goal for each of those years shall be 14 percent of the total number of dwelling units financed by each GSE's mortgages purchases in each of those years; the goal for each such year shall include mortgage purchases financing dwelling units in multifamily housing totalling not less than 0.8 percent of the dollar volume of mortgages purchased by the respective GSE in 1994.

(d) *Counting of multifamily units.* (1) Dwelling units affordable to low-income families and financed by a particular purchase of a mortgage on multifamily housing shall count toward achievement of the Special Affordable Housing Goal where at least:

(i) 20 percent of the dwelling units in the particular multifamily property are affordable to families whose incomes do not exceed 50 percent of the area median income; or

(ii) 40 percent of the dwelling units in the particular multifamily property are affordable to very-low-income families.

(2) Where only some of the units financed by a purchase of a mortgage on multifamily housing count under the multifamily component of the goal, only a portion of the unpaid principal balance of the mortgage attributable to such units shall count toward the multifamily component. The portion of the mortgage counted under the multifamily requirement shall be equal to the ratio of the total units that count to the total number of units in the mortgaged property.

(e) *Full Credit Activities.* (1) For purposes of 12 U.S.C. 4563(b)(1) and this paragraph (e), full credit means that each unit financed by a mortgage purchased by a GSE and meeting the requirements of this section shall count toward achievement of the Special Affordable Housing Goal for that GSE.

(2) Consistent with § 81.16(b)(3)(ii), the Secretary will give full credit toward achievement of the Special Affordable Housing Goals for the activities in 12 U.S.C. 4563(b)(1).

(3) Mortgages under HUD's Home Equity Conversion Mortgage (''HECM'') Insurance Demonstration Program, 12 U.S.C. 1715z-20, and the Farmers Home Administration's Guaranteed Rural Housing Loan Program, 7 U.S.C. 1933, meet the requirements of 12 U.S.C. 4563(b)(1)(A)(i) and (ii).

(4) (i) For purposes of determining whether a seller meets the requirement in 12 U.S.C. 4563(b)(1)(B), a seller must currently operate on its own or actively participate in an ongoing program that will result in originating additional loans that meet the goal. Actively participating in such a program includes actively participating with a qualified housing group that operates a program resulting in the origination of loans that meet the requirements of the goal.

(ii) To determine whether a seller meets the requirement in paragraph (e)(4)(i) of this section, the GSE shall verify and monitor that the seller meets the requirement and develop any necessary mechanisms to ensure compliance with this requirement.

(iii) Where a seller's primary business is originating mortgages on housing that qualifies under this Special Affordable Housing Goal, such seller is presumed to meet the requirements in paragraph (e)(4)(i) of this section.

(f) *No credit activities.* Neither the purchase nor the securitization of mortgages associated with the refinancing of a GSE's existing mortgage or mortgage-backed securities portfolios shall receive credit toward the achievement of the Special Affordable Housing Goal. Refinancings that result from the wholesale exchange of mortgages between the two GSEs shall not count toward the achievement of this goal. Refinancings of individual mortgages shall count toward achievement of this goal when the refinancing is an arms-length transaction that is borrower-driven and the mortgage otherwise counts toward achievement of this goal. For purposes of this paragraph (f), ''mortgage or mortgage-backed securities portfolios'' includes mortgages retained by Fannie Mae or Freddie Mac and mortgages utilized to back mortgage-backed securities.

§ 81.15 General requirements.

(a) *Calculating the numerator and denominator.* Performance under each of the housing goals shall be measured using a fraction that is converted into a percentage. The numerator of each fraction is the number of dwelling units financed by a GSE's mortgage purchases in a particular year that count toward achievement of the housing goal. The denominator of each fraction is, for all mortgages purchased, the number of dwelling units that could count toward achievement of the goal under appropriate circumstances. The denominators shall not include GSE transactions or activities that are not mortgages or mortgage purchases. When a GSE lacks sufficient information to determine whether the purchase of a mortgage originated after 1992 counts toward achievement of a particular housing goal, that mortgage purchase shall be included in the denominator for that housing goal.

(b) *Properties with multiple dwelling units.* For the purposes of counting toward the achievement of the goals, whenever the property securing a mortgage contains more than one dwelling unit, each such dwelling unit shall be counted as a separate dwelling unit financed by a mortgage purchase.

(c) *Credit toward multiple goals.* A mortgage purchase (or dwelling unit financed by such purchase) by a GSE in a particular year shall count toward the achievement of each housing goal for which such purchase (or dwelling unit) qualifies in that year.

(d) *Counting owner-occupied units.* For purposes of counting owner-occupied units toward achievement of the Low- and Moderate-Income Housing

Goal or the Special Affordable Housing Goal, mortgage purchases financing such units shall be evaluated based on the income of the mortgagors and the area median income at the time of origination of the mortgage. To determine whether mortgagors may be counted under a particular family income level, *i.e.*, very-low-, low-, or moderate-income, the income of the mortgagors is compared to the median income for the area at the time of mortgage origination, using the appropriate percentage factor provided under § 81.17.

(e) *Counting rental units.* (1) *Use of income, rent.* (i) *Generally.* For purposes of counting rental units toward achievement of the Low- and Moderate-Income Housing Goal or the Special Affordable Housing Goal, mortgage purchases financing such units shall be evaluated based on the income of actual or prospective tenants where such data is available, *i.e.*, known to a lender.

(ii) *Availability of income information.* (A) Each GSE shall require lenders to provide to the GSE tenant income information under paragraphs (e)(3) and (4) of this section, but only when such information is known to the lender.

(B) When such tenant income information is available for all occupied units, the GSE's performance shall be based on the income of the tenants in the occupied units. For unoccupied units that are vacant and available for rent and for unoccupied units that are under repair or renovation and not available for rent, the GSE shall use the income of prospective tenants, if paragraph (e)(4) of this section is applicable. If paragraph (e)(4) of this section is not applicable, the GSE shall use rent levels for comparable units in the property to determine affordability.

(2) *Model units and rental offices.* A model unit or rental office in a multifamily property may count toward achievement of the housing goals only if a GSE determines that:

(i) It is reasonably expected that the units will be occupied by a family within one year;

(ii) The number of such units is reasonable and minimal considering the size of the multifamily property; and

(iii) Such unit otherwise meets the requirements for the goal.

(3) *Income of actual tenants.* When the income of actual tenants is available, to determine whether a tenant is very-low-, low-, or moderate-income, the income of the tenant shall be compared to the median income for the area, adjusted for family size as provided in § 81.17.

(4) *Income of prospective tenants.* When income for tenants is available to a lender because a project is subject to a Federal housing program that establishes the maximum income for a tenant or a prospective tenant in rental units, the income of prospective tenants may be counted at the maximum income level established under such housing program for that unit. In determining the income of prospective tenants, the income shall be projected based on the types of units and market area involved. Where the income of prospective tenants is projected, each GSE must determine that the income figures are reasonable considering the rents (if any) on the same units in the past and considering current rents on comparable units in the same market area.

(5) *Use of rent.* When the income of the prospective or actual tenants of a dwelling unit is not available, performance under these goals will be evaluated based on rent and whether the rent is affordable to the income group targeted by the housing goal. A rent is affordable if the rent does not exceed 30 percent of the maximum income level of very-low-, low-, or moderate-income families as provided in § 81.19. In determining contract rent for a dwelling unit, the actual rent or average rent by unit type shall be used.

(6) *Timeliness of information.* In determining performance under the housing goals, each GSE shall use tenant and rental information as of the time of mortgage:

(i) Acquisition for mortgages on multifamily housing; and

(ii) Origination for mortgages on single-family housing.

(f) *Application of Median income.* (1) For purposes of determining an area's median income under §§ 81.17 through 81.19 and for the definition of ''low-income area,'' the area is:

(i) The metropolitan area, if the property which is the subject of the mortgage is in a metropolitan area; and

(ii) In all other areas, the county in which the property is located, except that where the State nonmetropolitan median income is higher than the county's median income, the area is the State nonmetropolitan area.

(2) When a GSE cannot precisely determine whether a mortgage is on dwelling unit(s) located in one area, the GSE shall determine the median income for the split area in the manner prescribed by the Federal Financial Institutions Examination Council for reporting under the Home Mortgage Disclosure Act, if the GSE can determine that the mortgage is on dwelling unit(s) located in:

(i) A census tract;

(ii) A census place code;

(iii) A block-group enumeration district;

(iv) A nine-digit zip code; or

(v) Another appropriate geographic segment that is partially located in more than one area (''split area'').

(g) *Sampling not permitted.* Performance under the housing goals for each year shall be based on a complete tabulation of mortgage purchases for that year; a sampling of such purchases is not acceptable.

(h) *Newly available data.* When a GSE uses data to determine whether a mortgage purchase counts toward achievement of any goal and new data is released after the start of a calendar quarter, the GSE need not use the new data until the start of the following quarter.

§ 81.16 Special counting requirements.

(a) *General.* In determining whether a GSE shall receive full credit for a transaction or activity toward achievement of any of the housing goals, the Secretary shall consider whether a transaction or activity of the GSE is substantially equivalent to a mortgage purchase and either creates a new market or adds liquidity to an existing market.

(b) *Not counted.* The following transactions or activities shall not count toward achievement of any of the housing goals and shall not be included in the denominator in calculating either GSE's performance under the housing goals:

(1) Equity investments in housing development projects;

(2) Purchases of State and local government housing bonds except as provided in 81.16(c)(8);

(3) Purchases of non-conventional mortgages except:

(i) Where such mortgages are acquired under a risk-sharing arrangement with a Federal agency; or

(ii) As provided in § 81.14(e)(2);

(4) Commitments to buy mortgages at a later date or time;

(5) Options to acquire mortgages;

(6) Rights of first refusal to acquire mortgages;

(7) Any interests in mortgages that the Secretary determines, in writing, shall not be treated as interests in mortgages;

(8) Mortgage purchases to the extent they finance any dwelling units that are secondary residences; and

(9) Any combination of (1) through (8) above.

(c) *Other special rules*—(1) *Credit enhancements.* (i) Dwelling units financed under a credit enhancement entered into by a GSE shall be treated

as mortgage purchases and count toward achievement of the housing goals when:

(A) The GSE provides a specific contractual obligation to ensure timely payment of amounts due under a mortgage or mortgages financed by the issuance of housing bonds (such bonds may be issued by any entity, including a State or local housing finance agency);

(B) The GSE assumes a credit risk in the transaction substantially equivalent to the risk that would have been assumed by the GSE if it had securitized the mortgages financed by such bonds; and

(C) Such dwelling units otherwise qualify under this part.

(ii) When a GSE provides a specific contractual obligation to ensure timely payment of amounts due under any mortgage originally insured by a public purpose mortgage insurance entity or fund, the GSE may, on a case-by-case basis, seek approval from the Secretary for such activities to count toward achievement of the housing goals.

(2) *Real estate mortgage investment conduits (''REMICs'').* (i) A GSE's purchase or guarantee of all or a portion of a REMIC shall be treated as a mortgage purchase and receive credit toward the achievement of the housing goals provided:

(A) The underlying mortgages or mortgage-backed securities for the REMIC were not:

(*1*) Guaranteed by the Government National Mortgage Association; or

(*2*) Previously counted toward any housing goal by the GSE; and

(B) The GSE has the information necessary to support counting the dwelling units financed by the REMIC, or that part of the REMIC purchased or guaranteed by the GSE, toward the achievement of a particular housing goal.

(ii) For REMICs that meet the requirements in paragraph (c)(2)(i) of this section and for which the GSE purchased or guaranteed:

(A) The whole REMIC, all of the units financed by the REMIC shall be treated as a mortgage purchase and count toward achievement of the housing goals; or

(B) A portion of the REMIC, the GSE shall receive partial credit toward achievement of the housing goals. This credit shall be equal to the percentage of the REMIC purchased or guaranteed by the GSE (the dollar amount of the purchase or guarantee divided by the total dollar amount of the REMIC) multiplied by the number of dwelling units that would have counted toward the goal(s) if the GSE had purchased or guaranteed the whole REMIC. In calculating performance under the housing goals, the denominator shall include the number of dwelling units included in the whole REMIC multiplied by the percentage of the REMIC purchased or guaranteed by the GSE.

(3) *Risk-sharing.* Mortgage purchases under risk-sharing arrangements between the GSEs and any Federal agency where the units would otherwise count toward achievement of the housing goal under which the GSE is responsible for a substantial amount (50 percent or more) of the risk shall be treated as mortgage purchases and count toward achievement of the housing goal or goals.

(4) *Participations.* Participations purchased by a GSE shall be treated as mortgage purchases and count toward the achievement of the housing goals, if the GSE's participation in the mortgage is 50 percent or more.

(5) *Cooperative housing and condominium projects.* (i) The purchase of a mortgage on a cooperative housing unit (''a share loan'') or a condominium unit is a mortgage purchase. Such a purchase is counted toward achievement of a housing goal in the same manner as a mortgage purchase of single-family owner-occupied units, *i.e.*, affordability is based on the income of the owner(s).

(ii) The purchase of a mortgage on a cooperative building (''a blanket loan'') or a condominium project is a mortgage purchase and shall count toward achievement of the housing goals. Where a GSE purchases both ''a blanket loan'' and mortgages for units in the same building (''share loans''), both the blanket loan and the share loan(s) are mortgage purchases and shall count toward achievement of the housing goals. Where a GSE purchases both a condominium project mortgage and mortgages on condominium dwelling units in the same project, both the condominium project mortgages and the mortgages on condominium dwelling units are mortgage purchases and shall count toward achievement of the housing goals.

(6) *Seasoned mortgages.* A GSE's purchase of a seasoned mortgage shall be treated as a mortgage purchase for purposes of these goals except:

(i) Where the GSE has already counted the mortgages under a housing goal applicable to 1993 or any subsequent year; or

(ii) As provided in 12 U.S.C. 4563(b)(1)(B).

(7) *Purchase of refinanced mortgages.* Except as provided in § 81.14(f), the purchase of a refinanced mortgage by a GSE is a mortgage purchase and shall count toward achievement of the housing goals to the extent the mortgage qualifies.

(8) *Mortgage revenue bonds.* (i) The purchase of a state or local mortgage revenue bond shall be treated as a mortgage purchase and units financed under such MRB shall count toward achievement of the goals where:

(A) the MRB is to be repaid only from the principal and interest of the underlying mortgages originated with funds made available by the MRB; and

(B) the MRB is not a general obligation of a state or local government or agency or is not credit enchanced by any government or agency, third party guarantor or surety.

(ii) Dwelling units financed by a mortgage revenue bond meeting the requirements of paragraph (c)(8)(i) of this section shall count toward a housing goal to the extent such dwelling units otherwise qualify under this part.

§ 81.17 Affordability—Income level definitions—family size and income known (owner-occupied units, actual tenants, and prospective tenants).

In determining whether a dwelling unit is affordable to very-low-, low-, or moderate-income families, where the unit is owner-occupied or, for rental housing, family size and income information for the dwelling unit is known to the GSE, the affordability of the unit shall be determined as follows:

(a) *Moderate-income* means:

(1) In the case of owner-occupied units, income not in excess of 100 percent of area median income; and

(2) In the case of rental units, where the income of actual or prospective tenants is available, income not in excess of the following percentages of area median income corresponding to the following family sizes:

Number of persons in family	Percentage of area median income
1	70
2	80
3	90
4	100
5 or more	(*)

*100% plus (8% multiplied by the number of persons in excess of 4).

(b) *Low-income* means:

(1) In the case of owner-occupied units, income not in excess of 80 percent of area median income; and

(2) In the case of rental units, where the income of actual or prospective tenants is available, income not in excess of the following percentages of area median income corresponding to the following family sizes:

Number of persons in family	Percentage of area median income
1	56
2	64
3	72
4	80
5 or more	(*)

*80% plus (6.4% multiplied by the number of persons in excess of 4).

(c) *Very-low-income* means:

(1) In the case of owner-occupied units, income not in excess of 60 percent of area median income; and

(2) In the case of rental units, where the income of actual or prospective tenants is available, income not in excess of the following percentages of area median income corresponding to the following family sizes:

Number of persons in family	Percentage of area median income
1	42
2	48
3	54
4	60
5 or more	(*)

*60% plus (4.8% multiplied by the number of persons in excess of 4).

§ 81.18 Affordability—Income level definitions—family size not known (actual or prospective tenants).

In determining whether a rental unit is affordable to very-low, low-, or moderate-income families where family size is not known to the GSE, income will be adjusted using unit size, and affordability determined as follows:

(a) *For moderate-income,* the income of prospective tenants shall not exceed the following percentages of area median income with adjustments, depending on unit size:

Unit size	Percentage of area median income
Efficiency	70
1 bedroom	75
2 bedrooms	90
3 bedrooms or more	(*)

*104% plus (12% multiplied by the number of bedrooms in excess of 3).

(b) *For low-income,* income of prospective tenants shall not exceed the following percentages of area median income with adjustments, depending on unit size:

Unit size	Percentage of area median income
Efficiency	56
1 bedroom	60
2 bedrooms	72
3 bedrooms or more	(*)

*83.2% plus (9.6% multiplied by the number of bedrooms in excess of 3).

(c) *For very-low-income,* income of prospective tenants shall not exceed the following percentages of area median income with adjustments, depending on unit size:

Unit size	Percentage of area median income
Efficiency	42
1 bedroom	45
2 bedrooms	54
3 bedrooms or more	(*)

*62.4% plus (7.2% multiplied by the number of bedrooms in excess of 3).

§ 81.19 Affordability—Rent level definitions—tenant income is not known.

For purposes of determining whether a rental unit is affordable to very-low-, low-, or moderate-income families where the income of the family in the dwelling unit is not known to the GSE, the affordability of the unit is determined based on unit size as follows:

(a) *For moderate-income,* maximum affordable rents to count as housing for moderate-income families shall not exceed the following percentages of area median income with adjustments, depending on unit size:

Unit size	Percentage of area median income
Efficiency	21
1 bedroom	22.5
2 bedrooms	27
3 bedrooms or more	(*)

*31.2% plus (3.6% multiplied by the number of bedrooms in excess of 3);

(b) *For low-income,* maximum affordable rents to count as housing for low-income families shall not exceed the following percentages of area median income with adjustments, depending on unit size:

Unit size	Percentage of area median income
Efficiency	16.8
1 bedroom	18
2 bedrooms	21.6
3 bedrooms or more	(*)

*24.96% plus (2.88% multiplied by the number of bedrooms in excess of 3); and

(c) *For very-low-income,* maximum affordable rents to count as housing for very-low-income families shall not exceed the following percentages of area median income with adjustments, depending on unit size:

Unit size	Percentage of area median income
Efficiency	12.6
1 bedroom	13.5
2 bedrooms	16.2
3 bedrooms or more	(*)

*18.72% plus (2.16% multiplied by the number of bedrooms in excess of 3).

(d) *Missing Information.* Each GSE shall make every effort to obtain the information necessary to make the calculations in this section. If a GSE makes such efforts but cannot obtain data on the number of bedrooms in particular units, in making the calculations on such units, the units shall be assumed to be efficiencies.

§ 81.20 Actions to be taken to meet the goals.

To meet the goals under this rule, each GSE shall operate in accordance with 12 U.S.C. 4565.

§ 81.21 Notice and determination of failure to meet goals.

If the Secretary determines that a GSE has failed or there is a substantial probability that a GSE will fail to meet any housing goal, the Secretary shall follow the procedures at 12 U.S.C. 4566(b).

§ 81.22 Housing plans.

(a) If the Secretary determines, under § 81.21, that a GSE has failed or there is a substantial probability that a GSE will fail to meet any housing goal and that the achievement of the housing goal was or is feasible, the Secretary shall require the GSE to submit a housing plan for approval by the Secretary.

(b) *Nature of plan.* Each housing plan shall:

(1) Be feasible;

(2) Be sufficiently specific to enable the Secretary to monitor compliance periodically;

(3) Describe the specific actions that the GSE will take:

(i) To achieve the goal for the next calendar year; or

(ii) If the Secretary determines that there is substantial probability that the GSE will fail to meet a housing goal in the current year, to make such improvements as are reasonable in the remainder of the year; and

(4) Address any additional matters relevant to the plan as required, in writing, by the Secretary.

(c) *Deadline for submission.* The GSE shall submit a housing plan to the Secretary within 30 days after issuance of a notice under § 81.21 requiring the GSE to submit a housing plan. The Secretary may extend the deadline for submission of a plan, in writing and for a time certain, to the extent the Secretary determines an extension is necessary.

(d) *Review of housing plans.* The Secretary shall review and approve or disapprove housing plans in accordance with 12 U.S.C. 4566(c)(4) and (5).

(e) *Resubmission.* If the Secretary disapproves an initial housing plan submitted by a GSE, the GSE shall submit an amended plan acceptable to the Secretary within 30 days of the Secretary disapproving the initial plan; the Secretary may extend the deadline if the Secretary determines an extension is in the public interest. If the amended plan is not acceptable to the Secretary, the Secretary may afford the GSE 15 days to submit a new plan.

Subpart C—Fair Housing

§ 81.41 General.

In this subpart, the Secretary: prohibits discrimination by the GSEs in their mortgage purchases because of race, color, religion, sex, handicap, familial status, age, or national origin, including any consideration of the age or location of a dwelling or age of the neighborhood or census tract where the dwelling is located in a manner that has a discriminatory effect; requires that the GSEs submit information to the Secretary to assist Fair Housing Act and ECOA investigations; provides for advising the GSEs of Fair Housing Act and ECOA violations; provides for reviewing the GSEs' underwriting and appraisal guidelines to ensure compliance with the Fair Housing Act; and requires that the GSEs take actions as directed by the Secretary following Fair Housing Act and ECOA adjudications. Because FHEFSSA provides, generally, that the Director of OFHEO shall enforce violations by the GSEs of FHEFSSA and regulations in this subpart, this subpart also provides for referral of such cases to the Director.

§ 81.42 Prohibitions against discrimination.

Neither GSE shall discriminate in any manner in making any mortgage purchases because of race, color, religion, sex, handicap, familial status, age, or national origin, including any consideration of the age or location of the dwelling or the age of the neighborhood or census tract where the dwelling is located in a manner that has a discriminatory effect.

§ 81.43 Reports; underwriting and appraisal guideline review.

(a) *Reports.* Each GSE, in the AHAR required under § 81.63, shall assess underwriting standards, business practices, repurchase requirements, pricing, fees, and procedures that affect the purchase of mortgages for low- and moderate-income families, or that may yield disparate results based on the race, color, religion, sex, handicap, familial status, age, or national origin of the borrower, including revisions thereto to promote affordable housing or fair lending.

(b) *Review of Underwriting and Appraisal Guidelines.* The Secretary shall periodically review and comment on the underwriting and appraisal guidelines of each enterprise to ensure that such guidelines are consistent with the Fair Housing Act and 12 U.S.C. 4545.

§ 81.44 Submission of information to the Secretary.

(a) *General.* Upon request from the Secretary, the GSEs shall submit information and data to the Secretary to assist in investigating whether any mortgage lender with which the GSE does business has failed to comply with the Fair Housing Act or ECOA.

(b) *Information requests and submissions.* (1) *Information requests by the Secretary.* The Secretary may require the GSEs to submit information to assist in Fair Housing Act or ECOA investigations of lenders. Under FHEFSSA, other Federal agencies responsible for the enforcement of ECOA must submit requests for information from the GSEs through the Secretary. For matters involving only ECOA, the Secretary will only issue requests for information upon request from the appropriate Federal agency responsible for ECOA.

(2) *Information from established data systems.* The Secretary may request that a GSE generate information or reports from its data system(s) to assist a Fair Housing Act or ECOA investigation.

(3) *GSE replies.* A GSE receiving any request(s) for information under this section shall reply in a complete and timely manner with any and all information that it is privy to and collects that is responsive to the request.

(c) *Submission to ECOA enforcers.* The Secretary shall submit any information received under paragraph (b) of this section concerning compliance with ECOA to appropriate Federal agencies responsible for ECOA enforcement, as provided in section 704 of ECOA.

§ 81.45 Obtaining and disseminating information.

(a) The Secretary shall obtain information from other regulatory and enforcement agencies of the Federal Government and State and local governments regarding violations by lenders of the Fair Housing Act, ECOA, and/or State or local fair housing/lending laws, and shall make such information available to the GSEs as the Secretary deems appropriate in accordance with applicable law regarding the confidentiality of supervisory information and the right to financial privacy, and subject to the terms of memoranda of understanding and other arrangements between the Secretary and Federal financial regulators and other agencies. In addition, the Secretary shall make information that the Secretary possesses regarding violations of the Fair Housing Act available to the GSEs.

(b) As contemplated in paragraph (a) of this section, the Secretary shall obtain information regarding violations by lenders of the Fair Housing Act or ECOA involving discrimination with respect to the availability of credit in a residential real-estate-related transaction from other Federal regulatory or enforcement agencies. The Secretary will obtain information from regulators regarding violations of ECOA by lenders only in circumstances in which there is either more than a single ECOA violation, or the ECOA violation could also be a violation of the Fair Housing Act.

§ 81.46 Remedial actions.

(a) *General.* The Secretary shall direct the GSEs to take one or more remedial actions, including suspension, probation, reprimand or settlement, against lenders found to have engaged in discriminatory lending practices in violation of the Fair Housing Act or ECOA, pursuant to a final adjudication on the record and an opportunity for a hearing under subchapter II of chapter 5 of title 5, United States Code.

(b) *Definitions.* For purposes of this subpart, the following definitions apply:

Indefinite suspension means that, until directed to do otherwise by the Secretary, the GSEs will refrain from purchasing mortgages from a lender.

Probation means that, for a fixed period of time specified by the Secretary, a lender that has been found to have violated the Fair Housing Act or ECOA will be subject automatically to more severe sanctions than probation,

e.g., suspension, if further violations are found.

Remedial action includes a reprimand, probation, temporary suspension, indefinite suspension, or settlement.

Reprimand means a written letter to a lender from a GSE, which has been directed to be sent by the Secretary, stating that the lender has violated the Fair Housing Act or ECOA and warning of the possibility that the Secretary may impose more severe remedial actions than reprimand if any further violation occurs.

Temporary Suspension means that, for a fixed period of time specified by the Secretary, the GSEs will not purchase mortgages from a lender.

(c) *Institution of remedial actions.* (1) The Secretary shall direct the GSE to take remedial action(s) against a lender charged with violating ECOA only after a final determination on the charge has been made by an appropriate United States District Court or any other court of competent jurisdiction. The Secretary shall direct the GSE to take remedial action(s) against a lender charged with violating the Fair Housing Act only after a final determination on the matter has been made by a United States Court, a HUD Administrative Law Judge, or the Secretary.

(2) Following a final determination sustaining a charge against a lender for violating the Fair Housing Act or ECOA, in accordance with paragraph (c)(1) of this section, the Secretary shall determine the remedial action(s) that the GSE is to be directed to take for such violation.

(3) In determining the appropriate remedial action(s), the Secretary shall solicit and fully consider the views of the Federal financial regulator responsible for the subject lender concerning the action(s) that are contemplated to be directed against such lender, prior to directing any such action(s). If such responsible Federal financial regulator makes a written determination that a particular remedial action would threaten the financial safety and soundness of a Federally-insured lender, the Secretary shall consider other remedial actions. Where warranted, the Secretary also shall solicit and fully consider the views of the Director regarding the effect of the action(s) that are contemplated on the safety and soundness of the GSE. In determining what action(s) to direct, the Secretary will also, without limitation, consider the following:

(i) The gravity of the violation;

(ii) The extent to which other action has been taken against the lender for discriminatory activities;

(iii) Whether the lender's actions demonstrate a discriminatory pattern or practice or an individual instance of discrimination;

(iv) The impact or seriousness of the harm;

(v) The number of people affected by the discriminatory act(s);

(vi) Whether the lender operates an effective program of self assessment and correction;

(vii) The extent of any actions or programs by the lender designed to compensate victims and prevent future fair lending violations;

(viii) The extent that a finding of liability against a lender is based on a lender's use of a facially-neutral underwriting guideline of a secondary mortgage market entity applied appropriately by the lender in order to sell loans to that secondary mortgage market entity; and

(ix) Any other information deemed relevant by the Secretary.

(d) *Notice of remedial action(s).* (1) Following the Secretary's decision concerning the appropriate remedial action(s) that the GSE is to be directed to take, the Secretary shall prepare and issue to the GSE and the lender a written notice setting forth the remedial action(s) to be taken and the date such remedial action(s) are to commence. The Notice shall inform the lender of its right to request a hearing on the appropriateness of the proposed remedial action(s), within 20 days of service of the Notice, by filing a request with the Docket Clerk, HUD Office of Administrative Law Judges.

(2) Where a lender does not timely request a hearing on a remedial action, the GSE shall take the action in accordance with the Notice.

(e) *Review and decision on remedial action(s).* (1) Where a lender timely requests a hearing on a remedial action, a hearing shall be conducted before a HUD Administrative Law Judge (ALJ) and a final decision rendered in accordance with the procedures set forth in 24 CFR 30.10, 30.15, and subpart E of part 30 of this title, to the extent such provisions are not inconsistent with this subpart or FHEFSSA. The lender and the Secretary, but not the GSE, shall be parties to the action. At such hearing, the appropriateness of the remedial action for the violation(s) will be the sole matter for review. The validity or appropriateness of the underlying determination on the violation(s) shall not be subject to review at such hearing.

(2) The Secretary shall transmit to the GSEs each final decision by HUD on a remedial action and any dispositive settlement of a proceeding on such action.

(3) The GSE shall take the action(s) set forth in a final decision by HUD on remedial action(s) or any dispositive settlement of such a proceeding setting forth remedial action(s) in accordance with such decision or settlement.

§ 81.47 Violations of provisions by the GSEs.

(a) FHEFSSA empowers the Director of OFHEO to initiate enforcement actions for GSE violations of the provisions of section 1325 of FHEFSSA and these regulations. The Secretary shall refer violations and potential violations of 12 U.S.C. 4545 and this subpart C to the Director.

(b) Where a private complainant or the Secretary is also proceeding against a GSE under the Fair Housing Act, the Assistant Secretary for Fair Housing and Equal Opportunity shall conduct the investigation of the complaint and make the reasonable cause/no reasonable cause determination required by section 810(g) of the Fair Housing Act. Where reasonable cause is found, a charge shall be issued and the matter will proceed to enforcement pursuant to sections 812(b) and (o) of the Fair Housing Act.

Subpart D—New Program Approval

§ 81.51 General.

This subpart details the requirements and procedures for review of requests for new program approval by the Secretary.

§ 81.52 Requirement for program requests.

(a) Before implementing a new program, a GSE shall submit a request for new program approval (''program request'') to the Secretary for the Secretary's review. Submission of a program request is not required where the program that the GSE proposes to implement is not significantly different from:

(1) A program that has already been approved in writing by the Secretary; or

(2) A program that was engaged in by the GSE prior to October 28, 1992.

(b) If a GSE does not submit a program request for a program, the Secretary may request information about the program and require that the GSE submit a program request. The GSE shall comply with the request and may indicate in such response its views respecting whether the program is subject to the Secretary's review.

§ 81.53 Processing of program requests.

(a) Each program request submitted to the Secretary by a GSE shall be in writing and shall be submitted to the Secretary and the Director, Office of

Government-Sponsored Enterprises, Department of Housing and Urban Development, Washington, D.C. For those requests submitted before 1 year after the effective date of the regulations issued by the Director of OFHEO under 12 U.S.C. 4611(e), the GSE shall simultaneously submit the program request to the Director.

(b) Each program request shall include:

(1) An opinion from counsel stating the statutory authority for the new program (Freddie Mac Act section 305(a) (1), (4), or (5), or Fannie Mae Charter Act section 302(b)(2)–(5) or 304);

(2) A good-faith estimate of the anticipated dollar volume of the program over the short- and long-term;

(3) A full description of: (i) The purpose and operation of the proposed program;

(ii) The market targeted by the program;

(iii) The delivery system for the program;

(iv) The effect of the program on the mortgage market; and

(v) Material relevant to the public interest.

(c) Following receipt of a program request, the Secretary and, where a program request is submitted to the Director pursuant to paragraph (a) of this section, the Director shall review the program request.

(d) *Transition standard for approval.* Program requests submitted by the GSEs before the date occurring 1 year after the effective date of the regulations issued by the Director under 12 U.S.C. 4611(e) shall be approved or disapproved by the Secretary as provided in 12 U.S.C. 4542(b)(2).

(e) *Permanent standard for approval by the Secretary.* Program requests submitted after the date occurring one year after the effective date of the regulations issued by the Director under 12 U.S.C. 4611(e) establishing the risk-based capital test shall be approved by the Secretary in accordance with 12 U.S.C. 4542(b)(1).

(f) *Time for review.* Unless the Secretary and, where appropriate, the Director of OFHEO, need additional information, a program request shall be approved or disapproved within 45 days from the date it is received by the Director, Office of Government-Sponsored Enterprises, and, where applicable, the Director of OFHEO. If within 45 days after receiving a request, the Secretary or the Director of OFHEO determine that additional information is necessary to review the matter and request such information from the GSE, the Secretary may extend the time period for consideration for an additional 15 days.

(1) Where additional information is requested, the GSE must provide the requested information to the Secretary and, where appropriate, the Director, within 10 days after the request for additional information.

(2) If the GSE fails to furnish requested information within 10 days after the request for information, the Secretary may deny the GSE's request for approval based on such failure and so report to the Committees of Congress in accordance with paragraph (g) of this section.

(g) *Approval or report.* Within 45 days or, if the period is extended, 60 days following receipt of a program request, the Secretary shall approve the request, in writing, or submit a report to the Committee on Banking and Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, explaining the reasons for not approving the request. If the Secretary does not act within this time period, the GSE's program request will be deemed approved.

§ 81.54 Review of disapproval.

(a) *Programs disapproved as unauthorized.* (1) Where the Secretary disapproves a program request on the grounds that the new program is not authorized, as defined in § 81.53(d) or (e), the GSE may, within 30 days of the date of receipt of the decision on disapproval, request an opportunity to review and supplement the administrative record for the decision, in accordance with paragraphs (a) (2) and (3) of this section.

(2) *Supplementing in writing.* A GSE supplementing the record in writing must submit written materials within 30 days after the date of receipt of the decision on disapproval, but no later than the date of a meeting, if requested, under paragraph (a)(3) of this section.

(3) *Meeting.* Within 10 days of the date of receipt of the decision of disapproval, the GSE may request a meeting. If the request for the meeting is timely, the Secretary shall arrange such a meeting, which shall be conducted by the Secretary or the Secretary's designee within 10 working days after receipt of the request. The GSE may be represented by counsel and may submit relevant written materials to supplement the record.

(4) *Determination.* The Secretary shall:

(i) In writing and within 10 days after submission of any materials under paragraph (a)(2) of this section or the conclusion of any meeting under paragraph (a)(3) of this section, whichever is later, withdraw, modify, or affirm the program disapproval; and

(ii) Provide the GSE with that decision.

(b) *Programs disapproved under public interest determination.* When a program request is disapproved because the Secretary determines that the program is not in the public interest or the Director makes the determination in 12 U.S.C. 4542(b)(2)(B), the Secretary shall provide the GSE with notice of, and opportunity for, a hearing on the record regarding such disapproval. A request for a hearing must be submitted by a GSE within 30 days of the Secretary's submission of a report under § 81.53(g) disapproving a program request or the provision of the notice under this paragraph (b), whichever is later. The procedures for such hearings are provided in subpart G of this part.

Subpart E—Reporting Requirements

§ 81.61 General.

This subpart establishes data submission and reporting requirements to carry out the requirements of the GSEs' Charter Acts and FHEFSSA.

§ 81.62 Mortgage reports.

(a) *Loan-level data elements.* To implement the data collection and submission requirements for mortgage data and to assist the Secretary in monitoring the GSEs' housing goal activities, each GSE shall collect and compile computerized loan-level data on each mortgage purchased in accordance with 12 U.S.C. 1456(e) and 1723a(m). The Secretary may, from time-to-time, issue a list entitled ''Required Loan-level Data Elements'' specifying the loan-level data elements to be collected and maintained by the GSEs and provided to the Secretary. The Secretary may revise the list by written notice to the GSEs.

(b) *Quarterly Mortgage reports.* Each GSE shall submit to the Secretary quarterly a Mortgage Report. The fourth quarter report shall serve as the Annual Mortgage Report and shall be designated as such.

(1) Each Mortgage Report shall include:

(i) Aggregations of the loan-level mortgage data compiled by the GSE under paragraph (a) of this section for year-to-date mortgage purchases, in the format specified in writing by the Secretary; and

(ii) Year-to-date dollar volume, number of units, and number of mortgages on owner-occupied and rental properties purchased by the GSE that do and do not qualify under each housing goal as set forth in this part.

(2) To facilitate the Secretary's monitoring of the GSE's housing goal activities, the Mortgage Report for the second quarter shall include year-to-date computerized loan-level data consisting of the data elements required under paragraph (a) of this section.

(3) To implement the data collection and submission requirements for mortgage data and to assist the Secretary in monitoring the GSE's housing goal activities, each Annual Mortgage Report shall include year-to-date computerized loan-level data consisting of the data elements required by under paragraph (a) of this section.

(c) *Timing of Reports.* The GSEs shall submit the Mortgage Report for each of the first 3 quarters of each year within 60 days of the end of the quarter. Each GSE shall submit its Annual Mortgage Report within 75 days after the end of the calendar year.

(d) *Revisions to Reports.* At any time before submission of its Annual Mortgage Report, a GSE may revise any of its quarterly reports for that year.

(e) *Format.* The GSEs shall submit to the Secretary computerized loan-level data with the Mortgage Report, in the format specified in writing by the Secretary.

§ 81.63 Annual Housing Activities Report.

To comply with the requirements in sections 309(n) of the Fannie Mae Charter Act and 307(f) of the Freddie Mac Act and assist the Secretary in preparing the Secretary's Annual Report to Congress, each GSE shall submit to the Secretary an AHAR including the information listed in those sections of the Charter Acts and as provided in § 81.43(a) of this part. Each GSE shall submit such report within 75 days after the end of each calendar year, to the Secretary the Committee on Banking and Financial Services of the House of Representatives, and the Committee on Banking, Housing, and Urban Affairs of the Senate. Each GSE shall make its AHAR available to the public at its principal and regional offices. Before making any such report available to the public, the GSE may exclude from the report any information that the Secretary has deemed proprietary under subpart F of this part.

§ 81.64 Periodic reports.

Each GSE shall provide to the Secretary all:

(a) Material distributed to the GSE's Housing Advisory Council;

(b) Press releases;

(c) Investor reports;

(d) Proxy statements;

(e) Seller-servicer guides; and

(f) Other information disclosed by the GSE to entities outside of the GSE, but only where the GSE determines that such information is relevant to the Secretary's regulatory responsibilities.

§ 81.65 Other information and analyses.

When deemed appropriate and requested in writing, on a case by-case basis, by the Secretary, a GSE shall furnish the data underlying any of the reports required under this part and shall conduct additional analyses concerning any such report. A GSE shall submit additional reports or other information concerning its activities when deemed appropriate to carry out the Secretary's responsibilities under FHEFSSA or the Charter Acts and requested in writing by the Secretary.

§ 81.66 Submission of reports.

Each GSE shall submit all hard copy reports or other written information required under this subpart to the Secretary and the Director, Office of Government-Sponsored Enterprises. Each GSE shall submit computerized data required under this subpart to the Director, Financial Institutions Regulations, Office of Policy Development and Research. The address for both of these offices is Department of Housing and Urban Development, 451 7th Street, S.W. Washington, D.C. 20410.

Subpart F—Access to Information

§ 81.71 General.

This subpart:

(a) Provides for the establishment of a public-use database to make available to the public mortgage data that the GSEs submit to the Secretary under subsection 309(m) of the Fannie Mae Charter Act and subsection 307(e) of the Freddie Mac Act, and AHAR information that the GSEs submit to the Secretary in the AHAR under subsection 309(n) of the Fannie Mae Charter Act and subsection 307(f) of the Freddie Mac Act;

(b) Establishes mechanisms for the GSEs to designate mortgage data or AHAR information as proprietary information and for the Secretary to determine whether such mortgage data or AHAR information is proprietary information which should be withheld from disclosure;

(c) Addresses the availability of HUD procedures to protect from public disclosure proprietary information and other types of confidential business information submitted by or relating to the GSEs;

(d) Addresses protections from disclosure when there is a request from Congress for information and sets forth protections for treatment of data or information submitted by or relating to the GSEs by HUD officers, employees, and contractors; and

(e) Provides that data or information submitted by or relating to the GSEs that would constitute a clearly unwarranted invasion of personal privacy shall not be disclosed to the public.

§ 81.72 Public-use database and public information.

(a) *General.* Except as provided in paragraph (c) of this section, the Secretary shall establish and make available for public use, a public-use database containing public data as defined in § 81.2.

(b) *Examination of submissions.* Following receipt of mortgage data and AHAR information from the GSEs, the Secretary shall, as expeditiously as possible, examine the submissions for mortgage data and AHAR information that:

(1) Has been deemed to be proprietary information under this part by a temporary order, final order, or regulation in effect at the time of submission;

(2) Has been designated as proprietary information by the GSE in accordance with § 81.73;

(3) Would constitute a clearly unwarranted invasion of personal privacy if such data or information were released to the public; or

(4) Is required to be withheld or, in the determination of the Secretary, is not appropriate for public disclosure under other applicable laws and regulations, including the Trade Secrets Act (18 U.S.C. 1905) and Executive Order 12600.

(c) *Public data and proprietary data.* The Secretary shall place public data in the public-use database. The Secretary shall exclude from the public-use database and from public disclosure:

(1) All mortgage data and AHAR information within the scope of paragraphs (b)(1), (b)(3), and (b)(4) of this section;

(2) Any other mortgage data and AHAR information under (b)(2) when determined by the Secretary under § 81.74 to be proprietary information; and

(3) Mortgage data that is not year-end data.

(d) *Access.* The Secretary shall provide such means as the Secretary determines are reasonable for the public to gain access to the public-use database. To obtain access to the public-use database, the public should contact the Director, Office of Government-Sponsored Enterprises, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C.

20410, telephone (202) 708–2224 (this is not a toll-free number).

(e) *Fees.* The Secretary may charge reasonable fees to cover the cost of providing access to the public-use database. These fees will include the costs of system access, computer use, copying fees, and other costs.

§ 81.73 GSE request for proprietary treatment.

(a) *General.* A GSE may request proprietary treatment of any mortgage data or AHAR information that the GSE submits to the Secretary. Such a request does not affect the GSE's responsibility to provide data or information required by the Secretary. Where the Secretary grants a request for proprietary treatment, HUD will not include the data or information in the public-use database or publicly disclose the data or information, except as otherwise provided in accordance with this subpart.

(b) *Request for proprietary treatment of mortgage data and AHAR information.* Except as provided in paragraph (c) of this section, a GSE requesting proprietary treatment of mortgage data or AHAR information shall:

(1) Clearly designate those portions of the mortgage data or AHAR information to be treated as proprietary, with a prominent stamp, typed legend, or other suitable form of notice, stating ''Proprietary Information—Confidential Treatment Requested by [name of GSE]'' on each page or portion of page to which the request applies. If such marking is impractical, the GSE shall attach to the mortgage data or information for which confidential treatment is requested a cover sheet prominently marked ''Proprietary Information—Confidential Treatment Requested by [name of GSE];''

(2) Accompany its request with a certification by an officer or authorized representative of the GSE that the mortgage data or information is proprietary; and

(3) Submit any additional statements in support of proprietary designation that the GSE chooses to provide.

(c) *Alternative procedure available for mortgage data or AHAR information subject to a temporary order, final order, or regulation in effect.* When the request for proprietary treatment pertains to mortgage data or AHAR information that has been deemed proprietary by the Secretary under a temporary order, final order, or regulation in effect, the GSE may reference such temporary order, final order, or regulation in lieu of complying with paragraphs (b)(2) and (3) of this section.

(d) *Nondisclosure during pendency.* Except as may otherwise be required by law, during the time any Request for Proprietary Treatment under § 81.73 is pending determination by the Secretary, the data or information submitted by the GSE that is the subject of the request shall not be disclosed to, or be subject to examination by, the public or any person or representative of any person or agency outside of HUD.

§ 81.74 Secretarial determination on GSE request.

(a) *General.* The Secretary shall review all Requests for Proprietary Treatment from the GSEs, along with any other information that the Secretary may elicit from other sources regarding the Request.

(b) *Factors for proprietary treatment.* Except as provided in paragraph (c) of this section, in making the determination of whether to accord proprietary treatment to mortgage data or AHAR information, the Secretary's considerations shall include, but are not limited to:

(1) The type of data or information involved and the nature of the adverse consequences to the GSE, financial or otherwise, that would result from disclosure, including any adverse effect on the GSE's competitive position;

(2) The existence and applicability of any prior determinations by HUD, any other Federal agency, or a court, concerning similar data or information;

(3) The measures taken by the GSE to protect the confidentiality of the mortgage data or AHAR information in question, and similar data or information, before and after its submission to the Secretary;

(4) The extent to which the mortgage data or AHAR information is publicly available including whether the data or information is available from other entities, from local government offices or records, including deeds, recorded mortgages, and similar documents, or from publicly available data bases;

(5) The difficulty that a competitor, including a seller/servicer, would face in obtaining or compiling the mortgage data or AHAR information; and

(6) Such additional facts and legal and other authorities as the Secretary may consider appropriate, including the extent to which particular mortgage data or AHAR information, when considered together with other information, could reveal proprietary information.

(c) *Alternative criterion for mortgage data or AHAR information subject to a temporary order, final order, or regulation in effect.* Where the request for proprietary treatment pertains to mortgage data or AHAR information that has been deemed proprietary by the Secretary under a temporary order, final order, or regulation in effect, the Secretary shall grant the request with respect to any mortgage data or AHAR information which comes within the order or regulation.

(d) *Determination of proprietary treatment.* The Secretary shall determine, as expeditiously as possible, whether mortgage data or AHAR information designated as proprietary by a GSE is proprietary information, or whether it is not proprietary and subject to inclusion in the public-use database and public release notwithstanding the GSE's request.

(e) *Action when according proprietary treatment to mortgage data and AHAR information.* (1) When the Secretary determines that mortgage data or AHAR information designated as proprietary by a GSE is proprietary, and the mortgage data or AHAR information is not subject to a temporary order, a final order, or a regulation in effect providing that the mortgage data or AHAR information is not subject to public disclosure, the Secretary shall notify the GSE that the request has been granted. In such cases, the Secretary shall issue either a temporary order, a final order, or a regulation providing that the mortgage data or information is not subject to public disclosure. Such a temporary order, final order, or regulation shall:

(i) Document the reasons for the determination; and

(ii) Be provided to the GSE, made available to members of the public, and published in the Federal Register, except that any portions of such order or regulation that would reveal the proprietary information shall be withheld from public disclosure. Publications of temporary orders shall invite public comments when feasible.

(2) Where the Secretary determines that such mortgage data or information is proprietary, the Secretary shall not make it publicly available, except as otherwise provided in accordance with this subpart.

(f) *Determination not to accord proprietary treatment to mortgage data and AHAR information or to seek further information.* When the Secretary determines that such mortgage data or AHAR information designated as proprietary by a GSE may not be proprietary, that the request may be granted only in part, or that questions exist concerning the request, the following procedure shall apply:

(1) The Secretary shall provide the GSE with an opportunity for a meeting with HUD to discuss the matter, for the

purpose of gaining additional information concerning the request.

(2) Following the meeting, based on the Secretary's review of the mortgage data or AHAR information that is the subject of a request and the GSE's objections, if any, to disclosure of such mortgage data or AHAR information, the Secretary shall make a determination:

(i) If the Secretary determines to withhold from the public-use database as proprietary the mortgage data or AHAR information that is the subject of a request, the procedures in paragraph (e) of this section shall apply; or

(ii) If the Secretary determines that any mortgage data or AHAR information that is the subject of a request is not proprietary, the Secretary shall provide notice in writing to the GSE of the reasons for this determination, and such notice shall provide that the Secretary shall not release the mortgage data or AHAR information to the public for 10 working days.

§ 81.75 Proprietary information withheld by order or regulation.

Following a determination by the Secretary that mortgage data or AHAR information is proprietary information under FHEFSSA, the Secretary shall expeditiously issue a temporary order, final order, or regulation withholding the mortgage data or AHAR information from the public-use database and from public disclosure by HUD in accordance with 12 U.S.C. 4546. The Secretary may, from time-to-time, by regulation or order, issue a list entitled ''GSE Mortgage Data and AHAR Information: Proprietary Information/Public-Use Data'' providing that certain information shall be treated as proprietary information. The Secretary may modify the list by regulation or order.

§ 81.76 FOIA requests and protection of GSE information.

(a) *General.* HUD shall process FOIA requests for information submitted to the Secretary by the GSEs in accordance with:

(1) HUD's FOIA and Privacy Act regulations, 24 CFR parts 15 and 16;

(2) 12 U.S.C. 4525, 4543, and 4546 and this subpart; and

(3) Other applicable statutes, regulations, and guidelines, including the Trade Secrets Act, 18 U.S.C. 1905, and Executive Order 12600. In responding to requests for data or information submitted by or relating to the GSEs, the Secretary may invoke provisions of these authorities to protect data or information from disclosure.

(b) *Protection of confidential business information other than mortgage data and AHAR information.* When a GSE seeks to protect from disclosure confidential business information, the GSE may seek protection of such confidential business information pursuant to the provisions of HUD's FOIA regulations at 24 CFR part 15, without regard to whether or not it is mortgage data or AHAR information.

(c) *Processing of FOIA requests*—(1) *FOIA Exemption (b)(4).* HUD will process FOIA requests for confidential business information of the GSEs to which FOIA exemption 4 may apply in accordance with 24 CFR part 15, and the predisclosure notification procedures of Executive Order 12,600.

(2) *FOIA Exemption (b)(8).* Under section 1319F of FHEFSSA, the Secretary may invoke FOIA exemption (b)(8) to withhold from the public any GSE data or information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of HUD. HUD may make data or information available for the confidential use of other government agencies in their official duties or functions, but all data or information remains the property of HUD and any unauthorized use or disclosure of such data or information may be subject to the penalties of 18 U.S.C. 641.

(3) *Other FOIA exemptions.* Under 24 CFR part 15, the Secretary may invoke other exemptions including, without limitation, exemption (b)(6) (5 U.S.C. 552(b)(6)), to protect data and information that would constitute a clearly unwarranted invasion of personal privacy.

(d) *Protection of information by HUD officers and employees.* The Secretary will institute all reasonable safeguards to protect data or information submitted by or relating to either GSE, including, but not limited to, advising all HUD officers and employees having access to data or information submitted by or relating to either GSE of the legal restrictions against unauthorized disclosure of such data or information under HUD Standards of Conduct regulations, 24 CFR part O; the Government-wide Standards of Ethical Conduct, 5 CFR part 2635; and the Trade Secrets Act, 18 U.S.C. 1905. Officers and employees shall be advised of the penalties for unauthorized disclosure, ranging from disciplinary action under 24 CFR part O and 5 CFR part 2635 to criminal prosecution.

(e) *Protection of information by contractors.* (1) In contracts and agreements entered into by HUD where contractors have access to data or information submitted by or relating to either GSE, HUD shall include detailed provisions specifying that:

(i) Neither the contractor nor any of its officers, employees, agents, or subcontractors may release data submitted by or relating to either GSE without HUD's authorization; and

(ii) Unauthorized disclosure may be a basis for:

(A) Terminating the contract for default;

(B) Suspending or debarring the contractor; and

(C) Criminal prosecution of the contractor, its officers, employees, agents, or subcontractors under the Federal Criminal Code.

(2) Contract provisions shall require safeguards against unauthorized disclosure, including training of contractor and subcontractor agents and employees, and provide that the contractor will indemnify and hold HUD harmless against unauthorized disclosure of data or information belonging to the GSEs or HUD.

§ 81.77 Requests for GSE information on behalf of Congress, the Comptroller General, a subpoena, or other legal process.

(a) *General.* With respect to information submitted by or relating to the GSEs, nothing in this subpart F may be construed to grant authority to the Secretary under FHEFSSA to withhold any information from or to prohibit the disclosure of any information to the following persons or entities:

(1) Either House of Congress or, to the extent of matters within its jurisdiction, any committee or subcommittee thereof, or any joint committee of Congress or subcommittee of any such joint committee;

(2) The Comptroller General, or any of the Comptroller General's authorized representatives, in the course of the performance of the duties of the General Accounting Office;

(3) A court of competent jurisdiction pursuant to a subpoena; or

(4) As otherwise compelled by law.

(b) *Notice of proprietary or confidential nature of GSE information.* (1) In releasing data or information in response to a request as set out in paragraph (a) of this section, the Secretary will, where applicable, include a statement with the data or information to the effect that:

(i) The GSE regards the data or information as proprietary information and/or confidential business information;

(ii) Public disclosure of the data or information may cause competitive harm to the GSE; and

(iii) The Secretary has determined that the data or information is proprietary information and/or confidential business information.

(2) To the extent practicable, the Secretary will provide notice to the GSE after a request from the persons or entities described in paragraphs (a)(1)–(4) of this section for proprietary information or confidential business information is received and before the data or information is provided in response to the request.

(c) *Procedures for requests pursuant to subpoena or other legal process.* The procedures in 24 CFR 15.71–15.74 shall be followed when a subpoena, order, or other demand of a court or other authority is issued for the production or disclosure of any GSE data or information that:

(1) Is contained in HUD's files;

(2) Relates to material contained in HUD's files; or

(3) Was acquired by any person while such person was an employee of HUD, as a part of the performance of the employee's official duties or because of the employee's official status.

(d) *Requests pursuant to subpoena or other legal process not served on HUD.* If an individual who is not a HUD employee or an entity other than HUD is served with a subpoena, order, or other demand of a court or authority for the production or disclosure of HUD data or information relating to a GSE and such data or information may not be disclosed to the public under this subpart or 24 CFR part 15, such individual or entity shall comply with 24 CFR 15.71–15.74 as if the individual or entity is a HUD employee, including immediately notifying HUD in accordance with the procedures set forth in 24 CFR 15.73(a).

(e) *Reservation of additional actions.* Nothing in this section precludes further action by the Secretary, in his or her discretion, to protect data or information submitted by a GSE from unwarranted disclosure in appropriate circumstances.

Subpart G—Procedures for Actions and Review of Actions

§ 81.81 General.

This subpart sets forth procedures for:

(a) The Secretary to issue cease-and-desist orders and impose civil money penalties to enforce the housing goal provisions implemented in subpart B of this part and the information submission and reporting requirements implemented in subpart E of this part; and

(b) Hearings, in accordance with 12 U.S.C. 4542(c)(4)(B), on the Secretary's disapproval of new programs that the Secretary determines are not in the public interest.

§ 81.82. Cease-and-desist proceedings.

(a) *Issuance.* The Secretary may issue and serve upon a GSE a written notice of charges justifying issuance of a cease-and-desist order, if the Secretary determines the GSE:

(1) Has failed to submit, within the time prescribed in § 81.22, a housing plan that substantially complies with 12 U.S.C. 4566(c), as implemented by § 81.22;

(2) Is failing or has failed, or there is reasonable cause to believe that the GSE is about to fail, to make a good-faith effort to comply with a housing plan submitted to and approved by the Secretary; or

(3) Has failed to submit any of the information required under sections 309(m) or (n) of the Fannie Mae Charter Act, sections 307(e) or (f) of the Freddie Mac Act, or subpart E of this part.

(b) *Procedures—(1) Content of notice.* The notice of charges shall provide:

(i) A concise statement of the facts constituting the alleged misconduct and the violations with which the GSE is charged;

(ii) Notice of the GSE's right to a hearing on the record;

(iii) A time and date for a hearing on the record;

(iv) A statement of the consequences of failing to contest the matter; and

(v) The effective date of the order if the GSE does not contest the matter.

(2) *Administrative Law Judge.* A HUD Administrative Law Judge (ALJ) shall preside over any hearing conducted under this section. The hearing shall be conducted in accordance with § 81.84 and, to the extent the provisions are not inconsistent with any of the procedures in this part or FHEFSSA, with §§ 30.10 and 30.15 and subpart E of part 30 of this title.

(3) *Issuance of order.* If the GSE consents to the issuance of the order or the ALJ finds, based on the hearing record, that a preponderance of the evidence established the conduct specified in the notice of charges, the ALJ may issue and serve upon the GSE an order requiring the GSE to:

(i) Submit a housing plan that substantially complies with 12 U.S.C. 4566(c), as implemented by § 81.22;

(ii) Comply with a housing plan; or

(iii) Provide the information required under subpart E of this part.

(4) *Effective date.* An order under this section shall be effective as provided in 12 U.S.C. 4581(c) and § 81.84(m).

§ 81.83 Civil money penalties.

(a) *Imposition.* The Secretary may impose a civil money penalty on a GSE that has failed:

(1) To submit, within the time prescribed in § 81.22, a housing plan that substantially complies with 12 U.S.C. 4566(c), as implemented by § 81.22;

(2) To make a good-faith effort to comply with a housing plan submitted and approved by the Secretary; or

(3) To submit any of the information required under sections 309(m) or (n) of the Fannie Mae Charter Act, sections 307(e) or (f) of the Freddie Mac Act, or subpart E of this part.

(b) *Amount of penalty.* The amount of the penalty shall not exceed:

(1) For any failure described in paragraph (a)(1) of this section, $25,000 for each day that the failure occurs; and

(2) For any failure described in paragraphs (a)(2) or (a)(3) of this section, $10,000 for each day that the failure occurs.

(c) *Factors in determining amount of penalty.* In determining the amount of a penalty under this section, the Secretary shall consider the factors in 12 U.S.C. 4585(c)(2) including the public interest.

(d) *Procedures—(1) Notice of Intent.* The Secretary shall notify the GSE in writing of the Secretary's determination to impose a civil money penalty by issuing a Notice of Intent to Impose Civil Money Penalties (''Notice of Intent''). The Notice of Intent shall provide:

(i) A concise statement of the facts constituting the alleged misconduct;

(ii) The amount of the civil money penalty;

(iii) Notice of the GSE's right to a hearing on the record;

(iv) The procedures to follow to obtain a hearing;

(v) A statement of the consequences of failing to request a hearing; and

(vi) The date the penalty shall be due unless the GSE contests the matter.

(2) To appeal the Secretary's decision to impose a civil money penalty, the GSE shall, within 20 days of service of the Notice of Intent, file a written Answer with the Chief Docket Clerk, Office of Administrative Law Judges, Department of Housing and Urban Development, at the address provided in the Notice of Intent.

(3) *Administrative Law Judge.* A HUD ALJ shall preside over any hearing conducted under this section, in accordance with § 81.84 and, to the extent the provisions are not inconsistent with any of the procedures in this part, FHEFSSA, or §§ 30.10 and 30.15 and subpart E of part 30 of this title.

(4) *Issuance of order.* If the GSE consents to the issuance of the order or the ALJ finds, on the hearing record, that a preponderance of the evidence establishes the conduct specified in the notice of charges, the ALJ may issue an order imposing a civil money penalty.

(5) *Consultation with the Director.* In the Secretary's discretion, the Director of OFHEO may be requested to review any Notice of Intent, determination, order, or interlocutory ruling arising from a hearing.

(e) *Action to collect penalty.* The Secretary may request the Attorney General of the United States to bring an action to collect the penalty, in accordance with 12 U.S.C. 4585(d). Interest on, and other charges for, any unpaid penalty may be assessed in accordance with 31 U.S.C. 3717.

(f) *Settlement by Secretary.* The Secretary may compromise, modify, or remit any civil money penalty that may be, or has been, imposed under this section.

§ 81.84 Hearings.

(a) *Applicability.* The hearing procedures in this section apply to hearings on the record to review cease-and-desist orders, civil money penalties, and new programs disapproved based upon a determination by the Secretary that such programs are not in the public interest, in accordance with 12 U.S.C. 4542(c)(4)(B).

(b) *Hearing requirements.* (1) Hearings shall be held in the District of Columbia.

(2) Hearings shall be conducted by a HUD ALJ authorized to conduct proceedings under 24 CFR part 30.

(c) *Timing.* Unless an earlier or later date is requested by a GSE and the request is granted by the ALJ, a hearing shall be fixed for a date not earlier than 30 days, nor later than 60 days, after:

(1) Service of the notice of charges under § 81.82;

(2) Service of the Notice of Intent to Impose Civil Money Penalty(ies) under § 81.83; or

(3) Filing of a request for a hearing under § 81.54(b).

(d) *Procedure.* Hearings shall be conducted in accordance with the procedures set forth in 24 CFR 30.10, 30.15, and subpart E of part 30 of this title to the extent that such provisions are not inconsistent with any of the procedures in this part or FHEFSSA.

(e) *Service.* (1) *To GSE.* Any service required or authorized to be made by the Secretary under this subpart G may be made to the Chief Executive Officer of a GSE or any other representative as the GSE may designate in writing to the Secretary.

(2) *How service may be made.* A serving party shall use one or more of the following methods of service:

(i) Personal service;

(ii) Delivering the papers to a reliable commercial courier service, overnight delivery service, or the U.S. Post Office for Express Mail Delivery; or

(iii) Transmission by electronic media, only if the parties mutually agree. The serving party shall mail an original of the filing after any proper service using electronic media.

(f) *Subpoena authority*—(1) *General.* In the course of or in connection with any hearing, the Secretary and the ALJ shall have the authority to:

(i) Administer oaths and affirmations;

(ii) Take and preserve testimony under oath;

(iii) Issue subpoenas and subpoenas duces tecum; and

(iv) Revoke, quash, or modify subpoenas and subpoenas duces tecum issued under this paragraph (f).

(2) *Witnesses and documents.* The attendance of witnesses and the production of documents provided for in this section may be required from any place in any State. A witness may be required to appear, and a document may be required to be produced, at:

(i) The hearing; and

(ii) Any place that is designated for attendance at a deposition or production of a document under this section.

(3) *Enforcement.* In accordance with 12 U.S.C. 4588(c), the Secretary may request the Attorney General of the United States to enforce any subpoena or subpoena duces tecum issued pursuant to this section. If a subpoenaed person fails to comply with all or any portion of a subpoena issued pursuant to this paragraph (f), the subpoenaing party or any other aggrieved person may petition the Secretary to seek enforcement of the subpoena. A party's petition to the Secretary for enforcement of a subpoena in no way limits the sanctions that may be imposed by the ALJ on a party who fails to comply with a subpoena issued under this paragraph (f).

(4) *Fees and expenses.* Witnesses subpoenaed under this section shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States and may seek reasonable expenses and attorneys fees in any court having jurisdiction of any proceeding instituted under this section. Such expenses and fees shall be paid by the GSE or from its assets.

(g) *Failure to appear.* If a GSE fails to appear at a hearing through a duly authorized representative, the GSE shall be deemed to have consented to the issuance of the cease-and-desist order, the imposition of the penalty, or the disapproval of the new program, whichever is applicable.

(h) *Public hearings.* (1) All hearings shall be open to the public, unless the ALJ determines that an open hearing would be contrary to the public interest. Where a party makes a timely motion to close a hearing and the ALJ denies the motion, such party may file with the Secretary within 5 working days a request for a closed hearing, and any party may file a reply to such a request within 5 working days of service of such a motion. Such motions, requests, and replies are governed by § 30.515 of this title. When a request for a closed hearing has been filed with the Secretary under this paragraph (h)(1), the hearing shall be stayed until the Secretary has advised the parties and the ALJ, in writing, of the Secretary's decision on whether the hearing should be closed.

(2) Failure to file a timely motion, request or reply is deemed a waiver of any objection regarding whether the hearing will be public or closed. A party must file any motion for a closed hearing within 10 days after:

(i) Service of the notice of charges under § 81.82;

(ii) Service of the Notice of Intent to Impose Civil Money Penalt(ies) under § 81.83; or

(iii) Filing of a request for a hearing under § 81.54(b).

(i) *Decision of ALJ.* After each hearing, the ALJ shall issue an initial decision and serve the initial decision on the GSE, the Secretary, any other parties, and the HUD General Counsel. This service will constitute notification that the case has been submitted to the Secretary.

(j) *Review of initial decision*—(1) *Secretary's discretion.* The Secretary, in the Secretary's discretion, may review any initial decision.

(2) *Requested by a party.* Any party may file a notice of appeal of an initial decision to the Secretary in accordance with § 30.910 of this title. Any waiver of the limitations contained in § 30.910(c) and (d) of this title on the number of pages for notices of appeal and responses, of the time limitation in § 30.910 of this title for filing a notice of appeal of the initial decision, or any other waivers under this subpart shall not be subject to the publication requirements in 42 U.S.C. 3535(q).

(k) *Final decision.* (1) The initial decision will become the final decision unless the Secretary issues a final decision within 90 days after the initial decision is served on the Secretary.

(2) *Issuance of final decision by Secretary.* The Secretary may review any finding of fact, conclusion of law, or order contained in the initial decision of the ALJ and may issue a final decision in the proceeding. Any decision shall include findings of fact upon which the decision is predicated. The Secretary may affirm, modify, or set aside, in whole or in part, the initial

decision or may remand the initial decision for further proceedings. The final decision shall be served on all parties and the ALJ.

(l) *Decisions on remand.* If the initial decision is remanded for further proceedings, the ALJ shall issue an initial decision on remand within 60 days of the date of issuance of the decision to remand, unless it is impractical to do so.

(m) *Modification.* The Secretary may modify, terminate, or set aside any order in accordance with 12 U.S.C. 4582(b)(2).

§ 81.85 Public disclosure of final orders and agreements.

(a) *Disclosure.* Except as provided in paragraph (b) of this section, the Secretary shall make available to the public final orders; written agreements and statements; and modifications and terminations of those orders, agreements, and statements, as set forth in 12 U.S.C. 4586(a) and the implementing regulations in this subpart G. The retention of records of these orders, agreements, and statements, and their modifications and terminations, are governed by 12 U.S.C. 4586(e).

(b) *Exceptions to disclosure.* Exceptions to disclosure will be determined in accordance with 12 U.S.C. 4586 (c), (d), and (f) and paragraph (c) of this section.

(c) *Filing documents under seal*—(1) *Request by party.* Upon the denial by the ALJ of a motion for a protective order, any party may request the Secretary to file any document or part of a document under seal if the party believes that disclosure of the document would be contrary to the public interest. Any other party may file with the Secretary a reply to such a request within 5 working days after a request is made or some other time to be determined by the Secretary. Such requests and replies are governed by § 30.515 of this title.

(2) *Effect of request.* A document or part of a document that is the subject of a timely request to the Secretary to file under seal will not be disclosed under this section until the Secretary has advised the parties and the ALJ, in writing, of the Secretary's decision on whether the document or part of a document should be filed under seal. The ALJ shall take all appropriate steps to preserve the confidentiality of such documents or parts of documents, including closing portions of the hearing to the public.

(3) *Time of request.* Failure to file with the Secretary a timely request or a reply is deemed a waiver of any objection regarding the decision on whether a document is to be disclosed. A party must make its request to file a document under seal at least 10 days before the commencement of the hearing. A request may be filed at any other time before or during the course of the hearing, but the requesting party's obligation to produce the document or parts of the document will not be affected by the party's pending request to the Secretary, unless the Secretary expressly directs the ALJ to treat the document as protected from disclosure until the Secretary makes a final written decision on whether the document should be filed under seal. If the Secretary's direction to the ALJ is made orally, that direction must be reduced to writing and filed with the ALJ within 3 working days of the making of the oral order or the document will then be subject to disclosure pending the Secretary's final written decision on disclosure.

§ 81.86 Enforcement and jurisdiction.

If a GSE fails to comply with a final decision, the Secretary may request the Attorney General of the United States to bring an action in the United States District Court for the District of Columbia for the enforcement of the notice or order. Such request may be made:

(a) *For a cease-and-desist order:*

(1) Upon expiration of the 30-day period beginning on the service of the order on the GSE; or

(2) Upon the effective time specified in an order issued upon consent; and

(b) *For a civil money penalty,* when the order imposing the penalty is no longer subject to review under 12 U.S.C. 4582 and 4583 and the implementing regulations at §§ 81.84 and 81.87.

§ 81.87 Judicial review.

(a) *Commencement.* In a proceeding under 12 U.S.C. 4581 or 4585, as implemented by §§ 81.82 or 81.83, a GSE that is a party to the proceeding may obtain review of any final order issued under § 81.84 by filing in the United States Court of Appeals for the District of Columbia Circuit, within 30 days after the date of service of such order, a written petition praying that the order of the Secretary be modified, terminated, or set aside.

(b) *Filing of record.* Upon receiving a copy of a petition, the Chief Docket Clerk, Office of Administrative Law Judges, shall file in the court the record in the proceeding, as provided in 28 U.S.C. 2112.

(c) *No automatic stay.* The commencement of proceedings for judicial review under this section shall not, unless specifically ordered by the court, operate as a stay of any order issued by the Secretary.

Subpart H—Book-Entry Procedures

§ 81.91 Definitions.

As used in this subpart H, the term—

(a) *Reserve bank* means a Federal Reserve bank and its branches acting as Fiscal Agent of Fannie Mae and, when indicated, acting in its individual capacity or as Fiscal Agent of the United States.

(b) *Fannie Mae security* means any obligation of Fannie Mae (except short-term discount notes and obligations convertible into shares of common stock) issued under 12 U.S.C. 1719 (b), (d), and (e) in the form of a definitive Fannie Mae security or a book-entry Fannie Mae security.

(c) *Definitive Fannie Mae security* means a Fannie Mae security in engraved or printed form.

(d) *Book-entry Fannie Mae security* means a Fannie Mae security in the form of an entry made as prescribed in this part on the records of a Reserve bank.

(e) *Pledge* includes a pledge of, or any other security interest in, Fannie Mae securities as collateral for loans or advances or to secure deposits of public moneys or the performance of an obligation.

(f) *Date of call* is, with respect to Fannie Mae securities issued under 12 U.S.C. 1719 (d) and (e), the date fixed in the authorizing resolution of the Board of Directors of Fannie Mae on which the obligor will make payment of the security before maturity in accordance with its terms, and, with respect to Fannie Mae securities issued under 12 U.S.C. 1719(b), the date fixed in the offering notice issued by Fannie Mae.

(g) *Member bank* means any National bank, State bank, or bank or trust company which is a member of a Reserve bank.

§ 81.92 Authority of Reserve Bank.

Each Reserve bank is hereby authorized, in accordance with the provisions of this part, to:

(a) Issue book-entry Fannie Mae securities by means of entries on its records which shall include the name of the depositor, the amount, the loan title (or series) and maturity date;

(b) Effect conversions between book-entry Fannie Mae securities and definitive Fannie Mae securities;

(c) Otherwise service and maintain book-entry Fannie Mae securities; and

(d) Issue a confirmation of transaction in the form of a written advice (serially numbered or otherwise) which specifies

the amount and description of any securities, that is, loan title (or series) and maturity date, sold or transferred, and the date of the transaction.

§ 81.93 Scope and effect of book-entry procedure.

(a) (1) A Reserve bank as Fiscal Agent of Fannie Mae may apply the book-entry procedure provided for in this part to any Fannie Mae securities which have been or are hereafter deposited for any purpose in accounts with it in its individual capacity under terms and conditions which indicate that the Reserve bank will continue to maintain such deposit accounts in its individual capacity, notwithstanding application of the book-entry procedure to such securities. This paragraph (a) is applicable, but not limited, to securities deposited:

(i) As collateral pledged to a Reserve bank (in its individual capacity) for advances by it;

(ii) By a member bank for its sole account;

(iii) By a member bank held for the account of its customers;

(iv) In connection with deposits in a member bank of funds of States, municipalities, or other political subdivisions; or

(v) In connection with the performance of an obligation or duty under Federal, State, municipal, or local law, or judgments or decrees of courts.

(2) The application of the book-entry procedure under this paragraph (a) shall not derogate from or adversely affect the relationships that would otherwise exist between a Reserve bank in its individual capacity and its depositors concerning any deposits under this section. Whenever the book-entry procedure is applied to such Fannie Mae securities, the Reserve bank is authorized to take all action necessary in respect of the book-entry procedure to enable such Reserve bank in its individual capacity to perform its obligations as depositary with respect to such Fannie Mae securities.

(b) A Reserve bank as Fiscal Agent of the corporation may apply the book-entry procedure to Fannie Mae securities deposited as collateral pledged to the United States under Treasury Department Circulars Nos. 92 and 176, both as revised and amended, and may apply the book-entry procedure, with the approval of the Secretary of the Treasury, to any other Fannie Mae securities deposited with a Reserve bank, as Fiscal Agent of the United States.

(c) Any person having an interest in Fannie Mae securities which are deposited with a Reserve bank (in either its individual capacity or as Fiscal Agent of the United States) for any purpose shall be deemed to have consented to their conversion to book-entry Fannie Mae securities pursuant to the provisions of this part, and in the manner and under the procedures prescribed by the Reserve bank.

(d) No deposits shall be accepted under this section on or after the date of maturity or call of the securities.

§ 81.94 Transfer or pledge.

(a) A transfer or pledge of book-entry Fannie Mae securities to a Reserve bank (in its individual capacity or as Fiscal Agent of the United States), or to the United States, or to any transferee or pledgee eligible to maintain an appropriate book-entry account in its name with a Reserve bank under §§ 81.91 through 81.98 is effected and perfected, notwithstanding any provision of law to the contrary, by a Reserve bank making an appropriate entry in its records of the securities transferred or pledged. The making of such an entry in the records of a Reserve bank shall:

(1) Have the effect of a delivery in bearer form of definitive Fannie Mae securities;

(2) Have the effect of a taking of delivery by the transferee or pledgee;

(3) Constitute the transferee or pledgee a holder; and

(4) If a pledge, effect a perfected security interest therein in favor of the pledgee. A transfer or pledge of book-entry Fannie Mae securities effected under this paragraph (a) shall have priority over any transfer, pledge, or other interest, theretofore or thereafter effected or perfected under paragraph (b) of this section or in any other manner.

(b) A transfer or a pledge of transferable Fannie Mae securities, or any interest therein, which is maintained by a Reserve bank (in its individual capacity or as Fiscal Agent of the United States) in a book-entry account under §§ 81.91 through 81.98, including securities in book-entry form under § 81.93(a)(3), is effected, and a pledge is perfected, by any means that would be effective under applicable law to effect a transfer or to effect and perfect a pledge of the Fannie Mae securities, or any interest therein, if the securities were maintained by the Reserve bank in bearer definitive form. For purposes of transfer or pledge hereunder, book-entry Fannie Mae securities maintained by a Reserve bank shall, notwithstanding any provision of law to the contrary, be deemed to be maintained in bearer definitive form. A Reserve bank maintaining book-entry Fannie Mae securities either in its individual capacity or as Fiscal Agent of the United States is not a bailee for purposes of notification of pledges of those securities under this section, or a third person in possession for purposes of acknowledgment of transfer thereof under this section. Where transferable Fannie Mae securities are recorded on the books of a depositary (a bank, banking institution, financial firm, or similar party, which regularly accepts in the course of its business Fannie Mae securities as a custodial service for customers, and maintains accounts in the names of such customers reflecting ownership of or interest in such securities) or account of the pledgor or transferor thereof and such securities are on deposit with a Reserve bank in a book-entry account, hereunder, such depositary shall, for purposes of perfecting a pledge of such securities or affecting delivery of such securities to a purchaser under applicable provisions of law, be the bailee to which notification of the pledge of the securities may be given or the third person in possession from which acknowledgment of the holding of the securities for the purchaser may be obtained. A Reserve bank will not accept notice or advice of a transfer or pledge effected or perfected under this section, and any such notice or advice shall have no effect. A Reserve bank may continue to deal with its depositor in accordance with the provisions of this part, notwithstanding any transfer or pledge effected or perfected under this paragraph (b).

(c) No filing or recording with a public recording office or officer shall be necessary or effective with respect to any transfer or pledge of book-entry Fannie Mae securities or any interest therein.

(d) A Reserve bank shall, upon receipt of appropriate instructions, convert book-entry Fannie Mae securities and deliver them in accordance with such instructions; no such conversion shall affect existing interest in such Fannie Mae securities.

(e) A transfer of book-entry Fannie Mae securities within a Reserve bank shall be made, in accordance with procedures established by the Reserve bank not inconsistent with this part. The transfer of book-entry Fannie Mae securities by a Reserve bank may be made through a telegraphic transfer procedure.

(f) All requests for transfer or withdrawal must be made prior to the maturity or date of call of the securities.

§ 81.95 Withdrawal of Fannie Mae securities.

For all book-entry Fannie Mae securities issued prior to March 10, 1978:

(a) A depositor of book-entry Fannie Mae securities may withdraw them from a Reserve bank by requesting delivery of like definitive Fannie Mae securities to itself or on its order to a transferee.

(b) Fannie Mae securities which are actually to be delivered upon withdrawal may be issued either in registered or in bearer form.

§ 81.96 Delivery of Fannie Mae securities.

A Reserve bank which has received Fannie Mae securities and effected pledges, made entries regarding them, or transferred or delivered them according to the instructions of its depositor is not liable for conversion or for participation in breach of fiduciary duty even though the depositor had no right to dispose of or take other action in respect of the securities. Customers of a member bank or other depositary (other than a Reserve bank) may obtain Fannie Mae securities only by causing the depositor of the Reserve bank to order the withdrawal thereof from the Reserve bank under the conditions set forth in § 81.95.

§ 81.97 Registered bonds and notes.

No formal assignment shall be required for the conversion to book-entry Fannie Mae securities of registered Fannie Mae securities held by a Reserve bank (in either its individual capacity or as Fiscal Agent of the United States) on the effective date of this part for any purpose specified in § 81.93(a). Registered Fannie Mae securities deposited thereafter with a Reserve bank for any purpose specified in § 81.93 shall be assigned for conversion to book-entry Fannie Mae securities. The assignment, which shall be executed in accordance with the provisions of subpart F of 31 CFR part 306, so far as applicable, shall be to ''Federal Reserve Bank of _____, as Fiscal Agent of the Federal National Mortgage Association, for conversion to book-entry Fannie Mae securities.''

§ 81.98 Servicing book-entry Fannie Mae securities; payment of interest; payment at maturity or upon call.

Interest becoming due on book-entry Fannie Mae securities shall be charged to Fannie Mae's account at the New York Federal Reserve Bank on the interest due date and remitted or credited in accordance with the depositor's instructions. Such securities shall be redeemed and charged to Fannie Mae's account at the New York Federal Reserve Bank on the date of maturity, call or advance refunding, and the redemption proceeds, principal and interest, shall dispose of in accordance with the depositor's instructions.

§ 81.99 Treasury Department regulations; applicability to Fannie Mae.

The provisions of Treasury Department Circular No. 300, 31 CFR part 306 (other than subpart O), as amended from time to time, shall apply, insofar as appropriate, to obligations of Fannie Mae for which a Reserve bank shall act as Fiscal Agent of Fannie Mae and to the extent that such provisions are consistent with agreements between Fannie Mae and the Reserve banks acting as Fiscal Agents of Fannie Mae. Definitions and terms used in Treasury Department Circular No. 300 should read as though modified to effectuate the application of the regulations to Fannie Mae.

Subpart I—Other Provisions

§ 81.101 Equal employment opportunity.

Fannie Mae and Freddie Mac shall comply with sections 1 and 2 of Executive Order 11478 (3 CFR, 1966–1970 Compilation, p. 803), as amended by Executive Order 12106, (3 CFR, 1978, Compilation, p. 263), providing for the adoption and implementation of equal employment opportunity, as required by section 1216 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1833e).

§ 81.102 Independent verification authority.

The Secretary may independently verify the accuracy and completeness of the data, information, and reports provided by each GSE, including conducting on-site verification, when such steps are reasonably related to determining whether a GSE is complying with 12 U.S.C. 4541–4589 and the GSE's Charter Act.

Dated: November 21, 1995.

Henry G. Cisneros,

Secretary.

2. The following Appendices A through F will not appear in the Code of Federal Regulations.

Appendix A—Secretarial Considerations to Establish the Low- and Moderate-Income Housing Goal

A. Introduction

1. Establishment of Goal

In establishing the annual Low- and Moderate-Income Housing Goal, the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 requires the Secretary to consider:

1. National housing needs;

2. Economic, housing, and demographic conditions;

3. The performance and effort of the enterprises toward achieving the Low- and Moderate-Income Housing Goal in previous years;

4. The size of the conventional mortgage market serving low- and moderate-income families relative to the size of the overall conventional mortgage market; [1]

5. The ability of the enterprises to lead the industry in making mortgage credit available for low- and moderate-income families; and

6. The need to maintain the sound financial condition of the enterprises.

2. Underlying Data

In considering the statutory factors in establishing these goals, HUD relied upon data from the American Housing Survey, the 1990 Census of Population and Housing, the 1991 Residential Finance Survey, other government reports, the Home Mortgage Disclosure Act (HMDA) reports, and the GSEs. HUD used data provided by the GSEs to determine their financial condition and their prior performance in meeting the needs of low- and moderate-income families. These data included loan-level information on all mortgages purchased by the GSEs in 1993 and 1994.

Section B responds to comments from the GSEs and other commenters on Appendix A in the proposed rule and Section C presents an updated discussion of each of the factors listed above. Section D summarizes the Secretary's rationale for selecting the levels of the Low- and Moderate-Income Housing Goals for 1996 and 1997–99 and thereafter.

B. Summary and Response to Public Comments

The GSEs and several other commenters furnished comments on Appendix A as it appeared in the proposed rule. Because the GSEs' comments covered all of the points made by other commenters, this appendix refers exclusively to the GSEs' comments. The GSEs took issue with HUD's application of the factors identified in Section A above and the analysis by which HUD determined the levels of the goals. The GSEs commented that Appendix A: (1) confused general housing needs with those for which the GSEs have an

[1] ''Conventional'' mortgages are those which do not carry any government insurance, guarantee, or other obligation. That is, conventional mortgages exclude Federal Housing Administration (FHA), Farmers Home Administration (FmHA), and Veterans Administration (VA) loans.

appropriate responsibility; (2) failed to identify the broad range of economic conditions which might be relevant over the coming years; (3) incorrectly assessed the past performance of the GSEs and postulated a very narrow concept of market leadership; (4) minimized the potential economic impact of higher-risk multifamily mortgage purchases and assumed the GSEs should have equal penetration of single-family and multifamily markets; and (5) used flawed data estimates for calculating the size of the conventional market for the Low- and Moderate-Income Housing Goal.[2]

1. ''Linking'' Housing Needs to GSEs

The GSEs expressed concern that HUD did not distinguish between general housing needs of low- and moderate-income households and those needs that the GSEs could reasonably be expected to address. HUD conducted an analysis of general housing needs to comply with FHEFSSA, which requires the Secretary to consider such needs when establishing the housing goals. HUD's examination of national housing needs does not suggest that the GSEs can or should meet all of those needs. Rather, the analysis was intended to provide background on the evolution and current state of the housing markets for low- and moderate-income households. HUD recognizes that the GSEs can do little to mitigate the more extreme problems, such as homelessness, identified in this analysis (Section C.1 below).

With focused effort the GSEs can assist in addressing problems discussed in the Appendix with regard to single-family and multifamily housing. On the single-family side, the GSEs support of more customized mortgage products and underwriting with greater outreach will likely have mutually beneficial effects for both investors and low- and moderate-income borrowers who have not been served with traditional products, underwriting, and marketing. The GSEs have already embarked on this path and continued efforts are encouraged.

On the multifamily side, with new product development and partnerships the GSEs can reduce the credit gaps in the current market for affordable rental housing—specifically small existing properties, redevelopment projects, housing for the elderly, and new construction in some markets. By sustaining a secondary market in units that meet the low- and moderate-income goal, the GSEs will bring increased liquidity, added stability, and ultimately lower rents for lower-income families in these segments of the market.

Moreover, the GSEs can work to improve overall efficiency and stability of the market for financing multifamily housing by promoting increased standardization, which would allow more direct links to capital markets independent of specific financial intermediaries or investors. The GSEs have been immensely successful in this area with regard to the financing of single-family housing. While HUD recognizes that multifamily finance is different from single-family finance, improvements may well be possible through, for example, creative partnerships and risk-sharing with local institutions.

2. Mortgage Market Volatility

Both GSEs expressed concern that establishing the levels of the housing goals on the basis of experience under the recent unusually favorable mortgage market conditions for financing homeownership could place unreasonable expectations on the GSEs. The GSEs commented that the market for home purchase and finance is very dynamic and susceptible to significant changes in conditions that affect whether home purchase is feasible or accessible to low- and moderate-income households. The current levels of interest rates, home prices, borrower incomes, alternative rental costs, and consumer confidence, as well as expectations about their future levels, play a role in determining whether homeownership is feasible or desirable for any particular household. HUD agrees that forecasting all these factors for upcoming years to obtain a picture of the future climate for home purchase and finance is difficult.

However, setting goals so that they can be met even under the worst of circumstances is unreasonable. If macroeconomic conditions change dramatically, then the levels of the goals can be revised to reflect the changed conditions. FHEFSSA and HUD recognize that conditions could change in ways that would require revised expectations. Thus, HUD is given the statutory discretion: (1) to revise the goals if the need arises and (2) if a GSE fails to meet a housing goal, to determine that the goal was not feasible, and not take further action. Furthermore, as discussed in Appendix D, HUD conducted detailed sensitivity analysis for each of the housing goals to reflect economic conditions that are less conducive to homeownership than those that existed during 1993 and 1994.

3. GSEs Already Innovate and Serve Low- and Moderate-Income Borrowers

The GSEs commented that Appendix A and the proposed rule failed to recognize that the GSEs already make a sizable contribution toward serving the housing needs of a wide range of American families, including low- and moderate-income households, in diverse geographic areas, through their overall operations. Congress chartered the GSEs to carry out four public purposes: (a) provide stability; (b) respond appropriately to the private capital market; (c) provide assistance to the residential mortgage market, including serving low- and moderate-income families; and (d) promote access to mortgage credit throughout the nation. In FHEFSSA, Congress developed a mechanism to ensure that the GSEs finance housing for and provide services to low- and moderate-income families and housing in underserved areas. Congress acknowledged, as does HUD, the substantial contributions the GSEs have made and continue to make in creating liquidity and stability in the overall mortgage market. No additional measures were thought necessary to ensure that such contributions continue to take place. However, in FHEFSSA, Congress focused on enhancing the GSEs' efforts to carry out their other Charter purposes. HUD, through its focus on the goals, is carrying out that Congressional intent.

4. Multifamily Market Is Different

The GSEs commented that the origination and purchase of multifamily mortgages is fundamentally different from the origination and purchase of single-family mortgages. Both GSEs commented that the GSEs do not dominate the multifamily market to the same extent as the single-family market and that they should not be required to obtain the same multifamily market share that they have in the single-family market. Freddie Mac argued that the purchase of creditworthy multifamily loans is far more difficult than for single-family loans.

HUD agrees that the multifamily mortgage business is a different business from single-family finance, posing a different level of risk. Underwriting multifamily mortgages is more like underwriting business loans than underwriting many small and relatively uniform single-family mortgages. However, with regard to the argument that multifamily lending is much more difficult, the evidence is not convincing.

[2] The credit risk criticism is addressed in the Economic Analysis that accompanies this rule and the market share criticism is addressed in Appendix D.

Much of the difficulty with multifamily mortgages in recent years was related to the aftermath of wide swings in the tax treatment of multifamily housing. The tax-driven rather than market-driven overbuilding of the early and mid-1980s was followed by the subsequent withdrawal of tax support and the resulting credit crunch in the late 1980s and the early 1990s. During the early 1990s, underwriting of creditworthy multifamily loans may have been difficult. These conditions have now improved markedly.

Currently, multifamily properties offer less risk of loss than most commercial property classes, according to Moody's Investors Service.[3] In overbuilt markets, vacancies have declined due to depressed construction levels in the early 1990s. Accordingly, competition for multifamily loans has increased and securitization has increased in 1993 and again in 1994. Credit risk remains a concern to investors, but new techniques in multi-class securitization have helped mitigate credit risk on multifamily mortgage pools.

HUD realizes that achievement of the housing goals may require deeper penetration of the multifamily mortgage market than the GSEs have heretofore achieved. As discussed in Section C.2 below, Fannie Mae purchased a large portion (nearly half) of the large multifamily loans (those with balances of $1.0 million or more) that were originated in 1993 and reported in the HMDA data. An alternative to very deep penetration of the large loan market would be for the GSEs to broaden their penetration by shifting their focus toward purchase of smaller multifamily loans. There is no evidence that smaller loans represent higher credit risks. Such a shift may require the GSEs to develop additional capabilities to underwrite smaller loans, such as forming new partnerships with community lenders. This may pose some initial difficulty, but the suggestion that there are long-term fundamental difficulties in the purchase of smaller (less than $1 million) multifamily loans is not consistent with the current market trends toward higher multifamily lending activity and new techniques of credit risk management.

5. HUD's Market Methodology

In establishing the goals, the Secretary is required to assess, among a number of factors, the size of the conventional market for each goal. HUD developed a straightforward technique for estimating the size of the conventional conforming market for each of the goals. This technique draws on the existing major sources of data on mortgage market activity.

Both GSEs expressed strong criticism of HUD's use of specific data elements in constructing its estimates of market size, for example, estimates of the proportion of 1- to 4-unit rental properties or the level of multifamily originations. Although both GSEs criticized how data had been interpreted in HUD's market-share models, neither GSE, nor any other commenter, objected to HUD's basic model for calculating the size of the markets relevant to each of the housing goals. However, Freddie Mac provided a detailed set of objections to the use of certain data sources or assumptions, concluding that HUD's market estimates were ''fatally flawed.'' Fannie Mae argued that market estimates employed by HUD ''created an artificial market description based on interpretations of the data available to [HUD], which are not consistent.'' Fannie Mae commented that the Secretary deliberately selected existing data interpretations to yield higher goals.

Freddie Mac maintained that the flaws in HUD's estimation process would result in goals that were too high, because HUD had overestimated the size of the rental market. Freddie Mac presented a comparison of available market-share estimates, explained deficiencies it believed were present in the data employed by HUD, and claimed that HUD had chosen the least-favorable of the data bases that could have been employed in establishing appropriate goals for the GSEs.

Both GSEs argued that the role of multifamily financing in the mortgage market was consistently overstated in the proposed rule. Freddie Mac provided data to support its assertion that the rule's estimates of multifamily originations overstated both the total amount of originations to be expected and the degree to which multifamily originations are available to the secondary market.

In considering the levels of the goals, HUD examined carefully the comments on the methodology used to establish the market share for each of the goals. HUD contracted with the Urban Institute to conduct an independent review that drew upon its resources of well-respected academics and others in evaluating HUD's methodology. Based on that thorough evaluation, as well as HUD's additional analysis, the basic methodology employed by HUD is a reasonable and valid approach to estimating market share, and Freddie Mac's claim that the methodology is ''fatally flawed'' is without merit.

HUD agrees that a comprehensive source of information on mortgage markets is not available. HUD considered and analyzed a number of data sources for the purpose of estimating market size, because no single source could provide all the data elements needed. In the appendices, HUD has carefully defined the range of uncertainty associated with each of these data sources and has conducted sensitivity analyses to show the effects of various assumptions. Technical papers prepared by the Urban Institute and other academics support HUD's analysis.

A number of technical changes have been made in response to the comments and the evaluation by outside experts and HUD, but the approach for determining market size has not been substantially modified. The detailed evaluations show that the methodology, as modified, produces reasonable estimates of the market share for each goal.

Criticism of the methodology focused, in part, on the estimated size of the multifamily market. The GSEs proposed that HUD use the volume of originations as reported in the Home Mortgage Disclosure Act (HMDA) data base—$15 billion in 1994—as the accurate number of multifamily originations, as opposed to HUD's $30 billion estimate derived from other data sources. Four of the studies HUD commissioned from the Urban Institute considered various aspects of the multifamily market. HUD also consulted with experts at the Federal Reserve Board, the Bureau of the Census, and in industry trade groups to assist HUD in carefully evaluating the GSEs' claim that HMDA data provide an accurate number of total multifamily originations.

HUD found consensus that HMDA data underreport multifamily originations. HMDA, alone, is not an accurate survey of the total market; it was not designed to be one. It includes only information reported by a subset of institutions that originate multifamily loans: large commercial banks, thrifts, and mortgage bankers in metropolitan areas. In addition, HMDA underestimates multifamily lending by both mortgage bankers and commercial banks. The additional analyses conducted in response to the comments support the $30 billion multifamily estimate used by HUD.

c. Consideration of the Factors

Overview of Sections C.1 and C.2. These sections cover a range of topics on housing needs and economic and

[3] ''Moody's: Multifamily Offers Less Loss Risk,'' *National Mortgage News*, May 1, 1995.

demographic trends that are important for understanding mortgage markets. Most of the information, such as trends in refinancing activity, is provided because it describes the market environment in which the GSEs must operate and is therefore useful for gauging the reasonableness of specific levels of the Low- and Moderate-Income Housing Goal. In addition, the severe housing problems faced by lower-income families are discussed.

This information has led the Secretary to the following conclusions:

- The volume of mortgage originations fell from its 1993 record level of one trillion dollars to $773 billion in 1994 and is expected to be about $650 and $700 billion in 1995 and 1996, respectively. Purchase mortgages, including those for first-time homebuyers, have replaced refinance mortgages as the dominant mortgage type.
- The increase in interest rates from the 25-year lows of 1993 could make it more difficult for marginal borrowers to afford homeownership. However, interest rates continue to remain lower and housing more affordable than any previous extended period since 1977. Borrowers also have been helped by the rising incomes that accompany economic growth, which helped to boost the GSEs' purchases of low- and moderate-income mortgages in 1994, beyond levels recorded in 1993.
- Purchasing a home became increasingly difficult for lower-income and younger families during the 1980s. Low-income families with children, who could most benefit from the advantages of ownership, bore the brunt of the decline in ownership rates. The share of the nation's children living in owner-occupied homes fell from 71 percent to 63 percent between 1980 and 1991.
- Very-low-income renters often must pay an unduly high share of their income for rent.
- Several demographic changes will affect the demand for housing over the next few years. The continued influx of immigrants will increase the demand for both rental and owner-occupied housing and help to offset declines due to the aging of the baby-boom generation. Non-traditional households will become more important as overall household formation rates have slowed. With later marriage, divorce, and other non-traditional living arrangements, the fastest-growing household groups will be single-parent and single-person households.
- The multifamily mortgage market is far less integrated into the broader capital markets than the single-family market. Increased liquidity will bring more capital, at lower cost, to fill current and future credit gaps for maintenance of existing affordable stock and construction of affordable units in higher growth markets.

1. National Housing Needs

This section reviews the general housing problems of both low- and moderate-income homeowners and then discusses past and current economic conditions affecting the single-family and multifamily housing markets. HUD recognizes that the GSEs can do little to mitigate many of the more extreme problems discussed in the next sections. These sections are meant to portray the general state of the housing markets for low- and moderate-income households as they exist today and are expected to continue in the near future.

a. Housing Problems Among Low- and Moderate-Income Owners and Renters

Under the income definitions in FHEFSSA, almost three-fifths of U.S. households in 1993 qualified as low- or moderate-income families. Almost half of all homeowners (48 percent) had incomes below their (unadjusted) area median family income, while 76 percent of renters had income below their area's HUD-adjusted median family income.[4]

Housing needs vary with income. In 1993, roughly 21 percent of owners with moderate incomes (income 80 to 100 percent of area median) and 24 percent of moderate-income renters had a housing problem, compared to 25 percent of low-income owners and 36 percent of low-income renters (with income 60 to 80 percent of area median). Moreover, two-thirds of the 14 million households with incomes below 30 percent of median paid more than 30 percent of income for housing or lived in inadequate or crowded housing.[5]

[4] HUD is required by statute to adjust median family income in developing its official income cutoffs for each Metropolitan Statistical Area (MSA) and non-metropolitan county. Income limits based on HUD-Adjusted Area Median Family Incomes (HAMFI) are adjusted 1) with upper and lower caps for areas with low or high ratios of housing costs to income; 2) by setting state nonmetropolitan average income as a floor for nonmetropolitan counties; and 3) by household size. The adjusted annual estimates of area median family income provide the base for the ''50 percent'' and ''80 percent'' of HAMFI cutoffs that are assigned to a household of four. Household size adjustments then range from 70 percent of the base for a 1-person household to 132 percent of the base for an 8-person household.

[5] Tabulations of U.S. Departments of Housing and Urban Development and Commerce, *American Housing Survey for the United States in 1993* (April 1995) performed by HUD Office of Policy Development and Research.

b. Unmet Demands for Homeownership

Homeownership is a key aspiration for most Americans and a basic concern of government. Homeownership fosters family responsibility and self-sufficiency, expands housing choice and economic opportunity, and promotes community stability. Ownership also improves access to the larger homes and better neighborhoods particularly needed by families with children. Children of homeowners are more likely to graduate from high school, less likely to commit crime, and less likely to bear children as teenagers than children of renters.[6] Recent surveys indicate that lower-income and minority families who do not own their homes will make considerable sacrifices to attain this goal.

Ownership rates rose dramatically in the late 1940s and 1950s, increasing from 43.6 percent to 61.9 percent between 1940 and 1960. During the 1960s, homeownership rates rose more slowly, reaching 62.9 percent by 1970, and—after several years of high house price appreciation—an all-time high of 65.6 percent in 1980. In the early 1980s, historically high interest rates, low price appreciation, and a series of deep regional recessions caused the homeownership rate to decline to 63.9 percent by 1985. The rate increased only slightly between 1985 and 1994.[7]

During the 1980s, the goal of homeownership became more elusive for low- and moderate-income families. Declines in ownership rates during the 1980s were most pronounced for younger, lower-income households, particularly those with children:

Between 1980 and 1992, homeownership among younger households dropped roughly 10 percentage points, from 43.3 percent to 33.1 percent for households with the head aged 25 to 29, and from 61.1 percent to 50.0 percent for households with the head aged 30 to 34. These declines were concentrated among single-parent households and married couples with children.[8]

Homeownership rates fell by 4 percentage points each for moderate-income households and low-income households during the 1980s, and by 3 percentage points for households below 50 percent of area median, adjusted for family size. At each income

[6] These tendencies are especially strong for lower-income households. Children of low-income homeowners are 15 percent more likely to stay in school than children of non-homeowners. Michelle White and Richard Green, ''Measuring the Benefits of Homeowning: Effects on Children,'' University of Chicago, unpublished paper, February 1994.

[7] The stability in ownership after 1985 resulted from increases among elderly households and single individuals, offset by further declines among families with children.

[8] Joint Center for Housing Studies of Harvard University, *The State of the Nation's Housing,* 1993, Table A–4.

level, declines were greatest for families with children. Among very low-income families with children, homeownership rates dropped by nearly a fourth.[9]

In sum, the families with children who could most benefit from ownership were most adversely affected by declines in ownership. Between 1980 and 1991, the dip in the total ownership rate from 65.6 to 64.2 percent included a fall of seven percentage points among families with children, from 70.4 percent to 63.4 percent.

c. Obstacles to Homeownership

Insufficient income, high debt burdens, and limited savings are obstacles to homeownership for younger families. As home prices skyrocketed during the late 1970s and early 1980s, real incomes stagnated, with earnings growth particularly slow for blue collar and less educated workers. Through most of the 1980s, the combination of slow income growth and increasing rents made saving for home purchase more difficult and relatively high interest rates required larger fractions of family income for homeowner mortgage payments. Thus, fewer households had the financial resources to meet down payment requirements, closing costs, and monthly mortgage payments. One-fifth of first-time homeowners had to rely on their relatives for most of their down payment.[10] One-third of recent first-time homeowners relied on gifts and loans from parents.[11]

In addition to low income, high debts are a primary reason households cannot afford to purchase a home. Nearly 53 percent of renter families have both insufficient income and excessive debt problems that may cause difficulty in financing a home purchase.[12] High debt-to-income ratios frequently make potential borrowers ineligible for mortgages based on the underwriting criteria established in the conventional mortgage market.

d. Affordability Problems and Worst Case Housing Needs

Finding affordable housing is by far the most common housing problem for American families nationwide.[13] Between 1979 and 1991, shares of households paying more than 30 percent of their income for housing fluctuated around 42 percent among renters and rose from 17 percent to 20 percent among owners.[14] Over this period, the number of low-income renter households spending 50 percent or more of their income on housing rose from 4.3 million in 1978 to 6.0 million in 1991.[15] Poor homeowners also paid high proportions of their income for housing costs. Between 1978 and 1989, the share of poor homeowners spending over 60 percent of income on housing rose from 30.6 percent to 33.1 percent.[16]

Although affordability problems affect two-fifths of low-income renters and one-eighth of low-income owners, they are most frequent and severe among the very lowest income owners and renters. In 1991, when the average gross rent/income ratio for renters with incomes above area median income was 23 percent, this ratio was 72 percent for renters with incomes below 30 percent of area median income and 41 percent for renters with incomes between 30 and 49 percent of median.[17]

Priority problems—defined as paying more than half of income for rent and utilities, being displaced, or living in severely inadequate housing—were heavily concentrated among renters with incomes below 50 percent of area median. Half of renters with incomes below 30 percent of median, and one-fourth of those with incomes 31–50 percent of median, had these severe ''worst case'' housing needs.[18]

According to HUD's third Congressionally-mandated study of worst case needs, severe affordability problems were not only the overwhelming cause of worst case needs but often a family's only housing problem.[19] Fully 94 percent of the 5.3 million households with worst case needs reported severe rent burden as a problem, and for almost three-fourths, severe rent burden was their only problem.

The number of households with worst case needs increased by nearly 400,000 between 1989 and 1991, rising most rapidly among families with children. Large families were more likely than smaller ones to have priority problems and to need to move to another housing unit because of crowding or excessive rent burden. Between 1989 and 1991, worst case needs among very-low-income families with three or more children increased from 34.7 percent to 40.2 percent. Elderly households were the least likely to have worst case needs.

2. Economic, Housing, and Demographic Conditions

A number of economic, housing, and demographic considerations have influenced the Secretary's establishment of the Low- and Moderate-Income Housing Goals. Increasing income inequality and changes in household composition suggest that needs for housing affordable to very-low-income families will continue to be most acute, placing additional pressure on the inadequate stock of rental housing affordable to families with incomes below 30 percent of median income. Although volatile interest rates strongly influence both single-family starts and mortgage market activity, rates that are relatively low by historical standards have improved affordability for first-time homebuyers.

a. Underlying Demographic Conditions

(1) *Household Formations.* The demand for housing and mortgages depends heavily on household formations. During the 1970s, as the leading edge of the baby boom generation (born between 1946 and 1964) entered adulthood, household formation surged to an annual average of 1.7 million. Aided by rising incomes and low real interest rates, household heads aged 25–34 purchased homes in record numbers. During the 1980s, annual household growth fell slightly to an average of 1.5 million. Many in the ''housing upgrade'' group (aged 35–44) had benefitted from substantial increases in the prices of their first homes, and were able to afford bigger and higher quality homes during the 1980s. Household formation is expected to drop sharply during the 1990s. The

[9] Kathryn Nelson and Jill Khadduri, ''To Whom Should Limited Housing Resources Be Directed?'' *Housing Policy Debate,* Vol. 3, 1992, pp. 1–55, Table 3.

[10] National Association of Home Builders, *Profile of the New Home Buyer Survey,* 1991.

[11] National Association of Realtors, *Survey of Homeowners and Renters,* 1991.

[12] Howard Savage and Peter Fronczek, *Who Can Afford to Buy A House in 1991?,* U.S. Bureau of the Census, Current Housing Reports H121/93–3, July 1993, p. ix.

[13] ''Affordable housing'' is generally interpreted as housing for which the homeowner or renter pays no more than 30 percent of family income for housing costs, including utilities.

[14] U.S. Departments of Housing and Urban Development and Commerce, *American Housing Survey for the United States in 1991,* April 1993.

[15] 1974–1979 figures from Nelson and Khadduri, ''To Whom Should Limited Housing Resources Be Directed,'' 3 *Housing Policy Debate 1,* 16, 1992. 1991 figure from *Worst Case Needs for Housing Assistance in the United States in 1990 and 1991.* HUD–1481–PDR, June 1994.

[16] Center on Budget and Policy Priorities and Low Income Housing Service, *A Place to Call Home,* April 1989; and U.S. Departments of Housing and Urban Development and Commerce, *American Housing Survey for the United States in 1989,* July 1991.

[17] Tabulations of U.S. Departments of Housing and Urban Development and Commerce, *American Housing Survey for the United States in 1991,* April 1993, performed by HUD Office of Policy Development and Research.

[18] Congress defines ''worst case needs'' for housing assistance as unassisted renters with incomes below 50 percent of area median income who have priority problems.

[19] *Worst Case Needs for Housing Assistance in the United States in 1990 and 1991,* HUD–1481–PDR, June 1994.

Census Bureau projects that the older baby boomers (aged 45 to 54) will be the fastest growing population group during this decade.

The effects of these demographic trends on housing demand have been debated in the economics literature for several years. In 1989, Gregory Mankiw and David Weil predicted that the aging of the baby boomers and the small size of the following ''baby bust'' generation would substantially reduce housing demand and cause housing prices to collapse during the 1990s.[20] Other researchers disagree. Reductions in housing demand due to aging of the baby boom generation could be offset by many factors, including rising incomes, pent-up demand for homeownership by those priced out of the housing market during the 1980s, and high levels of immigration.[21]

(2) *Immigration.* The continued increase in immigration during the 1990s will help offset declines in the demand for housing caused by the aging of the baby boom generation. During the 1980s, 6 million legal immigrants entered the United States, up from 4.2 million during the 1970s and 3.2 million during the 1960s. The Hispanic population residing in the U.S. increased by 50 percent during the 1980s, while the Asian population doubled. About one-quarter of the Hispanics living in the U.S. in 1990 had immigrated during the 1980s. Immigration is projected to add even more new Americans in the 1990s than it did during the 1980s. Asians and Pacific Islanders are expected to be the fastest growing group, with annual growth rates that may exceed 4 percent in the 1990s. Total population is now projected to rise by 25 million in each of the decades from 1991 to 2020. The tendency of immigrants, particularly Hispanics, to locate in certain ''gateway'' cities (e.g., Los Angeles and Miami) will place increased demands on the housing stock in some major urban areas.

(3) *Non-traditional Households.* While overall growth in new households has slowed, non-traditional households have become more important. With later marriages, divorce, and other non-traditional living arrangements, household growth has been fastest among single-parent and single-person households. The number of single parents with one or more children under 18 was 10.5 million in 1992; the vast majority of those single parents were women.[22] About 62 percent of African-American families with children were single-parent families in 1992, compared with 34 percent for Hispanics and 24 percent for Whites. Since only 35 percent of single-parent households are homeowners compared to 74 percent of married couples, their increase should spur demand for rental housing and for affordable ownership opportunities. In addition, HUD's analysis of the nation's worst case housing needs shows that female-headed households suffer some of the most severe housing problems.

(4) *Single Person Households* are playing an increasingly important role in the housing market. Singles accounted for one-fourth of all households in 1990. While one-half owned their own home, many of these were elderly people with little or no mortgage debt and probably no intention of entering the housing market. Never-married singles, on the other hand, have been a significant factor in the homebuying market in large urban areas. Never-married singles rose as a proportion of first-time homebuyers from just over one-quarter in 1990 and 1991 to roughly a third in 1992 and 1993 before declining to about a 30 percent share in 1994.[23] As discussed above, ownership rates among non-elderly single individuals rose steadily during the 1980s. Low interest rates during the past two years apparently enticed even more single renters to become homeowners.

(5) *Growing Income Inequality* in the distribution of income over the last 20 years has made it more difficult for those at the bottom of the income distribution to purchase adequate shelter. The share of the nation's income received by the richest 5 percent of American families rose from 18.6 percent in 1977 to 24.5 percent in 1990, while the share received by the poorest 20 percent fell from 5.7 percent to 4.3 percent. This widening income inequality was due in large part to a widening disparity in earned incomes; as the economy has moved away from manufacturing to more service industry jobs and more advanced computer and technologically-intensive industry jobs, the wages of unskilled, entry-level, and blue collar workers have fallen relative to the wages of professional and technical workers. The result has been an increase in the working poor and a decrease in the middle class.

In addition, higher real interest rates and declining inflation through the 1980s increased the return to capital, raising nonwage incomes of upper and upper middle income families. This too contributed to the increasing inequality in the distribution of income.

b. Economic and Housing Conditions—Single-Family Market

(1) *Interest Rate Trends.* As the 1980s began, mortgage interest rates were above 12 percent and rose quickly to over 15 percent. After 1982, they drifted slowly downward to the 9 percent range in 1987 before rising to over 10 percent in the 1989–1990 period. Rates returned to 9.3 percent in 1991 and then fell further to 8.2 percent in 1992 and 7.2 percent in 1993. The October 1993 rate of 6.80 percent was the lowest level in more than twenty years.[24] Rates rose nearly a full percentage point in 1994, and peaked at 8.3 percent in early 1995, but have since fallen by about 50 basis points.

Volatile interest rates were a principal cause of the housing market volatility of the 1980s and they continue to be a major determinant of housing and mortgage market activity. During 1992 and 1993, homeowners responded to the record low rates by refinancing existing mortgages. While refinancing accounted for less than 25 percent of mortgage originations in 1989–90 when interest rates exceeded 10 percent, the sharp decline in interest rates led refinancings to account for over 50 percent of all mortgage originations in 1992 and 1993.[25] Because of the heavy refinancing activity, single-family mortgage originations surged from less than $500 billion in 1990 to record levels of $894 billion in 1992 and over $1 trillion in 1993. As mortgage rates rebounded from the 1993 lows, refinancing subsided and home purchase returned as the predominant component of mortgage originations. Origination volume totalled $773 billion in 1994 and is projected to be about $650 and $700 billion in 1995 and 1996, respectively.

Single-family housing starts have also responded to interest rates, with record low volumes in 1981 and 1982, peaks in 1986 and 1987, and less severe lows in 1990 and 1991. Low interest rates and economic recovery in 1992 and 1993 made homeownership more affordable

[20] W. Gregory Mankiw and David N. Weil, ''The Baby Boom, the Baby Bust, and the Housing Market,'' *Regional Science and Urban Economics,* May 1989.

[21] See, for example, Joint Center for Housing Studies of Harvard University, *The State of the Nation's Housing 1994,* 1994.

[22] U.S. Department of Commerce, Bureau of the Census, *How We're Changing: Demographic State of the Nation: 1993.* Special Studies Series, P–23, No. 184, February 1993.

[23] Chicago Title and Trust Family of Insurers, *Who's Buying Homes in America,* 1992, 1993, 1994, and 1995.

[24] Council of Economic Advisers, *Economic Indicators,* August 1995 and *Economic Report of the President,* February 1995.

[25] Monthly average refinancing data obtained from Freddie Mac's *Primary Mortgage Market Survey.*

and helped to turn the housing market around. Single-family starts increased from less than 900,000 during the recessionary years of 1990 and 1991 to 1.03 million in 1992, 1.13 million in 1993, and 1.20 million in 1994. Volume in 1994 was 43 percent higher than 1991's recessionary low of 840,000.

(2) *First-time Homebuyers* have been the driving force in the recovery of the nation's housing market over the past several years. First-time homebuyers are typically people in the 25–34 year-old age group that purchase modestly priced houses. As the post-World War II baby boom generation ages, the percentage of Americans in this age group has shrunk, from 28.3 percent in 1980 to 25.4 percent in 1992.[26] Nonetheless, first-time homebuyers have bucked these demographic trends to increase their share of home sales. During the 1980s, first-time buyers accounted for about 40 percent of home sales; this figure rose to 45 percent in 1991, 48 percent in 1992, receding to 46 percent in 1993, and rebounding to 47 percent in 1994.[27] The 1992 figure was the highest percentage for first-time buyers since the annual Home Buyers Survey was initiated in 1976.

Among the first-time buyers was a record number of single-individual households. The 1992 and 1993 Home Buyers Surveys found that approximately 30 percent of first-time buyers in these years were single, compared to 21 percent in 1991. The more affluent, move-up home buyers, on the other hand, have recently played a smaller role. A sluggish economy, uncertain outlooks for many white-collar jobs, and slow house price appreciation have kept many trade-up buyers out of the housing market.

Reflecting these trends, the average income for recent home buyers has fallen. In 1991, one of every three buyers had a family income of $50,000 or less; in 1993, those earning less than $50,000 accounted for 44 percent of all home buyers. Apparently, two years of low interest rates induced many renters who had previously been priced out of the market to become homeowners. A strong pent-up demand to own a home is not surprising given the large reductions in homeownership rates experienced by several groups during the 1980s (see Section C.1.d above). A recent survey of renters by the National Association of Realtors (NAR) indicated that only one-third prefer to remain renters for the foreseeable future.[28] Thus there are many potential home buyers among the 34 million households that are currently renting.

(3) *Potential Homebuyers.* As noted above, immigration is expected to be a major source of future homebuyers. Fannie Mae's *1995 National Housing Survey* revealed that immigrant renter households are almost 3 times as likely as renter households in general to list home purchase as their ''number-one priority.'' Immigrants as a group are currently more than one-and-two-thirds times as likely to be renters although they appear as financially capable as the population at large.[29] The Joint Center for Housing Studies estimates that if the homebuying potential of immigrant households were realized—i.e., they purchased with the same propensity as non-immigrants with similar characteristics—that the number of homeowners in the largest 40 metropolitan areas would increase by about 900,000. In addition, the Joint Center estimates that another 950,000 native-born minority households in the same metropolitan areas would become homeowners if their rate of homeownership matched that of their native-born white counterparts with similar income and demographic characteristics.[30]

As part of the process of revising the GSE rule, HUD sought information on two key questions: how large is the underserved potential homebuyer market and what are the default risks associated with expanded homeownership among lower-income, underserved households? To help answer these questions, the Urban Institute and HUD developed a logit-based analysis of households in the 1990 Survey of Income and Program Participation (SIPP). The probability of a renter making the transition to homeownership was then estimated directly by applying a logit regression to the mid-1992 sub-sample of white suburban renters and recently-transitioned homeowners. These probabilities were then linked to all the remaining renter SIPP households to identify renters having relatively good prospects for transitioning to homeownership. Of the 20.3 million remaining renter households (i.e., 84 percent of all remaining renters) having low or moderate incomes, roughly 16 percent had a probability of transitioning into homeownership which was greater than that for half of the renter households who actually did become homeowners over the sample period. When one also took into account their likelihood of defaulting relative to the average expected for those actually transitioned to homeownership, 13.4 percent of all remaining low- and moderate-income renters had better-than-median probability of transitioning to homeownership and lower than average probability of default, assuming the purchase of a lower-cost home priced at the 10th percentile of area home prices. The proportion of high-probability, low-risk potential low- and moderate-income homebuyers declines to 10.6 percent if the purchase of homes priced at the median price for the area is assumed for these households.[31] These results indicate the existence of a significant population of lower-risk, potential homebuyer households that might be reached with more aggressive outreach.

(4) *Affordability.* Potential homebuyers in 1992–1994 enjoyed the most affordable market in almost twenty years. The National Association of Realtors (NAR) tracks housing affordability by measuring the degree to which an average family can afford monthly mortgage payments on a typical house, assuming that the family has enough cash for a 20 percent down payment. Specifically, NAR's composite affordability index measures the ratio of median family income to the income required to qualify for a conventional loan on a median-priced house. After averaging slightly over 110 between 1986 and 1991, the index jumped to 125 in 1992 and 133 in 1993, before slipping to 130 in 1994. The 1994 figure indicates that the U.S median family income was 30 percent more than was needed to qualify for a mortgage on the nation's median priced house.[32]

In addition to its overall affordability index, NAR also estimates the ability of first-time home buyers to purchase modestly-priced homes. When this index equals 100, the typical first-time buyer can afford the typical starter home under existing financial conditions with a 10 percent down payment; a score

[26] U.S. Department of Commerce, Bureau of the Census, *Money Income of Households, Families, and Persons in the United States: 1992*, Special Studies Series P–60, No. 184, Table B–25, October 1993.

[27] Chicago Title and Trust Family of Insurers, *Who's Buying Homes in America*, 1992, 1993, 1994, and 1995.

[28] National Association of Realtors, *Survey of Homeowners and Renters*, 1991.

[29] *Fannie Mae National Housing Survey 1995*, pp. 3 and 5.

[30] *State of the Nation's Housing, 1995*, Joint Center for Housing Studies of Harvard University, p. 30, Table A–8.

[31] George Galster and others, ''Estimating the Size, Characteristics, and Risk Profile of Potential Homebuyers,'' (The Urban Institute, September 1995) mimeo.

[32] The South and North Central census regions were the most affordable for homebuyers, with affordability indexes of 141 and 176, respectively, in 1993. Affordability remained much more of a problem in the Northeast and West, where NAR's indexes were 110–117.

below 100 indicates that the monthly mortgage payment places a significant burden on first-time home buyers, even during a period of record low interest rates. NAR's first-time home buyer index ranged from 75 to 86 between 1991 and 1993 (84 in 1994).

(5) *Increased Interest Rates.* The 1994 jump in interest rates reduced housing affordability. According to Freddie Mac's primary market survey, interest rates for conventional, 30-year, fixed rate mortgages increased from a 25-year low of 7.05 percent in the fourth quarter of 1993 to 9.10 percent in the fourth quarter of 1994, with a subsequent decline to 7.95 percent in the second quarter of 1995. The 1994 increase made it more difficult for potential first-time home buyers to qualify for conventional mortgages, as reflected in the decline in NAR's composite affordability index from 142 in the fourth quarter of 1993 to 127 in the fourth quarter of 1994. The first-time home buyer's index dropped from 92.3 to 82.4 during this period. Both indexes would have fallen further if incomes had not risen to partially offset the effects of increased interest rates.[33] However, interest rates continue to remain lower and housing more affordable than was true for any previous extended period since 1977. Moreover, as the economic recovery continues, rising incomes should continue to offset the effects of higher interest rates.

While all of the factors identified above are subject to change, interest rates are perhaps the most volatile. HUD assessed the impact on Fannie Mae's and Freddie Mac's business from a 100- or 200-basis-point increase above actual 1993 and 1994 interest rates, that averaged 7.33 and 8.35 percent, respectively.[34] Table A.1. shows the resulting changes in purchases, assuming no offsetting increases in income or reductions in loan amounts for households with less than median incomes.

Holding everything else constant, a 100-basis-point increase in mortgage interest rates would result in a 2–3 percentage point drop in the GSEs' purchases of lower-income mortgages.[35] While the percentage of business in the lower-income category changes by less than 2 to 3 percentage points, the proportional change relative to its small base is far greater than that on the GSEs' share of higher-income business. This is because the lower the income classification, the greater the concentration of households near the 28 percent limit on the qualifying payment-to-income ratio. As Table A.1 shows, the pattern becomes more exaggerated with a 200 basis point change.

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[33] The qualifying payment-to-income ratio depends essentially on three elements: The interest rate, loan amount, and borrower's income. It can be shown that for every 100 basis point increase in interest rates (one percentage point), payment-to-income ratios rise by approximate 8 percent. However, this effect can be offset with either an 8 percent increase in income or an 8 percent reduction in the loan amount.

[34] The GSE data were limited to long-term, fixed-rate loans for one-unit, owner-occupied properties in metropolitan areas. A payment ratio was estimated for each loan using the Freddie Mac coupon rate prevailing 2 months prior to the origination date, an assumed annual tax and insurance rate of 1.8 percent, acquisition unpaid principal balance, and borrower's income. Estimated payment ratios would be biased upward to the extent the associated monthly Freddie Mac coupon rate or tax and insurance percentages exceed actual loan-specific rates. Because the monthly average of interest rates varied by less than one-half percentage point over any two-month period in 1993 or 1994, the potential bias is likely to be less than 1 percentage point in either direction.

[35] It was assumed that the lower-income, i.e., below-median-income, households whose payment-to-income ratios rose above 28 percent would leave the GSE distribution and either pursue non-GSE conventional or FHA mortgages to maintain their loan amount or defer their home purchase. Above-median-income households whose payment-to-income ratios rose above 28 percent were retained in the subsequent distributions under the expectation that they would either lower their loan amounts, raise their down payments, or switch to an ARM.

Table A.1

Distribution of GSEs' Business by Borrower Income Under Various Interest Rate Scenarios*

Fannie Mae

Income Class (% of Median)	Actual Rates	+100 Basis Points	+200 Basis Points
Percent of 1993 Business			
Above 100%	64.68	67.28	70.21
80 to 100%	15.68	14.60	13.36
60 to 80%	11.88	10.93	9.87
Under 60%	7.13	6.52	5.95
Percent of 1994 Business			
Above 100%	59.61	62.34	65.33
80 to 100%	16.85	15.84	14.65
60 to 80%	13.61	12.66	11.61
Under 60%	9.12	8.38	7.66

Freddie Mac

Percent of 1993 Business			
Above 100%	67.09	69.54	72.20
80 to 100%	15.28	14.27	13.11
60 to 80%	11.08	10.19	9.25
Under 60%	6.36	5.84	5.27
Percent of 1994 Business			
Above 100%	66.44	68.93	71.67
80 to 100%	15.43	14.41	13.17
60 to 80%	11.33	10.46	9.51
Under 60%	6.70	6.12	5.55

* Distributions of business by income level for 1993 and 1994 interest rates are limited to 30-year, fixed-rate home purchase mortgages and may differ from distributions reported elsewhere.

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c. Economic and Housing Conditions: Multifamily Market

(1) *The Secondary Mortgage Markets: Multifamily Differs from Single-Family.* Over the past two decades, the single-family mortgage market has evolved from a fragmented set of local markets to an efficient, national market that is well integrated into the broader capital markets. In particular, the development of the secondary market for single-family mortgages has increased the flow of capital available to homeowners and lowered its cost.

The same cannot be said of multifamily rental housing. The secondary market has increased its purchase volume for multifamily mortgages in recent years, but remains much less of a factor in providing capital for multifamily housing than it does for single-family housing. About one-third of multifamily mortgage originations are sold to the secondary market, compared to about three-fourths of single-family mortgages in some years. The GSEs do not dominate the multifamily mortgage market like they dominate the single-family market—the GSE's purchases of multifamily mortgages in 1994 were $5.7 billion out of a total market estimated to be in excess of $30 billion.

(2) *Multifamily Continues to Rely on Portfolio Lenders.* As a result, debt financing for multifamily mortgages remains very dependent on portfolio lenders, many of whom are depository institutions (banks and thrifts). Yet several institutional changes in the past two decades have made it increasingly difficult for depository institutions to originate and hold multifamily mortgages.

These changes include a significant downsizing of the thrift industry after the savings and loan (S&L) debacle of the 1980s, and the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) of 1989 which imposed new risk standards for depository institutions to prevent a recurrence of the S&L scandal.[36]

(3) *A Role for the GSEs in Multifamily Housing.* In addition to institutional changes, the difficulty with multifamily lending in recent years was also related to market conditions. The tax-driven overbuilding of the early 1980s was followed by a credit crunch due to the Tax Reform Act of 1986, FIRREA, and the soft market conditions for all properties (both new and existing properties) caused by the overbuilding. As a result, underwriting creditworthy multifamily deals was difficult in the early 1990s, especially for portfolio lenders. These conditions have now improved markedly.

Currently, multifamily properties offer less risk of loss than most other commercial property classes according to Moody's Investors Service.[37] In overbuilt markets, vacancies have declined due to depressed construction levels in the early 1990s. Accordingly, competition for multifamily loans has increased and spreads over Treasury rates of these loans have declined in the past year.

Credit risk remains a concern of investors, but new techniques in multiclass securitization have helped mitigate credit risk on multifamily mortgage pools.[38]

Much of the benefit of increased competition for multifamily mortgages results from reduced spreads on these mortgages, which lower capital costs for owners, and ultimately reduce rents for borrowers. As discussed in background section (7) below, the recent market upturn has not been equally beneficial to multifamily properties affordable to lower-income households. Among these are smaller, inner-city properties, which comprise a significant portion of the existing affordable stock, as well as larger redevelopment projects, seniors' housing, and affordable new construction in faster-growing markets.

By sustaining a secondary market for multifamily mortgages, the GSEs can extend the benefits that come from increased mortgage liquidity to many more lower-income families while helping private owners to maintain the quality of the existing affordable housing stock. That is, greater liquidity and stability in the secondary market due to a significant presence by the GSEs will benefit lower-income renters without the need for subsidy—much as the GSEs now provide benefits to homebuyers without subsidies. Providing liquidity and stability is the main role for the GSEs in the multifamily market, just as in the single-family market.

(4) *The Current Availability of Credit is not the Key Issue Regarding the Role of the GSEs.* As described above, an important consideration in determining the appropriate role for the GSEs in the multifamily housing market is the potential benefit from increased liquidity in the long term. The current ''snapshot'' of market conditions and recent trends in the availability of mortgage credit are temporary features of the mortgage market.

Today's ample supply of credit for certain multifamily properties and credit gaps for other classes of properties (see part vi of Section 7 below) are temporary features of a changeable market. For example, the current return to multifamily lending by banks and thrifts may be driven in part by a desire by these institutions to maintain loan volume and fee income following the single-family refinance boom of 1993–1994, and in part by Community Reinvestment Act considerations.

Portfolio lenders may eventually feel the burden of FIRREA standards or other portfolio management pressures and seek to reduce their holdings of multifamily mortgages. This could rather rapidly reverse many of the private investment decisions that have contributed to current market conditions. In such circumstances, the liquidity of an efficient secondary market for multifamily mortgages would help these lenders and other lenders maintain a presence in the primary market during such shifts in investment strategy.

(5) *The Importance of Increased Liquidity.* Anecdotal information available to HUD indicates that lack of liquidity, rather than credit risk, is a major obstacle preventing lenders from holding more affordable housing investments in portfolio. HUD examined the current sources of multifamily capital to determine if mortgages originated were available for purchase by the GSEs, including institutional mortgage originators and holders such as life insurance companies and pension funds.

Investors in multifamily mortgages make their investment decisions based on how well the characteristics of an asset matches their portfolio objectives. Increasing the liquidity of an asset like multifamily mortgages would increase the interest of all investors in holding these assets.

Life insurance companies report, for example, that it is generally true that they buy mortgages with the original intent of holding them. However, life insurance companies do sell multifamily mortgages from time to

[36] Two specific changes instituted by FIRREA that affect multifamily mortgages are risk-based capital requirements under which most multifamily mortgages are assigned 100 percent risk weights (compared to 50 percent risk weights for single-family loans which are not backed by a federal credit agency), and a lending limitation to a single borrower of 15 percent of an institution's unimpaired capital.

[37] ''Moody's: Multifamily Offers Less Loss Risk,'' *National Mortgage News*, May 1, 1995.

[38] For example, Fannie Mae ''swap transactions'' in which Fannie Mae swaps its securities for the top 85 percent, or the ''A'' piece, of a multifamily mortgage pool, leaves the riskier ''B'' piece, which absorbs the first credit losses from the pool, to be sold at discount on the market. Recently there has been considerable investor interest in these higher yielding B pieces.

time, particularly when they need to make adjustments in the composition of their portfolios. These companies would increase their sales of multifamily mortgages if these investments were more liquid. In the current market, absent a highly liquid and efficient secondary market for multifamily mortgages, life companies that wish to sell a mortgage must pay the high transaction costs for a private placement. These companies might even buy and hold more multifamily mortgages, including mortgages on affordable units, in portfolio if there were a more active secondary market for these assets that made them more liquid.

(6) *Increased Liquidity Will Make More Multifamily Mortgages Available for GSE Purchase.* The GSEs have the ability to expand the multifamily secondary market and to bring increased liquidity to multifamily mortgages. The increases in liquidity that their sustained presence in this market would bring would make investments in multifamily mortgages more attractive for all investors. As noted above, even traditional portfolio investors can be a source of mortgages for GSE purchase through sales of existing, seasoned mortgages.[39]

Existing multifamily mortgages currently lack standardization with regard to loan-to-value, debt coverage, and other underwriting ratios, as well as with regard to loan terms, property use restrictions, and other factors. Not all existing mortgages would be suitable for GSE purchase. However, the GSEs can play an important role in bringing basic standards to this market, much as they have done with the single-family market, increasing the supply of seasoned mortgages available for purchase in the future.

(7) *Background on Multifamily Market Conditions.* The following discussion provides a more detailed overview of multifamily market conditions and trends.

(i) *Historical Trend: Decline in Debt Financing.* As mentioned above, the downsizing of the thrift industry in the late 1980s and the FIRREA changes contributed to a credit crunch for multifamily lending. Debt financing for multifamily housing became difficult to obtain in the early 1990s. Conventional multifamily mortgage originations peaked at $41 billion in 1986, and then declined every year to a trough of about $25 billion in 1992. In 1993 the level rose to almost $29 billion, and rose again in 1994 when originations were estimated to be about $33 billion. The recent increases in originations suggest that the credit crunch is effectively over.

The thrift industry's problems played a major role in the decline of the multifamily market. In 1985, thrift institutions originated 42 percent of multifamily mortgages. The thrifts' share of multifamily originations declined every year since that peak. Their holdings have decreased by $41 billion since 1988, due to defaults and write-offs, failure of institutions and refinancing of thrift-held mortgages. Multifamily mortgages remained close to 8.5 percent of total thrift assets from 1985 to 1992, but the high failure rate of these institutions has reduced their total assets. After passage of FIRREA in 1989, multifamily mortgage holdings by thrifts continued to decline.[40]

(ii) *Historical Trend: Decline in New Construction.* Multifamily mortgage construction activity has paralleled the decline in multifamily mortgage originations. Along with the decline in debt financing, the value of new multifamily construction declined for seven consecutive years until it edged up again in 1994 to $12.1 billion.[41] However, peaks and troughs have always characterized multifamily construction starts. The most recent peak year was 1985, in which 576,000 multifamily units were started.[42] The downturn from this peak was particularly severe. Over the next 3 years, multifamily housing production reached the lowest levels recorded since the Government began collecting these data 35 years ago. In 1993, the number of new multifamily units started fell to a low of 132,600. Multifamily starts rose to 223,500 in 1994, but even this level was far below the annual average of 435,000 units from 1964 through 1992.

Much of the current production of affordable multifamily housing is due to Low-Income Housing Tax Credits[43]—about 100,000 units per year since 1992.[44] An increasing share of affordable housing is being produced by non-traditional developers, particularly community-based, nonprofit developers. Although current production levels do not meet the demand for low-cost rental housing, housing affordable to lower-income families is a significant share of the multifamily units that are being produced.

(iii) *Supply and Demand Considerations.* Other market forces besides the thrift industry downsizing and FIRREA contributed to the decline in multifamily lending and construction in the early 1990s. For example, the generous tax treatment allowed by the Economic Recovery Tax Act of 1981 resulted in overbuilding of multifamily housing in many markets. When the Tax Reform Act of 1986 reduced the favorable tax treatment, investment decisions on multifamily mortgages appropriately returned to sound market fundamentals of supply and demand at the local market level. Accordingly, an excess supply of multifamily units in many markets kept the demand for both new construction and debt financing low for many years.

The 1994 upturn in multifamily construction is evidence that local rental markets are now stabilizing. Multifamily production has resumed in these markets, but it has been generally limited to higher-rent luxury units. HUD has anecdotal evidence of this happening throughout the Southeast, for example, and elsewhere.[45]

(iv) *Outlook for New Construction and Debt Financing.* Despite the upturn in starts, the demand for new multifamily construction, but not multifamily mortgage credit, is likely to be weak for the remainder of the decade. The aging of the baby-boom generation means that single-family tradeup homes will dominate the new-construction market, while declines in households under age 35 will limit the demand for new rental housing, except in very fast-growing areas in which migration from other parts of the nation and foreign immigration will offset the decline.[46]

HUD believes that the weak demand for new multifamily construction for the remainder of the decade will not result in a reduction in the overall demand for multifamily mortgage credit. The new

[39] A potential new source of existing multifamily mortgages that may be available for GSE purchase in 1996 and well into the next decade could come from the Department's proposed ''mark-to-market'' solution to reducing the long-term costs of Section 8 project-based assistance programs. If Congress enacts the Department's proposal, several billion dollars of existing mortgages on privately-owned low-income multifamily properties could be sold as current Section 8 assistance contracts expire and are not renewed.

[40] Thrift holdings of multifamily mortgages fell by over one-third between 1989 and 1994, reducing their share of holdings among financial institutions from 34.5 percent to 23.3 percent according to the Federal Reserve Board.

[41] Joint Center for Housing of Harvard University, *State of the Nation's Housing,* 1995.

[42] The record high was 906,200 multifamily units started in 1972.

[43] The Low Income Housing Tax Credit (LIHTC) program was introduced by the Tax Reform Act of 1986.

[44] Exact figures for the LIHTC program are not yet available. The estimate in the text includes existing units under rehabilitation as well as new construction, although the majority are estimated to be new construction. Not all of these units have actually started construction or rehabilitation.

[45] HUD, Office of Policy Development and Research. May 1995. ''U.S. Housing Market Conditions,'' pp. 27–47.

[46] Joint Center for Housing of Harvard University, 1995.

construction weakness will be offset by a growing demand associated with the existing stock. Specifically, mortgage demand in the remainder of the decade will include refinancings of long-term loans to reduce interest rates, rollover of shorter-term balloon loans coming due, refinancings to rehabilitate buildings, and existing property sales. Some observers expect that the $33 billion origination volume in 1994 to increase to over $35–$40 billion in 1996 and 1997.[47]

(v) *Interpreting the Trends.* These trends have been interpreted by some as evidence that the private capital markets in the mid-1990s are capable of providing the necessary liquidity to the multifamily market. However, there are other considerations to be weighed.

Despite the upturn in lending for new construction and the increased participation by banks, private conduits and REITs, there are indications that the private credit markets may not be meeting the full range of multifamily credit needs. The loans most likely to be originated by banks or sold to private conduits and real estate investment trusts (REITs) are not secured by affordable rental units. One market observer noted, ''* * * while Wall Street has recently sought to fill multifamily lending gaps through conduits, these conduits barely nick the surface of affordable housing, concentrating primarily on market-rate multifamily properties.'' [48]

There are several reasons for the continued gap in multifamily finance. First, multifamily mortgages, like small business loans, lack standardization. This is particularly true for affordable housing loans because the developments often require a mix of financing sources in order to make the project affordable to low-income households. Second, multifamily loans are also relatively large, making multifamily mortgage pools more difficult to diversify than single-family pools. Third, there is far less information about the performance of multifamily mortgages than there is for single-family mortgages, particularly those secured by affordable developments.

(vi) *Current Credit Gaps: Property Types.* HUD has anecdotal evidence that credit shortages exist currently for certain classes of existing affordable properties: smaller multifamily properties (i.e., 5 to 20 unit properties) in older urban areas, and properties of all sizes in inner cities in need of rehabilitation.[49] While some may consider these to be market ''niches,'' they are not insignificant markets. For example, small multifamily properties actually comprise a major component of the nation's affordable housing stock: the 1991 Residential Finance Survey shows that there were about 470,000 properties in the U.S. with between 5 and 19 units, but only 150,000 with 20 or more units.

Affordable housing for seniors is another class of properties that the conventional market has had difficulty financing. The primary reason for this difficulty appears to be uncertainty by the market over the nature of seniors' housing.[50] Compared to other multifamily rental housing, seniors' housing is more specialized and non-homogeneous. It is a currently evolving product, and investors are especially uncertain of its financial performance.

Finally, there is inadequate capital to finance construction of new affordable units, which usually involve low-income housing tax credits, in higher-growth markets.

(vii) *Current Credit Gaps: Lending Terms.* Terms of conventional financing can also restrict access to credit for units intended for lower-income families. For example, an obstacle to the financing of new construction or substantial rehabilitation of housing for lower-income families is the inability to lock-in an interest rate (without payment of an exorbitant fee) for the permanent loan. Over 60 percent of outstanding multifamily debt either carries a variable interest rate, or will have a balloon payment due in less than 10 years.

The construction financing for most new construction or substantial rehabilitation projects covers both the actual construction and the initial rent-up periods, while the interest rate usually floats until the project has reached the required occupancy level and is ready for permanent loan takeout and possible securitization. The inability to lock-in permanent rates without paying prohibitive lock-in fees, makes it much more difficult to finance affordable housing because a rate increase during construction and rent-up can make an affordable project infeasible.[51] If the GSEs are able to provide new financial instruments that include forward rate commitments at reasonable cost, for example, the credit gaps for affordable units can be reduced.

(viii) *The Impact of Credit Gaps.* A major problem facing low-income households is that low-cost housing units continue to disappear from the existing stock.[52] The ability of the nation to maintain the quality of the affordable housing stock and to stabilize inner city neighborhoods depends on the availability of adequate capital for small existing properties, redevelopment projects, and senior housing.

The current availability of multifamily credit for certain types of multifamily mortgages is not a valid argument that the GSEs are unneeded in the multifamily credit markets. Rather, the current competition for multifamily mortgages on amenity-rich apartments and the tightening spreads between the yields of privately issued multifamily MBS and comparable maturity Treasury bonds demonstrate the benefits that increased liquidity in multifamily markets could provide to the affordable rental housing market. That is, the GSEs' participation in the market can reduce the cost of capital and ultimately improve housing quality and/or decrease rents paid by low-income families.

(ix) *Rentals in 1- to 4-Unit Buildings.* HUD is also aware that a significant portion of the demand for rental housing is satisfied by rental units in properties containing 1 to 4 units. In 1993, about 57 percent of the rental housing in the nation was in buildings with fewer than 5 units. However, there is considerable variation across local markets in the portion of the rental stock that is contained in 1- to 4-unit properties. The New York area, for example, has only 30 percent of its rental units in 1- to 4-unit properties, while Chicago has 46 percent and

[47] Robert Dunsky, James Follain, and Jan Ondrich, ''An Alternative Methodology to Estimate the Volume of Multifamily Mortgage Originations,'' Report prepared for the Department of Housing and Urban Development, September 1995.

[48] Stuart J. Boesky, ''Tax Credits at Work,'' *Mortgage Banking,* September 1995.

[49] Participants at numerous industry forums and working group meetings sponsored by the Department have attested to the existence of these credit gaps.

[50] Campbell, W. Donald. 1995. ''Seniors Housing Finance.'' Paper prepared for AARP/White House Mini-Conference ''Expanding Housing Choices for Older People,'' January 26–27, 1995, in Washington, D.C.

[51] Another example of the terms of conventional financing that restricts access to credit for affordable units is the lack of long-term fixed rate loans. About 60 percent of conventional multifamily loans are adjustable rates or fixed rate balloon loans with terms of 10 years or less. The rollover of a balloon loan generally resets the interest rate. In either case, if the rate increases at a scheduled adjustment period, the higher debt service expense may be more difficult for an affordable property to absorb.

[52] The Joint Center's *State of the Nation's Housing* for 1995 finds that the number of unsubsidized low-cost units in the Northeast has fallen by half since 1974. In the Midwest the addition of new subsidized units has offset the loss of unsubsidized low-cost units, but in every other region the total low-cost stock (subsidized and unsubsidized) is below 1974 levels.

Boston has 56 percent of its rental stock in 1- to 4-unit buildings. The market-specific variations suggest that rental housing in 1- to 4-unit properties is not a perfect substitute for multifamily rental housing. The need for multifamily housing is relatively greater in some cities.

The financing of 1- to 4-unit properties is provided by the standard single-family primary and secondary mortgage markets if one of the units is owner-occupied. This segment is relatively well-served by the existing capital-delivery system. If the 1- to 4-unit property is investor-owned, the single-family market is still used, but with greater restrictions such as tighter underwriting ratios. These restrictions are generally in response to the greater credit risk posed by investor-owned 1- to 4-unit properties. The investor-owned side of the 1- to 4-unit rental market also has access to the liquidity of the single-family secondary market, albeit with restrictions.

(x) *Credit Risk of Affordable Housing.* Credit risk is an important factor to be considered by the GSEs in their participation in the multifamily mortgage markets. Does credit risk pose a major obstacle to the development of an efficient and highly liquid secondary market for multifamily mortgages that addresses the full range of multifamily credit needs? If the GSEs broaden their penetration of the multifamily market to purchase more small (under $1 million) mortgages, will the GSEs be taking on additional risk? Unfortunately, the academic literature is deficient in addressing these questions. However, numerous sources suggest that credit risk is not an insurmountable obstacle.

On a whole loan basis, risk levels of multifamily lending are often higher than for single family. There are four major reasons for this. First, multifamily loans, like small business loans, lack standardization. This is particularly true for affordable housing because the financial package often involves tax credits or local subsidy which complicates the loans. Second, multifamily loans are also relatively large, making multifamily portfolios more difficult to diversify than single-family portfolios. Third, there is far less information about the performance of multifamily mortgages than there is for single-family mortgages, particularly those secured by affordable units. And finally, private mortgage insurance is not generally available for multifamily loans as it is for single-family loans.

However, multifamily investments in today's market often involve mortgage pools rather than whole loans. Credit risk remains a concern of investors, but new techniques in multiclass securitization have helped mitigate credit risk on multifamily mortgage pools. For example, Fannie Mae ''swap transactions'' in which Fannie Mae swaps its securities for the top 85 to 90 percent, or the ''A'' piece, of a multifamily mortgage pool, leaves the riskier ''B'' piece, which absorbs the first credit losses from the pool, to be sold at discount in the market.

The B-piece that absorbs all credit losses up to 15 percent of the total unpaid balance on a typical multiclass multifamily pool provides considerable loss protection. This makes the A-piece highly marketable. Recently there has been considerable investor interest in these higher yielding B-pieces as well.

A source of anecdotal information on the credit risk involved with affordable multifamily housing comes from participants in the low-income housing tax credit (LIHTC) program which was created by the 1986 Tax Reform Act. Tax credits are the only major Federal assistance program for new or rehabilitated low-income housing that is currently active. Detailed data on the composition and performance of tax credit projects are not yet available. However, both academic and industry experts have been observing the tax credit program since its inception, and a number of them have shared their observations with HUD.

These market observers tell HUD that tax credit deals typically are financed with 30 to 40 percent equity obtained from investors receiving the tax credits, first mortgage debt of about 40 to 60 percent, and the remaining amount up to 30 percent comes from local subsidies often in the form of ''soft'' second mortgages. Market observers tell us that the trend in tax credit deals is toward increased equity as a share of the total development cost due to increased competition among tax credit syndicators.

The lenders who provide first mortgage financing for tax credit deals consider their loans on these affordable units to be less risky than loans for market-rate multifamily projects. There are several reasons for this conclusion. First, the loan-to-value ratio on these deals is at most 60 percent, which gives lenders substantial protection from credit risk. If the lender must foreclose, the tax credits stay with the property, giving the lender the ability to attract equity from new investors. Other reasons that first mortgage financing on affordable tax credit deals is considered less risky are the low turnover rates of affordable units which keeps project vacancies low, the high potential for future appreciation of the property, and the close scrutiny to initial underwriting by the equity provider or syndicator.[53] This anecdotal experience suggests that not all mortgages on affordable multifamily loans need be high-credit-risk lending.

Continued achievement of the housing goals in this rule may require the GSEs to develop additional capabilities to underwrite classes of multifamily loans such as smaller existing properties, redevelopment projects, seniors' housing, and tax credit deals. This may pose some initial administrative difficulty for the GSEs, but there are no apparent fundamental difficulties in multifamily mortgage origination and purchase activities, such as unmanageable risks. If there were, such risks would be difficult to explain, given the current market trends toward higher multifamily lending activity and new techniques of risk management.

3. Performance and Effort of the GSEs toward Achieving the Low- and Moderate-Income Goal in Previous Years

Each GSE has submitted data on its 1993 and 1994 performance to the Secretary. This is the first time that such detailed information has been made available on the GSEs' activities, which in 1993 involved the purchase of 2.97 million mortgages on 3.24 million dwelling units by Fannie Mae and the purchase of 2.32 million mortgages on 2.38 million dwelling units by Freddie Mac. In 1994, due to rising interest rates and the decline in mortgage refinancings, aggregate purchase volume (in dwelling units) fell by 43 percent, with Fannie Mae purchasing 1.66 million mortgages on 1.97 million units, and Freddie Mac purchasing 1.25 million mortgages on 1.34 million units.

Each GSE also has submitted detailed loan-level data on each loan it purchased in 1993 and 1994. HUD has done extensive analyses to verify the GSEs' stated performance and to measure aspects of their mortgage purchase activities in 1993–94 not contained in tables submitted to HUD in which the GSEs' aggregate data in various ways.[54]

Fannie Mae's data for 1993 show that 34.3 percent of total units financed by its mortgage purchases were affordable to low- and moderate-income families.

[53] See Stuart J. Boesky, ''Tax Credits at Work,'' *Mortgage Banking,* September 1995.

[54] In the following discussion, the GSEs' performance is measured using the counting rules which will be in effect under the final rule, not those under the Interim Notice, which have been used by the GSEs in reporting performance to HUD. For this reason, in some cases the following data differ slightly from the data reported by the GSEs.

This represented a significant increase in the low- and moderate-income percentage from an estimated 28 percent in 1992, and Fannie Mae's performance substantially exceeded the 30 percent goal established for Fannie Mae by the Secretary.[55] A further gain was recorded in 1994, as 45.4 percent of Fannie Mae's purchases qualified for the Low- and Moderate-Income Housing Goal, which was also 30 percent in 1994.[56]

Freddie Mac's data for 1993 show that 30.0 percent of total units financed by its mortgage purchases were affordable to low- and moderate-income families. There was a significant increase from an estimated 24 percent in 1992, and Freddie Mac's performance exceeded the 28 percent goal established for Freddie Mac by the Secretary. A further gain was also recorded in 1994, when 38.0 percent of total units financed by Freddie Mac's mortgage purchases qualified for the low- and moderate-income goal, which was raised from 28 percent in 1993 to 30 percent in 1994 for Freddie Mac.

Although the GSEs surpassed the low- and moderate-income goals in 1993 and 1994, approximately 50 percent of their one-unit single-family owner-occupied purchases, the bulk of their business, were secured by housing for families with incomes in excess of 120 percent of area median income, as indicated in Table A.2.[57] These results indicate that achievement of the Low- and Moderate-Income Goal in 1993 and 1994 did not impede the GSEs from buying many mortgages on properties purchased by higher-income families.

TABLE A.2.—DISTRIBUTION OF DWELLING UNITS IN GSE SINGLE-FAMILY OWNER-OCCUPIED 1–UNIT PURCHASES BY INCOME CLASS OF MORTGAGOR, 1993–1994

Income of mortgagor(s) relative to area median income (%)	Fannie Mae, 1993 (%)	Fannie Mae, 1994 (%)	Freddie Mac, 1993 (%)	Freddie Mac, 1994 (%)
0–60	6.8	8.8	6.2	6.8
60–80	11.3	13.2	10.8	11.3
80–100	15.0	16.5	14.9	15.2
100–120	15.4	15.8	15.6	16.0
> 120	51.5	45.7	52.5	50.7
Total	100.0	100.0	100.0	100.0

4. Size of the Conventional Conforming Mortgage Market Serving Low- and Moderate-Income Families Relative to the Overall Conventional Conforming Market

The low- and moderate-income share of the mortgage market is estimated to be 48–52 percent. Appendix D presents in detail the underlying analysis for this estimate.

5. GSEs' Ability to Lead the Industry

FHEFSSA requires the Secretary to consider the GSEs' ability to lead the market in determining the level of the Low- and Moderate-Income Goal. The GSEs' ability to lead the industry depends on their dominant role in the mortgage market, their ability—through their underwriting standards and new programs and products—to influence the types of loans that private lenders are willing to make, their utilization of cutting edge technology, their highly competent and well-trained staffs, and their financial resources.

a. Dominant Role in Market

The GSEs purchased 71 percent of all conventional conforming single-family mortgages in 1993—up from 15 percent in 1980, 34 percent in 1985, 50 percent in 1991, and 64 percent in 1992.[63] The GSEs' share of the relevant market fell to 55 percent in 1994. This was due in part to the increase in the adjustable rate mortgage (ARM) share of the mortgage market, from 20 percent in 1993 to 39 percent in 1994.[64] However, the GSEs' market share in 1994 exceeded that in all years except 1992 and 1993.

Most of the mortgages purchased by the GSEs are securitized, but sizable amounts are held in portfolio—in fact Fannie Mae and Freddie Mac have the first- and fourth-largest mortgage portfolios, respectively, of all mortgage holders in the United States. The GSEs now hold or securitize about 30 percent of the total dollar volume of mortgages outstanding, compared to about 7 percent in 1980, and they have accounted for over 40 percent of the net increase in mortgages outstanding between 1980 and 1992 and over 70 percent of the net increase between 1989 and 1992.[65]

The dominant position of the GSEs is reinforced by their relationship to other market institutions. Banks and savings and loans are both their competitors and their customers—they compete as portfolio lenders, but at the same time they sell mortgages to the GSEs and buy mortgage securities from them, and also buy the debt securities that the GSEs use to finance their portfolios.

b. Set Underwriting Standards for Market

The GSEs' underwriting guidelines are followed by virtually all mortgage originators, including lenders who do not sell many of their mortgages to Fannie Mae or Freddie Mac.[66] The guidelines are also commonly followed in underwriting ''jumbo'' mortgages, which exceed the maximum principal amount which can be purchased by the GSEs (the conforming loan limit), because such mortgages eventually

[55] Some mortgage purchases are not eligible for inclusion under the low- and moderate-income goal, such as federally guaranteed mortgages, mortgages on second homes, and mortgages originated prior to January 1, 1993 that were missing relevant borrower income or rent data. Such mortgages were excluded from both the numerator and the denominator in calculating the performance under this goal. These exclusions amounted to 14 percent of Fannie Mae's purchases and 9 percent of Freddie Mac's purchases.

[56] A portion of the increase from 1993 reflects a decline in the share of refinancings, which have been less common among low- and moderate-income families.

[57] Cases with missing data have been excluded from the table.

[63] Estimates provided by Fannie Mae's Economics Department.

[64] Federal Housing Finance Board, ''Rates & Terms on Conventional Home Mortgages,'' Annual Summary, 1994, Table 3. ARMs present less interest rate risk to lenders than fixed-rate mortgages, and therefore are more likely to be retained in portfolio.

[65] John C. Weicher, ''The New Structure of the Housing Finance System,'' *Federal Reserve Bank of St, Louis Review*, July/August 1994, pp. 51–52.

[66] The underwriting guidelines published by the two GSEs are not identical, but they are very similar in most aspects. And since November 30, 1992, Fannie Mae and Freddie Mac have provided lenders the same Uniform Underwriting and Transmittal Summary (Fannie Mae Form 1008/Freddie Mac Form 1077), which is used by originators to collect certain mortgage information that they need for data entry when mortgages are sold to either GSE.

might be sold to the GSEs as the principal balance is amortized or the conforming loan limit is increased. By setting the credit standards against which the mortgage applications of lower-income families will be judged, the GSEs influence the rate at which mortgage funds flow to low-income borrowers and underserved neighborhoods. Congress realized the crucial role played by the GSEs' underwriting guidelines when it required each enterprise to submit a study on its guidelines to the Secretary and to Congress.

c. Leading Edge Technology

Both GSEs are in the forefront of new developments in mortgage industry technology. For example, Fannie Mae has developed FannieMaps®, a computerized mapping service offered to lenders, nonprofit organizations, and state and local governments to help them implement community lending programs. Both GSEs released automated underwriting systems in 1995. The Freddie Mac system is based on credit scoring, which allows explicit consideration of compensating factors, while the Fannie Mae system automates current underwriting standards. Such systems have the potential to reduce the cost of loan origination, particularly for low-risk loans.

d. Staff Resources

Both GSEs are well-known throughout the mortgage industry for the expertise of their staffs in carrying out their current programs, researching and developing improvements in the mortgage market in general, developing innovative new programs, and conducting research that may lead to new programs in the future. Their key executives frequently testify before Congressional committees on a wide range of housing issues, and both GSEs have developed extensive working relationships with a broad spectrum of mortgage market participants, including various nonprofit groups and government housing authorities.

e. Financial Strength

The benefits that accrue to the GSEs because of their GSE status and solid management have made them two of the nation's most profitable businesses. Fannie Mae's net income has increased steadily from $807 million in 1989 to $2.1 billion in 1994, and for the first two quarters of 1995 net income was accruing at an annual rate of $2.3 billion, despite a 46 percent drop in mortgage purchases and a 60 percent drop in MBS issued in comparison with the first half of 1994. Through the second quarter of 1995, Fannie Mae has recorded 30 consecutive quarters of increased net income. Fannie Mae's return on equity averaged 27.5 percent over the 1990–94 period—far above the rates achieved by most financial corporations. In addition, Fannie Mae's dividends per share more than tripled over this period, rising from $0.72 in 1990 to $2.40 in 1994.

Freddie Mac has shown similar trends. Freddie Mac's net income has increased steadily from $414 million in 1990 to $983 million in 1994, and for the first two quarters of 1995 net income was accruing at an annual rate of $1.04 billion, despite declines in business volume similar to those experienced by Fannie Mae. Freddie Mac's return on equity averaged 20.9 percent over the 1990–94 period—also well above the rates achieved by most financial corporations. Freddie Mac's dividends per share nearly doubled over this period, rising from $0.53 in 1990 to $1.04 in 1994.

One measure of the strength of the GSEs was provided by a recent ranking of American corporations. This survey found that Fannie Mae was first of all companies in total assets and Freddie Mac ranked 17th; with regard to total profits, Fannie Mae ranked 20th and Freddie Mac ranked 52nd.[67]

Under FHEFSSA, beginning with the second quarter of 1994, the GSEs must meet fully phased-in minimum core capital requirements of 2.5 percent of on-balance sheet assets and 0.45 percent of outstanding mortgage-backed securities and other off-balance sheet obligations, except as adjusted by the Director of OFHEO.[68] For the transition period from June 30, 1993 through March 31, 1994, the corresponding percentages were 2.25 percent and 0.40 percent respectively. Based on the relation between actual core capital and minimum core capital, a GSE is classified as adequately capitalized, undercapitalized, significantly undercapitalized, or critically undercapitalized.

The Director has found both GSEs adequately capitalized for all nine quarters ending June 30, 1993 through June 30, 1995. At the end of the second quarter of 1995, Fannie Mae's core capital of $10.323 billion exceeded its minimum capital requirement of $9.684 billion by $639 million, and Freddie Mac's core capital of $5.538 billion exceeded its minimum capital requirement of $5.256 billion by $282 million.

f. Conclusion About Leading the Market

In light of these factors, the Secretary has determined that the GSEs have the ability to lead the industry in making mortgage credit available for low- and moderate-income families.

6. The Need to Maintain the Sound Financial Condition of the GSEs

HUD has undertaken a separate, detailed economic analysis of this rule, which includes consideration of the financial safety and soundness implications of the housing goals. The analysis considered the likely mortgage default implications of the goals and implications for the profitability of the GSEs under various alternative economic assumptions. Among the conclusions are: that the goals will have, at most, only limited impacts on credit risk, which the GSEs should be able to handle without significant lowering of underwriting standards; that risks associated with increased multifamily mortgage purchase volumes under the goals are manageable, considering the scope of the increases implied by the goals; and that the goals imply no meaningful increase in risk to the sound financial condition of the GSEs' operations. Based on this analysis, HUD concludes that the goals raise minimal, if any, safety and soundness concerns.

D. Determination of the Low- and Moderate-Income Housing Goals

The annual goal for 1996 for each GSE's purchases of mortgages financing housing for low- and moderate-income families is established at 40 percent of the total number of dwelling units financed by each GSE's mortgage purchases. The goal for 1997 and thereafter, unless changed, is 42 percent. These goals represent an increase over the statutorily-mandated 1994 goal of 30 percent, but they are conservative relative to the market share estimates in Appendix D, below Fannie Mae's low-mod performance in 1994, and only slightly above Freddie Mac's performance in 1994. The Secretary's considerations of the six statutory factors led to the choice of these goals.

1. Housing Need

Almost three-fifths of American households qualify as low- and moderate-income under FHEFSSA's definitions—half of owners and 70 percent of renters. Data from the Census and from the American Housing Surveys demonstrate that housing problems and needs for affordable housing are indeed substantial among

[67] *Business Week,* March 27, 1995, p. 154.

[68] Core capital is defined as the sum of the par or stated value of outstanding common or perpetual, noncumulative preferred stock, paid-in capital, and retained earnings.

low- and moderate-income families. These households, particularly those with very-low-incomes, are burdened by high rent payments and will likely continue to face serious housing problems, given the dim prospects for earnings growth in entry-level occupations.

With respect to homeownership, many younger, minority, and lower-income families did not become homeowners during the 1980s due to the slow growth of earnings, high real interest rates, and continued house price increases. Recently, low interest rates and low inflation have improved affordability conditions and first-time homeowners have become a major driving force in the home purchase market. A large pent-up demand for homeownership exists on the part of low-income families closed out of the market during the 1980s, particularly families with children in need of larger units and better neighborhoods.

Several demographic changes will strain the housing finance system during the 1990s. The continued influx of immigrants will increase demand for both rental and owner-occupied housing. Non-traditional households have become more important as overall household formation rates have slowed. With later marriages, divorce, and non-traditional living arrangements, the fastest growing household groups are single-parent and single-person households.

The multifamily mortgage market is far less integrated into the broader capital markets than is the single-family market. The GSEs do not dominate the multifamily secondary mortgage market as they do the single-family market, and they may never dominate the multifamily market to this extent—multifamily loans are more complex than single-family mortgages, and because of the large size of the component loans, multifamily mortgage pools are more difficult to diversify. Portfolio lending may remain a greater factor in multifamily markets.

Current market conditions indicate that the supply of multifamily mortgage credit is adequate for amenity-rich, suburban garden style apartments. However, credit gaps do exist, particularly with regard to the maintenance of the existing affordable stock and construction of affordable units in higher growth markets. Increased liquidity can make investments in affordable multifamily housing more attractive to all investors, including portfolio lenders, which would bring more capital at lower cost to fill current and future multifamily credit gaps. The GSEs' active participation in the market can lead to this needed increase in liquidity.

2. Past Performance and Ability to Lead the Industry

The GSEs have been assisting the overall secondary market, increasing their share of purchases of conventional conforming single-family mortgage origination from 42 percent in 1989 to 70 percent in 1993 before dropping to 55 percent in 1994. In fact, most industry observers would agree that the recent growth in the secondary market was the reason the decline of the thrift industry had only minor effects on the nation's housing finance system.

The GSEs' performance on the low- and moderate-income goal has also been improving. Fannie Mae's performance increased from 34.3 percent in 1993 to 45.4 percent in 1994. Freddie Mac's performance also increased from 30.0 to 38.0 percent during this period.

Single-family Market. The Secretary is concerned about the GSEs' assistance to the lower-income end of the market. Figure A.1 presents the distribution of the GSEs' single-family mortgage purchases by income category. In 1994, homeowners with incomes less than 60 percent of median represented roughly 7 percent of GSE purchases, and those with incomes less than 80 percent of median represented no more than 19 percent of GSE purchases. Families with incomes over 120 percent of median, on the other hand, accounted for approximately 50 percent of single-family mortgages purchased by the GSEs.

While the GSEs have improved their performance, they continue to purchase a smaller proportion of mortgages for very-low-income homebuyers than do portfolio lenders operating in the conforming market. According to the AHS, about 10 percent of conforming loans were originated for very-low-income homebuyers in 1993, compared to about 5 percent of GSE purchases in 1993. Figure A.2 uses HMDA data to compare the GSEs with the non-GSE portion of the conforming market. In 1993 and 1994, very-low-income loans accounted for a higher percentage of the business of portfolio (non-GSE) lenders than they did of GSE business. The 1993 and 1994 HMDA data suggest that there is room for the GSEs to improve their performance in purchasing loans at the lower-income end of the market.

Moreover, there is evidence that there is a significant population of potential homebuyers who might well respond to aggressive outreach. As mentioned above, both Fannie Mae and the Joint Center expect immigration to be a major source of future homebuyers. Furthermore, analysis by The Urban Institute indicates the existence of a large untapped potential. Indeed, the GSE's recent experience with new outreach and affordable housing initiatives is important confirmation of this potential.

Multifamily Market. The Secretary is particularly concerned about the level of Freddie Mac's activity in the multifamily area. In 1994, Freddie Mac purchased $913 million in multifamily mortgages, which was an increase over its purchase of $191 million in 1993. Given the affordability problems faced by renters and the need for a well-functioning secondary market for multifamily loans, it is imperative that Freddie Mac's multifamily business be increased. By sustaining a secondary market in units that meet the special affordable goal, the GSEs will bring increased liquidity, added stability, and ultimately lower rents for lower-income families in these segments of the market. In addition, their promotion of increased standardization in multifamily finance would allow for more direct links to capital markets and improve overall market efficiency and stability. The 1996 and 1997–99 goals are intended to encourage a minimum level of multifamily activity by Freddie Mac.

3. Market Feasibility and Changing Market Conditions

As detailed in Appendix D, the low- and moderate-income mortgage market is quite large, accounting for 48 to 52 percent of dwelling units financed by conventional conforming mortgages. Figure A.3 compares recent GSE performance, the 1996 and 1997–1999 goals, and the size of the low- and moderate-income market. Having considered the projected market and economic and demographic conditions for 1996–1999 and the GSEs' recent performance, HUD has determined that goals for low- and moderate-income purchases of 40 percent for 1996, 42 percent for 1997–1999, and 42 percent thereafter pending establishment of a new goal, are feasible.

In estimating the size of the market, HUD also used assumptions about future economic and market conditions that were less favorable than those that existed over the last two years. HUD is well aware of the volatility of mortgage markets and the possible impacts on the GSE's ability to meet the housing goals. Should conditions change such that the goals are no longer reasonable or feasible, the Secretary has the authority to revise the goals.

4. Parity Between the GSEs

The Secretary is establishing identical goals for both Fannie Mae and Freddie Mac. Freddie Mac consistently lags behind Fannie Mae on the housing goals. In part, this is due to Freddie Mac's limited multifamily activity—their 1994 multifamily mortgage purchases accounted for only 8.9 percent of their overall performance under this housing goal (versus 23.8 percent for Fannie Mae). Freddie Mac has used the past four years to rebuild its multifamily operations and has recently brought on new staff, developed new systems, and is pursuing an aggressive acquisition strategy. On the single-family side, Freddie Mac serves the same lenders and offers the same products as Fannie Mae. Therefore, Freddie Mac should be able to match Fannie Mae's performance in achieving the single-family goals. Moreover, the legislative history supports the idea of parity after the transition period, noting that ''because the enterprises have essentially equal opportunities, their respective annual goals should generally be set at comparable levels.'' [69]

5. Conclusions

The Secretary has determined that the 1996 and 1997–1999 goals set forth above address national housing needs and current economic, housing, and demographic conditions, and that they take into account the GSEs' performance in the past in purchasing low- and moderate-income mortgages, as well as the size of the conventional mortgage market serving low- and moderate-income families. Moreover, the Secretary has considered the GSEs' ability to lead the industry as well as the GSEs' financial condition. The Secretary has determined that the goals are necessary and achievable.

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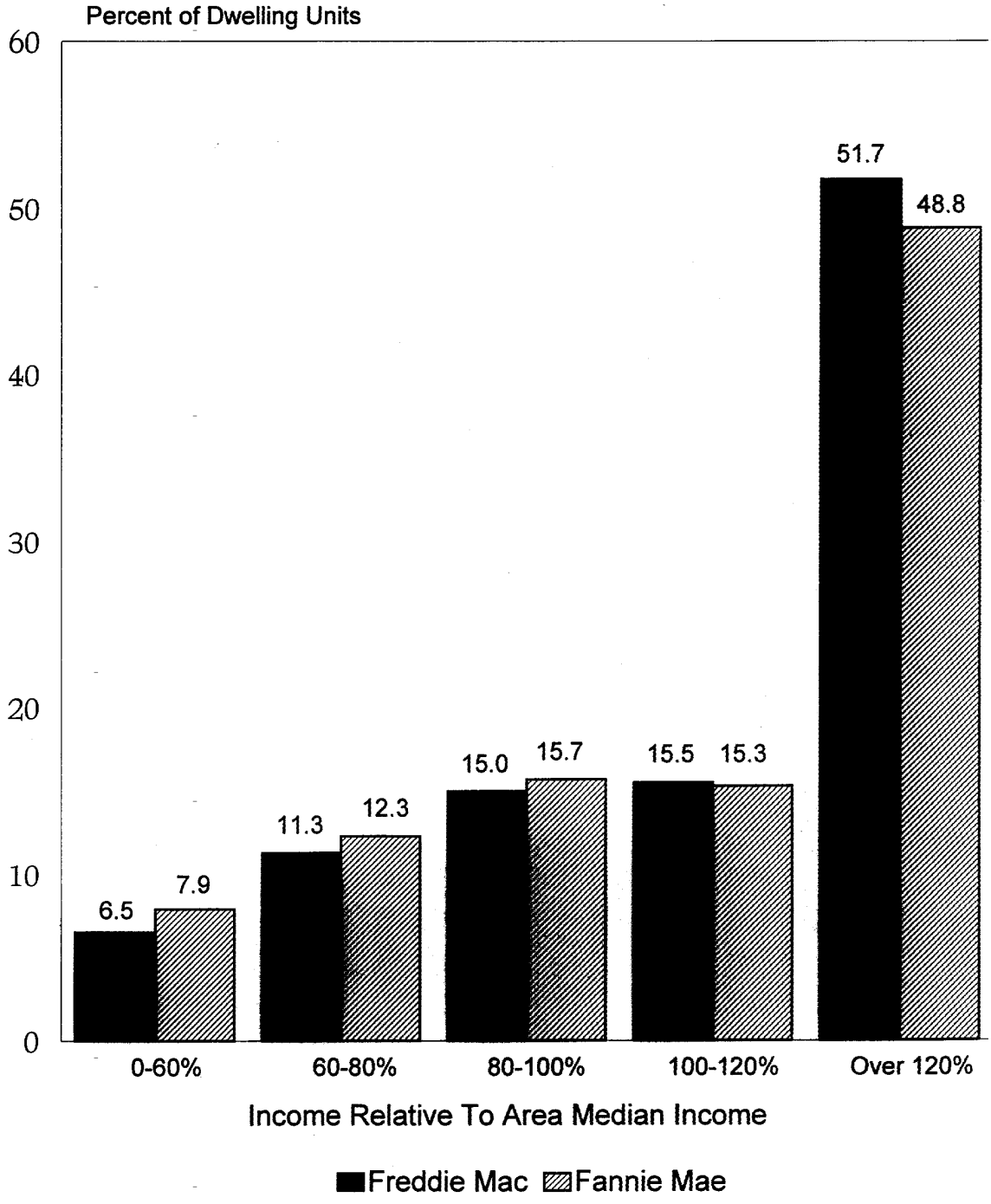
[69] Senate Report 102–282, p. 36.

FIGURE A.1

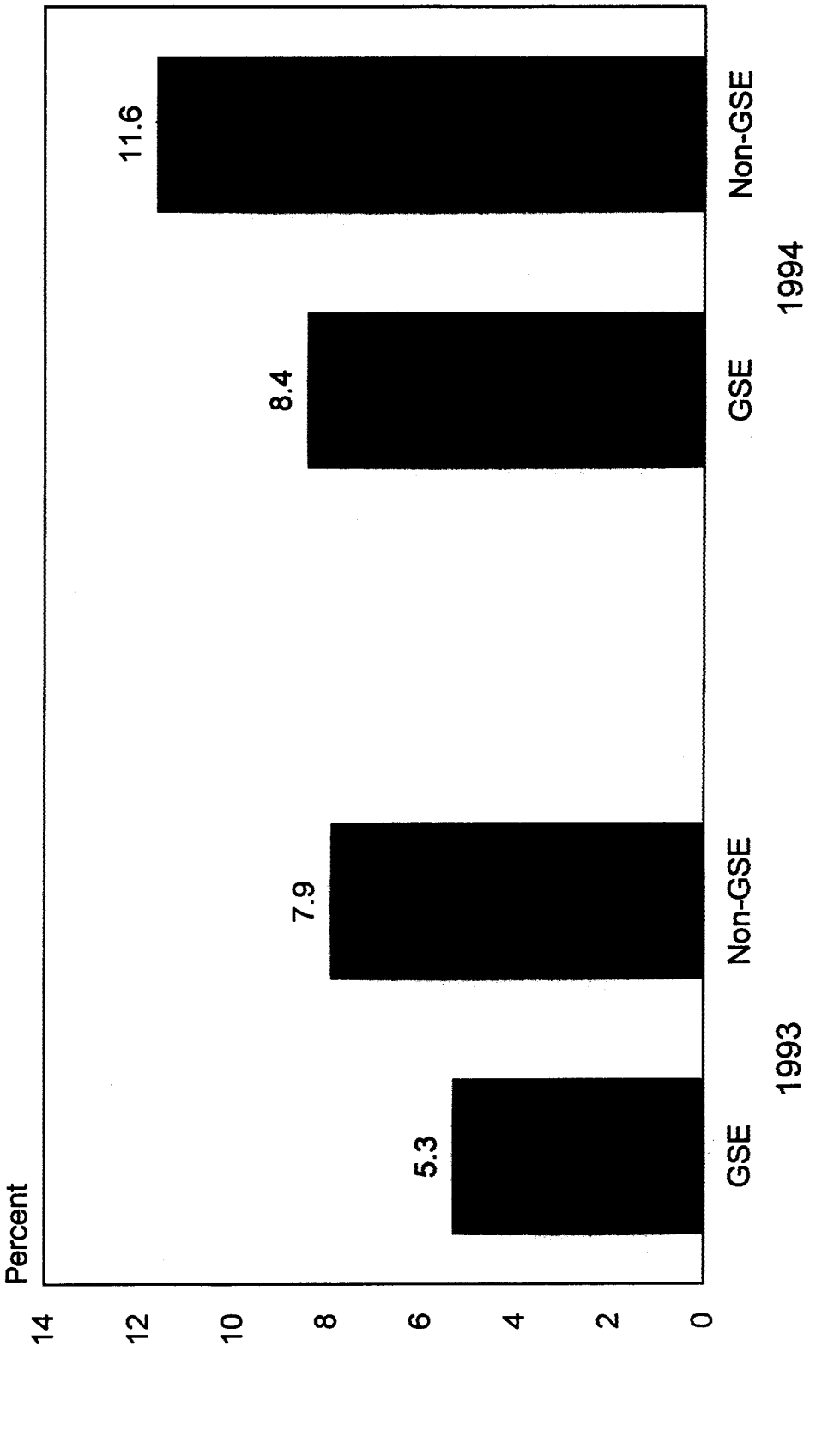
Distribution Of Total GSE Purchases Of Single-Family Owner-Occupied Dwelling Units By Income Class of Mortgagor For 1994



* Performances based on assumptions in final rule.

FIGURE A.2

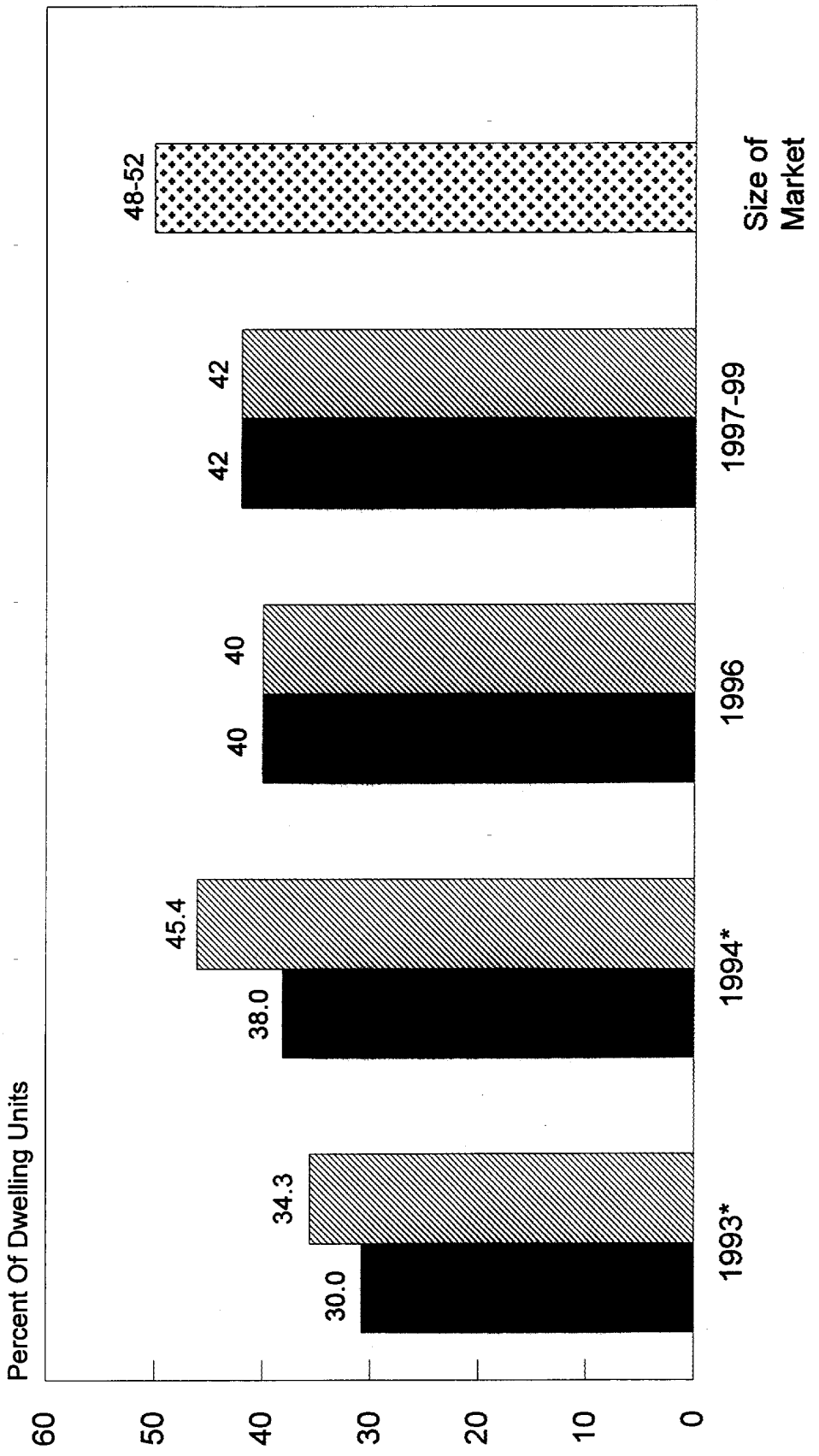
The Share Of GSE And Non-GSE Mortgages To Very-Low-Income Borrowers 1993 and 1994



Source: 1993 and 1994 HMDA Data

FIGURE A.3

Low- And Moderate-Income Activity And Goals For Freddie Mac And Fannie Mae, 1993-99



* Performances based on assumptions in final rule.

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Appendix B—Secretarial Considerations to Establish the Central Cities, Rural Areas, and Other Underserved Areas Goal

A. Establishment of Goal

1. Introduction

The Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (FHEFSSA) requires the Secretary to establish an annual goal for the purchase of mortgages on housing located in central cities, rural areas, and other underserved areas (the ''Geographically Targeted Goal'').

In establishing this annual housing goal, FHEFSSA requires the Secretary to consider:

1. Urban and rural housing needs and the housing needs of underserved areas;

2. Economic, housing, and demographic conditions;

3. The performance and effort of the GSEs toward achieving the Geographically Targeted Goal in previous years;

4. The size of the conventional mortgage market for central cities, rural areas, and other underserved areas relative to the size of the overall conventional mortgage market;

5. The ability of the GSEs to lead the industry in making mortgage credit available throughout the United States, including central cities, rural areas, and other underserved areas; and

6. The need to maintain the sound financial condition of the GSEs.

Organization of Appendix. Section A defines the goal and summarizes HUD's assessment of other proposed definitions of the Geographically Targeted Goal. Section B reports findings on access to mortgage credit and Section C addresses the factors listed above. Section D summarizes the Secretary's rationale for setting the level for the Geographically Targeted Goal.

2. HUD's Geographically Targeted Goal

As required by FHEFSSA, during 1993–1995 only mortgages located in central cities, as designated by the Office of Management and Budget (OMB), counted toward the Geographically Targeted Goal. FHEFSSA directed the Secretary to expand the Geographically Targeted Goal to include rural areas and other underserved areas.

HUD's definition of the Geographically Targeted Goal is based on studies of mortgage lending and mortgage credit flows conducted by academic researchers, community groups, the GSEs, HUD and other government agencies. While more research must be done before mortgage access for different types of people and neighborhoods is fully understood, one finding from the existing research literature stands out—minority and low-income neighborhoods have higher mortgage denial rates and lower mortgage origination rates than other neighborhoods. A neighborhood's minority composition and its level of income are useful proxies for measuring access to mortgage credit.

Metropolitan Areas. The rule provides that within metropolitan areas, mortgage purchases will count toward the goal when those mortgage purchases finance properties that are located in census tracts where either the median income of families in the tract does not exceed 90 percent of the area median income, or minorities comprise 30 percent or more of the residents and the median income of families in the tract does not exceed 120 percent of the area median income.

The final rule's definition includes 20,326 of the 43,232 census tracts (47 percent) in metropolitan areas and accounts for 44 percent of the metropolitan population.[1] The tracts included in this definition suffer from poor mortgage access and depressed socioeconomic conditions. The average mortgage denial rate in these tracts is 21 percent, almost twice the denial rate in non-included tracts.

The definition in the final rule adds 3,657 additional tracts to the definition in the proposed rule. These tracts have significant problems with access to credit, as evidenced by relatively high mortgage denial rates and low origination rates.

Nonmetropolitan Areas. The final rule provides that in non-metropolitan areas, mortgage purchases that finance properties that are located in counties will count toward the Geographically Targeted Goal where: minorities comprise 30 percent or more of the residents and the median income of families does not exceed 120 percent of the state nonmetropolitan median income; *or* the median income of families does not exceed 95 percent of the greater of the state nonmetropolitan median income or the nationwide nonmetropolitan median income.

Two important factors influenced HUD's definition of nonmetropolitan underserved areas—lack of available data for measuring mortgage availability in rural areas and the difficulty in operating mortgage programs at the census-tract level in rural areas. Because of these factors, the final rule uses a more inclusive, county-based definition of underservedness in rural areas. HUD's definition includes 1,511 of the 2,305 counties (66 percent) in nonmetropolitan areas and accounts for 54 percent of the nonmetropolitan population.

Goal Levels. The Geographically Targeted Goal is 21 percent in 1996 and 24 percent in 1997 and thereafter. HUD estimates that the mortgage market in areas included in the Geographically Targeted Goal accounts for 25–28 percent of the total number of newly-mortgaged dwelling units. In 1994, 29 percent of Fannie Mae's purchases financed dwelling units located in these areas, compared with 24 percent of Freddie Mac's purchases.

3. Alternative Definitions

Fannie Mae and Freddie Mac each proposed alternative definitions of underserved areas. Several other commenters suggested alternative definitions similar to those proposed by the GSEs. Fannie Mae would define all central city and nonmetropolitan census tracts as underserved; a suburban or non-central city tract would be considered underserved if minorities comprise 50 percent or more of the residents; or if the median income of families does not exceed 80 percent of the area median income. Freddie Mac would define a tract as underserved if minorities comprise 20 percent or more of the residents; or if the median income of families does not exceed 100 percent of the area median income.

HUD conducted extensive analysis of these and other alternative definitions of underserved areas. HUD also contracted with the Urban Institute to evaluate the alternative definitions of underserved areas.[2] That analysis, which is reported in Section B of this appendix, concluded that HUD's definitions in both the proposed rule and this final rule provide much better measures of mortgage access problems.

Fannie Mae Definition. The research conducted by the GSEs, other mortgage

[1] Tracts are excluded from the analysis if median income is suppressed or there are no population or owner-occupied 1–4 unit properties. There are 2,033 of these tracts. When reporting denial, origination, and application rates, tracts are excluded from the analysis if there are no purchase or refinance applications. Tracts are also excluded from the analysis if: (1) group quarters constitute more than 50 percent of housing units or (2) there are less than 15 home purchase applications in the tract and the tract denial rates equal 0 or 100 percent. Excluded tracts account for a small percentage of mortgage applications (1.4 percent). These tracts are not excluded from HUD's underserved areas if they meet the income and minority thresholds. Rather, the tracts are excluded to remove the effects of outliers from the analysis.

[2] George Galster, ''Comments on Defining 'Underserved' Areas in Metropolitan Regions,'' Urban Institute, prepared for the U.S. Department of Housing and Urban Development, August 15, 1995.

market economists, and HUD supports the premise that the location of a census tract—whether within a central city or a suburb—has minimal relationship to whether the tract is underserved. Instead, these studies have found that mortgage flows in a census tract are strongly correlated with the minority concentration or median income of that tract. The Urban Institute criticized the continued use of OMB-designated central cities in the goal because it treats all areas in central cities as if they have access problems. However, substantial evidence shows that mortgage access problems are not the same across central city neighborhoods.

Use of the definition advanced by Fannie Mae would add 8,833 central-city tracts to 13,554 central city tracts under this rule's definition. Credit access is not a problem in these added tracts—their average mortgage denial rate is 11 percent, which is one-half of the 22 percent denial rate for central city tracts covered by this final rule.

Freddie Mac Definition. Use of the definition proposed by Freddie Mac would add substantially more tracts and tracts that have lower denial rates than the definition in the final rule. Credit access does not appear to be a problem in the 5,367 tracts added by the Freddie Mac definition. The denial rate for the added tracts is 15 percent, which is only slightly above the 13 percent denial rate for all metropolitan tracts and significantly less than the 21 percent denial rate for metropolitan area tracts covered by this final rule.

B. Underlying Data and Identifying Underserved Areas

1. Introduction and Overview

Data on mortgage credit flows are far from perfect, and issues regarding the identification of areas with inadequate access to credit are both complex and controversial. For this reason, before considering housing needs and past GSE performance, it is essential to define ''underserved areas'' as accurately as possible from existing data. To provide essential background for understanding the final rule's definition of underserved areas for this goal, this section carefully reviews the literature investigating access to credit and reports findings from HUD's analysis of 1993 and 1994 HMDA and Census data bases. The first part of this section discusses research and data analysis in urban areas; the latter part discusses rural areas.

Three main points are made in this section:

- The existence of substantial geographic disparities in mortgage credit is well documented for metropolitan areas. Research has demonstrated that areas with lower incomes and higher shares of minority population consistently have poorer access to mortgage credit, with higher mortgage denial rates and lower origination rates for mortgages. Thus, the income and minority composition of an area is a good method of determining whether that area is being underserved by the mortgage market.
- The research supports a targeted definition. Studies conclude that characteristics of the applicant and the neighborhood where the property is located are the major determinants of mortgage denials and origination rates. Once these characteristics are accounted for, other influences such as location in an OMB-designated central city play only a minor role in explaining disparities in mortgage lending.[3]
- Research on mortgage credit needs in rural areas is not extensive because of the lack of mortgage data. The available research does suggest that income and minority composition identify rural areas that experience housing and mortgage access problems. The lack of mortgage data, however, suggests the use of a broader underserved definition than in metropolitan areas.

2. Evidence About Access to Credit in Urban Areas

The viability of neighborhoods—whether urban, rural, or suburban—depends on the access of their residents to mortgage capital to purchase and improve their homes. While neighborhood problems are caused by a wide range of factors, including substantial inequalities in the distribution of the nation's income and wealth, there is increasing agreement that imperfections in the nation's housing and mortgage markets are hastening the decline of distressed neighborhoods. Disparate denial of credit based on geographic criteria can lead to disinvestment and neighborhood decline. Discrimination and other factors, such as inflexible and restrictive underwriting guidelines, limit access to mortgage credit and leave potential borrowers in certain areas underserved.

a. Early Credit Flow Studies

Most studies of geographical disparities have used Home Mortgage Disclosure Act (HMDA) data. A number of studies using the early HMDA data sought to test for the existence of geographical redlining, which is the refusal of lenders to make loans in certain neighborhoods regardless of the creditworthiness of the individual applicant.[4] Consistent with the redlining hypothesis, these studies found lower volumes of loans going to low-income and high-minority neighborhoods.[5] However, such analyses were criticized because they did not distinguish between demand and supply effects[6]—that is, whether loan volume was low because people in high-minority and low-income areas were unable to afford home ownership and therefore were not applying for mortgage loans, *or* because lenders refused to make loans in these areas. Moreover, the early HMDA data were incomplete because non-depository lenders (e.g., mortgage bankers, who originate most FHA loans) were not included.

Like early HMDA studies, an analysis of deed transfer data in Boston found lower rates of mortgage activity in minority neighborhoods.[7] The discrepancies held even after controlling for income, house values and other economic and non-racial factors that might explain differences in demand and housing market activity.[8]

[3] For the sake of brevity, in the remainder of this appendix, the term ''central city'' is used to mean ''OMB-designated central city.''

[4] Prior to 1990, HMDA data showed only the total number and aggregate dollar volume of loans made in each census tract for depository institutions; no information was reported on individual borrowers or on applications denied.

[5] These studies, which were conducted at the census tract level, typically involved regressing the number of mortgage originations (relative to the number of properties in the census tract) on characteristics of the census tract including its minority composition. A negative coefficient estimate for the minority composition variable was often interpreted as suggesting redlining. For a discussion of these models, see Eugene Perle, Kathryn Lynch, and Jeffrey Horner, ''Model Specification and Local Mortgage Market Behavior,'' *Journal of Housing Research,* Volume 4, Issue 2, 1993, pp. 225–243.

[6] For critiques of the early HMDA studies, see Andrew Holmes and Paul Horvitz, ''Mortgage Redlining: Race, Risk, and Demand,'' *The Journal of Finance,* Volume 49, No. 1, March 1994, pp. 81–99; and Michael H. Schill and Susan M. Wachter, ''A Tale of Two Cities: Racial and Ethnic Geographic Disparities in Home Mortgage Lending in Boston and Philadelphia,'' *Journal of Housing Research,* Volume 4, Issue 2, 1993, pp. 245–276.

[7] Katherine L. Bradbury, Karl E. Case, and Constance R. Dunham, ''Geographic Patterns of Mortgage Lending in Boston, 1982–1987,'' *New England Economic Review,* September/October 1989, pp. 3–30.

[8] Using an analytical approach similar to that of Bradbury, Case, and Dunham, Anne Shlay found evidence of fewer mortgage loans originated in black census tracts in Chicago and Baltimore. See Anne Shlay, ''Not in That Neighborhood: The Effects of Population and Housing on the Distribution of Mortgage Finance within the Chicago SMSA,'' *Social Science Research,* Volume 17, No. 2, 1988, pp. 137–163; and ''Financing Community: Methods for Assessing Residential Credit Disparities, Market Barriers, and Institutional Reinvestment Performance in the Metropolis,'' *Journal of Urban Affairs,* Volume 11, No. 3, 1989, pp. 201–223.

In addition, a larger percentage of transactions in such neighborhoods were financed by the seller or other non-traditional institutional lenders (e.g., credit unions, governments, universities, business leaders, real estate trusts, and pension funds). Greater seller financing may suggest unmet demand for mortgages, since it is not likely that minority sellers prefer, more than whites, to finance the sale of their homes rather than being paid in cash.[9] The study concluded that ''the housing market and the credit market together are functioning in a way that has hurt African American neighborhoods in the city of Boston.''

b. Improved HMDA Data—Wider Coverage and Mortgage Denial Rates

HMDA reporting was expanded in 1990 to provide information on the disposition of loan applications (originated, approved but not accepted by the borrower, denied, withdrawn, or not completed), to include the activity of large independent mortgage companies, and to provide information on the race and income of individual loan applicants. An additional expansion in 1993 covered mortgage companies that originated 100 or more home purchase loans in the preceding calendar year. HUD's analysis using the expanded HMDA data for 1993 and 1994 shows that high-minority and low-income census tracts have both higher loan application denial rates and lower loan origination rates.[10]

Table B.1 presents mortgage denial and origination rates by the minority composition and median income of census tracts for metropolitan areas. Two patterns are clear:

- Census tracts with higher percentages of minority residents have higher mortgage denial rates and lower mortgage origination rates than all-white or substantially-white tracts. For example, the denial rate for census tracts that are over 90 percent minority is over two-and-a-half times that for census tracts with less than 10 percent minority.
- Census tracts with lower incomes have higher denial rates and lower origination rates than higher income tracts. The average number of 1993 mortgage originations in the highest-income census tracts (i.e., tracts with a median income over 150 percent of area median) was 20.0 per 100 owner-occupants; this compares with a range of 4.4 to 9.0 originations for the census tract deciles with income less than 90 percent of area median.[11]

Denial rates in 1993 increased from 10.7 to 29.3 percent as minority concentration changes from low-minority to 90-percent-minority tracts.[12] They declined from 24.2 to 7.8 percent as tract income increases from 60 percent of area median to over 150 percent of area median. Similar patterns arose in 1994.

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[9] Analysis of 1985 American Housing Survey data also showed a greater reliance on non-institutional financing by low- and moderate-income owners in both metropolitan and rural areas. See the Urban Institute, ''The Availability and Use of Mortgage Credit in Rural Areas,'' 1990.

[10] HUD's previous analysis of 1992 HMDA produced comparable results. For a similar analysis based on 1992 HMDA data, see Glenn B. Canner, Wayne Passmore, and Dolores S. Smith, ''Residential Lending to Low-Income and Minority Families: Evidence from the 1992 HMDA Data,'' *Federal Reserve Bulletin*, Volume 80, February 1994, pp. 79–108.

[11] Origination rates in 1994 are lower than origination rates in 1993 for all income and minority levels because of the lower number of refinance mortgages.

[12] The denial rates in Table B.1 are for purchase mortgages. Denial rates are several percentage points lower for refinance loans than for purchase loans, but denial rates follow the same pattern for both types of loans: rising with minority concentration and falling with increasing income.

Table B.1

Origination and Denial Rates for Conventional Mortgages

Minority Percentage	Originations Per 100 Owner-Occupied Units (Purchases and Refinances) 1993	1994	Denial Rates (Purchases) 1993	1994
Less than 10%	14.6	8.2	10.7 %	10.9 %
10-20	13.7	8.0	13.2	13.7
20-30	11.9	7.3	16.2	16.7
30-40	11.1	6.8	18.4	18.5
40-50	10.1	6.5	20.1	20.2
50-60	9.4	6.4	22.0	21.1
60-70	9.2	6.3	22.7	21.6
70-80	8.5	6.3	23.2	22.1
80-90	7.0	5.6	25.3	23.9
90-100	4.1	3.9	29.3	27.3

Tract Income Relative to MSA Median	Originations Per 100 Owner-Occupied Units (Purchases and Refinances) 1993	1994	Denial Rates (Purchases) 1993	1994
Less than 20%	5.9	1.4	30.6 %	28.7 %
20-30	6.3	4.2	25.8	28.4
30-40	4.4	3.9	28.2	27.9
40-50	4.7	4.4	28.0	26.8
50-60	5.1	4.4	25.8	26.0
60-70	6.2	5.0	24.2	23.8
70-80	7.3	5.5	21.6	21.4
80-90	9.0	6.2	18.7	19.3
90-100	10.7	6.8	15.9	16.3
100-110	12.7	7.6	13.3	13.6
110-120	14.9	8.5	11.3	11.3
120-150	18.1	9.6	9.4	9.3
150+	20.0	9.9	7.8	7.5

Source: HUD Analysis of 1993 and 1994 HMDA Data

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Table B.2 aggregates the data in Table B.1 into six minority and income combinations that exhibit very different credit flows. The low-minority (less than 30 percent minority), high-income (over 120 percent of area median) group has a denial rate of 8 percent and an origination rate of 19 per 100 owner occupants. The high-minority (over 50 percent), low-income (under 90 percent of area median) group has a denial rate of 27 percent and an origination rate of only 6 per 100 owner occupants. The other groupings fall between these two extremes.

The advantages of HUD's underserved area definition can be seen by examining the minority-income combinations highlighted in Table B.2. The sharp differences in denial rates and origination rates between the underserved and remaining served categories illustrate that HUD's definition delineates areas that have significantly less success in receiving mortgage credit. Underserved areas have almost twice the average denial rate of served areas (21 percent versus 11 percent) and half the average origination rate per 100 owner occupants (8 versus 16). HUD's definition does not include high-income (over 120 percent of area median) census tracts even if they meet the minority threshold. The mortgage origination rate per 100 owner occupants (15) for high-income tracts with a minority share of population over 30 percent is about the same as the average (16) for all served areas.

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Table B.2

Mortgage Denial and Origination Rates By Minority and Income Characteristics of the Census Tract

Denial Rates (Purchase Mortgages Only)				
	Minority Composition			
Tract Income	< 30%	30 - 50%	50 - 100%	Total
Less Than 90%	19.0%	22.1%	26.9%	21.3%
90 - 120%	12.8%	18.1%	21.6%	13.5%
120+	8.4%	15.1%	16.7%	8.9%
Total	11.8%	19.1%	24.4%	13.3%
Origination Rates per 100 owner occupants (Purchase and Refinance Mortgages)				
	Minority Composition			
Tract Income	< 30%	30 - 50%	50 - 100%	Total
Less Than 90%	8.3%	8.0%	5.7%	7.5%
90 - 120%	12.9%	11.3%	9.7%	12.6%
120+	19.1%	15.9%	13.8%	18.8%
Total	14.1%	10.7%	7.2%	13.1%

Source: HUD Analysis of 1993 HMDA Data

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c. Recent HMDA Studies—Controlling for Applicant Credit Risk

An important question is whether variations in denial rates reflect lender bias against certain kinds of neighborhoods and borrowers, or simply the credit quality of the potential borrower (as indicated by the applicant's available assets, credit rating, employment history, etc.). The technical improvements offered by recent studies of credit disparities have attempted to control for credit risk factors that might influence a lender's decision to approve a loan. Without fully accounting for the creditworthiness of the borrower, racial differences in denial rates cannot be attributed to lender bias. The best example of accounting for credit risk is the study by researchers at the Federal Reserve Bank of Boston, which analyzed mortgage denial rates.[13] To control for credit risk, the Boston Fed researchers included 38 borrower and loan variables indicated by lenders to be critical to loan decisions. The study found that minorities' higher denial rates could not be explained fully by income and credit risk factors. African Americans and Hispanics were about 60 percent more likely to be denied credit than Whites, even after controlling for credit risk characteristics such as credit history, employment stability, liquid assets, self-employment, age, and family status and composition. Although almost all highly-qualified applicants of all races were approved, differential treatment was observed among borrowers with lesser qualifications.[14]

A recent HUD study also found mortgage denial rates for minorities to be higher in ten metropolitan areas, even after controlling for credit risk.[15] In addition, the higher denial rates observed in minority neighborhoods were not purely a reflection of the higher denial rates experienced by minorities. Whites experienced higher denial rates in some minority neighborhoods than in some predominantly white neighborhoods.

A more recent reassessment and refinement of the data used by the Federal Reserve Bank of Boston has confirmed the findings of that study.[16] William C. Hunter of the Federal Reserve Bank of Chicago also found that race was a factor in denial rates of marginal applicants. While denial rates were comparable for borrowers of all races with ''good'' credit ratings, among those with ''bad'' credit ratings or high debt ratios, minorities were significantly more likely to be denied than similarly-situated whites. The study concludes that the racial differences in denial rates are due to a cultural gap between white loan officers and minority applicants, and conversely, a cultural affinity with white applicants.

The two Fed studies and the HUD study concluded that the effect of borrower race on mortgage rejections persists even after controlling for legitimate determinants of lenders' credit decisions. Thus, they give some legitimacy to denial rate comparisons such as those in Tables B.1 and B.2. However, the independent race effect identified in these studies is still difficult to interpret. In addition to lender bias, access to credit can be limited by loan characteristics that reduce profitability[17] and by underwriting standards that have disparate effects on minority and lower income borrowers and neighborhoods.[18]

d. Recent HMDA Studies—Controlling for Neighborhood Risk and Demand and Tests of the Redlining Hypothesis

Two recent statistical studies sought to test the redlining hypothesis by more completely controlling for differences in neighborhood risk and demand. These studies do not support claims of racially induced mortgage redlining—the explanatory power of neighborhood race is reduced to the extent that the effects of neighborhood risk and demand are accounted for. However, these studies cannot reach definitive conclusions about redlining because of the correlation of neighborhood race with other explanatory variables included in their models.

First, Andrew Holmes and Paul Horvitz used 1988–1991 HMDA data to examine the flow of conventional mortgage originations across census tracts in Houston.[19] Their regression model included as explanatory variables the economic viability of the loan and characteristics of residents of the tract (e.g., house value, income, age distribution and education level), measures of demand (e.g., recent movers and change in owner-occupied units between 1980 and 1990), and measures of credit risk (defaults on government-insured loans and change in tract house values between 1980 and 1990). To determine the existence of racial redlining, the model also included as explanatory variables the percentages of African American and Hispanic residents in the tract and the increase in the tract's minority percentage between 1980 and 1990. Most of the neighborhood risk and demand variables were significant determinants of the flow of conventional loans in Houston. The coefficients of the racial composition variables were insignificant which, led Holmes and Horvitz to conclude that allegations of redlining could not be supported, at least in the Houston market.

One of their more interesting findings, however, was that the racial composition variables became significant and negative, thus suggesting the existence of redlining, when they re-estimated their model twice, once without the credit risk variables and once without the demand variables. This finding is consistent with earlier credit flow studies that concluded that redlining exists. Holmes and Horvitz caution against relying on findings from these earlier studies because they did not adequately account for differences in neighborhood risk and demand. The authors conclude that ''a claim of racially based geographic discrimination in mortgage lending must be based on a consideration of race *after* taking

[13] Alicia H. Munnell, Lynn E. Browne, James McEneaney, and Geoffrey M. B. Tootell, ''Mortgage Lending in Boston: Interpreting HMDA Data,'' Federal Reserve Bank of Boston, Working Paper Series, No. 92–7, October 1992.

[14] This study was the subject of substantial criticism with regard to data quality and model specification, but even after accounting for these problems, the race conclusions were found to persist in a re-estimation of the model by Fannie Mae. See James H. Carr and Isaac F. Megbolugbe, ''The Federal Reserve Bank of Boston Study on Mortgage Lending Revisited,'' *Journal of Housing Research*, Volume 4, Issue 2, 1993, pp. 277–313. Other criticisms, however, have also been mentioned. For instance, the fact that the credit risk variables included in the model are correlated with the minority variable suggests that the latter may be picking up the effects of still other credit risk variables omitted from the model. See John Straka, ''Boston Federal Reserve Study of Mortgage Discrimination,'' *Secondary Mortgage Markets*, Volume 10, No. 1, Winter 1993, pp. 8–9, for a useful discussion of other aspects of the Boston Fed study.

[15] Ann B. Schnare and Stuart A. Gabriel, ''The Role of FHA in the Provision of Credit to Minorities,'' ICF Incorporated, prepared for the U.S. Department of Housing and Urban Development, April 25, 1994.

[16] William C. Hunter, ''The Cultural Affinity Hypothesis and Mortgage Lending Decisions,'' WP–95–8, Federal Reserve Bank of Chicago, 1995.

[17] Lenders are discouraged from making smaller loans in older neighborhoods. Since upfront loan fees are frequently determined as a percentage of the loan amount, such loans generate lower revenue and thus are less profitable to lenders.

[18] Standard underwriting practices may exclude lower income families that are, in fact, creditworthy. Such families tend to pay cash, leaving them without a credit history. In addition, the usual front-end and back-end ratios applied to applicants' housing expenditures and other on-going costs may be too stringent for lower income households, who typically pay higher shares of their income for housing than higher income households.

[19] Holmes and Horvitz also analyzed the flow of government-insured loans and obtained what are now standard results in the literature—compared with conventional loans, government-insured loans are more targeted to lower income and risky neighborhoods.

account of variables that are rationally connected with the economics of the mortgage lending process.'' [20]

In the second study, Michael Schill and Susan Wachter attempt to improve on earlier studies of redlining by examining whether mortgage denials are related to neighborhood racial composition.[21] Schill and Wachter argue that HMDA data on mortgage rejections, first released in 1990, allow researchers to address perhaps the major shortcoming of earlier credit flow studies—the inability to separate demand influences from supply influences. Analyzing information on whether lenders accept or reject individual loan applicants permits Schill and Wachter to study the determinants of the supply decision separately.[22]

In their empirical work, Schill and Wachter focused on loan acceptances rather than denials. Their model posits that the probability that a lender will accept a specific mortgage application depends on characteristics of the individual loan application [23] and characteristics of the neighborhood where the property collateralizing the loan is located. Because they rely on public data, Schill and Wachter did not have information on several loan and property risk variables, such as loan-to-value ratio, that are known to affect the mortgage decision. To compensate for the lack of these variables, the study includes neighborhood risk proxies that are likely to affect the future value of the properties.[24] Finally, to test for the existence of racially-induced lending patterns across census tracts, Schill and Wachter included the percentage of persons in the census tract that were African American and Hispanic.

The authors tested their model for conventional mortgages in Philadelphia and Boston. They first estimated their model including as explanatory variables only the individual loan and racial composition variables. The applicant race variables—whether the applicant was African American or Hispanic—showed significant negative effects on the probability that a loan would be accepted. Schill and Wachter stated that this finding does not provide evidence of individual race discrimination because applicant race is most likely serving as a proxy for credit risk variables omitted from their model (e.g., credit history, wealth and liquid assets). In this first analysis, the percentage of the census tract that was African American also showed a significant and negative coefficient, a result that is consistent with redlining. However, when the neighborhood risk proxies were included in the model along with the individual loan variables, the percentage of the census tract that was African American becomes insignificant. Thus, similar to Holmes and Horvitz, Schill and Wachter stated that ''once the set of independent variables is expanded to include measures that act as proxies for neighborhood risk, the results do not reveal a pattern of redlining.'' [25]

In their conclusion, however, Schill and Wachter stated that while their results did not support the hypothesis of redlining, they could not say definitively that neighborhood race is unrelated to lenders' decisions to accept or reject loan applications. One reason for their hesitancy is that many of their individual loan variables (as well as their neighborhood risk variables) are correlated with the racial composition of the census tract. For instance, the applicant's race variable (i.e., whether the applicant is African American or Hispanic) remained highly significant and negative in all their estimations. Because of the high degree of racial segregation that exists in urban areas, the applicant race variable was positively correlated with the census tract race variable. It may be that the applicant race variable was picking up effects that should properly be attributed to the census tract race variable.[26] If this were the case, Schill and Wachter's conclusions about the existence of racially induced redlining would necessarily change.

e. Geographic Dimensions of Underserved Areas—Targeted versus Broad Approaches

An important issue for the GSE regulations is whether geographic areas under this goal should be broadly or narrowly defined. Is central city location an adequate proxy for lack of access to mortgage credit? What is gained by more targeted neighborhood-based definitions? This section reports findings from three studies that address these questions. All three support defining underserved areas in terms of the minority and/or income characteristics of census tracts, rather than in terms of a broad definition such as all areas of all central cities.

HUD's Analysis. Tables B.1 and B.2 documented the relatively high denial rates and low mortgage origination rates in underserved areas as defined by HUD. This section extends that analysis by comparing underserved and served areas within central cities and suburbs. Figure B.1 shows that HUD's definition targets central city neighborhoods that are experiencing problems obtaining mortgage credit. The 22 percent denial rate in these neighborhoods is twice the 11 percent denial rate in the remaining areas of central cities. Similarly, the average mortgage origination rate (per 100 owner occupants) in HUD-defined underserved areas of central cities is 7, much lower than the average of 15 for the remaining areas of central cities.

A broad, inclusive definition of ''central city'' that includes all areas of all OMB-designated central cities would include the ''remaining'' portions of these cities. Figure B.1 shows that these

[20] Holmes and Horvitz, page 97 (emphasis added). The authors recognize that many of the risk and demand variables in their model are rather highly correlated with the racial composition variables also included in their model. Thus, one could argue that their risk and demand variables are serving, to a certain extent, as proxies for race, which would mean that their results suggest a high degree of redlining in the Houston market. Holmes and Horvitz dismiss this argument by stating that several of their non-racial variables are reasonable proxies for other prudent lending variables such as wealth and job stability for which they did not have direct data.

[21] Schill and Wachter. Although their methodology and findings are similar to those of studies discussed in the next section, it is informative to review Schill and Wachter's study in detail because it illustrates issues that must be dealt with before definitive conclusions can be reached about redlining.

[22] Perle also agrees that micro-based models of mortgage denial rates are more appropriate for studying redlining than macro-based credit flow models that fail to separate demand and supply effects.

[23] Individual loan characteristics include loan size (economies of scale cause lenders to prefer large loans to small loans) and all individual borrower variables included in the HMDA data (the applicant's income, sex, and race).

[24] Their neighborhood risk proxies include median income and house value (inverse indicators of risk), percent of households receiving welfare, median age of houses, homeownership rate (an inverse indicator), vacancy rate, and the rent-to-value ratio (an inverse indicator). A high rent-to-value ratio suggests lower expectations of capital gains on properties in the neighborhood.

[25] Schill and Wachter, page 271. Munnell, *et al.* reached similar conclusions in their study of Boston. They found that the race of the individual mattered, but that once individual characteristics were controlled, racial composition of the neighborhood was insignificant.

[26] In their study of individual loan denial rates, Avery, Beeson, and Sniderman obtain significant and positive coefficients for the individual applicant's race. Unlike Schill and Wachter, they found that denial rates were higher in low-income tracts even after controlling for the effects of the applicant's race and income. Although denial rates were not higher overall for purchase and refinance loans in minority tracts after controlling for the race of the applicant, denial rates were higher in minority tracts for white applicants. In other words, minorities have higher denial rates wherever they attempt to borrow, but whites face higher denials when they attempt to borrow in areas dominated by minorities. In addition, denial rates were higher in minority areas for home-improvement loans. See Robert B. Avery, Patricia E. Beeson, and Mark S. Sniderman, ''Underserved Mortgage Markets: Evidence from HMDA Data,'' Working Paper Series 94–16, Federal Reserve Bank of Cleveland, October 18, 1994.

areas, which account for approximately 42 percent of the population in OMB-designated central cities, appear to be well served by the mortgage market. They are not experiencing problems obtaining access to mortgage credit.[27]

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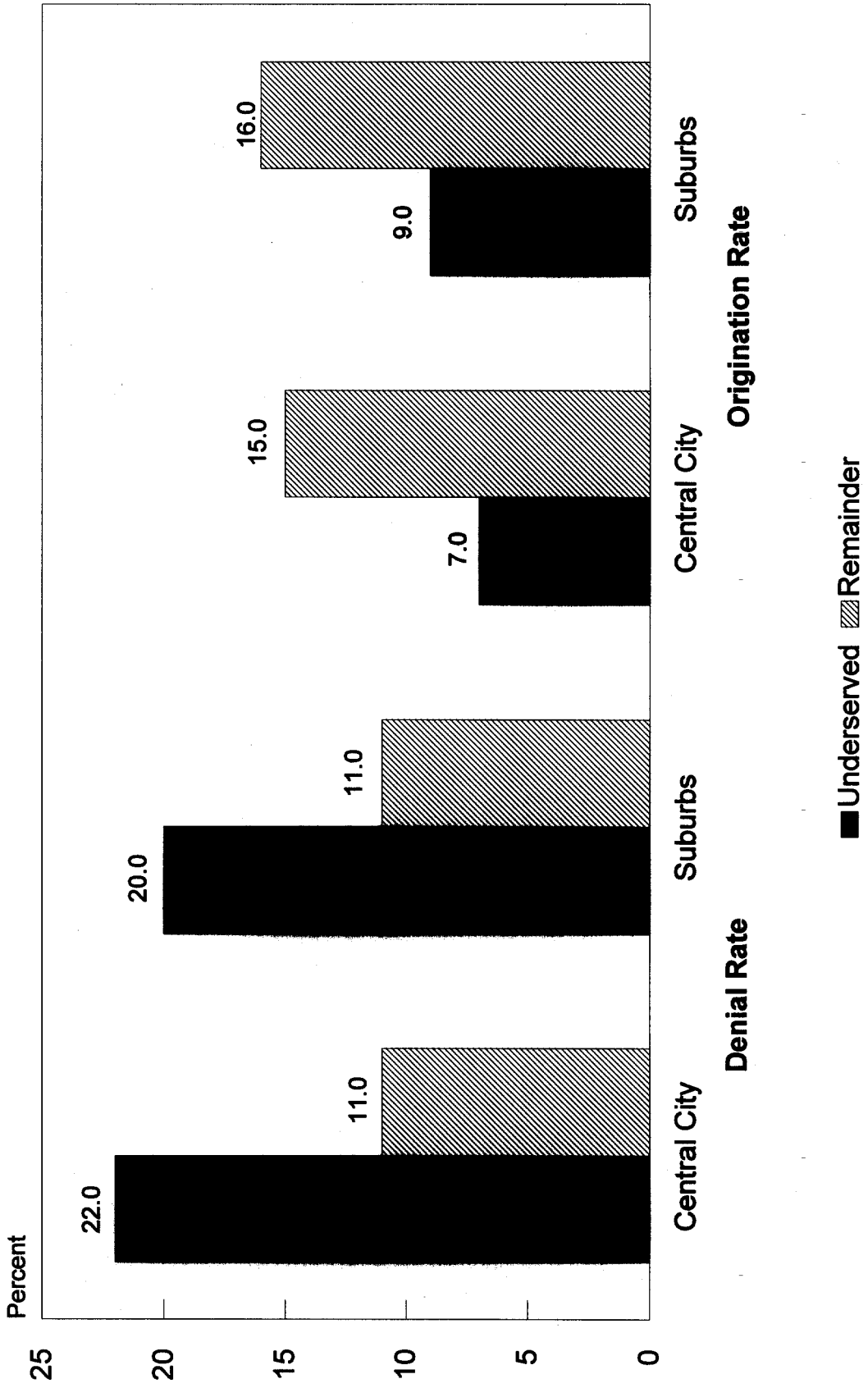
[27] The Preamble to this rule provides additional reasons why central city location should not be used as a proxy for underserved areas.

FIGURE B.1

1993 Denial And Origination Rates
Underserved Areas And Remainder
By Central Cities And Suburbs



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HUD's definition also targets in the suburbs as well as in central cities—for example, the average denial rate in underserved suburban areas is almost twice that in the remaining served areas of the suburbs. Low-income and high-minority suburban tracts appear to have credit problems similar to their central city counterparts. These suburban tracts, which account for 31 percent of the suburban population, are encompassed by the definition of other underserved areas. Thus, the advantage of HUD's targeted definition of underserved areas is illustrated by sharp differences in measures of mortgage access between served and underserved areas within both central cities and suburbs.

William Shear, James Berkovec, Ann Dougherty, and Frank Nothaft, economists at Freddie Mac, recently completed an analysis of mortgage flows and application acceptance rates in 32 metropolitan areas that also supported a targeted definition of underserved areas.[28] These researchers regressed the number of mortgage originations per 100 properties in the census tract on several independent variables that are intended to account for some, but admittedly not all, of the demand and supply (i.e., credit risk) influences at the census tract level. Examples of the demand and supply variables at the census tract level include: tract income relative to the area median income, the increase in house values between 1980 and 1990, the percentage of units boarded up, and the age distributions of households and housing units. The tract's minority composition and central city location were included to test if these characteristics are associated with underserved neighborhoods after controlling for the demand and supply variables. Several of their findings relate to the issue of defining underserved areas:

- Census tracts with high concentrations of African American and Hispanic families have lower rates of applications, originations, and acceptance rates. For instance, the regression estimates suggest that all-White census tracts would have an average 10.5 originations per 100 properties, while all-African American and all-Hispanic census tracts would have about 7 originations per 100 properties.
- Tract income influences mortgage flows—tracts at 80 percent of median income are estimated to have 8.6 originations per 100 owners as compared with 10.8 originations for tracts over 120 percent of median income.
- Once census tract influences are accounted for, central city location has only a minimal effect on credit flows.

Shear, Berkovec, Dougherty, and Nothaft recognized that it is difficult to interpret their estimated minority effects—the effects may indicate lender discrimination, supply and demand effects not included in their model but correlated with minority status, or some combination of these factors. They explain the implications of their results for measuring underserved areas as follows:

> * * * While it is not at all clear how we might rigorously define, let alone measure, what it means to be underserved, it is clear that there are important housing-related problems associated with certain location characteristics, and it is possible that, in the second or third best world in which we live, mortgage markets might be useful in helping to solve some of these problems. We then might use these data to help single out important areas or at least eliminate some bad choices. * * * The regression results indicate that income and minority status are better indicators of areas with special needs than central city location.[29]

HUD Analysis. HUD used 1993 HMDA data to update the analysis of Shear *et al.* HUD focused on denial and origination rates for conforming conventional applications and included all metropolitan areas in the analysis.[30] HUD's analysis also supports a targeted underserved definition. Lower-income census tracts and census tracts with concentrations of African American and Hispanic families have lower origination rates and higher denial rates. For example, the regression estimates suggest that all-White census tracts would have an average 13.7 percent denial rate and 13.4 originations per 100 properties, while census tracts that are 50 percent African American (Hispanic) would have an average 22.3 (19.7) percent denial rate and 9.8 (12.0) originations per 100 properties. Furthermore, the regression analysis indicates central-city location has a minimal effect on denial and origination rates, after controlling for census tract effects.[31]

Robert Avery, Patricia Beeson, and Mark Sniderman of the Federal Reserve Bank of Cleveland recently presented a paper specifically addressing the issue of underserved areas in the context of the GSE legislation.[32] Their study examines variations in application rates and denial rates for all individuals and census tracts included in the 1990 and 1991 HMDA data base. They seek to isolate the differences that stem from the characteristics of the neighborhood itself rather than the characteristics of the individuals that apply for loans in the neighborhood or lenders that happen to serve them. Similar to the two studies of redlining reviewed in the previous section, Avery, Beeson and Sniderman hypothesize that variations in mortgage application and denial rates will be a function of several risk variables such as the income of the applicant and changes in neighborhood house values; they test for independent racial effects by adding to their model the applicant's race and the racial composition of the census tract. Econometrics are used to separate individual applicant effects from neighborhood effects.

Based on their empirical work, Avery, Beeson and Sniderman reach the following conclusions:

- The individual applicant's race exerts a strong influence on mortgage application and denial rates. African American applicants, in particular, have unexplainably high denial rates.
- Once individual applicant and other neighborhood characteristics are controlled for, overall denial rates for purchase and refinance loans were only slightly higher in minority census tracts than non-minority census tracts.[33] For white applicants, on the other hand, denial rates were significantly higher in minority tracts.[34] That is, minorities

[28] William Shear, James Berkovec, Ann Dougherty, and Frank Nothaft, ''Unmet Housing Needs: The Role of Mortgage Markets,'' presented at mid-year meeting of the American Real Estate and Urban Economics Association, June 1, 1994. See also Susan Wharton Gates, ''Defining the Underserved,'' *Secondary Mortgage Markets,* 1994 Mortgage Market Review Issue, pp. 34–48.

[29] Shear *et al.,* p. 18.

[30] Including FHA applications in the analysis—as in Shear *et al.*—does not significantly change the results reported in this section.

[31] Central city location had no significant effect on origination rates. For denial rates, the difference between the average central city denial rate and the average suburban denial rate was .56 percent.

[32] See Avery, *et al.*

[33] Avery *et al.* find very large unadjusted differences in denial rates between white and minority neighborhoods, and although the gap is greatly reduced by controlling for applicant characteristics (such as race and income) and other census tract characteristics (such as house price and income level), a significant difference between white and minority tracts remains (for purchase loans, the denial rate difference falls from an unadjusted level of 16.7 percent to 4.4 percent after controlling for applicant and other census tract characteristics, and for refinance loans, the denial rate difference falls from 21.3 percent to 6.4 percent). However, when between-MSA differences are removed, the gap drops to 1.5 percent and 1.6 percent for purchase and refinance loans, respectively. See Avery, *et al.,* p. 16.

[34] Avery, *et al.,* page 19, note that, other things equal, a black applicant for a home purchase loan is 3.7 percent more likely to have his/her application denied in an all-minority tract than in an all-white tract, while a white applicant from an all-minority tract would be 11.5 percent more likely to be denied.

have higher denial rates wherever they attempt to borrow but whites face higher denials when they attempt to borrow in minority neighborhoods. In addition, Avery *et al.* found that home improvement loans had significantly higher denial rates in minority neighborhoods. Given the very strong effect of the individual applicant's race on denial rates, Avery *et al.* note that since minorities tend to live in segregated communities, a policy of targeting minority neighborhoods may be warranted.

- The median income of the census tract had strong effects on both application and denial rates of purchase and refinance loans, even after other variables were accounted for.
- There is little difference in overall denial rates between central cities and suburbs, once individual applicant and census tract characteristics are controlled for.

Avery, Beeson and Sniderman conclude that a tract-level definition would be a more effective way to define underserved areas in the GSE regulation than using the list of OMB-designated central cities as a proxy.

The next section will also document that there are equally widespread and pervasive differences in socioeconomic conditions across neighborhoods.

f. Conclusions From HUD's Analysis and the Economics Literature About Urban Underserved Areas

The implications of studies by HUD and others for defining underserved areas can be summarized briefly. First, the existence of large geographic disparities in mortgage credit is well documented. HUD's analysis of 1993 and 1994 HMDA data shows that low-income and high minority neighborhoods receive substantially less credit than other neighborhoods and, by most reasonable criteria, fit the definition of being underserved by the nation's credit markets.

Second, researchers are testing models that more fully account for the various risk, demand, and supply factors that determine the flow of credit to urban neighborhoods. The studies by Holmes and Horvitz and Schill and Wachter are good examples of this recent research. Their attempts to test the redlining hypothesis show the analytical insights that can be gained by more rigorous modeling of this issue. However, as those two studies show, the fact that our urban areas are highly segregated means that the various loan, applicant, and neighborhood characteristics currently being used to explain credit flows are often highly correlated with each other which makes it difficult to reach definitive conclusions about the relative importance of any single variable such as neighborhood racial composition. Thus, the need continues for further research on the underlying determinants of geographic disparities in mortgage lending.[35]

Finally, much research strongly supports a targeted definition of underserved areas. Studies by Shear, *et al.* and Avery, Beeson, and Sniderman conclude that characteristics of both the applicant and the neighborhood where the property is located are the major determinants of mortgage denials and origination rates—once these characteristics are controlled for, other influences such as central city location play only a minor role in explaining disparities in mortgage lending. HUD's analysis shows that both credit and socioeconomic problems are highly concentrated in underserved areas within central cities and suburbs. The remaining, high-income portions of central cities and suburbs appear to be well served by the mortgage market.

HUD recognizes that the mortgage origination and denial rates forming the basis for the research mentioned in the preceding paragraph, as well as for HUD's definition of underserved areas, are the result of the interaction of individual risk, demand and supply factors that analysts have yet to disentangle and interpret. The need continues for further research addressing this problem. HUD believes, however, that the economics literature is consistent with a targeted rather than a broad approach for defining underserved areas.

3. Alternative Underserved Area Definitions for Urban Areas[36]

This section compares the final rule's underserved definition to the alternative definitions advanced by Freddie Mac and Fannie Mae. Other comments were essentially variations on the two distinct approaches suggested by the GSEs. Therefore, rather than analyzing all variants, this section analyzes the two major alternative definitions—using all central cities and all rural areas, or expanding on the proposed rule's tract-based approach. The tracts added by these two alternative definitions have lower denial rates and higher origination rates than the tracts covered by the final rule. A study by the Urban Institute, summarized below, criticized both alternative definitions for being too broad in coverage.

a. The Fannie Mae Definition

Fannie Mae urged that HUD use the following definition for the geographically targeted goal: All central cities as defined by OMB, all non-metropolitan areas, *and all other* metropolitan census tracts that are more than 50 percent minority *or* that have an income less than 80 percent of area median income. The alternative definition proposed by Fannie Mae includes central city tracts that are substantially better off and have fewer problems accessing credit than underserved tracts covered by the final rule's definition. In suburban areas, the Fannie Mae definition excludes suburban tracts that appear to have mortgage access problems.

Table B.3 reports mortgage denial and origination rates and socioeconomic characteristics of served and underserved census tracts under the Fannie Mae definition. Credit access does not appear to be a problem in the added tracts—mortgage denial rates are one-half of mortgage denial rates in central city tracts covered by HUD's underserved definition. Moreover, the added central city census tracts appear substantially better off than the central-city census tracts covered by HUD's definition. The 7 percent poverty rate for the central city tracts added by Fannie Mae's underserved definition is only about one-third the 22 poverty rate for tracts included in central cities under the final rule.

The suburban tracts excluded from Fannie Mae's definition do not appear as distressed as other suburban underserved tracts covered by the final rule. For example, the 10 percent poverty rate in the excluded tracts is lower than the 14 percent poverty rate in all HUD suburban underserved tracts. But these tracts do appear to have problems accessing mortgage credit as evidenced by their high denial rates. The denial rate in the excluded tracts is 18 percent compared to the 20 percent denial rate in all underserved suburban tracts covered by the final rule.

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[35] Methodological and econometric challenges that researchers will have to deal with are discussed in Mitchell Rachlis and Anthony Yezer, ''Serious Flaws in Statistical Tests for Discrimination in Mortgage Markets,'' *Journal of Housing Research*, Volume 4, 1993, pp. 315–336.

[36] The analysis in this section relies on 1993 HMDA data.

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Table B.3

Characteristics of HUD's and Fannie Mae's Underserved Areas In Metropolitan Areas

	Denial Rate	Tract Income/ MSA Income	Relative Median House Value*	Minority Percentage	Poverty Rate
Central City					
HUD (Base)	21.5%	69.7	71.7	51.6%	21.9%
Additional Fannie Mae Tracts	10.8%	130.2	128.2	13.4%	7.1%
Suburbs					
HUD (Base)	20.4%	80.8	78.5	34.4%	14.0%
Tracts Excluded from Fannie Mae Definition	18.4%	88.8	86.3	18.8%	10.1%
Metropolitan Areas					
HUD (Base)	21.0%	70.9	72.3	46.9%	20.0%
Fannie Mae Definition	15.5%	89.2	89.7	39.0%	16.6%

* Median house value in tract relative to median house value in metropolitan area.

b. The Freddie Mac Definition

A tract is underserved, according to Freddie Mac, if minorities comprise 20 percent or more of the residents *or* the median income of families does not exceed 100 percent of area median income. Freddie Mac's definition includes areas covered by the Geographically Targeted Goal as well as 5,367 additional tracts where median family income is between 90 and 100 percent of area median income or minorities comprise 20–30 percent of tract population.

Table B.4 reports characteristics of the census tracts added by Freddie Mac's underserved area definition. Mortgage credit access does not appear to be a major problem in these added tracts. Their 15 percent mortgage denial rate is only slightly above average and much lower than the 21 percent denial rate for tracts included in the Geographically Targeted Goal. Mortgage origination patterns in these tracts show a similar disparity.

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Table B.4

Characteristics of HUD's and Freddie Mac's Underserved Areas In Metropolitan Areas

	Denial Rate	Tract Income/ MSA Income	Relative Median House Value*	Minority Percentage	Poverty Rate
Central City					
HUD (Base)	21.5%	66.3	69.0	54.4%	23.6%
Added Freddie Mac Tracts	14.5%	98.1	96.2	14.6%	9.5%
Suburbs					
HUD (Base)	20.4%	80.0	78.5	34.4%	14.0%
Added Freddie Mac Tracts	15.3%	97.0	95.4	10.7%	7.7%
Metropolitan Areas					
HUD (Base)	21.0%	70.9	72.3	46.9%	20.0%
Added Freddie Mac Tracts	15.0%	97.4	95.7	12.1%	8.3%

* Median house value in tract relative to median house value in metropolitan area.

c. The Urban Institute Study.

HUD commissioned the Urban Institute to evaluate the Department's effort to define underserved metropolitan areas. The Urban Institute analysis examined how HUD's, Fannie Mae's, and Freddie Mac's underserved definitions are related to a measure of credit flow problems. An underserved definition can be judged on how accurately it predicts the ''credit flow measure.'' In its analysis, the Urban Institute used mortgage denial rates as the credit flow measure.

The Urban Institute tested each of the definitions using a denial rate threshold of 22 percent.[37] The proposed rule's definitions correctly predict the credit flow measure for 71 percent of the tracts, while the Freddie Mac definition correctly predicts only 63 percent of the tracts, and the Fannie Mae definition only 58 percent of the tracts. Moreover, the HUD definition is not sensitive to changes in the threshold that defines credit flow problems. The Urban Institute also concluded that the final rule's definition is superior to the Freddie Mac and Fannie Mae definitions when the tract denial rate threshold is reduced to 17 percent.

4. Identifying Underserved Locations in Rural Areas[38]

This section discusses the final rule's definition of rural underserved areas, reviews the existing literature on rural housing needs and rural mortgage credit problems, and summarizes discussions held with rural lenders, rural housing developers, public interest groups, and the GSEs at forums on rural lending sponsored by HUD.[39] In addition, this section explains why defining underservedness in rural areas is more difficult than in metropolitan areas.

a. Basic Characteristics of Rural Areas

Identifying underserved rural areas is more difficult than identifying underserved metropolitan areas. In part, this difficulty results from the use of multiple definitions of ''rural'' by researchers, policy makers, and Federal agencies. The Census Bureau defines rural as communities with fewer than 2,500 residents. The Department of Agriculture's Rural Housing and Community Development Service (formerly the Farmers Home Administration) uses several definitions of rural, each specific to one of its housing programs. Maps outlining the areas covered by the various RHCDS programs are available only at local agriculture field offices.[40]

For the purposes of the final rule, HUD defines rural to be any area that lies outside of metropolitan boundaries established by OMB. The OMB nonmetropolitan definition is easily understood by lenders and the GSEs. Approximately 21 percent of the United States population lives in nonmetropolitan areas, with 75 percent of the nonmetropolitan population concentrated in the South and Midwest.

Proportionately more poor people and fewer minorities live in nonmetropolitan areas than in metropolitan areas. The poverty rate in nonmetropolitan areas is 17 percent, compared to 12 percent in metropolitan areas; minorities make up 15 percent of the population in nonmetropolitan areas compared to 27 percent in metropolitan areas. The South and West nonmetropolitan regions have the highest poverty rates and minority percentages. The South, for example, has a 21 percent poverty rate and a 23 percent minority concentration. Poverty rates are highest in remote counties that are not adjacent to a metropolitan area and have less than 2,500 in urban areas. These remote counties account for 12 percent of nonmetropolitan population.

b. Data Issues and Previous Research

Defining rural underserved areas requires a different approach than in metropolitan areas because of the lack of mortgage flow data, differences in housing needs between urban and rural areas, and the difficulty of implementing mortgage programs at the census tract level in rural areas. Evaluating which rural areas are underserved in terms of access to mortgage credit cannot be done with HMDA data, the source used for most studies of credit needs, because HMDA does not provide geographic identifiers on mortgage activity outside of metropolitan statistical areas.[41]

There are few conclusive studies on access to mortgage credit in rural areas because of the lack of adequate data.[42] The studies that do exist only suggest broad conclusions about credit flows in rural areas. Recognizing this lack of research on credit flows in rural areas, the Department consulted with researchers from academia, the Department of Agriculture, the Census Bureau, the Housing Assistance Council, and the Congressional Budget Office. The Department also conducted a series of forums to solicit information on rural mortgage markets from lenders, rural housing groups, and the GSEs. The following section summarizes the existing research on rural credit flows and describes further analysis conducted by HUD.

The Urban Institute Study (''The Availability and Use of Mortgage Credit in Rural Areas'' 1990) concludes that while little data on mortgage credit in rural areas is available, evidence suggests that there is no rural credit shortage that would warrant changes in federal mortgage credit policy. Symptoms of credit shortage identified by the Urban Institute include low homeownership rates, limited borrowing to finance home purchase, adverse credit terms for qualified borrowers, and larger portions of income spent on housing. Because these symptoms do not exist in the majority of rural areas, the Urban Institute concluded that most rural areas suffering from inactive local mortgage markets have weak economies in which demand for home mortgages is low.

The Urban Institute's indicators of a credit shortage and their focus on fixed-rate conventional mortgages could have led to the wrong conclusions about mortgage credit availability in rural areas. Higher homeownership rates in rural areas, for example, are not necessarily indicative of the lack of a credit shortage. Although nonmetropolitan households are more likely to own their homes than metropolitan households—the homeownership rate is 73 and 62 percent, respectively, in nonmetropolitan and metropolitan areas—the higher homeownership rate likely reflects the lack of rental

[37] The unweighted average of denial rates across metropolitan census tracts is 17 percent. The weighted average, which takes into account the number of applications in a tract, is 13 percent.

[38] In this Appendix definition, ''rural'' is used synonymously with ''nonmetropolitan,'' which differs from the terminology employed by the Census Bureau.

[39] Records of these forums are part of the public docket for this rule, and are available for public inspection at the HUD Headquarters Building, Room 10276.

[40] For example, the Rural Housing and Community Development Service (RHCDS) defines rural for its Rural Guaranteed Housing Program as any community with less than 10,000 people in a metropolitan area and less than 20,000 outside an MSA.

[41] Lenders are not required to report under HMDA the location of those mortgage applications for properties outside MSA boundaries. Moreover, a large portion of the data compiled by banking regulators does not distinguish between mortgage activity of rural branches of large regional banks and mortgage activity of the bank's metropolitan headquarters.

[42] Studies include: ''Analysis of Underserved Rural Areas,'' Housing Assistance Council, 1995; ''Effect of Federal Home Loan Bank System District Banks on the Housing Finance System in Rural Areas,'' ICF Incorporated, 1993; ''The Availability and Use of Mortgage Credit in Rural Areas,'' The Urban Institute, 1990; and ''Location, Location, Location: Report on Residential Mortgage Credit Availability in Rural Areas,'' The Center for Community Change, 1990.

opportunities and the high percentage of mobile homes in rural areas. Mobile homes account for 15 percent of owner-occupied units in nonmetropolitan areas, compared with only 6 percent in metropolitan areas. Mobile homes are starter homes for many rural households because of their affordability and the availability of dealer financing. The homeownership rate, exclusive of mobile homes, is approximately equal in metropolitan and nonmetropolitan areas indicating that nonmetropolitan households who buy mobile homes are the counterparts of metropolitan households who live in rental housing.

Furthermore, it is not surprising that studies that focus on fixed-rate home purchase mortgages lead to the conclusion that credit terms in rural areas do not differ significantly from credit terms in urban areas.[43] Properties that meet the underwriting criteria for fixed-rate mortgages are similar to urban properties that meet these criteria. Many rural properties, however, do not satisfy the criteria designed for mortgages underwritten in urban areas.

The Center for Community Change Study (''Location, Location, Location'', 1990) suggests that financing of housing in rural areas is made difficult by underwriting standards designed for urban areas: ''Interviews with bankers and realtors indicate that federal mortgage assistance programs and secondary market underwriting criteria continue to be geared to an urban market with a fire hydrant on every block and hard surface roads throughout.'' Moreover, the Center for Community Change reports that in many remote areas and areas with high concentrations of minorities and low-income households, a number of barriers prevent borrowers from accessing mortgage credit. These barriers include lower lender participation in federal mortgage assistance programs, lack of financial expertise among rural lenders, lack of private mortgage insurance, and a decreasing number of lending institutions located in rural communities as a result of the savings and loan crisis of the 1980s.

Housing Assistance Council Study. The connection between high-minority, low-income populations and poor access to mortgage credit was examined in a 1995 study conducted by the Housing Assistance Council (HAC) for HUD. HAC focused on the impact of alternative combinations of HUD's proxies of underserved areas—minority concentration and median income. The HAC study reiterated the difficulty of establishing an underserved areas definition that balances the priority of targeting those areas with the most severe credit problems with the priority of including enough areas so that the GSEs could build an infrastructure to facilitate and stimulate mortgage lending in rural areas. HAC suggested that the income criteria be high enough to include persistent poverty areas with low minority concentrations.

USDA's Economic Research Service. ''Rural Conditions and Trends'', a periodic research publication, shows that urban proximity is important: Economic conditions and housing problems tend to be worse in counties most remote from metropolitan areas or smaller cities.[44] In particular, counties with ''persistent low-income,'' which are disproportionately more rural and remote, have had little recent economic activity, stagnation in real family income during the 1980s, and continue to have the highest incidence of housing lacking complete plumbing. These high poverty counties are concentrated in Appalachia and in areas with high proportions of minority residents.

The ICF Study. Prepared for the Federal Housing Finance Board, this 1993 study examines the effect of the Federal Home Loan Bank System (FHLBS) District Banks on the housing financing system in rural areas. The study concluded that nonmetropolitan commercial banks and savings and loans are more likely than their metropolitan counterparts to hold loans in portfolio than to participate in the secondary market. Banks and savings and loans are the largest holders of fixed-rate mortgages in nonmetropolitan communities. In metropolitan areas, however, conventional mortgages are more often held or securitized by GSEs. Membership in the FHLBS is beneficial to commercial banks, savings and loans, and thrifts because the Bank System can provide them with capital, in the form of advances secured by the portfolio loans, to originate additional mortgage loans.[45] The importance of the FHLBS to rural lenders suggests that increased access to the secondary market would also be important for rural lenders.

RFS Analysis. HUD's analysis of the Residential Finance Survey shows that 17 percent of all mortgages originated between 1989 and 1991 were in nonmetropolitan areas. This percentage is consistent with the overall percentage of owner-occupied units in nonmetropolitan areas, especially after taking into account the lower mobility of nonmetropolitan residents and the fact that more households use cash and other non-bank sources to finance home purchases.[46]

Nonmetropolitan households are less likely to hold FHA mortgages than their metropolitan counterparts. According to RFS data, FHA's share of mortgages originated in nonmetropolitan areas is approximately half its share of mortgages in metropolitan areas. In part, the lower FHA share is attributable to the presence of the Rural Housing and Community Development Service (formerly the Farmers Home Administration) in nonmetropolitan areas. According to RFS data, the RHCDS 502 Direct Loan Program accounted for 5 percent of rural home purchase mortgages between 1989 and 1991.[47] The funds for this program, however, have been dwindling from $1.8 billion dollars in 1994 to $900 million in 1995. In 1991, the RHCDS created the 502 Guaranteed Rural Housing Loan Program, which guarantees losses up to 90 percent of the loan amount on 100-percent loan-to-value loans. The borrower's income cannot exceed 115% of county median income to qualify for these loans. Having to hold a 30-year fixed-rate mortgage in portfolio and being subject to recourse on the loan prevents many lenders from participating in the program.

According to the RFS, conventional mortgages held by financial institutions differ in metropolitan and nonmetropolitan areas. First, fewer nonmetropolitan mortgages are privately insured—16 percent of mortgages in nonmetropolitan areas are insured compared to 22 percent of mortgages in metropolitan areas.[48] Second,

[43] The ICF study also concludes that credit terms do not differ significantly between metropolitan and nonmetropolitan mortgages but their focus is only on fixed-rate and adjustable rate conventional mortgages.

[44] *Rural Conditions and Trends*, Volume 4, No. 3, Fall 1993, a special 1990 census issue, documents differences among counties in population, education, employment, income, poverty, and housing.

[45] ICF Incorporated, ''Effect of Federal Home Loan Bank System District Banks on the Housing Finance System in Rural Areas,'' p.30.

[46] Using 1989 AHS data, ICF reports that the mobility rate of nonmetropolitan owners is 18 percent lower than the mobility rate of metropolitan owners. Data from the Residential Finance Survey show that 10 percent of metropolitan households and 18 percent of nonmetropolitan households use cash to acquire their homes.

[47] This Program offers 100-percent loan-to-value (including closing costs) fixed-rate mortgages for 30 years at subsidized interest rates; it is targeted to rural households at 80 percent of area median income or less. To make Program funds go further, the RHCDS created the Rural Direct Leveraging Program where the lender and the RHCDS each make a 50-percent loan-to-value loan.

[48] According to the Center for Community Change study, the higher percentage of uninsured conventional mortgages could imply that

Continued

nonmetropolitan households rely more on short-term loans with balloon payments than their metropolitan counterparts.[49] Finally, the mortgage term for conventional fixed-rate mortgages is shorter for nonmetropolitan households.[50]

Rural Forums. In addition to examining available research, HUD convened three forums on rural housing issues with rural lenders, rural housing groups, housing industry organizations, the Department of Agriculture's Economic Research Service and Rural Housing and Community Development Service, the Congressional Budget Office, and the GSEs, which focused on the unique nature of mortgage lending and the role of the secondary market in rural areas. Participants agreed that some of the difficulty associated with financing housing in rural areas results from inappropriate underwriting and appraisal standards, inadequate resources, and the lack of access to government programs and secondary mortgage funds.

Participants emphasized that mortgage lending in rural areas is very different from lending in urban areas. The heterogeneity of housing types, nontraditional and often seasonal incomes of rural borrowers, and lack of credit history for many rural borrowers make underwriting in rural areas difficult for urban-oriented lenders. Appraisers may lack comparable sales or must rely on comparables over one year old or in a nearby town in order to determine a property's value.

Participation of rural lenders in the secondary market is limited. The low volume of loans originated by rural lenders serving smaller nonmetropolitan communities makes this business less profitable, and thus less attractive, to the secondary marketing firms.[51] Rural lenders are more likely to make short-term loans, 3-to-5 year balloons or adjustable rate mortgages, and hold them in portfolio. Many rural lenders do not participate in federal housing programs because they do not want to deal with the ''red tape'' of government or they are unaware of how the programs work and do not have the resources necessary to train staff. Moreover, some small rural banks may not be equipped to do the kind of labor-intensive loans that are required to qualify low-income borrowers.

Larger financial institutions, which do have experience with government programs and the secondary market, target more urbanized nonmetropolitan communities because of the higher demand for loans and lower costs of business. These lenders concentrate on loans with larger loan amounts and lower servicing costs, focus less on remote areas, and originate loans that are more easily sold to the secondary market.

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nonmetropolitan residents make higher down payments than metro residents because private market insurance is unavailable.

[49] In nonmetropolitan areas with fewer than 10,000 people, for example, 63 percent of conventional mortgages are fixed-rate, 16 percent are short-term with balloon payments, and 21 percent are adjustable rate mortgages. In nonmetropolitan areas with more than 10,000 people, 68 percent of conventional mortgages are fixed rate, 11 percent are short-term with balloon payments, and 20 percent are adjustable rate. In metro areas, however, 75 percent are fixed-rate, 5 percent are short-term balloons, and 19 percent are adjustable rate.

[50] In metro areas, 72 percent of fixed-rate mortgages have mortgage terms greater than 20 years, compared with only 33 percent in nonmetropolitan communities with less than 10,000 population and 59 percent in nonmetropolitan communities with more than 10,000 population. A similar story can be told for adjustable rate mortgages although the differential in percentages between metro and nonmetropolitan is not as pronounced. In particular, nonmetropolitan areas with more than 10,000 people have similar terms as metro areas. Nonmetropolitan areas with fewer than 10,000 people have shorter mortgage terms than other in nonmetropolitan and metropolitan areas.

[51] Twenty-nine percent of commercial banks (including the branches of banks headquartered elsewhere) are community banks. Fifty percent of these banks are in towns with 2,500 or fewer residents. The average community bank has only $50 million in assets.

Efforts have been made to overcome housing finance difficulties in rural areas. For example, the Farm Credit System, Farmer Mac, and Fannie Mae recently created a conduit to provide affordable loans to residents of rural communities with populations under 2,500.[52] The underwriting provisions of the program accommodate the unique features of rural housing, such as large lot sizes and few comparable sales for appraisal. In 1994, Fannie Mae established new, more flexible, underwriting guidelines for rural areas. These changes in the industry could contribute to increased secondary market activity and account for the increase in the proportion of Fannie Mae's business in rural areas. In 1994, Fannie Mae's purchases in rural areas increased to 9.3 percent of its total business, compared to 8.3 percent in 1993. Rural areas accounted for about 12.5 percent of Freddie Mac's business in both 1993 and 1994.

c. HUD's Definition of Underserved Counties

The Secretary has determined that in nonmetropolitan areas ''underserved areas'' are defined as counties where: minorities comprise 30 percent or more of the residents and the median income of families does not exceed 120 percent of the state nonmetropolitan median income; *or* the median income of families does not exceed 95 percent of the greater of the state nonmetropolitan median income or the nationwide nonmetropolitan median income. Comparing county median income to state nonmetropolitan median income ensures that poor counties in high-income states are included as underserved rural areas and comparing county median income to national nonmetropolitan median income ensures that poor counties in poor states are included as underserved rural areas.

Table B.5 compares the final rule's definition with Freddie Mac's and Fannie Mae's definitions of rural underserved areas as well as with a 90/30 definition that is analogous to HUD's metropolitan underserved areas definition.[53] HUD, however, chose the broader 95/30 definition for rural areas because the 90/30 definition did not include a significant number of persistent poverty counties.[54]

The final rule's definition of rural underserved areas balances the competing priorities of a targeted definition that provides greater mortgage opportunities to counties experiencing the worst problems and of a broad definition that encourages the GSEs to provide a secondary market infrastructure that encourages mortgage lending in all nonmetropolitan areas. The final rule's definition covers 54 percent of the nonmetropolitan population, 67 percent of poor persons, and 75 percent of the minority population.[55] The counties included have poverty rates (21 percent) and minority percentages (21 percent) well above the average poverty rate (17 percent) and minority percentage (15 percent) for all nonmetropolitan areas. Thus, HUD's definition encompasses 66 percent of all nonmetropolitan counties, including the most distressed nonmetropolitan counties.

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[52] Conduits provide assistance to smaller lenders so that they have access to secondary market funds. Moreover, conduits can provide guarantees and recourse to secondary market investors that low volume lenders cannot provide.

[53] Freddie Mac's definition includes counties as underserved if county median income does not exceed state nonmetropolitan median income or minority composition exceeds 20 percent. Fannie Mae's underserved definition includes all nonmetropolitan counties.

[54] A county experiences persistent poverty if its poverty rate is at least 20 percent over the last 3 decades.

[55] The 54 percent coverage rate in nonmetropolitan areas is similar to the 58 percent coverage rate in central cities.

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Table B.5

Nonmetropolitan Counties

	All Nonmetropolitan Areas	Coverage Rates In Underserved Rural Counties			
		90/30	95/30 Absolute	Freddie Mac	Fannie Mae
Counties	2,305	42.7 %	**66.0 %**	75.0 %	100 %
Population	50,860,983	33.3	**54.0**	66.0	100
Poor	8,421,751	45.3	**67.0**	76.0	100
Minority Population	7,495,007	63.5	**75.0**	83.0	100
Substandard Housing Units	915,866	51.3	**69.0**	78.0	100
Mobile Homes	2,033,730	39.7	**62.0**	73.0	100

	All Nonmetropolitan Areas	Rates In Underserved Rural Counties			
		90/30	95/30 Absolute (Base)	Added by	
				Freddie Mac	Fannie Mae
Poverty Rate	17.0 %	23.3 %	**21.0 %**	14.0 %	12.0 %
Minority Percentage	15.0	28.1	**21.0**	9.0	8.0
Substandard Housing	5.0	7.7	**6.0**	4.0	3.0
Mobile Homes	15.0	18.1	**17.0**	14.0	12.0

Counties not included under the final rule's definition but included by the broader Freddie Mac or Fannie Mae definitions have relatively low poverty rates and low minority percentages. The Freddie Mac definition includes an additional 221 counties and approximately 6 million additional people. These additional counties have a 14 percent poverty rate and minorities comprise 9 percent of the population. The Fannie Mae definition includes an additional 794 counties and approximately 23 million people. These additional counties have a 12 percent poverty rate and minorities comprise 8 percent of the population.

The HUD definition also targets specific geographic areas with high poverty and minority concentrations. For example, 71 percent of the nonmetropolitan population in the South is covered by HUD's definition. Similarly, HUD's definition includes 84 percent of the population that reside in remote counties that are not adjacent to metropolitan areas and have fewer than 2,500 residents in towns.

d. Tract Versus County Definition

A number of commenters, including the GSEs, argued that a definition based on rural census tracts was ill-advised because lenders in rural areas do not understand or lend on the basis of census tracts. Fannie Mae commented that use of census tract data was inappropriate because census tracts have ''no practical meaning'' in rural areas from a marketing standpoint; that geographic measurements used in the rule should be ''widely understood, easily measured, and practical from a marketing point of view;'' and that census tracts in rural areas ''fail these tests.''

In contrast, some commenters, such as HAC, noted that a county-based definition is not as targeted as a tract definition since it excludes tracts which could be considered underserved in served counties and includes tracts which could be considered adequately served in underserved counties.

The final rule uses the county designation, as opposed to a census tract-based definition. Counties are easy to identify and geocode, which will simplify the reporting process for the GSEs and for the lenders who provide the GSEs with loan level data. County boundaries are commonly recognized by housing industry representatives involved in the loan and marketing process, including lenders and appraisers.

Under this county-based definition, the GSEs may have an incentive to buy mortgages in the parts of underserved counties that have higher incomes. Although 21 percent of the homeowners that live in underserved rural areas reside in served tracts, these tracts accounted for 39 percent of GSE purchases. Even though HUD recognizes that a census tract definition better targets underserved areas, HUD decided to use a county-based definition because the operational difficulties associated with census tract and Block Numbering Area (BNA) boundaries outweigh the benefits of improved targeting of underserved areas.

C. Consideration of the Housing, Economic, and Demographic Factors

As Section B shows, the most thorough studies available provide strong evidence that in metropolitan areas low income and minority composition identify neighborhoods that are underserved by the mortgage market. As this section discusses, geographical differentials in housing, social, and economic problems and past discrimination against minorities confirm that problems are greater throughout the nation in the areas covered by the Geographically Targeted Goal. Section C.1. briefly describes housing, social, and economic problems of distressed neighborhoods. Section C.2. discusses discrimination and other housing problems faced by minorities. Although few studies have yet analyzed the specific geographic areas targeted by the final rule, the segregation of minorities within the nation's inner cities and poorer rural counties makes this information pertinent to analysis of underserved areas and to the goal set by the Secretary.

1. Urban and Rural Housing Needs and the Housing Needs of Underserved Areas

Over the past three decades evidence of growing poverty concentrations has increased concern about poor living conditions in the nation's distressed neighborhoods. John Kasarda has focused on trends in the neighborhood concentration of poverty and measures of the ''underclass'' population such as school dropouts, unemployed and underemployed adult males, single-parent families, and families dependent upon welfare.[56] Kasarda has not only documented the extreme deprivation that exists in minority and low-income neighborhoods throughout our major urban areas, but he has also shown that neighborhood distress and concentrations of lower-income residents in tracts with high poverty worsened during the 1980s.

Analysis within 44 major metropolitan areas showed that in the late 1980s renters were most likely to have worst case needs in the poorest neighborhoods.[57] Although only one-tenth of households lived in neighborhoods with poverty rates above 20 percent, those poorest neighborhoods housed almost one-fourth of worst case renters. These poorest zones closely resemble tracts identified as poor ghettos or underclass areas. They contained older, smaller units that were more often physically inadequate and crowded than other housing in the metropolitan areas studied.[58] Additional discussion of housing needs is contained in Appendix A.

2. Economic, Housing, and Demographic Conditions

Appendix A includes detailed discussion of economic, housing, and demographic conditions. That discussion was considered in establishing the Geographically Targeted Goal. This section discusses other conditions.

a. Discrimination in the Housing Market

In addition to discrimination in the lending market, substantial evidence exists of discrimination in the housing market. The 1989 Housing Discrimination Study sponsored by HUD found that minority home buyers encounter some form of discrimination about half the time when they visit a rental or sales agent to ask about advertised housing.[59] The incidence of discrimination was higher for African Americans than for Hispanics and for homebuyers than for renters. For renters, the incidence of discrimination was 46 percent for Hispanics and 53 percent for African Americans. The incidence among buyers was 56 percent for Hispanics and 59 percent for African Americans.

While discrimination is rarely overt, minorities are more often told the unit of interest is unavailable, shown fewer properties, offered less attractive terms, offered less financing assistance, or provided less information than similarly situated non-minority homeseekers.

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[56] ''Inner-City Concentrated Poverty and Neighborhood Distress: 1970 to 1990.'' *Housing Policy Debate*, 4(3): 253–302.

[57] U.S. Dept. of Housing and Urban Development, 1992. *The Location of Worst Case Needs in the Late 1980s: A Report to Congress.* HUD–1387–PDR.

[58] Kathryn P. Nelson, 1993. ''Intra-urban Mobility and Location Choice in the 1980s,'' pp. 53–95 in Thomas Kingsley and Margery Turner, eds., *Housing Markets and Residential Mobility*, Washington, DC: The Urban Institute Press.

[59] Margery A. Turner, Raymond J. Struyk, and John Yinger. *Housing Discrimination Study: Synthesis*, Washington, D.C., U.S. Department of Housing and Urban Development: 1991.

Some evidence indicates that properties in minority and racially-diverse neighborhoods are marketed differently from those in White neighborhoods. Houses for sale in non-White neighborhoods are rarely advertised in metropolitan newspapers, open houses are rarely held, and listing real estate agents are less often associated with a multiple listing service.[60]

b. Housing Problems of Minorities and their Neighborhoods

Because they face discrimination in access to housing or lending, minorities and their neighborhoods face severe housing problems:

- Discrimination in the housing and lending markets is evidenced by racial disparities in homeownership. In 1991, the homeownership rate was 68 percent for Whites, 43 percent for African Americans, and 39 percent for Hispanics. Although differences in income, wealth, and family structure explain much of the differences, racial disparities persist after accounting for these factors.[61]
- Discrimination, while not the only cause, contributes to the pervasive level of segregation that persists between African Americans and Whites in our urban areas.
- Hispanics are the group most likely to have worst case needs for housing assistance, but least likely to receive assistance; in 1991, only 21 percent of very low-income Hispanics lived in public or assisted housing. The 1989 to 1991 increase in worst case needs was the largest for Hispanic households, rising from 39.2 to 44.4 percent of very low-income Hispanic renters.

Homeownership rates vary consistently by neighborhood characteristics. As Table B.6 shows, on average homeownership rates decrease as the minority concentration in census tracts increases, and as income falls relative to the area median. These patterns are consistent with the demographic patterns described earlier, that minorities and low-income households have lower homeownership rates. An exception to this pattern occurs in tracts with incomes below 50 percent of the area median, in which homeownership rates rise with minority concentration in some cases. However, only a very small proportion of households live in these tracts.

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[60] Margery A. Turner, ''Discrimination in Urban Housing Markets: Lessons from Fair Housing Audits,'' *Housing Policy Debate,* Vol. 3, Issue 2, 1992, pp. 185–215.

[61] Susan M. Wachter and Isaac F. Megbolugbe, ''Racial and Ethnic Disparities in Homeownership,'' *Housing Policy Debate,* Vol. 3, Issue 2, 1992, pp. 333–370.

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Table B.6

Homeownership Rates for Metropolitan Census Tracts

Tract Median Income as a Percentage of Area Median Income	Percentage of Minority Households in Census Tracts										
	LT 10%	10-20%	20-30%	30-40%	40-50%	50-60%	60-70%	70-80%	80-90%	90-100%	Total
30% or Less	27%	23%	34%	34%	37%	33%	35%	37%	33%	35%	35%
30-40%	35%	26%	38%	40%	39%	38%	40%	38%	40%	43%	41%
40-50%	45%	44%	43%	44%	44%	44%	43%	45%	45%	48%	46%
50-60%	63%	49%	51%	47%	48%	51%	52%	50%	53%	54%	52%
60-90%	74%	66%	63%	62%	60%	62%	63%	64%	63%	65%	67%
90-100%	80%	74%	72%	70%	69%	71%	70%	71%	74%	79%	77%
100-120%	84%	78%	76%	75%	73%	77%	78%	77%	79%	75%	81%
Greater than 120%	88%	83%	81%	82%	81%	80%	84%	84%	82%	78%	86%
Total	83%	76%	71%	68%	65%	65%	64%	63%	60%	56%	75%

3. Previous Performance and Effort of the GSEs In Connection With the Central Cities, Rural Areas and Other Underserved Areas Goal

Table B.7 summarizes GSE acquisitions in underserved areas during 1993 and 1994. Fannie Mae's performance in underserved metropolitan areas increased from 23 percent in 1993 to 29 percent in 1994, and Freddie Mac's performance increased from 21 percent to 24 percent. Table B.7 also shows the level of the GSEs' purchases in rural underserved areas. Slightly more than 25 percent of their 1994 purchases in rural areas were in underserved areas.

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Table B.7

Fannie Mae and Freddie Mac Acquisitions of Single-Family and Multifamily Units in Underserved Metro and Nonmetro Areas in 1993 and 1994

	Fannie Mae		Freddie Mac	
	1993	1994	1993	1994
Metropolitan				
Number Of Units	642,843	502,270	429,313	275,276
Percent of Total Metro	22.6%	29.2%	20.9%	23.9%
Total Eligible	2,839,471	1,721,417	2,049,807	1,153,010
Nonmetropolitan				
Number Of Units	76,547	47,945	69,110	42,718
Percent of Total Metro	24.8%	26.9%	23.6%	26.3%
Total Eligible	308,088	177,965	292,802	162,462
Overall				
Number Of Units	719,390	550,215	498,423	317,994
Percent of Total Metro	22.9%	29.0%	21.3%	24.2%
Total Eligible	3,147,559	1,899,382	2,342,609	1,315,472

Source: HUD\ Policy Development and Research

4. Size of the Conventional Conforming Mortgage Market for Underserved Areas

HUD estimates that underserved areas account for 25–28 percent of the conventional conforming mortgage market. The analysis underlying this estimate is detailed in Appendix D.

5. Ability to Lead the Industry

This factor is the same as the fifth factor considered under the goal for mortgage purchases on housing for low- and moderate-income families. Accordingly, see Section C.5 of Appendix A for discussion of this factor.

6. Need to Maintain the Sound Financial Condition of the Enterprises

HUD has undertaken a separate, detailed economic analysis of this rule, which includes consideration of the financial safety and soundness implications of the housing goals. The analysis considered the likely mortgage default implications of the goals and implications for the profitability of the GSEs under various alternative economic assumptions. Among the conclusions are: that the goals will have, at most, only limited impacts on credit risk, which the GSEs should be able to handle without significant lowering of underwriting standards; that risks associated with increased multifamily mortgage purchase volumes under the goals are manageable, considering the scope of the increases implied by the goals; and that the goals imply no meaningful increase in risk to the sound financial condition of the GSEs' operations. Based on this analysis, HUD concludes that the goals raise minimal, if any, safety and soundness concerns.

D. Determination of the 1995 and 1996 Central Cities, Rural Areas, and Other Underserved Areas Goal

This section summarizes the Secretary's rationale for choosing targeted definitions of central cities, rural areas, and other underserved areas, compares the characteristics of served and underserved areas, and addresses other issues related to determining the goal. The section draws heavily from earlier sections which have reported findings from HUD's analyses of mortgage credit needs as well as findings from other research studies investigating access to mortgage credit.

1. Market Failure

The nation's housing finance market is a highly efficient system where most homebuyers can put down relatively small amounts of cash and obtain long-term funding at relatively small spreads above the lender's borrowing costs. Indeed, the growth of the secondary mortgage market during the 1980s integrated a previously thrift-dominated mortgage market with the nation's capital markets so that mortgage funds are more readily available and mortgage costs are more closely tied to movements in Treasury interest rates.

Unfortunately, this highly efficient financing system does not work everywhere or for everyone. Access to credit often depends on improper evaluation of characteristics of the mortgage applicant and the neighborhood in which the applicant wishes to buy. HUD's analysis of 1993 and 1994 HMDA data shows that mortgage credit flows are substantially lower in minority and low-income neighborhoods and mortgage denial rates are much higher for minority applicants.

Admittedly, disagreement exists in the economics literature regarding the underlying causes of these disparities in access to mortgage credit, particularly as related to the roles of discrimination, ''redlining'' of specific neighborhoods, and the barriers posed by underwriting guidelines to potential minority and low-income borrowers. Because the mortgage system is quite complex and involves numerous participants, it will take more data and research to gain a fuller understanding of why these disparities exist. Still, studies reviewed in Section B of this Appendix found that the individual's race and the racial and income composition of neighborhoods influence mortgage access even after accounting for demand and risk factors that may influence borrowers' decisions to apply for loans and lenders' decisions to make those loans. Therefore, the Secretary concludes that minority and low-income communities are underserved by the mortgage system.

2. Identifying Urban Underserved Areas

To identify areas underserved by the mortgage market, HUD focused on two traditional measures used in a number of HMDA studies: [62] application denial rates and mortgage origination rates per 100 owner-occupied units. [63] Tables B.1 and B.2 in Section B presented detailed data on denial and origination rates by the racial composition and median income of census tracts for metropolitan areas.[64] Aggregating those data is useful for examining denial and origination rates for broader groupings of census tracts:

[62] HMDA data have been expanded in 1993 to cover independent mortgage companies that originated 100 or more home purchase loans in the preceding calendar year. HMDA provides no useful information on rural areas. In addition, although HMDA data now include applications to provide some measure of overall loan demand, pre-screening discrimination can discourage would-be homebuyers from applying for a mortgage, leading to an underestimation of demand. Nevertheless, the HMDA data, while not necessarily definitive, are still useful in helping to define underserved areas.

[63] Analysis of application rates are not reported here. Although application rates are sometimes used as a measure of mortgage demand, they provide no additional information beyond that provided by looking at both denial and origination rates. The patterns observed for application rates are still very similar to those observed for origination rates.

[64] As shown in Table B.1, no sharp breaks occur in the denial and origination rates across the minority and income deciles—mostly, the increments are somewhat similar as one moves across the various deciles that account for the major portions of mortgage activity.

Minority composition (percent)	Denial rate (percent)	Origination rate	Tract income (percent)	Denial rate (percent)	Origination rate
0–30	11.8	14.1	Less than 90	21.3	7.5
30–50	19.1	10.7	90—120	13.5	12.6
50–100	24.4	7.2	Greater than 120	8.9	18.8

Two points stand out from these data. First, census tracts with higher percentages of minority residents have higher denial and lower origination rates. Tracts that are over 50 percent minority have twice the denial rate and half the origination rate of tracts that are under 30 percent minority.[65] Second, census tracts with lower incomes have higher denial rates and lower origination rates than higher income tracts. Tracts with income less than or equal to 90 percent of area median have more than two times the denial rate and less than one-half the origination rate of tracts with income over 120 percent of area median.

HUD chose over 30-percent minority and under 90-percent of area median income as the thresholds for defining metropolitan underserved areas. There are two advantages to HUD's definition. First, the cutoffs produce sharp differentials in denial and origination rates between served and underserved areas. For instance, the overall denial rate (21 percent) in underserved areas is almost double that (11 percent) in served areas. Thus, an advantage of a targeted definition of underserved areas is illustrated by sharp differences in mortgage access between served and underserved areas.[66]

A second advantage is that the minority and income cutoffs are useful for defining mortgage problems in the suburbs as well as in OMB-defined central cities. Underserved areas account for 31 percent of the suburban population, compared with 58 percent of the central city population. The average denial rate in underserved suburban areas is almost twice that in the remaining areas of the suburbs. (See Figure B.1 in Section B.) Thus, the minority and income thresholds in HUD's definition identify those suburban tracts that seem to be experiencing mortgage credit problems.

3. Characteristics of Urban Underserved Areas

The final rule's definition of metropolitan underserved areas includes 20,326 of the 43,232 census tracts in metropolitan areas, covering 44 percent of the metropolitan population, 58 percent of the OMB-defined central city population, and 31 percent of the suburban population. As shown in Table B.8, the final rule's definition covers most of the population of the nation's most distressed OMB-defined central cities: Newark (99 percent), Detroit (96 percent), Hartford (97 percent), Baltimore (90 percent), and Cleveland (90 percent). The nation's five largest cities also contain large concentrations of underserved areas: New York (62 percent), Los Angeles (69 percent), Chicago (77 percent), Houston (67 percent), and Philadelphia (80 percent).

High-Income-Minority Tracts. It should be noted that the final rule's definition of underserved areas excludes high minority tracts with median income above 120 percent of area median income. As shown in Table B.9, these tracts, which represent about two percent of metropolitan area population, appear to be relatively well off: they have low levels of poverty (7 percent), and high relative house values (122 percent). The high-income-minority tracts are concentrated in a few metropolitan areas: 7 percent of Los Angeles' population lives in them; the corresponding figures are 7 percent for New York, 5 percent for Miami, 25 percent for Honolulu, and 12 percent for San Antonio. By contrast, most relatively distressed metropolitan areas have few households in such areas—for example, Cleveland (1 percent), Detroit (2 percent), Memphis (1 percent), Milwaukee (0 percent), and Philadelphia (1 percent).

Income Threshold. Among other issues considered in setting the underserved definition for metropolitan areas included raising the area income threshold, to include more moderate-income census tracts. This alternative would add tracts with incomes between 90 and 100 percent of the area median. However, it should be noted that high-minority tracts (over 30 percent minority) at this income level are already included in HUD's underserved areas definition, and that raising the income limit to 100 percent would add only tracts with low-minority concentration (below 30 percent). These areas represent 4,486 census tracts, and comprise 11 percent of metropolitan population.[67]

These low-minority moderate-income tracts have denial rates almost 30 percent below the tracts that meet HUD's underserved definition (15 versus 21 percent). By contrast, high-minority moderate-income tracts have a denial rate almost identical to the overall underserved denial rate. The origination rate in moderate-income low-minority tracts (11 per 100 owner occupants) is noticeably higher than that in underserved tracts (8 per 100 owner occupants).

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[65] The differentials in denial rates are due, in part, to differing risk characteristics of the prospective borrowers in different areas. However, use of denial rates is supported by the findings in the Boston Fed study which found that denial rate differentials persist, even after controlling for risk of the borrower. See Section B for a review of that study.

[66] The Final Rule changed the income threshold from 80 percent to 90 percent. This added 3,645 tracts with a denial rate of 18 percent.

[67] In addition to including tracts with income between 90 and 100 percent of area median as underserved, the Freddie Mac definition includes tracts between 20 and 30 percent minority concentration; this would add an additional 881 tracts. Table B.4 compares the HUD and Freddie Mac definitions.

Table B.8

Needy Areas in Central Cities Would Be Covered

Large Cities with High Concentrations of Tracts Included in the Geographically Targeted Goal (Percent of Population)	
Newark	99%
Hartford	97%
Gary	96%
Detroit	96%
Jersey City	92%
Miami	91%
Baltimore	90%
Cleveland	90%
St. Louis	85%

Five Largest Cities	
New York	62%
Los Angeles	69%
Chicago	77%
Houston	67%
Philadelphia	80%

Central Cities with Small Concentrations			
Large Cities		**Small Cities**	
Raleigh	33%	Appleton, WI	6%
Tulsa	38%	Cedar Falls, IA	8%
Nashville-Davidson	41%	Scottsdale, AZ	11%
Oklahoma City	42%	Naples, FL	13%
Wichita	43%	Orem, UT	14%
Colorado Springs	44%	Wheeling, WV	20%
Columbus	46%	Salem. OR	19%
Phoenix	51%	Elkhart, IN	20%

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Table B.9

Characteristics of High Income Minority Tracts (HIMTS) and Moderate Income Tracts

	Served Tracts			
	HIMTS	90- 100% of Area Median Income	Remaining Served Tracts	Underserved Tracts
Unemployment Rate	4.9 %	5.1 %	3.9 %	8.9 %
Denial Rate	15.7	15.1	9.7	21.0
Tract/MSA Income	145.2	95.2	133.2	70.9
Relative Median House Value*	122.2	93.4	136.0	72.3
Poverty Rate	7.0	8.4	5.1	20.0
African American	16.2	3.8	2.9	23.9
Hispanic	21.8	3.5	3.4	17.9
Asian	12.7	1.5	2.4	4.3

Note: High-income minority tracts (HIMTS) are census tracts with income greater than 120 percent of area median and minority percentage greater than 30 percent. Moderate-income tracts are census tracts with income between 90 and 100 percent of area median and minority percentage less than 30 percent. Tracts with zero population, zero owner-occupied units, or suppressed income are not included.

* Median house value in tract relative to median house value in metropolitan area.

4. Rural Underserved Areas

Recognizing both the difficulty of defining rural underserved areas and the need to encourage GSE activity in such areas, HUD has chosen a rather broad, county-based definition of underservedness in rural areas. Its definition includes 1,511 of the 2,305 counties in nonmetropolitan areas and covers 54 percent of the nonmetropolitan population. Still, HUD's definition targets the most disadvantaged rural counties. It covers 67 percent of the nonmetropolitan poor and 75 percent of nonmetropolitan minorities. The average poverty rate of underserved counties is 21 percent, significantly greater than the 12 percent poverty rate in counties designated as ''served''.

The HUD definition also targets specific geographic areas with high poverty and minority concentrations. For example, HUD's definition includes 84 percent of the population that reside in remote counties that are not adjacent to metropolitan areas and have fewer than 2,500 residents in towns.

5. GSE Activity in Underserved Areas

Figure B.2 uses 1993 and 1994 HMDA data for single-family mortgages to compare GSE and non-GSE funding in underserved areas. The non-GSE part of the conventional conforming market consists mainly of bank and thrift portfolio lenders. The share of funding going to underserved areas increased between 1993 and 1994 for both GSEs and non-GSEs. A larger proportion of non-GSE mortgages finance properties in underserved areas than do mortgages purchased by the GSEs. This was particularly the case for Freddie Mac in 1994—22 percent of Freddie Mac's single-family business was in underserved areas, compared with 27 percent of non-GSE business.[68]

In terms of overall business, 29 percent of Fannie Mae's 1994 business was in underserved areas as was 24 percent of Freddie Mac's. The fact that underserved areas have much lower incomes than other areas does not mean that GSE purchase activity in underserved areas derives totally from lower income families. In 1993, above-median income households accounted for 48 percent of the mortgages that the GSEs purchased in underserved areas and in 1994, they accounted for 37 percent. This suggests these areas are quite diverse.

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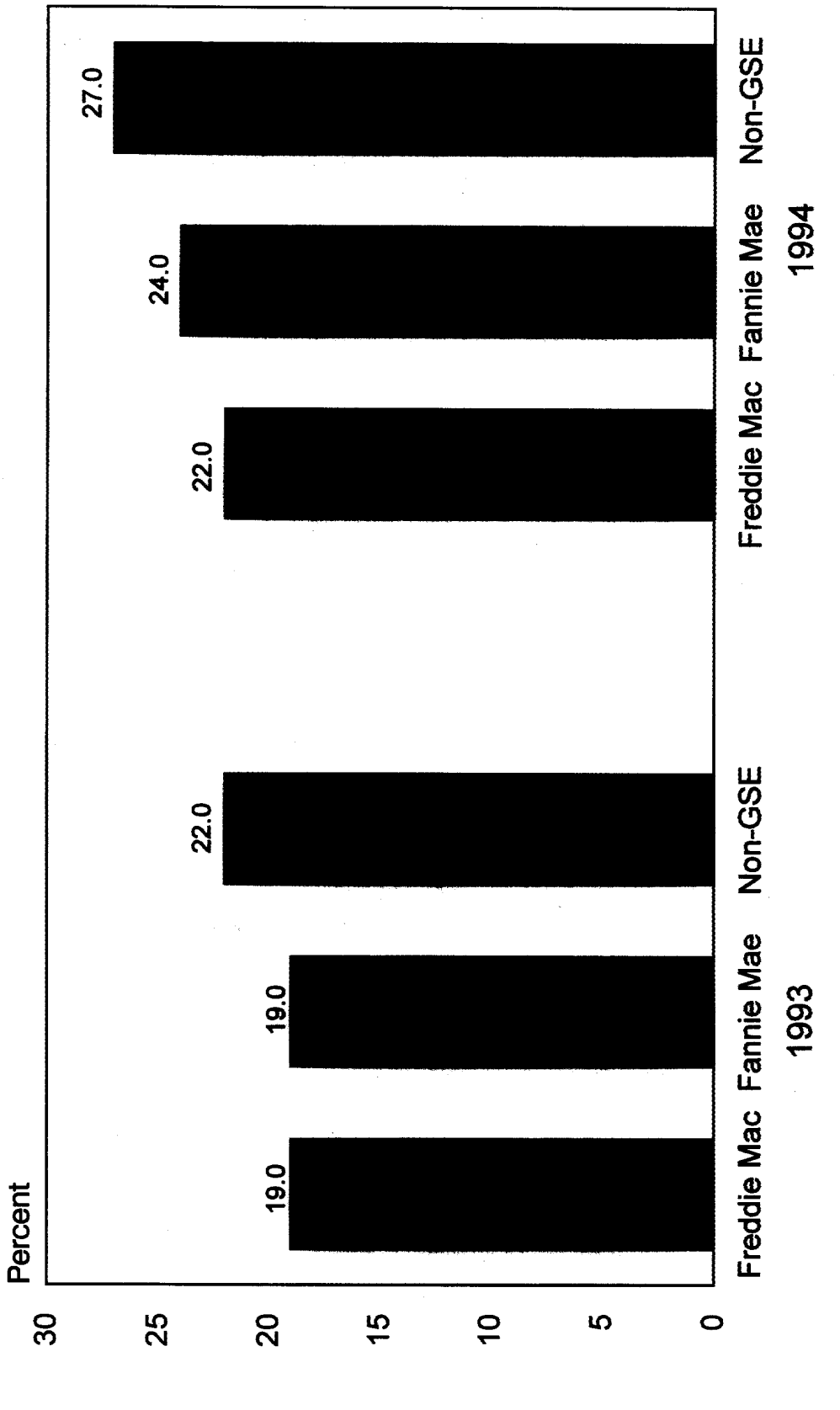
[68] The HMDA data has been adjusted for 100,000 mobile homes along the lines discussed in Appendix D.

FIGURE B.2

The Share Of GSE And Non-GSE Mortgages in Areas Included in the Geographically Targeted Goal, 1993 and 1994



Source: 1993 and 1994 HMDA Data

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6. Market Feasibility and Changing Market Conditions

As detailed in Appendix D, the market for mortgages in underserved areas accounts for 25 to 28 percent of dwelling units financed by conventional conforming mortgages. Figure B.3 compares recent GSE performance, the 1996 and 1997–1999 goals, and the size of the market. Having considered the projected market and economic and demographic conditions for 1996–1999 and the GSEs' recent performance, HUD has determined that goals for mortgage purchases in central cities, rural areas, and other underserved areas 21 percent for 1996, 24 percent for 1997–1999, and 24 percent thereafter pending establishment of a new goal, are feasible.

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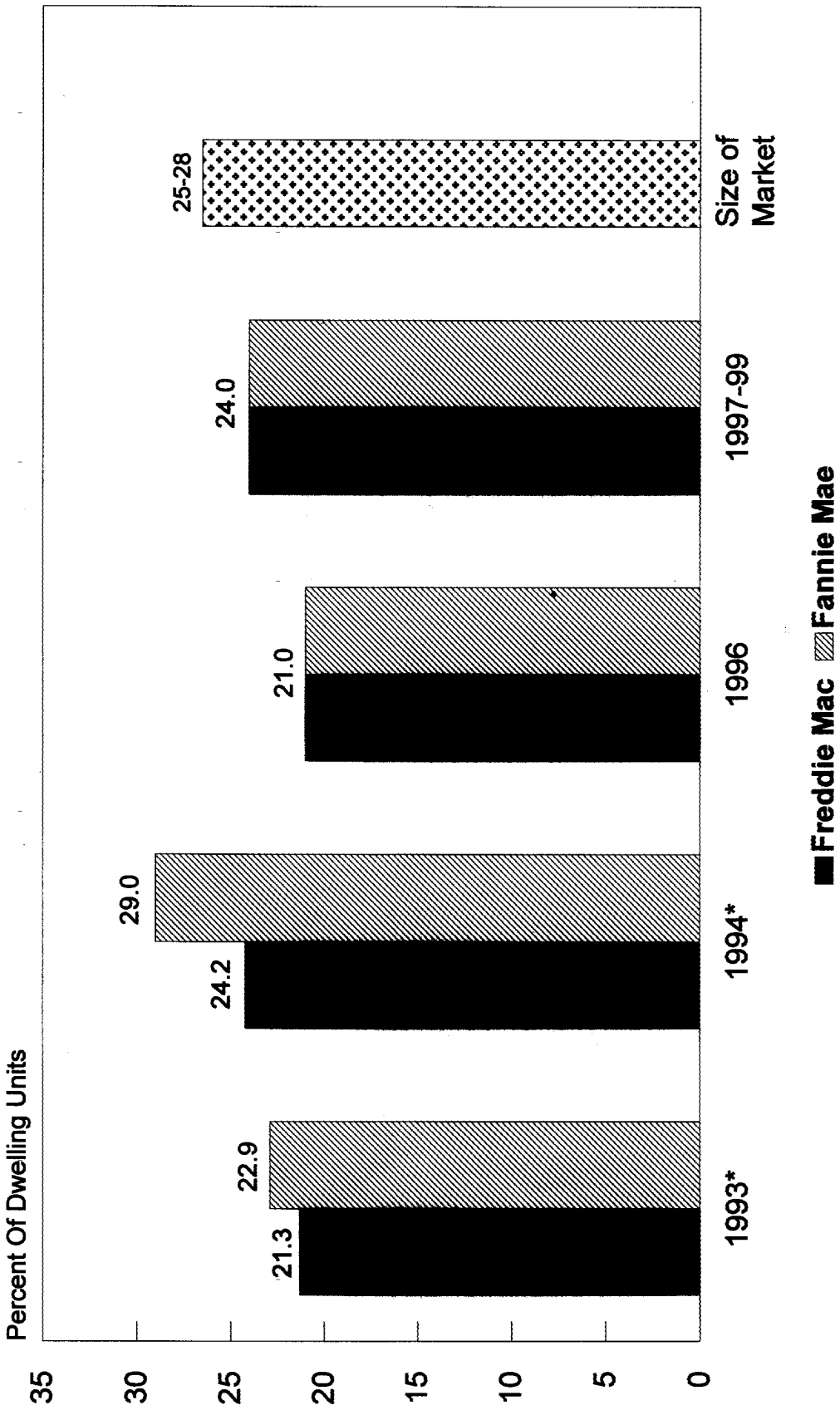
FIGURE B.3

Previous Performance and Goals in Central Cities, Rural Areas, and Other Underserved Areas For Freddie Mac And Fannie Mae, 1993-99



* Performances based on assumptions in final rule.

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7. Conclusion

The Secretary has determined that the goals of 21 percent in 1996 and 24 percent in 1997 and thereafter are necessary and feasible.

Appendix C—Secretarial Considerations To Establish the Special Affordable Housing Goal

A. Introduction

1. Establishment of the Goal

The Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (FHEFSSA) requires the Secretary to establish a special annual goal designed to adjust the purchase by each GSE of mortgages on rental and owner-occupied housing to meet the unaddressed needs of, and affordable to, low-income families in low-income areas and very-low-income families (the Special Affordable Housing Goal).

In establishing the Special Affordable Housing Goal, FHEFSSA requires the Secretary to consider:

(1) Data submitted to the Secretary in connection with the Special Affordable Housing Goal for previous years;

(2) The performance and efforts of the GSEs toward achieving the Special Affordable Housing Goal in previous years;

(3) National housing needs of targeted families;

(4) The ability of the GSEs to lead the industry in making mortgage credit available for low-income and very-low-income families; and

(5) The need to maintain the sound financial condition of the enterprises.

2. The Goal

The final rule provides that the Special Affordable Housing Goal for 1996 is 12 percent of the total number of dwelling units financed by each GSE's mortgage purchases. The goal for 1997 and subsequent years is 14 percent. Of the total Special Affordable Housing Goal for each year, each GSE must purchase multifamily mortgages in an amount at least equal to 0.8 percent of the total dollar volume of mortgages purchased by the GSE in 1994.

Approximately 20–23 percent of the conventional conforming mortgage market would qualify under the Special Affordable Housing Goal as defined in the final rule. Using the final rule's conventions for what will count toward the goal, 16.7 percent of Fannie Mae's 1994 business and 11.4 percent of Freddie Mac's would have qualified toward the goal.

Units that count toward the goal: Subject to further provisions specified below, units that count toward the Special Affordable Housing Goal include units occupied by low-income owners and renters in low-income areas, and very-low-income owners and renters. Low-income rental units in multifamily properties where at least 20 percent of the units are affordable to families whose incomes are 50 percent of area median income or less or where at least 40 percent of the units are affordable to families whose incomes are 60 percent or less of area median income count toward the goal.

B. Underlying Data

In considering the factors under FHEFSSA to establish the Special Affordable Housing Goal, HUD relied upon data gathered from the American Housing Survey, the Census Bureau's 1991 Residential Finance Survey, the 1990 Census of Population and Housing, other government reports, Home Mortgage Disclosure Act (HMDA) data and reports, and the GSEs. Among other new data resources, full-year 1994 data from the GSEs, as well as HMDA data for 1994, became available to HUD since publication of the proposed rule. Appendix D discusses in detail how these data resources were used and how the size of the conventional conforming market for this goal was estimated.

Section C discusses the factors listed above, and Section D provides the Secretary's rationale for establishing the special affordable goal.

C. Consideration of the Factors

1 and 2. Data Submitted to the Secretary in Connection With the Special Affordable Housing Goal for Previous Years, and the Performance and Efforts of the Enterprises Toward Achieving the Special Affordable Housing Goal in Previous Years

The discussions of these two factors have been combined because they overlap to a significant degree.

a. GSE Performance Relative to the 1993–94 Goals

For the 1993–94 transition period the Special Affordable Housing Goal was established in dollar terms. FHEFSSA called for special affordable purchases of $2.0 billion by Fannie Mae and $1.5 billion by Freddie Mac, and the legislative history made it clear that such purchases should be ''above and beyond their existing performance and commitments.'' [1] The specified amounts of the goals were evenly divided between multifamily and single family housing.

The Special Affordable Housing Goals for 1993–94 were $12.7 billion single family and $3.6 billion multifamily for Fannie Mae, and $11.1 billion single family and $0.8 billion multifamily for Freddie Mac.[2]

[1] Senate Report, p. 36.

[2] The 1993–94 dollar-based goals were extended on a pro-rated basis for 1995.

Fannie Mae's qualifying mortgage purchases in 1993 and 1994 together amounted to $16.7 billion single-family and $4.5 billion multifamily. Thus Fannie Mae surpassed the 1993–94 single-family and multifamily portions of the goal by 32 percent and 26 percent, respectively.

Freddie Mac's qualifying mortgage purchases in 1993 and 1994 together amounted to $12.2 billion single-family and $495 million multifamily. Thus Freddie Mac surpassed the 1993–94 single-family goal by 10 percent but fell short on the multifamily portion of the goal by 38 percent.

b. 1993–94 GSE Performance Relative to Final Rule Special Affordable Housing Goals for 1996–1999

Owner-occupied housing. Between 1993 and 1994, both GSEs increased significantly the purchase of mortgages on owner-occupied housing that would qualify under this goal. (See Table C.1.)

Rental housing. As in the case of owner-occupied housing, between 1993 and 1994 both GSEs increased significantly the purchase of mortgages financing rental units affordable to very-low-income families. (See Table C.2.)

In this final rule, the Special Affordable Housing Goal has been broadened relative to the proposed rule, to include low-income renters in low-income areas. This change increases the number of qualifying mortgages by 8.5 percent for Fannie Mae in 1993 and 10.2 percent in 1994, and 6.1 percent for Freddie Mac in 1993 and 6.5 percent in 1994. (See Table C.3.)

This final rule also includes as eligible all rental units affordable to low-income families in properties where at least 40 percent of the units qualify as very-low-income, or where at least 20 percent of the units qualify as especially-low-income. (Especially-low-income means no more than 50 percent of area median.) This provision makes a difference of approximately 5,100 units in Fannie Mae's 1993 performance, and 11,600 in 1994. For Freddie Mac, there is no effect for 1993, and approximately 1,300 units for 1994. (See Table C.4.)

Summary. Table C.5 summarizes the GSEs' purchases in 1993 and 1994 that would qualify under the final rule's Special Affordable Housing Goal: Fannie Mae's and Freddie Mac's qualifying purchases in 1994 were 16.7 percent and 11.4 percent of total eligible purchases, respectively. Thus Fannie Mae would have achieved both the 1996 goal and the goal for 1997 and thereafter, and Freddie Mac would nearly have achieved the 1996 goal.

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Table C.1
GSEs' Purchases Qualifying as Special Affordable Under the Final Rule:
Single-Family Owner-Occupied Units*

	Fannie Mae		Freddie Mac	
	1993	1994	1993	1994
Low-Income Families in Low-Income Areas				
Number of Units	27,258	24,538	21,408	15,460
Percent	0.9%	1.3%	1.0%	1.2%
Very-Low-Income Families				
Number of Units	135,364	119,253	97,053	76,279
Percent	4.7%	6.5%	4.5%	5.9%
Subtotal				
Number of Units	162,622	143,791	118,461	91,739
Percent	5.6%	7.9%	5.5%	7.1%
Total Eligible	2,905,406	1,827,584	2,167,994	1,291,275

*Includes owner-occupied units in 2-4 unit properties

Table C.2
GSEs' Purchases Qualifying as Special Affordable Under the Final Rule:
Rental Units Affordable To Very-Low-Income Families

	Fannie Mae		Freddie Mac	
	1993	1994	1993	1994
Units in 2-4 Unit Owner-Occupied Properties				
Number of Units	12,890	13,556	7,787	8,151
Percent	0.4%	0.7%	0.4%	0.6%
Units in 1-4 Unit Investor-Owned Properties				
Number of Units	19,296	24,309	13,005	13,925
Percent	0.7%	1.3%	0.6%	1.1%
Units in Multifamily Properties				
Number of Units	67,437	84,561	7,683	22,770
Percent	2.3%	4.6%	0.4%	1.8%
Subtotal				
Number of Units	99,623	122,426	28,475	44,846
Percent	3.4%	6.7%	1.3%	3.5%
Total Eligible	2,905,406	1,827,584	2,167,994	1,291,275

Table C.3
GSEs' Purchases Qualifying as Special Affordable Under the Final Rule:
Rental Units Affordable To Low-Income Families in Low-Income Areas*

	Fannie Mae		Freddie Mac	
	1993	1994	1993	1994
Units in 2-4 Unit Owner-occupied Properties				
Number of Units	3,918	4,241	2,667	2,351
Percent	0.1%	0.2%	0.1%	0.2%
Units in 1-4 Unit Investor-Owned Properties				
Number of Units	7,681	7,953	5,740	3,960
Percent	0.3%	0.4%	0.3%	0.3%
Units in Multifamily Properties				
Number of Units	10,764	15,022	577	2,609
Percent	0.4%	0.8%	0.0%	0.2%
Subtotal				
Number of Units	22,363	27,216	8,984	8,920
Percent	0.8%	1.5%	0.4%	0.7%
Total Eligible	2,905,406	1,827,584	2;167,994	1,291,275

*Other than units affordable to very-low-income families counted in Table C.2.

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Table C.4

GSEs' Purchases Qualifying as Special Affordable Under the Final Rule: Rental Units Affordable to Low-Income Families Outside Low-income Areas*

	Fannie Mae		Freddie Mac	
	1993	1994	1993	1994
Number of Units	5,122	11,631	0	1,316
Percent	0.2%	0.6%	0%	0.1%
Total Eligible	2,905,406	1,827,584	2,167,994	1,291,275

*Units affordable to low-income families in properties where at least 40 percent of the units are affordable to very-low-income families or at least 20 percent of the units are affordable to especially low-income families, other than units counted in Table C.2 or C.3.

Table C.5

GSEs' Purchases Qualifying as Special Affordable Under the Final Rule: Summary Table Showing All Single-Family and Multifamily Units

	Fannie Mae		Freddie Mac	
	1993	1994	1993	1994
Number of Units	289,729	305,065	155,921	146,821
Percent	10.0%	16.7%	7.2%	11.4%
Total Eligible	2,905,406	1,827,584	2,167,994	1,291,275

3. National Housing Needs of Low-Income Families in Low-Income Areas and Very-Low-Income Families

The following discussion closely follows HUD's analysis of national housing needs in Appendix C of the proposed rule, which has been updated in various respects. As in the proposed rule, this discussion concentrates on very-low-income families with the greatest needs, because Section C of Appendix A presents detailed analyses of housing problems and demographic trends for lower-income families.

a. Housing Problems Among Very-low-income Families

Data from the 1990 Census and from the 1989, 1991, and 1993 American Housing Surveys demonstrate that housing problems and needs for affordable housing are more pressing in the lowest-income categories than among moderate-income families. Analyses of special tabulations of the 1990 Census prepared for use in developing Comprehensive Housing Affordability Strategies (the CHAS database), which have been updated to 1993 using American Housing Survey Data, show clearly that sharp differentials by income characterized all regions of the nation as well as their city, suburban, and nonmetropolitan portions. Nationally, approximately one-fourth of moderate-income renters and owners experienced one or more housing problems, compared to nearly three-fourths of very-low-income renters and nearly half of very-low-income owners.[3] Severe cost burdens—paying more than half of income for housing and utilities—varied even more markedly by income, involving less than 2 percent of moderate-income households, but nearly two-fifths of the 10.5 million owners with incomes below 30 percent of area median income.

The CHAS tabulations are based on HUD-adjusted median income for both owners and renters, rather than on unadjusted median income for owners, as FHEFSSA specifies for mortgages counted toward the housing goals.[4] But tabulations of the 1993 AHS using the GSE income definitions reveal the same pattern of problems for lower-income families. As the following table details, for both owners and renters, housing problems are much more frequent for the lowest-income groups.[5] Priority problems of severe cost burden or severely inadequate housing are noticeably concentrated among renters and owners with incomes below 35 percent of area median income.

Income as % of area median income (percent)	Renters		Owners	
	Any problems (percent)	Priority problems (percent)	Any problems (percent)	Priority problems (percent)
Less than 35 ...	89	44	62	36
36–50	78	17	40	13
51–80	48	5	29	7
81–100 .	24	1	21	4

Comparisons by income reveal that owners and renters (with incomes between 50 and 80 percent of area median) resemble moderate-income households in seldom having priority problems. Priority problems are heavily concentrated among households with incomes below 50 percent of median.[6] In 1991, 5.3 million unassisted renter households with incomes below 50 percent of area median income had ''worst case'' housing needs.[7] This total does not include homeless persons and families, although they also qualify for preference. For three-fourths of the renter families with worst case problems, the only problem was affordability—they do not have problems with housing adequacy or crowding.

b. Needs for Housing Affordable to Very-Low-Income Families

The existing housing stock satisfies the physical needs of most very-low-income renters. In most cases families are able to find adequate housing. The problem is that much of this housing is not affordable to very-low-income families—i.e., these families must pay more than 30 percent of their income for housing. The main exception to this generalization occurs among extremely-low-income families (defined as families below 30 percent of area median income) with three or more children. The 1993 American Housing Survey shows that 47 percent of these families live in crowded housing. A certain amount of variation in need exists, by region and degree of urbanization. Although 22 percent of worst case renters experience crowding or severe inadequacy, this figure varies from 11 percent in the Northeastern suburbs to 35 percent in the South's nonmetropolitan areas. Shortages of affordable housing units continued to be greatest and vacancy rates lowest in California.

The relative decline in inexpensive dwelling units has been concentrated among the least expensive rental units—those with rents affordable to families with incomes below 30 percent of area median income. In 1979, the number of units in this rent range was 28 percent less than the number of renters with incomes below 30 percent of area median income; by 1989, the gap had widened to 39 percent, a shortage of 2.7 million units.[8] This shortage is a problem particularly at the extremely low end of the rent distribution. Both nationally and in most states, there are surpluses of rental housing affordable to families with incomes between 30 and 50 percent of area median income and to those in the 50–80 percent range.[9] Furthermore, in most states, vacancy rates were high in 1990 among units with rents affordable to families with incomes at or below 50 percent of median.[10] Thus, like housing problems, unmet needs for affordable housing are heavily concentrated in rent ranges affordable to renters with incomes below 30 percent of area median income.

[3] The problems covered by the Census include paying over 30 percent of income for housing, lacking complete kitchen or plumbing, and overcrowding. See Appendix Tables 18A and 19A of Amy Bogdon, Joshua Silver, and Margery A. Turner, *National Analysis of Housing Affordability, Adequacy, and Availability: A Framework for Local Housing Strategies*, HUD–1448–PDR, 1994.

[4] To determine eligibility for Section 8 and other HUD programs, HUD adjusts income limits derived from the median family income for household size. The ''very low'' and ''low'' income limits at 50 percent and 80 percent of median apply to 4-person households. Relative to the income limits for a 4-person household, the limit is 70 percent for a 1-person household, 80 percent for a 2-person household, 90 percent for a 3-person household, 108 percent for a 5-person household, 116 percent for a 6-person household, etc.

[5] Tabulations of the 1993 American Housing Survey by HUD's Office of Policy Development and Research. The results in the table categorize renters reporting housing assistance as having no housing problems. Almost one-third of renters with incomes 0–30 percent of median and one-fifth of those with incomes 30–50 percent of median are assisted.

[6] For all housing programs of HUD (other than the GSE goals) and the Department of Agriculture, ''very-low-income'' is defined as not exceeding 50 percent of area median income.

[7] ''Worst case housing needs'' for housing assistance are defined as unassisted renters with income below 50 percent of area median income who meet a Federal preference for admission to rental assistance because they pay more than half of income for rent and utilities, have been displaced, or live in severely substandard housing (which includes being homeless).

[8] Tabulations by HUD's Office of Policy Development and Research, based on U.S. Departments of Housing and Urban Development and Commerce, *American Housing Survey for the United States in 1989*, July 1991.

[9] HUD's Office of Policy Development and Research, *Worst Case Needs for Housing Assistance in the United States in 1990 and 1991*, 1994, Table 8.

[10] Id., Table 6.

4. The Ability of the Enterprises to Lead the Industry in Making Mortgage Credit Available for Low-Income and Very-Low-Income Families

The discussion of the ability of Fannie Mae and Freddie Mac to lead the industry in Section C.5 of Appendix A is relevant to this factor—the GSEs' dominant role in the market, their role in establishing widely-applied underwriting standards, their role in the development of new technology for mortgage origination, their strong staff resources, and their financial strength. Additional analysis on the potential ability of the enterprises to lead the industry in the low- and very-low-income market appears below—in Section D.2 generally, and in Section D.3 with respect to multifamily housing.

The ability of the GSEs to lead the industry in the special affordable market is best demonstrated by the significant gains both enterprises have made in this market. As a percentage of total units in the properties whose mortgages they purchased, the special affordable share for the GSEs combined rose from 7.7 percent in 1993 to 13.9 percent in 1994 and 16.4 percent for the first half of 1995. The 1994 increase was truly impressive, as special affordable units rose by 6 percent while total units declined by 41 percent.

5. The Need to Maintain the Sound Financial Condition of the GSEs

HUD has undertaken a separate, detailed economic analysis of this rule, which includes consideration of the financial safety and soundness implications of the housing goals. The analysis considered the likely mortgage default implications of the goals and implications for the profitability of the GSEs under various alternative economic assumptions. Among the conclusions are: that the goals will have, at most, only limited impacts on credit risk, which the GSEs should be able to handle without significant lowering of underwriting standards; that risks associated with increased multifamily mortgage purchase volumes under the goals are manageable, considering the scope of the increases implied by the goals; and that the goals imply no meaningful increase in risk to the sound financial condition of the GSEs' operations. Based on this analysis, HUD concludes that the goals raise minimal, if any, safety and soundness concerns.

D. Determination of the Goal

Several considerations, many of which have been reviewed in earlier sections of this Appendix, led to the determination of the Special Affordable Housing Goal.

1. Severe Housing Problems

The data presented in Section C.3 demonstrate that housing problems and needs for affordable housing are much more pressing in the lowest-income categories than among moderate-income families. The high incidence of severe problems among the lowest-income renters reflects severe shortages of units affordable to those renters. At incomes below 30 percent of median, two-thirds of owners and 70 percent of renters pay more than 30 percent of their income for housing, live in inadequate housing, or are crowded. As the analysis presented above shows, priority problems—paying more than half of income for housing or living in severely inadequate housing—are heavily concentrated among renters with incomes below 50 percent of median. Housing and affordability problems are particularly acute for renters with income below 30 percent of area median income.

2. GSE Performance and the Market

The Special Affordable Housing Goal is designed, in part, to ensure that the GSEs maintain a consistent focus on serving the very-low-income portion of the housing market where housing needs are greatest. The bulk of the GSEs' low- and moderate-income mortgage purchases are for the higher-income portion of the low- and moderate-income category. The lowest-income borrowers accounted for a very small percentage of each GSEs' purchases. Five percent of the GSEs' 1993 mortgage purchases financed homes for single-family homeowners with incomes below 60 percent of area median, and 7 percent in 1994. (See Figure A.1 in Appendix A.)

Specification of the goal. The Special Affordable Housing Goal is established as percentages of the GSEs' total business for the 1996–99 period. This kind of specification is preferable to a fixed, dollar-based specification because: (1) The size of the market for housing eligible to count toward the Special Affordable Housing Goal fluctuates with the size of the overall market rather than remaining at any fixed dollar level (as shown by analysis of HMDA data); and (2) fixed-dollar goals, if based on a high-volume year, could be unattainable in a low-volume year; if based on a low-volume year, could represent insufficient support by the GSEs for the special affordable market in a high-volume year; and if based on an average-volume year, could alternate between being unattainable in some years and insufficient in other years.

GSEs' Performance Relative to the Market. Analysis of American Housing Survey and HMDA data shows that the GSEs are purchasing a smaller proportion of loans for very-low-income homebuyers than are portfolio lenders operating in the conforming market (see the discussion of Figure A.2 in Appendix A). That analysis suggests that there is room in the very-low-income end of the homebuyer market for the GSEs to improve their performance.

A reasonable estimate of the size of the market for both single family and multifamily mortgages that would be eligible to count toward the Special Affordable Housing Goal is 20–23 percent of the overall conventional conforming market, as explained in Section H.2 of Appendix D.

Under the final rule's counting conventions 16.7 percent (7.9 percent owner-occupied and 8.8 percent rental) of units covered by Fannie Mae's mortgage purchases in 1994 would have been eligible to count toward this goal, and 11.4 percent (7.1 percent owner-occupied and 4.3 percent rental) of units covered by Freddie Mac's mortgage purchases would have been eligible to count toward this goal. Figure C.1 compares recent GSE performance, the 1996 and 1997–99 Special Affordable Housing Goals, and the size of the market.

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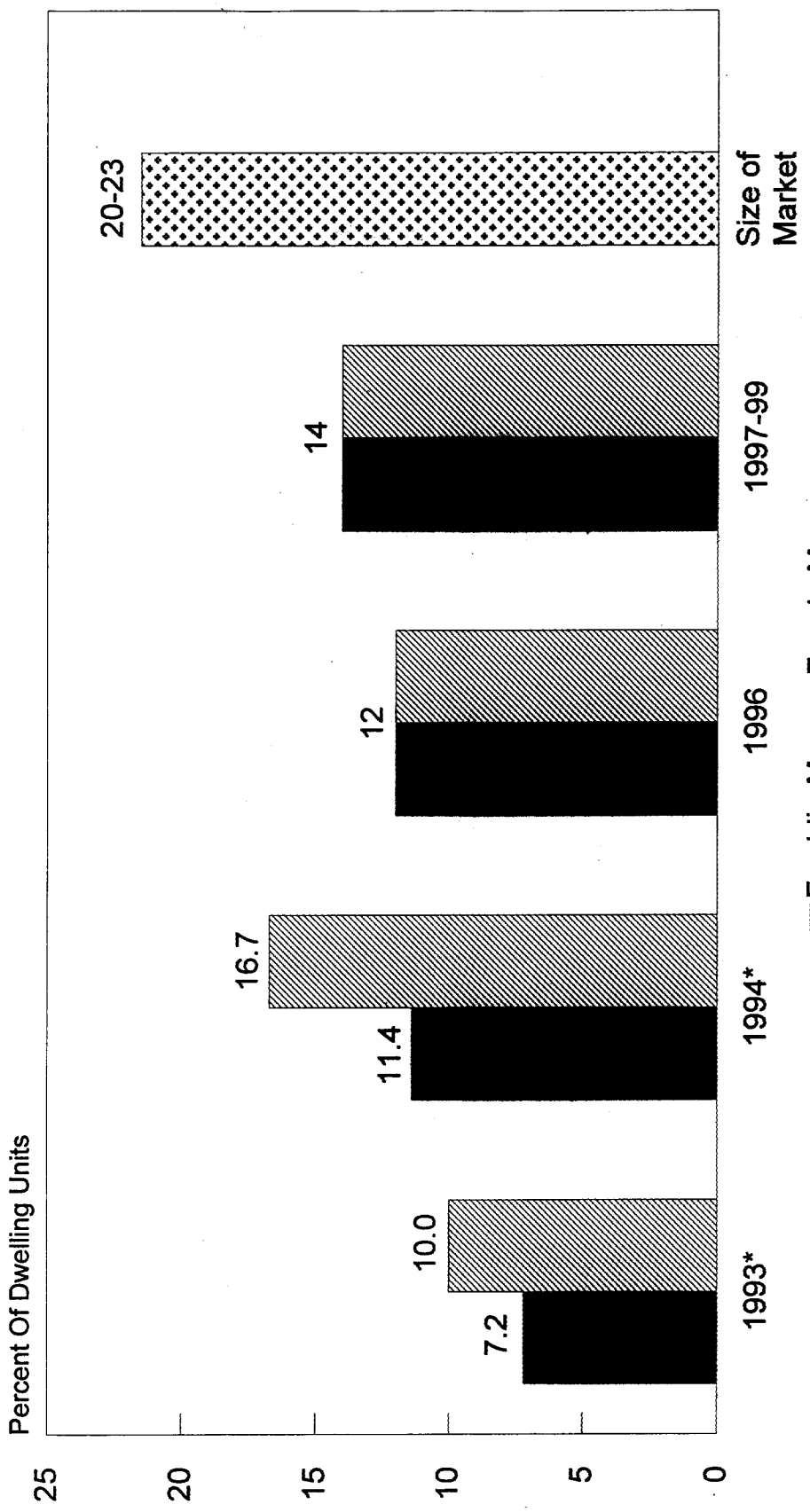
FIGURE C.1

Special Affordable Activity And Goals For Freddie Mac and Fannie Mae, 1993-99



* Performances based on assumptions in final rule.

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3. Multifamily Purchases

The GSEs can bring an important benefit to the multifamily market in the form of long-term liquidity. In the multifamily arena, however, a secondary market is only in its infancy (see Section C.2.c in Appendix A). Given the GSEs' overall experience and financial strength, it is reasonable to expect that they would play major roles in this development.

Recent tightening of interest rate spreads for ''better'' multifamily mortgage originations demonstrates that increased liquidity can lower spreads. This suggests that participation by the GSEs can lower financing costs and ultimately rents across the broad range of multifamily properties, including properties occupied by low- and very-low-income tenants. (Section C.2.c of Appendix A elaborates on these themes.)

A minimum multifamily special affordable volume of 0.8 percent of total 1994 volume of business is reasonable, both relative to the size of the market and relative to the GSEs' recent volume of qualifying multifamily purchases. The implied volumes are $950 million for Freddie Mac (relative to $118.8 billion total volume) and $1.22 billion for Fannie Mae (relative to $153.0 billion total volume). Their 1994 volumes of multifamily business that would have qualified as special affordable under this final rule were $425 million for Freddie Mac (0.36 percent of 1994 business), or half of the necessary volume for 1996, and $1.91 billion for Fannie Mae (1.25 percent of 1994 business), or $690 million more than necessary for 1996. The size of the total multifamily market that would qualify under the Special Affordable Housing Goal is approximately $10 billion annually.

Expressing the multifamily subgoals for every year covered by this rule as percentages of total 1994 purchases is a reasonable approach, since multifamily subgoals expressed as percentages of current-year total business could be difficult to achieve in some years. Total volume is driven by the single-family business, which is subject to wide swings due to refinancing waves, as in 1992–93, and to changes in the ARM share of the market.

The Secretary selected 0.8 percent of total 1994 business volume after careful review of the GSEs' past performance and consideration of the need to maintain a minimum level of attention to multifamily housing. This percentage may seem small, but that is because the multifamily market (measured in dollar terms) comprises only a fraction of the total mortgage market, and the special affordable share of the GSEs' multifamily purchases in 1994 was just above 50 percent.[11] For this same reason, changes in this subgoal of even 0.1 percent are significant.

These subgoals are below recent levels of special affordable multifamily purchases by Fannie Mae, but above recent levels of such purchases by Freddie Mac. It should be emphasized that these are minimum purchase amounts; thus HUD in no way is encouraging Fannie Mae to reduce its volume of multifamily business, which is important in its overall efforts to meet the Special Affordable Housing Goal and Low- and Moderate-Income Housing Goals. HUD very much supports Freddie Mac's actions to rebuild its multifamily business, and encourages further efforts in this area. To date Freddie Mac has had no delinquencies on its multifamily business since it reentered this market, and the GSE's multifamily business has been creditworthy and profitable.[12]

4. Conclusion

HUD has determined that the Special Affordable Housing Goal established in the final rule addresses national housing needs within the income categories specified for this goal, while accounting for the GSEs' performance in the past in purchasing mortgages meeting the needs of very-low-income families and low-income families in low-income areas. HUD has also considered the size of the conventional mortgage market serving very-low-income families and low-income families in low-income areas. Moreover, HUD has considered the GSEs' ability to lead the industry as well as their financial condition. HUD has determined that goals of 12 percent in 1996, 14 percent in 1997–1999, and 14 percent thereafter pending establishment of a new goal, with fixed multifamily subgoals of 0.8 percent of 1994 volumes of business, are both necessary and achievable.

Appendix D—Estimating the Size of the Conventional Conforming Market for Each Housing Goal

In establishing the three housing goals, the Secretary is required to assess, among a number of factors, the size of the conventional market for each goal. This Appendix explains HUD's methodology for estimating the size of the conventional market for each of the three housing goals. Section A provides an overview of public comments on the methodology described in the proposed rule. Section B describes the main components of HUD's market-share model and identifies those parameters that have a large effect on the relative market shares. Sections C and D discuss two particularly important market parameters—the size of the multifamily market and the share of the single-family mortgage market accounted for by rental properties. With this as background, Section E provides a more systematic presentation of the model's equations and main assumptions. Sections F, G, and H report HUD's estimates for the Low- and Moderate-Income Goal, the Central Cities, Rural Areas, and other Underserved Areas Goal, and the Special Affordable Housing Goal, respectively.

A. Overview of Comments on Market Methodology

1. Overall Issue

Both GSEs expressed strong criticism of HUD's use of specific data elements in constructing its estimates of market size. Although both GSEs criticized how data had been interpreted in the proposed rule's market share model, neither GSE, nor any commenter, objected to HUD's basic model for calculating the size of the markets relevant to each of the goals. However, Freddie Mac presented a detailed set of objections to the use of certain data sources or assumptions, concluding that HUD's market estimates were ''fatally flawed.'' Freddie Mac commented that ''the Proposed Rule uses a combination of data sources and a set of arbitrary assumptions in order to estimate the size of the current conforming, conventional market,'' adding that ''in nearly every case, HUD has chosen an estimate at the highest end of calculable estimates.''

Freddie Mac proposed a number of revisions to the assumptions or data sets used in the proposed rule, for example—using HMDA data to estimate the size of the multifamily and single-family rental markets, using American Housing Survey rent data on recently-completed properties to estimate the affordability of the newly-mortgaged rental properties, using discount factors to reduce the size of the rental and low-income owner markets, etc. HUD has carefully considered these comments in revising the market estimates for each of the goals. However, HUD disagrees with Freddie Mac's overarching comment that because data are not always available in the form and format desired, HUD should use minimal estimates of market activity. Such an

[11] Multifamily properties account for a much higher percentage of dwelling units financed by mortgages than their percentage of total dollar mortgage volume.

[12] *American Banker*, October 12, 1995, p. 12.

approach does not take advantage of the wealth of information currently available on mortgage activity.

In revising the rule, HUD has carefully reviewed existing information on mortgage activity in order to understand the weakness of various data sources, has conducted sensitivity analyses to show the effects of alternative parameter assumptions, and has hired independent researchers to assist in determining best estimates for the more important determinants of the housing goal market shares. HUD is well aware of uncertainties with some of the data and much of this Appendix is spent discussing the effects of these uncertainties on the market estimates.

The remainder of this section responds to several major comments about the market share methodology made by Freddie Mac and others. But with respect to Freddie Mac's statements that HUD's methodology is ''fatally flawed'' and based on ''arbitrary assumptions,'' HUD has three specific comments here:

(A) HUD contracted with Urban Institute researchers to independently evaluate its methodology for estimating market shares for the various goals. They concluded that HUD's conceptual approach is ''a reasonable approach to determining the size of the low- and moderate-income, underserved areas, and special affordable markets relative to the size of the overall conventional, conforming mortgage market.'' [1] They also concluded that Freddie Mac's approach for measuring mortgage market property shares was the wrong approach (see discussion below).

(B) Freddie Mac commissioned Abt Associates to evaluate HUD's methodology for the proposed rule. Abt Associates concluded that ''the point is not that HUD misused the data. On the contrary, HUD made reasonable attempts to arrive at plausible estimates.'' [2] (Emphasis added.)

(C) HUD has set conservative goals. For example, the Low- and Moderate-Income Goal is 40 percent for 1996 and 42 percent for 1997 and subsequent years. These goals are well below the market shares projected by HUD and the Urban Institute. In addition, the Abt study estimated that the low- and moderate-income market was 41–57 percent, placing the Low- and Moderate-Income Goal for 1997 and subsequent years at the bottom of Abt's range of estimates of market size. It should further be noted that Abt's estimates were made based on the proposed rule. A number of liberalizations in the counting rules have been made in the final rule, which mean that market estimates should be revised upward in light of these changes.

It also should be emphasized that neither GSE objected to HUD's basic model for calculating the size of the markets relevant to each of the housing goals, which involves estimating (1) the share of the market (in dwelling units) by type of property (single-family-owner, single-family-rental, and multifamily), (2) the proportion of dwelling units financed by mortgages for each type of property meeting each goal, and (3) projecting the size of the market by weighting each such goal share by the corresponding market share. The GSEs' comments focused on how the underlying estimates were derived and the resulting impacts on the size of the market for each goal. As noted above, HUD recognizes the uncertainty regarding some of these estimates, which led the Department to undertake a number of sensitivity analyses and to contract with Urban Institute researchers to reduce some of this uncertainty.

2. Major Issues

(1) Market volatility. Freddie Mac commented that HUD's analysis ignores the impact that changes in national economic conditions can have on the size of the market, stating that its recent efforts to expand the reach of the secondary market in support of low- and moderate-income people ''were aided by very favorable interest rates and macroeconomic conditions that made housing extraordinarily affordable.'' However, Freddie Mac observed, fluctuations of interest rates of approximately 250 basis points in the past year have demonstrated that housing can become much less affordable in a short period, but ''HUD's market estimates assume that the favorable conditions of 1993 and 1994 will continue indefinitely.''

HUD response. HUD has addressed the concerns about market volatility in two major ways:

(A) HUD has conducted detailed sensitivity analyses for each of the housing goals. These analyses present different estimates of market size by varying key assumptions: the size of the multifamily market; the low- and moderate-income shares of single-family owner-occupied homes [3], single-family rental homes, and multifamily units; the breakdown of the single-family market between owner-occupied units and rental units; and the multifamily loan amount per unit. These analyses support the feasibility of the goals under a wide range of conditions.

(B) With regard to volatility in the multifamily market, Freddie Mac stated the HUD's use of Residential Finance Survey (RFS) data is inappropriate, because they draw on a period when multifamily lending was unusually high. HUD did not use the RFS data in its baseline model. As the proposed rule noted, the RFS, based on a period with a high level of multifamily originations, overstates the probable level of multifamily originations in the 1996–97 period.

HUD recognizes that there is volatility in the multifamily market, and for this reason contracted with Urban Institute researchers to develop a ''steady-state'' multifamily originations model which abstracts from the volatility of interest rates, refinancings, and waves of maturing balloon mortgages.[4] This model generated projections of multifamily activity no less than, and in some cases substantially greater than, those used by HUD in this rule.

(2) Size of the multifamily market. Both GSEs commented that in the proposed rule the role of multifamily financing is consistently overstated. In particular, both GSEs advocated the use of data from the Home Mortgage Disclosure Act (HMDA) reports, rather than the Survey of Mortgage Lending Activity (SMLA), used by HUD in the proposed rule.

HUD response. HUD addressed this comment in two ways:

(A) HUD commissioned four papers on the multifamily market by Urban Institute researchers [5] and held two seminars on this topic with a wide range of participants, including the GSEs. These papers compared and evaluated

[1] Dixie M. Blackley and James R. Follain, ''A Critique of the Methodology Used to Determine Affordable Housing Goals for the Government-Sponsored Housing Enterprises,'' October 1995, p. 21.

[2] Abt Associates, ''Evaluation of HUD-Proposed Housing Goals for the GSEs,'' February 6, 1995, p. 12.

[3] The GSEs have generally advocated use of the HMDA data. In a number of the sensitivity analyses, the percentages of single-family owner-occupied homes which qualify for the low-mod goal have been reduced below the levels reported by the 1993 and 1994 HMDA data.

[4] Robert Dunsky, James R. Follain, and Jan Ondrich, ''An Alternative Methodology to Estimate the Volume of Multifamily Mortgage Originations,'' September 1995.

[5] These are: The previously cited papers by Blackely and Follain (1995) and Dunsky, Follain, and Ondrich (1995); ''Estimating the Volume of Multifamily Mortgage Originations by Commercial Banks Using the Survey of Mortgage Lending Activity and Home Mortgage Disclosure Act data,'' by Amy D. Crews, Robert Dunsky, and James Follain (October 1995); and ''What We Know About Multifamily Mortgage Originations,'' by Amy D. Crews, Robert M. Dunsky, and James R. Follain (October 1995).

information about the size of the multifamily market in detail. They supported HUD's projections of the size of the market, and at least one of their analyses suggested that higher estimates were reasonable. They concluded that the HMDA data base underreports multifamily originations. Details are presented in section C.2, below.

(B) In its sensitivity analyses, HUD has used lower estimates of the size of the multifamily market than the base case in the proposed rule.

Section C below provides a more detailed response to the GSEs' comments about the size of the multifamily market.

(3) Size of the single-family rental market. Freddie Mac stated that HUD's use of the Survey of Mortgage Lending Activity (SMLA) caused it to overstate the size of the single-family rental market, arguing that a more accurate estimate is derived from HMDA.

HUD response. HUD did not use the SMLA to estimate the rental share of the single-family market—rather, it closely analyzed data from the Residential Finance Survey (RFS) and the HMDA reports. In its base case HUD projected the investor share of the single-family market at 10.0 percent, well below the 17.3 percent reported by the RFS, but slightly above the 8.0 percent reported by the 1994 HMDA data. Again, the Urban Institute researchers concluded that the HMDA estimate was too low and a 10–12 percent estimate was reasonable. At the same time, HUD has acknowledged that there is some uncertainty about the rental share of the single-family market, and has reflected this in its sensitivity analyses (Table D.3).

(4) Multifamily market penetration. Fannie Mae stated that the multifamily lending industry is fundamentally different from the single-family industry and that the GSEs do not dominate the multifamily market to the degree that they dominate the single-family market. Fannie Mae concluded that ''origination volumes in multifamily lending are not a reliable indicator of what is available to either Fannie Mae or Freddie Mac in the secondary market.'' Freddie Mac concurred with this view.

HUD response. The GSEs are able to purchase loans from any multifamily lender. Explicitly considering only multifamily loans originated by certain lenders in the estimate of market size would implicitly amount to intervention in the GSEs' mortgage purchase decisions, and be tantamount to ''micromanagement'' of the GSEs' operations, which both HUD and the GSEs wish to avoid. (Appendix A discusses HUD's response to this issue in more detail.)

At the same time, HUD realizes that the GSEs have been and are likely to continue to be less active in the multifamily market than in the single-family market. It is also true that multifamily originations play a significant role in estimating the size of the Low- and Moderate-Income and Special Affordable Housing Goals. For these reasons, both of these goals have been conservatively set in relation to HUD's estimates of the size of these markets, including all multifamily originations.

Other Issues

(5) Distortions caused by mobile home loans in the HMDA data. Fannie Mae commented that the HMDA data used in HUD's analysis included mobile home loans, which ''are an important source of affordable housing for low- and moderate-income families, but which are not a significant product line for either Fannie Mae or Freddie Mac,'' adding that if mobile home originations are eliminated, ''the amount of mortgages meeting this [low- and moderate-income] goal available to Fannie Mae and Freddie Mac is significantly reduced.'' Freddie Mac was in general agreement with this view.

HUD response. HUD has undertaken discussions with industry representatives and mobile home lenders and has examined the effects of adjusting the HMDA data for mobile homes.[6] However, as Section F discusses in detail, it is not clear how many mobile home loans are included in the HMDA data. Thus, HUD also uses American Housing Survey data that does not include mobile homes. To a certain extent, HUD had anticipated this issue in its proposed rule by excluding small loans from its analysis of HMDA data.

(6) American Housing Survey (AHS) data on housing affordability. Freddie Mac stated that HUD's use of the AHS led to an overstatement of housing affordability, because ''it is well known that income reported in the AHS [is] lower than other independent estimates of income.''

HUD response. This issue requires distinguishing between owner-occupied and rental units using special 1990 Census tabulations. HUD compared data on household income to official HUD estimates of area median income for each location in the country. These Census tabulations should be more accurate than the AHS in two ways—because the Census income data are better, and because the Census income data were compared to accurate median family income data for each metro area or nonmetro county in the country. The AHS estimates of the income of very-low-, low-, and moderate-income homeowners are about two percentage points higher than the corresponding Census data. However, these comparisons fail to take into account the changes which were made in the AHS in 1993, which has reduced income underreporting by the AHS. (See Section F.1.c below.) Thus, it appears that income underreporting is not a serious problem with the recent AHS data. As noted above, one advantage of the AHS data is that it excludes mobile home loans.

The Census tabulations show that the AHS and the Census data are remarkably similar with regard to renters' incomes. But the Department used rent data, not income data, in measuring affordability of rental units. The AHS asks more questions about rent components than any other survey and it is the only source of information on gross rent (contract rent plus the cost of utilities), thus it is the best source of information about rents.

(7) Use of rent levels inflates rental housing importance. Freddie Mac stated that the proposed rule uses rent levels to qualify rental units as serving low- or moderate-income levels. They added that ''This is reasonable, but has the effect of increasing the importance of rental housing in meeting goals,'' because ''many higher income households live in lower cost rental units.''

HUD response. It is true that many higher-income households live in lower-rent units, but this is irrelevant. If the GSEs undertook a concerted effort to gather comprehensive data on renter income, as allowed (but not required) by the FHEFSSA, HUD would base its low- and moderate-income rental share on renters' income data. But in fact both GSEs have repeatedly said that data on tenant income is not generally available, and HUD has therefore allowed the GSEs to use data on rents in determining affordability. To be consistent with this practice, HUD has used rents in estimating the size of the market related to the various goals. This procedure does not inflate the importance of rental housing relative to what is available for purchase by the GSEs.

[6] These adjustments involved identifying all loans originated by four mobile home lenders, examining borrower income data for these loans, extrapolating from this data to estimate the size of the total mobile home market by income level in the HMDA data, and deducting the resulting estimates from the HMDA data.

B. Overview of HUD's Market Share Methodology

1. Definition

The size of the market for each housing goal is one of the factors that the Secretary is required to consider when setting the level of each housing goal.[7] Using the Low- and Moderate-Income Housing Goal as an example, the market share in a particular year is defined as follows:

Low- and Moderate-Income Share of Market: The number of dwelling units financed by the primary mortgage market in a particular calendar year that are occupied by (or affordable to, in the case of rental units) families with incomes less than the area median income *divided by* the total number of dwelling units financed in the conforming conventional primary mortgage market.

There are three important aspects to this definition. First, the market is defined in terms of ''dwelling units'' rather than, for example, ''value of mortgages'' or ''number of properties.'' Second, the units are ''financed'' units rather than the entire stock of all mortgaged dwelling units; that is, the market-share concept is based on the mortgage flow in a particular year, which will be smaller than total outstanding mortgage debt. Third, the low- and moderate-income market is expressed relative to the overall conforming conventional market, which is the relevant market for the GSEs.[8] The low- and moderate-income market is defined as a percentage of the conforming market; this percentage approach maintains consistency with the method for computing each GSE's performance under the low- and moderate-income goal (that is, the number of low- and moderate-income dwelling units financed by GSE mortgage purchases relative to the overall number of dwelling units financed by GSE mortgage purchases).

2. Three-Step Procedure

Ideally, computing the low- and moderate-income market share would be straightforward, consisting of three steps:

(Step 1) Projecting the market shares of the four major property types included in the conventional conforming mortgage market:

(a) Single-family owner-occupied dwelling units (SF-O units);

(b) Rental units in 2–4 unit properties where the owner occupies one unit (SF 2–4 units);[9]

(c) Rental units in one-to-four unit investor-owned properties (SF investor units); and,

(d) Rental units in multifamily (5 or more units) properties (MF units).[10]

(Step 2) Projecting the ''goal percentage'' for each of the above four property types (for example, the ''low- and moderate-income goal percentage for single-family owner-occupied properties'' is the percentage of those dwelling units financed by mortgages in a particular year that are occupied by households with incomes below the area median).

(Step 3) Multiplying the four percentages in (2) by their corresponding market shares in (1), and summing the results to arrive at an estimate (weighted average) of the overall share of dwelling units financed by mortgages that are occupied by low- and moderate-income families.

The four property types are analyzed separately because of their differences in low- and moderate-income occupancy. Rental properties have substantially higher percentages of low- and moderate-income occupants than owner-occupied properties. This can be seen by the following illustration of Step 3's basic formula for calculating the size of the low- and moderate-income market:[11]

Property type	(Step 1) share of market (percent)	(Step 2) low-mod share (percent)	(Step 3) multiply (1) x (2) (percent)
(a) SF–O	71.0	36	25.6
(b) SF 2–4	2.0	85	1.7
(c) SF Investor ..	10.6	85	9.1
(d) MF	16.4	90	14.8
Total Market	100.0	.....	51.2

In this example, low- and moderate-income dwelling units are estimated to account for slightly over 51 percent of the total number of dwelling units financed in the conforming mortgage market. To examine the other housing goals, the ''goal percentages'' in Step 2 would be changed and the new ''goal percentages'' would be multiplied by Step 1's property distribution, which remains constant.

3. Data Issues

Unfortunately, complete and consistent mortgage data are not readily available for carrying out the above three steps. A single data set for calculating either the property shares or the housing goal percentages does not exist. However, there are several major data bases that provide a wealth of useful information on the mortgage market. HUD combined information from the following sources: the Home Mortgage Disclosure Act (HMDA) reports, the American Housing Survey (AHS), HUD's Survey of Mortgage Lending Activity (SMLA), and the Census Bureau's Residential Finance Survey (RFS).

Property Shares. To derive the property shares, HUD started with forecasts of single-family mortgage originations. These forecasts, which are readily available from industry groups and the GSEs, are based on HUD's SMLA. The SMLA does not provide information on conforming mortgages, on owner versus renter mortgages, or on the number of units financed. Thus, to estimate the number of single-family units financed in the conforming conventional market, HUD had to project certain market parameters based on its judgment about the reliability of different data sources. Sections D and E report HUD's findings related to the single-family market.

Total market originations are obtained by adding multifamily originations to the single-family estimate. Because of the wide range of estimates available, the size of the multifamily mortgage market turned out to be one of the most controversial issues raised in the public comments. In 1994, HMDA reported about $15 billion in conventional multifamily originations while the SMLA reported double that amount ($30 billion). Because most renters qualify under the low- and moderate-income goal, the chosen market size for multifamily can have a substantial effect on the overall estimate of the low- and moderate-income market (as well as on the estimate of the special affordable market). Thus, it is important to have a reliable estimate of the size of the multifamily market. Section C discusses this issue in detail.

Goal Percentages. To derive the goal percentages for each property type, HUD relied heavily on HMDA and AHS data. For single-family owner originations, HMDA provides comprehensive information on borrower incomes and

[7] Sections 1332(b)(4), 1333(a)(2), and 1334(b)(4).

[8] So-called ''jumbo'' mortgages, greater than $203,150 for 1-unit properties, are excluded in defining the conforming market. There is some overlap of loans eligible for purchase by the GSEs with loans insured by the FHA and guaranteed by the Veterans Administration.

[9] The owner of the SF 2–4 property is counted in (a).

[10] Property types (b), (c), and (d) consist of rental units. Property types (b) and (c) must sometimes be combined due to data limitations; in this case, they are referred to as ''single-family rental units'' (SF-R units).

[11] The property shares and low-mod percentages reported here are based on one set of model assumptions; other sets of assumptions are discussed in Section E.

census tract locations for metropolitan areas. Unfortunately, it provides no information on the incomes of renters living in mortgaged properties (either single-family or multifamily) or on the affordability of rental units in mortgaged properties. The AHS, however, does provide a wealth of information on the affordability of rental properties. Thus, an important issue here concerns whether affordability data from rental properties can serve as a proxy for the affordability of newly-mortgaged rental properties. This issue as well as other technical issues related to the goal percentages (such as the need to exclude mobile homes from HMDA data) are discussed in Sections F, G, and H.

4. Conclusions

HUD has attempted to reduce the range of uncertainty around its market estimates by carefully reviewing all known major mortgage data sources and by conducting numerous sensitivity analyses to show the effects of alternative assumptions. The remainder of this Appendix reports findings from the additional analyses that HUD has conducted in response to public comments received. Sections C, D, and E report findings related to the property share distributions called for in Step 1, while Sections F, G, and H report findings related to the goal-specific market parameters called for in Step 2. These latter sections also report the overall market estimates for each housing goal calculated in Step 3.

HUD contracted with the Urban Institute to comment on the reasonableness of its market share approach and to conduct analyses related to specific comments received from the public about its market share methodology. Findings from several Urban Institute reports will be discussed throughout this Appendix.

C. Size of the Multifamily Mortgage Market

This section derives projections of multifamily mortgage originations, in dollars and in numbers of units in mortgaged properties.

The multifamily sector is especially important in the establishment of housing goals for Fannie Mae and Freddie Mac because multifamily properties are overwhelmingly occupied by low- and moderate-income families. For example, in 1994 11 percent of units financed by Fannie Mae were multifamily, but 93 percent of those units were low- and moderate-income units, accounting for 23 percent of all of Fannie Mae's low- and moderate-income purchases for that year.

This discussion is organized as follows: Section 1 reviews the proposed rule's approach to multifamily market estimation, the public comments on the methodology, and HUD's approach to resolve various questions raised. Section 2 identifies and evaluates available historical data resources. Section 3 undertakes an analysis of projected aggregate origination volume for 1996 and 1997 for the entire multifamily market and then considers the portion of the market relevant as a basis for establishing housing goals for Fannie Mae and Freddie Mac.

1. The Proposed Rule, Public Comments, and HUD's Approach to Resolving Issues Raised

Proposed rule. The proposed rule presented two projections of the size of the multifamily market. The first, based on the Bureau of the Census's 1991 Survey of Residential Finance (RFS), was $35 billion of conventional multifamily originations, which was projected to be 7 percent of the total dollar volume of conventional originations. The second, based on HUD's Survey of Mortgage Lending Activity (SMLA), was $33 billion of conventional multifamily originations, which was projected to be 5 percent of the total dollar volume of conventional originations.

Public comments. Both GSEs maintained that in deriving market-share estimates for all three of the statutory goals, HUD had made projections of the size of the multifamily market that were unreasonably high. They claimed that HUD had chosen the poorest and least-favorable of the data bases that could have been employed for this purpose.

The following points were made by the GSEs in support of this general criticism:

a. HUD's reliance on the Survey of Mortgage Lending Activity (SMLA): The GSEs commented that this survey's estimates of multifamily lending volumes in the early 1990s are based on data for a sample of commercial banks that is known to be out-of-date and too small, yet this survey is the one on which HUD relied most heavily.

b. HUD's use of the Residential Finance Survey (RFS): The GSEs commented that HUD used mortgage assumptions data that should have been excluded in estimating mortgage origination volumes; that HUD improperly ignored the nature of RFS as a survey of outstanding mortgages still outstanding after a period of time had passed since their origination and did not adequately allow for differential prepayment rates between multifamily and single-family mortgages over that passage of time; that HUD had relied on RFS data for mortgages originated over a longer-than-necessary time interval (1987–1991, when 1989–91 could have been used); that HUD had not recognized the decline in origination rates that occurred in the early 1990s, after the end of the period reflected in RFS and after a period of turmoil in the market in 1990–91; that HUD had failed to recognize that originations in 1990–91 included significant numbers of multifamily loan restructurings that would have been reported as new loans in RFS (as well as SMLA) but would not have been available for GSE purchase.

c. HUD's neglect of evidence on the multifamily market in the Home Mortgage Disclosure Act (HMDA) data base: The GSEs stated their belief that HMDA covers nearly 100 percent of the relevant lender base; and that commercial banks are known to file HMDA reports reliably, making this a better source of information on banks than SMLA. As a general matter, Fannie Mae and Freddie Mac contended that the HMDA figure for 1993 mortgage originations is the more accurate one, based on what they understood to be methodological deficiencies in SMLA and limited applicability of RFS.

Activities to resolve issues. HUD contracted with the Urban Institute for a wide-ranging evaluation of data sources and exploration of factors that could potentially affect multifamily originations in the next few years. This work included analyses of RFS, SMLA, and HMDA data, investigations of the methodologies used to construct these three data sources, and discussions with knowledgeable individuals in the lending community. This was supplemented by HUD in-house analyses of RFS, HMDA, SMLA, and GSE data on multifamily volumes. In addition, HUD convened two meetings with experts involved in the collection and compilation of RFS, SMLA, and HMDA data and other experts on mortgage originations. HUD also organized a discussion of affordable multifamily development and the secondary market involving a diverse group of lenders, with Urban Institute researchers. Representatives of Fannie Mae and Freddie Mac were present at all of these meetings. The results of these analyses are summarized below.

2. Multifamily Origination Volumes, 1987–1994

The principal sources of evidence on historical multifamily origination volumes are RFS, SMLA, and HMDA. RFS data show the aggregate face value of mortgage loans by year of origination

(in groups of years in the public use RFS data base) which were still outstanding as of the spring 1991 survey date. SMLA and HMDA data represent annual aggregate dollar volumes of loan originations. Table D.1 presents figures for 1987 through 1994.

TABLE D.1.—MULTIFAMILY MARKET ESTIMATES

[Billions of dollars]

Origination year	RFS mortgages outstanding, spring 1991	SMLA originations	HMDA originations
1987	35.7 (avg.) ...	45.1	.....
1988	35.7 (avg.) ...	38.2	.....
1989	37.4 (avg.) ...	31.1	.....
1990	37.4 (avg.) ...	23.6	.....
1991	37.4 (avg.) ...	25.5	.....
1992	37.4 (avg.) ...	25.7	10.2
1993	37.4 (avg.) ...	31.7	13.3
1994	37.4 (avg.) ...	31.3	15.2

The RFS figures in Table D.1 are expressed on an annualized basis, i.e., value of mortgages originated in 1987 and 1988 (and still outstanding as of 1991) divided by 2, and value originated in 1989–1991 (similarly), divided by 2⅓ (based on the survey date approximately one-third of the way through 1991).

To address the public comments, it is necessary to understand the methods used to compile each of these sources. Findings from HUD's comparative analysis will then be presented.

RFS begins with a sample of properties based on the lists of properties constructed for the decennial censuses of population and housing. The owner of each property is then located and interviewed—whether an owner-occupant or an absentee owner of a property that contains entirely rental or vacant units. The survey instrument includes questions on the mortgage(s) that apply to the property, as well as on property and owner characteristics. Each owner is asked to identify the holder or servicer of any applicable mortgage loans, and a separate lender survey instrument is administered. Responses from the owner questionnaires are linked to responses from the lender questionnaires in the data base as released by the Census Bureau. The strength of this survey is that it presents a highly comprehensive picture of residential financing, since it is based on a property sample rather than on a survey of lenders. Consistent and rigorous statistical and operational quality control procedures are applied throughout.

The data that enter into SMLA are compiled by HUD from source materials generated in various ways from the different institutional types of mortgage lenders. Data on savings associations are collected for HUD by the Office of Thrift Supervision; these data cover all thrifts, not a sample. Mortgage company and life insurance company data are collected through sample surveys conducted by the Mortgage Bankers Association of America and the American Council of Life Insurance, respectively. Data on commercial banks and mutual savings banks are collected on a HUD form from samples of such lenders. The Federal credit agencies and State credit agencies report their data directly to HUD. Local credit agency data are collected by HUD staff from a publication that lists their mortgage financing activities. HUD contracted with ICF, Inc., in 1994 to evaluate the methodology used in constructing the SMLA.[12] ICF concluded that, with respect to the survey of commercial banks and mutual savings banks, ''while there do not appear to be any significant problems with the sampling plan, the sample has never been redrawn since the origination of the [SMLA], and . . . has very likely become seriously outdated . . ..'' [13] With respect to mortgage bankers, ICF said that MBA staff had expressed ''concern that estimated data on multifamily . . . originations may not be as reliable as corresponding data on single-family mortgage originations.'' Subsequently, MBA has stopped reporting multifamily originations data to HUD and has begun work to revise its survey procedures. With these two exceptions, ICF concluded that no efforts to improve data collection methodologies appeared warranted.

HMDA data are collected by lending institutions and reported to their respective regulators as required by law. HMDA was enacted as a mechanism to permit the public to determine locations of properties on which local depository institutions make mortgage loans, ''to enable them to determine whether depository institutions are filling their obligations to serve the housing needs of the communities and neighborhoods in which they are located . . .'' (12 USC 2801). HMDA reporting requirements apply to lenders which have offices in Metropolitan Statistical Areas and which have more than $10 million in total assets. (For mortgage bankers, the $10 million includes assets of any parent corporations, reporting is required only if home purchase loan originations exceed 10 percent of total loan originations, and reporting since 1993 has been required only if the institution's annual home purchase loan origination volume is at least 100.) Reporting is required for all loans closed in the name of the lending institution and loans approved and later acquired by the lending institution, including multifamily loans. Thus, the HMDA data base concentrates on lending by depository institutions in metropolitan areas but, unlike SMLA and RFS, it is not a sample survey; it is intended to include loan-level data on all loans made by the institutions that are required to file reports.

The Urban Institute researchers concluded, based on comparison of the methodologies used in the three surveys and on reported problems with SMLA and HMDA (reviewed above), and on direct analyses of each data base (discussed below) that the RFS is ''an excellent survey which represents a good source of information about multifamily originations in the years just prior to the survey, i.e., 1989–1991''.[14] They infer from RFS an estimate of at least $30 billion per year of multifamily originations in 1987–1991.

With this in mind, we proceed to an examination of origination volumes reported by the three data sources by type of lender. Table D.2 shows the basic figures. The column headed ''RFS'' shows the annualized aggregate face value of multifamily loans outstanding as of the 1991 survey date that were originated in the indicated years, as in Table D.1, but disaggregated in table D.2 by category of loan servicer as of the 1991 survey date. The columns headed ''SMLA'' and ''HMDA'' show aggregate dollar volumes of loan originations by category of originator in the indicated years.

In addition to category of loan servicer, RFS also reports the category of holder. Use of data from the servicer category, as in Table D.2, produces the more reliable comparison with the other surveys because multifamily loans that are sold into the secondary market tend to remain serviced by the same category of originating lender. There are several major differences between the servicer and holder breakdowns in RFS. Commercial banks hold 20–30 percent more loans for each origination period than they service. Mortgage bankers hold about one-quarter of the value of loans that they service—one would expect even fewer. Since independent mortgage banking companies are not

[12] Evaluation of Design and Implementation of the Gross Flows Survey of Mortgage Lending Activity, Final Report submitted to HUD, July 31, 1994.

[13] HUD's Office of Housing has issued a Request for Proposals for help with improving the commercial banks component of SMLA.

[14] ''What We Know About Multifamily Mortgage Originations'', p. 5.

chartered to hold loans, these holdings presumably reflect a mis-categorization problem such as loans held by depository institutions of which the mortgage bankers are affiliates. Life insurance companies, pension funds, and REITs hold more than double the value of loans than they service. Federally-sponsored secondary market agencies and pools, and to a lesser extent conventional pools, are significant non-servicing holders of mortgages.

The total SMLA figure for 1987–88 is greater than the corresponding total RFS figure, consistent with attrition from the inventory of multifamily mortgages outstanding before the date of administration of the RFS. SMLA figures are also greater than RFS figures for lender categories, except for mortgage bankers.

The total RFS figure for 1989–91 is greater than the corresponding SMLA figure. To a significant extent, the difference reflects categories of lenders that SMLA does not cover: finance companies, individuals and estates, and ''other'' lenders—these include trust accounts administered by banks, nonprofit organizations, and insurance companies other than life insurance companies.

The main question raised by this comparison is why SMLA and HMDA report such different multifamily estimates for 1993. SMLA reports $31.7 billion while HMDA reports $13.3 billion. The Urban Institute conducted extensive analysis to answer this question. The researchers concluded both that the SMLA multifamily origination volume was too high and the HMDA estimate was too low, creating the large gap in reported 1993 multifamily originations. They concluded that the 1993 lending volume was actually in the range of $25–30 billion, i.e., the SMLA figure may be as much as $7 billion too high and the 1993 HMDA figure is likely at least $12 billion too low. This conclusion is supported by the following analyses:

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Table D.2
Comparison of RFS, SMLA, and HMDA Figures
(billions of dollars)

	1987-88		1989-91		1993	
Type of lender	SMLA	RFS	SMLA	RFS	SMLA	HMDA
Commercial banks	7.6	5.5	9.7	7.8	18.8	4.8
Savings & loans; mutual savings banks	21.6	13.6	11.4	9.5	7.3	6.5
Credit unions	--	0.06	--	0.01	--	0.01
Finance companies	--	0.6	--	3.0	--	--
Mortgage companies	3.5	7.2	4.6	8.6	2.0	1.9
Life insurance companies	3.6	2.5	2.4	2.3	1.5	--
Pension funds (including State & local governments)	0.07	0.08	0.04	0.2	0.2	--
Real estate investment trusts	--	0.09	--	0.2	--	--
State and local government credit agencies	4.1	0.6	1.5	0.3	1.0	--
Federal credit agencies	1.1	1.4	1.3	0.7	0.9	--
Federally sponsored secondary market agencies & pools and private conduits	0	0.3	0	0.1	--	--
Individuals and estates	--	0.9	--	0.9	--	--
Other	--	1.5	--	1.3	--	--
Not reported	--	4.4	--	4.3	--	--
TOTAL	41.6	38.6	30.9	39.1	31.7	13.3

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(a) A commercial banks figure of $7–8 billion is more plausible than SMLA's $18.8 billion for 1993. Comparison of HMDA and SMLA data on loans purchased in 1993 indicates that HMDA missed a significant volume of multifamily loan originations; thus the $4.8 billion HMDA figure is too low. A $7–8 billion figure is implied by combining the HMDA and SMLA data.[15]

(b) The SMLA overestimate for banks is offset by underestimation of multifamily loans for some lender categories, particularly mortgage bankers, loans by individuals, and life insurance companies.[16]

(c) A conclusion that HMDA underreports multifamily originations is supported by a comparison between HMDA and Fannie Mae data. Loans reported in HMDA as sold to Fannie Mae in 1993 tend to be smaller in size than Fannie Mae's 1993 multifamily originations as shown in the Fannie Mae data base. In addition, 41 percent of Fannie Mae's 1993 multifamily mortgage purchases were found to be in tracts where HMDA reported no multifamily originations. It appears that larger multifamily loans tend not to be reported in HMDA. Further evidence of the poor quality of the HMDA multifamily data is the fact that it reported that in 1993 more multifamily loans were sold to Freddie Mac than to Fannie Mae, when in fact Freddie Mac's purchases were only a small fraction of Fannie Mae's purchases.

(d) In addition, the HMDA data base does not cover a number of important categories of multifamily lenders such as life insurance companies and State housing finance agencies, providing another reason that the HMDA data understates the size of the multifamily market.

(e) The conclusion regarding HMDA is further supported by an analysis of RFS data, projecting loan terminations for to 1993 based on RFS's estimates of loans outstanding by maturity in 1991, using a hazard modeling framework.[17]

The SMLA figures, with the adjustments for 1993 discussed above, indicate a volume of multifamily mortgage originations of at least $30 billion around 1990, dropping to around $25 billion in the early 1990s. The inconsistency between the revised SMLA estimate and the HMDA 1993 estimate is the result of HMDA's underestimation for commercial banks and mortgage companies, and omission of several important lending categories shown in SMLA and RFS.

The estimate of $25–30 billion annual lending volume for 1993 and other years in the early 1990s represents around 10 percent of the aggregate value of multifamily mortgage debt outstanding, which was estimated by RFS at $329 billion as of Spring 1991.[18] Such an originations-to-outstanding debt ratio is consistent with the value of this ratio during the preceding several years, which provides further support both for the conclusion regarding 1993 and for HUD's extrapolation to 1996 and beyond.

3. Projections for 1996 and Beyond

Of the three data bases described above, the greatest confidence appears warranted for the RFS. The Urban Institute researchers therefore developed a model to project multifamily origination volumes from the 1991 survey date forward, based on RFS data on mortgages by year since origination. They applied a statistical model of mortgage terminations based on Freddie Mac's experience from the mid-1970s to around 1990. While mortgage characteristics in 1990 are not wholly similar to the characteristics of these historical mortgages financed by Freddie Mac, nevertheless the prepayment propensities of contemporary mortgages may at least be approximated by the prepayment experience of these historical mortgages. The research methodology took account of the influence of interest rate fluctuations on prepayments of the historical mortgages; the projections assumed that prepayments are motivated mainly by property sales.[19]

The analysis began with the $273 billion of outstanding first mortgage debt shown by RFS for 1991. Forecast mortgage origination volumes based on mortgages existing in 1991 were: $27 billion for 1993 (providing a useful point of comparison with the HMDA and SMLA figures referenced earlier), $37 billion for 1996 and $40 billion for 1997, the years to which this rulemaking applies. New construction was projected to add slightly less than $7 billion of mortgage lending volume each year to these figures.

These analyses imply an aggregate volume approaching $40 billion for the whole multifamily market in 1996. To derive an estimate of the market relevant to Fannie Mae and Freddie Mac, we exclude (a) FHA-insured loans, and (b) loans insured by State bonding agencies and held by State and local credit agencies. Other categories of mortgages, considering the type of insurer, servicer, or holder, do not tend to have mortgage characteristics that differ substantially from the multifamily mortgages that are purchased by Fannie Mae and Freddie Mac. There is thus no particular basis for excluding them.

Based on this analysis, $30-$35 billion per year are reasonable projections of multifamily mortgage origination volumes for 1996. Urban Institute analysis indicates an increasing level in 1997 and beyond.[20]

D. Single-Family Owner and Rental Mortgage Market Shares

1. Available Data

HUD projects that originations for single-family properties will total $700 billion in 1996. Because this projection is based on HUD's Survey of Mortgage Lending Activity, it combines mortgage originations for the three different types of single-family properties: owner-occupied, one-unit properties (SF-O); 2–4 unit rental properties (SF 2–4); and 1–4 unit rental properties owned by investors (SF-Investor). The fact that the goal percentages are much higher for the two rental categories argues strongly for disaggregating single-family mortgage originations by property type. This section discusses available data for estimating the relative size of the single-family rental mortgage market.

The RFS and HMDA are the two data sources for estimating the relative size of the single-family rental market. The RFS provides mortgage origination estimates for each of the three single-family property types. HMDA divides single-family mortgage originations into two property types:[21]

(1) Owner-occupied originations, which include both SF–O and SF 2–4.

(2) Non-owner-occupied mortgage originations, which include SF Investor.

The percentage distributions of mortgages from these data sources are as follows:

[15] ''Estimating the Volume of Multifamily Mortgage Originations for Commercial Banks.''

[16] ''What We Know About Mortgage Originations,'' p. 20.

[17] ''An Alternative Methodology to Estimate the Volume of Multifamily Mortgage Originations.''

[18] SMLA's figure is $245 billion as of the end of 1992. SMLA's coverage is less than RFS's. This figure is based on call reports and not subject to the methodological comments concerning SMLA's bank origination volume estimates.

[19] This is the methodology used to construct the 1993 RFS-based estimate cited above.

[20] ''An Alternative Methodology to Estimate the Volume of Multifamily Mortgage Originations.''

[21] This ignores the HMDA loans with ''non-applicable'' for owner type.

	1993 HMDA (percent)	1994 HMDA (percent)	1987–91[22] RFS (percent)	HUD's proposed rule (percent)
SF–O	94.3	92.0	80.4	88.0
SF 2–4	(Included above).		2.3	2.0
SF Investor	5.7	8.0	17.3	10.0
Total	100.0	100.0	100.0	100.0

Because HMDA combines the first two categories, the comparisons between the data bases must necessarily focus on the SF investor category. The RFS estimate of 17.3 percent is over twice HMDA's highest estimate. In its proposed rule, HUD projected a 10.0 percent share for the SF investor group, only two percentage points higher than the 1994 HMDA figure. In fact, HUD's projection appears quite conservative relative to the RFS estimate of 17.3 percent.

2. Urban Institute Analysis—Investor Market Share

HUD asked the Urban Institute to analyze the differences between the RFS and HMDA investor shares and determine which was the more reasonable. The Urban Institute's analysis of this issue is contained in a report by Dixie Blackley and James Follain.[23] Blackley and Follain provide reasons why HMDA should be adjusted upward as well as reasons why the RFS should be adjusted downward. One reason for adjusting HMDA's investor share upward is that the investor share of mortgage originations as reported by HMDA is much lower that the investor share of the single-family rental stock as reported by the AHS. The fact that investor loans prepay at a faster rate than other single-family loans suggests to Blackley and Follain that the investor share of single-family mortgage originations should be higher—not lower—than the investor share of the single-family housing stock. Follain and Blackley conclude that ''this brings into question the investor share based upon HMDA data'' (page 15).

The RFS's investor share should be adjusted downward in part because the RFS assigns all vacant properties to the rental group, but some of these are likely intended for the owner market, especially among one-unit properties. Blackley and Follain's analysis of this issue suggests lowering the investor share from 17.3 percent to about 14–15 percent.

Blackley and Follain note that a conservative estimate of the SF investor share is advisable because of the difficulty of measuring the magnitudes of the various effects that they analyzed.[24] They conclude that 10 percent and 12 percent are reasonable estimates of the investor share of single-family mortgage originations.[25] As noted earlier, HUD projected an investor share of 10 percent in its proposed rule. Blackley and Follain caution that uncertainty exists around these estimates because data bases needed to estimate these parameters do not provide precise measures of their size.

3. Single-Family Market in Terms of Unit Shares

The market share estimates for the housing goals need to be expressed as percentages of units rather than as percentages of mortgages. Thus, it is necessary to compare unit-based distributions of the single-family mortgage market under the alternative estimates discussed so far. The mortgage-based distributions given above in Section D.1 were adjusted in two ways. First, the owner-occupied HMDA data were disaggregated between SF–O and SF 2–4 mortgages based on RFS data, which show that SF 2–4 mortgages represent approximately 2 percent of all single-family mortgages. Second, the resulting mortgage-based distributions were shifted to unit-based distributions by applying the unit-per-mortgage assumptions in HUD's proposed rule. HUD assumed 2.25 units per SF 2–4 property and 1.35 units per SF investor property; both figures were derived from the 1991 RFS.[26]

[22] The year-by-year distributions from the RFS were not too different from the average distribution given in the text.

[23] Dixie M. Blackley and James R. Follain, ''A Critique of the Methodology Used to Determine Affordable Housing Goals for the Government Sponsored Housing Enterprises,'' October 1995.

[24] For example, they note that discussions with some lenders suggest that because of higher mortgage rates on investor properties, some HMDA-reported owner-occupants may in fact be ''hidden'' investors; however, it would be difficult to quantify this effect. They also note that some properties may switch from owner to renter properties soon after the mortgage is originated. While such loans would be classified by HMDA as owner-occupied at the time of mortgage origination, they could be classified by the RFS as rental mortgages. Again, it would be difficult to quantify this effect given available data.

[25] *Ibid.*, page 22.

[26] The unit-per-mortgage data from the 1991 RFS match closely the GSE purchase data for 1993 and 1994. Blackley and Follain show that an adjustment for vacant investor properties would raise the average units per mortgage to 1.4; however, this increase is so small that it has little effect on the overall market estimates.

	1994 HMDA (percent)	1987–91 RFS (percent)	HUD's proposed rule (percent)	Blackley/Follain alternative (percent)
SF–O	85.4	73.8	83.0	80.6
SF–2–4 Owner[27]	1.9 (est.)	2.1	1.9	1.9
SF 2–4 Renter	2.4 (est.)	2.7	2.4	2.3
SF Investor	10.3	21.4	12.7	15.2
Total	100.0	100.0	100.0	100.0
SF-Rental	12.7	24.1	15.1	17.5

Three points should be made about these data. First, notice that the ''SF-Rental'' row highlights the share of the single-family mortgage market accounted for by all rental units.

Second, notice that the rental categories represent a larger share of the unit-based market than they did of the mortgage-based market reported earlier. This, of course, follows directly from applying the loan-per-unit expansion factors.

Third, notice that the rental share under HMDA's unit-based distribution is again about one-half of the rental share under the RFS's distribution. The rental share in HUD's proposed rule is slightly larger than that reported by HMDA. The rental share in the ''Blackley-Follain'' alternative is slightly above that in HUD's proposed rule.[28]

4. Conclusions

This section has reviewed data and analyses related to determining the rental share of the single-family mortgage market. There are two main conclusions:

(1) The analytical findings do not support public commenters who argued that HUD had overestimated the single-family rental market in its proposed rule. While there is uncertainty concerning the relative size of this market, the projections made by HUD appear reasonable and, in fact, are below one set of the ''best estimates'' provided by Blackley and Follain.

(2) HMDA likely underestimates the single-family rental mortgage market. Thus, this part of the HMDA data are not considered reliable enough to use in computing the market shares for the housing goals. HMDA's rental data are included, however, in various sensitivity analyses of the market shares conducted in Sections F, G, and H. These analyses will show the effects on the overall market estimates of the different projections about the size of the single-family rental market.

E. HUD's Market Share Model

This section integrates findings from the previous two sections about the absolute size of the multifamily mortgage market and the relative distribution of single-family owner and rental mortgages into a single model of the mortgage market. The section provides the basic equations for HUD's market share model and identifies the remaining parameters that must be estimated.

The output of this section is a unit-based distribution for the four property types discussed in Section B.[29] Sections F–H will apply goal percentages to this property distribution in order to determine the size of the mortgage market for each of the three housing goals.

1. Basic Equations for Determining Units Financed in the Mortgage Market

The model first estimates the number of dwelling units financed by conventional conforming mortgage originations for each of the four property types. It then determines each property type's share of the total number of dwelling units financed.

a. Single-Family Units

This section estimates that 5.11 million single-family units will be financed in the conventional conforming market in 1996, where single-family units (SF–UNITS) are defined as:

SF–UNITS = SF–O + SF 2–4 + SF–INVESTOR

First, we estimate the dollar volume of conventional conforming single-family mortgages (CCSFM$):

(1) CCSFM$ = CONF% * CONV% * SFORIG$

Where:

CONF% = conforming mortgage originations as a percent (measured in dollars) of conventional single-family originations; estimated to be 83%.[30]

CONV% = conventional mortgage originations as a percent of total mortgage originations; forecasted to 78% by industry and GSEs.[31]

SFORIG$ = dollar volume of single-family one-to-four unit mortgages; projected to be $700 billion[32] in 1996 based on industry and GSE market forecasts.[33]

Substituting these values into (1) yields an estimate for CCSFM$ of $453 billion.

[27] Notice that the SF 2–4 category has been divided into its owner and renter subcomponents. This is easily done based on the assumption of 2.25 units per SF 2–4 mortgage. For each mortgage, one unit represents the owner occupant and 1.25 additional units represent renter occupants. The owner-occupant is included in the SF–O category in this Appendix. This is necessary because different data sources are used to estimate the owner's income and the affordability of the rental units. The income of owners of 2–4 properties are included in the borrower income data reported by HMDA. The AHS will be used to estimate the affordability of the rental units.

[28] Blackley and Follain say that 10 or 12 percent are reasonable estimates. Since HUD's proposed rule was approximately 10 percent, the ''Blackley-Follain'' alternative assumes that investors account for 12 percent of all single-family mortgages.

[29] The property distribution reported in Section A is an example of the output of the market share model. Thus, this section completes Step 1 of the three-step procedure outlined in Section A.

[30] The model projects that the conventional market share will increase slightly over its 81.4 percent of total mortgage originations in 1994.

[31] Data provided by Fannie Mae show that conforming loans have been about 78 percent of total conventional loans over the past few years.

[32] Single-family mortgage originations are estimated to be $700 billion in 1996, a reduction of $310 billion from the record setting $1,010 billion in 1993 and a reduction of $70 billion from the $770 billion in 1994. These reductions are due to the decline in refinance activity which is projected to fall from almost 60 percent of originations in 1993 to 25 percent in 1996.

[33] Fannie Mae, Freddie Mac, and the Mortgage Bankers Association have provided HUD with projections of 1996 single-family originations. Because the 1997 market is expected to be similar to the 1996 market, the discussion focuses on the 1996 market. The various market estimates reported in Sections E, F, and G for the 1996 market serve as a proxy for the 1997 market.

Second, we estimate the number of conventional conforming single-family mortgages (CCSFM#):

(2) CCSFM# = CCSFM$/SFLOAN$

Where:

SFLOAN$ = the average conventional conforming mortgage amount for single-family properties; estimated to be $94,000.[34]

Substituting this value into (2) yields an estimate of 4.82 million mortgages in 1996.

Third, we estimate the total number of single-family mortgages among the three single-family property types. Using the 88/2/10 percentage distribution for single-family mortgages from HUD's proposed rule (see Section C), the following results are obtained:

(3a) SF–OM# = .88 * CCSFM# = number of owner-occupied, one-unit mortgages = 4.24 million.

(3b) SF–2–4M# = .02 * CCSFM# = number of owner-occupied, two-to-four unit mortgages = .10 million.

(3c) SF–INVM# = .10 * CCSFM# = number of one-to-four unit investor mortgages = .48 million.

Fourth, we determine the number of dwelling units financed by these single-family mortgages:

(4a) SF–O = SF–OM# + SF–2–4M# = number of owner-occupied dwelling units financed = 4.34 million.

(4b) SF 2–4 = 1.25 * SF–2–4M# = number of rental units in 2–4 properties where a owner occupies one of the units = .12 million.[35]

(4c) SF–INVESTOR = 1.35 * SF–INVM# = number of single-family investor dwelling units financed = .65 million.

Summing equations 4a–4c gives 5.11 million for the projected number of newly-mortgaged single-family units (SF–UNITS).

b. Multifamily Units

The number of dwelling units financed by conventional conforming multifamily originations is:

(5) MF–UNITS = CCMFM$/MFLOAN$

Where:

CCMFM$ = conventional conforming mortgage originations, which are projected to be $30 billion; as discussed in Section C, alternative estimates of the multifamily market will be included in the analysis.

MFLOAN$ = average loan amount per housing unit in multifamily properties = $30,000.[36]

Substituting these values into (5) yields a projection for MF–UNITS of 1.0 million.

c. Total Units Financed

The total number of dwelling units financed by the conventional conforming mortgage market (TOTAL) can be expressed in three useful ways:

(6a) TOTAL = SF–UNITS + MF–UNITS = 6.11 million

(6b) TOTAL = SF–O + SF 2–4 + SF–INVESTOR + MF–UNITS

(6c) TOTAL = SF–O + SF–RENTAL + MF–UNITS

Where SF–RENTAL equals SF–2–4 plus SF–INVESTOR.

2. Property Distributions

The next step is to express the number of dwelling units financed for each property type as a percentage of the total number of units financed by conventional conforming mortgage originations.[37]

The projections used above in equations (1)–(6) produce the following distributions of financed units by property type:

	Percent share		Percent share
SF–O	71.0		
SF 2–4	2.0	SF–O	[38] 71.8
SF INVESTOR.	10.6	SF–RENTER.	12.6
MF–UNITS ..	16.4	MF–UNITS	16.4
Total .	100.0	.....	100.0

Sections C and D discussed alternative projections for the volume of the multifamily originations and the investor share of single-family mortgages. The analysis in this appendix will consider three multifamily origination levels—$23 billion, $30 billion, and $35 billion—and three projections about the investor share of single-family mortgages—7 percent, 10 percent, and 12 percent. The middle values ($30 billion and 10 percent) will be considered the ''baseline'' projections throughout the Appendix.

Table D.3 reports the unit-based distributions produced by HUD's market share model for different combinations of these projections. The effects of the different projections can best be seen by examining the owner category which varies by 9 percentage points, from a low of 67.2 percent (multifamily originations of $35 billion coupled with an investor mortgage share of 12 percent) to a high of 76.0 percent (multifamily originations of $23 billion coupled with an investor mortgage share of 7 percent). The owner share under the baseline projections ($30 billion and 10 percent) is 71.0 percent.

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[34] The Federal Housing Finance Board's 1994 Mortgage Interest Rate Survey (MIRS) reported an average loan size of $109,900 for one-unit, owner-occupied conventional mortgages. Assuming that 78 percent of the dollar volume of conventional single-family originations is conforming and that 90 percent of the number of conventional originations are conforming, the average loan amount for one-unit, owner-occupied mortgages in the conforming market is obtained by multiplying $109,900 by (.78/.90); this produces $95,246. A small adjustment (based on GSE data) is applied to this figure to reflect the fact that SFORIG$ includes a relatively small volume of mortgages for two-to-four-unit and investor properties (see Section C above). This produces an average loan size of about $94,000 for the conventional conforming market.

[35] Based on the RFS, there is an average of 2.25 housing units per mortgage for 2–4 properties. 1.25 is used here because one (i.e., the owner occupant) of the 2.25 units is allocated to the SF–O category. The RFS is also the source of the 1.35 used in (4c).

[36] Blackley and Follain, *op. cit.*, p. 10.

[37] The share of the mortgage market accounted for by owner occupants is (SF–O)/TOTAL; the share of the market accounted for by all single-family rental units is SF–RENTAL/TOTAL; and so on.

[38] Owners of 2–4 properties account for 1.6 percentage points of the 71.0 percent for SF–O.

Table D-3
Distribution of Financed Dwelling Units by Property Type For Different Projections of Multifamily and Single-Family Investor Originations

Investor Share Percentage Single-Family Mortgage Market	Size of Multifamily Market		
	$23 Billion	$30 Billion	$35 Billion
10 Percent			
Single-Family Owner-Occupied	73.0 %	71.0 %	69.1 %
Single-Family Rental	12.9	12.6	12.3
Multifamily	14.1	16.4	18.6
Total	100.0	100.0	100.0
7 Percent			
Single-Family Owner-Occupied	76.0 %	74.0 %	72.0 %
Single-Family Rental	9.8	9.5	9.3
Multifamily	14.2	16.5	18.7
Total	100.0	100.0	100.0
12 Percent			
Single-Family Owner-Occupied	70.9 %	69.1 %	67.2 %
Single-Family Rental	15.1	14.7	14.3
Multifamily	14.0	16.3	18.5
Total	100.0	100.0	100.0

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Comparison with the RFS. The Residential Finance Survey is the only mortgage data source that provides unit-based property distributions similar to those reported in Table D.3. Based on RFS data for 1987 to 1991, HUD estimated that, of total dwelling units in properties financed by recently acquired conventional conforming mortgages, 56.5 percent were owner-occupied units, 17.9 percent were single-family rental units, and 25.6 percent were multifamily rental units.[39] Thus, the RFS presents a much lower owner share than does HUD's model. This difference is due mainly to the relatively high level of multifamily originations during the mid- to late-1980s, which is the period covered by the RFS.[40]

3. Sensitivity of Property Distributions to Changes in Other Model Parameters

The multifamily and single-family rental markets are not the only areas where some degree of uncertainty exists about their magnitudes. HUD examined the sensitivity of the property distributions given in Table D.3 to changes in several other model parameters. Most of these sensitivity analyses will be reported when discussing the market estimates for each of the housing goals. Suffice it to say here that any changes that reduce the owner category—such as reducing the overall level of single-family origination activity or raising the per unit loan amounts for single-family mortgages—tend to increase the market estimates for each of the housing goals. This occurs because the goal percentages for owner mortgages are lower than those for rental housing.

F. Size of the Conventional Conforming Mortgage Market Serving Low- and Moderate-Income Families

This section estimates the size of the low- and moderate-income market by applying low- and moderate-income percentages to the property shares given in Table D.3. This section essentially accomplishes Steps 2 and 3 of the three-step procedure discussed in Section B.

Technical issues and data adjustments related to the low- and moderate-income percentages for owners and renters are discussed in the first two subsections. Then, estimates of the size of the low- and moderate-income market are presented along with several sensitivity analyses. Based on these analyses, HUD concludes that 48–52 percent is a reasonable estimate of the mortgage market's low- and moderate-income share for 1996 and 1997. It is assumed that similar shares will exist following 1997.

The final rule establishes the Low- and Moderate-Income Goal for 1996 at 40 percent of the total number of dwelling units financed by the GSE's mortgage purchases for 1996. The level of the goal for 1997 and subsequent years is 42 percent of each year's mortgage purchases.

1. Low- and Moderate-Income Percentage for Single-Family Owner Mortgages

a. HMDA Data

The most important determinant of the low- and moderate-income share of the mortgage market is the income distribution of single-family borrowers. HMDA reports annual income data for families living in metropolitan areas who purchase a home or refinance their existing mortgage.[41] Table D.4 gives the percentage of mortgages taken out by low- and moderate-income families for the years 1992, 1993, and 1994. For each year, an unadjusted low- and moderate-income percentage is reported as well as one based on the adjustments that HUD made in its proposed rule, that is, excluding loans less than $15,000 and excluding loans where the loan-to-income ratio was greater than six.[42] The additional adjustments reported for 1993 and 1994 will be discussed below.

Table D.4 also reports similar data for very-low-income families (that is, families with incomes less than 60 percent of area median income). These data will be used in Section H to estimate the special affordable mortgage market.

Two trends in the income data should be mentioned. First, the percentage of borrowers with less than area median income has increased significantly over the past three years—borrowers with less than median income increased from 33.5 percent of the home purchase market in 1992 to 42.6 percent of that market in 1994. This jump in low-income lending has been attributed to historically low interest rates during this period and to affordable lending initiatives and outreach efforts on the part of lenders, private mortgage insurers, and the GSEs. Second, the characteristics of borrowers refinancing mortgages appears to have changed between 1993 and 1994. During the refinancing waves of 1992 and 1993, refinancing borrowers had much higher incomes than borrowers purchasing homes. But during 1994 these two groups exhibited practically the same income distributions.

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[39] Restricting the RFS analysis to 1991 resulted in only minor changes to the market shares.

[40] Between 1987 and 1991, annual multifamily mortgage originations averaged $32 billion, representing 7.2 percent of conventional mortgage originations. In 1994, conventional multifamily originations stood at $30 billion but because of the increase in single-family originations since the late 1980s, the multifamily share of total originations had dropped to 4.5 percent. In HUD's projection model, the $30 billion in multifamily originations represents 4.9 percent of total conventional originations for 1996.

[41] As noted earlier, HMDA data are expressed in terms of number of loans rather than number of units. In addition, HMDA data do not distinguish between owner-occupied one-unit properties and owner-occupied 2–4 properties. This is not a particular problem for this section's analysis of owner incomes.

[42] The purpose of the first adjustment was to drop from the analysis small loans (such as mobile home loans) which the GSEs do not typically purchase; the purpose of the second adjustment was to cleanse the data base of outliers and likely coding errors. As discussed below, a more direct adjustment for mobile homes is made in this final rule.

Table D-4

Single-Family Owner-Occupied Mortgage Market by Borrower Income

	Low- and Moderate- Income			Very- Low- Income		
	Purchase	Refinance	Total	Purchase	Refinance	Total
1992 HMDA						
A. All Loans	35.0%	26.2%	29.0%	9.4%	5.4%	6.7%
B. Proposed Rule	33.5%	25.1%	27.8%	7.8%	4.2%	5.4%
1993 HMDA						
A. All Loans	39.6%	30.1%	32.9%	11.5%	6.4%	7.9%
B. Proposed Rule	38.2%	29.3%	32.0%	10.0%	5.6%	6.9%
C. All Without Mobile Homes						
(1) 75,000	37.9%	30.1%	32.3%	10.3%	6.4%	7.5%
(2) 100,000	37.3%	30.0%	32.1%	9.9%	6.4%	7.3%
(3) 125,000	36.6%	30.0%	31.9%	9.4%	6.3%	7.2%
(4) 150,000	36.0%	30.0%	31.7%	9.0%	6.3%	7.1%
D. C Plus Additional Adjustments						
(1) 75,000	36.9%	29.4%	31.5%	9.1%	5.6%	6.6%
(2) 100,000	36.4%	29.4%	31.3%	8.8%	5.6%	6.5%
1994 HMDA						
A. All Loans	42.6%	40.4%	41.6%	13.1%	11.8%	12.5%
B. Proposed Rule Method	41.1%	39.1%	40.2%	11.2%	10.4%	10.9%
C. All Without Mobile Homes						
(1) 100,000	40.8%	40.3%	40.6%	11.9%	11.7%	11.8%
(2) 125,000	40.3%	40.3%	40.3%	11.5%	11.7%	11.6%
(3) 150,000	39.8%	40.3%	40.0%	11.2%	11.7%	11.4%
(4) 200,000	38.7%	40.2%	39.4%	10.5%	11.7%	11.1%
D. C Plus Additional Adjustments						
(1) 100,000	39.6%	39.1%	39.4%	10.3%	10.4%	10.2%
(2) 125,000	39.2%	39.1%	39.1%	10.1%	10.4%	10.4%
American Housing Survey						
1985			27.0%			9.0%
1987			32.0%			10.0%
1989			34.0%			11.0%
1991			36.0%			14.0%
1993	38.7%	28.6%	33.0%	12.9%	8.1%	10.1%
Average(1985-93)			32.3%			10.6%

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b. Adjustment for Mobile Home Loans

The GSEs do not purchase mobile home loans under their seller/servicer guidelines unless they are real estate loans, that is, the home must have a permanent foundation and the site must be either purchased as part of the transaction or already owned by the borrower. A 1993 study estimated that only 10 percent of existing mobile homes could qualify under GSE guidelines, but industry trends (more homes on private lots and on concrete foundations) suggest that this percentage has grown in the past few years.[43] Mobile home loans present a problem for this analysis because an unknown number of them are included in the HMDA data. Since mobile homes are disproportionately occupied by lower-income families, their inclusion in HMDA data overstates the number of low-income loans eligible for GSE purchase under their seller/servicer guidelines. In other words, the 42.6 percent share for less-than-median-income home purchasers given in Table D.4 overstates the low- and moderate-income share of home purchase loans available to the GSEs in 1994.

According to industry representatives, it is unclear how many mobile home lenders report to HMDA, and for those that do report to HMDA, how many provide information on their non-real estate loans. HUD was able to identify four lenders in the HMDA data that primarily originate mobile home loans.[44] According to HMDA, these lenders originated 101,493 owner-occupied loans in 1993 and 124,251 in 1994. Reflecting the fact that over half of all mobile homes are sold in nonmetropolitan areas, only 33,813 (33 percent) of the four lenders' 1993 loans and 48,400 (39 percent) of their 1994 loans had geocode information (such as census tract or MSA code) indicating that the loans were for properties located in metropolitan areas.

With this information, ''ineligible'' mobile home loans under the GSE seller/servicer guidelines could be deducted from the unadjusted HMDA data in three steps. First, the percentage income distribution of the above-mentioned geocoded mobile home loans[45] could be applied to an ''estimate'' of the total number of geocoded mobile home loans included in the HMDA data base. (As discussed below, obtaining this ''estimate'' is the difficult part.) This would produce numbers of projected mobile home loans by income category. Next, the projected mobile home loans could be deducted from HMDA's unadjusted numbers for each income category. This would produce estimates of HMDA-reported, non-mobile-home loans by income category. Finally, a percentage income distribution could be calculated from these adjusted HMDA data.

HUD examined other data on the size of the mortgage market for mobile homes in order to determine some upper bounds for the ''estimate'' required in the first step. According to the American Housing Survey, there were 235,000 newly-constructed mobile homes in 1993, and 99,300 of these were located in metropolitan areas. About 85,000 of the newly-constructed mobile homes in metropolitan areas were financed with a mortgage or installment contract, rather than purchased ''free and clear.'' The other major category of mobile home lending involves purchases of existing mobile homes.[46] According to the AHS, 95,000 existing mobile homes located in metropolitan areas were sold and purchased using a mortgage or installment contract during 1993. Thus, the AHS estimates that there were about 180,000 owner-occupied mobile homes purchased and financed during 1993.[47] Assuming that 10–15 percent of these 180,000 loans are ''eligible'' under the GSE guidelines would reduce the estimate of ineligible loans to the 155,000–165,000 range.

Adjusted HMDA Data. Table D.4 shows the effects of a series of estimates of the size of the mobile home loan market included in HMDA. Adjusting HMDA data in the manner described earlier reduces the low- and moderate-income percentage for 1993 home purchase loans from the unadjusted HMDA figure of 39.6 percent to 37.9 percent if one assumes that 75,000 ineligible mobile home loans are included in HMDA income data, and to 37.3 percent if one assumes 100,000.[48] Increasing the assumptions to 125,000 and 150,000 ineligible mobile home loans reduces the low- and moderate-income percentage further to 36.6 percent and 36.0 percent, respectively.

As shown in Table D.4, the market share for very-low-income families is proportionately more affected by the adjustment than is the market share for less-than-median-income families. For instance, the home purchase share for very-low-income home purchase borrowers falls from 11.5 percent to 10.3 percent assuming that 75,000 mobile home loans are included in the 1993 HMDA data, and to 9.0 percent assuming that 150,000 mobile home loans are included in the HMDA data.

Mobile home loans were excluded from the AHS income data reported in Table D.4. For home purchase loans, that data show a 38.7 percent low- and moderate-income percentage and a 12.9 percent very-low-income percentage for 1993. Thus, the AHS income data suggest that the larger deductions for mobile homes (125,000 and 150,000) are probably too high.[49] In addition, when the 150,000 ''estimate'' was applied in the above three-step procedure, mobile homes accounted for all of the low- and moderate-income loans less than $15,000 included in the 1993 HMDA data base.[50] While the appropriate deduction of mobile home loans from HMDA data is not known, it appears to be much less than the higher estimates reported in Table D.4.

[43] See the study conducted by The Hamilton Securities Group (dated September 1993) for the National Commission on Manufactured Housing. Data supporting the 10 percent estimate for existing mobile homes was not provided by Hamilton.

[44] These lenders were Green Tree Acceptance, Vanderbilt Mortgage, The CIT Group, and Oakwood. Green Tree is estimated to account for 20–30 percent of the mobile home market.

[45] The income distribution for the 48,400 loans included in the 1994 HMDA data is: 34.5% had income less than 60% of AMI, 23.6% had income 60–80% of AMI, 17.2% had income 80–100% of AMI, and 24.7% had income greater than 100% of AMI. This can be compared with the income distribution for all HMDA loans reported in Table D.4. A mobile home loan borrower is almost three times more likely to have a very low income than the typical borrower (34.5% versus 12.5%). (Similar results were obtained for 1993 HMDA data.)

[46] Only about 5 percent of the identified mobile home loans were refinance loans. This explains why the income percentages for refinance loans in Table D.4 do not change very much, and why the change in total loans is much less than the change in home purchase loans. Manufactured Housing Insurance staff tell us that mobile home refinance loans are uncommon. Even if mobile home refinance loans were important, the 25 percent refinance share for 1996 loans in HUD's model would reduce the importance of this issue.

[47] It should be noted that the AHS sample for recent movers purchasing mobile homes was small which means that this estimate is subject to some degree of uncertainty.

[48] It should be noted that the adjustments made in HUD's proposed rule produce about the same effects as the mobile home adjustments discussed above; this can be seen by comparing percentages in row B with those in rows C(1) and C(2) of Table D.4. One reason for this similarity is that many mobile home loans are less than $15,000 and these were excluded from HUD's analysis in the proposed rule.

[49] Even adjusting the 12.9 percent figure for possible underreporting of income in the AHS (see discussion below) would not affect this conclusion. The AHS estimate of the very-low-income percentage would remain much higher than the 9.4 (9.0) percent figure associated with deducting 125,000 (150,000) mobile home loans from the 1993 HMDA data.

[50] This also happened when the 200,000 ''estimate'' was applied to 1994 HMDA data. Table D.4 gives higher ''estimates'' for 1994 HMDA because the U.S. Census reports that newly-constructed mobile homes increased by 50,000 (on a nationwide basis) between 1993 and 1994. Whether purchases of existing mobile homes also increased, or even declined, is not known.

c. Additional Adjustments to HMDA Data

Proposed Rule Adjustments. After deducting estimates of ineligible mobile home loans, HUD made the same deductions as in its proposed rule—that is, from the remaining estimate of non-mobile-home loans, HUD deducted loans less than $15,000 and loans with a loan-to-income ratio greater than six. The effects of these adjustments are shown in rows D(1) and D(2) of Table D.4. For instance, the low- and moderate-income percentage for 1994 home purchase loans falls from 42.6 percent (unadjusted HMDA) to 40.8 percent (due to dropping 100,000 mobile homes) to 39.6 percent (due to the proposed rule adjustments). In this case, the 1994 market share for very-low-income borrowers falls from 13.1 percent to 11.9 percent to 10.3 percent—a reduction of over 20 percent. When the AHS percentages given in Table D.4 are adjusted for loans less than $15,000 and for loans with a loan-to-income ratio greater than six, the low- and moderate-income percentage for home purchase loans falls from 38.7 to 37.2, while the very-low-income percentage for home purchase loans falls from 12.9 to 11.1.

Possible Bias in HMDA Data. There is evidence that HMDA may be over-reporting lower-income loans relative to higher-income loans. Jim Berkovec and Peter Zorn compared loans that were reported by HMDA as being sold to Freddie Mac with loans that Freddie Mac's own records show as being purchased by Freddie Mac.[51] Their major conclusion was that 1992 and 1993 HMDA data contain only 65–70 percent of conventional mortgage loans. They also found that HMDA's coverage varied across census tracts, with coverage being higher in lower-income census tracts.[52] While there was some correlation with the percent minority population in the census tract, it largely disappeared when controlling for income.

For a census tract configuration approximating the underserved area definition in HUD's proposed rule, Berkovec and Zorn's simulations suggest that the market share for these tracts should be adjusted by a factor of 90%-95% in 1992 and by 85%-95% in 1993.[53] However, Berkovec and Zorn caution that their analysis does not look at the whole mortgage market; rather, it looks only at HMDA loans reported as being sold to Freddie Mac. Loans sold to Fannie Mae are not included in Berkovec and Zorn's analysis. Thus, systematic over-reporting of low income loans sold to Freddie Mac could also explain their findings.

The low- and moderate-income goal is defined in terms of borrower incomes, not census tract incomes as analyzed by Berkovec and Zorn. Thus, HUD compared income distributions of loans that HMDA reports were originated in 1993 and 1994 and sold to one of the GSEs in the year of origination with income distributions of loans that the GSEs report were purchased by them in 1993 and 1994 in the same year as origination. The results were consistent with Berkovec and Zorn's findings that HMDA may be over-reporting lower-income loans and that the over-reporting may be greater the lower the income. In 1993, the low- and moderate-income share of loans reported by HMDA as being sold to the GSEs was 1.7 percentage points greater than the low- and moderate-income share of loans that the GSEs report they purchased in 1993 (34.2 percent versus 32.5 percent); this translates into a five percent rate of over-reporting. The corresponding very-low-income shares, on the other, differed by almost ten percent (7.1 percent based on HMDA data versus 6.5 percent based on GSE data). But as noted by Berkovec and Zorn, the absolute difference (0.6 percent in this case) is not so great because of the relatively small number of loans originated for very-low-income borrowers. Similar results were obtained when comparing 1994 HMDA and GSE data.

The above comparisons suggest that low- and moderate-income percentages reported in row D of Table D.4 may need a slight further adjustment for HMDA's over-reporting of lower income loans. But, as noted earlier, 1993 AHS data suggest that HMDA data does not need to be adjusted downward. Because of this uncertainty, HUD considers several possible values of the low- and moderate-income percentage for owners when computing the low- and moderate-income market share estimates in Section F.3 below.

d. American Housing Survey Data

Borrower income data from the American Housing Survey are included in Table D.4.[54] The low- and moderate-income percentages from the 1993 AHS are similar to those reported by 1993 HMDA data. According to the AHS, 38.7 percent of those families who recently purchased their homes, and who obtained conventional mortgages below the conforming loan limit, had incomes below the area median; this compares with 37.3 percent based on 1993 HMDA data that excludes 100,000 mobile homes.

A longer-term perspective of the mortgage market can be gained by examining income data from the last five American Housing Surveys, conducted in 1985, 1987, 1989, 1991, and 1993. The low- and moderate-income share was in the 32–34 percent range except for 1985 (27 percent) and 1991 (36 percent). The overall average during the 1985–93 period was 32.3 percent.

AHS Under-Reporting of Income. In commenting on the proposed rule, the GSEs criticized HUD's reliance on AHS data on the grounds that income reported in the AHS is lower than other independent estimates of income,[55] and questioned AHS estimates that 60 percent of all households qualify as low- or moderate-income under definitions of the Act.[56] The reported discrepancy is

[51] Jim Berkovec and Peter Zorn, ''How Complete is HMDA?: HMDA Coverage of Freddie Mac Purchases,'' Freddie Mac, January 4, 1995.

[52] Berkovec and Zorn offer two possible reasons for why HMDA reporting may be better in low-income areas. First, regulatory and CRA pressure is greater on larger banks and thrifts and all of these are required to report to HMDA. Smaller suburban lenders making loans in higher income tracts are not all required to report to HMDA and less likely to encounter intense regulatory pressure. Second, lenders have more incentive to report lower-income loans and thus are more careful in reporting these loans.

[53] These percentages were derived from their Tables 8 and 9 by comparing market shares under the three adjustment methods with the market share actually reported by HMDA. To approximate the underserved definition in HUD's proposed rule, high-minority tracts (31–100 percent) with incomes between 100 and 120 percent of area median income were assigned one-half of the market share of the high-minority tracts with income greater than area median income.

[54] The AHS data reported in this final rule were derived using different methods than the corresponding data reported in HUD's proposed rule. The differences will be explained below when discussing AHS data on rent affordability.

[55] See *Codebook for the American Housing Survey Data Base: 1973–1993*, at page 1–11.

[56] Claiming that 50 percent of the country's households are ''below the true median by definition,'' Freddie Mac proposed adjusting for AHS underreporting of income by inflating incomes of all households until 50 percent of AHS households are ''above median income.'' This suggestion has a major flaw: it fails to distinguish between median household income and the Act's definition of ''median income'' as: the unadjusted median family income for the area, as determined and published annually by the Secretary. [Sec. 1303 (9), emphasis added.] Because more than 30 percent of households are occupied by single persons or unrelated individuals and families often have more earners than households, median family income is appreciably higher than median household income. In 1990, for example, U.S. median family income was $35,353, 18 percent above the median household income of $29,943. Interpolating from the household income distribution, in 1990 58.3 percent of households had income less than national median family income. Table 695 of the 1992 Statistical Abstract gives the 1990 household income distribution in dollars with $35,000 as one cutoff. It shows that 57.9% of households had

Continued

based on a comparison with sources such as Gross Domestic Product (GDP) and the Social Security Administration, and relates to specific sources of income, such as interest income and assistance income, which are more significant portions of the incomes of households at the upper and lower ends of the spectrum. AHS estimates of wage and salary income are quite comparable to these aggregate sources. It is unclear how these discrepancies affect the percentages of interest here.

A more relevant issue is a comparison of AHS sample data with special tabulations of 1990 Census data, which has more accurate income data, since it explicitly asks amounts of income by source for each individual. Moreover, decennial Census data on median family income are the basic source of HUD's official estimates of area median income that define ''median income'' for this rule.[57]

In special Comprehensive Housing Affordability Strategy (CHAS) tabulations, 1990 Census data on household income were compared to official HUD estimates of area median income for each location in the country. These CHAS tabulations should be more accurate than the AHS in two ways—because the Census income data are better, and because the CHAS income data were compared to accurate median family income data for each metro area or nonmetro county in the country.

Comparison between the 1989 AHS income distribution (which, taken in fall of 1989, is the closest in time to the April 1, 1990 Census) and the CHAS tabulations shows that two income distributions are remarkably similar for renters:

Income cutoff	Percent of total below cutoff	
	CHAS	AHS
50% of median	38.7%	38.5%
80% of median	59.0%	59.0%
95% of median	68.0%	67.5%

For owners, shares appear to differ by about 2 percentage points throughout the very low- to moderate-income range.[58]:

Income cutoff	Percent of total below cutoff	
	CHAS	AHS
50% of median	15.5%	17.6%
80% of median	29.7%	32.2%
95% of median	37.8%	40.1%

This suggests that reducing the 1989 AHS estimates for owners by no more than 2 percentage points would appropriately adjust for income underreporting.

Improvements to the 1993 Survey. Income underreporting in the AHS was reduced after changes were made in the questionnaire for the 1993 Survey. Formerly, the AHS reported dividend and interest income for a household only if it exceeded $400. Now the Survey reports all dividend and interest income, regardless of the amount, and various sources of interest are specified. In addition to unemployment and worker's compensation and ''any other income,'' Survey respondents were explicitly asked about ''other disability payments,'' and ''veterans' payments.'' As a result, the percentage of respondents reporting income in this category rose from 9.6 percent in 1991 to 13.8 percent in 1993. In general, the percentage of AHS households reporting income other than wages or salaries rose sharply, from 63 percent in 1991 to 79 percent in 1993.

income below $35,000 in 1990 and 17.5% had income in the $35,000–$49,999 category.

[57] Note that in setting the median family income for an MSA, HUD compares the Census estimate to the AHS estimate. The Census estimate is used, unless it falls outside the confidence interval for the AHS estimate, in which case the AHS estimate is used. Currently, the Census estimate is used for all MSAs.

[58] These estimates of income are adjusted for family size, and therefore should not be taken as direct estimates of shares of owners qualifying as ''low or moderate income'' under GSE income definitions. The comparison should however provide a valid estimate of the effect of income underreporting on the AHS estimates of low or moderate income made without family size adjustments.

Thus, it is not clear that AHS underreporting of income is a major problem, especially since the 1993 improvement. In any event, there does not appear to be a need for an adjustment of more than a couple of percentage points for owner-occupied units surveyed prior to 1993, and no adjustment is needed for rental units.

2. Low- and Moderate-Income Percentage for Renter Mortgages

a. American Housing Survey Data

The American Housing Survey does not include data on mortgages for rental properties; rather, it includes data on the characteristics of the existing rental housing stock and recently completed rental properties. Current data on the income of prospective or actual tenants has also not been readily available for rental properties. Where such income information is not available, FHEFSSA provides that a rent level is affordable if it does not exceed 30 percent of the maximum income level for the low- and moderate-income category, with appropriate adjustments for family size as measured by the number of bedrooms. The GSEs' performance under the housing goals is measured in terms of the affordability of the rental dwelling units that are financed by mortgages that the GSEs purchase; the income of the occupants of these rental units is generally not considered in the calculation of goals' performance. Thus, it is appropriate to base estimates of market size on rent affordability data rather than on renter income data.[59]

Table D.5 presents AHS data on the affordability of the rental housing stock for the survey years between 1985 and 1993. The 1993 AHS shows that for 1–4 unit unsubsidized rental properties, 98 percent of all units, and 92 percent of units constructed in the preceding three years had gross rent (contract rent plus the cost of all utilities) less than or equal to 30 percent of area median income. For multifamily unsubsidized rental properties, the corresponding figures are 96 percent of all units, and 88 percent of units constructed in the preceding three years. The AHS data for 1989 and 1991 are similar to the 1993 data.

Several commenters expressed concern about using affordability data from the outstanding rental stock to proxy affordability data for mortgage flows. Some have argued that data based on the recently completed stock would be a better proxy for mortgage flows. In the above case, there is not a large difference between the affordability percentages for the recently constructed stock and those for the outstanding stock of rental properties. But this is not the case when affordability is defined at the very-low-income level. As shown in Table D.5, the recently completed stock houses substantially fewer very-low-income renters than does the existing stock. Because this issue is important for the special affordable goal, it will be further analyzed in Section H when that goal is considered.

For purposes of the Low- and Moderate-Income Goal, the analysis in Section H concludes that the existing stock is an adequate proxy for the mortgage flow when rent affordability is defined in terms of less than 30 percent of area median income. More specifically, that analysis suggests that 85 percent of single-family rental units and 90 percent of multifamily units are reasonable estimates for projecting the percentage of financed units affordable at the low- and moderate-income level.[60]

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[59] Because the ''low- and moderate-income share'' of rental units is based on rents rather than incomes, Freddie Mac's comment on the proposed rule, that estimates of the low-mod share for rental units should be adjusted for AHS income underreporting, is not valid.

[60] In 1994, 87 percent of GSE purchases of single-family investor rental units and 95 percent of their purchases of multifamily units qualified under the low-mod goal.

Table D-5

Rental Market By Affordability of Dwelling Unit: American Housing Survey, 1985-1993

Units Affordable at 100% of Area Median Income	Recently Constructed Stock(a)	Stock 4 Years Or Older	Existing Stock
1-4 Properties			
1985	75%	94%	93%
1987	80%	93%	92%
1989	90%	97%	97%
1991	92%	97%	97%
1993	92%	98%	98%
Average (1985-93)	84%	96%	95%
Multifamily (5+) Properties			
1985	88%	94%	93%
1987	86%	93%	92%
1989	88%	96%	95%
1991	88%	97%	96%
1993	88%	96%	96%
Average (1985-93)	87%	95%	95%
Units Affordable at 60% of Area Median Income			
1-4 Properties			
1985	8%	56%	54%
1987	17%	54%	52%
1989	24%	60%	59%
1991	26%	64%	63%
1993	37%	61%	61%
Average (1985-93)	20%	59%	58%
Multifamily (5+) Properties			
1985	14%	44%	41%
1987	18%	43%	40%
1989	13%	51%	47%
1991	18%	54%	51%
1993	12%	53%	51%
Average (1985-93)	15%	49%	46%

Source: American Housing Surveys, 1985, 1987, 1989,1991, 1993
a. Constructed in last 3 years.

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b. Improvements to AHS Analysis

The AHS data for both owners and renters differ from those reported in HUD's proposed rule due to several improvements in HUD's methodology. The major changes are as follows:

- The income limits for the 1989–93 surveys are now based on 1990 Census results, and those for the 1985 and 1987 survey are now based on 1980 Census results. Previous versions had used income limits from 1970 Census data for 1985, and from 1980 Census data for all other years. These changes basically use income limits that are more ''correct'' for each year than was the case in the earlier analysis. The newly available income limits based on 1990 Census data should more accurately describe income distributions in 1989 and 1991 than the ones extrapolated from 1980 Census data.
- A bedroom-size adjustment factor used by HUD for units with four or more bedrooms has been added; this is important because these large-bedroom units represent almost one-fourth of rental units with three or more bedrooms. This change increases accuracy because earlier, the 3-plus bedroom adjustment factor was used for all units with more than three bedrooms.
- Utility payments in the 1985 and 1987 surveys are constrained to independent (lower) estimates so that they are comparable with procedures begun by the Census Bureau for the 1989 AHS. The new Census Bureau procedures were instituted to correct errors in reported utility payments that were known to cause upward bias. This change should also increase accuracy.

The main effects of these changes are higher affordability estimates than reported in the proposed rule. The portion of the outstanding stock that is affordable at less than area median income goes up by only 3–6 percentage points across the five survey years; however, the portion of the recently completed stock shows increases from 5 to 20 percentage points. The portion of the outstanding stock affordable at the very-low-income level rises from 4 to 14 percent in four of the survey years and declines in the other one.[61]

3. Size of the Low- and Moderate-Income Mortgage Market

a. Market Estimates

This section provides estimates for the size of the low- and moderate-income mortgage market. Three alternative sets of projections about property shares and property low- and moderate-income percentages are given in Table D.6. Case 1 projections represent the baseline and intermediate case; it assumes that investors account for 10 percent of the single-family mortgage market. Case 2 assumes a lower investor share (7 percent) based on HMDA data and slightly more conservative low- and moderate-income percentages for single-family rental and multifamily properties (80 percent and 85 percent, respectively). Case 3 assumes a higher investor share (12 percent) consistent with Follain and Blackley's suggestions.

The low- and moderate-income percentage for owners is the most important determinant of the market estimates. Thus, Table D.7 provides market estimates for different owner percentages as well as for different sizes of the multifamily market—the $30 billion baseline projection bracketed by $23 and $35 billion. Most low- and moderate-income estimates reported for the baseline projections are around 50 percent. The market estimate is 53 percent if the owner percentage is at its 1994 level (40 percent), and it is 51 percent if the owner percentage is at its 1993 level (37 percent). If the low- and moderate-income percentage for owners falls to 32 percent (about its 1992 level), the overall market estimate falls to 48 percent. Under HUD's baseline projections, the owner percentage can fall to as low as 30 percent—about ten (seven) percentage points lower than its 1994 (1993) level—and the low- and moderate-income market share would still be at 46 percent.

The size of the multifamily market is also an important determinant of the low- and moderate-income market share. The market estimates increase by about a percentage point as multifamily volume moves from $23 billion to $35 billion. The market estimates for Case 2 and Case 3 bracket those for Case 1. The smaller rental market and lower low- and moderate-income percentages for rental properties result in the Case 2 estimates being almost three percentage points below the Case 1 estimates.

The various market estimates presented in Table D.7 are not all equally likely. Most of them equal or exceed 48 percent, suggesting that this is a reasonable lower bound for the size of the low- and moderate-income market.

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[61] Except for 1991, which showed an increase from 31 to 36 percent in the percentage of borrowers with less than median income, the income percentages for owners showed only slight increases or no increases at all.

Table D-6

Alternative Assumptions for Single-Family Rental Mortgage Shares and other Variables

	Case 1	Case 2	Case 3
1. Single-Family Mortgage Shares			
Single-Family Owner-Occupied	88.0%	91.0%	86.0%
Single-Family 2-4	2.0%	2.0%	2.0%
Single-Family 1-4 Investor	10.0%	7.0%	12.0%
2. Units Per Single-Family Mortgage			
Single-Family 2-4	2.25	2.25	2.25
Single-Family 1-4 Investor	1.35	1.35	1.40
3. Multifamily Loan Per Unit			
$23 Billion	$27,500	$27,500	$27,500
$30-$35 Billion	$30,000	$30,000	$30,000
4. Percentage Affordable at Area Median Income (AMI):			
Single-Family Rental	85.0%	80.0%	85.0%
Multifamily	90.0%	85.0%	90.0%
5. Percentage Underserved			
Single-Family Rental	37.5%	35.0%	40.0%
Multifamily	42.5%	40.0%	45.0%
6. Percentage Affordable at 60% of AMI			
Single-Family Rental	45.0%	40.0%	50.0%
Multifamily	42.0%	40.0%	45.0%
7. Percentage Low-Income in Low-Income Areas:			
Single-Family Rental	10.0%	8.0%	10.0%
Multifamily	10.0%	8.0%	10.0%

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Table D-7
Low- and Moderate- Income Mortgage Market: Sensitivity Analysis

Case 1 with Different Percentages for Single-Family Owner-Occupied's With Incomes less than AMI:		Size of Multifamily Market		
		$23 Billion	$30 Billion	$35 Billion
Single-Family: [a]	40% (1994 HMDA adjusted)	52.1 %	53.2 %	54.1 %
	38%	50.7	51.7	52.7
	37% (1993 HMDA adjusted)	50.0	51.1	52.1
	36%	49.2	50.3	51.4
	34%	47.8	48.9	50.0
	32%	46.3	47.5	48.6
	30%	44.9	46.1	47.2
	28%	43.4	44.6	45.8
Single-Family:	36% With:			
	Case 1	49.2 %	50.3 %	51.4 %
	Case 2	46.5	47.5	48.5
	Case 3	50.4	51.4	52.5
Single-Family:	34% With:			
	Case 1 (above)	47.8 %	48.9 %	50.0 %
	Case 2	45.0	46.0	47.1
	Case 3	49.0	50.1	51.1

[a] These percentages are used for home purchase loans. Refinanced loans were assumed to be 4 percentage points less for each alternative .

b. Economic Conditions, Market Estimates, and the Feasibility of the Low- and Moderate-Income Housing Goal

The public comments indicated a concern that the market share estimates and the housing goals failed to recognize the volatility of housing markets and the existence of macroeconomic cycles. There was particular concern that the market shares and housing goals were based on a period of record low interest rates and high affordability. This section discusses these issues, noting that the Secretary can consider shifts in economic conditions when evaluating the performance of the GSEs on the goals, and noting further that the market share estimates can be examined in terms of less favorable market conditions than existed during 1993 and 1994.

Volatility of Market. Industry forecasts of the 1996 mortgage market are the starting point for HUD's estimates of market share for each housing goal. HUD projected $700 billion in single-family originations for 1996 based on forecasts of $720 billion by the Mortgage Bankers Association and $700 billion by Fannie Mae. These industry forecasts are based on certain underlying economic conditions. Unanticipated shifts in economic activity will obviously affect the degree to which these forecasts are borne out. Thus, changing economic conditions can affect the validity of HUD's market estimates as well as the feasibility of accomplishing the housing goals.

One only has to recall the volatile nature of the mortgage market in the past few years to appreciate the uncertainty around projections of that market. Large swings in refinancing, consumers switching between adjustable-rate mortgages and fixed-rate mortgages, increased first-time homebuyer activity due to record low interest rates, and shifts in FHA activity have all characterized the recent mortgage market. These conditions are beyond the control of the GSEs but they would affect their performance on the housing goals. A mortgage market dominated by heavy refinancing on the part of middle-income homeowners would reduce the GSEs' ability to reach a specific target on the low- and moderate-income goal, for example. A jump in interest rates would reduce the availability of very-low-income mortgages for the GSEs to purchase. But on the other hand, the next few years may be highly favorable to achieving the goals because of the high refinancing activity in 1993. A period of low interest rates would sustain affordability levels without causing the rush to refinance seen in 1993. A high percentage of potential refinancers have already done so, and are less likely to do so again. Year-to-date 1995 data support this argument.

Feasibility Determination. HUD is well aware of the volatility of mortgage markets and the possible impacts on the GSEs' ability to meet the housing goals. FHEFSSA allows for changing market conditions.[62] If HUD has set a goal for a given year and market conditions change dramatically during or prior to the year, making it infeasible for the GSE to attain the goal, HUD must determine ''whether (taking into consideration market and economic conditions and the financial condition of the enterprise) the achievement of the housing goal was or is feasible.'' This provision of FHEFSSA clearly allows for a finding by HUD that a goal was not feasible due to market conditions, and no subsequent actions would be taken.

Affordability and Market Estimates. The market share estimates rely on 1993 and 1994 HMDA data for the percentage of low- and moderate-income borrowers. As discussed earlier, record low interest rates and affordability initiatives of the private sector encouraged first-time buyers and low-income borrowers to enter the market during this period. A significant increase in interest rates over their 1993–94 levels would reduce the presence of low-income families in the mortgage market and the availability of low-income mortgages for purchase by the GSEs.

HUD simulated the effects of a two-percentage point increase in interest rates on the payment-to-income ratios of 1993 and 1994 GSE borrowers (see Appendix A). Lower-income borrowers started with higher payment ratios and were thus disproportionately affected by the simulated increase in interest rates. Dropping from the GSE data all less-than-median income borrowers whose payment-to-income ratios increased to above 28 percent reduced the low- and moderate-income percentage of GSE business by 15 percent (about 5 percentage points) and the very-low-income percentage by 17 percent (about 1.25 percentage points). While this is only a partial look at the effects of higher interest rates, it indicates that the effects will be concentrated at the lower-income end of the market. A counter-balancing effect would be that a rise in interest rates reduces the refinance rate. In 1993, refinance borrowers had higher incomes than home purchase borrowers, but in 1994, purchase and refinance mortgage borrowers had more similar incomes.

As discussed in Appendix A, the effects of higher interest rates on affordability have to be considered in the context of other market changes. Rising employment, incomes, and consumer confidence, for example, can mitigate the effects of higher rates on the demand for mortgage credit. Unfortunately, it is difficult to quantify the impacts of these economic changes on the market estimates for the housing goals. What one can do, however, is examine the sensitivity of the market estimates to changes in the percentage of borrowers that have an income less than area median income. As noted earlier, reducing that percentage to 30 percent from its 1993–94 level of 37–40 percent drops the overall low- and moderate-income estimate to 46 percent under the baseline projections.

The market model was re-estimated assuming an even higher interest rate environment—lower origination volumes ($535 billion for single-family and $23 billion for multifamily) and an owner low- and moderate-income percentage (26) that was only two-thirds of the 1994 level.[63] In this case, the market estimate of 44 percent remains above HUD's goals of 40 percent for 1996 and 42 percent for 1997. Obviously, there are combinations of projections that would drive the low- and moderate-income market estimate even lower; however, setting the goals to ensure their feasibility under the most pessimistic of economic conditions is not appropriate, given that the Secretary can re-evaluate goal feasibility if market conditions change dramatically.

c. Conclusions About the Size of Low- and Moderate-Income Market

Based on the above findings as well as numerous sensitivity analyses, HUD concludes that 48–52 percent is a reasonable estimate of the mortgage market's low- and moderate-income share for 1996 and beyond. HUD recognizes that shifts in economic conditions could increase or decrease the size of the low- and moderate-income market during that period.

4. Further Considerations—Factors Not Taken Into Account in Developing the Market Estimates

The 48–52 percent low- and moderate-income market estimate does not take into account several factors which could enhance the GSEs' performance with regard to the goals.

[62] Section 1336(b)(3)(A).

[63] The $535 billion is a lower bound estimate provided by Freddie Mac.

a. Purchases of Seasoned Mortgages

Both GSEs buy a number of seasoned mortgages, where the date of the mortgage note is more than one year before the date the GSE purchased the mortgage. HUD's market share estimates are based on current mortgage originations, thus there is no way for HUD to take into account the availability of seasoned mortgages. But many such mortgages would qualify for one or more of the goals.

b. Small Second Loans

The final rule will allow the GSEs to count second mortgages for full credit toward the housing goals. In 1993, the GSEs purchased only a small number of second mortgages: Fannie Mae purchased 658 seconds, totalling $28.1 million, and Freddie Mac purchased 27 seconds, totalling $1.4 million. In 1994, the GSEs purchased both fewer such loans and smaller loans. Fannie Mae's second mortgage purchases fell to 207 loans, totalling $7.8 million, while Freddie Mac's purchases of second mortgages fell to 1, in the amount of $24,000.

It is unclear how the GSEs will react to the fact that seconds will be eligible under the goals. One scenario might involve a substantial increase in their purchases of small home improvement loans in inner-city areas which would increase their performance under the goals. Another scenario might involve only incremental changes to their current business which would only marginally increase their performance under the goals. It is also unclear how to delineate the overall market in which the GSEs might be operating, because their past purchases have been so small. Admittedly, they could purchase second mortgages in all segments of the market (from inner city low-income loans to suburban high-income loans); however, given their current small share of the overall market, it might not be appropriate to assume their purchases would cover the entire market. In any case, HUD has made no adjustments in its market estimate to allow for the possible effects of making second mortgages eligible under the goals.

The HMDA data do include information on home improvement loans (HILs). In 1993, 620,000 home improvement loans were originated, with an average loan amount of $20,700. Using RFS data, for the period 1989–1991, the average loan amount for HILs was $26,700. The loan distribution for all HILs shows that 59 percent of these loans were for amounts less than $15,000. Compared with purchase mortgages, HILs are more targeted to lower-income borrowers. Almost 47 percent of conforming conventional owner-occupied HILs went to low- and moderate-income borrowers.

G. Size of the Conventional Conforming Market Serving Central Cities, Rural Areas, and Other Underserved Areas

The following discussion presents the estimates of the size of the conventional conforming market for the Central City, Rural Areas, and other Underserved Areas Goal (Geographically-Targeted Goal). The first two sections focus on central cities and other underserved areas. Section 1 presents area percentages for different property types while section 2 presents market estimates for these areas. Section 3 discusses rural areas.

The final rule establishes the Central Cities, Rural Areas, and other Underserved Areas Goal for 1996 at 21 percent of the total number of dwelling units financed by the GSE's mortgage purchases. The level of the goal for 1997 and subsequent years is 24 percent.

1. Central City and Other Underserved Area Shares by Property Type

For purposes of the definitions of central cities and other underserved areas, underserved areas are defined as census tracts with:

(a) Tract median income at or below 90 percent of the MSA median income; or

(b) A minority composition equal to 30 percent or more and a tract median income no more than 120 percent of MSA median income.

Table D.8 presents central cities and other underserved areas percentages for mortgages on owner, single-family rental, and multifamily properties. In 1994, 24.6 percent of home purchase loans financed properties located in these areas; this represents an increase from 22.4 percent for 1993.[64] In 1994, refinance loans were slightly more likely than home purchase loans to be located in these areas (27.7 versus 24.6 percent) while in 1993 the situation was reversed (20.1 versus 22.4 percent). As table D.8 shows, the adjustments for mobile home loans are not nearly as large as those reported earlier for the borrower income data. The possibility that HMDA over-reports loans in low-income areas suggests that these percentages should be adjusted by another percent or two (see discussion of the Berkovec-Zorn paper in section F.1.c). Because of the importance of owner properties, the sensitivity analyses will examine a range of values for this variable.

Based on 1993 and 1994 HMDA data, the central cities and other underserved areas percentage for single-family rental units is 41–43 percent while that for multifamily properties is 48–51 percent. Thus, rental mortgages are about twice as likely as owner mortgages to finance properties located in these areas.

2. Market Estimates for Central Cities and Other Underserved Areas

Table D.9 presents estimates for the central cities and other underserved areas market for the same combinations of projections used to analyze the Low- and Moderate-Income Goal. Table D.6 in Section F.3 defines Cases 1, 2, and 3; Case 1 (the baseline) projects a 37.5 percent share for single-family rentals and a 42.5 percent share for multifamily properties while the more conservative Case 2 projects 35.0 percent and 40.0 percent, respectively.

The single-family owner percentages are the driving force in the market for the estimate, even more so than in the low- and moderate-income analysis. Table D.9 reports results under the baseline projections but for owner percentages ranging from 25 percent (1994 HMDA without mobile homes) to 20 percent (1993 HMDA) to 17 percent. The market share estimates are mostly in the 25–28 percent range if the single-family owner central cities and other underserved areas percentage is 18 percent or more. If the owner percentage is at the 1994 HMDA level of 25 percent, the market share estimate is as high as 29 percent.

At the lower extreme, the single-family owner percentage can go as low as 17 percent, which is 8 percentage points lower than the 1994 HMDA value, and the market estimate is still 24 percent in the base case. Thus, the Geographically Targeted Goal allows for a market not as affordable as the 1993–94 period.

Unlike the low- and moderate-income goal, the market estimates differ only slightly as one moves from Case 1 to Case 3 and from $23 billion to $35 billion in the size of the multifamily market. This is because the central cities and other underserved areas differentials between the owner and rental properties are not as large as the low- and moderate-income differentials reported earlier.

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[64] The corresponding percentages for the definitions in the proposed rule are 15.4 percent for 1993 and 17.1 percent in 1994. Thus, the effect of the additional 3,657 census tracts is to increase the home purchase percentage by 7.0 percent in 1993 and by 7.5 percent in 1994.

Table D-8

Central Cities and Other Underserved Areas Mortgage Market: 1993 and 1994 HMDA Data

	Purchase	Refinance	Total
Single-Family Owner-Occupied			
1993 HMDA			
A. All Loans	22.4%	20.1%	20.8%
B. Without Mobile Homes			
(1) 75,000	21.4%	20.1%	20.5%
(2) 100,000	21.1%	20.1%	20.4%
(3) 150,000	20.4%	20.1%	20.2%
1994 HMDA			
A. All Loans	24.6%	27.7%	26.0%
B. Without Mobile Homes			
(1) 100,000	23.5%	27.7%	25.4%
(2) 125,000	23.2%	27.7%	25.3%
(3) 150,000	22.9%	27.7%	25.1%
(4) 200,000	22.3%	27.7%	24.8%
Non-owner			
1993 HMDA	39.6%	41.3%	41.0%
1994 HMDA	39.8%	46.7%	43.1%
Multifamily			
1993 HMDA			47.7%
1994 HMDA			50.6%

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Table D-9
Central Cities and Other Underserved Areas Market Estimates: Sensitivity Analysis

Case 1 With Different Central Cities and Other Underserved Area Percentages for Single-Family Owner-Occupied's:		Size of Multifamily Market		
		$23 Billion	$30 Billion	$35 Billion
Single-Family Owner-Occupied: [a]	25% (1994 HMDA adjusted)	29.1 %	29.4 %	29.8 %
	23%	27.6	28.0	28.4
	21%	26.2	26.6	27.0
	20% (1993 HMDA adjusted)	25.4	25.9	26.3
	19%	24.7	25.2	25.6
	18%	24.0	24.5	24.9
	17%	23.2	23.8	24.3
Single-Family Owner-Occupied:	21% With:			
	Case 1 (above)	26.2 %	26.6 %	27.0 %
	Case 2	25.1	25.5	25.9
	Case 3	27.3	27.8	28.2
Single-Family Owner-Occupied:	19% With:			
	Case 1 (above)	24.7 %	25.2 %	25.6 %
	Case 2	23.5	24.0	24.4
	Case 3	25.9	26.4	26.9

[a] These percentages are used for both purchase and refinance loans.

3. Size of Rural Underserved Area Market

Rural areas are nonmetropolitan counties with:

(a) County median income at or below 95 percent of the greater of statewide nonmetropolitan median income or nationwide nonmetropolitan income; or

(b) A minority composition equal to 30 percent or more and a county median income no more that 120 percent of statewide nonmetropolitan median income.

HMDA does not provide mortgage data for nonmetropolitan counties, which makes it impossible to estimate the size of the mortgage market in rural areas. However, all indicators suggest that counties in rural areas comprise a larger share of the nonmetropolitan mortgage market than the census tracts in central cities and other underserved areas comprise of the metropolitan mortgage market. Counties within rural areas include 54 percent of nonmetropolitan residents as well as 54 percent of nonmetropolitan homeowners. Central cities and other underserved census tracts, on the other hand, account for 44 percent of metropolitan population and 34 percent of metropolitan homeowners.

In 1994, 26.9 percent of Fannie Mae's total purchases in nonmetropolitan areas were in rural areas while 29.2 percent of Fannie Mae's purchases in metropolitan areas were in central cities and other underserved areas. The corresponding percentages for Freddie Mac were 26.3 and 23.9, respectively. These data suggest that if the market share for counties in rural areas were available, it would be similar to the market share for census tracts in central cities and other underserved areas. Thus, HUD will use the metropolitan estimate to proxy the overall market for this goal, including rural areas.

4. Conclusions

Based on the above findings as well as numerous sensitivity analyses, HUD concludes that 25–28 percent is a reasonable estimate of mortgage market originations that would qualify toward achievement of the Geographically Targeted Goal if purchased by a GSE. HUD recognizes that shifts in economic and housing market conditions could affect the size of this market; however, the market estimate allows for the possibility that adverse economic conditions can make housing less affordable than it has been in the last two years.

H. Size of the Conventional Conforming Market for the Special Affordable Housing Goal

This section presents estimates of the conventional conforming mortgage market for the Special Affordable Housing Goal. The special affordable market consists of owner and rental dwelling units which are occupied by: (a) very-low-income families; *or* (b) low-income families in low-income census tracts [65]; *or* (c) low-income families in multifamily projects that meet minimum income thresholds patterned on the low-income housing tax credit (LIHTC).[66] HUD estimates that the special affordable market is 20–23 percent of the conventional conforming market. This market share estimate is three percentage points higher than the estimate in HUD's proposed rule mainly because low-income renters living in low-income census tracts or rural counties now qualify under the goal as defined in the final rule.

The final rule establishes the Special Affordable Housing Goal for 1996 at 12 percent of the total number of dwelling units financed by each GSE's mortgage purchases. The goal for 1997 and subsequent years is 14 percent. Of the total Special Affordable Housing Goal, each GSE must purchase annually in multifamily mortgages at least an amount equal to 0.8 percent of the total dollar volume of mortgages purchased by the GSE in 1994.

Section F described HUD's methodology for estimating the size of the low- and moderate-income market. Essentially the same methodology is employed here except that the focus is on the very-low-income market (0–60 percent of Area Median Income) and that portion of the low-income market (60–80 percent of Area Median Income) that is located in low-income areas. Data do not exist to estimate the number of renters with incomes between 60 and 80 percent of Area Median Income who live in projects that meet the tax credit thresholds. Thus, this part of the Special Affordable Housing Goal is not included in the market estimate.

1. Special Affordable Shares by Property Type

The basic approach involves estimating for each property type the share of dwelling units financed by mortgages in a particular year that are occupied by very-low-income families or by low-income families living in low-income areas. HUD has combined mortgage information from HMDA and the American Housing Survey in order to estimate these special affordable shares.

a. Very-Low-Income Owner Percentages

The percentage of borrowers with very-low-incomes was reported earlier when discussing the Low- and Moderate-Income Goal. HMDA data show that very-low-income borrowers accounted for 9.4 percent of all conforming home purchase loans in 1992, 11.5 percent in 1993, and 13.1 percent in 1994. Several adjustments were made to the HMDA data (see Table D.4). Excluding mobile home loans, for instance, reduced the 1993 and 1994 very-low-income borrower percentages to the 9–10 percent range. The AHS reports a higher very-low-income percentage of 12.9 percent for home purchase loans in 1993.

b. Very-Low-Income Rental Percentages

Table D.5 in Section F reported the percentages of the single-family rental and multifamily stock affordable to very-low-income families. According to the AHS, 61 percent of single-family units and 51 percent of multifamily units were affordable to very-low-income families in 1993. The corresponding average values for the AHS's five surveys between 1985 and 1993 were 58 percent and 46 percent, respectively.

c. Outstanding Housing Stock versus Mortgage Flow

An important issue concerns whether affordability data based on the existing rental stock can be used to proxy affordability of mortgaged rental units. Previous analysis of this issue has focussed on the relative merits of data from the recently completed stock versus data from the outstanding stock. The very-low-income percentages are much lower for the recently completed stock—for instance, the averages across the five AHS surveys were 15 percent for recently completed multifamily properties versus 46 percent for the multifamily stock. But it seems obvious that data from the recently completed stock would underestimate the affordability of newly-mortgaged units because they exclude purchase and refinance transactions involving older buildings, which generally charge lower rents than newly-constructed buildings. Blackley and Follain concluded that newly-constructed properties did not provide a satisfactory basis for

[65] Or in the case of rural areas, in low-income counties.

[66] There are two LIHTC thresholds: at least 20 percent of the units are affordable at 50 percent of AMI or at least 40 percent of the units are affordable at 60 percent of AMI.

estimating the affordability of newly-mortgaged properties.[67]

The remaining question is how much the affordability percentages from the existing rental stock should be reduced to reflect the flow of mortgage financing.[68] HUD used the 1991 Residential Finance Survey to compare rents of the outstanding stock with rents of properties receiving mortgages. There were two main findings. The first finding—and the important one for the Special Affordable Housing Goal—was that rents of newly-mortgaged properties were higher than those of the existing stock. About 44 percent of the units in newly-mortgaged, multifamily properties were affordable to very-low-income families; this compares with 52 percent for the entire multifamily stock.[69]

The corresponding percentages for single-family rental properties showed an even greater gap—47 percent for the newly-mortgaged stock and 60 percent for the existing stock. These comparisons suggest that in order to serve as a proxy for mortgage flows, the affordability percentages reported by the AHS should be adjusted downward by about 15 percent in the case of multifamily properties and 20 percent in the case of single-family properties. The baseline analysis below will use very-low-income percentages of 42.5 percent for multifamily properties and 45 percent for single-family rentals.[70]

The second finding—and the one important for the low- and moderate-income goal—was that the percentage of newly-mortgaged properties renting at a level affordable to families with less than median income was only slightly lower than the percentage of the stock renting at that level. This finding is not particularly surprising given that most of the rental stock rents at levels affordable to median income families. It suggests that only a small reduction (about 5 percent) in the affordability percentage of the existing stock is needed for it to proxy the mortgage flow.

d. Low-Income in Low-Income Areas

According to HMDA data, the percentage of home purchase borrowers who had an income between 60 and 80 percent of area median income and who lived in a low-income census tract was 1.7 percent in 1992, 1.8 percent in 1993, and 2.2 percent in 1994. The analysis below will vary this rate between 1 and 2 percent, depending on the percentage of very-low-income owners being assumed at the time.

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[67] ''A Critique of the Methodology Used to Determine Affordable Housing Goals for the Government Sponsored Housing Enterprises.''

[68] Some might argue that no adjustment is needed because the existing stock represents the underlying demand for mortgage credit and thus mortgage flows will have the same characteristics as the stock. While appealing at first sight, particularly if one takes a longer-run perspective, this argument ignores the host of reasons why the mortgage flow might not take on the characteristics of the underlying rental stock—the most obvious being that new construction mortgages are a significant part of mortgage activity (almost 15 percent in 1994) but new properties represent only a minute part of the outstanding housing stock.

[69] First, HUD computed the distribution of units by rent category for existing and newly-mortgaged properties in the RFS. Because only average rent per property is reported in the RFS, all units in a particular property were assigned the same rent. Next, HUD computed the percentage of units that were affordable to families with less than 60 percent of area median income based on 1989 and 1991 AHS data; this was about 50 percent for multifamily units. This 50 percent figure was used to define the absolute rent amount ($400) in the RFS that included the bottom 50 percent of rental units. (Because the rent brackets were in $100 increments, the bottom 52 percent of rents had to be used in the RFS analysis.) Finally, HUD computed the percentage of newly-mortgaged units below $400; as the text discusses, only 44 percent of the newly-mortgaged units were below $400.

[70] Another approach would simply take the weighted average of the very-low-income percentages for newly-constructed multifamily properties (15 percent) and remaining stock (46 percent) with the weights determined by the estimated share of new construction mortgages (almost 15 percent in 1994). Doing this for multifamily also gives 42 percent.

HMDA does not provide similar data for renters. As a substitute, HUD examined the rental housing stock located in low-income zones of 41 metropolitan areas surveyed as part of the AHS between 1989 and 1993. While the low-income zones do not exactly coincide with low-income tracts, they were the only proxy readily available to HUD.[71] Slightly over 13 percent of single-family rental units were both affordable at the 60–80 percent of AMI level and located in low-income zones; almost 16 percent of multifamily units fell into this category.[72] The baseline analysis below assumes that 10 percent of the financed rental units are affordable at 60–80 percent of AMI and located in low-income areas.

2. Size of the Special Affordable Market

The size of the special affordable market depends in large part on the size of the multifamily market and on the very-low-income percentages of both owners and renters. Table D.10 gives market estimates for different combinations of these factors.[73] As before, Case 2 is slightly more conservative than the baseline projections (Case 1) mentioned above. For instance, Case 2 assumes that only 7 percent of rental units are affordable to low-income renters living in low-income areas.

The market estimates in Table D.10 suggest that 20–23 percent is a conservative estimate of the special affordable market. Under HUD's baseline projections, the market estimates remain above 20 percent even if the very-low-income percentage for owners falls as low as 6 percent. Thus, HUD's market estimate allows for the possibility that adverse economic conditions could keep very-low-income families out of the housing market. On the other hand, if the very-low-income percentage stays at its recent levels of 10 percent, the market estimate is as high as 24 percent.

The market estimate drops by approximately one percent if the estimate of the multifamily mortgage market changes from $30 billion to $23 billion. The market estimates under the more conservative Case 2 projections are almost 3 percentage points below those under the Case 1 projections. This is due mainly to Case 2's lower share of single-family rental mortgages (7 percent versus 10 percent in Case 1) and its lower affordability and low-income-area percentages for rental housing (e.g., a combined 48 percent for single-family rental units versus 55 percent for Case 1).

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[71] It would have been ideal for this purpose if AHS had identified its respondents by whether they live in a low-income census tract within a metropolitan area or low-income nonmetropolitan county (i.e., a tract or county whose median income is no more than 80 percent of metropolitan area or statewide non-metro median income). AHS would then have yielded an estimate of the percentage of rental units located in such areas whose median income is less than 80 percent of area median, and this could have been combined with an AHS estimate of the percentage of those units whose rents are affordable at 60–80 percent of area median income to generate the desired figure. Instead, AHS identifies respondents in its metropolitan area surveys by a variable called ZONE and provides no corresponding variable outside of metropolitan areas. Zones were defined in the 1970s to be areas of at least 100,000 population that were socioeconomically homogeneous, and their boundaries have been fixed since then. HUD estimated the percentage of rental units in metropolitan areas affordable at 60–80 percent of area median income based on the AHS distribution of rental units by income of zone (relative to 80 percent of area median) and the AHS percentages of units affordable at 60–80 percent of area median within each zone. Because of the size difference between tracts and zones—around 100,000 vs. around 4,000—the percentages that would have been generated if a tract-based analysis had been feasible would probably have been at least as large as the 13 percent and 16 percent figures generated in this analysis. This is because the larger the zones, the closer their median income would tend to be to the metropolitan area median income. HUD has no basis for estimating the degree of bias in extrapolating from this analysis of metropolitan area data to nonmetropolitan areas.

[72] The corresponding figures for the recently completed stock were 8 and 9 percent, respectively.

[73] Table D.10 shows the size of the special affordable market based on alternative assumptions about the share of single-family owner-occupied units that are occupied by very-low-income households. Special affordable units also include those that are occupied by low-income households in low-income areas. For a very-low-income assumption of 10 percent, the low-income in low-income area assumption is 2 percent. The 2 percent low-income in low-income area assumption is prorated downward as the very-low-income assumption is reduced, falling to 1.2 percent for a very-low-income assumption of 7 percent.

Table D-10
Special Affordable Mortgage Market:
Sensitivity Analysis

	Size Of Multifamily Market		
Case 1 With:	$23 Billion	$30 Billion	$35 Billion
(a) Rent Affordable at 60% AMI: Single-Family Rental Percentage= 45%, Multifamily= 42%;			
(b) Low-Income in Low-Income Areas for Single-Family Rental and Multifamily= 10%; and			
(c) Single-Family Owner-Occupied's Income less than 60% AMI: [a]			
10.0% (1994 HMDA Adjusted)	22.9 %	23.7 %	24.4 %
9.0% (1993 HMDA Adjusted)	21.9	22.7	23.4
8.5%	21.4	22.3	23.0
8.0%	21.0	21.8	22.6
7.5%	20.6	21.4	22.2
7.0%	20.1	21.0	21.8
6.0%	19.3	20.2	21.0
Case 2 With:			
(a) Rent Affordable at 60% AMI: Single-Family Rental Percentage= 40%, Multifamily= 40%;			
(b) Low-Income in Low-Income Areas for Single-Family Rental and Multifamily= 8%; and			
(c) Single-Family Owner-Occupied's Income less than 60% AMI:			
10.0%	20.3 %	21.0 %	21.8 %
9.0%	19.2	20.0	20.8
8.0%	18.3	19.1	19.9
Case 3 With:			
(a) Rent Affordable at 60% AMI: Single-Family Rental Percentage= 50%, Multifamily= 45%;			
(b) Low-Income in Low-Income Areas for Single-Family Rental and Multifamily= 10%; and			
(c) Single-Family Owner-Occupied's Income less than 60% AMI:			
10.0%	25.1 %	25.9 %	26.7 %
9.0%	24.1	24.9	25.7
8.0%	23.3	24.1	24.9

[a] These percentages are used for home purchase loans. Refinaced loans were assumed to be 1.75 percentage points lower for each alternative.

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Tax Credit Definition. Data are not available to measure the increase in market share associated with including low-income units located in multifamily buildings that meet threshhold standards for the low-income housing tax credit. Currently, the effect on GSE performance under the Special Affordable Housing Goal is rather small. For instance, adding the tax credit condition increases Fannie Mae's 1994 performance by only 0.6 percentage points, from 16.1 to 16.7 percent. At first glance, this small effect seems at odds with the fact that almost 25 percent of Fannie Mae's multifamily purchases during 1994 involved properties with a very-low-income occupancy of 100 percent, and 57 percent involved properties with a very-low-income occupancy of over 40 percent. The explanation, of course, is that most of the rental units in these ''tax-credit'' properties are covered by the very-low-income part of the special affordable goal.

3. Conclusions

Sensitivity analyses were conducted for the market shares of each property type, for the very-low-income shares of each property type, and for various assumptions in the market projection model. These analyses suggest that 20–23 percent is a reasonable estimate of the size of the conventional conforming market for the Special Affordable Housing Goal. This estimate allows for the possibility that homeownership will not remain as affordable as it has over the past two years.

Appendix E—Required Loan-Level Data Elements

As required under 24 CFR part 81, subpart E, the GSEs are required to provide to the Secretary the loan level mortgage data listed below.

(a) Loan level data on single family mortgage purchases. Each GSE's submission of loan level data shall include the following information for each single family mortgage purchased by the GSE:

(1) Loan number—a unique numerical identifier for each mortgage purchased;

(2) U.S. postal state—the two-digit numerical Federal Information Processing Standard (FIPS) code;

(3) U.S. postal zip code—the five digit zip code for the property;

(4) MSA code—the four-digit numerical code for the property's metropolitan statistical area (MSA) if the property is located in an MSA;

(5) Place code—the five-digit numerical FIPS code;

(6) County—the county, as designated in the most recent decennial census by the Bureau of the Census, in which the property is located;

(7) Census tract/Block Numbering Area (BNA)—the tract/BNA number as used in the most recent decennial census by the Bureau of the Census;

(8) 1990 census tract—percent minority—the percentage of a census tract's population that is minority based on the most recent decennial census by the Bureau of the Census;

(9) 1990 census tract—median income—the median family income for the census tract;

(10) 1990 local area median income—the median income for the area;

(11) Tract income ratio—the ratio of the 1990 census tract median income to the 1990 local area median income;

(12) Borrower(s) annual income—the combined income of all borrowers;

(13) Area median family income—the current median family income for a family of four for the area as established by the Secretary;

(14) Borrower income ratio—the ratio of borrower(s) annual income to area median family income;

(15) Acquisition UPB—the unpaid principal balance (UPB) in whole dollars of the mortgage when purchased by the GSE; where the mortgage purchase is a participation, the acquisition UPB reflects the participation percentage;

(16) Loan-to-Value Ratio at Origination—the loan-to-value (LTV) ratio of the mortgage at the time of origination;

(17) Date of Mortgage Note—the date the mortgage note was created;

(18) Date of Acquisition—the date the GSE purchased the mortgage;

(19) Purpose of Loan—indicates whether the mortgage was a purchase money mortgage, a refinancing, a second mortgage;

(20) Cooperative Unit Mortgage—indicates whether the mortgage is on a dwelling unit in a cooperative housing building;

(21) Special Affordable, Seasoned Loan Proceeds Recycled—for purposes of the special affordable housing goal, indicates whether the mortgage purchased by the GSE meets the requirements in section 81.14(h)(1)(B);

(22) Product Type—indicates the product type of the mortgage, *i.e.*, fixed rate, adjustable rate mortgage (ARM), balloon, graduated payment mortgage (GPM) or growing equity mortgages (GEM), reverse annuity mortgage, or other;

(23) Federal guarantee—a numeric code that indicates whether the mortgage has a federal guarantee from: the Federal Housing Administration (FHA) or the Department of Veterans Affairs (VA); the Farmers Home Administration's Guaranteed Rural Housing Loan program; or other federal guarantee;

(24) RTC/FDIC—for purposes of the special affordable housing goal, indicates whether the mortgage purchased by the GSE meets the requirements in section 81.14(h)(1)(C);

(25) Term of Mortgage at Origination—the term of the mortgage at the time of origination in months;

(26) Amortization Term—for amortizing mortgages, the amortization term of the mortgage in months;

(27) Lender Institution—the name of the institution that loaned the money for the mortgage;

(28) Lender City—the city location of the institution that loaned the money for the mortgage;

(29) Lender State—the State location of the institution that loaned the money for the mortgage;

(30) Type of Seller Institution—the type of institution that sold the mortgage to the GSE, *i.e.*, mortgage company, Savings Association Insurance Fund (SAIF) insured depositary institution, Bank Insurance Fund (BIF) insured depositary institution, National Credit Union Association (NCUA) insured credit union, or other seller;

(31) Number of borrowers—the number of borrowers;

(32) First-time home buyer—a numeric code that indicates whether the mortgagor(s) are first-time home buyers; second mortgages and refinancings are treated as not first-time home buyers;

(33) Mortgage Purchased under GSE's Community Lending Program—indicates whether the GSE purchased the mortgage under its community lending program;

(34) Acquisition Type—indicates whether the GSE acquired the mortgage with cash, by swap, with a credit enhancement, a bond or debt purchase, reinsurance, risk-sharing, real estate investment trust (REIT), or a real estate mortgage investment conduit (REMIC), or other;

(35) GSE Real Estate Owned—indicates whether the mortgage is on a property that was in the GSE's real estate owned (REO) inventory;

(36) Borrower race or national origin—a numeric code that indicates whether the borrower is: an American Indian or Alaskan Native; an Asian or Pacific Islander; black; Hispanic; white; or other;

(37) Co-borrower race or national origin—a numeric code that indicates whether the co-borrower is: an American Indian or Alaskan Native; an

Asian or Pacific Islander; black; Hispanic; white; or other

(38) Borrower gender—a numeric code that indicates whether the borrower is male or female;

(39) Co-borrower gender—a numeric code that indicates whether the co-borrower is male or female

(40) Age of borrower;

(41) Age of co-borrower;

(42) Occupancy Code—indicates whether the mortgaged property is an owner-occupied principal residence, a second home, or a rental/investment property;

(43) Number of Units—indicates the number of units in the mortgaged property;

(44) Number of Bedrooms—where the property contains non-owner-occupied dwelling units, the number of bedrooms in each of those units;

(45) Owner-Occupied—indicates whether each of those units are owner-occupied;

(46) Affordability Category—where the property contains non-owner-occupied dwelling units, indicates under which, if any, of the special affordable goals the units qualified;

(47) Reported Rent Level—where the property contains non-owner-occupied dwelling units, the rent level for each unit in whole dollars;

(48) Reported Rent Plus Utilities—where the property contains non-owner-occupied dwelling units, the rent level plus the utility cost for each unit in whole dollars;

(b) Loan level data on multifamily mortgage purchases. Each GSE's submission of loan level data shall include the following information for each multifamily mortgage purchased by the GSE:

(1) Loan number—a unique numerical identifier for each mortgage purchased;

(2) U.S. postal state—the two-digit numerical Federal Information Processing Standard (FIPS) code;

(3) U.S. Postal Zip Code—the five digit zip code for the property;

(4) MSA code—the four-digit numerical code for the property's metropolitan statistical area (MSA) if the property is located in an MSA;

(5) Place code—the five-digit numeric FIPS code;

(6) County—the county, as designated in the most recent decennial census by the Bureau of the Census, in which the property is located;

(7) Census tract/Block Numbering Area (BNA)—the tract/BNA number as used in the most recent decennial census by the Bureau of the Census;

(8) 1990 census tract—percent minority—the percentage of a census tract's population that is minority based on the most recent decennial census by the Bureau of the Census;

(9) 1990 census tract—median income—the median family income for the census tract;

(10) 1990 local area median income—the median income for the area;

(11) Tract income ratio—the ratio of the 1990 census tract median income to the 1990 local area median income;

(12) Area median family income—the current median family income for a family of four for the area as established by the Secretary;

(13) Affordability Category—indicates under which, if any, of the special affordable goals the property qualified;

(14) Acquisition UPB—the unpaid principal balance (UPB) in whole dollars of the mortgage when purchased by the GSE; where the mortgage purchase is a participation, the acquisition UPB reflects the participation percentage;

(15) Participation Percent—where the mortgage purchase is a participation, the percentage of the mortgage that the GSE purchased;

(16) Date of Mortgage Note—the date the mortgage note was created;

(17) Date of Acquisition—the date the GSE purchased the mortgage;

(18) Purpose of Loan—indicates whether the mortgage was a purchase money mortgage, a refinancing, a new construction mortgage, a mortgage financing property rehabilitation;

(19) Cooperative Project Loan—indicates whether the mortgage is a project loan on a cooperative housing building;

(20) Refinancing Loan from Own Portfolio—indicates, where the GSE has purchased a refinanced mortgage, whether the GSE owned the previous mortgage on the same property;

(21) Special Affordable, Seasoned Loans: Proceeds Recycled?—for purposes of the special affordable housing goal, indicates whether the mortgage purchased by the GSE meets the requirements in section 81.14(h)(1)(ii);

(22) Mortgagor Type—indicates the type of mortgagor, *i.e.*, an individual, a for-profit entity such as a corporation or partnership, a nonprofit entity such a corporation or partnership, a public entity, or other type of entity;

(23) Term of Mortgage at Origination—the term of the mortgage at the time of origination in months;

(24) Loan Type—indicates the type of the loan, *i.e.*, fixed rate, adjustable rate mortgage (ARM), balloon, or graduated payment mortgage (GPM);

(25) Construction Loan—indicates whether the mortgage is for a construction loan;

(26) Amortization Term—for amortizing mortgages, the amortization term of the mortgage in months;

(27) Lender Institution—the name of the institution that loaned the money for the mortgage;

(28) Lender City—the city location of the institution that loaned the money for the mortgage;

(29) Lender State—the State location of the institution that loaned the money for the mortgage;

(30) Type of Seller Institution—the type of institution that sold the mortgage to the GSE, *i.e.*, mortgage company, Savings Association Insurance Fund (SAIF) insured depositary institution, Bank Insurance Fund (BIF) insured depositary institution, National Credit Union Association (NCUA) insured credit union, or other seller;

(31) Government insurance—indicates whether any part of the mortgage has government insurance;

(32) FHA Risk Share Percent—the percentage of risk assumed for the mortgage purchased under a risk-sharing arrangement with the Department.

(33) Acquisition Type—indicates whether the GSE acquired the mortgage with cash, by swap, with a credit enhancement, a bond or debt purchase, reinsurance, risk-sharing, real estate investment trust (REIT), or a real estate mortgage investment conduit (REMIC), or other;

(34) GSE Real Estate Owned—indicates whether the mortgage is on a property that was in the GSE's real estate owned (REO) inventory;

(35) Public Subsidy Program—indicates whether the mortgage property is involved in a public subsidy program and which level(s) of government are involved in the subsidy program, *i.e.*, Federal government only, state or local government only, other only, Federal government and either state or local government, Federal government and other, state or local government and other, and Federal, state, or local government and other;

(36) Total Number of Units—indicates the number of dwelling units in the mortgaged property;

(37) The following data apply to unit types in a particular mortgaged property. The unit types are defined by the GSEs for each property and are differentiated based on the number of bedrooms in the units and on the average contract rent for the units. A unit type must be included for each bedroom size category represented in the property:

(A) Unit Type XX—Number of Bedroom(s)—the number of bedrooms in the unit type;

(B) Unit Type XX—Number of Units—the number of units in the property within the unit type;

(C) Unit Type XX—Average Reported Rent Level—the average rent level for the unit type in whole dollars;

(D) Unit Type XX—Average Reported Rent Plus Utilities—the average reported rent level plus the utility cost for each unit in whole dollars; and

(E) Unit Type XX—Affordability Level—the ratio of the average reported rent plus utilities for the unit type to the adjusted area median income;

BILLING CODE 4210–32–P

APPENDIX F

ORDER

GSE MORTGAGE DATA AND AHAR INFORMATION:
PROPRIETARY INFORMATION/PUBLIC-USE DATA

THIS ORDER SETS FORTH THAT CERTAIN INFORMATION SUBMITTED BY THE FEDERAL NATIONAL MORTAGE ASSOCIATION AND THE FEDERAL HOME LOAN MORTGAGE CORPORATION TO HUD IS PROPRIETARY AND SHALL NOT BE DISCLOSED TO THE PUBLIC AT THIS TIME. THIS ORDER SHALL BE EFFECTIVE UNTIL SUCH TIME AS IT IS DETERMINED NECESSARY AND/OR APPROPRIATE TO WITHDRAW OR MODIFY IT.

Note: The following matrices distinguish proprietary from public-use mortage data elements. A "YES" designation indicates that the data element is included in the public-use data base in the format indicated. For some data elements, where disclosure of census tract information would divulge proprietary information, alternative formats for disclosure that will not divulge proprietary information are indicated.

GSE Single-Family Mortgage Data
Owner- and Renter-Occupied 1- to 4-Unit Properties
Proprietary Information/Public-Use Data

#	Field Description	Values	Release on Census Tract File	Release on National File A	Release on National File B
0	Agency Flag	1=Fannie Mae 2=Freddie Mac	YES	YES	YES
1	Loan Number		Recode Using Random Number*	Recode Using Random Number*	Recode Using Random Number*
2	US Postal State	0=Missing	YES		
3	US Postal Zip Code				
4	MSA Code	0=Missing	YES		
5	Place Code - FIPS				
6	County - 1990 Census	0=Missing	YES		
7	Census Tract/BNA - 1990 Census	0=Missing	YES		
8**	Census Tract Geographic Designation	1=Tract Entirely Within Central City 2=Tract Entirely Outside Central City 3=Central City Split Tract 9=Not Able To Code	YES		
9**	Central City Flag 1	9999=Not Able To Code	YES		
10**	Central City Flag 2	9998=Not Available 9999=Not Applicable	YES		
11	1990 Census Tract - Percent Minority	9999=Not Available	YES	YES, but recode as: 1=0-<10% 2=10-<30% 3=30-100% 9=Missing	YES, but recode as: 1=0-<10% 2=10-<30% 3=30-100% 9=Missing
12	1990 Census Tract - Median Income	999999=Not Available	YES		
13	1990 Local Area Median Income	999999=Not Available	YES		
14	Tract Income Ratio	9999=Not Applicable	YES	YES, but recode as: 1=0-<=80% 2=80-<=120% 3= >120% 9=Missing Add Underserved Areas Indicator	YES, but recode as: 1=0-<=80% 2=80-<=120% 3= >120% 9=Missing Add Underserved Areas Indicator
15	Borrower(s) Annual Income	999999=Not Available	YES		
16	Area Median Family Income	999999=Not Available	YES		
17	Borrower Income Ratio	9999=Not Applicable/not available	YES - recode to include ratios for investor-owned properties	YES, but recode as: 1=0- <=60% 2=60- <=100% 3= >100 9=Not Applicable	YES, but recode as: 1=0- <=60% 2=60- <=100% 3= >100 9=Not Applicable
18	Acquisition UPB		YES, but recode as: Actual values for < $200,000 999998= >=$200,000 999999=Missing		
19	LTV @ Origination	999=Not Applicable		YES, but recode as: 1=0-60% 2=60+-80% 3=80+-90% 4=90+-95% 5=95%+	
20	Date of Mortgage Note				YES, but recode as: 1=Seasoned 2=Unseasoned
21	Date of Acquisition				
22	Purpose of Loan	1=Purchase 2=Refinancing 3=Second 9=Not Applicable			YES
23	Cooperative Unit Mortgage	1=Yes 2=No 8=Not Available 9=Not Applicable			

#	Field Description	Values	Release on Census Tract File	Release on National File A	Release on National File B
24**	Refinancing Loan from Own Portfolio	1=Yes 2=No 9=Not Applicable			
25	Special Affordable, Seasoned Loan: Are Proceeds Recycled?	1=Yes 2=No 9=Not Applicable			
26	Product Type	01=Fixed Rate 02=ARM 03=Balloon 04=GPM/GEM 05=Reverse Annuity Mortgage 06=Other 07...98=List Other Distinct Products 99=Not Available			
27	Federal Guarantee	1=FHA/VA 2=FMHA-Guaranteed Rural Housing Loan 3=Other Federal Guarantee 4=No Federal Guarantee		YES	YES
28	RTC/FDIC	1=Yes 2=No			
29	Term of Mortgage at Origination				
30	Amortization Term	998=Non-Amortizing Loan 999=Not Available			
31***	Lender Institution Name				
32***	Lender City				
33***	Lender State				
34	Type of Seller Institution	1=Mortgage Company 2=SAIF Insured Depository Institution 3=BIF Insured Depository Institution 4=NCUA Insured Credit Union 5=Other			YES
35	Number of Borrowers		YES		
36	First-Time Home Buyer	1=Yes 2=No 9=Not Available	YES		
37	Mortgage Purchased under GSE's Community Lending Program	1=FNMA's Community Homebuyer Program 2=FNMA's Community Lending Other 3=FNMA's Other Housing Impact Programs OR 1=FHLMC's Affordable Gold 2=FHLMC's Alternative Qualifying 9=Not Applicable			
38	Acquisition Type	1=Cash 2=SWAP 3=Credit Enhancement 4=Bond or Debt Purchase 5=Reinsurance 6=Risk Sharing 7=REIT 8=REMIC 9=Other			
39	GSE's Real Estate Owned	1=Yes 2=No 3=Not Available			
40**	Public Subsidy Programs	1=Federal only 2=State or Local only 3=Other/Private Subsidy only 4=Federal and State or Local 5=Federal and Other 6=State or Local and Other 7=Federal, State or Local and Other 9=Data Not Provided			
41	Borrower Race or National Origin	1=American Indian or Alaskan Native 2=Asian or Pacific Islander 3=Black 4=Hispanic 5=White 6=Other 7=Information Not Provided by Applicant In Mail or Telephone Application 8=Not Applicable 9=Not Available	YES	Combine Fields 41 and 42 1=American Indian or Alaskan Native 2=Asian or Pacific Islander 3=Black 4=Hispanic 5=White 6=Other 7=Borrower/Co-Borrower Are Different 9=Original 7, 8, 9	Combine Fields 41 and 42 1=American Indian or Alaskan Native 2=Asian or Pacific Islander 3=Black 4=Hispanic 5=White 6=Other 7=Borrower/Co-Borrower Are Different 9=Original 7, 8, 9
42	Co-Borrower Race or National Origin	1=American Indian or Alaskan Native 2=Asian or Pacific Islander 3=Black 4=Hispanic 5=White 6=Other 7=Information Not Provided by Applicant In Mail or Telephone Application 8=Not Applicable 9=Not Available	YES		

#	Field Description	Values	Release on Census Tract File	Release on National File A	Release on National File B
43	Borrower Gender	1=Male 2=Female 3=Information Not Provided by Applicant In Mail or Telephone Application 4=Not Applicable 9=Not Available	YES	Combine Fields 43 and 44 1=Male(s) only 2=Female(s) Only 3=Male and Female 9=Original 3, 4, 9	Combine Fields 43 and 44 1=Male(s) only 2=Female(s) Only 3=Male and Female 9=Original 3, 4, 9
44	Co-Borrower Gender	1=Male 2=Female 3=Information Not Provided by Applicant In Mail or Telephone Application 4=Not Applicable 9=Not Available	YES		
45	Age of Borrower	999=Data Not Provided	YES		
46	Age of Co-Borrower	999=Data Not Provided	YES		
47	Occupancy Code	1=Principal Residence/Owner Occupied 3=Investment Property (Rental)			YES
48	Number of Units			YES	YES
49	Unit 1 - Number of Bedrooms	99=Data Not Provided			
50	Unit 1 - Owner Occupied	1=Yes 2=No			
51	Unit 1 - Affordability Category	1=Low-Income Family (but not Very Low-Income) in a Low-Income Area 2=Very Low-Income Family, in a Low-Income Area 3=Very Low-Income Family, Not in a Low-Income Area 4=Other 9=Not Available		YES	YES
52	Unit 1 - Reported Rent Level	99999=Not Applicable			
53	Unit 1 - Reported Rent Plus Utilities	99999=Not Applicable			
54	Unit 2 - Number of Bedrooms	99=Data Not Provided			
55	Unit 2 - Owner Occupied	1=Yes 2=No			
56	Unit 2 - Affordability Category	1=Low-Income Family (but not Very Low-Income) in a Low-Income Area 2=Very Low-Income Family, in a Low-Income Area 3=Very Low-Income Family, Not in a Low-Income Area 4=Other 9=Not Available		YES	YES
57	Unit 2 - Reported Rent Level	99999=Not Applicable			
58	Unit 2 - Reported Rent Plus Utilities	99999=Not Applicable			
59	Unit 3 - Number of Bedrooms	99=Data Not Provided			
60	Unit 3 - Owner Occupied	1=Yes 2=No			
61	Unit 3 - Affordability Category	1=Low-Income Family (but not Very Low-Income) in a Low-Income Area 2=Very Low-Income Family, in a Low-Income Area 3=Very Low-Income Family, Not in a Low-Income Area 4=Other 9=Not Available		YES	YES
62	Unit 3 - Reported Rent Level	99999=Not Applicable			
63	Unit 3 - Reported Rent Plus Utilities	99999=Not Applicable			
64	Unit 4 - Number of Bedrooms	99=Data Not Provided			
65	Unit 4 - Owner Occupied	1=Yes 2=No			
66	Unit 4 - Affordability Category	1=Low-Income Family (but not Very Low-Income) in a Low-Income Area 2=Very Low-Income Family, in a Low-Income Area 3=Very Low-Income Family, Not in a Low-Income Area 4=Other 9=Not Available		YES	YES
67	Unit 4 - Reported Rent Level	99999=Not Applicable			
68	Unit 4 - Reported Rent Plus Utilities	99999=Not Applicable			
69	Fannie Mae Exclusions	1=Excluded from Goal Reporting			

* Different random number on each of the tract and national files.
** Not applicable to 1996 and beyond data sets.
*** Not applicable to 1993-1995 data sets.

GSE Multifamily Mortgage Data
Property Level
Proprietary Information/Public-Use Data

#	Field Description	Values	Release on Census Tract file	Release on National File
0	Agency Flag	1=Fannie Mae 2=Freddie Mac	YES	YES
1	Loan Number		Recode Using Random Number*	Recode Using Random Number*
2	US Postal State		YES	
3	US Postal Zip Code			
4	MSA Code		YES	
5	Place Code - FIPS			
6	County - 1990 Census		YES	
7	Census Tract/BNA - 1990 Census		YES	
8**	Census Tract Geographic Designation	1=Tract Entirely Within Central City 2=Tract Entirely Outside Central City 3=Central City Split Tract 9=Not Able To Code	YES	
9**	Central City Flag 1	9999=Not Able To Code	YES	
10**	Central City Flag 2	9998=Not Available 9999=Not Applicable	YES	
11	1990 Census Tract - Percent Minority	9999=Not Available	YES	YES, but recode as: 1=0-<10% 2=10-<30% 3=30-100% 9=Missing
12	1990 Census Tract - Median Income	999999=Not Available	YES	
13	1990 Local Area Median Income	999999=Not Available	YES	
14	Tract Income Ratio	9999=Not Applicable	YES	YES, but recode as: 1=0-<=80% 2=80-<=120% 3= >120% 9=Missing Add Underserved Areas Indicator
15	Area Median Family Income	999999=Not Available	YES	
16	Affordability Category	1. >=20% especially low income and <40% very low income 2. <20% & >=40% 3. >=20% & >=40% 4. <20% & <40% 8=Not Available 9=Not Eligible 0=Missing-Eligible But Does Not Qualify		YES
17	Acquisition UPB		YES, but recode as: 1= <= $500,000 2= $500k-<=$1m 3= $1m-<=$2m 4= $2m-<=$4m 5= > $4m 9= Missing	
18	Participation Percent			
19	Date of Mortgage Note			
20	Date of Acquisition			
21	Purpose of Loan	1=Purchase 2=Refinancing 3=New Construction 4=Rehabilitation 9=Not Applicable		YES
22	Cooperative Project Loan	1=Yes 2=No 8=Not Available 9=Not Applicable		
23**	Refinancing Loan from Own Portfolio	1=Yes 2=No 9=Not Applicable		
24	Special Affordable, Seasoned Loan: Are Proceeds Recycled?	1=Yes 2=No 9=Not Applicable		
25	Mortgagor Type	1=Individual 2=For Profit Entity 3=Nonprofit Entity 4=Public Entity 5=Other		

#	Field Description	Values	Release on Census Tract file	Release on National File
26	Term of Mortgage at Origination			
27	Loan Type	1=Fixed Rate 2=ARM 3=GPM		
28	Construction Loan	1=Yes 2=No		
29	Amortization Term	998=Non-Amortizing Loan 999=Not Available		
30***	Lender Institution			
31***	Lender City			
32***	Lender State			
33	Type of Seller Institution	1=Mortgage Company 2=SAIF Insured Depository Institution 3=BIF Insured Depository Institution 4=NCUA Insured Credit Union 5=Other	YES	YES
34	Government Insurance	1=Yes 2=No 9=Not Available		YES
35	FHA Risk Share Percent			
36	Acquisition Type	1=Cash 2=Swap 3=Other 4=Credit Enhancement 5=Bond/Debt Purchased 6=REMIC 7=Reinsurance 8=Risk Sharing 9=REIT		
37	GSE Real Estate Owned	1=Yes 2=No 3=Not Available		
38	Public Subsidy Program	1=Federal only 2=State or Local only 3=Other/Private Subsidy only 4=Federal and State or Local 5=Federal and Other 6=State or Local and Other 7=Federal, State or Local and Other 9=Data Not Provided		
39	Total Number of Units			YES
40**	Special Affordable - 45 Percent			YES
41**	Special Affordable - 55 Percent			YES
42	Fannie Mae Exclusions	1=Excluded from Goal Reporting		

* Different random numbers on tract and national files
** Not applicable to 1996 and beyond data sets.
*** Not applicable to 1993-1995 data sets.

GSE Multifamily Mortgage Data
Unit Level
Proprietary Information/Public-Use Data

0	Agency Flag			YES
1	Loan Number			Recoded As A Random Number****
43	Unit Type XX-Number of Bedrooms			YES, but recode as: 1=0-1 Bedroom 2= 2+ Bedrooms
44	Unit Type XX-Number of Units			YES, but recode to correspond to #43
45	Unit Type XX-Average Rent Level			
46	Unit Type XX-Average Rent Plus Utilities			
47	Unit Type XX-Affordability Level			YES, but recode as: 1=0-50% 2=50-60% 3=60-80% 4=80-100% 5= > 100% 9=Not Available

**** This number will match the property level random number on the national file.

[FR Doc. 95–28902 Filed 11–30–95; 8:45 am]
BILLING CODE 4210–32–C

Federal Register

Friday
December 1, 1995

Part XI

Environmental Protection Agency

Resource Conservation and Recovery Act; OUST Docket: Relocation; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5338–2]

Resource Conservation and Recovery Act OUST Docket: Relocation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice to extend closing of OUST Docket during the move.

SUMMARY: As announced in the November 14, 1995, Federal Register, the Office of Underground Storage Tanks (OUST) Docket will move from M2616, 401 M Street, SW, Washington, DC to Crystal Gateway, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. Due to the shutdown of the federal government, the Office of Underground Storage Tanks Office must extend the time the OUST Docket will be closed. The OUST Docket, originally scheduled to be closed from November 14, 1995 through November 24, 1995, will now be closed through December 1, 1995. Closing the OUST Docket during the move will facilitate the moving of the Docket's collection and ensure the integrity of the regulatory dockets. The move will allow the OUST Docket to provide improved services to its patrons.

FOR FURTHER INFORMATION CONTACT: OUST Docket (5305W), 401 M Street, SW, Washington, DC 20460, (202/260–9720). Beginning December 4, the phone number will be 703/603–9231.

Dated: November 27, 1995.

Dana Tulis,

Acting Director, Office of Underground Storage Tanks.

[FR Doc. 95–29359 Filed 11–30–95; 8:45 am]

BILLING CODE 6560–50–M

Federal Register

Friday
December 1, 1995

Part XII

Department of Commerce

Bureau of the Census

1996 Race and Ethnic Targeted Test; Notice

DEPARTMENT OF COMMERCE

Bureau of the Census

1996 Race and Ethnic Targeted Test (RAETT) and Its Content Reinterview, Also Identified as the 1996 Census Survey

ACTION: Proposed Agency Information Collection Activity; Request for comments.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before January 30, 1996.

ADDRESSES: Direct all written comments to Gerald Taché, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Nampeo R. McKenney, Assistant Division Chief, Population Division, at the Bureau of the Census, Room 2011, FOB#3, Washington, D.C. 20233; or call (301) 457-2075.

SUPPLEMENTARY INFORMATION:

I. Abstract

The June 1996 Race and Ethnic Targeted Test (RAETT) is the principal vehicle for testing and evaluating several major proposed changes in, or alternatives to, the 1990 census race and ethnic questions. These include:

- A ''Multiracial or biracial'' category;
- A ''Check more than one category'' approach to reporting as multiracial;
- Alternative sequencing of the race and Hispanic origin items;
- A combined race, Hispanic origin and ancestry question;
- A combined ''Indian (Amer.) or Alaska Native'' category; and
- A ''Native Hawaiian'' category.

These proposals arose from:

- The Office of Management and Budget's (OMB) review of the Federal standards for racial and ethnic classification (Statistical Policy Directive No. 15), with particular attention to the research agenda developed by the Research Subcommittee of the OMB Interagency Committee for the Review of Racial and Ethnic Standards;
- Evaluation research on the 1990 census data, on early tests of alternative 2000 census forms (e.g., the Alternative Questionnaire Experiment and the Simplified Questionnaire Test), and on the Current Population Survey, May 1995 Supplement on Race and Ethnicity funded by the Bureau of Labor Statistics; and
- Consultations with the Census Advisory Committees and other data users, including a conference on undercounted ethnic populations, an international conference on the measurement of race and ethnicity, and recommendations in reports by the National Research Council and the General Accounting Office.

The RAETT is essential for evaluating how proposed changes to Directive No. 15, such as a multiracial classification and combined race and Hispanic origin questions, might affect the distribution and quality (e.g., reinterview consistency) of responses in the current race and Hispanic origin items. Substantial changes could affect the historical continuity of race and ethnic data and the usefulness of data for Federal agencies that monitor and enforce legislation (e.g., the Voting Rights Act). In addition, the RAETT is needed to determine whether alternative sequencing of the race and Hispanic origin items or combining the Indian (Amer.) and Alaska Native categories provide improvements over the 1990 census. The RAETT will also be used for evaluating the terminology of ''Native Hawaiian.''

The RAETT will target about 90,000 urban and rural households representing American Indians, Alaska Natives, Asians, Pacific Islanders, Hispanics, Blacks, White ethnic groups, and multiracial persons.

The RAETT will include a reinterview which will permit assessments of effects of changes on relatively smaller populations not reliably measured in national samples.

The test will also assess alternative approaches to household rostering, including special probes designed to improve coverage in undercounted minority households.

The RAETT will include six forms (one control and five experimental). We are only including the questions on race and ethnicity in this notice because they are pertinent to the survey. If you want to obtain a copy of the questionnaire in its entirety, you may write to Nampeo R. McKenney, Assistant Division Chief, Population Division, at the address listed above. The following is a list of the form numbers and précis of the race and ethnicity questions.

Form No.	Précis of race and ethnic questions on forms
DL–1A	Control.
DL–1B	Separate Hispanic origin and race questions; multiracial category; combined ''Indian (Amer.) or Alaska Native'' category.
DL–1C	Separate Hispanic origin and race questions; mark more than one race; combined ''Indian (Amer.) or Alaska Native'' category.
DL–1D	Race question followed by Hispanic origin question; combined ''Indian (Amer.) or Alaska Native'' category; ''Native Hawaiian'' category.
DL–1E	Combined race, Hispanic origin, and ancestry; multiracial category.
DL–1F	Combined race, Hispanic origin, and ancestry; mark more than one box.

Attachment A, ''Proposed Race and Ethnic Questions for RAETT,'' is included to assist with the review of the race and ethnic questions. Attachment B contains the race and ethnic questions that will appear on forms DL–1A through DL–1F.

II. Method of Collection

The proposed information collection will be a one-time mailout-mailback census test needed for planning the 2000 census. The mailing operations for the proposed RAETT will be conducted through the U.S. Postal Service, using first-class postage rates for all pieces.

The RAETT will also include a Computer Assisted Telephone Interview (CATI) reinterview, which will compare individual responses collected on the self-enumeration forms to those collected in the CATI reinterview. Measures of response error will be generated from the reinterview to estimate the error associated with question wording.

Repeated callbacks will be made to each household to obtain a completed reinterview. The automatic call scheduler in the CATI instrument is designed to maximize response by optimizing the callback times based on prior call records for the household.

III. Data

OMB Number: Not Available

Form Number: DL–1A, DL–1B, DL–1C, DL–1D, DL–1E, and DL–1F.

Type of Review: Regular Submission.

Affected Public: Households and Individuals.

Estimated Number of Respondents: 90,000 Households.

Estimated Time Per Response: Mailout—10 minutes Reinterview—20 minutes.

Estimated Total Annual Burden Hours: Mailout—15,000 hours; Reinterview—15,000 hours.

Estimated Total Annual Cost: $2.2 Million.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: November 22, 1995.

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Organization.

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ATTACHMENT A

11/9/95

PROPOSED RACE AND ETHNIC QUESTIONS FOR RAETT

CONTROL: Separate Race, Hispanic Origin	EXPERIMENTAL FORMS				
	Separate Race, Hispanic Origin			Combined Race, Hispanic Origin, Ancestry	
DL-1A	DL-1B	DL-1C	DL-1D	DL-1E	DL-1F
Modified 1990 Race Question	Separate w/ "multiracial or biracial" category	Separate w/ "Check more than one box"	Separate w/ "multiracial or biracial" category	Combined w/ "multiracial or biracial" category	Combined "Check more than one box"
Separate categories for: Indian (Amer.) Eskimo Aleut	Indian (Amer.) or Alaska Native category	Indian (Amer.) or Alaska Native category	Indian (Amer.) or Alaska Native category Native Hawaiian category		
Modified 1990 Hispanic origin Question	Separate	Separate	Separate		
1990 Census Sequence--Race followed by age, marital status, and then Hispanic origin	Hispanic origin first immediately followed by race	Hispanic origin first immediately followed by race	Race first immediately followed by Hispanic origin		

Note: Terminology for the Black and Hispanic Origin populations will be consistent across all panels.

ATTACHMENT B

Form DL-1A

4. What is this person's race? Mark ☒ ONE box for the race that the person considers himself/herself to be.

- ☐ White
- ☐ Black, African Am., or Negro
- ☐ Indian (Amer.) – Print name of enrolled or principal tribe.
- ☐ Eskimo
- ☐ Aleut
- ☐ Chinese
- ☐ Filipino
- ☐ Hawaiian
- ☐ Korean
- ☐ Vietnamese
- ☐ Japanese
- ☐ Asian Indian
- ☐ Samoan
- ☐ Guamanian
- ☐ Other Asian or Pacific Islander – Print race, for example: Hmong, Fijian, Laotian, Thai, Tongan, Pakistani, Cambodian, and so on.
- ☐ Other race – Print race.

7. Is this person Spanish/Hispanic/Latino? Mark ☒ the "**No**" box if **not** Spanish/Hispanic/Latino.

- ☐ **No**, not Spanish/Hispanic/Latino
- ☐ Yes, Mexican, Mexican-Am., Chicano
- ☐ Yes, Puerto Rican
- ☐ Yes, Cuban
- ☐ Yes, other Spanish/Hispanic/Latino – Print one group, for example: Argentinean, Colombian, Dominican, Nicaraguan, Salvadoran, Spaniard, and so on.

Form DL-1B

Note: Please answer both Questions 5 and 6.

5. Is this person Spanish/Hispanic/Latino? Mark ☒ the "**No**" box if **not** Spanish/Hispanic/Latino.

- ☐ **No**, not Spanish/Hispanic/Latino
- ☐ Yes, Mexican, Mexican-Am., Chicano
- ☐ Yes, Puerto Rican
- ☐ Yes, Cuban
- ☐ Yes, other Spanish/Hispanic/Latino – Print one group.

6. What is this person's race? Mark ☒ ONE box for the race that the person considers himself/herself to be.

- ☐ White
- ☐ Black, African Am., or Negro
- ☐ Indian (Amer.) or Alaska Native (Print name of enrolled or principal tribe.)
- ☐ Chinese
- ☐ Filipino
- ☐ Hawaiian
- ☐ Korean
- ☐ Vietnamese
- ☐ Japanese
- ☐ Asian Indian
- ☐ Samoan
- ☐ Guamanian
- ☐ Other Asian or Pacific Islander – Print race.
- ☐ Some other race – Print race.
- ☐ Multiracial or biracial – Print races.

Form DL-1C

Note: Please answer both Questions 5 and 6.

5. Is this person Spanish/Hispanic/Latino? Mark ☒ the "**No**" box if **not** Spanish/Hispanic/Latino.

- ☐ **No**, not Spanish/Hispanic/Latino
- ☐ Yes, Mexican, Mexican-Am., Chicano
- ☐ Yes, Puerto Rican
- ☐ Yes, Cuban
- ☐ Yes, other Spanish/Hispanic/Latino – Print one group.

6. What is this person's race? Mark one or more races to indicate what this person considers himself/herself to be.

- ☐ White
- ☐ Black, African Am., or Negro
- ☐ Indian (Amer.) or Alaska Native (Print name of enrolled or principal tribe.)
- ☐ Chinese
- ☐ Filipino
- ☐ Hawaiian
- ☐ Korean
- ☐ Vietnamese
- ☐ Japanese
- ☐ Asian Indian
- ☐ Samoan
- ☐ Guamanian
- ☐ Other Asian or Pacific Islander – Print race.
- ☐ Some other race – Print race.

Form DL-1D

Note: Please answer both Questions 5 and 6.

5. What is this person's race? Mark ☒ ONE box for the race that the person considers himself/herself to be.

- ☐ White
- ☐ Black, African Am., or Negro
- ☐ Indian (Amer.) or Alaska Native (Print name of enrolled or principal tribe.)
- ☐ Native Hawaiian
- ☐ Chinese
- ☐ Filipino
- ☐ Korean
- ☐ Vietnamese
- ☐ Japanese
- ☐ Asian Indian
- ☐ Samoan
- ☐ Guamanian
- ☐ Other Asian or Pacific Islander – Print race.
- ☐ Some other race – Print race.
- ☐ Multiracial or biracial – Print races.

6. Is this person Spanish/Hispanic/Latino? Mark ☒ the "**No**" box if **not** Spanish/Hispanic/Latino.

- ☐ **No**, not Spanish/Hispanic/Latino
- ☐ Yes, Mexican, Mexican-Am., Chicano
- ☐ Yes, Puerto Rican
- ☐ Yes, Cuban
- ☐ Yes, other Spanish/Hispanic/Latino – Print one group.

Form DL-1E

NOTE – Please answer **both** 4a and 4b.

4a. What is this person's race or origin? – Mark ☒ ONE box for the race or origin that this person considers himself/herself to be.

- ☐ White
- ☐ Black, African Am., or Negro
- ☐ Indian (Amer.) or Alaska Native
  (Print name of enrolled or principal tribe)
- ☐ Asian or Pacific Islander
- ☐ Hispanic, Latino, or Spanish origin
- ☐ Multiracial or biracial
- ☐ Some other race

4b. What is this person's ancestry or ethnic group? For example, Italian, African Am., Mexican, Korean, Amer. Indian, Cape Verdean, Ecuadorian, Haitian, Lebanese, Nigerian, Polish, Samoan, Taiwanese, Ukrainian, or any other ancestry.

Form DL-1F

NOTE – Please answer **both** 4a and 4b.

4a. What is this person's race or origin? – Mark one or more boxes to indicate what this person considers himself/herself to be.

- ☐ White
- ☐ Black, African Am., or Negro
- ☐ Indian (Amer.) or Alaska Native
  (Print name of enrolled or principal tribe)
- ☐ Asian or Pacific Islander
- ☐ Hispanic, Latino, or Spanish origin
- ☐ Some other race

4b. What is this person's ancestry or ethnic group? For example, Italian, African Am., Mexican, Korean, Amer. Indian, Cape Verdean, Ecuadorian, Haitian, Lebanese, Nigerian, Polish, Samoan, Taiwanese, Ukrainian, or any other ancestry.

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Federal Register

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FEDERAL REGISTER PAGES AND DATES, DECEMBER

61645–62016.....1

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List November 30, 1995

TABLE OF EFFECTIVE DATES AND TIME PERIODS—DECEMBER 1995

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

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A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
December 1	December 18	January 2	January 16	January 30	February 29
December 4	December 19	January 3	January 18	February 2	March 4
December 5	December 20	January 4	January 19	February 5	March 4
December 6	December 21	January 5	January 22	February 5	March 5
December 7	December 22	January 8	January 22	February 5	March 6
December 8	December 26	January 8	January 22	February 6	March 7
December 11	December 26	January 10	January 25	February 9	March 11
December 12	December 27	January 11	January 26	February 12	March 11
December 13	December 28	January 12	January 29	February 12	March 12
December 14	December 29	January 16	January 29	February 12	March 13
December 15	January 2	January 16	January 29	February 13	March 14
December 18	January 2	January 17	February 1	February 16	March 18
December 19	January 3	January 18	February 2	February 20	March 18
December 20	January 4	January 19	February 5	February 20	March 19
December 21	January 5	January 22	February 5	February 20	March 20
December 22	January 8	January 22	February 5	February 20	March 21
December 26	January 10	January 25	February 9	February 26	March 25
December 27	January 11	January 26	February 12	February 26	March 26
December 28	January 12	January 29	February 12	February 26	March 27
December 29	January 16	January 29	February 12	February 27	March 28