AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

Federal Register

10–31–00 Tuesday
Vol. 65 No. 211 Oct. 31, 2000
Pages 64881–65252

The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.nara.gov/fedreg.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512-1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $638, or $697 for a combined **Federal Register,** Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $253. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $9.00 for each issue, or $9.00 for each group of pages as actually bound; or $2.00 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 65 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC	
Subscriptions:	
Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**512–1806**
General online information	**202–512–1530; 1–888–293–6498**
Single copies/back copies:	
Paper or fiche	**512–1800**
Assistance with public single copies	**512–1803**
FEDERAL AGENCIES	
Subscriptions:	
Paper or fiche	**523–5243**
Assistance with Federal agency subscriptions	**523–5243**

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: November 14, 2000, at 9:00 a.m.

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

Printed on recycled paper.

Contents

Federal Register

Vol. 65, No. 211

Tuesday, October 31, 2000

Agency for International Development
NOTICES
Agency information collection activities:
Proposed collection; comment request, 64926

Agency for Toxic Substances and Disease Registry
NOTICES
Meetings:
Public Health Service Activities and Research at DOE Sites Citizens Advisory Committee, 64953–64954

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Centers for Disease Control and Prevention
NOTICES
Reports and guidance documents; availability, etc.:
Human immunodeficiency virus (HIV)—
HIV counseling, testing, and referral guidelines; comment request, 65241–65242
HIV screening of pregnant women, recommendations; guidelines; comment request, 65241–65243

Coast Guard
RULES
Drawbridge operations:
New York, 64891–64892

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration
NOTICES
Committees; establishment, renewal, termination, etc.:
Manufacturing Extension Partnership National Advisory Board, 64926

Commodity Futures Trading Commission
PROPOSED RULES
Commodity Exchange Act:
Futures commission merchants; daily computation of amount of customer funds required to be segregated; amendments, 64904–64906

Comptroller of the Currency
NOTICES
Strategic plan, 65039

Customs Service
NOTICES
Customhouse broker license cancellation, suspension, etc.:
Goldberg, Scott J., et al., 65039–65040
United Motor Freight, Inc., et al., 65040
Meetings:
2000 Trade Symposium, 65040

Defense Department
NOTICES
Federal Acquisition Regulation (FAR):
Reverse auctioning, 65231–65232

Education Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 64933
Submission for OMB review; comment request, 64933–64934

Employment and Training Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Incumbent/dislocated worker skill shortage II demonstration program, 64991–65007

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Reports and guidance documents; availability, etc.:
Environmental cleanup program at sites; long-term stewardship study, 64934–64935

Environmental Protection Agency
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Texas, 64914–64919
NOTICES
Pesticides; emergency exemptions, etc.:
Aventis CropScience; StarLink corn Cry9 Bt corn plant pesticide; scientific information assessment, 65245–65251
Toxic and hazardous substances control:
Interagency Testing Committee report; receipt and comment request, 65233–65240
Monomer acid and derivatives; chemical nomenclature correction, 64944–64948

Executive Office of the President
See Management and Budget Office
See Trade Representative, Office of United States

Federal Aviation Administration
PROPOSED RULES
Airworthiness directives:
Airbus, 64901–64904
Bombardier, 64898–64901
NOTICES
Meetings:
RTCA, Inc., 65038

Federal Communications Commission
RULES
Common carrier services:
National Exchange Carrier Association, Inc.; access tariffs participation changes; notice period shortened, 64892–64894
PROPOSED RULES
Radio stations; table of assignments:
Arizona, 64924
Various States, 64924–64925
NOTICES
Meetings:
Technological Advisory Council, 64948–64949

Federal Deposit Insurance Corporation
RULES
Practice and procedure:
Civil monetary penalties; inflation adjustment, 64884–64887

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Kentucky Utilities Co. et al., 64939–64941
Environmental statements; notice of intent:
William Gas Pipelines Central, Inc., 64941–64943
Hydroelectric applications, 64943–64944
Applications, hearings, determinations, etc.:
Algonquin Gas Transmission Co., 64935–64936
ANR Pipeline Co., 64936
El Paso Natural Gas Co., 64936
FPL Energy Cape, LLC, 64936–64937
Granite State Gas Transmission, Inc., 64937
GridFlorida LLC et al., 64937
Natural Gas Pipeline Co. of America, 64937
Nicole Energy Marketing of Illinois, Inc., 64938
Northwest Pipeline Corp., 64938
Tennessee Gas Pipeline Co., 64938

Federal Reserve System
NOTICES
Banks and bank holding companies:
Formations, acquisitions, and mergers, 64949
Permissible nonbanking activities, 64949–64950
Meetings; Sunshine Act, 64950

Federal Trade Commission
NOTICES
Organization, functions, and authority delegations:
Planning and Information Division, Associate Director, 64950
Prohibited trade practices:
WebTV Networks, Inc., 64950–64951

Financial Management Service
See Fiscal Service

Fiscal Service
NOTICES
Federal debt collection and discount evaluation; Treasury current value of funds rate, 65040–65041

Fish and Wildlife Service
NOTICES
Natural resource damage assessment plans; availability, etc.:
Lower Fox River/Green Bay, WI, 64982

Food and Drug Administration
NOTICES
Animal drugs, feeds, and related products:
Enrofloxacin for poultry; proposal to withdraw approval; hearing, 64954–64965
Committees; establishment, renewal, termination, etc.:
Gastrointestinal Drugs Advisory Committee et al., 64965–64966

General Services Administration
NOTICES
Acquisition regulations:
Electrostatic Sensitive Devices (Label) (OF 87A); form cancellation, 64951–64952
Federal Acquisition Regulation (FAR):
Reverse auctioning, 65231–65232
Privacy Act:
Systems of records, 64952–64953

Health and Human Services Department
See Agency for Toxic Substances and Disease Registry
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Care Financing Administration
See National Institutes of Health
NOTICES
Agency information collection activities:
Proposed collection; comment request, 64953

Health Care Financing Administration
PROPOSED RULES
Medicaid:
Federal financial participation limits, 64919–64924
NOTICES
Medicare:
Fiscal intermediaries and carriers; criteria and standards for evaluating performance (2001 FY), 64968–64974
Medicare, Medicaid, and CLIA programs:
COLA approval as CLIA accreditation organization; continuance, 64966–64968

Housing and Urban Development Department
RULES
Federal National Mortgage Association (Fannie Mae) and Federal Home Loan Mortgage Corporation (Freddie Mac):
New housing goals for 2000-2003 calendar years, 65043–65229
NOTICES
Agency information collection activities:
Proposed collection; comment request, 64980–64981
Submission for OMB review; comment request, 64981
Organization, functions, and authority delegations:
Enforcement Center Director, 64981–64982

Immigration and Naturalization Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 64987–64990

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service
See Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
RULES
Income taxes:
Partnership debt allocation, 64888–64890
NOTICES
Agency information collection activities:
Proposed collection; comment request, 65041
Meetings:
Information Reporting Program Advisory Committee, 65041–65042

International Trade Administration
NOTICES
Antidumping:
Cut-to-length carbon steel plate from—
Canada, 64926–64932

International Trade Commission
NOTICES
Meetings; Sunshine Act, 64987

Justice Department
See Immigration and Naturalization Service
See Justice Programs Office

Justice Programs Office
NOTICES
Environmental statements; availability, etc.:
Methamphetamine Law Enforcement Program, 64990–64991

Labor Department
See Employment and Training Administration
See Occupational Safety and Health Administration
See Pension and Welfare Benefits Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 64991

Land Management Bureau
NOTICES
Coal leases, exploration licenses, etc.:
Utah, 64982–64983
Meetings:
Resource Advisory Councils—
Front Range, 64983–64984
Survey plat filings:
Idaho, 64984

Management and Budget Office
NOTICES
Hospital and medical care and treatment furnished by United States, costs; rates regarding recovery from tortiously liable third persons (Circular A-25), 65024–65032

Maritime Administration
NOTICES
Coastwise trade laws; administrative waivers:
MACCOBOY III, 65038–65039

National Aeronautics and Space Administration
NOTICES
Federal Acquisition Regulation (FAR):
Reverse auctioning, 65231–65232

National Archives and Records Administration
NOTICES
Services for persons with limited English proficiency; comment request, 65016–65017

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Combined Arts Advisory Panel, 65017

National Institutes of Health
NOTICES
Inventions, Government-owned; availability for licensing, 64974
Meetings:
Director's Council of Public Representatives, 64974–64975
National Cancer Institute, 64975–64976
National Center for Complementary and Alternative Medicine, 64976
National Institute of Allergy and Infectious Diseases, 64976–64977
National Institute of Diabetes and Digestive and Kidney Diseases, 64976
Scientific Review Center, 64977–64980
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Amylin Pharmaceuticals, Inc.; correction, 64980

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Bering Sea and Aleutian Islands groundfish; correction, 64895–64896
Atlantic coastal fisheries cooperative management—
Horseshoe crab; cancellation of Federal moratorium on Virginia, 64896–64897
Northeastern United States Fisheries—
Spiny dogfish, 64894–64895
NOTICES
Meetings:
Western Pacific Fishery Management Council, 64932
Permits:
Marine mammals, 64932–64933

National Park Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 64984–64985
Environmental statements; availability, etc.:
Petrified Forest National Park, AZ, 64985
Yellowstone and Grand Teton National Parks and John D. Rockefeller, Jr., Memorial Parkway, WY and MT, 64986
Meetings:
National Park System Advisory Board, 64986–64987

Nuclear Regulatory Commission
NOTICES
Meetings; Sunshine Act, 65017–65018
Post Accident Sampling System; license amendment applications; model safety evaluation, etc., 65018–65024
Regulatory guides; issuance, availability, and withdrawal, 65024

Occupational Safety and Health Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 65008–65011

Office of Management and Budget
See Management and Budget Office

Office of United States Trade Representative
See Trade Representative, Office of United States

Pension and Welfare Benefits Administration
NOTICES
Employee benefit plans; prohibited transaction exemptions:
Care Services Employees et al., 65011–65016

Public Debt Bureau
See Fiscal Service

Public Health Service
See Agency for Toxic Substances and Disease Registry

See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health

Securities and Exchange Commission
NOTICES
Meetings; Sunshine Act, 65034
Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 65034–65037
Applications, hearings, determinations, etc.:
CyberSentry, Inc., 65032
Public utility holding company filings, 65033–65034

Special Counsel Office
RULES
Prohibited personnel practice or other prohibited activity; complaints and information disclosures filing, 64881–64884

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Permanent program and abandoned mine land reclamation plan submissions:
Missouri, 64906–64914

Toxic Substances and Disease Registry Agency
See Agency for Toxic Substances and Disease Registry

Trade Representative, Office of United States
NOTICES
Meetings:
Customs Matters Industry Functional Advisory Committee, 65037
Reports and guidance documents; availability, etc.:
Foreign Trade Barriers; National Trade Estimate Report; comment request, 65037–65038

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Maritime Administration

Treasury Department
See Comptroller of the Currency
See Customs Service
See Fiscal Service
See Internal Revenue Service

Veterans Affairs Department
NOTICES
Meetings:
National Research Advisory Council, 65042

Separate Parts In This Issue

Part II
Department of Housing and Urban Development, 65043–65229

Part III
Department of Defense, General Services Administration, National Aeronautics and Space Administration, 65231–65232

Part IV
Environmental Protection Agency, 65233–65240

Part V
Department of Health and Human Services, Centers for Disease Control, 65241–65243

Part VI
Environmental Protection Agency, 65245–65251

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

5 CFR
1800 64881

12 CFR
308 64884

14 CFR
Proposed Rules:
39 (2 documents) 64898, 64901

17 CFR
Proposed Rules:
1 64901

24 CFR
81 65044

26 CFR
1 64888

30 CFR
Proposed Rules:
925 64906

33 CFR
117 64891

40 CFR
Proposed Rules:
52 64914

42 CFR
Proposed Rules:
435 64919

47 CFR
69 64892
Proposed Rules:
73 (2 documents) 64923, 64924

50 CFR
648 64894
679 64895
697 64896

Rules and Regulations

Federal Register

Vol. 65, No. 211

Tuesday, October 31, 2000

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.

OFFICE OF SPECIAL COUNSEL

5 CFR Part 1800

RIN 3255–ZA00

Filing Complaints of Prohibited Personnel Practice or Other Prohibited Activity; Filing Disclosures of Information

AGENCY: Office of Special Counsel.

ACTION: Final rule.

SUMMARY: The Office of Special Counsel (OSC) is issuing a final rule amending its regulations at 5 CFR part 1800 to: provide basic information about OSC jurisdiction over complaints of improper employment practices, and over disclosures of information of wrongdoing in federal agencies (also known as ''whistleblower disclosures''); implement a requirement that complaint filers use an OSC form to submit allegations of improper employment practices (other than alleged Hatch Act violations); outline procedures to be followed by OSC when filers submit complaints (other than Hatch Act allegations) in formats other than an OSC complaint form; revise and update descriptions of information needed by OSC to process both complaints alleging Hatch Act violations and whistleblower disclosures; and update contact information for sending complaints and disclosures to OSC, and for obtaining OSC complaint and disclosure forms.

DATES: This rule is effective on December 1, 2000.

FOR FURTHER INFORMATION CONTACT: Kathryn Stackhouse, Attorney, Planning and Advice Division, by telephone at (202) 653–8971, or by fax at (202) 653–5161. Information on the rule is also available on OSC's Web site (at *www.osc.gov*).

SUPPLEMENTARY INFORMATION:

I. Rulemaking History

On August 16, 2000, OSC published for comment a proposed rule revising agency regulations at 5 CFR part 1800. *See* 65 FR 49949. OSC issued the proposed rule pursuant to 5 U.S.C. 1212(e), which authorizes the Special Counsel to prescribe and publish such regulations as may be necessary to perform the functions of the office.

A brief outline of the purposes for which OSC has revised part 1800 follows:

(1) *To provide basic information about OSC jurisdiction over complaints of improper employment practices and whistleblower disclosures.* Sections 1800.1 and 1800.2 currently outline procedures for filing complaints and disclosures with OSC, with no reference to its basic jurisdiction. The revision of Part 1800 outlines matters within OSC's jurisdiction under each section as an aid to persons considering filing a complaint or disclosure.

(2) *To implement a requirement that complaint filers use an OSC complaint form to submit allegations of improper employment practices (other than alleged Hatch Act violations).* Most complaints received by OSC consist of allegations of improper employment practices other than Hatch Act violations. Section 1800.1, at paragraphs (b)(1)–(6), currently outlines the types of information that should be provided in a complaint, and indicates that complaints can be submitted in any written format. Given this latitude, there have been considerable disparities in the way complaint information is presented to OSC. Mandatory use of the revised Form OSC–11, rather than any written format chosen by a complaint filer, will help: (a) Enable complainants to obtain useful information about OSC jurisdiction and procedures before filing the complaint; (b) produce more complete and consistent presentations of facts needed by OSC to review, follow up on, and investigate complaints of improper employment practices; and (c) make more efficient use of OSC's limited resources, by reducing the time spent by staff in answering threshold questions about jurisdiction and procedures, and in soliciting basic information about allegations in complaints.

(3) *To outline procedures to be followed by OSC when filers submit complaints (other than Hatch Act allegations) in formats other than Form OSC–11.* Under the revision of § 1800.1, if a person uses a format other than the required OSC form to file a complaint (other than a Hatch Act allegation), the material submitted will be returned to the filer with a blank Form OSC–11 to fill out and return to OSC. Processing of the complaint will begin upon OSC's receipt of the completed Form OSC–11.

(4) *To revise and update descriptions of information needed by OSC to process both complaints alleging Hatch Act violations and whistleblower disclosures.* OSC will continue to permit filers of complaints alleging Hatch Act violations, and filers of whistleblower disclosures, to submit such matters to OSC in any written format, including OSC's complaint and disclosure forms (Forms OSC–11 and OSC–12, respectively). Sections 1800.1 and 1800.2 currently describe information needed by OSC to review and evaluate complaints and disclosures. The revision of § 1800.1 tailors the description to Hatch Act allegations, for filers who submit them in formats other than an OSC complaint form. The revision of § 1800.2 updates the description of information needed in whistleblower disclosures to OSC, for filers who submit them in a format other than the OSC disclosure form.

(5) *To update contact information for sending complaints and disclosures to OSC, and for obtaining OSC complaint and disclosure forms.* Since OSC's current regulations were published, its mailing address for complaints and disclosures has changed, and a Web site, at which many OSC forms and publications are available to the public, has been established. The revision of §§ 1800.1 and 1800.2 updates both sections with current mailing and Web site address information.

Following OSC's publication of the notice of proposed rulemaking, the Office of Management and Budget (OMB) approved a revised complaint form (Form OSC–11), along with a revised form for whistleblower disclosures (Form OSC–12), as a collection of information (OMB Control No. 3255–0002) under the Paperwork Reduction Act. *See* 65 FR 41512 (July 5, 2000) for a description of the revisions to both forms.

II. Summary of Comments

The proposed rule provided a 60-day comment period, and invited comments from current and former Federal employees, employee representatives, other Federal agencies, and the general public. OSC also posted the notice of proposed rulemaking on its Web site.

Timely comments were received from two sources, an individual and an executive branch agency. After carefully considering the comments and making appropriate modifications, OSC is publishing this final rule pursuant to 5 U.S.C. 1212(e).

The individual respondent stated that making use of OSC's complaint form mandatory would further discourage federal employees from reporting unlawful and wasteful actions by federal agencies. He suggested that OSC could simply provide the form and the information requested to complainants, and request that they respond.

OSC has implemented a variant of this suggestion over the years—either accepting and acting on complaints in whatever form submitted, or offering persons who inquired the option of submitting their complaints on an OSC complaint form. As described in the notice of proposed rulemaking, this led to considerable disparities in the way complaint information was presented to OSC. In addition, due to a lack of awareness about or misunderstanding of its role and jurisdiction, OSC received many complaints about matters that it had no legal authority to pursue.

OSC has concluded that mandatory use of its revised complaint form will be more efficient, effective, and useful, both for complaint filers and OSC. As outlined in the Rulemaking History section, above, mandatory use of the OSC form, rather than any written format chosen by a filer, will help: (a) Enable complainants to obtain useful information about OSC jurisdiction and procedures before filing a complaint (including information about matters outside OSC's jurisdiction, election of remedies, OSC deferral policies, legal elements required to establish reprisal for whistleblowing, and certain appeal rights to the Merit Systems Protection Board (''the Board''); (b) produce more complete and consistent presentations of facts needed by OSC to review, follow up on, and investigate complaints of improper employment practices; and (c) make more efficient use of OSC's limited resources, by reducing the time spent by staff in answering threshold questions about jurisdiction and procedures, and in soliciting basic information about allegations in complaints.

The respondent's comment, however, led OSC to conclude that the final rule should state more clearly the procedures that OSC will follow when allegations are received in a format other than an OSC complaint form. Therefore, OSC is revising the final regulation, at § 1800.1(f), to indicate that: (a) When allegations are received in a format other than an OSC complaint form, the material submitted will be returned to the filer with a blank Form OSC–11 to complete and return to OSC; and (b) the complaint will be considered to be filed on the date on which OSC receives the completed Form OSC–11.

OSC anticipates that the return of allegations and supporting material may be required more frequently for some months after use of the complaint form becomes mandatory on December 1, 2000. After information about mandatory use of the Form OSC–11 becomes more widely known, however, OSC believes that this will occur less often. OSC also believes that, with increasing access to the Internet, its complaint form and information about its complaint procedures will be more readily available to potential filers. OSC's planned implementation of procedures permitting electronic filing of complaints by October 2003 will make that process even easier.

OSC does not intend in any way to discourage federal employees from filing complaints, nor does OSC believe that this regulatory change will produce that result. Rather, OSC believes that this change will help employees make more informed decisions about whether and what to report to OSC, and will result in greater efficiencies in the complaint process.

The second comment was received from an executive branch agency, which agreed with the proposal as written, and asked that OSC ensure that its complaint form comply with Executive Order 13166 (Improving Access to Services for Persons with Limited English Proficiency). The executive order requires agencies to develop and begin implementing a plan to improve access to federally conducted and federally assisted programs and activities, and to submit the plan to the Department of Justice by December 11, 2000. OSC is reviewing its programs and activities to identify those that may be subject to the executive order. Should compliance with the executive order entail any revision to the complaint form, OSC will proceed accordingly.

Technical, non-substantive corrections have been made to the final version of § 1800.1(e) (to correct a disagreement in the text of the proposed rule between plural and singular references to the OSC complaint form); § 1800.1(g)(1) (to substitute ''complaint(s)'' for an erroneous reference to ''disclosure(s)''); and to § 1800.2(c)(2) (to conform the text more closely to that used in § 1800.1(e)).

III. Matters of Regulatory Procedure

Procedural determinations were published in the notice of proposed rulemaking for the Regulatory Flexibility Act; the Paperwork Reduction Act; the Unfunded Mandates Reform Act; the National Environmental Policy Act; Executive Order 12630 (Government Actions and Interference with Constitutionally Protected Property Rights); Executive Order 12866 (Regulatory Planning and Review); Executive Order 12988 (Civil Justice Reform); Executive Order 13045 (Protection of Children from Environmental Health Risks and Safety Risks); and Executive Order 13132 (Federalism). There have been no changes in these procedural determinations.

List of Subjects in 5 CFR Part 1800

Administrative practice and procedure, Government employees, Investigations, Law enforcement, Political activities (Government employees), Reporting and recordkeeping requirements, Whistleblowing.

For the reasons set forth in the preamble, the Office of Special Counsel is amending title 5, chapter VIII, Part 1800 as follows:

PART 1800—FILING OF COMPLAINTS AND DISCLOSURES

1. The authority citation for 5 CFR Part 1800 continues to read as follows:

Authority: 5 U.S.C. 1212(e).

2. Section 1800.1 is revised to read as follows:

§ 1800.1 Filing complaints of prohibited personnel practices or other prohibited activities.

(a) The Office of Special Counsel (OSC) has investigative jurisdiction over the following prohibited personnel practices against current or former Federal employees and applicants for Federal employment:

(1) Discrimination, including discrimination based on marital status or political affiliation (see § 1810.1 of this chapter for information about OSC's deferral policy);

(2) Soliciting or considering improper recommendations or statements about individuals requesting, or under consideration for, personnel actions;

(3) Coercing political activity, or engaging in reprisal for refusal to engage in political activity;

(4) Deceiving or obstructing anyone with respect to competition for employment;

(5) Influencing anyone to withdraw from competition to improve or injure the employment prospects of another;

(6) Granting an unauthorized preference or advantage to improve or injure the employment prospects of another;

(7) Nepotism;

(8) Reprisal for whistleblowing (whistleblowing is generally defined as the disclosure of information about a Federal agency by an employee or applicant who reasonably believes that the information shows a violation of any law, rule, or regulation; gross mismanagement; gross waste of funds; abuse of authority; or a substantial and specific danger to public health or safety);

(9) Reprisal for:

(i) Exercising certain appeal rights;

(ii) Providing testimony or other assistance to persons exercising appeal rights;

(iii) Cooperating with the Special Counsel or an Inspector General; or

(iv) Refusing to obey an order that would require the violation of law;

(10) Discrimination based on personal conduct not adverse to job performance;

(11) Violation of a veterans' preference requirement; and

(12) Taking or failing to take a personnel action in violation of any law, rule, or regulation implementing or directly concerning merit system principles at 5 U.S.C. 2302(b)(1).

(b) OSC also has investigative jurisdiction over allegations of the following prohibited activities:

(1) Violation of the Federal Hatch Act at title 5 of the U.S. Code, chapter 73, subchapter III;

(2) Violation of the state and local Hatch Act at title 5 of the U.S. Code, chapter 15;

(3) Arbitrary and capricious withholding of information prohibited under the Freedom of Information Act at 5 U.S.C. 552 (except for certain foreign and counterintelligence information);

(4) Activities prohibited by any civil service law, rule, or regulation, including any activity relating to political intrusion in personnel decisionmaking;

(5) Involvement by any employee in any prohibited discrimination found by any court or appropriate administrative authority to have occurred in the course of any personnel action (unless the Special Counsel determines that the allegation may be resolved more appropriately under an administrative appeals procedure); and

(6) Violation of uniformed services employment and reemployment rights under 38 U.S.C. 4301, *et seq*.

(c) Complaints of prohibited personnel practices or other prohibited activities within OSC's investigative jurisdiction should be sent to: U.S. Office of Special Counsel, Complaints Examining Unit, 1730 M Street, NW, Suite 201, Washington, DC 20036–4505.

(d) Complaints alleging a prohibited personnel practice, or a prohibited activity other than a Hatch Act violation, must be submitted on Form OSC–11 (''Complaint of Possible Prohibited Personnel Practice or Other Prohibited Activity'').

(1) The form includes a section (Part 2) that must be completed in connection with allegations of reprisal for whistleblowing, including identification of:

(i) Each disclosure involved;

(ii) The date of each disclosure;

(iii) The person to whom each disclosure was made; and

(iv) The type and date of any personnel action that occurred because of each disclosure.

(2) If a complainant who has alleged reprisal for whistleblowing seeks to supplement a pending OSC complaint by reporting a new disclosure or personnel action, then, at OSC's discretion:

(i) The complainant will be required to document the disclosure or personnel action in the Part 2 format, or

(ii) OSC will document the disclosure or personnel action in the Part 2 format, a copy of which will be provided to the complainant upon OSC's closure of the complaint.

(e) Form OSC–11 is available by writing to OSC at the address shown in paragraph (c) of this section; by calling OSC at (1) (800) 872–9855; or by printing the form from OSC's Web site (at *http://www.osc.gov*).

(f) Except for complaints alleging only a Hatch Act violation, OSC will not process a complaint submitted in any format other than a completed Form OSC–11. If a person uses a format other than the required OSC form to file a complaint (other than a Hatch Act allegation), the material received by OSC will be returned to the filer with a blank Form OSC–11 to complete and return to OSC. The complaint will be considered to be filed on the date on which OSC receives the completed Form OSC–11.

(g) Complaints alleging only a Hatch Act violation may be submitted in any written form to the address shown in paragraph (c) of this section, but should include:

(1) The name, mailing address, and telephone number(s) of the complainant(s), and a time when the person(s) making the complaint(s) can be safely contacted, unless the matter is submitted anonymously;

(2) The department or agency, location, and organizational unit complained of; and

(3) A concise description of the actions complained about, names and positions of employees who took these actions, if known to the complainant, and dates, preferably in chronological order, together with any documentary evidence the complainant may have.

3. Section 1800.2 is revised to read as follows:

§ 1800.2 Filing disclosures of information.

(a) OSC is authorized by law (at 5 U.S.C. 1213) to provide an independent and secure channel for use by current or former Federal employees and applicants for Federal employment in disclosing information that they reasonably believe shows wrongdoing by a Federal agency. The law requires OSC to determine whether there is a substantial likelihood that the information discloses a violation of any law, rule, or regulation; gross mismanagement; gross waste of funds; abuse of authority; or a substantial and specific danger to public health or safety. If so, OSC must refer the information to the agency head involved for investigation and a written report on the findings to the Special Counsel. The law does not give OSC jurisdiction to investigate the disclosure.

(b) Employees, former employees, or applicants for employment wishing to file a whistleblower disclosure with OSC should send the information to: U.S. Office of Special Counsel, Disclosure Unit, 1730 M Street, NW, Suite 201, Washington, DC 20036–4505.

(c) A disclosure of the type of information described in paragraph (a) of this section should be submitted in writing, using any of the following formats:

(1) Filers may use Form OSC–12 (''Disclosure of Information''), which provides more information about OSC jurisdiction and procedures for processing whistleblower disclosures. This form is available from OSC by writing to the address shown in paragraph (b) of this section; by calling OSC at (1) (800) 572–2249; or by printing the form from OSC's Web site (at *http://www.osc.gov*).

(2) Filers may use another written format, but the submission should include:

(i) The name, mailing address, and telephone number(s) of the person(s) making the disclosure(s), and a time when that person(s) can be safely contacted by OSC;

(ii) The department or agency, location and organizational unit complained of; and

(iii) A statement as to whether the filer consents to the disclosure of his or her identity to the agency by OSC in connection with any referral to the appropriate agency.

Dated: October 25, 2000.

Elaine Kaplan,

Special Counsel.

[FR Doc. 00–27828 Filed 10–30–00; 8:45 am]

BILLING CODE 7405–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 308

RIN 3064–AC45

Rules of Practice and Procedure

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Civil Monetary Penalty Inflation Adjustment Act of 1990 requires all federal agencies with statutory authority to impose civil money penalties (CMPs) to evaluate and adjust those CMPs every four years. The FDIC last adjusted its CMP statutes in 1996. The FDIC is issuing this final rule to implement the required adjustments to its CMP statutes.

EFFECTIVE DATE: October 31, 2000.

FOR FURTHER INFORMATION CONTACT: John T. Mahshie, Counsel, (202) 898–3503, Compliance and Enforcement Section, Legal Division, 550 17th Street, NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Background

The Debt Collection Improvement Act (DCIA) (Pub. L. 104–134) amended section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990 (Inflation Adjustment Act) (28 U.S.C. 2461 note), to require the head of each Federal agency to enact regulations within 180 days of the enactment of the DCIA and at least once every four years thereafter, that adjust each CMP provided by law within the jurisdiction of the agency (with the exception of certain specifically listed statutes) by the inflation adjustment formula set forth in section 5(b) of the Inflation Adjustment Act.

To satisfy the requirements of the DCIA, the FDIC is amending those sections of part 308 of its regulations pertaining to its Rules of Practice and Procedure which address CMPs. The amount of each CMP which the FDIC has jurisdiction to impose has been increased according to the prescribed formula. The penalties were last adjusted in 1996. (61 FR 57987). Any increase in penalty amounts under the DCIA shall apply only to violations which occur after the effective date of the increase.

Summary of Calculation

The Inflation Adjustment Act requires that each CMP amount be increased by the ''cost of living'' adjustment, which is defined as the percentage by which the Consumer Price Index (CPI–U) [1] for the month of June of the calendar year preceding the adjustment exceeds the CPI for the month of June of the calendar year in which the amount of the CMP was last set or adjusted pursuant to law. Any increase is to be rounded to the nearest multiple of $10 in the case of penalties less than or equal to $100; multiple of $100 in the case of penalties greater than $100 but less than or equal to $1,000; multiple of $1,000 in the case of penalties greater than $1,000 but less than or equal to $10,000; multiple of $5,000 in the case of penalties greater than $10,000 but less than or equal to $100,000; multiple of $10,000 in the case of penalties greater than $100,000 but less than or equal to $200,000; and multiple of $25,000 in the case of penalties greater than $200,000. Under the DCIA, the first adjustment may not exceed ten percent of the current penalty amount.

Example

To explain the inflation adjustment calculation for CMP amounts that were last adjusted in 1996, we will use the following example. Under 12 U.S.C. 1818(i), as adjusted under 12 CFR 308.132(c), the FDIC may impose a daily maximum Tier Three CMP not to exceed $1,100,000 for violating certain laws.

We first determine the appropriate CPI–U. The statute requires the FDIC to use the CPI–U for June of the calendar year preceding the year of adjustment. Because we are adjusting CMPs in 2000, we use the CPI–U for June 1999, which was 166.2. We must also determine the CPI–U for June of the year the CMP was last set by law or adjusted for inflation. Because the FDIC last adjusted the CMPs under 12 U.S.C. 1818 in 1996, we use the CPI–U for June 1996, which was 156.7.

We next calculate the cost of living adjustment or inflation factor. To do this, we divide the CPI–U for June 1999 (166.2) by the CPI–U for June 1996 (156.7). The result is 1.061 (*i.e.,* a 6.1 percent increase).

Third, we calculate the raw inflation adjustment. To do this, multiply the maximum penalty amounts by the inflation factor. In our example, $1,100,000 multiplied by the inflation factor of 1.061 equals $1,167,100.

Fourth, we round the raw inflation amounts according to the rounding rules in section 5(a) of the Inflation Adjustment Act. Since we round only the increased amount, we calculate the increased amount by subtracting the current maximum penalty amounts from the raw maximum inflation adjustments. Accordingly, the increased amount for the maximum penalty in our example is $67,100 (*i.e.*, $1,167,100 less $1,100,000). Under the rounding rules, if the penalty is greater than $200,000, we round the increase to the nearest multiple of $25,000. Therefore, the maximum penalty increase for our example is $75,000.

Fifth, we add the rounded increase to the maximum penalty amount last set or adjusted. In our example, $1,100,000 plus $75,000 yields a maximum inflation adjusted penalty amount of $1,175,000.

Summary of Adjustments

Under the Inflation Adjustment Act, the FDIC must adjust for inflation the civil monetary penalties in statutes that it administers. The following chart displays the adjusted civil money penalty amounts for the enumerated statues. The amounts in this chart apply to violations that occur after October 31, 2000:

[1] The CPI–U is compiled by the Bureau of Statistics of the Department of Labor. To calculate the adjustment, the FDIC used the Department of Labor, Bureau of Labor Statistics B All Urban Consumers tables to get the CPI–U values.

U.S. Code citation	Current maximum amount	New maximum amount
12 U.S.C. 1817(a):		
Tier One penalties	2,000	2,200
Tier Two penalties	22,000	22,000
Tier Three penalties	1,100,000	1,175,000
12 U.S.C. 1817(c):		
Tier One penalties	2,000	2,200
Tier Two penalties	22,000	22,000
Tier Three penalties 1,100,000 1,175,000.		
12 U.S.C. 1817(j):		
Tier One penalties	5,500	5,500
Tier Two penalties	27,500	27,500
Tier Three penalties	1,100,000	1,175,000
12 U.S.C. 1818(i)(2):		
Tier One penalties	5,500	5,500
Tier Two penalties	27,500	27,500
Tier Three penalties	1,100,000	1,175,000
12 U.S.C. 1820(e)(4)	5,500	5,500
12 U.S.C. 1828(a)(3)	110	110
12 U.S.C. 1828(h)	110	110
12 U.S.C. 1829b(j)	11,000	11,000
12 U.S.C. 1832(c)	1,100	1,100
12 U.S.C. 1884	110	110
12 U.S.C. 1972(2)(F):		
Tier One penalties	5,500	5,500
Tier Two penalties	27,500	27,500
Tier Three penalties	1,100,000	1,175,000
12 U.S.C. 3108(b):		
Tier One penalties	5,500	5,500
Tier Two penalties	27,500	27,500
Tier Three penalties	1,100,000	1,175,000
12 U.S.C. 3349(b):		
Tier One penalties	5,500	5,500
Tier Two penalties	27,500	27,500
Tier Three penalties	1,100,000	1,175,000
12 U.S.C. 3909(d)	1,100	1,100
12 U.S.C. 4717(b):		
Tier One penalties	5,500	5,500
Tier Two penalties	27,500	27,500
Tier Three penalties	1,100,000	1,175,000
15 U.S.C. 78u–2	5,500	5,500
	55,000	60,000
	55,000	60,000
	110,000	120,000
	275,000	300,000
	550,000	575,000
31 U.S.C. 3802	5,500	5,500
42 U.S.C. 4012a(f)	350/105,000	350/115,000

II. Section-by-Section Analysis

Section 308.116(b)

Section 308.116(b) pertains to the amount of any CMP that may be assessed for violations of the Change in Bank Control Act of 1978 (12 U.S.C. 1817(j)). This section has been amended by increasing the Tier Three penalty amount from $1,100,000 for each day the violation continues to $1,175,000 for each day the violation continues or, in the case of a depository institution, increasing the penalty from an amount not to exceed the lesser of $1,100,000 or one percent of the total assets of the institution for each day the violation continues to the lesser of $1,175,000 or one percent of the total assets of the institution for each day the violation continues.

Section 308.132

Section 308.132 pertains to the manner in which the FDIC assesses CMPs. Paragraph (c)(2) of that section pertains to the CMPs imposed pursuant to section 7(a) of the Federal Deposit Insurance Act (FDIA) (12 U.S.C. 1817(a)) for the late filing of a bank's Reports of Condition and Income (Call Reports) or for the submission of false or misleading Call Reports or information. Paragraph (c)(2)(i) has been amended to reflect the increase in the Tier One penalty amount from a maximum of $2,000 per day to $2,200 per day for each day the failure to file continues. Paragraph (c)(ii)(3)(C) has been amended to increase the Tier Three penalty amount from a maximum of the lesser of $1,100,000 or one percent of the total assets of the institution for each day the violation continues to a maximum of the lesser of $1,175,000 or one percent of the total assets of the institution for each day the violation continues.

Paragraph (c)(2)(iii) pertains to penalties for the submission of false or misleading Call Reports or information. Paragraph (c)(2)(iii)(A) of that section has been amended to reflect the increase in Tier One penalty amounts from a maximum of $2,000 per day for each day the information is not corrected to a maximum of $2,200 per day for each day the information is not corrected. Paragraph (c)(2)(iii)(C) of that section reflects the increase in Tier Three penalties from an amount not to exceed the lesser of $1,100,000 or one percent of the total assets of the institution for each day the information is not

corrected to an amount not to exceed the lesser of $1,175,000 or one percent of the total assets of such institution for each day the information is not corrected. No change has been made to Tier Two penalty amounts by the DCIA.

Paragraph (c)(3)(i) sets forth the increases for CMPs assessed pursuant to section 8(i)(2) of the FDIA (12 U.S.C. 1818(i)(2)). A Tier Three CMP which may be assessed pursuant to section 8(i)(2)(C) (12 U.S.C. 1818(i)(2)(C)) will increase from an amount not to exceed, in the case of any person other than an insured depository institution $1,100,000 or, in the case of any insured depository institution, the amount will increase from an amount not to exceed the lesser of $1,100,000 or one percent of the total assets of such institution for each day during which the violation, practice, or breach continues to an amount not to exceed the lesser of $1,175,000 or one percent of the total assets of such institution for each day during which the violation, practice, or breach continues.

Paragraph (c)(3)(i)(A) of § 308.132 lists a number of statutes which provide jurisdiction to the FDIC to assess CMPs under section 8(i)(2) of the FDIA for violation thereof, including, the Home Mortgage Disclosure Act (12 U.S.C. 2804 *et seq.*) and implementing Regulation C (12 CFR 203.6), the Expedited Funds Availability Act (12 U.S.C. 4001 *et seq.*), the Truth in Savings Act (12 U.S.C. 4301 *et seq.*), the Real Estate Settlement Procedures Act (12 U.S.C. 2601 *et seq.*) and implementing Regulation X (24 CFR Part 3500), the Truth in Lending Act (15 U.S.C. 1601 *et seq.*), the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*), the Equal Credit Opportunity Act (15 U.S.C. 1691 *et seq.*), the Fair Debt Collection Practices Act (15 U.S.C. 1692 *et seq.*), the Electronic Funds Transfer Act (15 U.S.C. 1693 *et seq.*), and the Fair Housing Act (42 U.S.C. 3601 *et seq.*). Increases in the amount of any CMP which the FDIC may assess for violations of those statutes are the same as the increases for section 8(i)(2) penalties. Therefore, for the foregoing statutes, as in section 8(i)(2), only the Tier Three penalty amounts will increase.

Paragraph (c)(3)(ii) of § 308.132 reflects the increases in CMP amounts that may be assessed pursuant to section 7(c) of the FDIA for late filing or the submission of false or misleading certified statements. A Tier One CMP pursuant to section 7(c)(4)(A) of the FDIA (12 U.S.C. 1817(c)(4)(A)) will increase from an amount not to exceed $2,000 per day to an amount not to exceed $2,200 for each day during which the failure to file continues or the false or misleading information is not corrected. A Tier Three CMP which may be assessed pursuant to section 7(c)(4)(C) of the FDIA (12 U.S.C. 1817(c)(4)(B)) will increase from an amount not to exceed the lesser of $1,100,000 or one percent of the total assets of the institution for each day during which the failure to file continues or the false or misleading information is not corrected to an amount not to exceed the lesser of $1,175,000 or one percent of the total assets of the institution for each day during which the failure to file continues or the false or misleading information is not corrected. Tier Two penalties remain the same.

Paragraph (c)(3)(ix) of § 308.132 sets forth the increases in the CMP amounts that may be assessed pursuant to the Bank Holding Company Act of 1970 (12 U.S.C. 1841 *et seq.*) for prohibited tying arrangements. A Tier Three CMP which may be assessed pursuant to 12 U.S.C. 1972(2)(F)(iii) will increase from an amount not to exceed, in the case of any person other than an insured depository institution $1,100,000 for each day during which the violation, practice, or breach continues to an amount not to exceed $1,175,000 for each day during which the violation, practice, or breach continues. In the case of any insured depository institution, Tier Three penalties will increase from an amount not to exceed the lesser of $1,100,000 or one percent of the total assets of such institution for each day during which the violation, practice, or breach continues to an amount not to exceed the lesser of $1,175,000 or one percent of the total assets of such institution for each day during which the violation, practice, or breach continues. Tier One and Tier Two penalties remain the same.

Paragraph (c)(3)(x) of § 308.132 indicates that pursuant to the International Banking Act of 1978 (IBA) (12 U.S.C. 3108(b)), a CMP may be assessed for failure to comply with the requirements of the IBA pursuant to section 8(i)(2) of the FDIA (12 U.S.C. 1818(i)(2)). Such CMP will increase in the amounts set forth in paragraph (c)(3)(i) of § 308.132 which contains the increases for section 8(i)(2).

Paragraph (c)(3)(xi) of § 308.132 sets forth the increase in CMP that may be assessed pursuant to section 8(i)(2) of the FDIA (12 U.S.C. 1818(i)(2)), as made applicable by 12 U.S.C. 3349(b), where a financial institution seeks, obtains, or gives any other thing of value in exchange for the performance of an appraisal by a person that the institution knows is not a state certified or licensed appraiser in connection with a federally related transaction. Such CMP amounts will increase in the amounts set forth in paragraph (c)(3)(i) of § 308.132 which contains the increases for section 8(i)(2).

Paragraph (c)(3)(xiii) of § 308.132 indicates that pursuant to the Community Development Banking and Financial Institution Act (Community Development Banking Act) (12 U.S.C. 4717(b)) a CMP may be assessed for violations of the Community Development Banking Act pursuant to section 8(i)(2) of the FDIA (12 U.S.C. 1818(i)(2)). Such CMP amounts will increase in the amounts set forth in paragraph (c)(3)(i) of § 308.132 which contains the increases for section 8(i)(2).

Paragraph (c)(3)(xiv) of § 308.132 sets forth that pursuant to section 21B of the Securities Exchange Act of 1934 (Exchange Act) (15 U.S.C. 78u–2), CMPs may be assessed for violations of certain provisions of the Exchange Act, where such penalties are in the public interest. The Tier One CMP amounts which may be assessed pursuant to 15 U.S.C. 78u–2(b)(1) will increase from an amount not to exceed $5,500 for a natural person or $55,000 for any other person for violations set forth in 15 U.S.C. 78u–2(a), to $5,500 for a natural person or $60,000 for any other person. The Tier Two CMP which may be assessed pursuant to 15 U.S.C. 78u–2(b)(2) for each violation set forth in 15 U.S.C. 78u–2(a) will increase from an amount not to exceed $55,000 for a natural person to $275,000 for any other person to an amount not to exceed $60,000 for a natural person or $300,000 for any other person if the act or omission involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement. The Tier Three CMP which may be assessed pursuant to 15 U.S.C. 78u–2(b)(3) for each violation set forth in 15 U.S.C. 78u–2(a), in an amount not to exceed $110,000 for a natural person or $550,000 for any other person, if the act or omission involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and such act or omission directly or indirectly resulted in substantial losses, or created a significant risk of substantial losses to other persons or resulted in substantial pecuniary gain to the person who committed the act or omission to an amount not to exceed $120,000 for a natural person or $575,000 for any other person.

Paragraph (c)(3)(xvi) of § 308.132 sets forth the CMP that may be assessed pursuant to the Flood Disaster Protection Act (FDPA)(42 U.S.C. 4012a(f)) against any regulated lending institution that engages in a pattern or practice of violations of the FDPA. The

amount of the penalty for each violation will remain at $350; however, the annual amount which may be assessed will increase from an amount not to exceed a total of $105,000 annually to an amount not to exceed a total of $115,000 annually.

III. Exemption From Public Notice and Comment

Because the law requires the FDIC to amend its rules, provides the specific adjustments to be made and leaves the FDIC no discretion in calculating the amount of those adjustments, the changes are ministerial, technical and noncontroversial, and the law requires that the regulation implementing the adjustments be published in the **Federal Register** within 180 days of enactment of the DCIA, the FDIC has determined for good cause that public notice and comment is unnecessary and impracticable under the APA (5 U.S.C. 553(b)(3)(B)), and that the rule should be published in final form.

IV. Effective Date

For the same reasons that the FDIC for good cause has determined that public notice and comment is unnecessary, impractical and contrary to the public interest, the FDIC finds that it has good cause to adopt an effective date that is less than 30 days after the date of publication in the **Federal Register** pursuant to the APA (5 U.S.C. 553(d)), and therefore, the regulation is effective upon publication. Moreover, section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 [2] states that a final rule imposing new requirements must take effect on the first day of a calendar quarter following its publication. That section provides, however, that an agency may determine that the rule should take effect earlier upon a finding of good cause.

Under the statute, agencies must make the required CMP inflation adjustments: (1) According to the formula in the statute; and (2) within four years of the last inflation adjustment, or by October 31, 2000. Agencies have no discretion as to the amount or timing of the adjustment. The regulation is ministerial, technical, and noncontroversial. Accordingly, the FDIC believes that notice and comment are unnecessary. For these same reasons, the FDIC believes that there is good cause to make this rule effective immediately upon publication.

[2] 12 U.S.C. 4802.

V. Regulatory Flexibility Act

An initial regulatory flexibility analysis under the Regulatory Flexibility Act (RFA) is required only when an agency must publish a general notice of proposed rulemaking.[3] As already noted, the FDIC has determined that publication of a notice of proposed rulemaking is not necessary for this final rule. Accordingly, the RFA does not require an initial regulatory flexibility analysis. Nevertheless, the FDIC has considered the likely impact of the rule on small entities and believes that the rule will not have a significant impact on a substantial number of small entities.

VI. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Public Law 104–121) provides generally for agencies to report rules to Congress and for Congress to review such rules. The reporting requirement is triggered in instances where the FDIC issues a final rule as defined by the Administrative Procedures Act (APA) at 5 U.S.C. 551. Because the FDIC is issuing a final rule as defined by the APA, the FDIC will file the reports required by the SBREFA.

The Office of Management and Budget has determined that this final revision to part 308 does not constitute a ''major'' rule as defined by the statute.

VII. The Treasury and General Government Appropriations Act, 1999 Assessment of Federal Regulations and Policies on Families

The FDIC has determined that this final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

VIII. Paperwork Reduction Act

No collection of information pursuant to section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) is contained in this rule. Consequently, no information has been submitted to the Office of Management and Budget for review.

IX. Authority for the Regulation

This regulation is authorized by the FDIC's general rulemaking authority and pursuant to its fundamental responsibilities to ensure the safety and soundness of insured depository institutions. Specifically, 12 U.S.C. 1819(a) Tenth provides the FDIC with general authority to issue such rules and regulations as it deems necessary to carry out the statutory mandates of the Federal Deposit Insurance Act and other laws that the FDIC is charged with administering or enforcing.

[3] 5 U.S.C. 603.

List of Subjects in 12 CFR Part 308

Administrative practice and procedure, Banks, banking, Claims, Crime, Equal access to justice, Ex parte communications, Fraud, Hearing procedure, Lawyers, Penalties, State nonmember banks.

For the reasons set out in the preamble, part 308 of chapter III of title 12 of the Code of Federal Regulations is amended as set forth below.

PART 308—RULES OF PRACTICE AND PROCEDURE

1. The authority citation continues to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 93(b), 164, 505, 1815(e), 1817, 1818, 1820, 1828, 1829, 1829b, 1831i, 1831o, 1831p–1, 1832(c), 1884(b), 1972, 3102, 3108(a), 3349, 3909, 4717; 15 U.S.C. 78(h) and (i), 78o–4(c), 78o–5, 78q–1, 78s, 78u, 78u–2, 78u–3 and 78w; 28 U.S.C. 2461 note; 31 U.S.C. 330, 5321; 42 U.S.C. 4012a; sec. 31001(s), Pub. L. 104–134, 110 Stat. 1321–358.

§ 308.116 [Amended]

2. In § 308.116, amend paragraphs (b)(4)(iii)(A) and (b)(4)(iii)(B) by removing $1,100,000 and adding $1,175,000 in its place.

§ 308.132 [Amended]

3. In § 308.132, amend:

a. Paragraphs (c)(2)(i), (c)(2)(iii)(A), and (c)(3)(ii) by removing $2,000 and adding $2,200 in its place.

b. Paragraphs (c)(2)(iii)(C), (c)(3)(i), and (c)(3)(ix) by removing $1,100,000 and adding $1,175,000 in its place each time it appears.

c. Paragraph (c)(3)(xiv) by removing $55,000 and adding in its place $60,000 each time it appears; by removing $110,000 and adding in its place $120,000; by removing $275,000 and adding in its place $300,000; and by removing $550,000 and adding in its place $575,000.

d. Paragraph (c)(3)(xvi) by removing $105,000 and adding in its place $115,000.

Dated at Washington, D.C., this 17th day of October, 2000.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 00–27864 Filed 10–30–00; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8906]

RIN 1545–AX09

Allocation of Partnership Debt

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the allocation of nonrecourse liabilities by a partnership. The final regulations revise tier three of the three-tiered allocation structure contained in the current nonrecourse liability regulations, and also provide guidance regarding the allocation of a single nonrecourse liability secured by multiple properties.

DATES: *Effective Date:* These regulations are effective October 31, 2000.

Applicability Date: For dates of applicability of these regulations, see § 1.752–5(a).

FOR FURTHER INFORMATION CONTACT: Dan Carmody, (202) 622–3070 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Introduction

This document revises § 1.752–3 of the Income Tax Regulations (26 CFR part 1) relating to the allocation by a partnership of nonrecourse liabilities.

Background

On January 13, 2000, the IRS published in the **Federal Register** a notice of proposed rulemaking [REG–103831–99 (65 FR 2084)] to provide guidance relating to the allocation of nonrecourse liabilities by a partnership. The IRS and Treasury received public comments concerning the proposed regulations, and a public hearing was held on May 3, 2000. After consideration of the comments received, the proposed regulations are adopted as revised by this Treasury decision.

Explanation of Revisions and Summary of Comments

1. In General

Treasury regulation § 1.752–3 currently provides a three-tiered system for allocating nonrecourse liabilities. The three-tiered system applies sequentially. Under the first tier, a partner is allocated an amount of the liability equal to that partner's share of partnership minimum gain under section 704(b). See § 1.704–2(g)(1). Under the second tier, to the extent the entire liability has not been allocated under the first tier, a partner will be allocated an amount of liability equal to the gain that partner would be allocated under section 704(c) if the partnership disposed of all partnership property subject to one or more nonrecourse liabilities in full satisfaction of the liabilities (section 704(c) minimum gain). Under the third tier, a partner is allocated any excess nonrecourse liabilities (*i.e.,* nonrecourse liabilities in excess of the portion allocable in the first and second tiers) under one of several methods (*i.e.,* partner's share of profits or certain reasonably expected deductions) that the partnership may choose.

The proposed regulations modified the third tier to allow an additional method under which a partnership may allocate an excess nonrecourse liability based on the excess section 704(c) gain (*i.e.,* the excess of the amount of section 704(c) built-in gain attributable to an item of property over the amount of section 704(c) minimum gain on that property) attributable to the properties that are subject to the liability. In addition, for purposes of determining section 704(c) minimum gain under the second tier, the proposed regulations provided that if a partnership holds multiple properties subject to a single liability, the liability may be allocated among the properties based on any reasonable method. A method is not reasonable under the proposed regulations if it allocates to any property an amount that exceeds the fair market value of the property.

2. Allocation of Debt in Accordance With Reverse Section 704(c) Gain

One commentator noted that the additional method provided in the proposed regulations under the third tier covers only built-in gain on section 704(c) property, which includes built-in gain (*i.e.,* book value minus adjusted basis) attributable to contributed property, but not built-in gain attributable to property subject to a revaluation (pursuant to § 1.704–1(b)(2)(iv)(*f*)) (*i.e.,* reverse section 704(c) gain). The commentator noted that this distinction is not made in allocating nonrecourse liabilities in accordance with section 704(c) minimum gain under the second tier and questioned the policy reason for excluding the reverse section 704(c) gain in applying the third tier. In response to this comment, the final regulations provide that an excess nonrecourse liability may be allocated under the third tier in accordance with excess section 704(c) gain as well as excess reverse section 704(c) gain (*i.e.,* the excess of the amount of reverse section 704(c) gain attributable to an item of property over the section 704(c) minimum gain on that property) with respect to property that is subject to such liability.

3. Interplay With the Disguised Sales Rules

One commentator noted that the proposed amendments to § 1.752–3 would impact the disguised sales rules relating to transfers of encumbered property. The disguised sale rules treat a contribution of property encumbered by a ''non-qualified'' liability (generally, a liability incurred within two years of the contribution to the partnership that is incurred in anticipation of such contribution) as a disguised sale to the extent that the amount of the liability exceeds the contributing partner's share of the liability immediately after the contribution. Section 1.707–5(a)(2)(ii) provides that a partner's share of a nonrecourse liability, for purposes of the disguised sale rules, is determined by applying the same percentage used to determine the partner's share of the excess nonrecourse liability under § 1.752–3(a)(3).

Because the proposed amendments to § 1.752–3(a)(3) would allow excess nonrecourse liabilities to be allocated according to an amount, rather than a percentage, the potential for ambiguity exists. The commentator suggested that the disguised sale rules should be modified to define a partner's share of a nonrecourse liability by cross-reference to § 1.752–3(a), rather than limiting the definition to the third tier. The commentator noted that maintaining separate definitions for the same term was burdensome and confusing for practitioners, and noted that the disguised sale rules provide consistency between sections 707(a) and 752 with respect to the definition of a partner's share of a recourse liability by reference to § 1.752–2 without limitation.

The preamble to § 1.707–5 explains that the cross-reference defining a partner's share of nonrecourse liabilities is limited to the third tier of § 1.752–3(a) because the adoption of the full three-tier approach in the disguised sale context would provide an inverse relationship between the gain inherent in the contributed property and the extent to which a disguised sale of the property results from the encumbrance. See preamble (57 FR 44974). The contributing partner's share of the liability under § 1.752–3(a) generally will increase as the amount of built-in gain on the property increases, which in turn would reduce the extent to which

the contribution would be treated as a disguised sale.

The same problem would exist if the proposed modifications to the third tier were taken into account for purposes of § 1.707–5(a)(2)(ii). To the extent that excess section 704(c) gain exists with respect to a property, the partnership could allocate excess nonrecourse liabilities to the contributing partner. The greater the built-in gain with respect to a property, the less likely it would be that a disguised sale would result from the contribution. In order to avoid this inappropriate result, the final regulations clarify that the modifications made to the third tier do not apply for purposes of § 1.707–5(a)(2)(ii). Thus, for purposes of the disguised sale rules, the partner's share of nonrecourse liabilities continues to be determined under the third tier by reference to the partner's share of profits or certain reasonably expected deductions.

4. Treatment of ''Extra'' Excess Section 704(c) Gain

Rev. Rul. 95–41 (1995–1 C.B. 132) holds that if a partnership determines the partners' interests in partnership profits based on all of the facts and circumstances relating to the economic arrangement of the partners, excess section 704(c) gain is one factor, but not the only factor, to be considered under § 1.752–3(a)(3). The preamble to the proposed regulations provides that this holding will remain relevant where a partnership does not allocate nonrecourse debt under the third tier based on the excess section 704(c) gain attributable to the property that is subject to the debt. The preamble also provides that once a partnership has allocated nonrecourse indebtedness pursuant to the rule in the proposed regulations based upon excess section 704(c) gain, that excess section 704(c) gain cannot again be considered in determining a partner's interest in partnership profits.

One commentator asked, in situations where the amount of a liability allocated to a partner under the third tier pursuant to the rule contained in the proposed regulations is less than the partner's share of excess 704(c) gain, whether the remaining excess 704(c) gain should be taken into account for purposes of determining a partner's interest in partnership profits under the third tier with regard to other liabilities.

The statement contained in the preamble regarding the impact of the proposed regulations on Rev. Rul. 95–41 reflects a concern on the part of IRS and Treasury that taxpayers might count the same excess section 704(c) gain in applying the rule in the proposed regulations and then again in determining a partner's interest in partnership profits under the third tier. To the extent that a portion of excess section 704(c) gain remains after a liability has been fully allocated, there is no double-counting, and the remaining portion of the gain should be taken into account as one factor to be considered in determining a partner's interest in partnership profits under § 1.752–3(a)(3) and Rev. Rul. 95–41.

5. Applicability of § 1.752–3(b) to Third-Tier Allocations

The proposed regulations provide rules regarding the allocation of a single liability among multiple properties. The proposed regulations generally provide that if a partnership has multiple properties subject to a single liability, for purposes of determining the amount of section 704(c) minimum gain in applying the second tier, the partnership may allocate to each property an amount of the liability that, when combined with any other liabilities allocated to the property, do not exceed the property's fair market value. The portion of the liability allocated to each property will be treated as a separate loan in determining the section 704(c) minimum gain attributable to the property.

One commentator asked that the rule for allocating a single liability among multiple properties under the second tier also apply to third tier allocations. For purposes of the second tier, where nonrecourse debt is cross-collateralized, it is necessary to determine how much of the nonrecourse debt is attributable to each partnership property, since debt is allocated among the partners under that tier based upon the amount by which the debt attributable to each specific property exceeds the tax basis of such property. (See § 1.704–3(a)(2), which provides that, except in limited circumstances, section 704(c) applies on a property-by-property basis.) Under the proposed modification to the third tier, any remaining nonrecourse liability of the partnership could be allocated to a partner up to the excess section 704(c) gain allocable to the partner on property subject to that liability. There is no need to bifurcate cross-collateralized debt under this tier, since excess section 704(c) gain is not limited by the amount of debt attributable to specific partnership property. So long as a partner's share of excess section 704(c) gain is attributable to property that is ''subject to'' the debt being allocated, the debt may be allocated in accordance with that partner's share of such excess section 704(c) gain. Multiple properties may be ''subject to'' the same indebtedness. Bifurcating the debt among multiple properties so that each property is treated as subject to only a portion of the debt actually would limit taxpayers' flexibility and narrow the scope of the proposed change to the third tier. Accordingly, the commentator's recommendation is not adopted. However, the final regulations add an example which clarifies the operation of this rule.

6. Retroactive Effective Date

One commentator suggested that the regulations should apply on a retroactive basis. This suggestion has not been adopted. However, the final regulations respond to this recommendation by providing an optional effective date for those taxpayers who wish to apply the rules currently to liabilities incurred prior to the issuance of these regulations.

7. Additional Comments Requested

The preamble to the proposed regulations requested comments regarding the allocation of a single liability among multiple partnerships. Although no formal comments were submitted on this issue, several commentators have indicated that additional guidance regarding appropriate methods of allocating such liabilities would be helpful. The IRS and Treasury again request comments regarding this issue.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

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

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.752–3 is amended as follows:

1. Paragraph (a)(3) is amended by adding three sentences immediately before the last sentence in the paragraph.
2. Paragraph (b) is redesignated as paragraph (c).
3. New paragraph (b) is added.
4. Newly designated paragraph (c) is amended by revising the introductory text and adding a new *Example 3*.

The revisions and addition read as follows:

§ 1.752–3 Partner's share of nonrecourse liabilities.

(a) * * *

(3) * * * Additionally, the partnership may first allocate an excess nonrecourse liability to a partner up to the amount of built-in gain that is allocable to the partner on section 704(c) property (as defined under § 1.704–3(a)(3)(ii)) or property for which reverse section 704(c) allocations are applicable (as described in § 1.704–3(a)(6)(i)) where such property is subject to the nonrecourse liability to the extent that such built-in gain exceeds the gain described in paragraph (a)(2) of this section with respect to such property. This additional method does not apply for purposes of § 1.707–5(a)(2)(ii). To the extent that a partnership uses this additional method and the entire amount of the excess nonrecourse liability is not allocated to the contributing partner, the partnership must allocate the remaining amount of the excess nonrecourse liability under one of the other methods in this paragraph (a)(3). * * *

(b) *Allocation of a single nonrecourse liability among multiple properties*—(1) *In general.* For purposes of determining the amount of taxable gain under paragraph (a)(2) of this section, if a partnership holds multiple properties subject to a single nonrecourse liability, the partnership may allocate the liability among the multiple properties under any reasonable method. A method is not reasonable if it allocates to any item of property an amount of the liability that, when combined with any other liabilities allocated to the property, is in excess of the fair market value of the property at the time the liability is incurred. The portion of the nonrecourse liability allocated to each item of partnership property is then treated as a separate loan under paragraph (a)(2) of this section. In general, a partnership may not change the method of allocating a single nonrecourse liability under this paragraph (b) while any portion of the liability is outstanding. However, if one or more of the multiple properties subject to the liability is no longer subject to the liability, the portion of the liability allocated to that property must be reallocated among the properties still subject to the liability so that the amount of the liability allocated to any property does not exceed the fair market value of such property at the time of reallocation.

(2) *Reductions in principal.* For purposes of this paragraph (b), when the outstanding principal of a partnership liability is reduced, the reduction of outstanding principal is allocated among the multiple properties in the same proportion that the partnership liability originally was allocated to the properties under paragraph (b)(1) of this section.

(c) *Examples.* The following examples illustrate the principles of this section:

* * * * *

Example 3. Allocation of liability among multiple properties. (i) A and B are equal partners in a partnership (PRS). A contributes $70 of cash in exchange for a 50-percent interest in PRS. B contributes two items of property, X and Y, in exchange for a 50-percent interest in PRS. Property X has a fair market value (and book value) of $70 and an adjusted basis of $40, and is subject to a nonrecourse liability of $50. Property Y has a fair market value (and book value) of $120, an adjusted basis of $40, and is subject to a nonrecourse liability of $70. Immediately after the initial contributions, PRS refinances the two separate liabilities with a single $120 nonrecourse liability. All of the built-in gain attributable to Property X ($30) and Property Y ($80) is section 704(c) gain allocable to B.

(ii) The amount of the nonrecourse liability ($120) is less than the total book value of all of the properties that are subject to such liability ($70 + $120 = $190), so there is no partnership minimum gain. § 1.704–2(d). Accordingly, no portion of the liability is allocated pursuant to paragraph (a)(1) of this section.

(iii) Pursuant to paragraph (b)(1) of this section, PRS decides to allocate the nonrecourse liability evenly between the Properties X and Y. Accordingly, each of Properties X and Y are treated as being subject to a separate $60 nonrecourse liability for purposes of applying paragraph (a)(2) of this section. Under paragraph (a)(2) of this section, B will be allocated $20 of the liability for each of Properties X and Y (in each case, $60 liability minus $40 adjusted basis). As a result, a portion of the liability is allocated pursuant to paragraph (a)(2) of this section as follows:

Partner	Property	Tier 1	Tier 2
A	X	$0	$0
	Y	0	0
B	X	0	20
	Y	0	20

(iv) PRS has $80 of excess nonrecourse liability that it may allocate in any manner consistent with paragraph (a)(3) of this section. PRS determines to allocate the $80 of excess nonrecourse liabilities to the partners up to their share of the remaining section 704(c) gain on the properties, with any remaining amount of liabilities being allocated equally to A and B consistent with their equal interests in partnership profits. B has $70 of remaining section 704(c) gain ($10 on Property X and $60 on Property Y), and thus will be allocated $70 of the liability in accordance with this gain.

The remaining $10 is divided equally between A and B. Accordingly, the overall allocation of the $120 nonrecourse liability is as follows:

Partner	Tier 1	Tier 2	Tier 3	Total
A	$0	$0	$5	$5
B	0	40	75	115

Par. 3. In § 1.752–5, paragraph (a) is amended by adding three sentences after the first sentence:

§ 1.752–5 Effective dates and transition rules.

(a) *In general.* * * * However, § 1.752–3(a)(3) fifth, sixth, and seventh sentences, (b), and (c) *Example 3,* do not apply to any liability incurred or assumed by a partnership prior to October 31, 2000. Nevertheless, § 1.752–3(a)(3) fifth, sixth, and seventh sentences, (b), and (c) *Example 3,* may be relied upon for any liability incurred or assumed by a partnership prior to October 31, 2000 for taxable years ending on or after October 31, 2000. * * *

* * * * *

Approved: October 11, 2000.

David A. Mader,

Acting Deputy Commissioner of Internal Revenue.

Jonathan Talisman,

Acting Assistant Secretary of the Treasury.

[FR Doc. 00–27826 Filed 10–30–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–00–223]

RIN 2115–AE47

Drawbridge Operation Regulations: Harlem River, Newtown Creek, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary final rule governing the operation of the Willis Avenue Bridge, mile 1.5, and the Madison Avenue Bridge, mile 2.3, both across the Harlem River, and the Pulaski Bridge, mile 0.6, across Newtown Creek in New York City, New York. This temporary final rule allows the bridge owner to close the above three bridges on November 5, 2000, for public safety and to facilitate a public function, the running of the New York City Marathon.

DATES: This temporary final rule is effective on November 5, 2000.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at the First Coast Guard District Office, 408 Atlantic Avenue, Boston, Massachusetts 02110, 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–8364.

FOR FURTHER INFORMATION CONTACT: Joe Arca, Supervisory Bridge Management Specialist, at (212) 668–7165.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing a NPRM and for making this regulation effective in less than 30 days after publication in the **Federal Register**. Information about the New York City Marathon was not provided to the Coast Guard until September 20, 2000, making it impossible to draft or publish a NPRM.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Any delay encountered in this regulation's effective date would be unnecessary and contrary to the public interest since immediate action is needed to close the bridge in order to provide for public safety and the safety of marathon participants. This closure is not expected to have a significant impact on navigation because vessel traffic on the Harlem River and Newtown Creek is mostly commercial vessels that normally pass under the draws without openings. The commercial vessels that do require openings are work barges that do not operate on Sundays.

Background and Purpose

The Willis Avenue Bridge, mile 1.5, across the Harlem River has a vertical clearance of 24 feet at mean high water (MHW) and 30 feet at mean low water (MLW) in the closed position. The Madison Avenue Bridge, mile 2.3, across the Harlem River has a vertical clearance of 25 feet at MHW and 29 feet at MLW in the closed position. The Pulaski Bridge across Newtown Creek, mile 0.6, has a vertical clearance of 39 feet at MHW and 43 feet at MLW in the closed position.

The current operating regulations for the Willis Avenue and Madison Avenue bridges, listed at 33 CFR 117.789(c), require the bridges to open on signal from 10 a.m. to 5 p.m., if at least four-hours notice is given. The current operating regulations for the Pulaski Bridge listed at 117.801(g) require it to open on signal if at least a two-hour advance notice is given.

The bridge owner, New York City Department of Transportation (NYCDOT), requested a temporary change to the operating regulations governing the Willis Avenue Bridge, the Madison Avenue Bridge, and the Pulaski Bridge, to allow the bridges to remain in the closed position as follows: Willis Avenue and Madison Avenue bridges from 10 a.m. to 5 p.m.; Pulaski Bridge from 10:30 a.m. to 3 p.m. This action is necessary on November 5, 2000, to facilitate the running of the New York City Marathon. Vessels that can pass under the bridges without bridge openings may do so at all times during these bridge closures.

Regulatory Evaluation

This temporary final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; Feb. 26, 1979). The Coast Guard expects the economic impact of this temporary final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This conclusion is based on the fact that the requested closures are of short duration and on Sunday when there have been few requests to open these bridges.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612) we considered whether this temporary final rule would have a significant economic impact on a substantial number of small entities. ''Small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This conclusion is based on the fact that the bridge closures are of short duration and on Sunday when there have been few requests to open these bridges.

Collection of Information

This temporary final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this temporary final rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this temporary final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this temporary final rule and concluded that, under Section 2.B.2., Figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.1C, this temporary final rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found not to have a significant effect on the environment. A written ''Categorical Exclusion Determination'' is not required for this temporary final rule.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. On November 5, 2000, from 10 a.m. to 5 p.m., in § 117.789, paragraph(c) is temporarily suspended and a new paragraph(g) is temporarily added to read as follows:

§ 117.789 Harlem River

* * * * *

(g) The draws of the bridges at 103rd Street, mile 0.0, 3rd Avenue, mile 1.9, 145th Street, mile 2.8, Macombs Dam, mile 3.2, 207th Street, mile 6.0, and the two Broadway Bridges, mile 6.8, shall open on signal if at least four-hours notice is given to the New York City Highway Radio (Hotline) Room. The Willis Avenue Bridge, mile 1.5, and Madison Avenue Bridge, mile 2.3, need not open for vessel traffic from 10 a.m. to 5 p.m.

3. On November 5, 2000, from 10 a.m. to 5 p.m., in § 117.801, paragraph (g) is temporarily suspended and a new paragraph (h) is added to read as follows:

§ 117.801 Newtown Creek, Dutch Kills, English Kills, and their tributaries.

* * * * *

(h) The draw of the Pulaski Bridge, mile 0.6, across Newtown Creek, need not open for vessel traffic, from 10 a.m. to 5 p.m. The Greenpoint Avenue Bridge, mile 1.3, across Newtown Creek between Brooklyn and Queens, shall open on signal if at least a two-hour advance notice is given to the New York City Department of Transportation (NYCDOT) Radio Hotline or NYCDOT Bridge Operations Office.

Dated: October 18, 2000.

G.N. Naccara,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 00–27942 Filed 10–30–00; 8:45 am]

BILLING CODE 4910–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 69

[CC Docket No. 99–316; FCC 00–384]

Shortening Notice Period for Changes in Participation in NECA's Access Tariffs

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the Commission's rules to change the date by which carriers must notify the National Exchange Carrier Association, Inc. (NECA) of any changes in their participation in the association's access tariff filing. Previously, incumbent local exchange carriers were required to notify NECA of any change in their participation in the association's access tariff by December 31 of the year preceding the tariff filing. The Commission is amending its rules to extend that notification deadline to March 1 of the tariff year. This change will provide carriers with additional time in which to make their access tariff participation decisions.

DATES: Effective November 30, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jennifer McKee, (202) 418–1520.

SUPPLEMENTARY INFORMATION: Under 47 CFR 69.3, NECA is responsible for filing an access service tariff as agent for all telephone companies that participate in the association tariff. The association tariff is to be filed with a scheduled effective date of July 1. To provide NECA with sufficient notice, carriers were required to notify NECA of any change in their association tariff participation by December 31 of the year preceding the filing of the tariff.

In 1997 the Commission streamlined its tariff filing rules, allowing carriers to file their annual access tariffs on 15 days notice for filings that include rate increases, or on 7 days notice for filings that include only rate decreases, rather than on 90 days notice. 63 FR 13132, March 18, 1998. The streamlined notice requirement applies to NECA's association access service tariff, allowing NECA to file the tariff on June 16 or June 24, rather than on April 2, for an effective date of July 1. In addition to the streamlined notice period, NECA now employs electronic data collection and processing routines that were not in use when 47 CFR 69.3 was adopted. These more efficient data collection techniques significantly reduce the time required to assemble and analyze data for NECA's tariff filing. According to NECA, the tariff streamlining rules and improvements in data collection management eliminate the need for carriers to provide six months advance notice to NECA of planned tariff participation changes. Therefore, NECA filed a petition for rulemaking seeking to change the carrier notification date from December 31 of the previous year to March 1 of the tariff year. We granted NECA's petition and sought comment on the proposal. 65 FR 51572, August 24, 2000.

We agree with NECA that changes in tariff notification periods and advancements in data collection and processing methods warrant a shorter timeframe for carriers to provide notice of tariff participation changes. In addition, as NECA noted in its petition, shorter notice periods will not disadvantage NECA and may help smaller companies make better-informed decisions regarding tariff participation. For instance, because the deadline by which NECA must file proposed revisions to its average schedule formulas is December 31, companies that rely on these formulas to compute interstate access compensation will have more time to analyze the proposed revisions before deciding whether to participate in NECA's access tariff.

Therefore, we amend 47 CFR part 69 to allow carriers until March 1 of each tariff year to notify NECA of any changes in tariff participation.

Paperwork Reduction Act Analysis

The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 and found not to impose new or modified reporting and recordkeeping requirements or burdens on the public. Therefore implementation of the amended rule extending the date by which carriers must notify NECA of changes in their association access tariff participation will not be subject to approval by the Office of Management and Budget (OMB).

Final Regulatory Flexibility Act Analysis

As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the NPRM. The RFA, 5 U.S.C. 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). The Commission sought written public comment on the proposals in the NPRM, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA, as amended. *See* 5 U.S.C. 604.

Need for and Objectives of This Order. As discussed above, NECA has asserted that changes in tariff notification periods and advancements in data collection and processing methods have facilitated NECA's ability to prepare association tariffs. Therefore, NECA can receive notifications from carriers changing the status of their

association tariff participation closer to the tariff filing deadline. At NECA's request, the Commission is amending its rules to extend the deadline by which carriers must notify NECA of changes in association tariff participation. Specifically, the notification deadline is changed from December 31 of the preceding year to March 1 of the tariff year. This extension of the notification deadline will provide carriers additional time to determine their tariff participation status, thus allowing them to make more informed tariff participation decisions.

Summary of Significant Issues Raised by the Public Comments in Response to the IRFA. The Commission received no comments addressing the IRFA. However, the comments received in response to the NPRM were supportive of the change in tariff participation notification date. NTCA's comments specifically noted that changing the election deadline to March 1 would benefit NTCA's members, which are small carriers that are ''rural telephone companies'' as defined in the Telecommunications Act of 1996.

Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities to which the rules will apply. 5 U.S.C. 604(a)(3). The RFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small business concern'' under Section 3 of the Small Business Act. 5 U.S.C. 601(3). A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). Small Business Act, 15 U.S.C. 632.

In this FRFA, we consider the potential impact of the Order on all local exchange carriers (LECs) that could consider participating in NECA's association tariffs. Neither the Commission nor the SBA has developed a definition for small LECs. The closest applicable definition under the SBA rules is for Standard Industrial Classification (SIC) category 4,813, telephone communications companies other than radiotelephone (wireless) companies. 13 CFR 121.201. For this category, the SBA has defined a small business to be a small entity having no more than 1,500 employees. *Id.*

We have included small incumbent LECs in the present RFA analysis. As noted, a ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' 5 U.S.C. 601(3). The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of ''small business concern'' which the RFA incorporates into its own definition of ''small business.'' *See* 15 U.S.C. 632(a) (Small Business Act); 5 U.S.C. 601(3) (RFA). SBA regulations interpret ''small business concern'' to include the concept of dominance on a national basis. 13 CFR 121.102(b). Since 1996, out of an abundance of caution, the Commission has included small incumbent LECs in its regulatory flexibility analyses. *See, e.g., Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* 61 FR 45476, August 29, 1996. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on the Commission's analyses and determinations in other, non-RFA contexts.

The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its *Carrier Locator: Interstate Service Providers Report (Locator).* This report was compiled using information from Telecommunications Relay Service (TRS) fund worksheets filed by carriers, including, *inter alia,* LECs, competitive local exchange carriers, interexchange carriers, competitive access providers, satellite service providers, wireless telephony providers, operator service providers, pay telephone operators, providers of telephone toll service, providers of telephone exchange service, and resellers.

There are two principle providers of local telephone service; incumbent LECs and competing local service providers. However, under 47 CFR part 69, participation in NECA's access service tariffs is limited to incumbent LECs, therefore the rule changes will not affect competing local service providers. 47 CFR 69.2(hh). According to the most recent *Locator* data, 1,348 filers identified themselves as incumbent LECs. Data set forth in the Commission's *Statistics of Communications Common Carriers (SOCC)* lists 32 incumbent LECs that have more than 1,500 employees. We do not have data specifying the number of incumbent LECs that are either dominant in their field of operations or are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of incumbent LECs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 1,316 incumbent LECs are small entities that may be affected by the rules.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements. This Order adopts a proposed extension of the date by which carriers must notify NECA of changes in participation in association tariffs. Under the current rules this notification must be provided six months prior to the effective date of the tariff, by December 31 of the preceding year. The Commission amends its rules to allow carriers until March 1 of the tariff year to provide the required notification to NECA. The amended rules will not require carriers to conduct any new reporting or recordkeeping obligations. Instead, carriers will continue to report to NECA any changes in their association tariff participation, but this notification will be submitted at a later date.

Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered. The rule amendments adopted in this Order are designed to assist all carriers in making their association tariff participation elections. The extension of the notification date from December 31 to March 1 may particularly benefit smaller carriers that rely on average schedule formulas to compute interstate access compensation, because NECA is required to file proposed revisions to these schedules by December 31. The extension of the tariff election deadline will provide carriers more time to analyze NECA's proposed revisions before making tariff participation decisions.

Report to Congress. The Commission will send a copy of the Order, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. *See* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the Order, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Order and FRFA (or summaries thereof) will also be published in the **Federal Register**. *See* 5 U.S.C. 604(b).

Ordering Clauses

Pursuant to the authority contained in sections 1, 4(i), 4(j), 201–205, and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201–205, and 303, that this Order *Is Hereby Adopted* as described.

The provisions of this Order *Shall Be Effective November 30, 2000.*

The Commission's Consumer Information Bureau, Reference Information Center, *Shall Send* a copy of this Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 69

Communications common carriers, Tariffs.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Regulatory Text

For the reasons stated in the preamble, the Federal Communications Commission amends 47 CFR part 69 as follows:

PART 69—ACCESS CHARGES

1. The authority citation for part 69 continues to read as follows:

Authority: 47 U.S.C. 154, 201, 202, 203, 205, 218, 220, 254, 403.

2. Amend § 69.3 by revising paragraphs (e)(6), (e)(9), and (i)(1) to read as follows:

§ 69.3 Filing of access service tariffs.

* * * * *

(e) * * *

(6) A telephone company or companies that elect to file such a tariff shall notify the association not later than March 1 of the year the tariff becomes effective, if such company or companies did not file such a tariff in the preceding biennial period or cross-reference association charges in such preceding period that will be cross-referenced in the new tariff. A telephone company or companies that elect to file such a tariff not in the biennial period shall file its tariff to become effective July 1 for a period of one year. Thereafter, such telephone company or companies must file its tariff pursuant to paragraphs (f)(1) or (f)(2) of this section.

* * * * *

(9) A telephone company or group of affiliated telephone companies that elects to file its own Carrier Common Line tariff pursuant to paragraph (a) of this section shall notify the association not later than March 1 of the year the tariff becomes effective that it will no longer participate in the association tariff. A telephone company or group of affiliated telephone companies that elects to file its own Carrier Common Line tariff for one of its study areas shall file its own Carrier Common Line tariff(s) for all of its study areas.

* * * * *

(i) * * *

(1) In addition to the withdrawal provisions of paragraphs (e)(6) and (e)(9) of this section, a telephone company or group of affiliated companies that participates in one or more association tariffs during the current tariff year and that elects to file price cap tariffs or optional incentive regulation tariffs effective July 1 of the following tariff year shall notify the association by March 1 of the following tariff year that it is withdrawing from association tariffs, subject to the terms of this section, to participate in price cap regulation or optional incentive regulation.

* * * * *

[FR Doc. 00–27904 Filed 10–30–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 000426114–0114–01; I.D. 101700E]

RIN 0648–AN53

Fisheries of the Northeastern United States; Spiny Dogfish Fishery; 2000 Specifications; Extension of an Interim Rule

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Extension of the effective date of an interim rule.

SUMMARY: NMFS informs the public that the interim rule published on May 4, 2000, to implement specifications and seasonal trip limits for fishing year 2000 (May 1, 2000, through April 30, 2001) for the spiny dogfish (Squalus acanthias) fishery, is extended through April 24, 2001. The extension maintains the total quota for the 2000 fishing year and sets aside a portion of the total quota for vessels participating in spiny dogfish exempted fishing projects. The interim final rule is necessary to prevent overfishing of spiny dogfish and extend the effective period of the quota.

DATES: Effective October 29, 2000, through April 24, 2001.

ADDRESSES: Copies of documents supporting this action are available from the Northeast Regional Office, NMFS, Office of Sustainable Fisheries, 1 Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Peter W. Christopher, Fishery Policy Analyst, 978–281–9288, fax 978–281–9135, e-mail peter.christopher@noaa.gov.

SUPPLEMENTARY INFORMATION: The Spiny Dogfish Fishery Management Plan (FMP) prepared by the Mid-Atlantic and New England Fishery Management Councils (Councils) was partially approved by NMFS on behalf of the Secretary of Commerce (Secretary) on September 29, 1999. The final rule implementing the FMP was published on January 11, 2000 (65 FR 1557), and was initially scheduled to be effective on February 10, 2000. However, the Councils were unable to reach agreement on a preferred commercial quota and trip limit measure for this action. After delays in implementing the FMP from February to April, 2000, in order to provide the Councils additional opportunities to reach agreement, NMFS, on behalf of the Secretary, published an interim rule on May 4, 2000 (65 FR 25887), which established a quota and trip limits for fishing year 2000.

The interim rule allocated quota into two periods (May 1 through October 31, and November 1 through April 30), with trip limits intended to preclude directed fishing. As of September 23, 2000, reported landings have exceeded the annual quota of 4 million lb (1,814 mt), with approximately 4.7 million lb (2,131 mt) reported. In addition, the Commonwealth of Massachusetts closed its waters to spiny dogfish fishing on August 26, 2000, based on its determination that landings in that state reached the 7 million lb (3,175 mt) of spiny dogfish that the Commonwealth believed appropriate. Therefore, the landings of 4.6 million lb (2,086 mt) currently included in Federal landings records is incomplete. Due to the excessive landings in quota period 1, which have exceeded the annual quota, the fishery will not be reopened for quota period 2.

The research quota set–-aside of 500,000 lb (226.7 mt) was established for vessels participating in research projects designed to improve selectivity of spiny dogfish fishing gear and methods. The primary goal in providing this incentive for research is to investigate ways to shift fishing effort away from female spiny dogfish, which

in turn would help to rebuild the female portion of the stock and to provide greater rebuilding capacity to the stock as a whole. In addition, spiny dogfish gear selectivity research would contribute to improving current information on the species, including bycatch and discard mortality. This measure will remain in place for quota period 2 to allow for this research.

Comments and Responses

Comment 1: Two commenters felt that measures other than those in the interim rule would be more fair. One stated that the interim final rule measures are unfair to gillnet vessels and that management measures such as weekly trip limits, individual quotas based on vessel history, and a minimum mesh size of 7 inches (17.8 cm) would reduce discarding. Another commentor stated that the shutdown of the directed spiny dogfish fishery would eliminate a portion of his vessel's income for a part of the year.

Response: Management alternatives were considered during the development of the annual specifications for the spiny dogfish fishery and in the interim final rule. Individual quotas were not considered by the Councils when the Spiny Dogfish FMP was under development because of a moratorium enacted by Congress in section 303(d) of the Magnuson–Stevens Fishery Conservation and Management Act that prohibited the development of management options involving individual quotas through October 1, 2000, pending a study of individual transferable quotas by the National Research Council. Other management alternatives were determined to be either unlikely to achieve the necessary conservation targets or infeasible. For example, mesh-size restrictions may not provide the necessary conservation benefits because, while the larger mesh size may exclude juvenile spiny dogfish, it would still capture the larger female spiny dogfish, which are of special concern to the reproductive capacity of the stock. The interim final rule implemented measures to end overfishing while providing the greatest future benefits to the fishing communities, based on the available information. In the future, the Councils are expected to consider additional alternatives designed to reduce bycatch of spiny dogfish in other fisheries and to mitigate short–-erm economic hardships, as requested by the Secretary.

Comment 2: One commentor reiterated its concerns expressed during the comment period of the proposed rule for the FMP. The commentor believes that a lack of information on the fishery and the stock status continues to be a problem with the interim final rule. The commentor believes that some NMFS analyses indicate that the level of discards of spiny dogfish in non–directed fisheries would be so great that it would cause the FMP measures to fail. The commentor stated that the experimental fishery quota set-aside was an attempt to shield the lack of substantive information that is usually required to establish an FMP and an attempt to indicate to the industry that serious work will be done to support changes in the plan that would forestall the closure of directed harvesting and the consequent loss of markets.

Response: The need for restrictive management measures for spiny dogfish was established in the FMP. The Secretary delayed implementation of the FMP in order for the Councils to consider additional information and to reach an agreement on management measures for the 2000 fishing year. When the Councils failed to come to an agreement, the Secretary implemented the interim final rule to be consistent with the FMP and to end overfishing. As required by the Magnuson-Stevens Act, the FMP and the interim final rule are based on the best available scientific information and on established measures to end overfishing on spiny dogfish. While an analysis prepared by NMFS does indicate that a high amount of spiny dogfish discards is possible with low trip limits, it does not indicate that such discards compromise the rebuilding plan established in the FMP. The trip limit analysis was unable to quantify the expected changes in fishing practices by fishermen to avoid spiny dogfish due to low trip limits. Also, low trip limits essentially eliminate the directed spiny dogfish fishery, thereby preventing the high amount of discards of small spiny dogfish known to be associated with the directed spiny dogfish fishery. The research set-aside encourages industry and researchers to improve selectivity of spiny dogfish gear and methods.

Comment 3: The Massachusetts Division of Marine Fisheries (MADMF) commented on the rationale behind the management measures implemented in Massachusetts shortly before the interim final rule was implemented. In late April, the MADMF implemented a 7-million lb (3,175-mt) quota, a 7,000-lb (3,175-kg) trip limit, a 31-inch (78.7-cm) minimum fish size, and gillnet restrictions. The MADMF believes that these measures allow a small-scale directed fishery while remaining consistent with the FMP and the Magnuson-Stevens Act. Further, the MADMF believes that the small-scale directed fishery would reduce discards while allowing the processing sector to maintain its infrastructure.

Response: The MADMF management strategy does not eliminate overfishing as required by the FMP because it does not result in a fishing mortality rate of F = 0.03 or less. The Spiny Dogfish Technical Committee is continuing to evaluate alternative management approaches and will consider updated stock status information. The Spiny Dogfish Joint Committee and the Councils may consider the new information and new alternatives in 2001 in an amendment to the FMP. An FMP amendment would be necessary to modify the rebuilding program in the FMP.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 25, 2000.

William T. Hogarth,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–27867 Filed 10–26–00; 1:08 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 991210329–0273–02; I.D. 102699B]

RIN 0648–AM36

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Area; Amendment 58 to Revise the Chinook Salmon Savings Area; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; correction.

SUMMARY: This document corrects regulatory text in the final rule that implements Amendment 58 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP), which was published in the **Federal Register**on October 12, 2000.

DATES: Effective November 13, 2000.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, 907–586–7008.

SUPPLEMENTARY INFORMATION:

Background

A final rule was published in the **Federal Register** on October 12, 2000

(65 FR 60587), to implement Amendment 58 to the FMP. In the regulatory text portion of the final rule, a reference to Figure 8a and Figure 8b were inadvertently omitted from the revised definition for ''Chinook Salmon Savings Area of the BSAI.'' Also, the paragraph designations were incorrectly labeled for § 679.21(e)7)(viii).

Correction

In the final rule to implement Amendment 58 to the FMP, which revises the Chinook Salmon Savings Area, published at 65 FR 60587, October 12, 2000, FR Doc. 00–26086, the following corrections are made:

§ 679.2 [Corrected]

1. On page 60588, column 2, § 679.2, the definition for ''Chinook Salmon Savings Area of the BSAI'' is corrected to read: ''Chinook Salmon Savings Area of the BSAI (see § 679.21(e)(7)(viii) and Figure 8a and Figure 8b to this part).''

2. On page 60588, column three, § 679.21 (e)(7)(viii) is correctly revised to read as follows:

§ 679.21 Prohibited species bycatch management.

* * * * *

(e) * * *

(7) * * *

(viii) Chinook salmon. If, during the fishing year, the Regional Administrator determines that catch of chinook salmon, by vessels using trawl gear while directed fishing for pollock in the BSAI, will reach the annual limit as identified in paragraph (e)(1)(vii) of this section, NMFS, by notification in the **Federal Register** will close the Chinook Salmon Savings Area, as defined in Figure 8 to this part, to directed fishing for pollock with trawl gear consistent with the following dates:

(A) From the effective date of the closure until April 15, and from September 1 through December 31, if the Regional Administrator determines that the annual limit of chinook salmon will be attained before April 15.

(B) From September 1 through December 31, if the Regional Administrator determines that the annual limit of chinook salmon will be attained after April 15.

* * * * *

Dated: October 25, 2000.

William T. Hogarth,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–27874 Filed 10–30–00; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 697

[Docket No. 00824246—0294—03; I.D. 062700F]

RIN 0648–AO33

Horseshoe Crab; Interstate Fishery Management Plans; Cancellation of Moratorium

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Cancellation of Federal moratorium; final rule.

SUMMARY: The Secretary of Commerce (Secretary) announces the cancellation of the Federal moratorium on fishing for horseshoe crabs in the Commonwealth of Virginia (Virginia) waters and the removal of regulations prohibiting the possession of horseshoe crabs in Virginia waters and the landing of horseshoe crabs in Virginia, regardless of where they were caught. The Secretary cancelled the moratorium, as required by the Atlantic Coastal Fisheries Cooperative Management Act (Act), based on his determination that Virginia is now in compliance with the Atlantic States Marine Fisheries Commission's (Commission) Interstate Fishery Management Plan (ISFMP) for horseshoe crabs.

DATES: Effective October 26, 2000.

FOR FURTHER INFORMATION CONTACT: Richard H. Schaefer, Chief, Staff Office for Intergovernmental and Recreational Fisheries, NMFS, 301–427–2014.

SUPPLEMENTARY INFORMATION:

Background

On July 7, 2000, National Marine Fisheries Service (NMFS) determined that Virginia was not in compliance with Addendum 1 to the Commission's ISFMP for horseshoe crabs and that the measure Virginia failed to implement is necessary for the conservation of the fishery in question. Virginia was notified by letter on July 11, 2000, of this determination, and that NMFS required additional time to analyze the timing and nature of the moratorium's implementation before issuing a declaration of a moratorium and a rule necessary to implement Section 806 of the Act.

On October 16, 2000 (65 FR 61116), the Secretary declared a Federal moratorium effective October 23, 2000, on fishing for horseshoe crabs in Virginia waters and issued regulations prohibiting the possession of horseshoe crabs in Virginia waters and the landing of horseshoe crabs in Virginia, regardless of where they were caught. Details were provided in the October 16, 2000, **Federal Register** document and are not repeated here. On October 20, 2000, the Secretary stayed the effective date of the moratorium and associated regulations until October 27, 2000, because Virginia was in the process of implementing regulations to reduce its horseshoe crab quota. This stay was filed on October 20, 2000, at the Office of the **Federal Register,** effective October 23, 2000, and published in the **Federal Register** on October 24, 2000 (65 FR 63550).

The Act specifies that, if, after a moratorium is declared with respect to a State, the Secretary is notified by the Commission that it is withdrawing the determination of noncompliance, the Secretary shall immediately determine whether the State is in compliance with the applicable plan. If the State is determined to be in compliance, the moratorium shall be terminated.

Activities Pursuant to the Act

On October 20, 2000, the Secretary received a letter from the Commission prepared pursuant to the Act. The Commission's letter stated that Virginia had taken corrective action to comply with Addendum 1 to the Commission's ISFMP for horseshoe crabs, and, therefore, the Commission was withdrawing its determination of noncompliance.

Cancellation of the Moratorium

Based on the Commission's October 20, 2000, letter, information received from the Virginia, and the Secretary's review of Virginia's revised regulations, which reduced its quota of horseshoe crabs from 355,000 horseshoe crabs to 152,495 horseshoe crabs as required by Addendum 1, the Secretary concurs with the Commission's determination that Virginia is now in compliance with Addendum 1 to the Commission's ISFMP for horseshoe crabs. Therefore, the moratorium on fishing for horseshoe crabs in Virginia waters is cancelled, and the associated regulations removed.

Changes from Interim Final Rule

These changes were due to the cancellation of the moratorium and associated regulations. The definition of horseshoe crab in § 697.2 is removed, and in § 697.7, paragraph (e) is removed. This paragraph includes the provision that it is unlawful for any person to possess horseshoe crabs in Virginia waters or land horseshoe crabs

in Virginia, regardless of where they were harvested.

List of Subjects in 50 CFR Part 697

Fisheries, Fishing, Intergovernmental relations.

Dated: October 25, 2000.

William T. Hogarth,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, the regulatory text which was added as an interim rule to part 697 at 65 FR 61116 on October 16, 2000, and amended at 65 FR 63550 on October 24, 2000, is amended as follows:

PART 697—ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT

1. The authority citation for 50 CFR part 697 continues to read as follows:

Authority: 16 U.S.C. 5101 et seq.

§ 697.2 [Amended]

2. In § 697.2, definition for ''Horseshoe crab'' is removed.

§ 697.7 [Amended]

3. In § 697.7, paragraph (e) is removed.

[FR Doc. 00–27866 Filed 10–26–00; 1:08 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 65, No. 211
Tuesday, October 31, 2000

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 39

[Docket No. 2000–NM–142–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Bombardier Model CL–600–2B19 series airplanes, that currently requires, among other actions, certain revisions to the Airplane Flight Manual (AFM); and removal of all elevator flutter dampers. That AD also requires installation of new elevator flutter dampers, and replacement of shear pins and shear links with new improved shear pins and shear links. This action would add airplanes to the applicability of the existing AD; and would require replacing certain shear pins with new, improved shear pins; and, for certain airplanes, inspecting of the maintenance records to determine replacement status of the shear pins; and corrective actions, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent premature failure of the shear pins of the elevator damper, which may increase the likelihood of jamming or restricting movement of the elevator and the resultant adverse effect on controllability of the airplane.

DATES: Comments must be received by November 30, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–142–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–142–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087 Station A, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; and at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Serge Napoleon, Aerospace Engineer, ANE–171, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7512; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed 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 above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.,* reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed 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 summarizing each FAA-public contact concerned with the substance of this proposal 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 2000–NM–142–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–142–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On February 12, 1998, the FAA issued AD 98–04–45, amendment 39–10356 (63 FR 9928, February 27, 1998), applicable to certain Bombardier Model CL–600–2B19 series airplanes, to require revisions to the Airplane Flight Manual (AFM) to advise the flight crew of the need to perform daily checks to verify proper operation of the elevator control system, and to restrict altitude and airspeed operations under certain conditions.

That AD also requires removal of all elevator flutter dampers. That AD also requires inspections of certain airplanes to detect deformation or discrepancies of the flutter damper hinge fittings and lug of the horizontal stabilizer, the elevator hinge/damper fitting, and the shear pin lugs; and replacement of discrepant parts with serviceable parts. That AD also requires installation of new elevator flutter dampers, and replacement of shear pins and shear links with new, improved pins and links. That action was prompted by reports that the installation of certain

shear pins may jam or restrict movement of the elevator. The requirements of that AD are intended to prevent such jamming or restricting movement of the elevator and the resultant adverse effect on the controllability of the airplane.

Actions Since Issuance of Previous Rule

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, has advised the FAA that, in several cases, the new shear pins of the elevator flutter dampers have failed. These improved shear pins were installed, as required by AD 98–04–45, and were intended to have a safe life limit of 20,000 flight cycles. However, in three cases, the failed shear pins had all been in service between 5,000 and 6,000 flight cycles. Investigation revealed that the failed shear pins did not meet the design specifications due to a quality control problem (improper hardness of the pins).

Explanation of Relevant Service Information

The manufacturer has issued Canadair Regional Jet Service Bulletin S.B. 601R–27–100, Revision 'A,' dated March 10, 2000, which describes procedures for the following:

- Part A of the Accomplishment Instructions: For certain airplanes, replacement of shear pins of the elevator flutter dampers with new, improved shear pins.
- Parts B and C of the Accomplishment Instructions: For certain other airplanes, inspection of the maintenance records to determine the replacement status of the shear pins of the elevator flutter dampers, and replacement of certain shear pins with new, improved shear pins.

The manufacturer also has issued Canadair Regional Jet Temporary Revision RJ/68–1, dated February 15, 2000, to the AFM. The temporary revision describes procedures for re-introducing additional first-flight-of-the-day checks of the elevator control system. These checks apply to certain airplanes on which the previously described service bulletin has not been accomplished.

TCCA classified the service bulletin as mandatory and issued Canadian airworthiness directive CF–2000–10, dated March 23, 2000, in order to assure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

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, TCCA has kept the FAA informed of the situation described above. The FAA has examined the findings of TCCA, 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.

Explanation of Requirements of Proposed Rule

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, the proposed AD would supersede AD 98–04–45 to continue to require:

- Revisions to the AFM to advise the flight crew of the need to perform daily checks to verify proper operation of the elevator control system, and to restrict altitude and airspeed operations under certain conditions;
- Removal of all elevator flutter dampers;
- Inspections of certain airplanes to detect deformation or discrepancies of the flutter damper hinge fittings and lug of the horizontal stabilizer, the elevator hinge/damper fitting, and the shear pin lugs;
- Replacement of discrepant parts with serviceable parts; and
- Installation of new elevator flutter dampers.

This new action would require adding airplanes to the applicability of the existing AD; replacing certain shear pins with new, improved shear pins; and, for certain airplanes, inspecting the maintenance records to determine replacement status of the shear pins, and corrective actions, if necessary. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Cost Impact

There are approximately 214 Bombardier Model CL–600–2B19 series airplanes of U.S. registry that would be affected by this proposed AD.

The removal of the elevator dampers and the AFM revision that are currently required by AD 98–04–45, and retained in this AD, take approximately 6 hours per airplane to accomplish, at an average rate of $60 per work hour. The FAA estimates that all affected U.S. operators have previously accomplished these requirements, therefore, the future cost impact of these requirements is minimal.

The inspections that are currently required by AD 98–04–45, and retained in this AD, take approximately 26 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection requirements of AD 98–04–05 is estimated to be $1,560 per airplane.

The installation of flutter dampers that is currently required by AD 98–04–45 takes approximately 12 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would be provided at no cost to the operators by the manufacturer. Based on these figures the cost impact of the installation currently required AD 98–04–45 is estimated to be $720 per airplane.

The new actions (*i.e.,* replacement of the shear pins, check of maintainence records, and AFM revision) that are proposed in this AD action would take approximately 21 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts are estimated to cost $801. Based on these figures, the cost impact of these proposed requirements of this AD on U.S. operators is estimated to be $441,054, or $2,061 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect 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, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, 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 copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10356 (63 FR 9928, February 27, 1998), and by adding a new airworthiness directive (AD), to read as follows:

Bombardier, Inc. (Formerly Canadair): Docket 2000–NM–142–AD. Supersedes AD 98–04–45, Amendment 39–10356.

Applicability: Model CL–600–2B19 series airplanes, having serial numbers 7003 through 7357 inclusive, 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 request approval for an alternative method of compliance in accordance with paragraph (i) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent premature failure of the shear pins of the elevator damper, which may increase the likelihood of jamming or restricting movement of the elevator and the resultant adverse effect on controllability of the airplane; accomplish the following:

Restatement of AFM Required by AD 98–04–45

(a) For airplanes having serial numbers 7003 through 7054 inclusive: Within 30 days after January 26, 1994 (the effective date of AD 94–01–09, amendment 39–8791), revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following restrictions of altitude and airspeed operations under conditions of single or double hydraulic system failure; and advise the flight crew of these revised limits. Revision of the AFM may be accomplished by inserting a copy of this AD or AFM Revision 34, dated June 12, 1995, in the AFM. Restrictions of altitude and airspeed operations under conditions of single or double hydraulic system failure are listed in the following tables.

Altitude limit (maximum)	Airspeed limit (maximum)
Single Hydraulic System Failure	
31,000 feet	0.55 Mach (199 KIAS).
30,000 feet	0.55 Mach (204 KIAS).
28,000 feet	0.55 Mach (213 KIAS).
26,000 feet	0.55 Mach (222 KIAS).
24,000 feet	0.55 Mach (232 KIAS).
22,000 feet	0.55 Mach (241 KIAS).
20,000 feet and below.	252 KIAS.
Double Hydraulic System Failure	
10,000 feet	200 KIAS.

Note 2: The restrictions described in the AFM Temporary Revision (TR) RJ/30, dated December 16, 1993, meet the requirements of this paragraph. Therefore, inserting a copy of TR RJ/30 in lieu of this AD in the AFM is considered an acceptable means of compliance with this paragraph.

Restatement of AFM Revision Required by AD 98–04–45

(b) Within 7 days after December 14, 1994 (the effective date of AD 94–24–02, amendment 39–9075), accomplish the requirements of paragraph (b)(1) and (b)(2) of this AD.

(1) Remove the elevator dampers in accordance with Canadair Regional Jet Alert Service Bulletin S.B. A601R–27–041, dated October 28, 1994.

(2) Revise the Limitations Section of the FAA-approved AFM to include the following, which advises the flight crew of daily checks to verify proper operation of the elevator control system. Revision of the AFM may be accomplished by inserting a copy of this AD or AFM Revision 32, dated March 30, 1995, in the AFM.

Note 3: The daily check described in the AFM TR RJ/40, dated October 28, 1994, meets the requirements of this paragraph. Therefore, inserting a copy of TR RJ/40 into the AFM in lieu of this AD is considered an acceptable means of compliance with this paragraph.

"Elevator, Before Engine Start (First Flight of Day)

(1) Elevator	Check	Travel range (to approximately ½ travel) using each hydraulic system in turn, with the other hydraulic systems depressurized."

Restatement of Inspections Required by AD 98–04–45

(c) For airplanes having serial numbers 7003 through 7049 inclusive: Within 12 months after April 3, 1998 (the effective date of AD 98–04–45, amendment 39–10356), perform the actions required in paragraphs (c)(1), (c)(2), and (c)(3) of this AD, as applicable, in accordance with Section 2.B., Part A, of Canadair Regional Jet Service Bulletin S.B. 601R–27–040, Revision 'B,' dated September 11, 1995.

(1) Remove the shear pins and shear links of the flutter dampers and perform a visual inspection to detect any deformation or discrepancy of the flutter damper hinge fitting and lug of the horizontal stabilizer. Prior to further flight, replace any deformed or discrepant part with a serviceable part in accordance with the service bulletin.

(2) Perform a visual inspection to detect any deformation or discrepancy of the elevator hinge/damper fitting and shear pin lugs. Prior to further flight, replace any discrepant part with a serviceable part in accordance with the service bulletin.

(3) Perform a fluorescent penetrant inspection and a dimensional inspection to detect any deformation or discrepancy of the shear pin lugs. If any deformation or discrepancy is found on the lugs, prior to further flight, replace the elevator with a new or serviceable elevator in accordance with the service bulletin.

Note 4: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(d) For airplanes having serial numbers 7003 through 7054: Within 12 months after April 3, 1998 (the effective date of AD 98–04–45, amendment 39–10356), install new elevator flutter dampers (P/N 601R75142–7) in accordance with Section 2.B., Part B, of Canadair Regional Jet Service Bulletin S.B. 601R–27–040, Revision 'B,' dated September 11, 1995.

New Requirements of This AD: Installation of Shear Pins

(e) For airplanes having serial numbers 7003 through 7142 inclusive, and 7144:

Within 12 months after the effective date of this AD, install new shear pins [part number (P/N) 601R24063–31/S] in accordance with Part A of the Accomplishment Instructions of Canadair Regional Jet Service Bulletin S.B. 601R–27–100, Revision 'A,' dated March 10, 2000.

After accomplishment of the installation of new shear pins, Canadair Regional Jet TR RJ/68–1, dated February 15, 2000, may be removed from the AFM.

Inspection of Maintenance Records Required by This AD

(f) For airplanes having serial numbers 7143, and 7145 through 7357 inclusive: Within 14 days after the effective date of this AD, perform a one-time inspection of the maintenance records to determine the replacement status of the shear pins of the elevator flutter dampers, in accordance with Part B of the Accomplishment Instructions of Canadair Regional Jet Service Bulletin S.B. 601R–27–100, Revision 'A,' dated March 10, 2000.

(1) If the maintenance records indicate that all shear pins were NOT replaced after delivery of the airplane, or if all shear pins were replaced with shear pins having P/N 601R24063–31/S: No further action is required by this AD.

(2) If the maintenance records indicate that any shear pin was replaced after delivery of the airplane with a shear pin having P/N 601R24063–31 or 601R24063–953, or if the maintenance records do not verify that all shear pins having P/N 601R24063–31/S are installed: Accomplish the requirements of paragraph (g) of this AD at the times specified in that paragraph.

AFM Revision and Replacement Required by This AD

(g) For airplanes on which any shear pin of the elevator flutter dampers of the elevators was replaced after delivery of the airplane with a shear pin having P/N 601R24063–31 or 601R24063–953, or for airplanes on which verification of shear pins having P/N 601R24063–31/S is not possible: Accomplish the requirements of paragraphs (g)(1) and (g)(2) of this AD at the times specified in those paragraphs.

(1) Within 30 days after the effective date of this AD, revise the Normal Procedures Section of the AFM by inserting Canadair Regional Jet TR RJ/68–1, dated February 15, 2000 in the AFM, which advises the flight crew of an additional first-flight-of-the-day check of the elevator control system.

(2) Within 12 months after the effective date of this AD, replace the shear pins with new, improved shear pins having P/N 601R24063–31/S, in accordance with Part C of the Accomplishment Instructions of Canadair Regional Jet Service Bulletin S.B. 601R–27–100, Revision 'A,' dated March 10, 2000. After accomplishment of the installation of new shear pins, the temporary revision required by paragraph (g)(1) of this AD may be removed from the AFM.

Spares

(h) As of the effective date of this AD, no person shall install a shear pin of the elevator flutter dampers having P/N 601R24063–31 or 601R24063–953 on any airplane.

Alternative Methods of Compliance

(i) 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. 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 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

Special Flight Permits

(j) 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.

Note 6: The subject of this AD is addressed in Canadian airworthiness directive CF–2000–10, dated March 23, 2000.

Issued in Renton, Washington, on October 25, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–27947 Filed 10–30–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–72–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2, A300 B4, A300 B4–600, A300 B4–600R, A300 F4–600R, and A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A300 B2, A300 B4, A300 B4–600, A300 B4–600R, A300 F4–600R, and A310 series airplanes. This proposal would require modification of the escape slides. This action is necessary to prevent deflation of the escape slide after deployment, which could result in a delay during an emergency evacuation. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by November 30, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–72–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9–anm–nprmcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–72–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed 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 above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments by issue. For example, discuss a request to change the compliance time and a request to change a service bulletin reference as two separate issues.
- For each issue, state the specific change to the proposed AD being requested.
- Include justification (*e.g.,* reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed 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 summarizing each FAA-public contact

concerned with the substance of this proposal 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 No. 2000–NM–72–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–72–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A300 B2, A300 B4, A300 B4–600, A300 B4–600R, A300 F4–600R, and A310 series airplanes. The DGAC advises that it has received several reports that escape slides deflated immediately after deployment during operational tests. The slides deflated because the inflation bottle actuator punctured the lower part of the slide during deployment. The DGAC advises that a slide could be punctured if the inflation bottle was improperly installed (upside-down in its fabric-type bag) when the slide was packed. Such a slide puncture and consequent deflation, if not corrected, could result in a delay during an emergency evacuation.

Explanation of Relevant Service Information

Airbus has issued the following service bulletins:

Service bulletin	Revision level	Date	Model
A300–25–0466	01	December 1, 1999	A300 B2 A300 B4
A300–25–6146	01	December 1, 1999	A300 B4–600 A300 B4–600R A300 F4–600R
A310–25–2133	Original	June 21, 1999	A310

These service bulletins describe procedures for modification of certain BFGoodrich escape slides. The modification involves:

- Installing a pad on the actuator of the inflation bottle to protect the slide in case of contact between the bottle and the slide; and
- Replacing the fabric-type bottle bag (used on earlier slides) with a strap-type bottle bag to ensure the correct orientation of the bottle.

This modification will reduce the possibility of the slide being punctured by contact with the regulator valve during inflation. Accomplishment of the actions specified in these service bulletins is intended to adequately address the identified unsafe condition. The DGAC classified these service bulletins as mandatory and issued French airworthiness directive 2000–059–302(B), dated February 9, 2000, in order to ensure the continued airworthiness of these airplanes in France.

The Airbus service bulletins refer to BFGoodrich Service Bulletin 7A1296/7A1298–25–298, dated January 15, 1999, as an additional source of service information for modifying the escape slides.

FAA's Conclusions

These airplane models are manufactured in France and are 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, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, 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.

Explanation of Requirements of Proposed Rule

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, the proposed AD would require modification of the escape slides, as specified in the Airbus service bulletins described previously.

Cost Impact

The FAA estimates that 126 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per slide to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $124 to $185 per slide. Each Model A300 and A300–600 series airplane has 6 escape doors, and each Model A310 series airplane has 4 escape doors. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be between $736 and $1,470 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect 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, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, 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 copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the

location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

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

Airbus Industrie: Docket 2000–NM–72–AD.

Applicability: The following airplanes, certificated in any category:

Model	Equipped with any BFGoodrich slide having part number—	Excluding airplanes modified in accordance with—
A300 B2, A300 B4	7A1296–001 7A1296–002 7A1296–003 7A1296–004 7A1298–001 7A1298–002 7A1298–003 7A1298–004	Airbus Service Bulletin A300–25–0466, Revision 01, dated December 1, 1999; or BFGoodrich Service Bulletin 7A1296/7A1298–25–298, dated January 15, 1999.
A300 B4–600, A300 B4–600R, A300 F4–600R	7A1296–001 7A1296–002 7A1296–003 7A1296–004 7A1298–001 7A1298–002 7A1298–003 7A1298–004	Airbus Service Bulletin A300–25–6146, Revision 01, dated December 1, 1999; or BFGoodrich Service Bulletin 7A1296/7A1298–25–298, dated January 15, 1999.
A310	7A1298–001 7A1298–002 7A1298–003 7A1298–004	Airbus Service Bulletin A310–25–2133, dated January 21, 1999; or BFGoodrich Service Bulletin 7A1296/7A1298–25–298, dated January 15, 1999.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise 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 request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent deflation of the escape slide after deployment, which could result in a delay during an emergency evacuation, accomplish the following:

Modification

(a) Within 34 months after the effective date of this AD, modify the escape slides in accordance with the applicable Airbus service bulletin listed in Table 1 of this AD.

TABLE 1.—SERVICE BULLETINS

Model	Service bulletin	Revision level	Date
A300	A300–25–0466	01	December 1, 1999.
A300–600	A300–25–6146	01	December 1, 1999.
A310	A310–25–2133	Original	January 21, 1999.

Note 2: The Airbus service bulletins refer to BFGoodrich Service Bulletin 7A1296/7A1298–25–298, dated January 15, 1999, as an additional source of service information for modifying the escape slides.

(b) As of the effective date of this AD, no person shall install, on any airplane, a BFGoodrich escape slide having a part number listed in Table 2 of this AD, unless that slide has been modified in accordance with this AD:

TABLE 2.—SLIDE PART NUMBERS

7A1296–001	7A1296–002
7A1296–003	7A1296–004
7A1298–001	7A1298–002
7A1298–003	7A1298–004

Alternative Methods of Compliance

(c) 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, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) 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.

Note 4: The subject of this AD is addressed in French airworthiness directive 2000–059–302(B), dated February 9, 2000.

Issued in Renton, Washington, on October 25, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–27948 Filed 10–30–00; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

RIN 3038–AB52

Recordkeeping; Amendments to the Daily Computation of the Amount of Customer Funds Required To Be Segregated

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules.

SUMMARY: The Commodity Futures Trading Commission (''Commission'') is proposing to amend Commission Rule 1.32 to permit a futures commission merchant (''FCM''), in computing the amount of customer funds required to be held in segregated accounts pursuant to section 4d(2) of the Commodity Exchange Act (''Act''), to offset a net liquidating deficit or debit ledger balance in a customer's account with securities that have a ''ready market'' as defined by Rule 15c3–1(c)(11) of the Securities and Exchange Commission (''SEC'') and that are deposited as margin by such customer.[1] The proposal would limit the amount of the offset to the market value of the securities, less the applicable haircuts set forth in SEC Rule 15c3–1(c)(2)(vi). The FCM would also be required to maintain a security interest in the securities, including a written authorization to liquidate the securities at the FCM's discretion, and to segregate the securities in a safekeeping account with a bank, trust company, clearing organization of a contract market, or another FCM.

DATES: Comments must be received on or before November 30, 2000.

ADDRESSES: Comments should be mailed to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. In addition, comments may be sent by facsimile to (202) 418–5521, or by electronic mail to *secretary@cftc.gov.* Reference should be made to ''Recordkeeping—Futures Commission Merchants' Daily Computation of the Customer Segregated Amounts.''

FOR FURTHER INFORMATION CONTACT: Thomas J. Smith, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581; telephone (202) 418–5495; electronic mail *tsmith@cftc.gov;* or Henry J. Matecki, Financial Audit and Review Branch, Commodity Futures Trading Commission, 300 S. Riverside Plaza, Room 1600–N, Chicago, IL 60606; telephone (312) 886–3217; electronic mail *hmatecki@cftc.gov.*

SUPPLEMENTARY INFORMATION:

I. Offsetting Customer Net Liquidating Deficits or Debit Ledger Balances With Securities That Have a ''Ready Market''

A. Background

Section 4d(2) of the Act requires, among other things, that an FCM segregate from its own assets all money, securities, and other property held for customers as margin for their commodity futures and option contracts, as well as any gains accruing to such customers from open futures and option positions. The statute also prohibits an FCM from using the money, securities, or property of one customer to margin or secure futures or option positions of another customer. The segregation requirement is intended to: Protect customers who are dealing with an FCM by assuring the FCM has funds available to readily liquidate its obligations to its customers; assure an FCM has funds available to meet its daily variation margin obligations to the clearing organizations of contract markets; and prohibit an FCM from misappropriating customer funds for its own purposes.

Commission Regulations 1.20 through 1.30 implement the segregation of funds provisions of Section 4d(2) of the Act. Rule 1.32, a related recordkeeping regulation, requires each FCM to prepare a daily computation which shows: (1) The amount of funds that an FCM is required to segregate for customers who are trading on U.S. commodity exchanges pursuant to the Act and the Commission's regulations; (2) the amount of funds the FCM actually has in segregated accounts; and (3) the amount, if any, of the FCM's residual interest in the customer funds segregated. The computations required by Rule 1.32 are hereinafter collectively referred to as the ''segregation computation''.[2]

In 1959, the Commodity Exchange Authority (''CEA''), the predecessor agency of the Commission, issued Administrative Determination No. 171 (''AD No. 171'') in which it expressed the opinion that if an FCM elects to accept securities from a customer as margin, the securities, for purposes of computing the segregation computation, must be handled separately from the money deposited by, or due to, other customers.[3] The AD further provided that any net liquidating deficit in the account of a customer who deposited securities as margin was required to be covered by a deposit in segregation of an equivalent amount of the FCM's own money. This effectively required an FCM who held securities for a particular customer to segregate for the full value of those securities even though the customer's account liquidated to a deficit. For example, if a customer had a credit ledger balance of $3,000 and a mark-to-market loss on open positions of $4,200, that customer's account would liquidate to a deficit of $1,200.[4] If that customer also had securities with a market value of $50,000 on deposit with the FCM as margin for his commodity account, the FCM would be required to include in its daily segregation computation, a $50,000 segregation requirement for that customer. The FCM would not have been able to reduce the value of the security by the $1,200 net liquidating deficit.

The rationale for this treatment was that securities, unlike cash, are not fungible. Therefore, if an FCM became insolvent, a customer whose securities could be identified to that customer might be in a position to reclaim those securities free of any pro rata distribution. If the customer who deposited these ''specifically identifiable'' securities had been

[1] Commission regulations cited herein may be found at 17 CFR Ch. I (2000). SEC regulations cited herein may be found at 17 CFR Ch. II (2000). Section 4d(2) of the Act may be found at 7 U.S.C. § 6d(2) (1994).

[2] Regulation 1.32 further requires that the FCM complete the segregation computation for each trading day prior to 12:00 noon on the next business day and that the computation, and all supporting data, be maintained for a five-year period in accordance with Commission Rule 1.31.

[3] Commodity Exchange Authority Administrative Determination No. 171 (Aug. 13, 1959).

[4] A distinction is sometimes drawn between a net liquidating deficit and a debit balance. A net liquidating deficit is an amount owed to the FCM resulting from the combination of the customer's debit or credit ledger balance and the mark-to-market gain or loss on any open positions in the customer's account. A debit balance is the amount owed to the FCM by the customer represented by the debit ledger balance, and implies that there are no open positions in the account. For purposes of this proposal, a net liquidating deficit also includes customers' accounts with debit ledger balances and no open positions.

allowed to build up a deficit in his account and the FCM had not deposited enough of its own money into segregation to cover the deficit, the amount of money available in the segregated accounts to pay other customers would be insufficient.

The concerns raised by the CEA were subsequently addressed by the passage of the Bankruptcy Reform Act of 1978 which provided that a commodity futures customer could not reclaim specifically identifiable property that would exceed such customer's pro rata share of the FCM's bankruptcy estate.[5] In recognition of this change, the Commission's Division of Trading and Markets (''Division of T&M'') issued an advisory wherein it set forth a no-action position applicable to FCMs with respect to the segregation computation when customers' accounts incur net liquidating deficits.[6] In the advisory, the Division of T&M stated that it would not recommend that the Commission commence an enforcement action against an FCM based solely upon the FCM's use of customer-owned U.S. Treasury Bills, U.S. Treasury Notes, or U.S. Treasury Bonds (collectively ''Treasuries'') in connection with the segregation computation provided that certain conditions were met, including that: (1) The FCM maintained a security interest in the Treasuries, which included written authorization to liquidate the Treasuries at the FCM's discretion in order to protect the FCM and to cover any deficit in the customer's account; and (2) the Treasuries were segregated in safekeeping accounts with a bank, trust company, clearing organization of a contract market, or another FCM as provided by the Act and Commission regulations.

B. Proposed Rule Amendments

The Joint Audit Committee (''JAC'') has asked the Commission to amend Rule 1.32 to permit an FCM to offset a customer's net liquidating deficit with securities deposited by such customer that have a ''ready market'' as defined in SEC Rule 15c3–1(c)(11).[7] The amount of the offset would be limited to the market value of the securities, less applicable haircuts set forth in SEC Rule 15c3–1(c)(2)(vi).[8] Furthermore, an FCM would be required to maintain a security interest in the securities, including the written authorization to liquidate the securities at the FCM's discretion, and to segregate the securities in a safekeeping account with a bank, trust company, clearing organization of a contract market, or another FCM.

SEC Rule 15c3–1(c)(11) defines ''ready market'' to include a recognized established securities market in which there exists independent bona fide offers to buy and sell so that a price reasonably related to the last sales price or current bona fide competitive bid and offer quotations can be determined for a particular security almost instantaneously and where payment will be received in settlement of a sale at such price within a relatively short time conforming to trade custom.[9] Therefore, if adopted, the proposal would expand the securities against which an FCM could offset a customer's liquidating deficit from just Treasuries to any security which has a ready market as defined in the SEC's rule. In the example set forth above, the FCM would be required to segregate $48,800 for the customer ($50,000 in securities less the $1,200 liquidating deficit), rather than $50,000 as is currently required.

The Commission believes that the proposal recognizes both the economic and legal realities that exist in such a situation. Economically, the FCM is liable to its customer for only $48,800, not the amount represented by the current value of the securities it is holding for the customer, and should be required to segregate only the amount it owes its customer. Likewise, current bankruptcy rules recognize this economic reality by permitting the FCM to liquidate the securities, apply the proceeds against the liquidating deficit, and return the net balance owed to the customer.[10]

The Commission invites interested parties to comment on the proposed amendments. In particular, the Commission is interested in obtaining views regarding whether the types of securities that would be permitted to offset customer net liquidating deficits should be further restricted in any way, for example, to securities which are deemed acceptable for margin, or performance bond, under exchange rules.[11]

II. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601–611, requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The proposed rule amendments discussed herein would affect FCMs. The Commission has previously determined that, based upon the fiduciary nature of FCM/customer relationships, as well as the requirement that FCMs meet minimum financial requirements, FCMs should be excluded from the definition of small entity.[12]

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* (Supp. I 1995), imposes certain requirements on federal agencies (including the Commission) to review rules and rule amendments to evaluate the information collection burden that they impose on the public. The Commission believes that the proposed amendments to Rule

[5] The provisions of that statute relevant to the futures industry have been amended since that time and current law is codified in 11 U.S.C. 362, 546, 548, 556 and 761–766 (1994). The Commission's bankruptcy Rules are contained in 17 CFR part 190 (1999).

[6] Division of Trading and Markets Advisory on Treatment of Government Securities Deposited as Customer Funds, reprinted in [1980–1982 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 21,101 (Nov. 3, 1980) (the ''November 1980 Advisory'').

[7] The JAC is comprised of representatives of the audit and compliance departments of the domestic SROs and the National Futures Association. The JAC coordinates the industry's audit and ongoing surveillance activities to promote a uniform framework of self-regulation.

[8] SEC Rule 15c3–1(c)(2)(vi) sets forth haircuts that a broker or dealer is required to apply to investment securities in computing its adjusted net capital. This Rule and the haircuts are incorporated by reference in the Commission's net capital rule. See Commission Rule 1.17(c)(2)(vi)(B).

[9] The definition goes on to say that a ''ready market'' will also be deemed to exist where securities have been accepted as collateral for a loan by a bank as defined in section 3(a)(6) of the Securities and Exchange Act of 1934 and where the broker or dealer demonstrates to its Examining Authority that such securities adequately secure such loans as that term is defined in Rule 15c3–1(c)(5). This portion of the definition of a ''ready market'' is not applicable to this proposal.

[10] Of course should there be a shortfall in the funds available to pay all customers, the net amount owed would be included among the claims of all customers and be subject to pro rata distribution of available assets.

[11] It should also be noted that the Commission requires an FCM to set aside in special accounts a certain amount of funds for those of its U.S.-domiciled customers who trade on non-U.S. commodity markets. (See Commission Regulation 30.7, which identifies this as the ''secured amount.'') Unlike section 4d(2) of the Act and Commission Regulation 1.20, which require an FCM to segregate for the total net liquidating equities in accounts of customers who are trading on U.S. markets, Regulation 30.7 requires the FCM to set-aside only an amount that equals the margin required on foreign market open positions, plus or minus the mark-to-market gain or loss on such positions. This is normally less than the net liquidating equity in such accounts. However, an FCM is permitted to set-aside funds for customers trading on foreign markets in an amount which is calculated in the same manner as that done in determining section 4d(2) segregation requirements. If the FCM chooses to calculate its foreign secured amount requirement using the same method as it uses to calculate the segregation requirements under section 4d(2) of the Act, then the FCM would be able to use the same type of offset as permitted under the proposed change to Rule 1.32.

[12] 47 FR 18618, 18619–18620 (April 30, 1982).

1.32 do not impose an information collection burden on the public.

List of Subjects in 17 CFR Part 1

Brokers, Commodity Futures.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 4d, 4f, 4g and 8a(5) thereof, 7 U.S.C. 6d, 6f, 6g and 12a(5), the Commission hereby proposes to amend Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 U.S.C. 1a, 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, and 24.

2. Section 1.32 is proposed to be revised to read as follows:

§ 1.32 Segregated account; daily computation and record.

(a) Each futures commission merchant must compute as of the close of each business day:

(1) The total amount of customer funds on deposit in segregated accounts on behalf of commodity and option customers;

(2) The amount of such customer funds required by the Act and these regulations to be on deposit in segregated accounts on behalf of such commodity and option customers; and

(3) The amount of the futures commission merchant's residual interest in such customer funds.

(b) In computing the amount of funds required to be in segregated accounts, a futures commission merchant may offset any net deficit in a particular customer's account against the current market value of readily marketable securities, less applicable percentage deductions (*i.e.,* ''securities haircuts'') as set forth in Rule 15c3–1(c)(2)(vi) of the Securities and Exchange Commission (17 CFR 241.15c3–1(c)(2)(vi)), held for the same customer's account. The futures commission merchant must maintain a security interest in the securities, including the written authorization to liquidate the securities at the futures commission merchant's discretion, and must segregate the securities in a safekeeping account with a bank, trust company, clearing organization of a contract market, or another futures commission merchant. For purposes of this section, a security will be considered readily marketable if it is traded on a ''ready market'' as defined in Rule 15c3–1(c)(11)(i) of the Securities and Exchange Commission (17 CFR 240.15c3–1(c)(11)(i)).

(c) The daily computations required by this section must be completed by the futures commission merchant prior to noon on the next business day and must be kept, together with all supporting data, in accordance with the requirements of § 1.31.

Issued in Washington D.C. on October 25, 2000 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–27914 Filed 10–30–00; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 925

[SPATS No. MO–033–FOR]

Missouri Regulatory Program and Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of a proposed amendment to the Missouri regulatory program (Missouri program) and the Missouri Abandoned Mine Land Reclamation Plan (Missouri plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Missouri proposes revisions to its rules pertaining to surface mining performance requirements, special mining activities, prohibitions and limitations on mining in certain areas and areas unsuitable for mining, permitting requirements, bond and insurance requirements, definitions and general requirements, and abandoned mine land reclamation requirements. Missouri intends to revise its program to be consistent with the corresponding Federal regulations, to provide additional safeguards, to clarify ambiguities, and to improve operational efficiency.

This document gives the times and locations that the Missouri program and the proposed amendment to that program are available for your inspection, the comment period during which your may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments until 4:00 p.m., c.s.t., November 30, 2000. If requested, we will hold a public hearing on the amendment on November 27, 2000. We will accept requests to speak at the hearing until 4:00 p.m., c.s.t. on November 15, 2000.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to John W. Coleman, Mid-Continent Regional Coordinating Center, at the address listed below.

You may review copies of the Missouri program, the amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Mid-Continent Regional Coordinating Center.

John W. Coleman, Mid-Continent Regional Coordinating Center, Office of Surface Mining, Alton Federal Building, 501 Belle Street, Alton, Illinois 62002, Telephone: (618) 463–6460.

Missouri Department of Natural Resources, Land Reclamation Program, 205 Jefferson Street, P.O. Box 176, Jefferson City, Missouri 65102, Telephone: (573) 751–4041.

FOR FURTHER INFORMATION CONTACT: John W. Coleman, Mid-Continent Regional Coordinating Center. Telephone: (618) 463–6460. Internet: jcoleman@mcrgw.osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Missouri Program and the Missouri Plan

On November 21, 1980, the Secretary of Interior conditionally approved the Missouri program. You can find general background information on the Missouri program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the November 21, 1980, **Federal Register** (45 FR 77017). You can find later actions on the Missouri program at 30 CFR 925.12, 925.15, and 925.16.

On January 29, 1982, the Secretary of the Interior approved the Missouri plan. Background information on the Missouri plan, including the Secretary's findings, the disposition of comments, and the approval of the plan can be found in the January 29, 1982, **Federal Register** (47 FR 4253). Subsequent actions concerning the Missouri plan and amendments to the plan can be found at 30 CFR 925.25.

II. Description of the Proposed Amendment

By letter dated October 5, 2000 (Administrative Record No. MO–662.1), Missouri sent us an amendment to its program and plan under SMCRA and the Federal regulations at 30 CFR 732.17(b) and 884.15, respectively. Missouri sent the amendment in response to our letter dated June 17, 1997 (Administrative Record No. MO–651), that we sent to Missouri under 30 CFR 732.17(c), and in response to required program amendments at 30 CFR 925.16. The amendment also includes changes made at Missouri's own initiative. Missouri proposes to amend the Missouri Code of State Regulations (CSR) at Title 10, Division 40. Below is a summary of the changes proposed by Missouri. The full text of the program amendment is available for your inspection at the locations listed above under **ADDRESSES**.

A. 10 CSR 40–3 Permanent Performance Requirements for Surface Coal Mining and Related Activities

1. *10 CSR 40–3.010(6) Buffer Zone Markers.* Missouri proposes to add a reference to 10 CSR 40–8.010(1)(A)13 in its provision at 10 CSR 40–3.010(6). Missouri's rule at 10 CSR 40–8.010(1)(A)13 defines the term ''buffer zone.''

2. *10 CSR 40–3.020 Requirements for Casing and Sealing of Drilled Holes.* Missouri proposes to remove its reference to 10 CSR 40.3.040(13) and to add a reference to 10 CSR 40–3.040(14) and the Wellhead Protection Section, Division of Geology and Land Survey, at 10 CSR 23, Chapter 6, in its provisions at 10 CSR 40–3.020(1) and (3). Provisions of the referenced rules must be met in order to use a drilled hole or borehole or monitoring well as a water well.

3. *10 CSR 40–3.040 and 10 CSR 40–3.200 Requirements for Protection of the Hydrologic Balance.* Missouri proposes several changes to its rules at 10 CSR 40–3.040 for surface mining operations and 10 CSR 40–3.200 for underground mining operations.

a. Missouri is changing all instances of the term ''sedimentation ponds'' to the term ''siltation structures'' in its rules at 10 CSR 40–3.040(2), 10 CSR 40–3.040(6), 10 CSR 40–3.040(8), 10 CSR 40–3.040(17), 10 CSR 40–3.200(2), 10 CSR 40–3.200(6), 10 CSR 40–3.200(8), and 10 CSR 40–3.200(16).

b. At 10 CSR 40–3.040(4)(A), Missouri is correcting a rule reference by changing ''subsection (17)(A)'' to ''subsection (18)(A).''

c. At 10 CSR 40–3.040(4)(B)3 and 10 CSR 40–3.200(4)(B)3, Missouri is adding the language ''and any design criteria set by the director'' at the end of the paragraph.

d. At 10 CSR 40–3.040(6)(T) and 10 CSR 40–3.200(6)(T), Missouri is adding the following new provision:

> Impoundments meeting the Class B or C criteria for dams in the U.S. Department of Agriculture, Soil Conservation Service (now renamed as the Natural Resources Conservation Service) Technical Release No. 60 (210–VI, TR–60, Revised Oct. 1985), entitled ''Earth Dams and Reservoirs,'' hereafter in these rules referred to as TR–60, or the size or criteria of 30 CFR 77.216 must be examined in accordance with 30 CFR 77.216–3.

Missouri is also revising the existing provision by requiring that impoundments which do not meet the above criteria be examined at least quarterly.

e. At 10 CSR 40–3.040(10)(A) and 10 CSR 40–3.200(10)(A), Missouri is adding the following new sentence:

> Furthermore, impoundments meeting the Class B or C criteria for dams in TR–60 shall comply with the ''Minimum Emergency Spillway Hydrologic Criteria'' table in TR–60 and the requirements of this section.

f. At 10 CSR 40–3.040(10)(B)5 and 10 CSR 40–3.200(B)5, Missouri proposes to remove its current reference to the ''United States Soil Conservation Service Practice Standards 378, Ponds, January 1991'' and replace it with a reference to the ''United States Natural Resources Conservation Service, Conservation Practice Standard, Pond, No. Code 378, December 1998.''

g. Missouri is adding a new subsection at 10 CSR 40–3.040(10)(L) and 10 CSR 40–3.200(10)(L) entitled ''Stability.'' Paragraphs (10)(L)1 require an impoundment meeting the Class B or C criteria for dams in TR–60, or the size or other criteria of 30 CFR 77.216(a), to have a minimum static safety factor of 1.5 for a normal pool with steady state seepage saturation conditions and a seismic safety factor of at least 1.2. Paragraphs (10)(L)2 require an impoundment not included in the first paragraph, except for a coal mine waste impounding structure, to have a minimum static safety factor of 1.3 for a normal pool with steady state seepage saturation conditions or meet the requirements of the Natural Resources Conservation Service, Conservation Practice Standard 378, December 1998, and be less than 20 feet in height.

h. Missouri is adding a new subsection at 10 CSR 40–3.040(10)(M) and 10 CSR 40–3.200(10)(M) entitled ''Freeboard.'' Subsections (10)(M) require an impoundment to have adequate freeboard to resist overtopping by waves and by sudden increases in storage volume. They also require an impoundment that meets the Class B or C criteria for dams in TR–60 to comply with the freeboard hydrograph criteria in the ''Minimum Emergency Spillway Hydrologic Criteria'' table in TR–60.

i. Missouri is adding a new subsection at 10 CSR 40–3.040(10)(N) and 10 CSR 40–3.200(10)(N) entitled ''Foundation.'' Paragraphs (10)(N)1 require foundations and abutments for an impounding structure to be stable during all phases of construction and operation and the design must be based on adequate and accurate information on the foundation conditions. For impoundments meeting the Class B or C criteria for dams in TR–60, or the size or other criteria of 30 CFR 77.216(a), they require that foundation investigation, as well as any necessary laboratory testing of foundation material, be performed to determine the design requirements for foundation stability. Paragraphs (10)(N)2 require that all vegetative and organic materials be removed and foundations excavated and prepared to resist failure. Cutoff trenches must be installed if necessary to ensure stability.

j. Missouri is adding a new subsection at 10 CSR 40–3.040(10)(O) and 10 CSR 40–3.200(10)(O) entitled ''Spillways.'' Subsections (10)(0) provide the spillway requirements for permanent and temporary impoundments meeting the Class B or C criteria for dams in TR–60, for impoundments meeting or exceeding the size or other criteria of 30 CFR 77.216(a), and for impoundments not meeting either criteria. They also specify the design precipitation events that the various types of impoundments must be designed and constructed to safely pass or contain.

k. At 10 CSR 40–3.040(13)(A)1.A, Missouri is correcting regulation references by changing ''10 CSR 40–6.070(13)'' to ''10 CSR 40–6.070(14)'' and removing a reference to ''10 CSR 40–6.120(5).'' At 10 CSR 40–3.040(13)(B)1, Missouri is correcting a regulation reference by changing ''10 CSR 40–6.050(9)(B)4'' to ''10 CSR 40–6.050(9)(C)4.''

l. Missouri is revising 10 CSR 40–3.040(14)(B)3 to require that upon transfer of a well, the transferee must assume primary responsibility for compliance with 10 CSR 40–3.020 and those provisions of the Wellhead Protection Section, Division of Geology and Land Survey, at 10 CSR 23, Chapter 3, applicable to the well.

m. At 10 CSR 40–3.200(12)(A)1.A, Missouri is correcting a regulation reference by changing ''10 CSR 40–6.070(13)'' to ''10 CSR 40–6.070(14).'' At 10 CSR 40–3.200(12)(B)1, Missouri is correcting a regulation reference by

changing ''10 CSR 40–6.120(5)(B)3'' to ''10 CSR 40–6.120(5)(C)3.''

n. Missouri is revising 10 CSR 40–3.200(13)(B)3 to require that upon transfer of a well, the transferee must assume primary responsibility for compliance with 10 CSR 40–3.180 and those provisions of the Wellhead Protection Section, Division of Geology and Land Survey, at 10 CSR 23, Chapter 3, applicable to the well.

4. *10 CSR 40–3.050 Requirements for the Use of Explosives.* At 10 CSR 40–3.050(1)(D)1.A, Missouri proposes to require an operator to submit a blast design if blasting operations will be conducted within 1000 feet of a dam that is outside the permit area. At 10 CSR 40–3.050(2)(A), Missouri proposes to require the operator to notify owners of dams that are located within one-half mile of the permit area at least forty days before initiation of blasting and tell them how to request a preblast survey. At 10 CSR 40–3.050(3)(C)1, Missouri removed the language ''at a minimum, shall contain.''

5. *10 CSR 40–3.080 Requirements for the Disposal of Coal Processing Waste.* Missouri proposes the following changes to its requirements for disposing of coal processing waste.

a. Missouri proposes to revise the first sentence of 10 CSR 40–3.080(1)(A) to read as follows:

All coal processing waste disposed of in an area other than the mine workings or excavations shall be hauled or conveyed and placed for final placement in new or existing disposal areas approved in the permit and plan for this purpose.

b. At 10 CSR 40–3.080(3)(D), Missouri proposes to remove the references to ''10 CSR 40–3.040(12) and (15)'' and add a reference to ''10 CSR 40–3.040(16).''

6. *10 CSR 40–3.090 Requirements for the Protection of Air Resources at Surface Mining Operations.* Missouri proposes to add the following new requirement:

All exposed surface areas shall be protected and stabilized to effectively control erosion and air pollution attendant to erosion according to 10 CSR 40–3.040(5)(A).

7. *10 CSR 40–3.110 Backfilling and Grading Requirements.* Missouri proposes the following changes to its backfilling and grading requirements.

a. *10 CSR 40–3.110(4) Thin Overburden.* Missouri proposes to remove the first three sentences of 10 CSR 40–3.110(4)(A) and add the following language in their place:

The provisions of this section apply only where there is insufficient spoil and other waste materials available from the entire permit area to restore the disturbed area to its approximate original contour. Insufficient spoil and other waste materials occur where the overburden thickness times the swell factor, plus the thickness of other available waste materials, is less than the combined thickness of the overburden and coal bed prior to removing the coal, so that after backfilling and grading the surface configuration of the reclaimed area would not: (1) Closely resemble the surface configuration of the land prior to mining; or (2) Blend into and complement the drainage pattern of the surrounding terrain.

b. *10 CSR 40–3.110(5) Thick Overburden.* Missouri proposes to remove the first three sentences of 10 CSR 40–3.110(5)(A) and add the following language in their place:

The provisions of this section apply only where there is more than sufficient spoil and other waste materials available from the entire permit area to restore the disturbed area to its approximate original contour. More than sufficient spoil and other waste materials occur where the overburden thickness times the swell factor exceeds the combined thickness of the overburden and coal bed prior to removing the coal, so that after backfilling and grading the surface configuration of the reclaimed area would not: (1) Closely resemble the surface configuration of the land prior to mining; or (2) Blend into and complement the drainage pattern of the surrounding terrain.

c. *10 CSR 40–3.110(6) Regrading or Stabilizing Rills and Gullies.* Missouri proposes to revise 10 CSR 40–3.110(6)(B) to read as follows:

On areas that have been previously mined, the requirements for regrading or stabilizing rills and gullies pursuant to subsection (6)(A) apply after final grading and placement of topsoil or the best available topsoil substitute.

8. *10 CSR 40–3.120 and 10 CSR 40–3.270 Revegetation Requirements.* Missouri proposes the following changes to its rules at 10 CSR 40–3.120 for surface mining operations and 10 CSR 40–3.270 for underground mining operations.

a. Missouri proposes to remove the term ''range land'' from its provisions for grazing at 10 CSR 40–3.120(5) and 10 CSR 40–3.270(5).

b. Missouri proposes to replace the term ''sediment ponds'' with the term ''siltation structures'' in its rules at 10 CSR 40–3.120(8)(A)4 and (B) and 10 CSR 40–3.270(8)(A)4 and (B).

9. *10 CSR 40–3.140 Road and Other Transportation Requirements.* At 10 CSR 40–3.140(1)(A), Missouri proposes to remove the word ''road'' from the phrase ''as well as dust occurring on other exposed road surfaces.''

10. *10 CSR 40–3.240 Air Resource Protection at Underground Mining Operations.* Missouri proposes to remove the existing requirement and add the following new requirement:

All exposed surface areas shall be protected attendant to erosion according to 10 CSR 40–3.200(5)(A).

B. 10 CSR 40–4 Permanent Performance Requirements for Special Mining Activities

1. *10 CSR 40–4.010 Coal Exploration Requirements.* Missouri is proposing two changes to its rules concerning coal exploration requirements.

a. Missouri is revising its purpose statement to read as follows:

This rule sets forth the requirements for conducting coal exploration activities pursuant to 444.810 and 444.845, RSMo.

b. Missouri is correcting a citation reference at 10 CSR 40–4.010(3)(J) by changing the reference from ''10 CSR 40–3.040(8)'' to ''10 CSR 40–3.040(9).''

2. *10 CSR 40–4.020 Auger Mining Requirements.* Missouri is correcting a citation reference at 10 CSR 40–4.020(2)(B) by changing the reference from ''10 CSR 40–6.060(6)'' to ''10 CSR 40–6.060(5).''

3. *10 CSR 40–4.030 Operations on Prime Farmland.*

a. Missouri proposes to revise its purpose statement to read as follows:

This rule outlines the procedure for surface coal mining and reclamation on prime farmland pursuant to 444.810 and 444.855 RSMo.

b. Missouri proposes to change the term ''United States Soil Conservation Service'' to the term ''United States Natural Resources Conservation Service'' at 10 CSR 40–4.030(3)(A), (6)(A), and (7)(B)2 and 7.

c. Missouri proposes to remove its current provision at 10 CSR 40–4.030(4)(A), redesignate 10 CSR 40–4.030(4)(B) as 10 CSR 40–4.030(4)(C), and add the following new provisions at 10 CSR 40–4.030(4)(A) and (B):

(A) Coal preparation plants, support facilities, and roads of underground mines that are actively used over extended periods of time and where such uses affect a minimal amount of land. Such uses shall meet the requirements of 10 CSR 40–3.

(B) Disposal areas containing coal mine waste resulting from underground mines that is not technologically and economically feasible to store in underground mines or on non-prime farmland. The operator shall minimize the area of prime farmland used for such purposes.

4. *10 CSR 40–4.050 Coal Processing Plants and Support Facilities Not Located at or Near the Mine Site or Not Within the Permit Area for a Mine.* Missouri proposes to correct the citation reference at 10 CSR 40–4.050(11) from ''10 CSR 40–3.100(1)–(4)'' to ''10 CSR 40–3.100(1)–(7).'' Missouri also proposes to correct the citation

reference at 10 CSR 40–4.050(12) from ''10 CSR 40–3.100(5)'' to ''10 CSR 40–3.100(8).''

C. 10 CSR 40–5 Prohibitions and Limitations on Mining in Certain Areas and Areas Unsuitable for Mining

1. At 10 CSR 40–5.010(1)(B), Missouri proposes to revise the first sentence of its definition of ''No significant recreational, timber, economic or other values incompatible with surface coal mining operations'' to read as follows:

Significant recreational, timber, economic or other values incompatible with surface coal mining operations means those values which could be damaged by, and are not capable of existing together with, surface coal mining operations because of the undesirable effects mining would have on those values, either on the area included in the permit application or on other affected area.

2. Missouri proposes to revise the first sentence of 10 CSR 40–5.010(2)(E) to read as follows:

Within three hundred feet (300′), measured horizontally, from any occupied dwelling unless the permit applicant submits with the application a written waiver from the owner of the dwelling, clarifying that the owner and signatory had the legal right to deny mining and knowingly waived that right.

D. 10 CSR 40–6 Permitting Requirements for Permits, Permit Applications, and Coal Exploration

1. *10 CSR 40–6.010 General Requirements for Permits.* Missouri is proposing the following changes to its rule at 10 CSR 40–6.010.

a. *10 CSR 40–6.010(4)(B)2 Renewal of Valid Permits.* Missouri proposes to correct a citation reference by changing ''10 CSR 40–6.080(5) and (6)'' to ''10 CSR 40–6.090(5) and (6).'' Missouri also proposes to add the following new provision to the end of 10 CSR 40–6.010(4)(B)2:

A permittee need not renew the permit if no surface coal mining operations will be conducted under the permit and solely reclamation activities remain to be done. Obligations established under a permit continue until completion of surface coal mining and reclamation operations, regardless of whether the authorization to conduct surface coal mining operations has expired or has been terminated, revoked, or suspended.

b. *10 CSR 40–6.010(6)(A) Permit Fees.* Missouri proposes to remove the existing third sentence. Missouri also proposes to revise the existing fifth sentence to read as follows:

Afterwards and until the operator obtains the final liability release on all lands covered by the permit, the annual fee and acreage fee shall be paid as a condition to and prior to operating for that permit year.

2. *10 CSR 40–6.020 General Requirements for Coal Exploration Permits.* Missouri is proposing several changes to its rule at 10 CSR 40–6.020.

a. Missouri is proposing to revise the purpose statement to read as follows:

This rule sets forth the requirements for coal exploration permits pursuant to 444.810 and 444.845, RSMo.

b. *10 CSR 40–6.020(5) Requirements for Commercial Use or Sale During Coal Exploration.* In the first sentence, Missouri is proposing to add the words ''use or'' before the word ''sale'' in the phrase ''for commercial sale.'' In the first sentence, Missouri is also proposing to change the citation references to ''10 CSR 40–6.010 and 10 CSR 40–6030 through 10 CSR 40–6.120.'' In the second sentence, Missouri is proposing to add the word ''written'' before the word ''determination.'' Missouri is also adding a new sentence that reads as follows:

The person conducting the exploration shall file an application for such determination with the director or commission.

c. *10 CSR 40–6.020(7) Bonding for Coal Exploration Permits.* At 10 CSR 40–6.020(7)(A), Missouri proposes to change the citation reference to ''10 CSR 40–7.011(6).''

3. *10 CSR 40–6.030 and 10 CSR 40–6.100 Minimum Requirements for Legal, Financial, Compliance and Related Information.* Missouri proposes the following changes to its rules at 10 CSR 40–6.030 for surface mining operations and 10 CSR 40–6.100 for underground mining operations.

a. In the introductory paragraph of 10 CSR 40–6.030(1)(C), Missouri proposes to add the phrase ''each application shall contain'' after the words ''as applicable.''

b. Missouri proposes to revise the introductory paragraph of 10 CSR 40–6.030(1)(D) to read as follows:

For any surface coal mining operation owned or controlled by the applicant under the definition of owned or controlled and owns or controls in 10 CSR 40–6.010(2)(E), each application shall contain—

c. At 10 CSR 40–6.030(1)(I) and 10 CSR 40–6.100(1)(I), Missouri proposes to require the applicant to submit the information required by 10 CSR 40–6.010(1) and (2) and 10 CSR 40–6.100(1) and (2) in any format prescribed by the ''Office of Surface Mining Reclamation and Enforcement (OSMRE).''

d. Missouri is revising 10 CSR 40–6.030(2)(C) to read as follows:

A list of all violation notices received by the applicant during the three year period preceding the application date, and a list of all unabated cessation orders and unabated violation notices received prior to the date of the application by any surface coal mining and reclamation operation that is deemed or presumed to be owned or controlled by the applicant under the definition of ''owned or controlled'' and ''owns or controls'' in 10 CSR 40–6.010(2)(E) of this chapter. For each notice of violation issued pursuant to 10 CSR 40–8.030(7) or under the Federal or State program for which the abatement period has not expired, the applicant must certify that such notice of violation is in the process of being corrected to the satisfaction of the agency with jurisdiction over the violation. For each violation notice or cessation order reported, the lists shall include the following information, as applicable:

A. Any identifying numbers for the operation, including the Federal or State permit number and MSHA number, the dates of the violation notice and MSHA number, the name of the person to whom the violation notice was issued, and the name of the issuing regulatory authority, department or agency;

B. A brief description of the violation alleged in the notice;

C. The date, location and type of any administrative or judicial proceedings initiated concerning the violation, including, but not limited to, proceedings initiated by any person identified in subsection (C) of this section to obtain administrative or judicial review of the violation;

D. The current status of the proceedings and of the violation notice; and

E. The actions, if any, taken by any person identified in subsection (C) of this section to abate the violation.

e. Missouri is revising 10 CSR 40–6.100(2)(C) to read as follows:

For any violation of a provision of the Act, or of any law, rule or regulation of the United States, or of any State law, rule or regulation enacted pursuant to Federal law, rule or regulation pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, a list of all violations notices received by the applicant during the three (3) year period preceding the application date, and a list of all unabated cessation orders and unabated air and water quality violation notices received prior to the date of the application by any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant. For each violation notice or cessation order reported, the lists shall include the following information, as applicable:

A. Any identifying numbers for the operation, including the Federal or State permit number and MSHA number, the dates of issuance of the violation notice and MSHA number, the name of the person to whom the violation notice was issued, and the name of the issuing regulatory authority, department or agency;

B. A brief description of the violation alleged in the notice;

C. The date, location and type of any administrative or judicial proceedings initiated concerning the violation, including,

but not limited to, proceedings initiated by any person identified in subsection (C) of this section to obtain administrative or judicial review of the violation;

D. The current status of the proceedings and of the violation notice; and

E. The actions, if any, taken by any person identified in subsection (C) of this section to abate the violation.

4. *10 CSR 40–6.040 Environmental Resources.*

a. *10 CSR 40–6.040(5) Geology Description.* Missouri is revising 10 CSR 40–6.040(5)(B)1.E to read as follows:

Analyses of the coal seam for acid- or toxic-forming materials, including, but not limited to, an analysis of the total sulfur and pyritic sulfur content.

b. *10 CSR 40–6.040(16) Prime Farmland Investigation.* Missouri is revising 10 CSR 40–6.040(16)(C)1 and 3 by changing its references to the ''United States Soil Conservation Service'' to the ''United States Natural Resources Conservation Service.''

5. *10 CSR 40–6.050 and 10 CSR 40–6.120 Minimum Requirements for Reclamation and Operations Plan.* Missouri proposes the following changes to its rules at 10 CSR 40–6.050 for surface mining operations and 10 CSR 40–6.120 for underground mining operations.

a. Missouri proposes to change the term ''sedimentation pond'' to the term ''siltation structure'' in its rules at 10 CSR 40–6.050(5)(B)11, 10 CSR 40–6.050(5)(C)1, 10 CSR 40–6.050(11)(A) and (B), 10 CSR 40–6.120(7)(A) and (B), and 10 CSR 40–6.120(14)(B)10 and (C)(1).

b. At 10 CSR 40–6.050(7)(D)1, Missouri proposes that each fish and wildlife plan description be consistent with the requirements of this section and 10 CSR 40–3.100.

c. At 10 CSR 40–6.050(9)(C)3, Missouri is changing a citation reference from ''10 CSR 40–3.040(11)'' to ''10 CSR 40–3.040(12).''

d. At 10 CSR 40–6.050(9)(C)4, Missouri is changing a citation reference from ''10 CSR 40–3.040(12)'' to ''10 CSR 40–3.040(13).''

e. Missouri is redesignating the introductory paragraph of ''10 CSR 40–6.050(9)(E)'' as ''10 CSR 40–6.050(9)(D)3'' and adding a new heading entitled ''Cumulative Hydrologic Impact Assessment'' at 10 CSR 40–6.050(9)(E) and 10 CSR 40–6.120(5)(E).

f. At 10 CSR 40–6.050(11)(A) and 10 CSR 40–6.120(7)(A), Missouri is proposing to add the words ''and a detailed plan'' after the words ''general plan.''

g. At 10 CSR 40–6.050(11)(A)2 and 10 CSR 40–6.120(7)(A)2, Missouri is adding the following sentence to the beginning of the introductory paragraphs:

Impoundments meeting the Class B or C criteria for dams in TR–60, which is incorporated by reference, shall comply with the requirements of this section for structures that meet or exceed the size or other criteria of the Mine Safety and Health Administration (MSHA).

h. At 10 CSR 40–6.050(11)(A)3 and 10 CSR 40–6.120(7)(A)3, Missouri is removing a citation reference to ''30 CFR 77.216(a)'' and adding a citation reference to ''10 CSR 40–6.050(11)(A)2 and 10 CSR 40–6.120(7)(A)2,'' respectively.

i. Missouri is proposing to revise the second sentence of 10 CSR 40–6.050(11)(C) and 10 CSR 40–6.120(7)(C) to require that each plan for an impoundment meeting the size or other criteria of the Mine Safety and Health Administration comply with the requirements of 30 CFR 77.216–1 and 30 CFR 77.216–2. Missouri is adding a new sentence to these sections to require that the plan required to be submitted to the District Manager of MSHA under 30 CFR 77.216 be submitted to the director as part of the permit application.

j. Missouri is proposing to revise the first sentence of 10 CSR 40–6.050(11)(F) and 10 CSR 40–6.120(7)(F) by requiring that if a structure meets the Class B or C criteria for dams in TR–60, or meets the size or other criteria of 30 CFR 77.216(a), each plan under subsections (11)(B), (C) and (E) and subsections (7)(B), (C) and (E), respectively, must include a stability analysis of each structure.

k. Missouri is proposing to remove the language ''or a qualified registered professional land surveyor'' from its provisions at 10 CSR 40–6.050(17)(B) and 10 CSR 40–6.120(15)(B).

l. At 10 CSR 40–6.120(12)(D), Missouri proposes that each fish and wildlife plan description be consistent with the requirements of this section and 10 CSR 40–3.250.

6. *10 CSR 40–6.060(4) Prime Farmlands.*

a. Missouri is proposing to change all instances of its references to the ''United States Soil Conservation Service'' and the ''SCS'' to the ''United States Natural Resources Conservation Service'' and the ''NRCS,'' respectively.

b. At 10 CSR 40–6.060(4)(E)5, Missouri is proposing to add the following new provision:

Water bodies, if any, to be constructed during mining and reclamation operations must be located within the post-reclamation non-prime farmland portions of the permit area. The creation of any such water bodies must be approved by the regulatory authority and the consent of all affected property owners within the permit area must be obtained.

7. *10 CSR 40–6.070 Review, Public Participation and Approval of Permit Applications and Permit Terms and Conditions.*

a. At 10 CSR 40–6.070(3)(B), Missouri is proposing to require that written comments on permit applications be submitted to the commission and director within 30 days after the last publication of the newspaper advertisement required by subsection (2)(A).

b. At 10 CSR 40–6.070(4)(A), Missouri is proposing to require that written objections to an initial, renewed, or revised application for a permit be filed within 30 days after the last publication of the newspaper advertisement required by subsection (2)(A).

c. At 10 CSR 40–6.070(8)(C), Missouri is correcting a citation reference by changing ''10 CSR 40–6.050(9)(C)'' to ''10 CSR 40–6.050(9)(E).''

d. At 10 CSR 40–6.070(10)(D), Missouri is changing the word ''formal'' to the word ''informal.''

8. *10 CSR 40–6.090 Permit Reviews, Revisions and Renewals.*

a. Missouri is revising 10 CSR 40–6.090(4)(B)(2), to require that the scale or extent of permit application information requirements and procedures, including notice and hearings, applicable to revision requests must be sufficient to demonstrate compliance with all applicable rules.

b. At 10 CSR 40–6.090(6)(A), Missouri is correcting a citation reference by changing ''10 CSR 40–6.010(4)(B)3'' to 10 CSR 40–6.010(4)(B)2.''

c. At 10 CSR 40–6.090(7), Missouri is correcting a citation reference by changing ''10 CSR 40–6.070(11)'' to ''10 CSR 40–6.070(12).''

E. 10 CSR 40–7 Bond and Insurance Requirements

1. *10 CSR 40–7.011 Bond Requirements.*

a. At 10 CSR 40–7.011(6)(A)8 and (D)8, Missouri is proposing to require that if a cessation order is issued, mining operations shall not resume until the director has determined that an acceptable bond has been posted.

b. At the end of 10 CSR 40–7.011(6)(D)2.C.(II), Missouri is changing the word ''and'' to the word ''or.''

c. Missouri is proposing to revise 10 CSR 40–7.011(6)(D)5.A by changing the phrase ''including the parent corporate guarantor, a third-party nonparent corporate guarantor, or both'' to the phrase ''including the parent and nonparent corporations.''

d. Missouri is proposing to revise 10 CSR 40–7.011(6)(D)5.C by changing the

language ''parent or nonparent corporate guarantor'' to the language ''parent and nonparent corporation.''

2. *10 CSR 40–7.021 Duration and Release of Reclamation Liability.*

a. Missouri is proposing to remove its provisions at 10 CSR 40–7.021(2)(B)5 and 6 and add them at 10 CSR 40–7.021(1)(C) and (D).

b. Missouri is proposing to replace the term ''sediment ponds'' with the term ''siltation structures'' in 10 CSR 40–7.021(2)(A).

c. Missouri is proposing to add the following new provisions at 10 CSR 40–7.021(3)(C) and (D):

(C) At the time of final or phase III bond release submittal, the operator shall include evidence that an affidavit has been recorded with the recorder of deeds in the county where the mined land is located generally describing the parcel or parcels of land where operations such as underground mining, auger mining, covering of slurry ponds, or other underground activities occurred which could impact or limit future use of that land. This requirement shall be applicable to mined land where phase I reclamation was completed on or after September 1, 1992.

(D) Notarized Statement of Accomplished Reclamation. The permittee shall include in the application for reclamation liability release a notarized statement which certifies that all applicable reclamation activities have been accomplished in accordance with the requirements of the Surface Coal Mining Law, the regulatory program, and the approved reclamation plan. Such certification shall be submitted for each application and each phase of bond release.

F. 10 CSR 40–8 Definitions and General Requirements

1. *10 CSR 40–8.010 Definitions.*

a. At 10 CSR 40–8.010(1)(A)9, Missouri is correcting its definition of ''approximate original contour'' by adding the language ''piles eliminated'' after the word ''refuse'' to end the first sentence and adding the language ''Permanent water impoundments'' before the words ''may be permitted'' to begin a second sentence. Missouri is also replacing its reference to ''10 CSR 40–3.049(9) and (16)'' with a reference to ''10 CSR 40–3.040(10) and (17).''

b. At 10 CSR 40–8.010(1)(A)12, Missouri is revising its definition of ''best technology currently available'' by replacing the term ''sedimentation ponds'' with the term ''siltation structures.''

c. At 10 CSR 40–8.010(1)(A)52.C, Missouri is revising its definition of ''land use'' by adding the information ''(now known as the Natural Resources Conservation Service)'' after the term ''Soil Conservation Service'' in its secondary definition of ''prime farmland.''

d. At 10 CSR 40–8.010(1)(A)59, Missouri is revising its definition of ''other treatment facilities'' as follows:

Other treatment facilities means any chemical treatments, such a flocculation or neutralization, or mechanical structures, such as clarifiers or precipitators, that have a point source discharge and that are utilized—

A. To prevent additional contributions of dissolved or suspended solids to stream flow or runoff outside the permit area; or

B. To comply with all applicable State and Federal water-quality laws and regulations.

e. At 10 CSR 40–8.010(1)(A)73, Missouri is revising in definition of ''prime farmland'' as follows:

Prime farmland means land which meets the technical criteria established by the Secretary of Agriculture in 7 CFR 657 (FR Vol. 4, No. 21) and which has historically been used for cropland as that phrase is defined above.

f. At 10 CSR 40–8.010(1)(A)82, Missouri is adding the following definition of ''regulatory authority'':

Regulatory authority means the Land Reclamation Commission, the director, or their designated representative and employees unless otherwise specified in these rules.

g. Missouri is proposing to remove its definition for ''sedimentation pond'' at 10 CSR 40–8.010(1)(A)(87) and to add the following definition for ''siltation structure'' at 10 CSR 40–8.010(1)(A)(89):

Siltation structure means a sedimentation pond, a series of sedimentation ponds, or other treatment facility, it also means a primary sediment control structure designed, constructed and maintained in accordance with 10 CSR 40–3.040(6) and including, but not limited to, barrier, dam or excavated depression which slows down water runoff to allow sediment to settle out. A siltation structure shall not include secondary sedimentation control structures, such as straw dikes, riprap, check dams, mulches, dugouts and other measures that reduce overland flow velocity, reduce runoff volume or trap sediment, to the extent that those secondary sedimentation structures drain to the siltation structure.

h. At 10 CSR 40–8.010(1)(A)97.B, Missouri is correcting a citation reference in its definition of ''surface coal mining operations'' by replacing a reference to ''subparagraph (1)(A)14'' with a reference to ''subparagraph (1)(A)98.A.''

2. *10 CSR 40–8.030 Permanent Program Inspection and Enforcement.*

a. Missouri is proposing to revise 10 CSR 40–8.030(1)(F)4.A by allowing a site to be classified as abandoned only in cases where a permit has either expired or been revoked.

b. Missouri is revising 10 CSR 40–8.030(1)(G) to read as follows:

In lieu of the inspection frequency established in subsections (1)(A) and (B) of this rule, the regulatory authority shall inspect each abandoned site on a set frequency commensurate with the public health and safety and environmental considerations present at each specific site, but in no case shall the inspection frequency be set at less than one complete inspection per calendar year.

1. In selecting an alternate inspection frequency authorized under the subsection above, the regulatory authority shall first conduct a complete inspection of the abandoned site and provide public notice under paragraph (G)2 of this section. Following the inspection and public notice, the regulatory authority shall prepare and maintain for public review a written finding justifying the alternative inspection frequency selected. This written finding shall justify the new inspection frequency by affirmatively addressing in detail all of the following criteria:

A. How the site meets each of the criteria under the definition of an abandoned site under subsection (F) of this section and thereby qualifies for a reduction in inspection frequency;

B. Whether, and to what extent, there exist on the site impoundments, earthen structures or other conditions that currently pose, or may reasonably be expected to pose, imminent dangers to the health or safety of the public or significant environmental harms to land, air, or water resources;

C. The extent to which existing impoundments or earthen structures were constructed and certified in accordance with prudent engineering designs approved in the permit;

D. The degree to which erosion and sediment control is present and functioning;

E. The extent to which the site is located near or above urbanized areas, communities, occupied dwellings, schools and other public or commercial buildings and facilities;

F. The extent of reclamation completed prior to abandonment and the degree of stability of unreclaimed areas, taking into consideration the physical characteristics of the land mined and the extent of settlement or revegetation that has occurred naturally with time; and

G. Based on a review of the complete and partial inspection report record for the site during at least the last two consecutive years, the rate at which adverse environmental or public health and safety conditions have and can be expected to progressively deteriorate.

2. Provide the public notice and opportunity to comment required under subparagraph (G).1 of this section as follows:

A. The regulatory authority shall place a notice in the newspaper with the broadest circulation in the locality of the abandoned site providing the public with a 30-day period in which to submit written comments.

B. The public notice shall contain the permittee's name, the permit number, the precise location of the land affected, the inspection frequency proposed, the general reasons for reducing the inspection frequency, the bond status of the permit, the telephone number and the address of the regulatory authority where written comments

on the reduced inspection frequency may be submitted, and the closing date of the comment period.

c. At 10 CSR 40–8.030(6)(A)3, Missouri replaced a reference to ''paragraph (7)(A)1 of this section'' with a reference to ''paragraph (6)(A)1 of this rule.''

d. At 10 CSR 40–8.030(12)(C), Missouri replaced a reference to ''subsection (8)(E)'' with a reference to ''10 CSR 40–7.031.''

3. *10 CSR 40–8.050 Small Operators' Assistance Program (SOAP).*

a. Missouri proposes to revise its definition of ''qualified laboratory'' at 10 CSR 40–8.050(1) by replacing the phrase ''which can prepare'' with the phrase ''that can provide'' and by adding the phrase ''or other services as specified in section (5) of this rule'' after the term ''core samplings.''

b. Missouri proposes to revise the first sentence of 10 CSR 40–8.050(2)(B) to read as follows:

Establishes that his/her probable total attributed annual production from all locations on which the operator is issued the surface coal mining and reclamation permit will not exceed three hundred thousand (300,000) tons.

c. At 10 CSR 40–8.050(2)(B)1 and 2, Missouri proposes to increase from 5 to 10 percent the baseline percentage above which ownership will play a role in determining ''attributed coal production.''

d. At 10 CSR 40–8.050(5)(A), Missouri proposes to add the phrase ''and provide other services'' after the word ''statement.''

e. At 10 CSR 40–8.050(5)(B)1, Missouri proposes to add the phrase ''including the engineering analysis and designs necessary for the determination'' after the term ''adjacent areas.''

f. Missouri is revising 10 CSR 40–8.050(5)(B)2 to specify that drilling to provide rock samples is an authorized service under its SOAP rules.

g. Missouri is proposing to add the following new authorized services under its SOAP rules at 10 CSR 40–8.050(5)(B)3, 4, 5, and 6:

3. The development of cross-section maps and plans required by 10 CSR 40–6.040(15);

4. The collection of archaeological and historic information and related plans required by 10 CSR 40–6.040(3)(B) and 10 CSR 40–6.050(14) and any other archaeological and historic information required by the regulatory authority;

5. Pre-blast surveys required by 10 CSR 40–6.050(4); and

6. The collection of site-specific resources information, the production of protection and enhancement plans for fish and wildlife habitats required by 10 CSR 40–6.050(7) and information and plans for any other environmental values required by the regulatory authority under the act.

h. Missouri is revising the introductory paragraph to 10 CSR 40–8.050(9)(A) to read as follows:

A coal operator who has received assistance pursuant to section (5) of this rule, shall reimburse the director or commission for the cost of the services rendered if—

i. Missouri is proposing to revise 10 CSR 40–8.050(9)(A)2 to read as follows:

The director or commission finds that the operator's actual and attributed annual production of coal for all locations exceeds three hundred thousand (300,000) tons during the twelve (12) months immediately following the date on which the operator is issued the surface coal mining and reclamation permit; or

j. Missouri is proposing to revise the first sentence of 10 CSR 40–8.050(9)(A)3 to read as follows:

The permit is sold, transferred or assigned to another person and the transferee's total actual and attributed production exceeds the three hundred thousand (300,000)-ton annual production limit during the twelve (12) months immediately following the date on which the permit was originally issued.

4. *10 CSR 40–8.070 Applicability and General Performance Requirements*

a. At 10 CSR 40–8.070(2)(C)1.A.(II), Missouri is replacing a reference to ''paragraph (2)(C)10'' with a reference to ''paragraph (2)(C)11.''

b. At 10 CSR 40–8.070(2)(C)1.A.(II)(a), Missouri is proposing to change the end of the period for which cumulative production and revenue is calculated for coal or other minerals from ''extracted prior to November 1, 1992, and every October after that'' to ''extracted prior to October 1, 1992, September 30, 1992 and every September 30 after that.''

c. At 10 CSR 40–8.070(2)(C)10.F(I), (II), and (III), Missouri replaced the term ''commission'' with the term ''regulatory program.''

d. Missouri proposed the following new provisions at 10 CSR 40–8.070(2)(F) and (G):

(F) The commission may terminate its jurisdiction under the regulatory program over the reclaimed site of a completed surface coal mining and reclamation operation, or portion thereof, when:

1. The commission or director determines in writing that under the initial program, all requirements imposed under 10 CSR 40–2, 10 CSR 40–3, 10 CSR 40–4 and 10 CSR 40–8 have been successfully completed; or

2. The commission or director determines in writing that all requirements imposed under 10 CSR 40 chapters 3 through 8 have been successfully completed, and,

3. The operator has properly applied for, and obtained release of Phase III reclamation liability in accordance with 10 CSR 40–7.021(3) through (5).

(G) Following a termination of jurisdiction under subsection (F) of this rule, the commission shall reassert jurisdiction under the regulatory program over a site if it is demonstrated that the determination made under subsection (F) of this rule, or the release of Phase III reclamation liability referred to under paragraph (F) of this rule was based upon fraud, collusion, or misrepresentation of a material fact.

G. 10 CSR 40–9.020 Abandoned Mine Reclamation and Restoration; Reclamation

1. Missouri proposes to revise the first sentence of 10 CSR 40–9.020(1)(D)4 to read as follows:

The commission finds in writing that the site meets the eligibility requirements of this section and the priority objectives stated in subsections (4)(A) and (B) of this rule and that the reclamation priority of the site is the same or more urgent than the reclamation priority for other lands and waters eligible pursuant to this section.

2. Missouri proposes to add the following new provision at 10 CSR 40–9.020(1)(F):

If reclamation of a site covered by an interim or permanent program permit is carried out under the State reclamation program, the permittee of the site shall reimburse the abandoned mine land reclamation fund for the cost of the reclamation that is in excess of any bond forfeited to ensure reclamation. In performing reclamation under subsection (1)(D) of this rule, the commission shall not be held liable for any violations of any performance standards or reclamation requirements specified in Chapter 444 RSMo (1994) nor shall a reclamation activity undertaken on such lands or waters be held to any standards set forth in Chapter 444 RSMo (1994).

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h) and 884.15(a), we are seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15 and 884.14. If we approve the amendment, it will become part of the Missouri program.

Written Comments: If you submit written or electronic comments on the proposed rule during the 30-day comment period, they should be specific, should be confined to issues pertinent to the notice, and should explain the reason for your recommendation(s). We may not be able to consider or include in the Administrative Record comments delivered to an address other than the one listed above (see **ADDRESSES**).

Electronic Comments: Please submit Internet comments as an ASCII, WordPerfect, or Word file avoiding the use of special characters and any form of encryption. Please also include ''Attn:

SPATS NO. MO–033–FOR'' and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Mid-Continent Regional Coordinating Center at (618) 463–6460.

Availability of Comments: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours at OSM's Mid-Continent Regional Coordinating Center (see **ADDRESSES**). Individual respondents may request that we withhold their home address from the administrative record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Public Hearing: If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., c.s.t. on November 15, 2000. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her testimony. The public hearing will continue on the specified date until all persons scheduled to speak have been heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after all persons scheduled to speak and persons present in the audience who wish to speak have been heard. If you are disabled and need a special accommodation to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Public Meeting: If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. If you wish to meet with us to discuss the proposed amendment, you may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will also make a written summary of each meeting a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary under SMCRA. Section 405(d) of SMCRA requires State abandoned mine reclamation programs to be in compliance with the procedures, guidelines, and requirements of SMCRA.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met. Decisions on proposed abandoned mine land reclamation plans and revisions submitted by a State or Tribe are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and 30 CFR Part 884 of the Federal regulations.

National Environmental Policy Act

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed State regulatory program provision does not constitute a major Federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA) (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A). Agency decisions on proposed State and Tribal abandoned mine land reclamation plans and revisions are also categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million.

b. Will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 925

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 24, 2000.

Malcolm Ahrens,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 00–27919 Filed 10–30–00; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–119–2–7472; FRL–6893–5]

Approval and Promulgation of Implementation Plans; Texas; Electric Generating Facilities; Cement Kilns; and Major Stationary Sources of Nitrogen Oxides for the Dallas/Fort Worth Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed approval.

SUMMARY: The EPA is proposing approval of rules into the Texas State Implementation Plan (SIP). This rulemaking covers three separate actions.

First, we are proposing to approve revisions to the Texas Nitrogen Oxides (NO_X) rules for electric generating facilities in East and Central Texas. These new limits for electric generating facilities in East and Central Texas will contribute to attainment of the 1-hour ozone National Ambient Air Quality Standard (NAAQS) in the Houston/Galveston (H/GA), Dallas/Fort Worth (D/FW), and Beaumont/Port Arthur (B/PA) 1-hour ozone nonattainment areas. They will also contribute to continued maintenance of the standard in the eastern half of Texas and will strengthen the existing Texas SIP.

Second, we are proposing to approve revisions to the Texas NO_X rules for cement kilns in East and Central Texas. These rule revisions will contribute to attainment of the 1-hour ozone standard in the D/FW area, will contribute to continued maintenance of the standard in the eastern half of the State of Texas, and will strengthen the existing Texas SIP.

Third, we are proposing to approve revisions to the Texas NO_X rules for major stationary sources in the D/FW 1-hour ozone nonattainment area. These new limits for stationary sources will contribute to attainment of the 1-hour ozone standard in the D/FW nonattainment area.

The EPA is proposing approval of these SIP revisions to regulate emissions of NO_X as meeting the requirements of the Federal Clean Air Act (the Act).

DATES: Comments must be received on or before November 30, 2000.

ADDRESSES: Your comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. Copies of the documents about this action including the Technical Support Document, are available for public inspection during normal business hours at the above and following locations. Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Shar, P.E., Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214)665–6691.

SUPPLEMENTARY INFORMATION:

Table of Contents

1. What are we proposing to approve?
2. What does the April 30, 2000, SIP revision for electric generating facilities in East and Central Texas say?
3. What does the April 30, 2000, SIP revision for cement kilns in East and Central Texas say?
4. What does the April 30, 2000, SIP revision for major stationary sources in the D/FW area say?
5. What are the existing NO_X emissions specifications in the Texas SIP?
6. What are NO_X?
7. What is a nonattainment area?
8. What are definitions of major sources for NO_X?
9. What is a State Implementation Plan?
10. What is the Federal approval process for a SIP?
11. What does Federal approval of a SIP mean to me?
12. What areas in Texas will this action affect?

Throughout this document ''we,'' ''us,'' and ''our'' means EPA.

1. What Are We Proposing To Approve?

On April 30, 2000, the Governor of Texas submitted rule revisions to the 30 TAC, Chapter 117, ''Control of Air Pollution From Nitrogen Compounds,'' as a revision to the SIP for electric generating facilities in East and Central Texas. Texas submitted this revision to us as a part of the attainment plans for the D/FW, B/PA, and H/GA 1-hour ozone nonattainment areas. The revision also contributes to continued maintenance of the standard in the eastern half of the State of Texas, and it is a strengthening of the existing Texas SIP.

On April 30, 2000, the Governor of Texas submitted rule revisions to the 30 TAC, Chapter 117, ''Control of Air Pollution From Nitrogen Compounds,'' as a revision to the SIP for cement kilns in East and Central Texas. Texas submitted this revision to us as a part of the NO_X reductions needed for the continued maintenance of the 1-hour ozone standard in the eastern half of the State and for the D/FW area to attain the 1-hour ozone standard, and as a strengthening of the existing Texas SIP.

On April 30, 2000, the Governor of Texas submitted rule revisions to the 30 TAC, Chapter 117, ''Control of Air Pollution From Nitrogen Compounds,'' as a revision to the SIP for major stationary sources operating in the D/FW 1-hour ozone nonattainment area. Texas submitted this revision to us as a part of the NO_X reductions needed for the D/FW area to attain the 1-hour ozone standard.

We are proposing three separate actions:

(1) We are specifically proposing to approve new sections 117.131

concerning Applicability, 117.133 concerning Exemptions, 117.134 concerning Gas Fired Steam Generation, 117.135 concerning Emission Specification, 117.138 concerning System Cap, 117.141 concerning Initial Demonstration of Compliance, 117.143 concerning Continuous Demonstration of Compliance, 117.145 concerning Final Control Plan Procedures, 117.147 concerning Revision of Final Control Plan, 117.149 concerning Notification, Recordkeeping, and Reporting Requirements, 117.512 concerning Compliance Schedule for Utility Electric Generation in East and Central Texas, and a revision to the existing SIP-approved section 117.10 concerning Definitions. We are proposing approval of these rule revisions under part D of the Act because Texas is relying on these NO_X reductions to demonstrate attainment of the 1-hour ozone standard in the H/GA, B/PA, and D/FW 1-hour ozone nonattainment areas in the State of Texas. We are also proposing approval under sections 110 and 116 of the Act because the State is relying upon the NO_X reductions to show continued maintenance of the standard in the eastern half of the State of Texas and as a strengthening of the existing Texas SIP;

(2) We are specifically proposing to approve new sections 117.260 concerning Cement Kiln Definitions, 117.261 concerning Applicability, 117.265 concerning Emission Specifications, 117.273 concerning Continuous Demonstration of Compliance, 117.279 concerning Notification, Recordkeeping, and Reporting Requirements, 117.283 concerning Source Cap, and 117.524 concerning Compliance Schedule for Cement Kilns. We are proposing approval of these cement kiln rule revisions under part D of the Act because Texas is relying on these NO_X reductions to demonstrate attainment of the 1-hour ozone standard for the D/FW 1-hour ozone nonattainment area. We are also proposing to approve these rule revisions under sections 110 and 116 because they contribute to continued maintenance of the standard in the eastern half of the State and they strengthen the existing Texas SIP; and

(3) We are specifically proposing to approve new sections 117.104 concerning Gas-Fired Steam Generation, 117.106 concerning Emission Specifications for Attainment Demonstrations, 117.108 concerning System Cap, 117.116 concerning Final Control Plan Procedures for Attainment Demonstration Emission Specifications, 117.206 concerning Emission Specifications for Attainment Demonstrations, and 117.216 concerning Final Control Plan Procedures for Attainment Demonstration Emission Specifications as they relate to the D/FW 1-hour ozone nonattainment area, revisions to the existing SIP-approved sections 117.101—117.121, 117.201—117.223, 117.510, 117.520, and 117.570 as they relate to the D/FW 1-hour ozone nonattainment area, and the repeal of existing SIP-approved sections 117.109, and 117.601 for the nonattainment areas. We are proposing approval of these D/FW NO_X point source rule revisions under part D of the Act because Texas is relying on these NO_X control measures for major stationary sources in the D/FW area to demonstrate attainment of the 1-hour ozone standard in the D/FW ozone nonattainment area.

2. What Does the April 30, 2000, SIP Revision for Electric Generating Facilities in East and Central Texas Say?

This rule revision requires reductions of NO_X from electric utility power boilers and gas turbines in East and Central Texas. The following two tables contain a summary of the April 30, 2000, SIP revision for electric generating facilities and gas turbines in East and Central Texas.

TABLE I.—AFFECTED SOURCES AND NO_X EMISSION SPECIFICATIONS FOR UTILITY POWER BOILERS AND GAS TURBINES IN EAST AND CENTRAL TEXAS

Source	NO_X emission specification	Explanation
Electric power boilers	0.14 (lb/MMBtu)	Gas fired, annual (calendar) average.
Electric power boilers	0.165 (lb/MMBtu)	Coal fired, annual (calendar) average.
Stationary gas turbines	0.14 (lb/MMBtu)	If subject to Texas Utility Commission (TUC), Section 39.264.
Stationary gas turbines	0.15 (lb/MMBtu)	If not subject to TUC, Section 39.264, or 42 ppmv NO_X adjusted to 15% oxygen on a dry basis as an alternate specification. If subject to Texas Senate Bill 7 of 1997, then 0.14 (lb/MMBtu).

We are of the opinion that these emission specifications are in agreement with those of the Ozone Transport Assessment Group (OTAG). *See* 63 FR 49446, published on September 16, 1998.

TABLE II.—AFFECTED SOURCES AND THEIR COMPLIANCE SCHEDULES FOR UTILITY POWER BOILERS AND GAS TURBINES IN EAST AND CENTRAL TEXAS

Source	Compliance schedule
Electric generating units owned by utilities and subject to TUC 39.263(b).	May 1, 2003.
All other units	May 1, 2005.

We are of the opinion that the above listed compliance dates are as expeditious as practicable compared with the compliance dates for similar sources in serious and severe ozone nonattainment areas in the country.

We are proposing approval of the NO_X emission specifications and compliance dates for electric generating facilities in East and Central Texas as a part of the Texas 1-hour ozone SIP under part D of the Act because the State is relying on the NO_X control measures to demonstrate attainment of the 1-hour ozone standard in the H/GA, B/PA, and D/FW ozone nonattainment areas in the State of Texas. We are also proposing approval of these rules under sections 110 and 116 because they contribute to continued maintenance of the standard in the eastern half of the State of Texas and they strengthen the existing Texas SIP.

3. What Does the April 30, 2000, SIP Revision for Cement Kilns in East and Central Texas Say?

This rule revision requires reductions of NO_X from cement kilns operating in East and Central Texas. The following two tables contain a summary of the April 30, 2000, SIP revision for cement kilns operating in East and Central Texas.

TABLE III.—AFFECTED SOURCES, LOCATIONS, AND NO_X EMISSION SPECIFICATIONS FOR CEMENT KILNS

Source	County	NO_X emission specification
Long wet kiln	Bexar, Comal, Hays, McLennan	6.0 lb/ton of clinker produced.
Long wet kiln	Ellis	4.0 lb/ton of clinker produced.
Long dry kiln	Bexar, Comal, Hays, McLennan, Ellis	5.1 lb/ton of clinker produced.
Preheater kiln	Bexar, Comal, Hays, McLennan, Ellis	3.8 lb/ton of clinker produced.
Precalciner or preheater-precalciner kiln.	Bexar, Comal, Hays, McLennan, Ellis	2.8 lb/ton of clinker produced.

TABLE IV.—AFFECTED SOURCES AND THEIR COMPLIANCE SCHEDULES FOR CEMENT KILNS

Source	Compliance schedule
Cement kilns in Ellis County.	May 1, 2003.
Cement kilns in Bexar, Comal, Hays, McLennan Counties.	May 1, 2005.

The proposed emission specifications meet and are in agreement with those found in our reference document EPA–453/R–94–004 for cement plants. We are of the opinion that the above listed compliance dates are as expeditious as practicable compared with the compliance dates for similar sources in serious and severe ozone nonattainment areas in the country. We are proposing approval of the NO_X emission specifications and compliance dates for cement kilns as a part of the Texas 1-hour ozone SIP under part D of the Act because the State is relying on these NO_X control measures to demonstrate attainment of the 1-hour ozone standard in the D/FW area. We are also proposing approval of these rules under sections 110 and 116 because they contribute to continued maintenance of the standard in the eastern half of the State of Texas and they strengthen the existing Texas SIP.

4. What Does the April 30, 2000, SIP Revision for Major Stationary Sources in the D/FW Area Say?

This rule revision requires reductions in emissions of NO_X from major stationary sources operating in the D/FW ozone nonattainment area. The following three tables contain a summary of the April 30, 2000, SIP revision for major stationary sources operating in the D/FW ozone nonattainment area. The proposed emission specifications, for the D/FW area, listed in Table V are more stringent than those Reasonably Available Control Technology (RACT) emission specifications found in Table VIII of this document. We published approval of the Texas NO_X RACT emission specifications in 65 FR 53172 on September 1, 2000.

TABLE V.—AFFECTED SOURCES, EMISSION SPECIFICATIONS, AND LOCATIONS FOR MAJOR STATIONARY SOURCES IN THE D/FW OZONE NONATTAINMENT AREA

Source	Emission specification	Location
Gas fired boilers ≥40 MMBtu, non-utility boilers	30 ppmv NO_X at 3% O2 dry basis	D/FW
Utility boilers—part of a large system in D/FW	0.033 lb NO_X/MMBtu	D/FW
Utility boilers—part of a small system in D/FW	0.06 lb NO_X/MMBtu	D/FW
Lean burn stationary engine ≥300 hp gas fired and gas/liquid-fired engines	2.0 g NO_X/hp-hr	D/FW
Lean burn stationary engine ≥300 hp gas fired and gas/liquid-fired engines	3.0 g CO/hp-hr	D/FW
Boiler or process heater ≥40 MMBtu	400 ppmv CO at 3% O2 dry basis	D/FW
Boiler or process heater ≥40 MMBtu	5 ppmv ammonia on a one-hour averaging basis	D/FW

We are proposing to approve the proposed rules under section 110 of the Act on the basis that these rules will strengthen the SIP.

TABLE VI.—AFFECTED SOURCES AND THEIR COMPLIANCE SCHEDULES FOR UTILITY ELECTRIC GENERATION UNITS IN D/FW OZONE NONATTAINMENT AREA

Source type	Compliance date
RACT	No later than November 15, 1999.
⅔ NO_X emission reductions	No later than May 1, 2003.
All NO_X reductions	No later than May 1, 2005.

TABLE VII.—AFFECTED SOURCES AND THEIR COMPLIANCE SCHEDULES FOR INDUSTRIAL, COMMERCIAL, AND INSTITUTIONAL COMBUSTION SOURCES IN D/FW OZONE NONATTAINMENT AREA

Source type	Compliance date
RACT	No later than November 15, 1999.
Lean burn engines	No later than November 15, 2001.
⅔ NO_X emission reductions.	No later than May 1, 2003.
All NO_X reductions No later than May 1, 2005..	

We are of the opinion that the above listed compliance dates in the Tables VI and VII are as expeditious as practicable compared with the compliance dates of similar sources in serious and severe ozone nonattainment areas in the country. We are proposing approval of the NO_X emission specifications and compliance dates for the affected major stationary sources in the D/FW area as a part of the Texas 1-hour ozone SIP under part D of the Act because the State is relying on the NO_X control measures to demonstrate attainment of the 1-hour ozone standard in the D/FW nonattainment area.

5. What Are the EAxisting NO_X Emissions Specifications in the Texas SIP?

The following table contains a summary of the type of affected sources, their corresponding emission limits, and relevant applicability information for NO_X sources in the existing Texas SIP-approved rules. We have determined that these emission specifications in the existing Texas SIP-approved rules are consistent with Federal guidelines, and we approved them as meeting the RACT requirements of the Act. *See* 65 FR 53172, published on September 1, 2000.

TABLE VIII.—SUMMARY OF THE TEXAS SIP-APPROVED RULES FOR SOURCES IN THE H/GA, B/PA, AND D/FW NONATTAINMENT AREAS

Source	NO_X limit	Additional information
Utility Boilers	0.26 lb/MMBtu	Natural gas or a combination of natural gas and waste oil, 24-hour rolling average.
Utility Boilers	0.20 lb/MMBtu	Natural gas or a combination of natural gas and waste oil, 30-day rolling average.
Utility Boilers	0.38 lb/MMBtu	Coal, tangentially-fired, 24-hour rolling average.
Utility Boilers	0.43 lb/MMBtu	Coal, wall-fired, 24-hour rolling average,
Utility Boilers	0.30 lb/MMBtu	Fuel oil only, 24-hour rolling average.
Utility Boilers	[a(0.26) + b(0.30)]/(a + b)	Oil and gas mixture, 24-hour rolling average, where a=percent natural gas heat input b=percent fuel oil heat input.
Stationary Gas Turbines	42 parts per million volume dry (ppmvd) basis.	@ 15% 02, natural gas, ≥30 Mega Watt (mW) annual electric output ≥2500 hour × mW rating.
Stationary Gas Turbines	65 parts per million volume dry (ppmvd).	@ 15% O2, fuel oil.
Stationary Gas Turbines	0.20 lb/MMBtu	Natural gas, peaking units, annual electric output <2500 hour × mW rating.
Stationary Gas Turbines	0.30 lb/MMBtu	Fuel oil, peaking units, annual electric output <2500 hour × mW rating.
Non-utility Boilers	0.10 lb/MMBtu	Natural gas, low heat release and T<200 °F, capacity≥100 MMBtu/hr.
Non-utility Boilers	0.15 lb/MMBtu	Natural gas, low heat release, preheated air 200≤T< 400 °F, capacity≥100 MMBtu/hr.
Non-utility Boilers	0.20 lb/MMBtu	Natural gas, low heat release, preheated air T≥400 °F, capacity≥100 MMBtu/hr.
Non-utility Boilers	0.20 lb/MMBtu	Natural gas, high heat release, without air or preheated air T<250 °F, capacity≥100 MMBtu/hr.
Non-utility Boilers	0.24 lb/MMBtu	Natural gas, high heat release, preheated air 250≤T<500 °F, capacity≥100 MMBtu/hr.
Non-utility Boilers	0.28 lb/MMBtu	Natural gas, high heat release, preheated air T≥500 °F, capacity≥100 MMBtu/hr.
Process Heaters	0.10 lb/MMBtu	Natural gas, preheated air T<200 °F, capacity≥100 MMBtu/hr.
Process Heaters	0.13 lb/MMBtu	Natural gas, preheated air 200≤T<400 °F, capacity≥100 MMBtu/hr.
Process Heaters	0.18 lb/MMBtu	Natural gas, low heat release, preheated air T≥400 °F, capacity≥100 MMBtu/hr.
Process Heaters	0.10 lb/MMBtu	Natural gas, firebox T<1400 °F, capacity≥100 MMBtu/hr.
Process Heaters	0.125 lb/MMBtu	Natural gas, firebox 1400≤T<1800 °F, capacity≥100 MMBtu/hr.
Process Heaters	0.15 lb/MMBtu	Natural gas, firebox T≥1800 °F, capacity≥100 MMBtu/hr.
Process Heaters Non-utility and Boilers.	0.30 lb/MMBtu	Liquid fuel, capacity≥100 MMBtu/hr.
Process Heaters and Non-utility Boilers.	0.30 lb/MMBtu	Wood fuel, capacity≥100 MMBtu/hr.
Stationary Gas Turbines	42 parts per million volume dry (ppmvd) basis.	@ 15% O2, rating≥10 mW.
Reciprocating Internal Combustion Engines.	2.0 gram/hp-hr	Natural gas, rich burn, stationary, capacity≥150 hp in H/GA, capacity ≥300 hp in B/PA.
Absorbers of Adipic Acid Production Units.	2.5 lb/ton of acid produced	24-hr rolling average.
Absorbers of Nitric Acid Production Units.	2.0 lb/ton of acid produced	24-hr rolling average.

TABLE VIII.—SUMMARY OF THE TEXAS SIP-APPROVED RULES FOR SOURCES IN THE H/GA, B/PA, AND D/FW NONATTAINMENT AREAS—Continued

Source	NO_X limit	Additional information
Reciprocating Internal Combustion Engines.	3.0 gram/hp-hr	Natural gas, lean burn, stationary, capacity≥150 hp in H/GA, capacity≥300 hp in B/PA or D/FW. Also includes a 3.0 gram/hp-hr limit for CO.

6. What Are NO_X?

Nitrogen oxides belong to the group of criteria air pollutants. The NO_X result from burning fuels, including gasoline and coal. Nitrogen oxides react with volatile organic compounds (VOC) to form ozone or smog, and are also major components of acid rain.

7. What Is a Nonattainment Area?

A nonattainment area is a geographic area in which the level of a criteria air pollutant is higher than the level allowed by Federal standards. A single geographic area may have acceptable levels of one criteria air pollutant but unacceptable levels of one or more other criteria air pollutants; thus, a geographic area can be attainment for one criteria pollutant and nonattainment for another criteria pollutant at the same time.

8. What Are Definitions of Major Sources for NO_X?

Section 302 of the Act generally defines ''major stationary source'' as a facility or source of air pollution which emits, when uncontrolled, 100 tons per year (tpy) or more of air pollution. This general definition applies unless another specific provision of the Act explicitly defines major source differently. Therefore, for NO_X, a major source is one which emits, when uncontrolled, 100 tpy or more of NO_X in marginal and moderate areas. The B/PA area is a moderate ozone nonattainment area, so the major source size for the B/PA area is 100 tpy or more, when uncontrolled. According to section 182(c) of the Act, a major source in a serious nonattainment area is a source that emits, when uncontrolled, 50 tpy or more of NO_X. The D/FW area is a serious ozone nonattainment area, so the major source size for D/FW is 50 tpy or more, when uncontrolled.

According to section 182(d) of the Act, a major source in a severe nonattainment area is a source that emits, when uncontrolled, 25 tpy or more of NO_X. The H/GA area is a severe ozone nonattainment area, so the major source size for the H/GA area is 25 tpy or more, when uncontrolled.

9. What Is a State Implementation Plan?

Section 110 of the Act requires States to develop air pollution regulations and control strategies to ensure that State air quality meets the NAAQS that EPA has established. Under section 109 of the Act, EPA established the NAAQS to protect public health. The NAAQS address six criteria pollutants. These criteria pollutants are:

Carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each State must submit these regulations and control strategies to us for approval and incorporation into the federally enforceable SIP. Each State has a SIP designed to protect air quality. These SIPs can be extensive, containing State regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

10. What Is the Federal Approval Process for a SIP?

When a State wants to incorporate its regulations into the federally enforceable SIP, the State must formally adopt the regulations and control strategies consistent with State and Federal requirements. This process includes a public notice, a public hearing, a public comment period, and a formal adoption by a State-authorized rulemaking body.

Once a State adopts a rule, regulation, or control strategy, the State may submit the adopted provisions to us and request that we include these provisions in the federally enforceable SIP. We must then decide on an appropriate Federal action, provide public notice on this action, and seek additional public comment regarding this action. If we receive adverse comments, we must address them prior to a final action.

Under section 110 of the Act, when we approve all State regulations and supporting information, those State regulations and supporting information become a part of the federally approved SIP. You can find records of these SIP actions in the Code of Federal Regulations at Title 40, part 52, entitled ''Approval and Promulgation of Implementation Plans.'' The actual State regulations that we approved are not reproduced in their entirety in the CFR but are ''incorporated by reference,'' which means that we have approved a given State regulation with a specific effective date.

11. What Does Federal Approval of a SIP Mean to Me?

A State may enforce State regulations before and after we incorporate those regulations into a federally approved SIP. After we incorporate those regulations into a federally approved SIP, both EPA and the public may also take enforcement action against violators of these regulations.

12. What Areas in Texas Will This Action Affect?

The following table contains list of affected counties and the rules revision we are proposing to approve.

TABLE IX.—RULES LOG NUMBER, RULES REVISION, AND AFFECTED AREAS FOR TEXAS NO_X SIP

Rule log No.	Rule revision	Affected areas
1999–046–117–AI	Electric generating facilities (East and Central Texas).	Atascosa, Bastrop, Bexar, Brazos, Brazoria, Chambers, Cherokee, Calhoun, Collin, Dallas, Denton, Fannin, Fayette, Fort Bend, Freestone, Galveston, Goliad, Gregg, Grimes, Hardin, Harris, Harrison, Henderson, Hood, Hunt, Jefferson, Lamar, Liberty, Limestone, Marion, McLennan, Milam, Montgomery, Morris, Nueces, Orange, Parker, Red River, Robertson, Rusk, Tarrant, Titus, Travis, Victoria, Waller, and Wharton counties.
1999–049–117–AI	Cement kilns	Bexar, Comal, Ellis, Hays, and McLennan counties.

TABLE IX.—RULES LOG NUMBER, RULES REVISION, AND AFFECTED AREAS FOR TEXAS NO_X SIP—Continued

Rule log No.	Rule revision	Affected areas
1999–055D–117–AI	Point sources in D/FW area	Collin, Dallas, Denton, and Tarrant counties.

If you are in one of these Texas counties, you should refer to the Texas NO_X rules to determine if and how today's action will affect you.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This proposed action merely approves State law as meeting federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Because this rule proposes to approve pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this proposed rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998).

This proposed rule 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a State rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS.

It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

The proposed rule does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Nitrogen dioxide, Nitrogen oxides, Nonattainment, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: October 16, 2000.

Gregg A. Cooke,

Regional Administrator, Region 6.

[FR Doc. 00–27925 Filed 10–30–00; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 435

[HCFA–2086–P]

RIN 0938–AK22

Medicaid Program; Change in Application of Federal Financial Participation Limits

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would change the current requirement that limits on Federal Financial Participation (FFP) must be applied before States use less restrictive income methodologies than those used by related cash assistance programs in determining eligibility for Medicaid.

This regulatory change is necessary because the current regulatory interpretation of how the FFP limits apply to income methodologies under section 1902 (r)(2) of the Social Security Act (the Act) unnecessarily restricts States' ability to take advantage of the authority to use less restrictive income methodologies under that section of the statute. While the enactment of section 1902(r)(2) of the Act could be read in the limited manner embodied in current regulations the statute does not require such a reading, and subsequent State experience with implementing section 1902(r)(2) calls into question the current regulation's approach.

DATES: We will consider comments if we receive them at the appropriate address, as provided below, no later than 5 p.m. on November 30, 2000.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–2086–P, P.O. Box 8010, Baltimore, MD 21244–8010.

To ensure that mailed comments are received in time for us to consider them, please allow for possible delays in delivering them.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses:

Room 443-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room C5–16–03, 7500 Security Boulevard, Baltimore, MD 21244–8010.

Comments mailed to the above addresses may be delayed and received too late for us to consider them.

Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–2086–P.

Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 443–G of the Department's office at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 to 5 p.m. (phone: (202) 690–7890).

FOR FURTHER INFORMATION CONTACT: Roy Trudel, (410) 786–3417.

SUPPLEMENTARY INFORMATION: Generally, in determining financial eligibility of individuals for the Medicaid program, State agencies must apply the financial methodologies and requirements of the cash assistance program that is most closely categorically related to the individual's status. Our regulations at 42 CFR 435.601 set forth the requirements for State agencies applying less restrictive income and resource methodologies when determining Medicaid eligibility under the authority of section 1902(r)(2) of the Social Security Act (the Act). Current regulations at 42 CFR 435.1007 provide that when States use less restrictive income and resource methodologies under section 1902(r)(2), the limits on Federal Financial Participation (FFP) in section 1903(f) of the Act apply before application of any less restrictive income methodologies. We are proposing to amend that regulation to change this requirement so that FFP limits would apply after application of any less restrictive income methodologies under section 1902(r)(2) of the Act.

The adoption of this policy would give States additional flexibility in setting Medicaid eligibility requirements. Also, we believe adoption of this policy reflects the intent of Congress to move the Medicaid program away from cash assistance program rules, as evidenced by enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, which severed the link between the AFDC program and Medicaid.

I. Background

Section 2373(c) of the Deficit Reduction Act of 1984 (DRA) established a moratorium period beginning on October 1, 1981, during which the Secretary was prohibited from taking any compliance, disallowance, penalty, or other regulatory action against a State because a State's Medicaid plan included a standard or methodology for determining financial eligibility for the medically needy that the Secretary determined was less restrictive than the standard or methodology required under the related cash assistance program.

The provisions of the DRA moratorium were clarified by section 9 of the Medicare and Medicaid Patient Program Protection Act of 1987. Section 9 amended section 2373(c) of DRA to specify that the moratorium applied to the Secretary's compliance, disallowance, penalty, or other regulatory actions against a State because the State plan is determined to be in violation of provisions of the Act for coverage, as optional categorically needy, of certain aged, blind, and disabled individuals who were in institutions or receiving home and community-based services, as well as methodologies for determining financial eligibility of the medically needy.

The moratorium applied to an amendment or other changes in Medicaid State plans, or operation or program manuals, regardless of whether the Secretary had approved, disapproved, acted upon, or not acted upon the amendment or other change, or operation or program manual.

Authority to adopt less restrictive financial methodologies as part of a State's Medicaid plan was added to the law in 1988. Section 303(e) of the Medicare Catastrophic Coverage Act of 1988, enacted on July 1, 1988 (and amended by section 608(d)(16)(C) of the Family Support Act of 1988), amended the Act to permit States to use less restrictive financial methodologies in determining eligibility not only for the medically needy eligibility group at section 1902(a)(10)(C) of the Act, but also for specified categorically needy groups of individuals. These categorically needy groups include qualified pregnant women and children (section 1902(a)(10)(A)(i)(III) of the Act), poverty level pregnant women and infants (section 1902(a)(10)(A)(i)(IV) of the Act), qualified Medicare beneficiaries (section 1905(p) of the Act), all of the optional categorically needy groups specified in section 1902(a)(10)(A)(ii) of the Act, and individuals in States that have elected, under section 1902(f) of the Act, to apply more restrictive eligibility criteria than are used by the Supplemental Security Income (SSI) program. This provision of the Medicare Catastrophic Coverage Act was effective for medical assistance furnished on or after October 1, 1982. This authority was codified in a new section 1902(r)(2) of the Act.

The application of FFP limits prior to use of section 1902(r)(2) more liberal income methodologies was based on the Senate Report accompanying the 1987 amendment to the DRA moratorium (Senate Report No. 109, 100th Congress, 1st session at 24–25) which stated that:

> The moratorium does not eliminate the limits on income and resources of eligible individuals and families under section 1903(f) (including the requirements that the applicable medically needy income level not exceed the amount determined in accordance with standards prescribed by the Secretary to be equivalent to 133⅓ percent of the most generous AFDC eligibility standard, and that the income of individuals receiving a State supplementary payment in a medical institution or receiving home and community-based services under a special income standard not exceed 300% of the SSI standard). The moratorium also does not permit States Medicaid benefits to those who are not ''categorically related'' individuals (that is, individuals who would not be eligible for Medicaid, regardless of the amount of their income and resources).

Since, as the legislative history indicates, section 1902(r)(2) is essentially the codification of the DRA moratorium, we continued to apply the FFP limits at section 1903(f) of the Act when developing the implementing regulations for section 1902(r)(2).

However, subsequent experience has shown that the policy we adopted restricted the flexibility Congress intended States to have when it enacted section 1902(r)(2) in ways we did not foresee when we published the current regulations. The real effect of the policy we adopted was to make it almost impossible for States to actually use less restrictive income methodologies for many eligibility groups, including the medically needy, because use of such methodologies would violate the FFP limits. States have noted that the application of the FFP limits prior to use of less restrictive income methodologies unnecessarily limits their flexibility to expand Medicaid eligibility and simplify program administration by modifying cash assistance financial methodologies that do not work well in the Medicaid context.

Further, the passage of Pub. L. 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, leads us to believe that the current

application of the FFP income limits under section 1902(r)(2) no longer reflects Congressional intent. In enacting this legislation, Congress clearly expressed its intent that States should have the flexibility to depart from cash assistance program-based income criteria to define Medicaid eligibility. Given that Congress chose to sever the link between cash assistance and Medicaid under this legislation, we believe it is valid to conclude that Congress did not actually intend that FFP limits, which are based on cash assistance standards, apply prior to use of less restrictive financial methodologies under section 1902(r)(2) of the Act for those eligibility groups to which section 1902(r)(2) applies.

Also, section 1903(f) was enacted prior to section 1902(r)(2). Had Congress intended that the FFP limits apply prior to use of less restrictive income methodologies, it could have amended section 1903(f) to so state. The fact that section 1903(f) was not so amended indicates that Congress intended that the FFP limits apply after, not before, use of less restrictive income methodologies.

Thus, this change will give States needed additional flexibility in setting Medicaid eligibility requirements. Even though section 1902(r)(2) was derived from the DRA moratorium, its own legislative history did not contain any similar discussion of its interaction with the 1903(f) FFP limits. As such, we do not believe it is necessary to consider the legislative history of DRA to be determinative of Congressional understanding of the operation of section 1902(r)(2).

II. Provisions of the Proposed Regulations

As explained above, we are proposing to amend § 435.1007 to change the requirement that FFP limits apply prior to use of any less restrictive income methodologies under section 1902(r)(2) of the Act.

Section 435.1007 Categorically Needy, Medically Needy, and Qualified Medicare Beneficiaries

In 435.1007(b), we intend to delete the phrase ''does not exceed'' and replace it with the word ''exceeds''. This is purely an editorial change to correct an error in wording in the current regulation.

In § 435.1007, we are proposing to amend paragraph (e) by removing the phrase ''are applied and before the less restrictive income deductions under § 435.601(c)'' and replacing it with the following language: ''and any income disregards in the State plan authorized under section 1902(r)(2)'.

We are proposing to further amend § 435.1007 by adding a new paragraph (f) to read: ''A State may use the less restrictive income methodologies included under its State plan as authorized under § 435.601 in determining whether a family's income exceeds the limitation described in paragraph (b) of this section.''

III. Collection of Information Requirements

Under the Paper Work Reduction Act (PRA) of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment if Office of Management and Budget review and approval is needed because a proposed regulation imposes a collection of information requirement.

However, this proposed regulation does not impose any new collection of information requirements. Whether to take advantage of the flexibility the proposed rule makes available is strictly at the option of each State. If a State chooses to use any less restrictive income methodologies under the proposed rule, it would do so by using the existing process for amending its State Medicaid plan. The proposed rule imposes no new or different processes or information requirements on States.

IV. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the major comments in the preamble to that document.

V. Regulatory Impact Statement

A. Overall Impact

We and the Office of Management and Budget have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any one year). This rule is considered to be a major rule with economically significant effects.

The Medicaid and Medicare cost of the proposed rule is projected to be $960 million over five years. This estimate is based on available cost data on medically needy income standards and medically needy spending levels. Such data could be obtained for only two States (Utah and California). Using that available data, we projected the potential cost of the proposed rule by assuming that within two years of enactment about one fourth of States (*i.e.*, States representing at least 25% of total Medicaid program costs) would implement changes similar to those proposed by Utah and California. The result was an estimated potential cost of $860 million over five years in Medicaid costs and about $100 million in Medicare costs as explained below.

Arriving at the Medicaid and Medicare costs was difficult due to the fact that implementation of the option under this rule is entirely at the discretion of the State. Further, States that choose to exercise the option have great latitude in establishing the extent to which, and the eligibility groups for which, the option would be applied under their State Medicaid plan. As a result of limited data being available, we invite comments on this section.

Benefits of the Proposed Rule Change

We believe the proposed change will benefit both States and individuals in a number of ways. For example, under normal eligibility rules, States are required to count many kinds of income. Some of these types of income are administratively burdensome to deal with, and often do not materially affect the outcome of the eligibility determination. Some examples are the value of food or shelter provided to an applicant (called in-kind support and maintenance), income belonging to a parent of a child, or a spouse who is not applying for benefits (called deemed income), and low amounts of income such as interest earned on savings accounts. The proposed rule would allow States to use income disregards to simplify the process of determining eligibility by not counting types of income that primarily impose an administrative burden.

Medically Needy Income Limits

Under a medically needy program, States can choose to cover under Medicaid individuals with income that is too high to otherwise be eligible, but

who, by subtracting incurred medical expenses from their income, could reduce their income to the State's medically needy income standard. This process is known as spending down excess income, or ''spenddown''.

However, in many States the medically needy income standard is very low; in at least 22 States, the medically needy income standard is actually lower than the income standard for SSI benefits ($512 a month for an individual in 2000). In four States, the medically needy income standard is less than $200 a month. This creates a situation where individuals whose income is just slightly over the limit that would allow them to receive Medicaid as SSI recipients must spend down a certain amount of ''excess'' income to reach the medically needy income level.

For example, a person with $512 a month in income can be eligible for SSI and get free Medicaid in most States. A person with just $1 more cannot be eligible for SSI, and thus cannot receive Medicaid based on receiving SSI benefits. Depending on a particular State's medically needy income level, such an individual may have to spend over $300 on medical care each month just to reach a medically needy income limit that is that far below the SSI level.

Under the Medicaid statute, States cannot just increase their medically needy income levels to deal with this problem. However, under the proposed rule, a State could use section 1902(r)(2) to disregard additional amounts of income under its medically needy program, effectively reducing or even eliminating the large spenddown liability described in the example above.

Helping People Move From Institutions to the Community

The medically needy spenddown problem described above can also have adverse effects for people in medical institutions who would like to receive care in community settings. In many States, people with relatively high levels of income (up to $1,536 a month in 2000) can still be eligible for Medicaid provided they are in a medical institution. This is because many States cover an eligibility group that is specifically targeted at people in institutions, and which provides for that high income standard.

As long as a person is in the institution, he or she remains eligible for Medicaid. However, if the person wants to move to the community, he or she will lose eligibility under the institutional group. The only alternative in many cases is to become eligible in the community as medically needy. However, as explained previously, the medically needy income standard is very low in many States. A person who was eligible under the institutional group may find that he or she must spend most of his or her income on medical care in the community before the medically needy income standard can be met. The person may not be able to incur enough in the way of medical expenses while in the community to meet the medically needy income standard, which in turn would mean the person effectively would be without any coverage for medical care. Even if the person could incur enough medical expenses, though, the medical expenses would consume so much income that the person would have little left to use for the basic necessities of life such as food, clothing, shelter, transportation, etc.

The practical effect of this is that many people in institutions who would like to move to the community, and who would normally be able to manage in a community setting, remain in the institution because they literally cannot afford to leave. The proposed change in the regulations would give States opportunities to correct spenddown problems so that more people could leave institutional settings and live in the community.

Encouraging Work Effort

While legislation enacted in the last few years has given States new options for providing Medicaid to individuals with disabilities who want to work, States may want to encourage work effort among individuals eligible under other groups such as the medically needy, or among individuals who may not readily fit into one of the new work incentives groups. One way to encourage work effort is to allow people to keep more of the income they earn without forcing them to either spend more for medical care under a medically needy spenddown, or risk losing Medicaid altogether.

Under section 1902(r)(2) a State could do that by increasing the amount of earned income that is not counted in determining a person's eligibility. However, the current application of the FFP limits to the use of less restrictive income disregards effectively precludes States from offering that kind of encouragement for many eligibility groups. The proposed change in the regulations would remove that restriction, giving States another way to encourage work effort.

Medicaid Eligibility Expansion

In addition to the specific examples described above, section 1902(r)(2) gives States the option of expanding their Medicaid eligibility rolls by disregarding additional types and amounts of income and resources, thereby allowing people who could not otherwise meet the program's eligibility requirements to become eligible. However, the current application of the FFP limits to the use of less restrictive income disregards greatly reduces the options States have to implement that kind of program expansion. The proposed regulation change would give States the full flexibility provided by section 1902(r)(2) to expand their base of eligible individuals if they choose to do so.

Effect on Small Businesses and Small Rural Hospitals

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $5 million or less annually. Individuals and States are not included in the definition of a small entity.

We certify that small entities would not be affected by the proposed rule because the rule only affects States, which by definition are not small entities. The proposed rule would affect only States because any decisions concerning whether to take advantage of the options the rule makes available would be made at the State government level and then implemented by each State. However, because of limited data available, we invite comments in this area.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

This proposed rule would have no direct impact on small rural hospitals. The proposed rule affects only States because only States can implement the option the proposed rule makes available. As such small rural hospitals are in no way involved in the process of deciding whether to take advantage of the flexibility the proposed rule offers. Small rural hospitals would be impacted only to the extent that a State's use of less restrictive income methodologies could result in some

increase in the number of individuals eligible for Medicaid. This in turn could result in a slight increase in utilization of rural hospital services should an individual eligible under the less restrictive methodology need such services. Again, because of limited data available, we invite comments in this area.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an annual expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million. The proposed rule would have no impact on the private sector. The rule would impose no requirements on State, local or tribal governments. Rather, it would offer State governments additional flexibility in operating their Medicaid programs, but would not require that they make any changes in their programs.

Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that would impose substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. The proposed rule would impose no requirement costs on governments, nor does it preempt State law or otherwise have Federalism implications.

HCFA has had discussions of this issue with a number of State governments since approximately 1990. Those discussions have taken place both with individual States and with groups of States, including HCFA's Medicaid Eligibility Technical Advisory Group and the National Association of State Medicaid Directors Executive Council. Based on the many discussions we have had, we believe States will be overwhelmingly in favor of the proposed change.

B. Anticipated Effects

1. Effects on State Governments

The proposed rule will give States greater flexibility in designing and operating their Medicaid programs.

2. Effects on Providers

No providers would be affected by this rule.

3. Effects on the Medicare and Medicaid programs

This rule would increase Medicare costs by about $100 million over five years. Since the rule may increase the number of individuals eligible for Medicaid who receive inpatient hospital services, it would affect the calculation of hospitals' disproportionate share hospital (DSH) calculations under the Medicare program. We estimate that Medicare DSH payments would increase by $100 million over five years due to changes in this rule.

Under Medicaid, it is projected that the Federal cost of this rule could be as much as $860 million over 5 years. However, because actual implementation of the provisions of the rule is strictly at the option of each State, actual Federal program costs would depend on whether, and to what degree, States choose to take advantage of the flexibility provided by the proposed rule.

C. Alternatives Considered

There are few alternatives to the proposed rule to consider. One alternative is to maintain the requirement that the FFP limits apply prior to use of less restrictive income methodologies under § 435.601, but allow additional disregards at a somewhat higher level than is possible under the current regulations. However, this would not provide States the level of flexibility to operate their Medicaid programs that is provided under the proposed rule, and thus would be of only limited value. We rejected this alternative because it would not give States what they need to effectively operate their Medicaid programs.

We also considered pursuing a legislative option that would have changed the Medicaid statute itself to clarify that the FFP limits at section 1903(f) of the Act should apply after, rather than before, the use of any less restrictive income methodologies under section 1902(r)(2) of the Act. However, as explained previously the current policy concerning application of the FFP limits to less restrictive income methodologies does not reflect a clear statutory requirement, but rather is an administrative interpretation of the statute. Since the statute as written will support the proposed change in policy, we believe the issue should be addressed via a change in the regulations rather than a change in the statute. Also, we believe the proposed rule is the most efficient and expedient way of accomplishing the desired change.

D. Conclusion

We expect this rule to benefit State Medicaid programs and Medicaid beneficiaries by giving States additional flexibility in designing and operating their programs. In turn, this would allow States to make individuals eligible for Medicaid who otherwise could not be eligible under the current regulations.

Because this rule is considered major rule that is economically significant, we have prepared a regulatory impact statement. We believe that this rule will have an estimated cost of $960 million dollars over five years based on best available data. In addition, we certify, that this rule would not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 435

Aid to Families with Dependent Children, Grant programs—health, Medicaid, Reporting and recordkeeping requirements, Supplemental Security Income (SSI), Wages.

For the reasons set forth in the preamble, 42 CFR part 435 would be amended as set forth below:

PART 435—ELIGIBILITY IN THE STATES, DISTRICT OF COLUMBIA, THE NORTHERN MARIANA ISLANDS, AND AMERICAN SAMOA

1. The authority citation for part 435 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 435.1007 is amended by revising paragraphs (b) and (e) and adding paragraph (f) to read as follows:

435.1007 Categorically needy, medically needy, and qualified Medicare beneficiaries.

* * * * *

(b) Except as provided in paragraphs (c) and (d) of this section, FFP is not available in State expenditures for individuals (including the medically needy) whose annual income after deductions specified in §§ 435.831(a) and (c) exceeds the following amounts, rounded to the next higher multiple of $100.

* * * * *

(e) FFP is not available in expenditures for services provided to categorically needy and medically needy recipients subject to the FFP limits if their annual income, after the cash assistance income deductions and any income disregards in the State plan authorized under section 1902(r)(2) of the Act are applied, exceeds the 133⅓ percent limitation described under paragraphs (b), (c), and (d) of this section.

(f) A State may use the less restrictive income methodologies included under its State plan as authorized under § 435.601 in determining whether a family's income exceeds the limitation described in paragraph (b) of this section.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: July 25, 2000.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Approved: September 23, 2000.

Donna E. Shalala,

Secretary.

[FR Doc. 00–27923 Filed 10–27–00; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–2302; MM Docket Nos. 00–189, 00–190, 00–191, 00–192; RM–9984, RM–9985, RM–9986, RM–9987

Radio Broadcasting Services (Heber, Snowflake, Overgaard, and Taylor, Arizona)

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission, at the request of New Directions Media, Inc., seeks comment on four petitions for rulemaking requesting the allotment of Channel 288C2 at Heber, Arizona; Channel 258C2 at Snowflake, Arizona; Channel 232C3 at Overgaard, Arizona; and Channel 278C3 at Taylor, Arizona as each community's first local aural service. Channel 288C2 can be allotted to Heber in compliance with the Commission's minimum distance separation requirements, with respect to domestic allotments, without the imposition of a site restriction, at coordinates 34–25–53 NL and 110–35–36 WL. Channel 258C2 can be allotted to Snowflake in compliance with the Commission's minimum distance separation requirements, with respect to domestic allotments, without the imposition of a site restriction at coordinates 34–30–48 NL and 110–04–40 WL. Channel 232C3 can be allotted to Overgaard in compliance with the Commission's minimum distance separation requirements, with respect to domestic allotments, without the imposition of a site restriction at coordinates 34–23–27 NL and 110–33–04 WL. Channel 278C3 can be allotted to Taylor in compliance with the Commission's minimum distance separation requirements, with respect to domestic allotments, without the imposition of a site restriction at coordinates 34–27–54 NL and 110–05–26 WL. Petitioner is requested to provide further information concerning the community status of each proposed community.

DATES: Comments must be filed on or before December 1, 2000, and reply comments on or before December 18, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: New Directions Media, Inc., Robert D. Zellmer, President, P.O. Box 1643, Greeley, CO 80632.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, Docket No. 00–189, 00–190, 00–191, 00–192, adopted September 27, 2000, and released October 11, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority Citation for part 73 continues to read as follows:

Authority: 47 U.S.C 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by adding Heber, Channel 288C2, Snowflake, Channel 258C2, Overgaard, Channel 232C3, and Taylor, Channel 278C3.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–27906 Filed 10–30–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–2301; MM Docket No. 00–194, RM–9972; MM Docket No. 00–195, RM–9973; MM Docket No. 00–196, RM–9974; MM Docket No. 00–197, RM–9975]

Radio Broadcasting Services; Paradise, MI; Clinton TN; Lynchburg, TN; Rincon, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes four new allotments to Paradise, MI; Lynchburg, TN; Clinton, TN; and Rincon, TX. The Commission requests comments on a petition filed by David C. Schaburg proposing the allotment of Channel 234A at Paradise, Michigan, as the community's first local aural transmission service. Channel 234A can be allotted to Paradise in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 234A at Paradise are 46–37–42 North Latitude and 85–02–18 West Longitude. Since Paradise is located within 320 kilometers (199 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been requested. *See* **SUPPLEMENTARY INFORMATION.**

DATES: Comments must be filed on or before December 1, 2000, and reply comments on or before December 18, 2000.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the

petitioner, his counsel, or consultant, as follows:

David C. Schaburg, 3105 S. MLK, #169, Lansing, Michigan (Petitioner for the Paradise, MI proposal);

Clyde Scott, Jr., D.B.A. EME Communications, 293 JC Saunders Road, Moultrie, GA 31768 (Petitioner for the Clinton, TN proposal);

Donald E. Martin, P.C., 6060 Hardwick Place, Falls Church, Virginia 22041 (Counsel for Mash Media); and

Quevalle Communications, c/o Michael Celenza, 41 Kathleen Crescent, Coran, NY 11727 (Petitioner for the Rincon, TX proposal).

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–194; MM Docket No. 00–195; MM Docket No. 00–196; and MM Docket No. 00–197, adopted September 27, 2000, and released October 11, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

The Commission requests comments on a petition filed by Clyde Scott, Jr., D.B.A. EME Communications proposing the allotment of Channel 291A at Clinton, Tennessee, as the community's third local FM transmission service and fourth aural service. Channel 291A can be allotted to Clinton in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.3 kilometers (7.7 miles) west of city reference coordinates. The coordinates for Channel 291A at Clinton are 36–06–39 North Latitude and 84–15–54 West Longitude.

The Commission requests comments on a petition filed by Mash Media proposing the allotment of Channel 296A at Lynchburg, Tennessee, as the community's first local aural transmission service. Channel 296A can be allotted to Lynchburg in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 296A at Lynchburg are 35–16–54 North Latitude and 86–22–24 West Longitude.

The Commission requests comments on a petition filed by Quevalle Communications proposing the allotment of Channel 284A at Rincon, Texas, as the community's first local aural transmission service. Channel 284A can be allotted to Rincon in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.7 kilometers (7.3 miles) northwest of city reference coordinates. The coordinates for Channel 284A at Rincon are 26–34–21 North Latitude and 98–41–27 West Longitude. Since Rincon is located within 320 kilometers (199 miles) of the U.S.-Mexican border, concurrence of the Mexican government has been requested.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by adding Paradise, Channel 234A.

3. Section 73.202(b), the Table of FM Allotments under Tennessee, is amended by adding Channel 291A, Clinton and Lynchburg, Channel 296A.

4. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Rincon, Channel 284A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–27907 Filed 10–30–00; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 65, No. 211

Tuesday, October 31, 2000

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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collections Being Reviewed by the Agency for International Development; Comments Requested

SUMMARY: U.S. Agency for International Development (USAID) is making efforts to reduce the paperwork burden. USAID 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 for 1995. Comments are requested concerning: (a) Whether the proposed or continuing collections 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 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: Submit comments on or before January 2, 2001.

FOR FURTHER INFORMATION CONTACT: Beverly Johnson, Bureau for Management, Office of Administrative Services, Information and Records Division, U.S. Agency for International Development, Room 2.07–106, RRB, Washington, DC 20523, (202) 712–1365 or via e-mail bjohnson@usaid.gov.

SUPPLEMENTARY INFORMATION:

OMB No.: OMB 0412–0510.

Form No.: N/A.

Title: Administration or Assistance Awards to U.S. Non-Government Organizations—22 CFR part 226 and USAID's Automated Directive Systems Chapter 303.

Type of Review: Renewal of Information Collection.

Purpose: Section 635(b) of the Foreign Assistance Act (FAA) authorizes USAID to make grants and cooperative agreements with any organization and within limits of the FAA. Most of the information that USAID requests of its recipients is necessary to fulfill the requirement that USAID, as a Federal agency, ensure prudent management of public funds under all of its assistance instruments. The pre-award information is necessary to assure that funds are provided for programs that further the purposes of the FAA and that the recipients have the capability to manage the program administratively and financially. The administration (post-award) requirements are based on the need to assure that the program is functioning adequately, that the funds are managed properly and that statutory and regulatory requirements are complied with.

Annual Reporting Burden:

Respondents: 400.

Total annual responses: 1,100.

Total annual hours requested: 37,400 hours.

Dated: October 24, 2000.

Joanne Paskar,

Chief, Information and Records Division, Office of Administrative Services, Bureau for Management.

[FR Doc. 00–27918 Filed 10–30–00; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF COMMERCE

Manufacturing Extension Partnership National Advisory Board; Notice of Renewal

In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2, and the General Services Administration (GSA) rule on Federal Advisory Committee Management, 41 CFR Part 101–6, and after consultation with GSA, the Secretary of Commerce has determined that the renewal of the Manufacturing Extension Partnership National Advisory Board is in the public interest in connection with the performance of the duties imposed on the Department by law.

The Committee was first established in October 1996 to advise MEP regarding their programs, plans, and policies. In reviewing the Board, the Secretary has established it for an additional two years. During the next two years, the Board plans to address center service mix standardization, eBusiness, moving toward high performance centers, training and education of field staff, MEP University, national awareness of the MEP program, international services, and others.

The Board will consist of nine members to be appointed by the Director of the National Institute of Standards and Technology to assure a balanced membership that will represent the views and needs of customers, providers, and others involved in industrial extension throughout the United States.

The Board will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act. Copies of the Board's revised charter will be filed with the appropriate committees of the Congress and with the Library of Congress.

Inquiries or comments may be directed to Linda Acierto, Senior Policy Advisor, Manufacturing Extension Partnership, National Institute of Standards and Technology, 100 Bureau Drive, Shop 4800, Gaithersburg, Maryland 20899–4800; telephone: 301–975–5020.

Karen H. Brown,

Deputy Director, NIST.

[FR Doc. 00–27900 Filed 10–30–00; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–823]

Preliminary Determination of Circumvention of Antidumping Order: Cut-to-Length Carbon Steel Plate From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Determination of Circumvention of Antidumping Order: Cut-to-Length Carbon Steel Plate from Canada.

SUMMARY: We preliminarily determine that imports of certain cut-to-length carbon plate products, known as grader blade and draft key steel, falling within the physical dimensions outlined in the scope of the order, and containing a minimum of both 0.0008 percent boron

by weight and 0.55 percent carbon by weight, and produced by Co-Steel Lasco, Inc. and Gerdau MRM Steel are circumventing the antidumping duty order on cut-to-length carbon steel plate from Canada (58 FR 44162, August 19, 1993).

EFFECTIVE DATE: October 31, 2000.

FOR FURTHER INFORMATION CONTACT: Michael Panfeld or Rick Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone: (202) 482–0172 (Panfeld); (202) 482–3818 (Johnson).

Applicable Statute

Unless otherwise stated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise stated, all citations to the Department's regulations are references to the regulations as codified at 62 FR 27296 (May 19, 1997).

SUPPLEMENTARY INFORMATION:

Background

On March 14, 1997, at the request of petitioner, Kentucky Electric Steel (''KES''), the Department of Commerce (''the Department'') initiated a scope inquiry to determine whether certain cut-to-length carbon steel plate used to make grader blades and draft keys (''grader blade'' and ''draft key'' steel) that contain small amounts of boron fall within the scope of the order on certain cut-to-length carbon steel plate from Canada.

On January 16, 1998, the Department issued a ruling, based on 19 CFR section 353.29(i), that boron-added grader blade and draft key steel falls outside the literal scope of the order. The scope of the original antidumping investigation relied on the HTSUS definition of carbon steel, which distinguishes other-alloy steel (*i.e.* including steel containing more that 0.0008 percent boron). Because the petition equated the term ''carbon steel'' with the HTSUS term ''non-alloy steel'', variants of grader blade and draft key steel which contain at least 0.0008 percent boron by weight fell outside the literal scope of the order.

On January 30, 1998, KES requested that the Department conduct an anticircumvention inquiry pursuant to section 781(c) of the Act to determine whether imports of certain cut-to-length steel plate used to make grader blades and draft keys that contain small amounts of boron and fall within the physical dimensions outlined in the scope of the order, are circumventing the antidumping duty order on certain cut-to-length carbon steel plate from Canada. KES alleged that, since publication of the antidumping duty order, exporters of certain cut-to-length carbon steel plate from Canada have been circumventing the order by exporting carbon steel plate with small amounts of boron added so as to avoid coverage under the order. According to KES, the ''inclusion of 0.0016 percent boron by weight to high carbon grader blade and draft key steel constitutes a minor alteration'' and is, therefore, within the meaning of the provisions detailed in section 781(c) of the Act. *See* Anticircumvention Application, January 30, 1998 at 4.

On May 20, 1998, the Department initiated an anticircumvention inquiry on the antidumping order on Cut-to-Length Carbon Steel Plate from Canada. *See Notice of Initiation of Anticircumvention Inquiry: Cut-to-Length Carbon Steel Plate from Canada*, 63 FR 29179 (May 28, 1998). On June 5, 1998, the Department requested information from Canadian producers which were listed as producers of either grader blade or draft key steel in Iron and Steel Works of the World, 12th edition. On June 26, 1998 and July 17, 1998, Gerdau MRM Steel (''MRM'') and Co-Steel Lasco (''CSL''), respectively, responded to the Department's questionnaire, identifying themselves as producers of carbon steel products with over 0.0008 percent boron. Based on these responses, the Department issued a full questionnaire to both CSL and MRM on July 30, 1998. CSL filed its response on September 28, 1998. MRM filed its response on October 6, 1998. On October 7, 1998, the Department issued a supplemental questionnaire to CSL, who responded on October 14, 1998. On November 6, 1998, the Department issued a supplemental questionnaire to MRM, which responded on December 7, 1998.

From October 26 through October 28, 1998, Department officials conducted a verification of CSL. The Department reviewed documents and made inquiries of CSL officials with regard to the sales and production of grader blade and draft key carbon steel with and without boron added.

Algoma Steel Inc. and Caterpillar Inc. have also filed notices of appearance with the Department as interested parties to this inquiry.

On December 16, 1998, the Court of International Trade (''CIT'') enjoined further proceeding with this inquiry. *See Co-Steel Lasco* v. *United States* (*Co-Steel*) Court No. 98–08–02684. However, the Court of Appeals for the Federal Circuit subsequently reversed the injunction, and on October 12, 2000, the CIT dismissed the case. Thus, we are proceeding with this inquiry and we will make our final determination no later than January 10, 2001.

Scope of the Investigation

The scope language contained in the final determination and antidumping duty order describes the covered merchandise as follows:

Certain Cut-to-Length Carbon Steel Plate

These products include hot-rolled carbon steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7208.31.000, 7208.32.000, 7208.33.1000, 7208.33.5000, 7208.41.000, 7208.42.000, 7208.43.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.11.0000, 7211.12.0000, 7211.21.0000, 7211.22.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included in these investigations are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'')-for example, products which have been beveled or rounded at the edges. Excluded from these investigations is grade X–70 plate.

Although the Harmonized Tariff Schedule of the United States (HTS) subheadings are provided for convenience and customs purposes, our written descriptions of the scope of these proceedings are dispositive.

Determination; Certain Cold-Rolled Carbon Steel Flat Products From Argentina, 58 FR 37063 (July 9, 1993), Appendix I. *See also Antidumping Duty Orders: Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada,* 58 FR 44162 (August 19, 1993).

Scope of the Anticircumvention Inquiry

The merchandise subject to this inquiry is certain cut-to-length plate, commonly known as grader blade and draft key steel, made of in-scope high carbon steel to which a small amount of boron (minimum 0.0008 percent boron

by weight) has been added, falling within the physical dimensions outlined in the scope of the order. High carbon steel is defined as steel of AISI or SAE grades 1050, 1152, or 1552, or higher, *i.e.,* carbon steels that may contain 0.55 percent or more carbon by weight. ''Grader blade'' steel is typically used in grading equipment such as bulldozers and snowplows. ''Draft key'' steel is used specifically to make locking mechanisms for railroad couplings. Unless otherwise indicated, the terms ''boron-added grader blade and draft key carbon steel'', ''boron-added steel for use in grader blades and draft keys'' and ''boron-added steel'' are synonymous for the purpose of this notice.

Analysis

Section 781 of the Act addresses the prevention of circumvention of antidumping and countervailing duty orders. Subsection 781(c) specifically provides that:

(1) In general—The class or kind of merchandise subject to—

(A) an investigation under this title,

(B) an antidumping duty order issued under section 736,

(C) a finding under the Antidumping Act of 1921, or

(D) a countervailing duty order issued under section 706 or section 303, shall include articles altered in form or appearance in minor respects (including raw agricultural products that have undergone minor processing), whether or not included in the same tariff classification.

(2) Exception—Paragraph (1) shall not apply with respect to altered merchandise if the administering authority determines that it would be unnecessary to consider the altered merchandise within the scope of the investigation, order or finding.

The Scope Review and the Holdings of the U.S. Courts

In its final determination of the scope ruling noted above, the Department found that the scope did not include grader blade steel and draft key steel produced with 0.0008 percent boron or more by weight (''boron-added steel''), the merchandise in question in this inquiry. Respondents have argued in this case that by finding that the product is outside the scope of the order, the Department may not initiate a ''minor alterations'' anticircumvention inquiry, citing the decision of the CIT in *Wheatland Tube Co.* v. *United States,* 973 F.Supp. 149 (CIT 1997).

Since the time of initiation, the United States Court of Appeals for the Federal Circuit (''CAFC'') has clarified the law in this area. In *Wheatland Tube Co.* v. *United States,* the CAFC held that, under the facts of that case, an anticircumvention inquiry was not appropriate. However, the appellate court also determined that ''(i)n essence, section 1677j(c) includes within the scope of an antidumping order products that are so insignificantly changed from a covered product that they should be considered within the scope of the order *even though the alterations remove them from the order's literal scope.*'' *See Wheatland Tube Co.* v. *United States,* 161 F.3d 1365 (1998) at 12. Thus, under *Wheatland,* the Department may properly inquire whether, although the merchandise in question is outside the order's literal scope, the merchandise has been altered from an in-scope product in such a minor way that it should be considered within the scope of the order.

Petitioner has alleged, and the facts discovered by the Department to-date have shown, that the out-of-scope boron-added carbon grader blade and draft key steel is made through an economically and metallurgically insignificant alteration of in-scope carbon steel. Consequently, this case presents precisely the sort of inquiry authorized by the court in *Wheatland.*

Additionally, in a related case involving nearly identical facts and the same scope issue, *Nippon Steel Corporation* v. *United States,* 219 F.3d 1348 (Fed. Cir., July 26, 2000) (''Nippon''), the CAFC further clarified that the minor alteration inquiry in *Wheatland* was prohibited only because the product in question was well-known prior to the order and was specifically excluded from the investigation. In this respect, the Court in *Nippon* distinguished *Wheatland* from the inquiry involving boron-added carbon steel, and determined that a circumvention inquiry of such a product (boron-added carbon steel) was proper. *See Decision Memorandum: Preliminary Determination of Circumvention of the Antidumping Duty Order: Certain Cut-to-Length Carbon Steel Plate from Canada* (''*Decision Memo*'') from Joseph A. Spetrini to Troy Cribb dated October 23, 2000. Moreover, the Federal Circuit in this case (*Co-Steel*) adopted the *Nippon* opinion by reference and found that the circumvention inquiry was indeed proper. *See Co-Steel Lasco* v. *United States,* 99–1339 (September 22, 2000). As a result, on October 12, 2000, the CIT in this case dissolved the injunction and dismissed the complaint.

Minor Alterations

Petitioner alleges that imports of grader blade and draft key steel that contain small amounts of boron are circumventing the order on cut-to-length carbon steel plate from Canada. As discussed above, minor alteration anticircumvention inquiries are used when a petitioner claims that, although a product falls outside the literal scope of an order, the product should nevertheless be considered within the scope of an order because it results from an insignificant minor alteration of the in-scope product.

Carbon steel is produced by first melting scrap and/or iron ore with charge carbon in a furnace. Once the steel is sufficiently heated, it is transferred to a ladle arc refiner, where alloys are added according to the specification required. When the steel's chemistry meets specifications, it is poured into a caster to form billets. These billets are cut and cooled. After the billets have cooled, they are reheated and sent to the structural mill, where the billets are rolled and cut according to the customer's specifications.

The only difference in the production of boron-added carbon steel versus ordinary carbon steel is in the refining stage, where boron is simply added to the molten steel. All that is required to meet the HTSUS threshold level of 0.0008 percent boron is the addition of less than 100 pounds of boron to more than a hundred tons of molten steel. All other aspects of production are exactly the same as those for carbon steel. As discussed in ''Cost of Modification'' below, not only was the alteration to the production ''minor'' in all respects, the cost of this alteration was also ''minor'': approximately one third of one percent of the sales price. For a further discussion of this issue, *see Decision Memo* at 6.

Respondent CSL argues that ''alloy steel plate,'' or boron-added grader blade and draft key steel, cannot be made by altering carbon steel plate. CSL states that in order for carbon steel plate, the subject merchandise, to be altered into alloy steel plate, the carbon steel plate would have to be remelted in order to introduce boron into the molten steel, and then follow the production process from pouring billets to cutting rolled plate. However, respondent misinterprets the minor alterations provision. Neither the statute nor its legislative history require that a minor alteration be made to a finished product. Indeed, the legislative history indicates that Congress anticipated that slight changes in production might allow an exporter to circumvent an order.

Factors of Consideration

While the statute is silent regarding what factors to consider in determining whether alterations are properly considered ''minor,'' the legislative history of this provision indicates that there are certain factors which should be considered before reaching an anticircumvention determination. The petitioner cites to the Senate Finance Committee report on the Omnibus Trade and Competitiveness Act of 1988 (which amended the Tariff Act of 1930 to include the anticircumvention provisions contained in section 781), which states:

> [i]n applying this provision, the Commerce Department should apply practical measurements regarding minor alterations, so that circumvention can be dealt with effectively, even where such alterations to an article technically transform it into a differently designated article. The Commerce Department should consider such criteria as the overall physical characteristics of the merchandise, the expectations of the ultimate users, the use of the merchandise, the channels of marketing and the cost of any modification relative to the total value of the imported products. S. Rep. No.71, 100th Cong., 1st Sess. 100 (1987).

KES presented evidence with respect to each of the criteria listed in the Senate report, and the Department has examined the information on the record regarding each of these criteria. Our findings are discussed below.

Overall Physical Characteristics

The cut-to-length plate product at issue in this inquiry is a high carbon steel (minimum 0.55 percent by weight) with small amounts of boron added. The petitioner claims that while boron is traditionally added to steel to improve ''hardenability,'' when the level of carbon is already at 0.60 percent by weight or above, the added boron's effect on the final product is negligible. For this reason, petitioner claims that it is the steelmaking industry's practice not to add boron to high-carbon grades.

Co-Steel Lasco

According to CSL, the only metallurgical difference between boron-added steel and carbon steel is the amount of boron added. All other specifications remain the same, within a given ASTM grade. CSL contends that its rationale for adding boron is not to increase hardness, but to improve the grain size, and therefore, the ''toughness'' of the steel. ''Toughness'' refers to the steel's ability to withstand shearing, breaking and cracking on impact. At verification, CSL officials stated that members of the steelmaking industry were ''skeptical'' regarding whether boron added to high carbon steel improves toughness. CSL officials also stated that to the best of their knowledge, no other producer uses boron as a grain refiner in high carbon steel. *See* Verification Report at 14. CSL stated that it did not represent to its customers that the boron-added steel was an improvement over the carbon steel, because it could not quantify the improvement. However, CSL was aware that there were tests that could indicate if the boron was improving toughness. One of these tests is a test for grain size. The smaller the grain size of the steel, the tougher it is. We believe that record evidence indicates that CSL did not assign a high priority to confirming the alleged improvement to the boron-added steel. *See Decision Memorandum.*

Gerdau MRM Steel

Respondent MRM contends that the addition of boron facilitates the formation of martensite, which, if the steel is subsequently heat treated and quick-quenched (a process of raising the temperature of the metal to a ''critical'' level and cooling it rapidly), imparts greater hardenability to the steel, particularly ''through hardness.'' MRM has stated that ''it is of the opinion that all customers who purchase alloy grade steel do include heat treatment and/or flame hardening as part of their production process.'' *See* MRM submission, dated October 6, 1998. However, both CSL and petitioner have stated that grader blade and draft key customers do not heat treat steel. Moreover, MRM's discussion of martensite only appears to apply to low carbon steel, not to the high carbon grade blade and draft key steels which are the subjects of this inquiry. *See Decision Memo* at 8.

In addition, respondents have often referred to the boron-added grader blade steel as an ''alloy steel'' and have discussed general differences between ''alloy steel'' and carbon steel. However, we believe that this reference is misleading. Although the carbon steel to which a small amount of boron has been added is technically an ''other alloy'' steel for the purposes of the HTSUS classification, a true alloy steel as recognized by the industry is markedly different from the product at issue. The ITC Staff Report describes a true alloy steel as a significantly higher priced product with distinct characteristics and uses, containing much higher levels of alloys. *Staff Report, Certain Flat-Rolled Carbon Steel Products from Various Countries,* USITC Pub. 2664, Vol. 2 (August 1993), at I–37. The ''alloy'' steel produced by respondents has, with the exception of its boron content, exactly the same physical and metallurgical properties of its carbon steel counterpart.

Based on the record evidence, the Department finds that there is no substantial difference in the physical characteristics between boron-added and carbon steel—indeed the differences are ''minor''. Both kinds of steel are produced to the same specifications with the exception of boron content. Although respondents claim that differences exist in terms of toughness and through hardening, neither respondent has made any effort to confirm and quantify any improvement that would indicate a difference in physical characteristics. The record evidence indicates that respondents are not primarily concerned with the steel's purported improvement.

Expectations of the Ultimate Users

The petitioner maintains that carbon steel users purchase high carbon steel with the expectation that the product be especially hard and durable, and that these characteristics are imparted by the presence of sufficient levels of carbon. Petitioner states that consumers of this product are fully aware that carbon steel of the sort at issue does not rely on or benefit from the presence of boron, and thus ''do not expect, seek, or desire'' its presence.

Typical uses for grader blade steel are blades for snowplows and bulldozers. Draft key steel is used to make locking devices for railroad car couplings. Because of their application, customers require and expect that the steel they buy will be hard. The primary characteristic of high carbon steel is its hardness, due to the level of carbon. Although CSL and MRM claim to have improved the steel, no evidence has been presented to significantly distinguish boron-added steel from the in-scope high carbon steel in terms of use or performance. CSL reports that there is no application that restricts customers to using boron-added steel versus a carbon steel. MRM presented no evidence for the record that customers could use the boron-added steel in applications where they could not use the carbon steel.

Co-Steel Lasco

Respondent CSL reports that the decision to use boron was not the result of customer dissatisfaction, specific requests, or problems with the process of production. CSL reported at verification that customers did not request boron, and have to date made no comment regarding its addition, or any purported improvement. In addition,

CSL did not indicate to its customers that the boron-added product was significantly better than the carbon product, nor did the company charge more for the product. CSL reported that it only told its customers that boron was being added to the steel as a grain refiner, and that its addition ''wouldn't hurt the steel.'' Record evidence offers other indications that CSL has sold both boron-added and carbon grader blade steel to its customers, and that none of CSL's customers made any distinction between the two products. For a further discussion of this issue, *see Decision Memo.*

Gerdau MRM Steel

MRM has not presented any corroborated evidence that the ultimate users of its products have any expectations with regard to any improvement in the increased surface and through hardness of the boron-added grader blade and draft key steel vis-a-vis an ordinary carbon grader blade and draft key steel. For a further discussion of this issue, *see Decision Memo.*

Use of the Merchandise

The petitioner maintains that, with or without boron, high carbon grader blade and draft key steel have the same uses: making blades on grading equipment and locking devices on railroad couplings. The petitioner states that knowledgeable purchasers would be aware that there are no uses of high carbon steel containing small amounts of boron that cannot fully be met without boron, and that the addition of boron neither responds to a new need in the market, nor improves the way existing technical needs are met.

CSL reports that there is no difference in the use of the boron-added product versus the carbon product, both in its responses and at verification. As noted above in ''Expectations of End-Users,'' CSL has sold both boron-added and carbon steel to the same customer, and has not received any comments concerning any differences in application or performance.

MRM claims that it ''cannot state with certainty what their customers ''intended use'' was or is with alloy steel or carbon steel.'' *See* MRM response, October 6, 1998, at 15. However, the sales-related documentation MRM submitted in its responses indicate that MRM did have knowledge of its customers' use of the merchandise. Every sample sale presented by MRM in its October 6 and December 7, 1998 responses include descriptions of products that are either clearly grader blade products, or clearly not grader blade products. This evidence, coupled with the sales and marketing process of direct contact with customers, indicates that MRM is fully aware of customers' use of the merchandise. MRM has not presented any evidence that indicates that boron-added steel is used in a manner different from that of ordinary carbon steel. For a further discussion of this issue, *see Decision Memo.*

Channels of Marketing

The petitioner states that steel producers, with few exceptions, sell directly to manufacturers of grader blades and draft keys through company sales forces. Petitioner claims that, because carbon grader blade and draft key steels are used for precisely the same products as are the boron-added versions of the products, boron-added steel is sold in precisely the same sales channels as carbon steel.

The grader blade and draft key steel market has been reported to be mature, with few customers and a limited number of suppliers. Record evidence indicates that CSL and MRM have sold their products to the same U.S. customers before and after the investigation in 1993. Both CSL and MRM have stated that their products are marketed by direct contact with the customer, and have made no distinction between the sales and marketing process for either the boron-added or carbon steel.

Cost of Modification

Petitioner alleges that, by adding boron to high carbon steels, Canadian producers have been able to avoid dumping duties ranging from 1.47 percent to 68.7 percent, and that the cost of avoiding these duties, relative to the total value of the product itself, is negligible. Based on records examined at verification of CSL, the additional cost of making a boron-added steel is wholly insignificant. For a further discussion of this issue, *see Decision Memo.*

MRM claims that ''it has no basis for a comparison between carbon steel and high-carbon/boron alloy steel.'' *See* MRM response, dated December 7, 1998, at 4. MRM's only reference to a price difference between carbon steel and ''high-carbon/boron alloy steel'' is a comparison of *all* carbon steels (not just grader blade and draft key steels) in unadjusted dollars over a four year period. *Id.* However, MRM has not made any claim regarding additional cost in the cost of producing a boron-added steel vis-a-vis a carbon steel without boron. If the only additional cost is the cost of the boron, it may be assumed that CSL's boron costs and MRM's costs are similar, and therefore, the price differential would also be similar.

Additional Factors

In addition to the criteria above, we note that the Department has in a prior anticircumvention proceeding considered other factors as relevant to the circumvention allegation. These factors are: (i) the circumstances under which the subject products entered the United States, (ii) the timing of these entries during the circumvention review period, and (iii) the total quantity of the merchandise entered during this period. *See Brass Sheet and Strip from Germany; Negative Preliminary Determination of Circumvention of Antidumping Duty Order,* 55 FR 32655 (August 10, 1990).

1. Circumstances Under Which the Products Enter the United States

The Department is not required to determine intent during a circumvention inquiry. Nevertheless, the facts surrounding CSL's production and importation of boron-added steel tend to indicate a deliberate attempt to modify carbon steel so as to avoid the effects of the antidumping duty order.

Record evidence indicates that CSL clearly distinguishes its boron-added grader blade and carbon grader blade. CSL's own metallurgical specification records indicate a deliberate effort to avoid antidumping duties on products shipped to the United States. Boron-added grader blade steel is almost exclusively, and seemingly by design, produced for U.S. customers, while grader blade steel without boron represents the vast majority of products sold to Canadian customers. If the addition of boron served any purpose other than circumvention, we would expect to see boron added to steel regardless of whether the customer was located in the United States or Canada. For a further discussion of this issue, *see Decision Memo.*

2. The Timing of the Entries During the Circumvention Review Period

Generally speaking, a preliminary affirmative determination by the Department in an antidumping investigation is seen by foreign manufacturers/exporters as the first reliable indication that antidumping duties will most likely be imposed. This is because it is the first formal determination by the Department, and the first time the Department directs the Customs Service to suspend liquidation and collect a cash deposit of estimated dumping duties. In the antidumping investigation of cut-to-length carbon

steel plate from Canada, a preliminary affirmative determination was published on February 4, 1993. *See Notice of Preliminary Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from Canada,* 58 FR 7085 (February 4, 1998).

CSL's records indicate that boron-added steel, technically out of the scope of the order, was first produced shortly after the publication of the preliminary affirmative determination. This suggests that the addition of boron may have been in response to the preliminary determination.

Each ''batch'' of steel, called a heat, has a specific chemistry, namely, the content levels of certain elements and alloys in the heat. On one occasion, CSL appears to have modified a heat to contain boron levels above the HTSUS threshold. This could indicate a deliberate attempt to exceed the 0.0008 percent threshold. For a further discussion of this issue, *see Decision Memo.*

The facts surrounding MRM's production and importation of boron-added steel also indicates circumvention. According to MRM's July 17, 1998 response, boron-added grader blade and draft key steels were not sold to either Canadian or U.S. customers prior to 1993, but were sold exclusively to U.S. customers after 1993, the year of the investigation. In contrast, with the exception of a negligible amount, all of MRM's sales to its Canadian customers, before and after 1993, involved grades that did not include boron. For a further discussion of this issue, *see Decision Memo.*

3. The Quantity of Merchandise Entered During the Circumvention Review Period

Record evidence indicates that, after the investigation in 1993, both CSL and MRM shifted all of their production for U.S. customers to boron-added steel. Sales data submitted by both respondents indicate that all grader blade and draft key steel sold in the United States has boron added, while steel sold in Canada is, for the most part, produced without boron. Neither respondent has presented any evidence that explains why only U.S. customers are sold the allegedly ''improved'' boron-added steel.

Preliminary Ruling

As a result of our inquiry, we preliminarily determine that exports of boron-added grader blade and draft key steel from Canada are circumventing the antidumping order on certain cut-to-length carbon steel plate from Canada. While carbon steel plate products containing over 0.0008 percent boron by weight are, by definition, technically outside the literal scope of the antidumping duty order, we have preliminarily determined that, pursuant to ''minor alterations'' provision of the statue, it is appropriate to include the putatively out-of-scope boron-added steel, which is the subject of this inquiry, in the class or kind of merchandise subject to the order on cut-to-length carbon steel plate. *See* Section 781(c) of the Act.

Boron-added steel is made by slightly altering carbon steel during its production process. With the exception of the presence of boron, boron-added steel has the same physical characteristics as carbon steel. There are no differences in the expectations of the ultimate users, uses of the merchandise, and channels of marketing between boron-added steel and the subject merchandise. Furthermore, the cost of adding boron in the course of production is negligible. Since the original investigation, respondents have shifted their entire production for U.S. customers away from in-scope carbon steel to out-of-scope carbon steel to out-of-scope boron-added steel. No similar shift has occurred in the home market, where the majority, if not all, of both respondents' production is devoted to carbon grader blade and draft key steel without boron. The timing of this shift further indicates circumvention of the order by making a minor alteration. Taken as a whole, this evidence leads to our determination that boron-added grader blade and draft key steel is being produced in circumvention of the antidumping law, undermining its intent, and eviscerating its effectiveness.

After a thorough analysis of the physical characteristics of the merchandise subject to this inquiry, the expectations of the ultimate users, the ultimate use of the merchandise, the cost of modification, and the additional factors listed above, we have determined that Canadian manufacturers/exporters of grader blade and draft key steel have made minor alterations in their in-scope merchandise within the meaning of section 781(c) of the Act, resulting in circumvention of the antidumping order covering certain cut-to-length carbon steel plate from Canada. This preliminary determination extends only to those products manufactured by Co-Steel Lasco and Gerdau MRM Steel.

Suspension of Liquidation

In accordance with section 351.225(1) of the Department's regulations, we are directing the U.S. Customs Service to suspend liquidation of all imports of high carbon (minimum 0.55 percent by weight) cut-to-length carbon steel plate with boron (minimum 0.0008 percent by weight), falling within the physical parameters outlined in the scope of this order, manufactured or exported by Co-Steel Lasco or Gerdau MRM Steel that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will also instruct the U.S. Customs Service to require a cash deposit of estimated duties for each unliquidated entry of the product entered, or withdrawn from warehouse, on or after the date of initiation of this inquiry, in accordance with section 351.225(1)(2) of our regulations. We will instruct the U.S. Customs Service to require a cash deposit at the applicable rates for MRM and CSL listed below. These suspension-of-liquidation instructions will remain in effect until further notice.

Exporter/manufacturer	Weighted-average margin percentage
Co-Steel Lasco	61.88
Gerdau MRM Steel	0.0

As a result of this preliminary determination, the merchandise subject to the scope of this order includes merchandise entered under the following additional HTSUS number: 7211.14.0030.

Public Comment

Case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than 30 days after the publication of the preliminary determination, and rebuttal briefs, limited to issues raised in case briefs, no later than 35 days after the publication of the preliminary determination. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. We will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held 37 days after the publication of the preliminary determination, time and room to be determined, at the U.S. Department of Commerce, 14th Street and Constitution

Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination no later than January 10, 2001.

This determination is issued and published in accordance with section 777(i)(1) of the Act.

Dated: October 23, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–27949 Filed 10–30–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102400E]

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council's (Council) Recreational Fisheries Data Task Force (RFDTF) will hold a meeting.

DATES: The meeting will be held November 15, 2000, from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Western Pacific Fishery Management Council office, 1164 Bishop St., Suite 1400, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: 808-522-8220.

SUPPLEMENTARY INFORMATION: This will be the sixth meeting of the RFDTF and will discuss the following topics: the implementation of the NMFS Marine Recreational Fisheries Statistical Survey (MRFSS), Pelagic Environmental Impact Statement & recreational fisheries, outcome of the seventh Multilateral High Level Conference for tuna management in the Central-West Pacific, the pros and cons for a marine recreational fishery license in Hawaii, recreational bag limits and minimum sizes for sale, effectiveness of bottomfish closed areas in the Main Hawaiian Islands, new Council Advisory Panels and the future of the RFDTF.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808-522-8220 (voice) or 808-522-8226 (fax), at least 5 days prior to meeting date.

Dated: October 25, 2000.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–27875 Filed 10–30–00; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 101900B]

Marine Mammals; File No. 633–1483–03

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for amendment.

SUMMARY: Notice is hereby given that Dr. Charles A. Mayo, Center for Coastal Studies, 59 Commercial Street P.O. Box 1036, Provincetown, Massachusetts 02657, has requested an amendment to scientific research Permit No. 633–1483.

DATES: Written or telefaxed comments must be received on or before November 30, 2000.

ADDRESSES: The amendment request and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289); and

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (508)281–9250; fax (508)281–9371.

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or other electronic media.

FOR FURTHER INFORMATION CONTACT: Simona Roberts or Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 633–1483, issued on March 3, 1999 (64 FR 10276), is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 et seq.), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–227).

Permit No. 633–1483 authorizes the permit holder to (Project I): (1) conduct behavioral observations of, and photo-identify northern right whales during aerial and vessel surveys; (2) place VHF tags on right whales during the course of vessel surveys; (3) collect skin and blubber biopsy samples and sloughed skin; and (4) export skin samples for genetic analysis. And, under Project II (humpback whales), to: (1) develop a genealogy of the Gulf of Maine humpback whale population; (2) determine paternity and evaluate male reproductive success; (3) evaluate the influence of relatedness on feeding distribution, behavior and social organization; (4) determine individual movement and habitat preferences; (5) evaluate rates and severity of entanglement; (6) monitor trends in abundance, reproductive rates,

recruitment, and mortality; and (7) opportunistically photo-identify and biopsy sample various Balaenopterid species.

With this application for amendment, the permit holder requests authorization (Project III) to attach a non-invasive optical device (''critter cam'') to seven North Atlantic right whales in Cape Cod Bay for collecting video documentation in order to better assess prey selectivity and movements of the whales during foraging and the quality of the food layer supporting the whales. This documentation will provide a subsurface tool for supplementing CCS' on-going oceanographic surveys and for ''ground-truthing'' current estimates of prey patch density and area in Cape Cod Bay.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: October 25, 2000.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–27873 Filed 10–30–00; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 2, 2001.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: October 25, 2000.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of the Undersecretary

Type of Review: New.

Title: Evaluation of the Partnership Grants Program of Title II of the Higher Education Act.

Frequency: Annually; Weekly.

Affected Public: Not-for-profit initiations; State, Local, or Tribal Gov't, SEAs or Leas.

Reporting and Recordkeeping Hour Burden:

Responses: 453.

*Burden Hours:*963.

Abstract: The purpose of this evaluation is to assess the impact, strengths and weaknesses of the Partnership Grants Program, one of the three programs authorized in Title II of the Higher Education Amendments of 1998. This program is designed primarly to increase collaboration between schools of arts and sciences and schools of education, increase the rule of K–12 educators in the design and implementation of effective teacher education programs, and increase the intensity and quality of clinical experiences for prospective teachers. The evaluation will measure the impact of grants in helping colleges of education, colleges of arts and sciences, school districts and other partners to work more closely together to improve the content and structure of the professional education offered to prospective teachers.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO–IMG–Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his internet address Joe_Schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–27863 Filed 10–30–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 30, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Lauren__Wittenberg@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early

opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: October 26, 2000.

John Tressler,

Leader Regulatory Information Management, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Reinstatement.

Title: Public Libraries Survey.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Federal Government.

Reporting and Recordkeeping Hour Burden:

Responses: 56.

Burden Hours: 1,680.

Abstract: The Public Libraries Survey is an annual survey of public libraries in the 50 States, D.C. and the Outlying Areas. Data for local public libraries are aggregated at the State and national levels. Federal, state, and local officials use the data for planning, evaluation, monitoring, budgeting, administration, and policy. Other users include librarians, educators, and researchers. The respondents are the 50 States, D.C. and the Outlying Areas.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her internet address Kathy__Axt@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–27876 Filed 10–30–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Draft Long-Term Stewardship Study

AGENCY: Department of Energy (DOE).

ACTION: Notice of availability, opportunity to comment and public hearing.

SUMMARY: The Department of Energy (DOE) announces the release of the Draft Long-Term Stewardship Study (Draft Study) for public review, comment and public hearing. This Draft Study has been prepared in accordance with the terms of a 1998 Settlement Agreement that resolved a lawsuit brought against DOE by the Natural Resources Defense Council (NRDC) and other plaintiffs.

The Draft Study examines the institutional and programmatic issues facing DOE as it completes the environmental cleanup program at its sites. In keeping with the requirement that the Draft Study meet certain DOE requirements for public review in 10 CFR 1021.313, made applicable under the terms of the Settlement Agreement, DOE invites the general public, other Federal agencies, Native American Tribes, state and local governments, and all other interested parties to comment on the Draft Study. The purpose of the public hearing is to receive oral and written comments on the Draft Study.

DATES: The public comment period will extend to December 15, 2000. Comments received after that date will be considered to the extent practicable.

The public hearing will be held Thursday, November 30, 2000, from 9 am to 1 pm. Submit written notices of participation by November 20, 2000.

ADDRESSES: The public hearing will be held at the U.S. Department of Energy, Forrestal Building, 1000 Independence Ave SW, Washington, D.C., Room 1E245.

Submit written notices of participation in the public hearing, requests for information about the Draft Study and written comments on the Draft Study to Steven Livingstone, Project Manager, Office of Long-Term Stewardship (EM–51), Office of Environmental Management, U.S. Department of Energy, P.O. Box 45079, Washington, D.C. 20026–5079, phone: 202–586–9280; or submitted electronically to: Steven.Livingstone@em.doe.gov; or submitted by fax to: 202–863–7036.

Copies of the Draft Study can be requested by telephone at 1–800–736–3282 (''1–800–7EM–DATA''). The Draft Study and its supporting technical documents also are available for review at *www.em.doe.gov/lts* and at the DOE Reading Room addresses referenced in the ''Availability of the Draft Study and Related Information'' section of this notice.

SUPPLEMENTARY INFORMATION:

Background

DOE has prepared the Draft Study on the possible consequences of long-term stewardship according to the terms of a 1998 settlement agreement that resolved a lawsuit brought against DOE by the Natural Resources Defense Council and 38 other plaintiffs [*Natural Resources Defense Council, et al.* v. *Richardson, et al.,* Civ. No. 97–936 (SS) (D.D.C. Dec. 12, 1998)]. The Draft Study incorporates input received during a public scoping process and examines the institutional and programmatic issues currently facing DOE as it completes the environmental cleanup program at its sites. Long-term stewardship, under the agreement, refers to:

> The physical controls, institutions, information and other mechanisms needed to ensure protection of people and the environment at sites where DOE has completed or plans to complete ''cleanup'' (*e.g.,* landfill closures, remedial actions, removal actions, and facility stabilization). This concept of long-term stewardship includes, inter alia, land-use controls, monitoring, maintenance, and information management.

Study Goal and Approach

The goal of the Draft Study is to inform decision-makers and the public about the long-term stewardship issues and challenges facing DOE and potential options for addressing such issues.

The Draft Study does:

- Describe DOE's long-term stewardship responsibilities, the status of current and ongoing stewardship obligations, activities and initiatives, and the plans for future activities;
- Analyze the national issues that DOE needs to address in planning for and conducting long-term stewardship activities; and
- Promote information exchange on long-term stewardship among DOE,

Tribal nations, state and local governments, and private citizens.

The Draft Study does not:

• Serve as a National Environmental Policy Act (NEPA) document or its functional equivalent;

• Identify or address site-specific issues, except as examples in the context of presenting national issues; or

• Address issues specific to nuclear stockpile stewardship, other activities related to national security, or the Central Internet Database required by the settlement agreement.

Study Development Process

The terms of the settlement agreement stipulate that DOE follow the President's Council on Environmental Quality (CEQ) procedures for public scoping, 40 CFR 1501.7(a)(1)–(2) for this study, even though it is not a NEPA document or its functional equivalent. Therefore, DOE conducted a scoping process during October 1999—February 2000 to gather comments on the scope of the Draft Study. The scoping period was initially intended to run from October 1999 to January 2000, but was extended by request to February 2000. The scoping process provided DOE with input about the topics and issues that should be included in the Draft Study, within the general parameters established by the settlement agreement. DOE developed the overall scope and issues that are addressed in the Draft Study based on comments received through the scoping process, ongoing work on long-term stewardship being conducted by DOE and non-DOE organizations, and requirements of the settlement agreement. DOE is soliciting comments on the Draft Study during a public comment period that begins on the date of publication of this notice and ends on December 15, 2000. Similarly, a public hearing will be held to receive oral and written comments from the public on the Draft Study. Comments received during the public comment period will be used by DOE to complete the final study. DOE's responses to comments received during the public comment period will be presented in a public comment summary document to be issued as part of the final study.

Availability of the Draft Study and Related Information

DOE released a background document, From Cleanup to Stewardship, a Companion Report to ''Paths to Closure'' and Background Information to Support the Scoping Process Required for the 1998 PEIS Settlement Study in October 1999. In producing the background document and the Draft Study, DOE used the same data set used to develop the 1998 Accelerating Cleanup: Paths to Closure report. DOE used this information to identify sites where contaminated facilities, water, soil, and/or engineered units would likely remain after cleanup is complete to estimate the scope of long-term stewardship activities. Both the Draft Study on long-term stewardship and the background document are the best available information sources to date on the issue of DOE's long-term stewardship responsibilities. Copies of the Draft Study and the background document or other related information can be obtained by contacting:

• The Internet Web Site at *www.em.doe.gov/lts,* which contains information on long-term stewardship related issues produced by DOE and outside sources.

• The Center for Environmental Management Information, 955 L'Enfant Plaza, North, SW, Suite 8200, Washington, D.C. 20024, 1–800–736–3282 (''1–800–7EM–DATA'').

• DOE Reading Rooms (for locations of the DOE Reading Rooms or other public information repositories containing background information, please contact the Center for Environmental Management Information at the above address and telephone).

Issued in Washington D.C., October 24, 2000.

James D. Werner,

Director, Office of Long-Term Stewardship, Office of Environmental Management.

[FR Doc. 00–27902 Filed 10–31–00; 8:45 am]

BILLING CODE 6450–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–17–00]

Algonquin Gas Transmission Company; Notice of Request Under Blanket Authorization

October 25, 2000.

Take notice that on October 18, 2000 Algonquin Gas Transmission Company (Algonquin), 5400 Westheimer Court, Houston, Texas 77056–5310, filed in Docket No. CP01–17–000, a request pursuant to § 157.205 and 157.211 of the Commission's regulations under the Natural Gas Act (18 CFR 157.205 and 175.211). Algonquin requests authorization to install, own, operate and maintain a new point of delivery and short spur lateral along its existing 6-inch and 12-inch laterals in New London County, Connecticut, to make natural gas deliveries to Phelps Dodge Copper Products Company (Phelps Dodge), an industrial end user near Norwich, Connecticut.

Algonquin requests this authorization pursuant to its blanket facilities certificate of public convenience and necessity, as more fully set forth in the application which is on file with the Commission and open to public inspection. This application may be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for0 assistance). The name, address, and telephone number of the applicant's representative, to whom correspondence and communications concerning this application should be addressed is: Steven E. Tillman, Director of Regulatory Affairs, Algonquin Gas Transmission Company, P.O. Box 1642 Houston, Texas 77251–1642, (713) 627–5113 (Phone) or (713) 627–5947 (Fax).

Algonquin proposes to construct and install dual 6-inch tap valves, 6-inch check values and 6-inch insulating flanges near Mile Post 17.0 of its existing E–1L 12-inch Lateral and the E–1 6-inch Lateral in New London County, including all piping between such tap valves, check valves and insulating flanges or above ground riser piping. The short spur lateral from the above delivery tap to the Phelps Dodge plant would be located between the Yantic River and Otrobando Avenue and will consist of about 1,565 feet of buried 6-inch pipe and an electric gas measurement meter station at the plant. Algonquin says that Phelps Dodge will reimburse Algonquin for 100% of the projects cost, abut $1,450,000.

Algonquin says that the related transportation service for Phelps Dodge of up to 3,800 Dth per day will be rendered pursuant to Algonquin's open access rate schedules. Further, Algonquin says that the transportation service for Phelps Dodge will be performed using existing capacity on Algonquin submits that its proposal will be accomplished without detriment or disadvantage to its other customers.

Any person or the Commission's staff may, within 45 days after issuance of the this 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 Section 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 therefore, 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 filing a protest, this request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act. Beginning November 1, 2000, comments and protests may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site; http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–27848 Filed 10–30–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–372–001]

ANR Pipeline Company; Notice of Compliance Filing

October 25, 2000.

Take notice that on October 19, 2000, ANR Pipeline Company (ANR) tendered for filing in compliance with the Commission's order dated September 29, 2000 at Docket No. RP00–372–000, a revised allocation of interest costs.

On June 30, 2000 ANR Pipeline Company (ANR) filed an Interest Recovery Plan to direct bill certain shippers for interest charges paid by ANR to Great Lakes Gas Transmission L.P. (Great Lakes). The order required ANR to allocate, but not direct bill, costs to all discount shippers, unless such discount shippers are subject to additional charges.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before November 1, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Beginning November 1, 2000, comments and protests may be filed electronically via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–27854 Filed 10–30–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–59–000]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

October 25, 2000.

Take notice that on October 20, 2000, El Paso Natural Gas Company (El Paso) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, Third Revised Sheet No. 293, with an effective date of November 20, 2000.

El Paso states that it is also filing a revised Statement on Standards of Conduct. El Paso states that this filing updates El Paso's Standards of Conduct and related tariff sheet.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Beginning November 1, 2000, comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–27856 Filed 10–30–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER00–3068–000 and ER00–3068–001]

FPL Energy Cape, LLC; Notice of Issuance of Order

October 25, 2000.

FPL Energy Cape, LLC (FPL Energy Cape) submitted for filing a rate schedule under which FPL Energy Cape will engage in wholesale electric power and energy transactions at market-based rates. FPL Energy Cape also requested waiver of various Commission regulations. In particular, FPL Energy Cape requested that the Commission grant blankets approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability bye FPL Energy Cape.

On October 18, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by FPL Energy Cape should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, FPL Energy Cape is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of FPL Energy Cape's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests as set forth above, is November 17, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E.,

Washington, D.C. 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–27899 Filed 10–30–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–58–000]

Granite State Gas Transmission, Inc.; Notice of Compliance Filing

October 25, 2000.

Take notice that on October 18, 2000, Granite State Gas Transmission, Inc. (Granite State) tendered for filing a letter with the Commission in response to Order No. 587–L informing the Commission that Granite State's currently effective gas tariff contains provisions permitting imbalance netting and trading by shippers.

Granite States states that copies of this filing have been sent to Granite State's shippers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–27855 Filed 10–30–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RT01–67–000]

GridFlorida LLC, Florida Power & Light Co., Florida Power Corporation, and Tampa Electric Co.; Supplemental Notice of Filing

October 25, 2000.

Take notice that on October 16, 2000, Florida Power & Light Company, Florida Power Corporation, and Tampa Electric Company (collectively, the Applicants), pursuant to Sections 203 and 205 of the Federal Power Act, jointly filed their Order No. 2000 compliance filing providing for the creation of a Regional Transmission Organization (RTO). In a Notice of Filng issued October 20, 2000, the date for interventions, comments, and protests with respect to that filing was established as November 20, 2000.

The Applicants have requested, to facilitate the continuing collaborative process, that interested parties be permitted additional time to submit their comments on the portion of their Application for which an additional filing will be make on December 15, 2000.

Accordingly, any person desiring to be heard or to protest should file a motion to intervene, comments, or protests with the Federal Energy Regulatory Commission, 888 First Street, N.W., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions, comments and protests with respect to the matters for which Applicants have requested expedited treatment should be filed on or before November 20, 2000. All such motions, comments and protests with respect to the matters for which Applicants have not requested expedited treatment will be due within 30 days from the date Applicants make their additional filing implementing details of their RTO proposal. Beginning November 1, 2000, comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http;//www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–27858 Filed 10–30–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–60–000]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

October 25, 2000.

Take notice that on October 20, 2000, Natural Gas Pipeline Company of America (Natural) tendered for filing to be part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be effective November 20, 2000.

Natural states that these sheets were filed is to make several minor revisions to its Tariff, including changes to the General Terms and Conditions and to Natural's Rate Schedules IBS, FFTS, FRSS, NSS and DSS. These changes correct several provisions of Natural's Tariff and clarify others, conform various provisions of Natural's Tariff to each other or incorporate current Commission policy.

Natural requests waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets submitted to become effective November 20, 2000.

Natural states that copies of the filing have been mailed to its customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http;//www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–27857 Filed 10–30–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–3637–000]

Nicole Energy Marketing of Illinois, Inc.; Notice of Issuance of Order

October 25, 2000.

Nicole Energy Marketing of Illinois, Inc. (Nicole Energy) submitted for filing a rate schedule under which Nicole Energy will engage in wholesale electric power and energy transactions at market-based rates. Nicole Energy also requested waiver of various Commission regulations. In particular, Nicole Energy requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Nicole Energy.

On October 18, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Nicole Energy should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Nicole Energy is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Nicole Energy's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is November 17, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://*www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance.

David P. Boergers,

Secretary.

[FR Doc. 00–27898 Filed 10–30–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT01–2–000]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff and Filing of Non-Conforming Service Agreements

October 25, 2000.

Take notice that on October 19, 2000, Northwest Pipeline Corporation (Northwest) tendered for filing and acceptance three Rate Schedule TF–1 non-conforming service agreements. Northwest also tendered the following tariff sheets as part of its FERC Gas Tariff, Third Revised Volume No. 1, to be effective November 19, 2000:

Seventh Revised Sheet No. 364
Fifth Revised Sheet No. 365
First Revised Sheet No. 366

Northwest stats that the service agreements each contain a provision imposing a subordinate scheduling priority and that the tariff sheets are submitted to add such agreements to the list of non-conforming service agreements contained in Northwest's tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–27850 Filed 10–30–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–033]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate Filing

October 25, 2000.

Take notice that on October 19, 2000, Tennessee Gas Pipeline Company (Tennessee), tendered for filing and approval two Gas Transportation Agreements between Tennessee and Dynegy Energy Marketing and Trade (Dynegy) pursuant to Tennessee's Rate Schedule FT–A (FT–A Service Agreements) and a copy of an October 18, 2000 Firm Transportation Negotiated Rate Agreement entered into between Tennessee and Dynegy (Negotiated Rate Agreement). The filed FT–A Service Agreements and the Negotiated Agreement reflects a negotiated rate arrangement between Tennessee and Dynegy to be effective November 1, 2000 through October 31, 2001.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–27853 Filed 10–30–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES01–5–000, et al.]

Kentucky Utilities Company, et al.; Electric Rate and Corporate Regulation Filings

October 24, 2000.

Take notice that the following filings have been made with the Commission:

1. Kentucky Utilities Company

[Docket No. ES01–5–000]

Take notice that on October 16, 2000, Kentucky Utilities Company submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue short-term debt in an amount not to exceed $400 million on or before November 30, 2002 with a final maturity no later than November 30, 2003.

Comment date: November 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Louisville Gas and Electric Company

[Docket No. ES01–6–000]

Take notice that on October 16, 2000, Louisville Gas and Electric Company submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue short-term debt in an amount not to exceed $400 million on or before November 30, 2002 with a final maturity no later than November 30, 2003.

Comment date: November 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Sithe Tamuin Energy Services II, S. de R.L. de C.V.

[Docket No. EG01–8–000]

Take notice that on October 20, 2000 Sithe Tamuin Energy Services II, S. de R.L. de C.V. (Applicant), c/o Sithe Energies, Inc., 335 Madison Avenue, 28th Floor, New York, NY 10017 filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant is a company organized under the laws of Delaware, and will be engaged in the operation of a nominally rated 260 MW circulating fluidized bed petroleum coke power plant and auxiliary facilities located in Tamuin, San Luis Potosi, Mexico.

Comment date: November 14, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Oklahoma Gas and Electric Company and OGE Energy Resources, Inc.

[Docket Nos. ER98–511–001] and [ER97–4345–013]

Take notice that on October 17, 2000, Oklahoma Gas and Electric Company and OGE Energy Resources, Inc. (OGE Companies) collectively tendered for filing an updated market analysis as required by the Commission's orders approving market based rates for each of the OGE Companies.

Comment date: November 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Allegheny Energy Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER96–58–005]

Take notice that on October 17, 2000, Allegheny Energy Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) tendered for filing revisions to its Open Access Transmission Tariff in compliance with the Commission's Order of October 2, 2000 at Docket Nos. ER96–58–003 and ER99–237–002, 93 FERC ¶ 61,005.

Copies of the filing have been provided to Allegheny Power's jurisdictional customers, those parties contained within the official service lists of the Federal Energy Regulatory Commission for Docket Nos. ER96–58–003 and ER99–237–002, the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission and the West Virginia Public Service Commission.

Comment date: November 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Illinois Power Company

[Docket No. ER00–3334–001]

Take notice that on October 16, 2000, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62521, tendered for filing in compliance with the Commission's letter order issued September 14, 2000, in this proceeding, a complete, revised Service Agreement with a new designation as required in Order No. 614, FERC Stats. & Regs. ¶ 31.096 (2000).

Comment date: November 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Xcel Energy Services, Inc.

[Docket No. ER00–3438–001]

Take notice that on October 16, 2000, Xcel Energy Services, Inc. (XES), on behalf of Public Service Company of Colorado (Public Service), tendered for filing a corrected Master Power Purchase and Sale Agreement between Public Service and Sandia Resources Corporation which is an umbrella service agreement under Public Service's Rate Schedule for Market-Based Power Sales (Public Service FERC Electric Tariff, Original Volume No. 6).

XES requests that this agreement become effective on August 1, 2000. This filing is made in compliance with FERC Order dated September 29, 2000 in Docket No. ER00–3438–000 and FERC Order No. 614.

Comment date: November 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Energetix, Inc.

[Docket Nos. ER97–3556–011]

Take notice that on October 17, 2000, in compliance with the Commission's order issued September 12, 1997 in the above-referenced proceeding, Rochester Gas and Electric Corporation, 80 FERC ¶ 61,284 (1997), Energetix, Inc. (Energetix), tendered for filing with the Commission an update to the market power study originally submitted in support of Energetix's request for market-based rate authority.

Comment date: November 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Citizens Communications Company

[Docket No. ER00–3211–000]

Take notice that on October 19, 2000, Citizens Communications Company, tendered for filing Notice that effective September 28, 2000, Citizens Utilities Company changed its name to Citizens Communications Company.

Comment date: November 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Consumers Energy Company

[Docket No. ER00–3559–001]

Take notice that on October 16, 2000, Consumers Energy Company (Consumers), tendered for filing a designated version of Consumers Energy Company Electric Rate Schedule FERC No. 44 as provided for in Order No. 614, pursuant to the October 5, 2000 letter order in this docket.

Copies of the filing were served upon Northern, the Michigan Public Service Commission and the Indiana Utility Regulatory Commission.

Comment date: November 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. PECO Energy Company

[Docket No. ER01–127–000]

Take notice that on October 16, 2000, PECO Energy Company (PECO), tendered for filing under Section 205 of the Federal Power Act, 16 U.S.C. S 792 *et seq.*, a Service Agreement dated October 5, 2000 with Smartenergy.com (SMC) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff).

PECO requests an effective date of November 1, 2000 for the Agreement.

PECO states that copies of this filing have been supplied to Smartenergy.com and to the Pennsylvania Public Utility Commission.

Comment date: November 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Western Resources, Inc.

[Docket No. ER01–157–000]

Take notice that on October 19, 2000, Western Resources, Inc. (WR), tendered for filing a Service Agreement between WR and Strategic Energy LLP (Strategic). WR states that the purpose of this agreement is to permit Strategic to take service under WR'' Market Based Power Sales Tariff on file with the Commission.

This agreement is proposed to be effective November 19, 2000.

Copies of the filing were served upon Strategic Energy LLP and the Kansas Corporation Commission.

Comment date: November 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Virginia Electric and Power Company

[Docket No. ER01–158–000]

Take notice that on October 19, 2000, Virginia Electric and Power Company (Dominion Virginia Power or the Company), tendered for filing a Service Agreement for Long Term Firm Point-to-Point Transmission Service with PECO Energy Company. This Agreement will be designated as Service Agreement No. 306 under the Company's FERC Electric Tariff, Revised Volume No. 5.

The foregoing Service Agreement is tendered for filing under the Open Access Transmission Tariff to Eligible Purchasers effective June 7, 2000. Under the tendered Service Agreement, Dominion Virginia Power will provide long term firm point-to-point service to the Transmission Customer under the rates, terms and conditions of the Open Access Transmission Tariff.

Dominion Virginia Power requests an effective date of October 19, 2000, the date of filing of the Service Agreement.

Copies of the filing were served upon PECO Energy Company, the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment date: November 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Consolidated Edison Company of New York, Inc.

[Docket No. ER01–160–000]

Take notice that on October 19, 2000, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a Supplement to its Rate Schedule, Con Edison Rate Schedule FERC No. 129, a facilities agreement with Orange and Rockland Utilities, Inc., (O&R). The Supplement provides for an increase in the monthly carrying charges.

Con Edison states that a copy of this filing has been served upon O&R.

Comment date: November 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Consolidated Edison Company of New York, Inc.

[Docket No. ER01–161–000]

Take notice that on October 19, 2000, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a Supplement to its Rate Schedule, Con Edison Rate Schedule FERC No. 2, a facilities agreement with Central Hudson Gas and Electric Corporation (CH). The Supplement provides for a decrease in the monthly carrying charges.

Con Edison has requested that this decrease take effect as of October 1, 2000.

Con Edison states that a copy of this filing has been served by mail upon CH.

Comment date: November 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company

[Docket No. ER01–162–000]

Take notice that on October 19, 2000, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (individually doing business as GPU Energy), tendered for filing a Notice of Cancellation of the Service Agreement between GPU Service Corporation and KCS Power Marketing, Inc., FERC Electric Tariff, Original Volume No. 1, Service Agreement No. 38.

GPU Energy requests that cancellation be effective December 18, 2000.

Comment date: November 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company

[Docket No. ER01–163–000]

Take notice that on October 19, 2000, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (individually doing business as GPU Energy), tendered for filing a Notice of Cancellation of the Service Agreement between GPU Service, Inc. and Niagara Mohawk Power Corporation, FERC Electric Tariff, Original Volume No. 1, Service Agreement No. 69.

GPU Energy requests that cancellation be effective December 18, 2000.

Comment date: November 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company

[Docket No. ER01–164–000]

Take notice that on October 19, 2000, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (individually doing business as GPU Energy), tendered for filing a Notice of Cancellation of the Service Agreement between GPU Service Corporation and Commonwealth Edison Company, FERC Electric Tariff, Original Volume No. 1, Service Agreement No. 45.

GPU Energy requests that cancellation be effective December 18, 2000.

Comment date: November 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company

[Docket No. ER01–165–000]

Take notice that on October 19, 2000, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (individually doing business as GPU Energy), tendered for filing Notice of Cancellation of the Service Agreement between GPU Service Corporation and Coral Power, L.L.C., FERC Electric Tariff, Original Volume No. 1, Service Agreement No 46.

GPU Energy requests that cancellation be effective December 18, 2000.

Comment date: November 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

20. Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company

[Docket No. ER01–166–000]

Take notice that on October 19, 2000, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (individually doing business as GPU Energy), tendered for filing Notice of Cancellation of the Service Agreement between GPU Service Corporation and Morgan Stanley Capital Group, Inc., FERC Electric Tariff, Original Volume No. 1, Service Agreement No. 53.

GPU Energy requests that cancellation be effective December 18, 2000.

Comment date: November 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

21. Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company

[Docket No. ER01–167–000]

Take notice that on October 19, 2000, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (individually doing business as GPU Energy), tendered for filing Notice of Cancellation of the Service Agreement between GPU Service Corporation and Baltimore Gas and Electric Company, FERC Electric Tariff, Original Volume No. 1, Service Agreement No. 31.

GPU Energy requests that cancellation be effective December 18, 2000.

Comment date: November 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

22. Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company

[Docket No. ER01–170–000]

Take notice that on October 19, 2000, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (individually doing business as GPU Energy), tendered for filing Notice of Cancellation of the Service Agreement between GPU Service Corporation and LG&E Power Marketing Inc., FERC Electric Tariff, Original Volume No. 1, Service Agreement No. 8.

GPU Energy requests that cancellation be effective December 18, 2000.

Comment date: November 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

23. Consumers Energy Company and CMS Marketing, Services and Trading Company

[Docket No. ER01–171–000]

Take notice that on October 19, 2000, Consumers Energy Company (CECo) and CMS Marketing, Services and Trading Company (CMS MST), tendered for filing an application requesting modification of Code of Conduct, modification of CECo's market-based rate power sales tariff, FERC Electric Tariff, First Revised Volume No. 8, and acceptance of a service agreement.

Comment date: November 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

24. Illinois Power Company

[Docket No. ER01–175–000]

Take notice that on October 18, 2000, Illinois Power Company (IP), 500 South 27th Street, Decatur, Illinois 65251–2200, tendered for filing with the Commission a Service Agreement for Network Integration Transmission Service and a Network Operating Agreement with Central Illinois Light Company entered into pursuant to IP's Open Access Transmission Tariff.

IP requests an effective date of September 18, 2000 for the Agreements and accordingly seeks a waiver of the Commission's notice requirement.

IP has served a copy of the filing on CILCO.

Comment date: November 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

25. PG Power Sales Twelve, L.L.C.

[Docket No. ER01–196–000]

Take notice that on October 16, 2000, PG Power Sales Twelve, L.L.C., tendered for filing Notice that effective September 28, 2000, CP Power Sales Four, L.L.C., changed its name to PG Power Sales Twelve, L.L.C.

Comment date: November 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

26. PG Power Sales Eleven, L.L.C.

[Docket No. ER01–197–000]

Take notice that on October 16, 2000, PG Power Sales Eleven, L.L.C., tendered for filing Notice that effective September 28, 2000, CP Power Sales Eleven, L.L.C., changed its name to PG Power Sales Eleven, L.L.C.

Comment date: November 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance). Beginning November 1, 2000, comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 00–27897 Filed 10–30–00; 8:45 am]

BILLING CODE 6717–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–10–000]

Williams Gas Pipelines Central, Inc.; Notice of Intent To Prepare an Environmental Assessment for the Proposed Welda/Ottawa Compression Project and Request for Comments on Environmental Issues

October 25, 2000.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Welda/Ottawa Compression Project involving construction, operation, and abandonment of facilities proposed by Williams Gas Pipelines Central, Inc. (Williams) in Anderson and Franklin Counties, Kansas.[1] Williams proposes to install 6,107 horsepower (hp) of compression and abandon 7,000 hp of compression. This EA will be used by the Commission in its decision-making process to determine whether the

[1] Williams' application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

project is in the public convenience and necessity.

If you are a landowner receiving this notice, you should have been contacted by Williams if you reside within ½ mile of the compressor stations. Also, you may be contacted by a pipeline company representative about the acquisition of an easement to construct an access road near the north property line of the Welda compressor Station. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' was attached to the project notice Williams provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet website (*www.ferc.fed.us*).

Summary of the Proposed Project

Williams proposes to:

- Abandon by removal seven 1,000-hp Cooper Type 22 compressors at its Ottawa Compressor Station in Franklin County, Kansas; and
- Install one 6,107-hp Solar Centaur 50 turbine and appurtenant facilities at its Welda Compressor Station in Anderson County, Kansas in replacement of the compressors proposed to be abandoned at its Ottawa Compressor Station.

The system modifications would increase operating efficiency and reliability on this segment of Williams' pipeline system. Williams indicates that due to their obsolescence, abandonment of the compressors would enable Williams to eliminate maintenance and parts procurement problems associated with these compressors. Replacement of this compression at the Welda Compressor Station with a new 6,107-hp turbine would enable Williams to operate its Ottawa-Welda 20-inch-diameter pipeline at the existing designed and certificated maximum allowable operating pressure (MAOP) of 690 pounds per square inch gauge during periods of peak withdrawal from the Welda Storage Complex.

Williams indicates that pursuant to 18 Code of Federal Regulation (CFR) 2.55(a) of the Commission's regulations, it would also construct station piping, headers and other appurtenant facilities to tie the three existing turbines into the five existing reciprocating compressors at the Welda Compressor Station in order to utilize these reciprocating compressors as second stage compression during periods of peak withdrawal. This would provide Williams the flexibility of operating the Ottawa-Welda 20-inch-diameter pipeline at the existing certificated MAOP. Williams is identifying the modification in the application for informational purposes.

The location of the proposed project facilities is shown in appendix 1.[2]

Land Requirements for Construction

The only additional land required for this project is about 0.21 acre of land required to construct a new access road on the north side of the Welda Compressor Station. All other proposed construction work would take place within the 17-acre Welda Compressor Station requiring a disturbance of about 3.89 acres and within the 73-acre Ottawa Compressor Station requiring a disturbance of about 2.53 acres.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[3] to discover and address concerns the public may have about proposals. We call this ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Land use
- Cultural resources
- Vegetation and wildlife
- Air quality and noise
- Endangered and threatened species
- Public safety

This preliminary list of issues may be changed based on your comments and our analysis. We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

[2] The appendices referenced in this notice are not being printed in the **Federal Register.** Copies are available on the Commission's website at the ''RIMS'' link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, or call (202) 208–1371. For instructions on connecting to RIMS refer to the last page of this notice. Copies of the appendices were sent to all these receiving this notice in the mail.

[3] ''Us'', ''we'' and ''our'' refer to the environmental staff of the FERC's Office of Energy Projects.

• Send an original and two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426.

• Label one copy of the comments for the attention of the Gas Group 2, PJ–11.2.

• Reference Docket No. CP01–10–000.

• Mail your comments so that they will be received in Washington, DC on or before November 24, 2000. Beginning November 1, 2000, comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.200(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor.'' Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2). Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Additional information about the proposed project is available from the Commission's Office of External Affairs at (202) 208–0004 or on the FERC website (www.ferc.fed.us) using the ''RIMS'' link to information in this docket number. Click on the ''RIMS'' link, select ''Docket #'' from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the ''CIPS'' link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the ''CIPS'' link, select ''Docket #'' from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

David P. Boergers,

Secretary.

[FR Doc. 00–27849 Filed 10–31–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Request To Use Alternative Procedures in Preparing a Licenses Application

October 25, 2000.

Take notice that the following request to use alternative procedures to prepare a license application has been filed with the Commission.

a. *Type of Application:* Request to use alternative procedures to prepare a license application has been filed with the Commission.

b. *Project Nos.:* P–2146, P–2146, P–82, P–618, and P–2165.

c. *Date filed:* September 22, 2000.

d. *Applicant:* Alabama Power Company.

e. *Name of Projects:* Coosa River Project, Mitchell Project, Jordan Project, and Warrior River Projects, collectively called the Coosa-Warrior Projects.

f. *Location:* On the Coosa and Warrior Rivers, in Cherokee, Etowah, Calhoun, St. Clair, Talladega, Chilton, Coosa, Shelby, Elmore, Walker, Winston, Cullman, and Tuscaloosa Counties, Alabama and Floyd County, Georgia. The Warrior River Project occupies federal lands within the Bankhead National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:* Jim Crew, Relicensing Project Manager, Alabama Power Company, 600 North 18th Street, Birmingham, AL 35291, (205) 257–4265 or Barry Lovett Project Manager, Alabama Power Company, 600 North 18th Street, Birmingham, AL35291, (205) 257–1268.

i. *FERC Contact:* Ronald McKitrick at (770) 452–3778; e-mail ronald.mckitrick@ferc.fed.us.

j. *Deadline for Comments:* 30 days from the date of this notice. Project No. 2146, *et al.*

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Beginning November 1, 2000, comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http;//www.ferc.fed.us/efi/doorbell.htm.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The existing Coosa River Project consists of five developments (Weiss, Neely Henry, Logan Martin, Lay, Bouldin) with a total rated capacity of 705.78 MW, Lay and Bouldin operate principally as run-of-river the other three as peaking projects. The Mitchell Project has a rated capacity of 170 MW and operates run-of-river. The Jordan Project has a rated capacity of 100 MW and operates principally as run-of-river. The Jordan Project has a rated capacity of 100 MW and operates principally as run-of-river. The Warrior River Projects consists of two developments (Lewis Smith and Bankhead) with a total rated capacity of 210 MW, Lewis Smith is a peaking project and Bankhead operates principally as run-of-river.

l. Alabama Power Company (APC) has demonstrated that it has made an effort to contact all federal and state resources agencies, non-governmental organizations (NGO), and others affected by the project. APC has also demonstrated that a consensus exists that the use of alternative procedures is appropriate in this case. APC has submitted a communications protocol that is supported by the stakeholders.

The purpose of this notice is to invite any additional comments on Alabama Power Company's request to use the alternative procedures, pursuant to Section 4.34(i) of Commission's regulations. Additional notices seeking comments on the specific project proposal, interventions and protests, and recommended terms and conditions will be issued at a later date. APC will complete and file a preliminary Environmental Assessment, in lieu of Exhibit E of the license application. This differs from the traditional process, in which an applicant consults with agencies, Indian tribes, NGOs, and other parties during preparation of the license application and before filing the application, but the Commission staff

performs the environmental review after the application is filed. The alternative procedures are intended to simplify and expedite the licensing process by combining the pre-filing consultation and environmental review processes into a single process, to facilitate greater participation, and to improve communication and cooperation among the participants.

Alabama Power Company has met within federal and state resources agencies, NGOs, elected officials, environmental groups, business and economic development organizations, and members of the public regarding the Coosa-Warrior projects. APC intends to file 6-month progress reports during the alternative procedures process that leads to the filing of a license application by July, 2005.

David P. Boergers,

Secretary.

[FR Doc. 00–27851 Filed 10–30–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

October 25, 2000.

Take notice the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License.

b. *Project No.:* 7115–031.

c. *Date Filed:* June 23, 2000.

d. *Applicant:* Homestead Energy Resources, LLC.

e. *Name of Project:* George W. Andrews.

f. *Location:* At the Corps of Engineers' George W. Andrews Lock and Dam on the Chattahoochee River in Houston County, Alabama and Early County, Georgia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Charles B. Mierek, Homestead Energy Resources, LLC., 5250 Clifton-Glendale Rd., Spartanburg, SC 29307–4618, (864) 579–4405.

i. *FERC Contact:* Regina Saizan, (202) 219–2673.

j. *Deadline for filing comments and or motions:* December 1, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Beginning November 1, 2000, comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Please include the Project Number (7115–031) on any comments or motions filed.

k. *Description of Amendment:* Pursuant to Sections 4.200(c) and 4.202(a) of the Commission's regulations and Public Law No. 106–213, the applicant requests that its license be amended to extend the deadline for commencement of construction for 3 consecutive 2-year periods. The applicant also requests that completion of construction be extended by an additional four years from any extended commencement of construction date that the Commission grants.

l. *Location of the Application:* a copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This Filing may be viewed on *http://www.ferc.fed.us/online/rims.htm* (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 00–27852 Filed 10–30–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–50040; FRL–6746–7]

Proposed Correction to Chemical Nomenclature for Monomer Acid and Derivatives for TSCA Inventory Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: An August 2, 1985 letter from EPA erroneously equates monomer acid and its derivatives with Tall Oil Fatty Acid (TOFA) and its corresponding derivatives for Toxic Substances Control Act (TSCA) Inventory purposes when, in fact, they are chemically distinct. As a result, many manufacturers of monomer acid derivatives have not submitted Premanufacture Notices (PMNs) under TSCA section 5, because the letter incorrectly indicated that monomer acid derivatives were covered by TOFA derivatives already on the Inventory. This notice proposes a correction to the 1985 letter on nomenclature of monomer acid and derivatives. With this proposed correction, monomer acid derivatives that are not on the Inventory would be considered new chemical substances under section 5 of TSCA.

DATES: Comments, identified by the docket control number [OPPTS–50040], must be received by EPA on or before January 2, 2001.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**: To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–50040 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Acting Director, Environmental Assistance Division (7401), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone numbers: 202–554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Kenneth Moss, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–260–3395; fax number: 202–260–0118; e-mail address: moss.kenneth@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Document Apply to Me?

You may be affected by this document if you are, or may in the future be, a manufacturer or importer of a monomer acid derivative that requires submission of a Premanufacture Notice (PMN) or Significant New Use Notice (SNUN) under the Toxic Substances Control Act (TSCA). Special rules apply to persons who manufactured (or processed) these chemicals between August 2, 1985, and 12 months following the date of publication of the final nomenclature correction notice in the **Federal Register**. Potentially affected entities may include, but are not limited to the following:

Category	NAICS Codes	Examples of Potentially Affected Entities
Chemical manufacturers or importers	325, 32411	Anyone who manufactures or imports, or who plans to manufacture or import, a monomer acid derivative or other ''downstream'' substance based on monomer acid for a non-exempt commercial purpose

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. To access information about EPA's New Chemicals Program, go directly to the Home Page at http://www.epa.gov/oppt/newchems/.

2. *In person.* The Agency has established an official record for this action under docket control number OPPTS–50040. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall, Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–50040 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: OPPT Document Control Office (DCO) in East Tower Rm. G-099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260–7093.

3. *Electronically.* You may submit your comments electronically by e-mail to: ''oppt.ncic@epa.gov,'' or mail your computer disk to the address identified above. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.1 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–50040. Electronic comments may also be filed online at many Federal Depository Libraries

D. How Should I Handle Confidential Business Information That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be confidential business information (CBI). You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person identified under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. What Action is the Agency Taking?

An August 2, 1985 letter from EPA erroneously equates monomer acid and its derivatives with Tall Oil Fatty Acid (TOFA) and its corresponding derivatives for TSCA Inventory purposes when, in fact, they are chemically distinct. As a result, many manufacturers of monomer acid derivatives have not submitted PMNs under TSCA section 5, because the letter incorrectly indicated that monomer acid derivatives were covered by TOFA derivatives already on the Inventory. This notice proposes a correction to the 1985 letter on nomenclature of monomer acid and derivatives. With this proposed correction, monomer acid derivatives that are not on the Inventory would be considered new chemical substances under section 5 of TSCA.

B. What is the Agency's Authority for Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Section 8(b) of TSCA requires EPA to compile, keep current, and publish a list of each chemical substance which is manufactured or processed in the United States (the TSCA Inventory). This requirement includes defining the scope of the listings on the Inventory.

C. Why is this Proposed Nomenclature Correction Necessary?

The August 2, 1985 EPA letter to an industry representative on the nomenclature for monomer acids states:

> The co-product produced during the catalytic dimerization of tall oil fatty acids and generally known as monomer acid or monomer fatty acid is considered to be the same as tall oil fatty acids for TSCA Inventory purposes. . . .Because the names oleic acid, octadecenoic acid, and tall oil fatty acid may have been used to represent the same substance on the Inventory, they are synonymous terms within the context of the Inventory. If one wishes to determine if a substance derived from monomer acid is on the Inventory, and he finds a similar derivative under any of these names, his product is on the Inventory. (See docket for full text.)

Tall oil is a source for natural fatty acids, commonly referred to as Tall Oil Fatty Acids (TOFA). TOFA may be reacted with other substances to create TOFA derivatives. TOFA that is heated in the presence of an acid clay catalyst forms a ''dimer acid'' together with small amounts of ''trimer acid'' and higher oligomers. The ''dimer acid'' process also produces ''monomer acid'' as a co-product. The monomer acid is often used as an inexpensive fatty acid source to make monomer acid derivatives or other downstream products for use in lubricants, greases, hot melt adhesives, printing ink resins, ore flotation agents, corrosion inhibitors, etc.

It is clear that the TOFA dimerization process yields distinct chemical substances that may be separated by distillation: Dimer acid, trimer acid, and monomer acid. Whereas the natural source-derived TOFA largely consists of linear C18-unsaturated carboxylic acids, principally oleic and linoleic acids, monomer acid contains relatively small amounts of oleic and linoleic acids, and instead contains significant amounts of branched and cyclic C18 acids, both saturated and unsaturated, as well as elaidic acid. The more diverse and significantly branched composition of monomer acid results from the thermal catalytic processing carried out on TOFA or analogous feedstocks.

Further, the reaction of monomer acid with other chemical substances also yields unique, identifiable derivative substances which are chemically different from corresponding TOFA derivatives. Therefore, it is incorrect to equate monomer acid to TOFA, or a monomer acid derivative to a TOFA derivative.

Oleic acid and octadecenoic acid are also unique, identifiable substances that are distinguished from monomer acid because of their essentially linear, unsaturated acid composition. Thus, the derivatives of oleic and octadecenoic acid are also unique, identifiable, and different from monomer acid derivatives.

Through dialogue over the last 6 years, EPA and industry have worked toward a mutual understanding of the correct nomenclature for these chemical substances that previously were believed to be on the Inventory, and have mutually developed procedures to implement the nomenclature change. In 1994, the Pine Chemicals Association (PCA, then known as the Pulp Chemicals Association) asked EPA to clarify the Agency's chemical nomenclature policy for dimer acids. At that time several alternative listings for dimer acid were present in the Inventory, and PCA and EPA agreed that one description, ''Fatty Acids, C18 unsaturated, dimers (CASRN 61788–89–4),'' would describe dimer acids irrespective of the fatty acid source (except for the crude form of dimer acid that is not made from oleic acid or linoleic acid, and is used directly as a crude chemical intermediate, which is instead named ''Fatty acids, C16-18 and C18-unsatd., dimerized (CASRN 71808–39–4)''). Subsequently, over 100 Inventory corrections were filed and the dimer acid issue successfully resolved. During this program it was also realized that a similar issue existed for a co-product, monomer acid, as there were four separate ways in which it was identified in the Inventory. As a consequence, different types of chemical names exist on the Inventory for derivatives and other downstream products based on monomer acids. EPA and PCA agreed that it would be necessary to correct the existing Inventory listings under a uniform nomenclature.

EPA also acknowledged that the August 2, 1985 Agency letter had erroneously equated monomer acid derivatives with TOFA derivatives and derivatives of oleic acid or octadecenoic acid, when in fact they are chemically distinct. Because the guidance found in the 1985 letter led the manufacturers to believe that the products they manufactured were already on the Inventory under a name based on TOFA, oleic acid, or octadecenoic acid, since 1985 a number of manufacturers of monomer acid products have not submitted PMNs required under section 5 of TSCA.

III. Proposed TSCA New Chemicals Program Policy for Monomer Acid Chemical Nomenclature

Today's proposed nomenclature correction constitutes official notice that EPA's August 2, 1985 letter was erroneous and that monomer acids are not equivalent to TOFA, oleic acid, or octadecenoic acid for Inventory purposes. Under this proposed notice PMNs are required for monomer acid derivatives that are not on the TSCA

Inventory and which are manufactured on or after the effective date of the final notice. In accordance with Inventory correction guidelines (45 FR 50544; July 29, 1980), because these monomer acid derivatives were not manufactured during the Initial Inventory reporting period and were never reported for the Initial TSCA Inventory, they are not eligible for Inventory correction as an alternative to PMN submission.

A. What is the Basis for and Scope of this Proposed Nomenclature Correction?

EPA no longer considers as valid the nomenclature interpretation in the August 2, 1985 EPA letter which stated:

> The co-product produced during the catalytic dimerization of tall oil fatty acids and generally known as ''monomer acid'' or ''monomer fatty acid'' is considered to be the same as tall oil fatty acids for TSCA Inventory purposes. . . .Because the names oleic acid, octadecenoic acid, and tall oil fatty acid may have been used to represent the same substance on the Inventory, they are synonymous terms within the context of the Inventory. If one wishes to determine if a substance derived from monomer acid is on the Inventory, and he finds a similar derivative under any of these names, his product is on the Inventory.

The proposed nomenclature correction affects anyone who manufactures or imports, or who plans to manufacture or import, a monomer acid derivative or other ''downstream'' substance based on monomer acid for a non-exempt commercial purpose. The correct nomenclature now required for monomer acid is ''Fatty acids, C16-18 and C18-unsatd., branched and linear'' (CAS Registry Number 68955–98–6). For TSCA Inventory purposes, derivatives and other downstream products made from monomer acids must be named consistently with this nomenclature for monomer acid.

B. What are the Key Dates and Provisions of this Proposed Nomenclature Correction?

The proposed effective date for this new nomenclature interpretation, described in Unit III.A., will be 12 months following the date of publication of the final nomenclature correction notice in the **Federal Register**. Prior to this effective date, EPA will allow manufacturers to continue commercial production of existing monomer acid derivatives and downstream products under the old nomenclature. After the effective date, companies that manufacture monomer acid derivatives and downstream products under the old nomenclature will no longer be in compliance with TSCA section 5. Therefore, companies would need to submit PMNs at least 90 days before the effective date to ensure that Agency review is completed before this nomenclature correction takes effect.

EPA will work closely with chemical manufacturers and importers to resolve chemical nomenclature of specific monomer acid derivatives whose Inventory status is uncertain. EPA is taking two specific steps to facilitate the Premanufacture Notice process for chemical substances currently using the incorrect nomenclature. For the purposes of this proposed nomenclature correction only, EPA is suspending its TSCA new chemicals program policy of a limit of six chemical substances per consolidation notice and waiving PMN fees for any PMN submissions required as a result of the proposed nomenclature correction. However, consistent with the Agency's chemical nomenclature requirements for consolidated notices, submitters must use the Chemical Abstract Service (CAS) Inventory Expert Service to develop correct Chemical Abstracts (CA) names for all of their reported substances, in accordance with Method 1 as described in the Revision of Premanufacture Notification Regulations (60 FR 16298; March 29, 1995) (FRL–4921–8), 40 CFR 720.45(a). EPA encourages conversion to the new nomenclature immediately instead of delaying the correction to the effective date of this proposed notice.

EPA expects that there will be at least several consolidated PMNs submitted as a result of this proposed nomenclature correction, and there may also be individual PMNs filed. It may be possible that only one consolidated PMN is necessary for each chemical class of product based on monomer acid. These notices can be submitted by individual companies or as part of an organized effort to submit consolidated PMNs. It is expected that the affected manufacturers and importers of monomer acid and its derivatives or other downstream products, supported by PCA, will prepare consolidated PMNs. In such cases, PMN Standard Form pages 8 through 11 of each consolidated PMN may be filled out by PCA or another organization (this information is expected to be more generally applicable to a given class of monomer acid derivative). Pages 1 through 7, however, pertain to information that is specific to individual submitters, and will need to be filled out by the individual manufacturers and importers. The individual manufacturers and importers of monomer acid derivatives will be the submitter of record for each PMN chemical substance. Other information, such as toxicity data on the PMN chemical substance that are in the possession or control of the PMN submitter, or known to or reasonably ascertainable by the PMN submitter, must also be submitted or described by each individual manufacturer or importer, as specified in 40 CFR 720.50. There may be some manufacturers that do not wish to participate in a consolidated PMN; these manufacturers can submit individual notices separately for their corrected nomenclature.

If a person intends to manufacture a monomer acid derivative or monomer acid-based downstream product for the first time before the effective date, and there is no corresponding Inventory listing using the old nomenclature for that particular substance, this person must submit a regular PMN, using the correct nomenclature, at least 90 days before manufacture of that substance. The special consolidated PMN reporting process involving PCA, as described in this section, cannot be used to report such new derivatives or downstream products.

C. What are the Consequences of Not Submitting a PMN and Completing PMN Review on a Monomer Acid Derivative before the Effective Date of this Proposed Nomenclature Correction Notice?

On the effective date of the final nomenclature correction notice, TOFA, oleic acid, or octadecenoic acid will no longer be considered equivalent to monomer acid. Starting on the effective date, anyone manufacturing a chemical substance based on monomer acid that is not specifically listed on the TSCA Inventory using the correct nomenclature for the monomer acid component of the chemical substance name will be in violation of TSCA. A person may, of course, continue to manufacture TOFA derivatives and derivatives of oleic acid or octadecenoic acid listed on the Inventory without submitting a PMN.

D. Is a PMN Required for Everyone Who Did Not Submit One Since 1985 because of the Incorrect EPA Guidance, Regardless of Whether this Person Still Manufactures the Substance Today?

A PMN must be submitted by those persons who intend to manufacture monomer acid and its derivatives and other downstream products not on the TSCA Inventory on or after the effective date of the final nomenclature correction notice. For example, if you manufactured such a monomer acid derivative in 1986 but are not currently manufacturing or intending to resume manufacture, you are not required to submit a PMN now. However, if you

later plan to manufacture the monomer acid derivative after the effective date of the final nomenclature correction notice, you will need to submit a PMN 90 days before commencing manufacture.

E. How will EPA Handle CBI in Consolidated PMNs?

Consistent with current law, policy and practice in the New Chemicals Program, multiple persons submitting information required in a specific consolidated PMN may make separate submissions to EPA so as to not disclose CBI to one another. For example, a customer of a PMN submitter of record who also is a manufacturer of monomer acid derivatives may submit a letter of support, confidential from the supplier, directly to EPA for TSCA section 5 notification, giving complete chemical identity, health and safety, use, production volume, or process information, etc. This enables the customer to disclose any specific CBI to EPA but not to the other parties in the consolidated PMN.

IV. Do Any of the Regulatory Assessment Requirements Apply to this Action?

A. General

No. This document is not a rule. It only seeks comment on a proposed correction to TSCA Inventory nomenclature. As such, this action does not require review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

Because this action is not economically significant as defined by section 3(f) of Executive Order 12866, this action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

This action will not result in environmental justice related issues and does not, therefore, require special consideration under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

This action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, and is not subject to the provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pubic Law 104-4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. Nor does this action significantly or uniquely affect the communities of tribal governments as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 10, 1998). This action 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, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999).

This action does not involve any technical standards that require the Agency's consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

In issuing this action, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988, entitled *Civil Justice Reform* (61 FR 4729, February 7, 1996).

EPA has complied with Executive Order 12630, entitled *Governmental Actions and Interference with Constitutionally Protected Property Rights* (53 FR 8859, March 15, 1988), by examining the takings implications of this action in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the Executive Order.

B. Paperwork Reduction Act

This document does not contain any new information collection requirements that would require additional OMB review and approval. The information collection activities related to the submission of information pursuant to TSCA section 5 has been already approved by OMB under OMB control number 2070-00012 (EPA ICR No.574). The annual respondent burden for this information collection activity is estimated to average 100 hours per respondent, including time for reading the regulations, processing, compiling and reviewing the requested data, generating the request, storing, filing, and maintaining the data. The additional reporting requirement is estimated to be six additional PMNs over and above the current annual projections of PMN submissions. The renewal ICR projects about 875 PMNs and 185,000+ burden hours annually. An additional six PMNs at 100 hours each would be covered by these current estimates.

As defined by the Paperwork Reduction Act and 5 CFR 1320.3(b), ''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.

Comments regarding the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, should be submitted as described in Unit I.C.

List of Subjects

Environmental protection, Chemical substances, Hazardous substances, Reporting and recordkeeping requirements.

Dated: October 20, 2000.

Susan H. Wayland,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 00–27927 Filed 10–30–00 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Technological Advisory Council Meeting

AGENCY: Federal Communications Commission.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 2, Public Law 92–463, as

amended, this notice advises interested persons of the seventh meeting of the Technological Advisory Council (''Council''), which will be held at the Federal Communications Commission in Washington, DC.

DATES: Wednesday, December 6, 2000 at 10:00 a.m.

ADDRESSES: Federal Communications Commission, 445 12th St. S.W., Room TW–C305, Washington DC 20554.

FOR FURTHER INFORMATION CONTACT: Kent Nilsson at knilsson@fcc.gov or 202–418–0845.

SUPPLEMENTARY INFORMATION: The Council was established by the Federal Communications Commission to provide a means by which a diverse array of recognized technical experts from a variety of interests such as industry, academia, government, citizens groups, etc., can provide advice to the FCC on innovation in the communications industry.

The purpose of this seventh meeting will be to hear and discuss the progress of the three focus groups established by the Council to consider the issues the FCC presented to it at its April 30, 1999 meeting. These issues include: (1) The current state of the art for software defined radios, cognitive radios, and similar devices, future developments for these technologies, and ways that the availability of such technologies might affect the FCC's traditional approaches to spectrum management; and the current state of knowledge of electromagnetic noise levels and the effects of such noise on the reliability of existing and future communications systems; (2) the current technical trends in telecommunications services, changes that might decrease, rather than increase, the accessibility of telecommunications services by persons with disabilities and ways the FCC might best communicate to designers of emerging telecommunications network architectures, the requirements for accessibility; and (3) the telecommunications common carrier network interconnection scenarios that are likely to develop, including the technical aspects of cross network (*i.e.,* end-to-end) interconnection, quality of service, network management, reliability, and operations issues, as well as the deployment of new technologies such as dense wave division multiplexing and high speed packet/cell switching. The Council may also consider such other issues as come before the Council at the meeting.

Members of the general public may attend the meeting. The Federal Communications Commission will attempt to accommodate as many persons as possible. However, admittance will be limited to the seating available. Depending on the Council's progress at this meeting, public participation may be permitted at the discretion of the Council's Chairman. Interested persons may submit written comments to David Farber, the Council's Designated Federal Officer, before the meeting either by e-mail (dfarber@fcc.gov) or by U.S. mail to David Farber, Chief Technologist, Room 7–C161, Office of Engineering & Technology, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–27905 Filed 10–30–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/.*

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 24, 2000.

A. Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. First National Bankers Bankshares, Inc., Baton Rouge, Louisiana; to acquire 100 percent of the voting shares of Mississippi National Bankers Bank, Ridgeland, Mississippi (in organization).

Board of Governors of the Federal Reserve System, October 26, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–27957 Filed 10–30–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/.*

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 24, 2000.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Irwin Financial Corporation, Columbus, Indiana; to acquire Irwin Union Bank, F.S.B., Louisville, Kentucky, and thereby engage in

operating a savings association, pursuant to § 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, October 26, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–27958 Filed 10–30–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, November 6, 2000.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: October 27, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–28064 Filed 10–27–00; 3:40 pm]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Delegation of Authority To Disclose Certain Nonpublic Information to Foreign Law Enforcement Agencies

AGENCY: Federal Trade Commission.

ACTION: Delegation of authority.

SUMMARY: The Commission has delegated authority to the Associate Director of the Division of Planning and Information to share certain non-public information with Canadian agencies and the Australian Competition and Consumer Commission. With respect to Canadian agencies, the authority may be redelegated to individual Regional Directors on specific cases and projects as appropriate.

EFFECTIVE DATE: With respect to the Australian Competition and Consumer Commission, the effective date of the delegation was July 17, 2000. With respect to the Canadian agencies, the effective date of the delegation was October 24, 2000.

FOR FURTHER INFORMATION CONTACT: Maneesha Mithal, Attorney, Division of Planning and Information, (202) 326–2771, mmithal@ftc.gov.

SUPPLEMENTARY INFORMATION: Notice is hereby given, pursuant to Reorganization Plan No. 4 of 1961, 26 FR 6191, that the Commission has delegated to the Associate Director for Planning and Information the authority to disclose: (1) To Canadian law enforcement agencies, information regarding consumer protection investigations involving Canadian businesses or consumers; and (2) to the Australian Competition and Consumer Commission, information regarding consumer protection investigations involving Australian businesses or consumers. With respect to Canada, the Associate Director can redelegate this authority to individual Regional Directors on specific cases and projects as appropriate.

This delegation does not apply to competition-related investigations. When exercising its authority under this delegation, staff will require from the relevant foreign law enforcement agency assurances of confidentiality. Disclosures shall be made only to the extent consistent with limitations on disclosure, including section 6(f) of the FTC Act, 15 U.S.C. 46(f), section 21 of the Act, 15 U.S.C. 57b–2, and Commission Rule 4.10(d), 16 CFR 4.10(d), and with the Commission's enforcement policies and other important interests. Where the subject matter of the information to be shared raises significant policy concerns, staff shall consult with the Commission before disclosing such information.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–27953 Filed 10–30–00; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 972 3162]

WebTV Networks, Inc.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before November 24, 2000.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Joel Winston or Dean Forbes, FTC/S–4002, 600 Pennsylvania Ave., NW, Washington, D.C. 20580, (202) 326–3153 or 326–2831.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Homes Page (for October 25, 2000), on the World Wide Web, at ''http://www.ftc.gov/os/2000/10/index.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, D.C. 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and

will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from WebTV Networks, Inc. (''WNI'').

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

WNI advertises and promotes the WebTV system, consisting of a set-top box and an Internet service which, together, allows users to connect to the Internet through a telephone line and a television. WNI licenses the set-top box technology to various companies, including Sony, Philips Electronics, and Mitsubishi, which manufacture and sell the boxes. WNI sells the Internet service for a flat monthly fee.

This matter concerns allegedly false and deceptive advertising for the WebTV system. The Commission's proposed complaint alleges that WNI falsely claimed that:

- The WebTV system provides access to all of the Internet's content, including all of the entertainment and information available on the Internet. In fact, WebTV users are unable, for example, to access files on Web sites that use popular formats or programming languages, including technologies for Web site audio, video, interactivity, and multimedia used for online entertainment and information communication.
- The WebTV set-top box is equivalent to a personal computer with respect to its Internet-related performance. In fact, in contrast to a computer, WebTV users are unable, for example, to download, store, or run software available on the Internet; display certain Web pages or play certain Web pages or play certain Web files; or open email attachments in certain common formats.
- WNI's upgrades to the WebTV system keep users current with the latest Internet technology. In fact, those upgrades have failed to provide certain commonly used Internet technologies for audio, video, interactivity, and multimedia.

The complaint also alleges that, in advertising the total cost of using the WebTV system, WNI failed to disclose adequately that a significant percentage of U.S. consumers will incur long distance telephone toll charges while connected to the Internet through the WebTV Internet service. The complaint alleges that this is a deceptive practice.

The proposed consent order contains provisions designed to prevent WNI from engaging in similar acts and practices in the future.

Part I of the proposed order prohibits the three alleged false representations, as well as any false representation related to access to Internet content or functionality of any Internet access product or service.

Part II of the proposed order prohibits WNI from making any representation about the cost of any Internet access product or service unless it discloses certain material information. If using such product or service to access the Internet may result in telephone toll charges, this fact must be disclosed, clearly and conspicuously, along with how consumers can determine whether they would be subject to these charges.

Part III of the proposed order requires that WNI make clear and conspicuous disclosures about long distance charges on a log-on screen, dialog box, or other similar device that appears prior to any Internet access product dialing a telephone number for which there is a toll charge. The disclosures must state the following: (a) That the user will or will likely incur such a charge while connected to the Internet access service; (b) how the user can determine whether in fact (s)he will incur such a charge, and the amount of the charge; and (c) a source of information about means, if any, of avoiding the charge. Under this provision, WNI must use a procedure designed to ensure that the user expressly consents to connecting on a toll basis, before a toll charge is incurred.

Part IV of the proposed order requires that WNI clearly and conspicuously disclose in its Terms of Service and introductory kit, or the equivalent documents it provides to new subscribers, that users may incur toll charges while using the Internet service, if that is the case, and how users can determine whether they would incur these charges.

Part V of the proposed order requires that WNI offer reimbursement to certain former subscribers to its Internet service for toll charges they incurred. Subscribers eligible for reimbursement are those who: (a) Incurred toll charges before March 1, 1999, and within sixty days of subscribing to the service; (b) have not been previously reimbursed; (c) canceled their subscription before April 1, 1999, and within ninety days of subscribing to the service; (d) identified toll charges as a reason for canceling; and (e) provide proof of the charges. Eligible subscribers may receive reimbursement for toll charges incurred in the first two months of their subscription. subscribers who cannot provide phone bills as proof of the charges would receive reimbursement up to a maximum dollar amount, which depends on the type of proof submitted.

Part VI of the proposed order requires WNI to notify its advertising agencies, manufacturers, and retailers to discontinue making any of the advertising claims prohibited by the order. WNI must also set up, staff, and refer consumers to a toll-free customer service telephone number (or a similar mechanism that is free to consumers) that would handle inquiries regarding telephone toll charges.

Part VII describes a consumer education campaign that WNI must undertake to inform consumers about the limitations of Internet access devices as compared to computers. The campaign will include one-half page advertisements in three national magazines, as well as a brochure that WNI will (a) distribute to retailers selling WebTV set-top boxes for posting in the stores and (b) post on its Web site.

Parts VIII through XI of the proposed order are reporting and compliance provisions. Part XII is a provision ''sunsetting'' the order after twenty years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–27952 Filed 10–30–00; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

DEPARTMENT OF DEFENSE

Office of Communications; Cancellation of a Optional Form

AGENCY: General Services Administration DoD.

ACTION: Notice.

SUMMARY: The Department of Defense cancelled the following Optional Form because of low usage:

OF 87A, Attention—Electrostatic Sensitive Devices (Label)

DATES: Effective October 31, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Williams, General Services Administration, (202) 501–0581.

Dated: October 10, 2000.

Barbara M. Williams,

Deputy Standard and Optional Forms Management Officer.

[FR Doc. 00–27908 Filed 10–30–00; 8:45 am]

BILLING CODE 6820–34–M

GENERAL SERVICES ADMINISTRATION

Privacy Act of 1974; System of Records

AGENCY: General Services Administration.

ACTION: Notice of a new system of records subject to the Privacy Act of 1974.

SUMMARY: The General Service Administration (GSA) is providing notice of the establishment of a new system of records, Personal Property Sales Program (GSA/FSS–13). The new system will collect information for use in soliciting bids and awarding contracts on sales of Federal personal property. Information in the system will be provided voluntarily by individuals who wish to buy Federal personal property through sales and auctions conducted by GSA.

DATES: Comments on the new system must be provided November 30, 2000. The new system will become effective without further notice on November 30, 2000 unless comments dictate otherwise.

ADDRESSES: Address comments to: Director, Personal Property Division (FBP), Federal Supply Service, General Services Administration, 1941 Jefferson Davis Highway, Crystal Mall Building 4, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Personal Property Division, Federal Supply Service, at the above address, or telephone (703) 305–7240.

GSA/FSS–13

SYSTEM NAME:

Personal Property Sales Program.

SYSTEM LOCATION:

System records are maintained by the General Services Administration (GSA) at several locations. A complete list of the locations is available from the System Manager.

INDIVIDUALS COVERED BY THE SYSTEM:

The system will include those individuals who request to be added to GSA bidders' mailing lists, register to bid on GSA sales, and enter into contracts to buy Federal personal property at sales conducted by GSA.

RECORDS IN THE SYSTEM:

The system contains information needed to identify potential and actual bidders and awardees, and transaction information involving personal property sales. System records include:

a. Personal information provided by bidders and buyers, including names, phone numbers, addresses, Social Security Numbers, and credit card numbers or other banking information; and

b. Contract information on Federal personal property sales, including whether payment was received, the form of the payment, notices of default, and contract claim information.

AUTHORITY FOR MAINTAINING THE SYSTEM:

Sections 201 and 203 of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 481 and 484), which assign responsibility for the disposition of property to the Administrator of General Services.

PURPOSE(S):

To establish and maintain a system of records for conducting public sales of Federal personal property by GSA.

ROUTINE USES OF THE SYSTEM RECORDS, INCLUDING CATEGORIES OF USERS AND THEIR PURPOSES FOR USING THE SYSTEM:

System information may be accessed and used by authorized GSA employees or contractors to prepare for and conduct personal property sales, administer sales contracts, perform oversight or maintenance of the GSA electronic systems and, when necessary, for sales contract litigation or non-procurement suspension or debarment purposes.

Information from this system also may be disclosed as a routine use:

a. In any legal proceeding, where pertinent, to which GSA is a party before a court or administrative body.

b. To a Federal, State, local, or foreign agency responsible for investigating, prosecuting, enforcing, or carrying out a statute, rule, regulation, or order when GSA becomes aware of a violation or potential violation of civil or criminal law or regulation.

c. To duly authorized officials engaged in investigating or settling a grievance, complaint, or appeal filed by an individual who is the subject of the record.

d. To the Office of Personnel Management (OPM) or the General Accounting Office when the information is required for evaluation of the program.

e. To a Member of Congress or his or her staff on behalf of and at the request of the individual who is the subject of the record.

f. To an expert, consultant, or contractor of GSA in the performance of a Federal duty to which the information is relevant.

g. To the GSA Office of Finance for debt collection purposes (see GSA/PPFM–7).

h. To the National Archives and Records Administration (NARA) for records management inspection conducted under 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF SYSTEM RECORDS:

STORAGE:

Information may be collected on paper or electronically and may be stored on paper or on electronic media, as appropriate.

RETRIEVABILITY:

Records are retrievable by a personal identifier or by other appropriate type of designation approved by GSA.

SAFEGUARDS:

System records are safeguarded in accordance with the requirements of the Privacy Act, the Computer Security Act, and OMB Circular A–130. Technical, administrative, and personnel security measures are implemented to ensure confidentiality and integrity of the system data stored, processed, and transmitted. Paper records are stored in secure cabinets or rooms. Electronic records are protected by passwords and other appropriate security measures.

RETENTION AND DISPOSAL:

Disposition of records is according to the National Archives and Records Administration (NARA) guidelines, as set forth in the handbook, GSA Records Maintenance and Disposition System (OAD P 1820.2), and authorized GSA records schedules.

SYSTEM MANAGER AND ADDRESS:

Director, Personal Property Division (FBP), Federal Supply Service, General Services Administration, 1941 Jefferson Davis Highway, Crystal Mall Building 4, Arlington VA 22202.

NOTIFICATION PROCEDURE:

Individuals may submit a request on whether a system contains records about them to the system manager at the above address.

RECORD ACCESS PROCEDURES:

Requests from individuals for access to their records should be addressed to the system manager.

CONTESTING RECORD PROCEDURES:

GSA rules for access to systems of records, contesting the contents of systems of records, and appealing initial determinations are published in the **Federal Register**, 41 CFR part 105–64.

RECORD SOURCE CATEGORIES:

Information is provided by individuals who wish to participate in the GSA personal property sales program, and system transactions designed to gather and maintain data and to manage and evaluate the Federal personal property disposal program.

Dated: October 18, 2000.

Daniel K. Cooper,

Director, Information Management Division.

[FR Doc. 00–27909 Filed 10–30–00; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Proposed Collections; Comment Request

The Department of Health and Human Services, Office of the Secretary will periodically publish summaries of proposed information collections projects and solicit public comments in compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain a copy of the information collection plans and instruments, call the OS Reports Clearance Officer on (202) 690–6207.

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 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 through the use of automated collection techniques or other forms of information technology.

Proposed Projects 1. Annual Report for OPA Title X Family Planning Program Grantees—0990–0221—Revision—The Office of Population Affairs (OPA) collects annual data from Title X grantees to assure compliance with legislative and regulatory requirements and identify areas where grantees may require assistance. *Respondents:* Title X Family Planning Program Grantees; *Annual Number of Respondents:* 85; *Average Burden per Response:* 22 hours; *Total Burden:* 1,870 hours.

Send comments to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201. Written comments should be received within 60 days of this notice.

Dated: October 19, 2000.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 00–27834 Filed 10–30–00; 8:45 am]

BILLING CODE 4150–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Citizens Advisory Committee on Public Health Service (PHS) Activities and Research at Department of Energy (DOE) Sites: Oak Ridge Reservation Health Effects Subcommittee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

Name: Citizens Advisory Committee on PHS Activities and Research at DOE Sites: Oak Ridge Reservation Health Effects Subcommittee (ORRHES).

Times and Dates:

8 a.m.–5 p.m., November 16, 2000

8 a.m.–5 p.m., November 17, 2000

Place: YWCA, 1660 Oak Ridge Turnpike, Oak Ridge, Tennessee, 37830. Telephone 865/482–9922.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 150 people.

Background: Under a Memorandum of Understanding (MOU) signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or ''Superfund''). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles. In addition, under an MOU signed in December 1990 with DOE and replaced by an MOU signed in 1996, the Department of Health and Human Services (HHS) has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production and use. HHS has delegated program responsibility to CDC.

Purpose: This subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator, ATSDR, pertaining to CDC's and ATSDR's public health activities and research at this DOE site. Activities shall focus on providing the public with a vehicle to express concerns and provide advice and recommendations to CDC and ATSDR. The purpose of this meeting is to receive updates from ATSDR and CDC, and to address other issues and topics, as necessary.

Matters to be Discussed: Agenda items include a presentation and discussion on the purpose, function, and structure of the Subcommittee, discussion on defining operational guidelines, and agency updates. Agenda items are subject to change as priorities dictate.

Contact Persons for More Information: Loretta Bush, Executive Secretary ORRHES, or Marilyn Palmer, Committee Management Specialist, Division of Health Assessment and Consultation, ATSDR, 1600 Clifton Road, NE, M/S E–56, Atlanta, Georgia 30333, telephone 1–888–42–ATSDR(28737), fax 404/639–6075.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: October 25, 2000.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 00–27871 Filed 10–30–00; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1571]

Enrofloxacin for Poultry; Opportunity For Hearing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA), Center for Veterinary Medicine (CVM), is proposing to withdraw approval of the new animal drug application (NADA) for use of the fluoroquinolone enrofloxacin in poultry. This action is based on CVM's determinations that the use of fluoroquinolones in poultry causes the development of fluoroquinolone-resistant *Campylobacter*, a human pathogen, in poultry; this resistant *Campylobacter* is transferred to humans and is a significant cause of the development of resistant *Campylobacter* infections in humans; and resistant *Campylobacter* infections are a human health hazard. Therefore, CVM is proposing to withdraw the approval of the new animal drug application for use of enrofloxacin in poultry on the grounds that new evidence shows that the product has not been shown to be safe as provided for in the Federal Food, Drug, and Cosmetic Act (the act).

DATES: Submit written appearances and a request for a hearing by November 30, 2000. Submit all data and analysis upon which a request for a hearing relies by January 2, 2001.

ADDRESSES: Written appearances, requests for a hearing, data and analysis, and other comments are to be identified with Docket No. 00N–1571 and must be submitted to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Linda R. Tollefson, Center for Veterinary Medicine (HFV–200), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6647.

SUPPLEMENTARY INFORMATION:

I. Fluoroquinolones Approved for Poultry Use

The following are approved uses for fluoroquinolones in poultry:

A. Sarafloxacin Hydrochloride

NADA 141–017, SaraFlox® WSP, approved August 18, 1995, for the control of mortality in growing turkeys and broiler chickens associated with *Escherichia coli* organisms, Abbott Laboratories, 1401 Sheridan Rd., North Chicago, IL 60064.

NADA 141–018, SaraFlox® Injection, approved October 12, 1995, for the control of early chick mortality associated with *E. coli* organisms in chickens and turkeys, Abbott Laboratories, 1401 Sheridan Rd., North Chicago, IL 60064.

B. Enrofloxacin

NADA 140–828, Baytril® 3.23% Concentrate Antimicrobial Solution, approved October 4, 1996, for the control of mortality in chickens associated with *E. coli* organisms and control of mortality in turkeys associated with *E. coli* and *Pasteurella multocida* organisms, Bayer Corp., Agriculture Division, Animal Health, Shawnee Mission, KS 66201.

Abbott Laboratories has requested withdrawal of NADA's 141–017 and 141–018 for use of sarafloxacin hydrochloride in poultry. By doing so, the company has waived its right to a hearing. Therefore, only NADA 140–828 is covered by this notice.

II. Summary of the Bases for Withdrawing the Approval

CVM is providing notice of an opportunity for a hearing on a proposal to withdraw approval of the NADA for enrofloxacin for use in poultry and to revoke the new animal drug regulations reflecting the approval of the NADA (21 CFR 520.813). Enrofloxacin belongs to the class of antimicrobial drugs called fluoroquinolones. Fluoroquinolones also are approved for use in humans. Fluoroquinolones are considered to be one of the most valuable antimicrobial drug classes available to treat human infections because of their spectrum of activity, pharmacodynamics, safety and ease of administration. This class of drugs is effective against a wide range of human diseases and is used both in treatment and prophylaxis of bacterial infections in the community and in hospitals. Fluoroquinolones are essential to the treatment of foodborne diseases. These diseases have a major public health impact in the United States.

Enrofloxacin oral solution for each of its uses in poultry is a new animal drug as defined in section 201(v) of the act (21 U.S.C. 321(v)). As such, the drug cannot be legally marketed in interstate commerce in the absence of an approved NADA (sections 301, 501, and 512 of the act (21 U.S.C. 331, 351, and 360b)). The requirements for approval of NADA's are set out in section 512 of the act. Section 512 of the act requires that a new animal drug must be shown to be safe and effective for its intended uses. Section 201(u) of the act provides that ''safe'' as used in section 512 ''has reference to the health of man or animal.'' The determination of safety requires CVM to consider, among other relevant factors, ''the probable consumption of such drug and of any substance formed in or on food because of the use of such drug'' (section 512(d)(2)(A)). Accordingly, CVM must consider not only safety of the new animal drug to the target animal but also safety to humans of substances formed in or on food as a result of the use of the new animal drug.

FDA approved the NADA's for fluoroquinolones for use in poultry in 1995 and 1996 (see section V.A.3 of this document). After the approvals, CVM instituted several strategies intended to prevent or mitigate the development of resistance (see section V.A.4 of this document). However, resistance still quickly developed to the fluoroquinolones among the human foodborne pathogen, *Campylobacter* (see section V.B of this document). The resistance developed from use of fluoroquinolones in poultry under the approved, labeled conditions of use (see section V.B.1 of this document).

By 1998, Centers for Disease Control and Prevention (CDC) testing found that 13.6 percent of *Campylobacter* human isolates were resistant to fluoroquinolones. Fluoroquinolone resistance rose to 17.6 percent among *Campylobacter jejuni* and 30 percent among *Campylobacter coli* isolated from ill humans in 1999. In 1998, testing established that approximately 9.4 percent of the *C. jejuni* isolated from chicken carcasses at federally inspected slaughter plants in the United States were fluoroquinolone resistant. Higher levels of fluoroquinolone resistance are observed in retail chicken (see section V.B of this document).

After thoroughly analyzing all the data and evidence, CVM has determined the following: The primary cause of the emergence of domestically-acquired fluoroquinolone-resistant *Campylobacter* infections in humans is the consumption of or contact with contaminated food (see section IV.B of this document). Moreover, poultry is the most likely source of campylobacteriosis

in humans (see section V.C.2 of this document), poultry is also a source of fluroquinolone-resistant *Campylobacter* (see sections V.B.3 and V.B.4 of this document), and administration of fluoroquinolones to chickens leads to development of fluoroquinolone-resistant *Campylobacter* in chickens.

CVM has concluded, based on data from surveillance programs, published literature and other sources, that the use of fluoroquinolones in poultry is a significant cause of fluoroquinolone-resistant *Campylobacter* on poultry carcasses, and therefore a significant cause of fluoroquinolone-resistant *Campylobacter* infections in humans. CVM's conclusion is supported by data establishing a temporal association between the approvals of these drugs for use in poultry in the United States and the increase in resistant *Campylobacter* infections in humans. Fluoroquinolones have been available for human use since 1986 and are commonly prescribed for persons with gastrointestinal illness. Yet resistance to fluoroquinolones did not increase among *Campylobacter* organisms above a very low level until 1996 or 1997, or soon after the approval and use of these drugs in poultry (see section V.B.5 of this document).

CVM's conclusion is also supported by comparison of fluoroquinolone use in poultry with the two most likely other possible causes of fluoroquinolone-resistant human infections—exposure to resistant *Campylobacter* during foreign travel, and direct use of fluoroquinolones in humans. People are exposed to fluoroquinolone-resistant *Campylobacter* during travel to developing countries (Ref. 1). However, a risk assessment conducted by CVM (see section V.C.3 of this document) demonstrates an unacceptable human health impact from domestically-acquired *Campylobacter* infections from use of fluoroquinolones in chickens (Ref. 2). These domestically acquired infections are much more likely to come from exposure to resistant *Campylobacter* through food than as a result of direct treatment with fluoroquinolones in humans (see section IV.B of this document). This is due in part to the fact that even if fluoroquinolone treatment results in resistant *Campylobacter* in an individual, the resistant organisms are unlikely to be transmitted to other people in the United States because generally the numbers of organisms present are low and fecal-oral transmission is required (Ref. 3). Therefore, the level of fluoroquinolone-resistant *Campylobacter* now seen in human isolates in the United States is not plausibly due to fluoroquinolone use in humans or the spread of resistant *Campylobacter* from one human to another.

Development of resistance to fluoroquinolones among *Campylobacter* has important consequences for human health (see section V.C of this document). Foodborne diseases have a major public health impact in the United States, and *Campylobacter* is the most common known cause of foodborne illness in the United States (Ref. 3). Fluoroquinolones are considered to be one of the most valuable antimicrobial drug classes available to treat a wide variety of human infections, including infections resistant to other drugs, and have been particularly important in the treatment of foodborne infections.

Patients with severe enteric disease such as campylobacteriosis are usually treated empirically. Therefore, *Campylobacter* resistance presents a dilemma for the physician. If fluoroquinolone treatment is given based on symptoms, and the patient is infected with resistant *Campylobacter*, there is a risk that the treatment will not be effective or will be less effective and valuable time will be lost. If treatment is delayed until the causative organism and susceptibility are confirmed by a medical laboratory, again valuable time will be lost. That is, the disease may be prolonged or result in complications, especially in vulnerable patients with underlying health problems (Refs. 1 and 4). Use of an alternative drug to treat the patient empirically may be less desirable because that drug may have a narrower spectrum of activity or greater or more toxic side effects.

Isolation of fluoroquinolone-resistant *Campylobacter* organisms from humans means that fluoroquinolone therapy—if administered—would be ineffective or less effective in these humans. The current level of resistance to fluoroquinolones among human *Campylobacter* isolates attributed to the use of fluoroquinolones in poultry represents a harm to human health.

Furthermore, a risk assessment conducted by CVM demonstrated the magnitude of the adverse impact that the use of fluoroquinolones in chickens has on human health. The risk assessment determined that in 1999 a mean estimate of 11,477 persons (5th and 95th percentiles: 6,412 and 18,978) infected with campylobacteriosis and prescribed a fluoroquinolone would have had a fluoroquinolone-resistant illness due to the use of fluoroquinolones in chickens. These people are likely to have had prolonged illnesses or complications. Furthermore, CVM believes that the adverse human health effects were underestimated due to limitations in study methods and data.

Finally, CVM is concerned that the harm from fluoroquinolone-resistant *Campylobacter* infections will continue to increase such that more people will be unable to be effectively treated with fluoroquinolones when those drugs are needed for foodborne illness. With respect to the harm presented by resistant foodborne pathogens, it is especially important to take action as soon as a problem is detected since the nature of the problem is dynamic and relatively large shifts in the prevalence of resistance can occur within short timeframes (Refs. 5 and 6).

III. Legal Context of the Proposed Action

Section 512(e)(1)(B) of the act, requires withdrawal of approval of an NADA if:

> * * * new evidence not contained in [an approved] application or not available to the Secretary until after such application was approved, or tests by new methods, or tests by methods not deemed reasonably applicable when such application was approved, evaluated together with the evidence available to the Secretary when the application was approved, shows that such drug is not shown to be safe for use under the conditions of use upon the basis of which the application was approved * * *.

Under this clause, to meet its initial burden to support withdrawal of an approval CVM must provide ''a reasonable basis from which serious questions about the ultimate safety of [the drug] may be inferred.'' *See* Diethylstilbestrol: Withdrawal of Approval of New Animal Drug Applications; Commissioner's Decision (Commissioner's DES Decision), 44 FR 54852 at 54861, September 21, 1979, *aff'd Rhone-Poulenc, Inc.*, *Hess & Clark Div.* v. *FDA*, 636 F.2d 750 (D.C. Cir 1980). *See also* Nitrofurans: Withdrawal of Approval of New Animal Drug Applications; Final Rule; Final Decision Following a Formal Evidentiary Public Hearing, 56 FR 41902, August 23, 1991. '''Serious questions' can be raised where the evidence is not conclusive, but merely suggestive of an adverse effect'' (44 FR 54861). Once this threshold burden has been satisfied, the burden passes to the sponsor to demonstrate safety. *Id.*

Section 201(u) of the act provides that for purposes of section 512 of the act, ''safe'' has ''reference to the health of man or animals.'' In determining whether a drug is ''safe,'' section

512(d)(2)(A) of the act requires FDA to consider ''the probable consumption of such drug and any substance formed in or on food because of the use of such drug.''

''Safe,'' in the context of human food safety, can be defined as ''reasonable certainty of no harm.'' The definition is derived from language in H. Rept. 2284, 85th Cong., 2d. sess. 4095, 1958, defining the term ''safe'' as it appears in section 409 of the act (21 U.S.C. 348), which governs food additives. Substances formed in or on food due to the use of animal drugs were regulated under the food additive provisions in section 409 of the act until passage of the Animal Drug Amendments in 1968 (the 1968 amendments). The 1968 amendments merely consolidated all of the existing statutory authorities related to animal drugs into section 512 of the act, and the legislative history shows that the consolidation in no way changed the authorities with respect to the regulation of new animal drugs (S. Rept. 1308, 90th Cong., 2d. sess. 1, 1968). CVM has applied the ''reasonable certainty of no harm'' standard in determining the safety of substances formed in or on food as a result of the use of a new animal drug during the new animal drug application review process. CVM has done so by determining the level at which a substance formed in or on food as a result of the use of a new animal drug has no effect on humans (Ref. 75).

IV. Development of Antimicrobial Resistance As a Result of Drug Use in Animals

A. Development of Antimicrobial Resistance That Can Compromise Human Therapy

Antimicrobial drugs are products that affect bacteria by inhibiting their growth or by killing them outright. Antimicrobial drugs are used to treat bacterial disease in humans and since their discovery have prevented countless deaths worldwide. In animals, these drugs are used to control, prevent, and treat infection, and to enhance animal growth and feed efficiency.

That antimicrobial agents could select for resistant bacterial populations became apparent soon after the first antimicrobial drug, penicillin, was discovered. Antimicrobial use promotes antimicrobial resistance by selecting for resistant bacteria (Refs. 7 and 8). When an antimicrobial drug is used to treat an infection, the bacteria most sensitive to the drug die or are inhibited. Those bacteria that have, or acquire, the ability to resist the antimicrobial persist and replace the sensitive bacteria. If these bacteria that have developed resistance are disease causing (pathogenic) in humans, they may cause disease resistant to treatment (Refs. 7 and 9).

Selective pressure resulting from the use of antimicrobial drugs is the underlying force in the development and spread of resistant bacterial populations. The association between antimicrobial use and resistance has been documented in various settings (Ref. 7), for nosocomial infections (Ref. 10) as well as for community-acquired infections (Ref. 11).

B. Antimicrobial Resistance in Foodborne Pathogens of Animal Origin

In industrialized countries, the major foodborne pathogens, *Campylobacter* and *Salmonella*, are infrequently transferred from person to person (Refs. 3 and 12). In these countries, epidemiological data have demonstrated that the primary source of antibiotic resistant foodborne infections in humans is the acquisition of resistant bacteria from animals via food (Refs. 3, 13, and 14). This has been demonstrated through several different types of foodborne disease followup investigations, including laboratory surveillance, molecular subtyping, outbreak investigations, and studies on infectious dose and carriage rates (Refs. 15, 16, 17, and 18).

CDC published an extensive review of epidemiological studies that focused on human foodborne infections caused by drug-resistant *Salmonella* and concluded that the resistant infections were acquired through contaminated foods of animal origin (Refs. 12 and 19). Transfer of *Campylobacter* from poultry to humans through food was demonstrated as early as 1984 (Ref. 15).

Recent emergence of a resistant foodborne pathogen that has a food-producing animal reservoir is illustrated by *Salmonella enterica* serotype Typhimurium Definitive Type 104 (DT104). DT104 is a multidrug resistant pathogen that is currently epidemic in human and food-producing animal populations in the United Kingdom and has been isolated in several countries in Europe (Refs. 20, 21, and 22). This organism has also been identified in livestock and poultry in the United States (Refs. 23, 24, and 25). Also, a report from the United Kingdom suggests that infections caused by DT104 may be associated with greater morbidity and mortality than infections by less resistant serotypes of *Salmonella* (Ref. 26).

C. Role of Animal Drug Use in the Development of Resistant Foodborne Pathogens

Scientific evidence demonstrates that the use of antimicrobials in food-producing animals can select for resistant bacteria of human health concern. Repeated dosing of food-producing animals can also contribute to the selection of resistant bacteria (Refs. 27 and 28). When an antimicrobial drug is administered to an animal, the most susceptible bacteria will be eliminated, while the least susceptible organisms will survive. These surviving bacteria will proliferate and become the predominant population. With additional exposure to the drug, the resistant populations of bacteria will expand and have an increasing probability of survival and dissemination.

The resistant bacteria that develop as a result of antimicrobial drug use in food-producing animals can then be transferred to humans via food. The contaminated food may cause disease in persons handling or consuming the food or in persons consuming food contaminated from the animal-derived food.

When antimicrobial drugs are administered to food-producing animals, they promote the emergence of resistance in bacteria that may not be pathogenic to the animal, but are pathogenic to humans (Refs. 15, 29, 30, 31, and 32). For example, *Salmonella* and *Campylobacter* are ubiquitous and can exist in the intestinal flora of various food-producing animals without causing disease in the animals. However, these bacteria can cause severe, even fatal, foodborne illness in humans. If using an antimicrobial in a food-producing animal causes resistance to occur in such bacteria, and the resistant bacteria cause an illness in a consumer who needs treatment, that treatment may be compromised (Ref.9).

The link between antimicrobial resistance in foodborne pathogenic bacteria and use of antimicrobials in food-producing animals has been demonstrated in a number of studies (Refs. 25, 33, 34, and 35). For example, an association has been noted between loss of susceptibility to fluoroquinolones among *Salmonella enterica* Typhimurium DT104 isolates (see section IV.B of this document) and the approval and use of a fluoroquinolone for veterinary therapeutic use in the United Kingdom (Refs. 14, 30, and 36). Moreover, fluoroquinolone administration to chickens infected with fluoqouinolone-sensitive *C. jejuni* has been shown to

result in the development of fluoroquinolone-resistant *C. jejuni* in those chickens (Ref. 35).

Epidemiological evidence shows that resistant foodborne pathogens are present on or within animals as a result of antimicrobial drug use in food-producing animals and can result in drug-resistant infections in humans (Refs. 1, 16, 37, 38, and 39). Holmberg et al. were the first to establish this by documenting an outbreak of salmonellosis in people caused by multi-drug-resistant *Salmonella* from eating hamburger originating from South Dakota beef cattle fed the antibiotic chlortetracycline for growth promotion (Ref. 16). As explained more fully in section V.B of this document, researchers in Minnesota recently reported on fluoroquinolone-resistant *Campylobacter* infections in humans acquired from poultry treated with fluoroquinolones (Ref. 1).

V. Antimicrobial Resistance Resulting From the Use of Fluoroquinolones in Poultry

As discussed below, during its evaluation of the NADA's for use of fluoroquinolones in poultry, CVM carefully considered the issue of potential resistance development due to the use of the drugs in poultry. When CVM approved the NADA's for use of fluoroquinolones in poultry, it believed that the fluoroquinolones could be used safely in poultry and that resistance development could be limited by certain restrictions placed on the use of the drugs. Resistance, however, has developed such that CVM now believes that its only option to protect human health is withdrawal of the approval of the NADA's for use of fluoroquinolones in poultry.

A. Circumstances Surrounding the Approval

1. Human Health Concern Related to Fluoroquinolone Resistance

Prior to FDA's approval of fluoroquinolones for use in food-producing animals, several scientific organizations and individual scientists expressed concern that the use of fluoroquinolones in food-producing animals would result in the selection of fluoroquinolone-resistant foodborne bacterial pathogens in humans (Refs. 7, 33, and 40). There were several reasons for these concerns.

First, as explained more fully in section V.C of this document, fluoroquinolones are very important for human therapy. Bacteria resistant to veterinary fluoroquinolones exhibit resistance to other compounds within the class. Thus, resistance to a fluoroquinolone used only in animals, such as enrofloxacin, confers resistance to all other fluoroquinolones, including ciprofloxacin and other fluoroquinolones used only in humans. The veterinary fluoroquinolone enrofloxacin is structurally similar to ciprofloxacin and a portion of it is metabolized to ciprofloxacin in the animal (Ref. 41).

Second, reports of studies conducted after approvals of fluoroquinolones for poultry in other countries had shown a relationship between the approval of fluoroquinolones for therapeutic use in food-producing animals and the development of fluoroquinolone resistance in *Campylobacter* in animals and humans. For example, the approval and use of these drugs in poultry in the Netherlands (Refs. 33, 35, and 42), and Spain (Refs. 43 and 44) preceded increases in fluoroquinolone resistance in *Campylobacter* isolates from treated animals and ill humans. In the Netherlands, *Campylobacter* isolates from humans and poultry were examined for resistance to the human fluoroquinolone ciprofloxacin between the years 1982 and 1989 to determine the influence of licensing of enrofloxacin for veterinary use in 1987 (Ref. 33). In 1982, none of the *Campylobacter* isolates from either human or poultry sources was resistant to ciprofloxacin. In 1989, fluoroquinolone resistance among the *Campylobacter* isolates was 11 percent in humans and 14 percent in poultry (Ref. 33).

Third, there was a concern about use of fluoroquinolones as water-soluble products. This use raised the possibility of development of resistant organisms in greater numbers than if the drugs were to be administered in an individually administered injectable dosage form. Due to the nature of animal production, the most efficient way to treat herds or flocks is to administer drugs through the water supply or the feed. When disease is detected in a herd of animals or a flock of poultry, the product is put into the animals' water supply, thereby exposing greater numbers of animals than just the few with clinical signs of the disease. The practice of treating an entire herd or flock is more likely to result in resistant pathogens than individual animal treatment due to the inability to control each animal's dose and the widespread contamination by water leakage and animal waste that occurs when large numbers of animals are treated, which result in untreated animals being exposed to the drug.

Selective pressure exerted by fluoroquinolone use is the driving force for the development and spread of the genetic mutations in *Campylobacter* that lead to fluoroquinolone resistance. Administering fluoroquinolones to large numbers of animals through water or feed could substantially increase the selective pressure on the organisms and facilitate the spread of resistant pathogens. An additional problem arises when the dose administered to each bird is variable, which is the case when the antimicrobial is administered *ad libitum* in the water. This practice may result in ineffective dosing in some animals and increase the probability of selecting for resistant zoonotic bacteria in both healthy and diseased animals.

2. Advisory Committee Review

Because of the concerns surrounding the use of fluoroquinolones in food-producing animals, CVM consulted with a panel of experts comprised of its Veterinary Medicine Advisory Committee and FDA's [Human] Anti-Infective Drug Advisory Committee in May 1994 to address the issue of use of fluoroquinolones in food-producing animals in light of concerns about antimicrobial resistance. The panel supported several restrictions on the use of the drugs in food-producing animals in order to minimize the human health risks related to the development of resistant bacteria in animals (Ref. 45). Frequently expressed recommendations of committee members included approval for therapeutic use by veterinary prescription only, prohibition of extra-label use, and establishment of a nationally representative surveillance system to prospectively monitor resistance trends of selected enteric bacteria of animals that can cause disease in humans (Ref. 45).

3. Approval of Enrofloxacin

The NADA for Baytril® 3.23% Concentrate Antimicrobial Solution (enrofloxacin) was approved October 4, 1996, for broiler chickens and growing turkeys. The approval is for therapeutic use: Enrofloxacin is approved for the control of mortality in chickens associated with *E. coli* organisms and control of mortality in turkeys associated with *E. coli* and *P. multocida* organisms.

At the time this drug was approved, microbial safety studies were not required for therapeutic uses of antimicrobial new animal drugs in food-producing animals. Thus, no studies were required of the drug sponsor, and none was performed, demonstrating the safety of the use of fluoroquinolones in poultry with respect to antimicrobial resistance and the potential for resistant pathogens to be transferred from poultry

to humans. At that time, the agency believed that such studies were necessary only for certain subtherapeutic feed uses in food-producing animals (21 CFR 558.15). However, increasing evidence that therapeutic as well as subtherapeutic use of antimicrobials in food-producing animals may select for resistant bacteria of human health concern led the agency to issue final guidance addressing this concern in December 1999 (Ref. 46). The guidance addresses how FDA intends to consider the potential human health impact of all uses, therapeutic as well as subtherapeutic, of all classes of antimicrobial new animal drugs intended for use in food-producing animals. The guidance states that preapproval studies to answer questions regarding the human health impact of the microbiological effects of an antimicrobial product may be needed for therapeutic as well as subtherapeutic products (Ref. 46).

4. Approval Restrictions, Surveillance, and Educational Activities

Certain actions were taken at or near the time of approval of the fluoroquinolones to help ensure that resistance to fluoroquinolones did not develop in bacteria that are transferred from poultry to humans, and to detect any trend towards the development of resistance at an early stage. First, CVM imposed two restrictions on the use of the fluoroquinolones. CVM limited the drugs to use by or on the order of a licensed veterinarian. Also, FDA issued an order to prohibit all extra-label uses of fluoroquinolones in animals, which became effective in August 1997 (21 CFR 530.41).

Second, the agency took steps to gather surveillance data on the development of antimicrobial resistance among foodborne pathogens, including resistance to fluoroquinolones. In 1996, FDA, CDC, and the U.S. Department of Agriculture (USDA) established the National Antimicrobial Resistance Monitoring System: Enteric Bacteria (NARMS) to prospectively monitor changes in antimicrobial susceptibilities of selected zoonotic enteric pathogens from human and animal clinical specimens, from healthy farm animals, and from carcasses of food-producing animals at slaughter (Ref. 47). Nontyphoid *Salmonella* was initially selected as the sentinel organism and the program has been expanded each year since its inception. NARMS is currently monitoring susceptibilities of human and animal isolates of *Salmonella*, *E. coli*, *Campylobacter*, and *Enterococcus*. NARMS is set up as two equal parts, human and animal, that use the same methodology for isolating and testing the organisms.

Animal isolate testing is conducted at the USDA Agricultural Research Service Russell Research Center. Human isolate testing is conducted at the CDC National Center for Infectious Diseases Foodborne Disease Laboratory. Goals and objectives of the monitoring program include: Providing descriptive data on the extent and temporal trends of antimicrobial susceptibility in enteric organisms from the human and animal populations; providing information to veterinarians, physicians, and public health authorities so that timely action can be taken; prolonging the life span of approved drugs by promoting the prudent use of antimicrobials; identifying areas for more detailed investigation; and guiding research on antimicrobial resistance.

Third, CVM has supported efforts by the American Veterinary Medical Association (AVMA) and several practitioner and producer groups to define and promote the appropriate use of antimicrobial drugs in food-producing animals to try to minimize the occurrence of resistant foodborne pathogens that may be transferred to humans through food. CVM is supporting the development of printed material and videotapes based on the prudent use guidelines developed by the AVMA to educate producers and veterinarians about food-producing animal drug use. CVM is also committed to help develop other educational strategies to be disseminated to veterinarians and food-producing animal producers via symposia and exhibits at scientific meetings. Veterinary medical schools may also use these educational materials as part of a food safety curriculum.

B. Development of Resistance After FDA Approvals of Fluoroquinolones for Use in Poultry

1. Overview

Despite the previously described restrictions placed by FDA on the use of the approved poultry fluoroquinolone products, fluoroquinolone resistance among *Campylobacter* developed and increased after the 1996 approvals. CVM believes, based on research, that prior to 1995, there was very little, if any, fluoroquinolone-resistant *Campylobacter* in the United States among domestically acquired foodborne disease (see section V.B.5 of this document). After the approval, however, fluoroquinolone resistance was observed in *Campylobacter* from human clinical cases, and in poultry isolates taken from slaughter plants and retail establishments. The results were obtained from NARMS and a key study by the Minnesota Department of Health. In the 4 years since approval of the fluoroquinolones, CVM has found very little evidence of extra-label use of these drugs in food-producing animals, based on information derived from regulatory inspections. Nor has CVM found evidence of over-the-counter sales of the poultry fluoroquinolones. Therefore, the agency's attempts to prevent the development of fluoroquinolone-resistant human pathogens through limiting these drugs to prescription use and by prohibiting extra-label use have not been sufficient.

2. Human Isolate Data from NARMS

CDC began routinely testing human *Campylobacter* isolates for resistance to fluoroquinolones in 1998, 2 years after approval of enrofloxacin for use in poultry. In 1998, CDC tested 346 human *Campylobacter* isolates and found 13.6 percent of the *Campylobacter* isolates were resistant to fluoroquinolones (Ref. 48). In 1999, CDC tested 315 human isolates of *Campylobacter*; fluoroquinolone resistance had risen to 17.6 percent among *C. jejuni* and 30 percent among *C.* coli, a statistically significant increase (Ref. 49).

3. Poultry Isolate Data From NARMS and Other Sources

Approximately 9.4 percent of the *C. jejuni* isolated from chicken carcasses at federally inspected slaughter plants in 1998 were fluoroquinolone resistant (Ref. 50). The *Campylobacter* isolates were collected in a pilot study during the latter 3 months of the year. The 1999 data set, collected for the entire year, shows that approximately 9.3 percent of the *C. jejuni* were resistant to fluoroquinolones (Ref. 51). However, the 1999 data when segregated by State show that several areas of the country had significantly higher than the 9.3 percent average level (Ref. 2). When the isolate test results are weighted by the level of chicken production in each State, the level of resistance among *C. jejuni* is approximately 12 percent for 1999 (Ref. 2).

Campylobacter isolates from retail chicken products show even higher levels of fluoroquinolone resistance. In January-June 1999, public health laboratories in Georgia, Maryland, and Minnesota, under the direction of the CDC, tested 180 chickens with 23 distinct brand names that were purchased from 25 grocery stores (Ref. 52). *Campylobacter* were isolated from 80 (44 percent) of the chickens. Nineteen (24 percent) of the samples had *Campylobacter* isolates resistant to

fluoroquinolones and 25 (32 percent) were resistant to nalidixic acid, a quinolone antimicrobial drug that serves as a precursor to fluoroquinolone resistance development (Ref. 52). These retail chicken findings are consistent with those from an earlier, independent study by the Minnesota Department of Health, described in the next subsection.

4. Human and Poultry Isolate Data From the Minnesota Study

Researchers at the Minnesota Department of Health studied quinolone and fluoroquinolone resistance among Minnesota residents, and evaluated chicken as the source of the resistance. They found that the proportion of fluoroquinolone-resistant *C. jejuni* isolates from humans increased from 1.3 percent in 1992 to 10.2 percent in 1998 (Ref. 1).

The proportion of resistant *C. jejuni* collected from all reported cases of illness increased only slightly from 1992 to 1994. Although researchers found that increases between 1996 and 1998 were predominantly associated with foreign travel, the percentage of resistant infections that were acquired domestically also increased from 0.3 percent to 3 percent between 1996 and 1998 (Ref. 1).

As part of the study, the Minnesota Department of Health in cooperation with the Minnesota Department of Agriculture collected 20 different brands of retail chicken products from 18 markets in the Twin Cities metro area in 1997. *Campylobacter* were isolated from 88 percent (80/91) of the samples; 20 percent of these were *Campylobacter* resistant to fluoroquinolones. The products with resistant strains had been processed in five States (Ref. 1).

Molecular subtyping revealed a strong association between resistant *C. jejuni* strains from the retail chicken products and *C. jejuni* strains from the domestically acquired human cases of campylobacteriosis. The study used polymerase chain reaction with restriction length polymorphism flagellin gene typing to identify strains of fluoroquinolone-resistant *C. jejuni* among isolates from the domestically acquired human cases and locally available retail chicken products. The investigators attributed the 1996 to 1998 increase in resistant domestic cases among humans to poultry treated with fluoroquinolones (Ref. 1). The investigators concluded that ''the use of fluoroquinolones in poultry, which began in the United States in 1995, has created a reservoir of resistant *C. jejuni*'' (Ref. 1).

5. Summary of Fluoroquinolone Resistance Data

The most recent data on fluoroquinolone resistance among *Campylobacter* isolates (1999) show 17.6 percent resistance among *C. jejuni* in humans, and 9.3 percent resistance among *C. jejuni* on chickens sampled at slaughter plants. Retail samples taken in 1999 indicate even higher levels of fluoroquinolone-resistant *Campylobacter* on chickens (Ref. 52).

After thoroughly analyzing all the data and evidence, CVM has determined that a significant cause of the emergence of domestically-acquired fluoroquinolone-resistant *Campylobacter* infections in humans is the consumption of, or contact with, contaminated food (see section IV.B of this document), that poultry is the most likely source of campylobacteriosis in humans (see section V.C.2 of this document), and that poultry is also a source of resistant *Campylobacter* (see section V.B.3 and V.B.4 of this document). CVM has also concluded that the administration of fluoroquinolones to chickens leads to development of fluoroquinolone-resistant *Campylobacter* in the chickens (see section IV.C of this document). Fluoroquinolone-resistant *Campylobacter* have been found in broiler chicks that had been administered fluoroquinolone drugs (Ref. 35). Further, resistant *Campylobacter* found on chicken carcasses would not have resulted from use of a nonfluoroquinolone drug because fluoroquinolone resistance in *Campylobacter* arises exclusively from clonal expansion, rather than by the transfer of plasmids or resistance determinants (Ref. 53). Also, the fluoroquinolone resistance results only from drug use; that is, the resistance could not have developed naturally since fluoroquinolones are totally synthetic antimicrobials with no known natural analogues. (See also discussion in section IV.A of this document.) Consequently, CVM has concluded, based on a careful study of all relevant data and information, that use of fluoroquinolones in poultry is a significant cause of domestically acquired resistant *Campylobacter* infections in humans.

CVM's conclusion is supported by the establishment of a temporal association between the approval of the fluoroquinolones for poultry and the emergence of fluoroquinolone-resistant *Campylobacter* in humans. Although most of the data cited above were collected after the approval, CVM believes that there was very little, if any, fluoroquinolone-resistant *Campylobacter* in the United States among domestically acquired foodborne disease cases before the approvals. Fluoroquinolones have been available for human use since 1986 when ciprofloxacin was approved in the United States (Refs. 1 and 54). Ciprofloxacin soon was one of the most commonly used antimicrobials to treat infections caused by a variety of bacterial infections in humans, including *Campylobacter* infections. However, emergence of domestically acquired fluoroquinolone-resistant human foodborne infections in numbers large enough to be detected by national surveillance systems did not occur until sometime between 1996 and 1998 Ref. 1).

Only rare, sporadic, and isolated incidents of fluoroquinolone-resistant *Campylobacter* infections were reported in humans prior to 1995.[1] (NARMS was not initiated until January 1996 and *Campylobacter* were not tested until 1998.) In addition, as shown in section V.B.4 of this document, only very low levels of resistance were detected among isolates from human *Campylobacter* cases collected by the Minnesota Department of Health from 1992 to 1994 (Ref. 1). Additional data from Minnesota demonstrated an increase in fluoroquinolone resistance among *Campylobacter* collected from domestically-acquired cases of human illness after the approval of the poultry fluoroquinolones (Refs. 1 and 54). The researchers were able to conclude that the 1996 to 1998 increases in domestic cases were due to the use of fluoroquinolones in poultry. That conclusion is supported by the association found between molecular subtypes of resistant *C. jejuni* strains that were acquired domestically in humans and those found in chicken products (Ref. 1). (See section V.B.4 of this document.)

Because there was no food-producing animal fluoroquinolone use other than use in poultry until late 1998 (when CVM approved fluoroquinolones for use in cattle), CVM believes that the data presented in this section V.B of the document) provide strong evidence that the increase in domestically acquired fluoroquinolone resistance observed in people since 1996 (Ref. 1) is largely associated with the use of fluoroquinolones in poultry. Data from other countries, which showed

[1] In two surveys encompassing 474 human isolates from 1982 to 1992 in the United States, only a single ciprofloxacin resistant isolate was identified. This isolate was subsequently speciated as *C. lari*, which is intrinsically resistant to fluoroquinolones (Ref. 54).

increases in *Campylobacter* resistance following approval of fluoroquinolones for use in poultry, support this conclusion as to temporal association (Refs. 33, 43, and 55). (See section V.A.1 of this document.)

CVM's conclusion is also supported by an examination of the two most likely other possible causes of fluoroquinolone-resistant *Campylobacter* in humans. One possible cause is the direct use of fluoroquinolones in humans. Although fluoroquinolone-resistant *Campylobacter* may develop in the intestinal tract of persons with these infections who are treated with fluoroquinolones, spread of the organisms to other persons is uncommon because person-to-person transmission of these organisms is rare in developed countries (Ref. 3). As a result, the resistance due to direct human use is likely to be limited (Refs. 12 and 19). (See section IV.B of this document.) The lack of an increase in fluoroquinolone-resistant human cases from the time when fluoroquinolones were first used in human medicine, the high level of human use since their approval, and the emergence of fluoroquinolone resistance in human cases of *Campylobacter* infections soon after the approval of fluoroquinolones for poultry, all support the conclusion that the resistance observed in humans is due to the use of fluoroquinolones in poultry.

Exposure to *Campylobacter*-contaminated food can occur during foreign travel and, indeed, some of the fluoroquinolone resistance identified among humans is due to acquiring an illness while traveling outside the United States. However, a risk assessment conducted by CVM demonstrates a significant human health impact from domestically acquired fluoroquinolone-resistant *Campylobacter* infections due to the use of fluoroquinolones in chickens (Ref. 2). (See section V.C.3 of this document.)

CVM therefore believes that a significant cause of the emergence of fluoroquinolone-resistant *Campylobacter* infections in humans is the consumption of, or contact with, contaminated poultry that had been administered fluoroquinolones, had contact with other poultry treated with this drug, or had contact with the environment contaminated directly or indirectly with this drug.

C. Human Health Implications

1. Importance of Fluoroquinolines in Human Medicine

Fluoroquinolones are considered to be one of the most valuable antimicrobial drug classes available to treat human infections because of their broad spectrum of activity, pharmacokinetics, safety, and ease of administration (Ref. 56). This class of drugs is effective against a wide range of human diseases and is widely used both in treatment and prophylaxis of bacterial infections in the community and in hospitals (Ref. 56). Fluoroquinolones are important because they are active against a variety of organisms resistant to most other classes of antibiotics or for which alternative agents are more toxic and/or not available for oral administration. They have been very effective in treating or preventing serious, often life-threatening, infections in a number of major areas of human medicine, both in the hospital and in the community. In the hospital setting, the fluoroquinolones are very often life-saving drugs of choice for a wide variety of common resistant and serious infections because of both their activity and their favorable safety profiles.

Fluoroquinolones are particularly important in the treatment of gram negative infections, including those caused by *Campylobacter*, but also including *Shigella*, *Salmonella*, *E. coli*, *Klebsiella* and other Enterobactericiae. These type of enteric bacteria cause a wide variety of infections and are frequently resistant to agents such as ampicillin, tetracycline, trimethoprim-sulfa and many cephalosporins (Ref. 56). In addition, the fluoroquinolones are often less toxic and more convenient to administer than alternative treatments that may be available for resistant organisms.

Fluoroquinolones are the agents most frequently used as the drugs of choice in the empiric treatment of patients presenting to a physician with serious gastrointestinal symptoms such as acute diarrhea or possible enteric fever (e.g., typhoid fever) because they traditionally have exhibited a very high level of clinical effectiveness against most enteric pathogens (Refs. 4 and 57). Severity of illness is one of the most important criteria physicians use in determining which patients require immediate treatment for a presumed infectious enteric illness. Other criteria include having a complicating medical condition and belonging to a high-risk group such as persons who are immunocompromised. Upon presentation to the physician, the patient is examined and if treatment is deemed necessary, treatment is usually prescribed empirically, that is, without having the results of culture and sensitivity testing available prior to the selection of the treatment. Culture and sensitivity testing of *Campylobacter* can take 48 to 96 hours before results are available to provide guidance to the physician in selection of a treatment regimen. Thus, the physician needs to be able to confidently prescribe an agent likely to be immediately effective against the array of organisms most likely to be causing the patient's severe symptoms.

Treatment of serious susceptible enteric infections with an effective fluoroquinolone (e.g., ciprofloxacin) can reduce the duration of illness and most likely prevent complications and adverse outcomes, including hospitalization (Refs. 19 and 58). The magnitude of the benefit of antibiotic treatment is directly related to the early initiation of therapy (Refs. 19 and 58). For example, effective treatment of campylobacteriosis with fluoroquinolones has been shown to decrease the duration of illness from 10 days to 5 days and the mean duration of diarrhea from 5 to 1.3 days (Refs. 7, 19, and 58).

2. Foodborne Diseases

a. *Introduction*. Foodborne diseases have a major public health impact in the United States. Recent estimates describe 5,000 deaths and 76 million foodborne illnesses annually (Ref. 59). The causes of foodborne illness are varied and include bacteria, parasites, viruses, toxins and novel agents. Clinical severity of foodborne disease also varies and ranges from mild gastroenteritis to life-threatening neurologic, hepatic, and renal syndromes as well as septicemia (Ref. 59). Development of resistance in foodborne bacterial pathogens to safe and effective antimicrobials complicates the medical and public health concern as important treatment options are compromised or lost (Refs. 7, 19, 61, and 62).

b. *Campylobacteriosis*. The three primary causes of bacterial foodborne disease in the United States are *Campylobacter*, *Salmonella*, and some pathogenic strains of *E. coli*. *Campylobacter* infections are predominantly foodborne infections associated with animal-derived food products (Refs. 59, 63, and 64). *Campylobacter* is the most common known cause of foodborne illness in the United States (Ref. 3), causing an estimated 2 million cases every year (Ref. 60). Compared to patients with typical noninvasive salmonellosis, patients with *C. jejuni* or *Campylobacter*

coli gastroenteritis often experience more severe illness and are ill longer. Gastroenteritis caused by *Campylobacter* commonly causes severe diarrhea, often bloody, fever, severe abdominal pain, and can mimic acute appendicitis, which may result in unnecessary surgery (Ref. 65). While these symptoms usually improve within several days, they persist or recur in 15 to 25 percent of patients and can be confused with chronic bowel diseases (Ref. 65). For example, among 460 sporadic (not associated with an epidemic) cases of campylobacteriosis recently reported in 19 representative U.S. counties, the mean duration of illness was 10 days, with 7 lost workdays, and one-half hospitalization day. Five patients (1 percent) died (Ref. 66). Effective treatment of campylobacteriosis with fluoroquinolones within the first 2 days of illness decreased the duration of illness from 10 days to 5 days (Refs. 7, 19, and 58).

Campylobacter species are often found as commensal bacteria, which are bacteria that exist in an animal without causing harm to that animal. These bacteria are carried in the intestinal tract of food-producing animals and can contaminate food during slaughter and processing (Ref. 67). The USDA Food Safety Inspection Service has recently conducted surveys of recovery rates and estimated the mean number per unit (gram, cm^3) of product for some of the major foodborne pathogens found on raw animal products at slaughter and processing. Raw product isolation rates vary by species, with turkeys and chickens appearing to have the highest rates of *Campylobacter* recovery (Refs. 68, 69, 70, and 71).

Broiler chickens carry the highest carcass and ground product load of *Campylobacter* when compared to other food-producing animals at slaughter (Refs. 70 and 71). These data are consistent with the repeated observations in epidemiological studies of the increased risk of campylobacteriosis associated with exposure to poultry. In surveys of retail food products conducted by other organizations, *Campylobacter* was isolated from: 2 to 20 percent of raw beef, 40 percent of veal; up to 98 percent of chicken meat; low proportions of pork, mutton, and shellfish; 2 percent of fresh produce from outdoor markets and 1.5 percent of mushrooms (Refs. 15 and 72).

The symptoms exhibited by persons with an enteric foodborne illness include vomiting, diarrhea, abdominal pain, cramping, and fever. The causal agent of an enteric illness is not easily determined based upon symptoms alone. Empiric treatment of patients with serious enteric disease of presumed bacterial etiology is usual medical practice because when treatment is delayed (e.g., until the *Campylobacter* infection or another etiologic agent is confirmed by a medical laboratory), the therapy may be ineffective or less effective, and the illness is more likely to be prolonged or result in complications (Ref. 4). Also, the clinical signs of patients with campylobacteriosis are indistinguishable from enteric disease caused by *Salmonella*, which also is treated with fluoroquinolones. Relapses occur in approximately 5 to 10 percent of untreated patients with campylobacteriosis (Ref. 4) and have been associated with fluoroquinolone resistance (Ref. 74).

Antibiotic therapy is always indicated for patients who demonstrate symptoms of high fever, bloody diarrhea, or more than eight stools in 24 hours; who are immunosuppressed; who have bloodstream infections; or whose symptoms worsen or persist for more than 1 week (Ref. 4). More invasive disease such as blood-borne infections occur in less than 1 percent of patients with *C. jejuni* infections and are more common in the elderly or very young individuals as well as those with impaired immune systems (Ref. 65). Rare manifestations of campylobacteriosis can include meningitis, endocarditis, and septic abortion (Ref. 4).

Campylobacteriosis also carries the potential for serious sequelae as a result of immunologic reactions to the infection. The disease has been linked to reactive arthritis and Reiter's Syndrome as well as Guillain-Barre Syndrome (Ref. 65). Guillain-Barre Syndrome is an autoimmune-mediated disorder of the peripheral nervous system. Since the elimination of polio, this syndrome is now the most common cause of acute flaccid paralysis (Ref. 73). Many studies have shown a link between campylobacteriosis and Guillain-Barre Syndrome. Culture and serologic data indicate that 30 to 40 percent of patients with the syndrome have evidence of a preceding *Campylobacter* infection, but this may be an underestimate (Ref. 73). *C. jejuni* is the most common species identified from patients with Guillain-Barre Syndrome, but other species of *Campylobacter* may be involved (Ref. 73). It is not known whether resistant *Campylobacter* infections are more susceptible to developing sequelae such as Guillain-Barre Syndrome. There is also evidence suggesting that Guillain-Barre Syndrome may be more severe following infection with *Campylobacter* than other precipitating infections (Ref. 73).

3. Campylobacter Risk Assessment

The data on fluoroquinolone resistance levels, and the evidence leading to the conclusion that the use of fluoroquinolones in chickens is a significant cause of fluoroquinolone resistance in humans, establish an adverse effect on human health by fluoroquinolones. To assist in establishing the extent of the adverse human health impact of fluoroquinolone use in poultry, CVM developed a risk assessment model. The risk assessment estimates the extent of the risk to human health from resistant *Campylobacter* pathogens attributed to the use of fluoroquinolones in chickens in the United States. Specifically, the risk assessment model relates the prevalence of fluoroquinolone-resistant *Campylobacter* infections in humans associated with the consumption of chicken to the prevalence of fluoroquinolone-resistant *Campylobacter* in chickens (Ref. 2). The risk assessment addressed that portion of the risk that was quantifiable, which is the risk related to consumption of chicken. The unquantifiable portion, that portion due to spread of the pathogen from chicken to other foods through contamination during food preparation or from secondary spread to other animals, was not considered in the risk assessment.

As explained in section V.B.5 of this document, the presence of fluoroquinolone-resistant *Campylobacter* on chicken carcasses results from the use of fluoroquinolones in chickens. This conclusion was used as a parameter in the risk assessment. This does not mean, for purposes of the risk assessment, that every chicken carrying resistant *Campylobacter* had to have been treated with a fluoroquinolone. Resistant organisms could have been acquired from a contaminated environment due to fluoroquinolone drug use in a previous flock, through contact with other chickens during transportation to the slaughter plant and antemortem processing, or through contamination in the slaughter plant by other infected chicken carcasses.

The number of *Campylobacter* culture confirmed human cases in the U.S. population was used to estimate the total burden of campylobacteriosis. These data are collected from State public health laboratories that participate in FoodNet, the CDC's Foodborne Disease Active Surveillance

Network. FoodNet monitors the incidence of foodborne disease in humans and conducts studies to identify the sources and consequences of infection. Using the data on human *Campylobacter* cases reported in FoodNet, the risk assessment calculated a mean estimate of 1.7 million cases of campylobacteriosis (5th and 95th percentiles: 1.1 million and 2.7 million) for 1999 (Ref. 2).

The model also estimates the number of fluoroquinolone-resistant *Campylobacter* cases in humans attributable to chickens. This estimate excludes travelers to countries outside the United States, those patients who were prescribed a fluoroquinolone prior to stool culture, and those patients who were unsure of the timing of their treatment in relation to stool culture. For 1999, the mean estimate of the domestically-acquired fluoroquinolone-resistant *Campylobacter* cases in humans attributable to chickens is 190,421 (5th and 95th percentiles: 103,471 and 318,321) (Ref. 2). The model also estimated the number of humans with fluoroquinolone-resistant campylobacteriosis due to chickens who actually received a fluoroquinolone drug for therapy.

For 1999, the estimated mean number of people infected with fluoroquinolone-resistant *Campylobacter* from consuming or handling chicken and who subsequently received a fluoroquinolone as therapy is 11,477 (5th and 95th percentiles: 6,412 and 18,978) (Ref. 2). These people received less effective or ineffective therapy for their infections. Because their therapy was less effective or ineffective, these people would have had adverse health effects. Since the risk assessment was limited to resistance development due to use of fluoroquinolones in chickens only and the impact is a mean estimate, the actual risk to humans from fluoroquinolone-resistant *Campylobacter* infections from all foodborne sources is likely to be higher.

4. Summary of Human Health Impact

Foodborne diseases have a major public health impact in the United States, and *Campylobacter* is the most common known cause of foodborne illness. Fluoroquinolones are especially important in the treatment of foodborne diseases. Selection of *Campylobacter* resistance to fluoroquinolones is therefore a particular human health concern. Fluoroquinolones used in treating patients with enteritis are typically prescribed empirically because when treatment is delayed pending the results of culture and sensitivity, the illness may be extended or therapy may be ineffective. Moreover, fluoroquinolone resistance in *Campylobacter* infections has been associated with relapses (Ref. 74).

Campylobacter resistance therefore presents a dilemma for the physician. If fluoroquinolone treatment is given based on symptoms, there is a risk that the treatment will not be effective or will be less effective and valuable time will be lost. If the physician waits for a culture to determine the organism and its susceptibility to antimicrobials, again valuable time will be lost. In either case, the illness may be prolonged and result in complications, including hospitalization and deaths. The physician could turn to another drug for empiric treatment, but alternatives with the spectrum of activity shown by the fluoroquinolones are not available or may be less desirable than the fluoroquinolone due to greater side effects associated with therapy or increased cost of treatment. Even if an acceptable alternative is available at the time, the public health is diminished by the loss of an effective drug from the physician's armamentarium. The *Campylobacter* risk assessment provides evidence of the extent of the adverse impact of fluoroquinolone use in poultry on human health. The risk assessment determined in 1999 a mean estimate of 11,477 people (5th and 95th percentiles: 6,412 and 18,978) infected with fluoroquinolone-resistant *Campylobacter* from consuming or handling chicken and who subsequently received a fluoroquinolone as therapy. The fact that fluoroquinolone use in poultry has resulted in increased resistance of *Campylobacter* infecting humans is clear, as is the risk to human health. Continued use will likely lead to even higher levels of resistance and additional adverse health effects.

VI. Other Considerations

Before issuing this notice of opportunity for a hearing on the withdrawal of the approval for use of fluoroquinolones in poultry, CVM considered requiring revisions to the labeling of the fluoroquinolones to exert more control over their use. Limiting use to individual bird treatment and requiring that the drugs not be used more than once in any individual animal in order to minimize the initial development of resistant enteric organisms were options considered. CVM determined, however, that these use limitations would be impractical for both the veterinary practitioners and poultry producers. The limitations would necessitate mandatory animal identification and maintenance of extensive treatment records. Even if feasible, due to poultry production and processing practices, this approach would not prevent untreated poultry from picking up the resistant organism from treated poultry or from the environment, exposures that may be substantial during transportation to slaughter and antemortem containment.

CVM also considered establishing a drug registry requiring that veterinarians demonstrate the need for a fluoroquinolone through culture and antimicrobial susceptibility testing and request permission to use the drug in chickens or turkeys from CVM before doing so. This approach would greatly diminish the exposure of poultry to fluoroquinolones and could also be used to enforce a ''single use'' labeling provision. The treated animals could be tagged for followup testing at the slaughter plant and if resistant organisms were identified, the contaminated carcasses could be diverted to nonfood uses. CVM also determined that this alternative was impractical due to the cost of sampling, process control problems with accumulation of carcasses due to the prohibitive amount of time required for current resistance testing techniques, and the public health risk associated with the handling of contaminated carcasses.

VII. Notice of Opportunity for a Hearing

Therefore, notice is given to Bayer Corp., Agriculture Division, Animal Health, that CVM proposes to withdraw the approval of the fluoroquinolone enrofloxacin for use in poultry. This action is based on section 512(e)(1)(B) of the act in that new evidence not contained in the NADA or not available until after the application was approved, evaluated together with the evidence available when the application was approved, shows that enrofloxacin is not shown to be safe under the conditions of use upon the basis of which the application was approved.

In accordance with section 512 of the act and part 514 (21 CFR part 514) and under the authority delegated to the Director of the Center for Veterinary Medicine (21 CFR 5.84), CVM hereby provides an opportunity for a hearing to show why approval of the new animal drug application for enrofloxacin for use in poultry, NADA 141–828, should not be withdrawn. Any hearing would be subject to part 12 (21 CFR part 12).

If a sponsor decides to seek a hearing, the sponsor must file: (1) On or before November 30, 2000, a written notice of appearance and request for a hearing, and (2) on or before January 2, 2001, the

data, information, and analyses relied on to demonstrate that there is a genuine and substantial issue of fact to justify a hearing as specified in § 514.200.

Any other person may also submit comment on this notice. Procedures and requirements governing this notice of opportunity for a hearing, a notice of appearance and request for a hearing, submission of data, information, and analyses to justify a hearing, other comments, and a grant or denial of a hearing, are contained in § 514.200 and part 12.

The failure of a holder of an approval to file timely a written appearance and request for hearing as required by § 514.200 constitutes an election not to avail himself or herself of the opportunity for a hearing, and the Director of the Center for Veterinary Medicine will summarily enter a final order withdrawing the approvals.

A request for a hearing may not rest upon mere allegations of denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that there is no genuine and substantial issue of fact that precludes the withdrawal of approval of the applications, or when a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person who requests a hearing, making findings and conclusions, and denying a hearing.

If a hearing is requested and is justified by the sponsor's response to this notice of opportunity for a hearing, the issues will be defined, an administrative law judge will be assigned, and a written notice of the time and place at which the hearing will commence will be issued as soon as practicable.

All submissions under this notice must be filed in four copies. Except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, the submissions may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m. Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (section 512 (21 U.S.C. 360b)) and under the authority delegated to the Director of the Center for Veterinary Medicine (21 CFR 5.84).

VIII. Environmental Impact

The agency has determined under 21 CFR 25.33(g) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IX. References

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

1. Smith, K., J. Besser, C. Hedberg, F. T. Leano, J. B. Bender, J. H. Wicklund, B. P. Johnson, K. A. Moore, and M. Osterholm, ''Quinolone-resistant *Campylobacter Jejuni* Infections in Minnesota, 1992–1998,'' *New England Journal of Medicine*, 340(20), pp. 1525–1532, 1999.

2. FDA, ''Human Health Impact of Fluoroquinolone Resistant *Campylobacter* Attributed to the Consumption of Chicken,'' October 18, 2000.

3. Tauxe, R. V., ''Epidemiology of *Campylobacter Jejuni* Infections in the United States and Other Industrial Nations,'' *In: Campylobacter*, edited by I. Nachamkin, M. J. Blaser, 2d Ed., American Society for Microbiology, Washington, DC, pp. 9–12, 2000.

4. Blaser, M., ''*Campylobacter* and Related Species,'' *In:* Mandell, Douglas and Bennett's Principles and Practice of Infectious Disease, edited by G. Mandell, J. Bennett, and R. Dolin, 4th ed., Churchill Livingston, New York, pp. 1948–1956, 1995.

5. Jacobs-Reitsma, W., ''Aspects of Epidemiology of *Campylobacter* in Poultry,'' *Veterinarian Quarterly*, 19(3), pp. 113–117, 1997.

6. O'Brien, T. F., ''The Global Epidemic Nature of Antimicrobial Resistance and the Need to Monitor and Manage it Locally,'' *Clinical Infectious Diseases*, vol. 24 (Suppl. 1), pp. 2–8, 1997.

7. Anonymous; Report of the American Society for Microbiology Task Force on Antibiotic Resistance; The American Society for Microbiology, Public and Scientific Affairs Board; Washington, DC, March 16, 1995.

8. Institute of Medicine, Committee on Emerging Microbial Threats to Health, edited by J. Lederberg, R. E. Shope, and S. C. Oaks, *Emerging Infections: Microbial Threats to Health in the United States*, Washington, DC, National Academy Press, 1992.

9. National Research Council, ''The Use of Drugs in Food Animals: Benefits and Risks,'' Food and Nutrition Board, Institute of Medicine, National Academy Press, Washington, DC, 1999.

10. McGowan, Jr. J. E., ''Antimicrobial Resistance in Hospital Organisms and its Relation to Antibiotic Use,'' *Reviews of Infectious Diseases*, 5(6), pp. 1033–1048 Nov–Dec, 1983.

11. Baquero, F., J. Martinez-Beltran, and E. Loza, ''A Review of Antibiotic Resistance Patterns of *Streptococcus pneumoniae* in Europe,'' *Journal of Antimicrobial Chemotherapy*, vol. 28 (Suppl. C), pp. 31–38, 1991.

12. Angulo, F. J., R. V. Tauxe, and M. L. Cohen, ''The Origins and Consequences of Antimicrobial-resistant Nontyphoidal *Salmonella:* Implications for Use of Fluoroquinolones in Food Animals,'' *In:* Use of quinolones in food animals and potential impact on human health, WHO/EMC/ZDI/98.12, Geneva, Switzerland, pp. 205-219.

13. Harris, N., N. Weiss, and C. Nolan, ''The Role of Poultry and Meats in The Etiology of *Campylobacter jejuni/coli* Enteritis,'' *American Journal of Public Health*, 76(4), pp. 407–411, April 1986.

14. Threlfall, E., J. Frost, L. Ward, and B. Rowe, ''Increasing Spectrum of Resistance in Multiresistant *Salmonella typhimurium*,'' *Lancet*, vol. 347, pp. 1053–1054, 1996.

15. Communicable Disease Control Section, Seattle-King County Department of Public Health, ''Surveillance of the Flow of *Salmonella* and *Campylobacter* in a Community,'' August 1984.

16. Holmberg, S. D., M. T. Osterholm, K. A. Senger, and M. L. Cohen, ''Drug-resistant *Salmonella* From Animals Fed Antimicrobials,'' *New England Journal of Medicine*, 311(10), pp. 617–622, 1984.

17. Spika, J. S., S. H. Waterman, G. W. Soo Hoo, M. E. St. Louis, R. E. Pacer, S. M. James, M. L. Bissett, L. W. Mayer, J. Y. Chiu, B. Hall, K. Greene, M. E. Potter, M. L. Cohen, and P. A. Blake, ''Chloramphenicol-Resistant *Salmonella Newport* Traced Through Hamburger to Dairy Farms,'' *New England Journal of Medicine*, 316(10), pp. 565–570, 1987.

18. Tacket, C. O., L. B. Dominguez, H. J. Fisher, and M. L. Cohen, ''An Outbreak of Multiple-drug-resistant *Salmonella* enteritis From Raw Milk,'' *Journal of the American Medical Association*, 253(14), pp. 2058–2060, 1985.

19. Cohen, M. L. and R. V. Tauxe, ''Drug-resistant *Salmonella* in the United States: An Epidemiologic Perspective,'' *Science*, vol. 234, pp. 964–969, 1986.

20. Carattoli, A., F. Tosini, and P. Visca, ''Multidrug-resistant *Salmonella enterica* serotype Typhimurium Infections,'' letter to the Editor, *New England Journal of Medicine*, 339(13), pp. 921–922, 1998.

21. Evans, S. and R. Davies, ''Case Control Study of Multiple-resistant *Salmonella typhimurium* DT104 Infection of Cattle in Great Britain,'' *Veterinary Record*, 139(23), pp. 557–558, Dec. 7, 1996.

22. Threlfall, E. J., J. A. Frost, L. R. Ward, and B. Rowe, ''Epidemic in Cattle and Humans of *Salmonella typhimurium* DT104 with Chromosomally Integrated Multiple Drug Resistance,'' *Veterinary Record*, vol. 143, p. 577, 1994.

23. Benson, C. E., D. S. Munro, and S. Rankin, ''*Salmonella typhimurium* DT104 in the northeast USA,'' *Veterinary Record*, vol. 140, pp. 503–504, Nov. 8, 1997.

24. Besser, T. E., C. C. Gay, J. M. Gay, D. D. Hancock, D. Rice, L. C. Pritchett, and E. D. Erickson, ''Salmonellosis Associated with *S. Typhimurium* DT104 in the USA,'' *Veterinary Record*, vol. 140, p.75, 1997.

25. Glynn, M. K., C. Bopp, W. Dewitt, P. Dabney, M. Mokhtar, and F. J. Angulo, ''Emergence of Multidrug-resistant *Salmonella enterica* Serotype Typhimurium DT104 Infections in the United States,'' *New*

England Journal of Medicine, 338(19), pp. 1333–1338, 1998.

26. Wall, P.G., D. Morgan, K. Lamden, M. Ryan, M. Griffin, E. J. Threlfall, L. R. Ward, and B. Rowe, a case control study of infection with an epidemic strain of multiresistant *Salmonella typhimurium* DT104 in England and Wales, Communicable Disease Report, Vol. 4:R130-R135, Review No. 11, October 14, 1994.

27. Carratala, J., A. Fernandez-Sevilla, F. Tubau, M. A. Dominguez, and F. Gudiol, ''Emergence of Fluoroquinolone-resistant *Escherichia coli* in Fecal Flora of Cancer Patients Receiving Norfloxacin Prophylaxis,'' *Antimicrobial Agents and Chemotherapy*, 40(2), pp. 503–505, 1996.

28. Pena, C., J. M. Albareda, R. Pallares, M. Pujol, F. Tubau, and J. Ariza, ''Relationship Between Quinolone Use and Emergence of Ciprofloxacin-resistant *Escherichia coli* in Bloodstream Infections,'' *Antimicrobial Agents and Chemotherapy*, 39(2), pp. 520–524, 1995.

29. Bates, J., J. Jordens, and D. Griffiths, ''Farm Animals as a Putative Reservoir for Vancomycin-resistant Enterococcal Infection in Man,'' *Journal of Antimicrobial Chemotherapy*, vol. 34, pp. 507–516, 1994.

30. Piddock, L. J. V., ''Does the Use of Antimicrobial Agents in Veterinary Medicine and Animal Husbandry Select for Antibiotic Resistant Bacteria That Infect Man and Compromise Antimicrobial Chemotherapy?,'' *Journal of Antimicrobial Chemotherapy*, vol. 38, pp. 1–93, 1996.

31. World Health Organization (WHO), The Medical Impact of the Use of Antimicrobials in Food Animals, Report of a WHO meeting, WHO/EMC/ZOO/97.4, Berlin, Germany, October 13–17, 1997.

32. WHO, Use of Quinolones in Food Animals and Potential Impact on Human Health, Report of a WHO meeting, WHO/EMC/ZDI/98.10, Geneva, Switzerland, June 2–5, 1998.

33. Endtz, H. P., G. J. Ruijs, B. van Klingeren, W. H. Jansen, T. van der Reyden, and R. P. Mouton, ''Quinolone Resistance in *Campylobacter* Isolated From Man and Poultry Following the Introduction of Fluoroquinolones in Veterinary Medicine,'' *Journal of Antimicrobial Chemotherapy*, vol. 27, pp. 199–208, 1991.

34. Helmuth, R. and D. Protz, ''How to Modify Conditions Limiting Resistance in Bacteria in Animals and Other Reservoirs,'' *Clinical Infectious Diseases*, vol. 24 (Suppl. 1), pp. S136–138, 1997.

35. Jacobs-Reitsma, W. F., C. A. Kan, and N. M. Boulder, ''The Induction of Quinolone Resistance in *Campylobacter* Bacteria in Broilers By Quinolone Treatment,'' *Letters in Applied Microbiology*, vol. 19, pp. 228–231, 1994.

36. Rowe, B., Multiple Drug Resistance in *Salmonella:*, The Threat to International Health, Wellcome Trust, 183 Euston Rd., London, 53, May 18–21, 1997.

37. Aarestrup, F. M., ''Occurrence of Glycopeptide Resistance Among *Enterococcus faecium* Isolates From Conventional and Ecological Poultry Farms,'' *Microbial Drug Resistance*, 1(3), pp. 255–257, 1995.

38. Bager, F., M. Madsen, J. Christensen, and F. M. Aarestrup, ''Avoparcin Used as a Growth Promoter is Associated With the Occurrence of Vancomycin-resistant *Enterococcus faecium* on Danish Poultry and Pig Farms,'' *Preventive Veterinary Medicine*, vol. 31, pp. 95–112, 1997.

39. Kruse, H., B. K. Johansen, L. M. Rorvik, and G. Schaller, ''The Use of Avoparcin as a Growth Promoter and the Occurrence of Vancomycin Resistant *Enterococcus* species in Norwegian Poultry and Swine Production,'' *Microbial Drug Resistance*, 5(2), pp. 135–139, 1999.

40. Levy, S. B., *The Antibiotic Paradox: How Miracle Drugs are Destroying the Miracle*, Plenum Press, New York, pp. 130–136, 1992.

41. Moellering Jr., R. C., ''Quinolone Antimicrobial Agents: Overview and Conclusions,'' *In: Quinolone Antimicrobial Agents*, 2d ed., edited by D. C. Hooper and J. S. Wolfson, American Society for Microbiology, Washington, DC, pp. 527–535, 1993.

42. Piddock, L. J. V., ''Quinolone Resistance and *Campylobacter* spp,'' *Journal of Antimicrobial Chemotherapy*, vol. 36, pp. 891–898, 1995.

43. Perez-Tallero, E., F. Otero, C. Lopez-Lopategui, et al., ''High prevalence of ciprofloxacin resistant *Campylobacter jejuni/coli* in Spain,'' Abstract C–21, p. 49. *In: Program and Abstracts of the 37th Interscience Conference on Antimicrobial Agents and Chemotherapy*, American Society of Microbiology, Washington, DC, 1997.

44. Velazquez, J. B., A. Jimenez, B. Chomon, and T. G. Villa, ''Incidence and Transmission of Antibiotic Resistance in *Campylobacter Jejuni* and *Campylobacter coli*,'' *Journal of Antimicrobial Chemotherapy*, vol. 35, pp. 173–178, 1995.

45. FDA, transcript of the joint meeting of the Veterinary Medicine Advisory Committee and Anti-infective Drugs Advisory Committee, Gaithersburg, MD, May 12, 1994.

46. FDA, ''Guidance for Industry: Consideration of the Human Health Impact of the Microbial Effects of Antimicrobial New Animal Drugs Intended for Use in Food-Producing Animals (GFI #78),'' 64 FR 72083 and 72084, December 23, 1999.

47. Tollefson, L., F. J. Angulo, P. J. Fedorka-Cray, ''National Surveillance For Antibiotic Resistance in Zoonotic Enteric Pathogens,'' *In: Microbial Food Borne Pathogens*, Veterinary Clinics of North America: Food Animal Practice 14(1):141–150, 1998.

48. Centers for Disease Control and Prevention, 1998 Annual Report NARMS National Antimicrobial Resistance Monitoring System: Enteric Bacteria.

49. Centers for Disease Control and Prevention, 1999 Annual Report NARMS National Antimicrobial Resistance Monitoring System: Enteric Bacteria.

50. U.S. Department of Agriculture, Agricultural Research Service, 1998 Preliminary Data: NARMS National Antimicrobial Resistance Monitoring System: Enteric Bacteria—Animal *Campylobacter* Isolate Report, Athens, GA, Personal communication Dr. P. Fedorka Cray.

51. U. S. Department of Agriculture, Agricultural Research Service, 1999 Preliminary Data: NARMS National Antimicrobial Resistance Monitoring System: Enteric Bacteria—Animal *Campylobacter* Isolate Report, Athens, GA, Personal communication Dr. P. Fedorka Cray.

52. Rossiter, S., K. Joyce, M. Ray, J. Benson, C. Mackinson, C. Gregg, M. Sullivan, K. Vought, F. Leano, J. Besser, N. Marano, F. Angulo, ''High Prevalence of Antimicrobial-resistant, Including Fluoroquinolone-resistant, *Campylobacter* on Chicken in U.S. Grocery Stores,'' Meeting of the American Society for Microbiology, poster C296, Los Angeles, May 24, 2000.

53. Hooper, D. C., ''New Uses for New and Old Quinolones and the Challenge of Resistance,'' *Clinical Infectious Diseases*, 30, pp. 243–254, 2000.

54. Smith, K., J. Bender, M. Osterholm, ''Antimicrobial Resistance in Animals and Relevance to Human Infections,'' *In: Campylobacter*, edited by I. Nachamkin and M. Blaser, 2d ed., American Society for Microbiology, Washington, DC, pp. 483–495, 2000.

55. Threlfall, E. J., J. A. Frost, and B. Rowe, ''Fluoroquinolone Resistance in Salmonellas and Campylobacte's From Humans,'' *British Medical Journal*, vol. 318, pp. 943–944, 1999.

56. Peterson, L., ''Quinolone Resistance in Clinical Practice: Occurrence and Importance,'' *In: Quinolone Antimicrobial Agents*, edited by D. C. Hooper and J. S. Wolfson, 2d ed., American Society Microbiology, Washington, DC, pp. 119–137, 1993.

57. Sande, M., J. H. Chambers, ''Antimicrobial Agents, General Considerations, Section IX, Chemotherapy of Microbial Diseases,'' *In: Goodman and Gilman's The Pharmacological Basis of Therapeutics*, edited by J. Hardman, L. Limbird, P. Molinoff, et al., 9th ed., The McGraw-Hill Companies, New York, p. 1039, 1996.

58. Sobel, J., R. Tauxe, A. Ries, C. Patton, and K. Maloney, The burden of *Campylobacter Jejuni* infections: A target for early treatment? 45th Annual Epidemic Intelligence Service (EIS) Conference, Centers for Disease Control and Prevention, Atlanta, GA, April 22–26, 1996.

59. Mead, P. S., L. Slutsker, V. Dietz, L. F. McCaig, J. S. Bresee, C. Shapiro, P. M. Griffin, and R. V. Tauxe, ''Food-related Illness and Death in the United States,'' *Emerging Infectious Diseases*, (5)5, pp. 607–625, 1999.

60. Council for Agricultural Science and Technology, risk characterization: estimated numbers of illnesses and deaths, *In:* ''Foodborne Pathogens: Risks and Consequences,'' task force report number 122:40–52, 1994.

61. Lee, L. A., N. D. Puhr, E.K. Maloney, N. H. Bean, R. V. Tauxe, ''Increase in Antimicrobial-resistant *Salmonella* Infections in the United States, 1989–1990,'' *Journal of Infectious Diseases*, vol. 170, pp. 128–134, 1994.

62. Linden, P. K., A. W. Pasculle, R. Manez, D. J. Kramer, J. J. Fung, A. D. Pinna, and S. Kusne, ''Differences in Outcomes for Patients with Bacteremia Due to Vancomycin-resistant *Enterococcus faecium* or vancomycin-susceptible *E. faecium*,'' *Clinical Infectious Diseases*, vol. 22, pp. 663–670, 1996.

63. Deming, M., R. Tauxe, P. Blake et al., ''*Campylobacter* Enteritis at a University: Transmission From Eating Chicken and From Cats,'' *American Journal of Epidemiology*, vol. 126, no. 3, pp. 526–534, 1987.

64. Hopkins, R., R. Olmsted, and G. Istre, ''Endemic *Campylobacter jejuni* Infection in Colorado: Identified Risk Factors,'' *American Journal of Public Health*, 74(3), pp. 249–250, 1984.

65. Skirrow, M. B., M. J. Blaser, ''Clinical Aspects of *Campylobacter* Infection,'' *In: Campylobacter*, edited by I. Nachamkin and M. Blaser, 2d ed., America Society Microbiology, Washington, DC, pp. 69–88, 2000.

66. Altekruse, S., N. Stern, P. Fields, and D. Swerdlow, ''*Campylobacter Jejuni*—an Emerging Foodborne Pathogen,'' *Emerging Infectious Diseases*, 5(1), pp. 28–35, 1999.

67. Saeed, A., N. Harris, and R. DiGiacomo, ''The Role of Exposure to Animals in the Etiology of *Campylobacter Jejuni/coli* enteritis,'' *American Journal of Epidemiology*, 137(1), pp. 108–114, 1993.

68. Shane, S., ''Campylobacteriosis,'' *In: Diseases of Poultry*, edited by B. Calnek, H. Barnes, C. Beard, et al., 10th ed., Iowa State University Press, Ames, pp. 235–245, 1997.

69. U.S. Department of Agriculture Food Safety Inspection Service, Microbiology Division, Nationwide Broiler Chicken Microbiological Baseline Data Collection Program, July 1994–June 1995 pp. 1–34, April 1996.

70. U.S. Department of Agriculture Food Safety Inspection Service, Microbiology Division, Nationwide Raw Ground Chicken Microbiological Survey pp 1–8, May 1996.

71. U.S. Department of Agriculture Food Safety Inspection Service, Microbiology Division, Nationwide Raw Ground Turkey Microbiological Survey pp.1–8, May 1996.

72. Doyle, M. and J. Schoeni, ''Isolation of *Campylobacter Jejuni* From Retail Mushrooms,'' *Applied and Environmental Microbiology*, 51(2), pp. 449–50, 1986.

73. Nachamkin, I., B. M. Allos, T. W. Ho, ''*Campylobacter Jejuni* Infection and the Association With Guillain-Barre Syndrome,'' *In: Campylobacter*, edited by I. Nachamkin and M. Blaser, 2d ed., American Society Microbiology, Washington, DC, pp. 155–175, 2000.

74. Petruccelli, B. P., G. S. Murphy, J. L. Sanchez, S. Walz, R. DeFraites, J. Gelnett, R. L. Haberberger, P. Echeverria, and D. N. Taylor, ''Treatment of Traveler's Diarrhea With Ciprofloxacin and Loperamide,'' *Journal of Infectious Diseases*, 165, pp. 557–560, 1992.

75. FDA, CVM, Guideline: General Principles for Evaluating the Safety of Compounds Used in Food-Producing Animals, July 1994.

Dated: October 24, 2000.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 00–27832 Filed 10–26–00; 10:43 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee; Renewals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the renewals of certain FDA advisory committees by the Commissioner of Food and Drugs (the Commissioner). The Commissioner has determined that it is in the public interest to renew the charters of the committees listed below for an additional 2 years beyond charter expiration date. The new charters will be in effect until the dates of expiration listed below. This notice is issued under the Federal Advisory Committee Act of October 6, 1972 (Pubic Law 92–463 (5 U.S.C. app. 2)).

DATES: Authority for these committees will expire on the dates indicated below unless the Commissioner formally determines that renewal is in the public interest.

Name of committee	Date of expiration
Gastrointestinal Drugs Advisory Committee	March 3, 2002
Advisory Committee for Reproductive Health Drugs	March 23, 2002
Arthritis Advisory Committee	April 5, 2002
Veterinary Medicine Advisory Committee	April 24, 2002
Anesthetic and Life Support Drugs Advisory Committee	May 1, 2002
Blood Products Advisory Committee	May 13, 2002
Pulmonary-Allergy Drugs Advisory Committee	May 30, 2002
Drug Abuse Advisory Committee	May 31, 2002
Science Advisory Board to the National Center for Toxicological Research	June 2, 2002
Peripheral and Central Nervous System Drugs Advisory Committee	June 4, 2002
Psychopharmacologic Drugs Advisory Committee	June 4, 2002
Transmissible Spongiform Encephalopathies Advisory Committee	June 9, 2002
Science Board to the Food and Drug Administration	June 26, 2002
Allergenic Products Advisory Committee	July 9, 2002
Cardiovascular and Renal Drugs Advisory Committee	August 27, 2002
Endocrinologic and Metabolic Drugs Advisory Committee	August 27, 2002
Oncologic Drugs Advisory Committee	September 1, 2002

FOR FURTHER INFORMATION CONTACT: Donna M. Combs, Committee Management Office (HFA–306), Food and Drug Administration, 5600 Fishers Lane, Rockville MD 20857, 301–827–5496.

Dated: October 23, 2000.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 00–27835 Filed 10–30–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–2118–N]

Medicare, Medicaid, and CLIA Programs; Continuance of the Approval of COLA as a CLIA Accreditation Organization

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces the continued approval of COLA (formerly the Commission on Office Laboratory Accreditation) as an accreditation organization for laboratories under the Clinical Laboratory Improvement Amendments of 1988 (CLIA) program. We have found that the accreditation process of this organization provides reasonable assurance that the laboratories accredited by it meet the conditions required by CLIA law and regulations. Consequently, laboratories that voluntarily become accredited by COLA in lieu of direct Federal oversight and continue to meet COLA requirements would meet the CLIA condition level requirements for laboratories and, therefore, are not subject to routine inspection by State survey agencies to determine their compliance with CLIA requirements. They are, however, subject to Federal validation and complaint investigation surveys.

EFFECTIVE DATE: This notice is effective for the period October 31, 2000, through December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Val Coppola, (410) 786–3531.

SUPPLEMENTARY INFORMATION:

I. Background and Legislative Authority

On July 31, 1992, HCFA issued a final rule (57 FR 33992). Under section 353(e)(2) of the Public Health Service Act (PHSA), HCFA may approve a private, nonprofit organization to accredit clinical laboratories (an ''approved accreditation organization'') under the Clinical Laboratory Improvement Amendments of 1988 (CLIA) program if the organization meets certain requirements. An organization's requirements for accredited laboratories must be equal to, or more stringent than, the applicable CLIA program requirements in 42 Code of Federal Regulations (CFR), part 493 (Laboratory Requirements). Therefore, a laboratory accredited by an approved accreditation organization that meets and continues to meet all of the accreditation organization's requirements would be considered to meet CLIA condition level requirements if it were inspected against CLIA regulations. The regulations listed in subpart E (Accreditation by a Private, Nonprofit Accreditation Organization or Exemption Under an Approved State Laboratory Program) of part 493 specify the requirements an accreditation organization must meet to be an approved accreditation organization. HCFA approves an accreditation organization for a period not to exceed 6 years.

In general, the approved accreditation organization must among other conditions and requirements:

- Use inspectors qualified to evaluate laboratory performance and agree to inspect laboratories with the frequency determined by HCFA.
- Apply standards and criteria that are equal to or more stringent than those condition level requirements established by HCFA when taken as a whole.
- Provide reasonable assurance that these standards and criteria are continually met by its accredited laboratories;
- Provide HCFA with the name of any laboratory that has had its accreditation denied, suspended, withdrawn, limited, or revoked within 30 days of the action taken.
- Notify HCFA in writing at least 30 days before the effective date of any proposed changes in its standards.
- If HCFA withdraws its approval, notify the accredited laboratories of the withdrawal within 10 days of the withdrawal. A laboratory can be accredited if, among other things, it meets the standards of an approved accreditation organization and authorizes the accreditation body to submit to HCFA records and other information HCFA may require.

Along with requiring the promulgation of criteria for approving the accreditation body and for withdrawing this approval, CLIA requires HCFA to perform an annual evaluation by inspecting a sufficient number of laboratories accredited by an approved accreditation organization as well as by any other means that HCFA determines appropriate.

II. Notice of Continued Approval of COLA as an Accreditation Organization

In this notice, we approve COLA as an organization that may continue to accredit laboratories for purposes of establishing their compliance with CLIA requirements. HCFA and Centers for Disease Control and Prevention (CDC) have examined the COLA application and all subsequent submissions to determine equivalency with HCFA requirements under subpart E of part 493 that an accreditation organization must meet to be granted approved status under CLIA. We have determined that COLA has complied with the applicable CLIA requirements as of October 31, 2000, and grant COLA approval as an accreditation organization under subpart E, through August 31, 2002, for the following specialty/subspecialty areas:

- Bacteriology.
- Mycobacteriology.
- Mycology.
- Parasitology.
- Virology.
- Syphilis Serology.
- General Immunology.
- Routine Chemistry.
- Endocrinology.
- Toxicology.
- Urinalysis.
- Hematology.
- Immunohematology.

As a result of this determination, any laboratory that is accredited by COLA during this time period for an approved specialty/subspecialty (listed above) is deemed to meet the applicable CLIA condition level requirements for the laboratories found in part 493 and, therefore, is not subject to routine inspection by a State survey agency to determine its compliance with CLIA requirements. The accredited laboratory, however, is subject to validation and complaint investigation surveys performed by HCFA, or by any other Federal or State or local public agency or nonprofit private organization under an agreement with the Secretary.

III. Evaluation of COLA

The following describes the process used to determine that COLA, as a private, nonprofit organization, provides reasonable assurance that laboratories it accredits will meet the applicable requirements of the CLIA and applicable regulations.

A. Requirements for Approving an Accreditation Organization Under CLIA

To determine whether we should grant approved status to COLA as a private, nonprofit organization for accrediting laboratories under CLIA for the specific specialty or subspecialty areas of human specimen testing it requested, we conducted a detailed and in-depth comparison of COLA's requirements for its laboratories to those of CLIA. In summary, we evaluated whether COLA meets the following requirements:

• Provides reasonable assurance to us that it requires the laboratories it accredits to meet requirements that are equal to or more stringent than the CLIA condition level requirements (for the requested specialties/subspecialties) and would, therefore, meet the condition level requirements of CLIA if those laboratories had not been granted deemed status and had been inspected against condition level requirements.

• Meets the applicable requirements of Subpart E.

As specified in the regulations of subpart E, HCFA review of a private, nonprofit accreditation organization seeking approved status under CLIA includes, but is not limited to, an evaluation of the following:

• Whether the organization's requirements for its accredited laboratories are equal to or more stringent than the condition level requirements of the CLIA regulations.

• The organization's inspection process to determine:

—The composition of the inspection teams, qualifications of the inspectors, and the ability of the organization to provide continuing education and training to all of its inspectors;

—The comparability of the organization's full inspection and complaint inspection requirements to the Federal requirements including but not limited to inspection frequency, and the ability to investigate and respond to complaints against its accredited laboratories.

—The organization's procedures for monitoring laboratories that it has found to be out of compliance with its requirements.

—The ability of the organization to provide HCFA with electronic data and reports that are necessary for effective validation and assessment of the organization's inspection process.

—The ability of the organization to provide HCFA with electronic data, related to the adverse actions resulting from unsuccessful proficiency testing (PT) participation in HCFA approved PT programs, as well as data related to the PT failures, within 30 days of the initiation of the action.

—The ability of the organization to provide HCFA with electronic data for all its accredited laboratories and the areas of specialty and subspecialty testing.

—The adequacy of the numbers of staff and other resources.

—The organization's ability to provide adequate funding for performing the required inspections.

• The organization's agreement with HCFA that requires it, among other things, to meet the following requirements:

—Notify HCFA of any laboratory that has had its accreditation denied, limited, suspended, withdrawn, or revoked by the accreditation organization, or that has had any other adverse action taken against it by the accreditation organization within 30 days of the action taken.

—Notify HCFA within 10 days of a deficiency identified in an accredited laboratory if the deficiency poses an immediate jeopardy to the laboratory's patients or a hazard to the general public.

—Notify HCFA of all newly accredited laboratories, or laboratories whose areas of specialty or subspecialty are revised, within 30 days.

—Notify each laboratory accredited by the organization within 10 days of HCFA's withdrawal of approval of the organization.

—Provide HCFA with inspection schedules, as requested, for the purpose of conducting onsite validation inspections.

—Provide HCFA or our agent, or the State survey agency with any facility-specific data that includes, but is not limited to, PT results that constitute unsuccessful participation in an approved PT program and notification of the adverse actions or corrective actions imposed by the accreditation organization as a result of unsuccessful PT participation.

—Provide HCFA with written notification at least 30 days in advance of the effective date of any proposed changes in its requirements.

—Provide upon the request by any person, on a reasonable basis (under State confidentiality and disclosure requirements, if applicable), any laboratory's PT results with the explanatory information needed to assist in the interpretation of the results.

Laboratories that are accredited by an approved accreditation organization must, among other things, meet the following requirements:

• Authorize the organization to release to HCFA all records and information required.

• Permit inspections as required by the CLIA regulations in part 493, subpart Q (Inspection).

• Obtain a certificate of accreditation as required by § 493.55 (Application for registration certificate and certificate of accreditation).

B. Evaluation of the COLA Request for Continued Approval as an Accreditation Organization under CLIA

HCFA has verified COLA's assurance that it requires the laboratories it accredits to be, and that the organization is, in compliance with the following subparts of part 493 as explained below:

Subpart E—Accreditation by a Private, Nonprofit Accreditation Organization or Exemption Under an Approved State Laboratory Program

COLA has submitted a list of the specialties and subspecialties that it would continue to accredit, a description of its inspection process and guidelines, PT monitoring process, and its data management and analysis system, a listing of the size, composition, education and experience of its inspection teams, its investigative and complaint response procedures, its notification agreements with HCFA, its removal or withdrawal of laboratory accreditation procedures, its current list of accredited laboratories, and its announced or unannounced inspection process. We have determined that COLA has complied with the requirements under CLIA for approval as an accreditation organization under this subpart.

Subpart H—Participation in Proficiency Testing for Laboratories Performing Tests of Moderate or High Complexity, or Both

COLA's requirements for PT are equivalent to those of CLIA.

Subpart J—Patient Test Management for Moderate or High Complexity Testing, or Both

COLA has revised its requirements to equal the CLIA requirements at §§ 493.1101 through 493.1111 on an overall basis.

Subpart K—Quality Control for Tests of Moderate or High Complexity, or Both

The quality control (QC) requirements of COLA have been evaluated against the applicable requirements of CLIA and its implementing regulations. We have determined that COLA's requirements, when taken as a whole, are equal to or

more stringent than the CLIA requirements.

Subpart M—Personnel for Moderate and High Complexity Testing

We have found the COLA personnel requirements to be equal to the CLIA personnel requirements.

Subpart P—Quality Assurance for Moderate or High Complexity Testing or Both

We have determined that COLA's requirements are equal to the CLIA requirements of this subpart.

Subpart Q—Inspections

We have determined that COLA's inspection requirements are equal to the requirements of this subpart.

Subpart R—Enforcement Procedures for Laboratories

COLA meets the requirements of subpart R to the extent it applies to accreditation organizations. COLA policy stipulates the action it takes when laboratories it accredits do not comply with its requirements. COLA shall suspend, withdraw, revoke, or limit accreditation of a laboratory as appropriate and report the action to HCFA within 30 days. COLA also provides an appeals process for laboratories that have had accreditation denied.

We have determined that COLA's laboratory enforcement and appeal policies are essentially equivalent to the requirements of this subpart as they apply to accreditation organizations.

IV. Federal Validation Inspections and Continuing Oversight

The Federal validation inspections of COLA accredited laboratories may be conducted on a representative sample basis or in response to substantial allegations of noncompliance (complaint inspections). The outcome of those validation inspections, performed by HCFA or our agent, or the State survey agency, will be HCFA's principal means for verifying that the laboratories accredited by COLA remain in compliance with CLIA requirements. This Federal monitoring is an ongoing process.

V. Removal of Approval as an Accrediting Organization

Our regulations provide that we may remove the approval of an accreditation organization, such as that of COLA, for cause, before the end of the effective date of approval. If validation inspection outcomes and the comparability or validation review produce findings as described in § 493.573 (Continuing Federal oversight of private nonprofit accreditation organizations and approved State licensure program), HCFA will conduct a review of an approved accreditation organization's program. We also conduct a review when the validation review findings, irrespective of the rate of disparity (as defined in § 493.2), indicate systemic problems in the organization's processes that provide evidence that the organization's requirements, taken as a whole, are no longer equivalent to the CLIA requirements, taken as a whole.

If HCFA determines that COLA has failed to adopt or maintain requirements that are equal to or more stringent than the CLIA requirements, or systemic problems exist in its inspection process, a probationary period, not to exceed 1 year, may be given to COLA to adopt equal or more stringent requirements. HCFA will make a determination as to whether or not COLA retains its approved status as an accreditation organization under CLIA. If approved status is withdrawn, an accreditation organization such as COLA may resubmit its application if it revises its program to address the rationale for the denial, demonstrates that it can reasonably assure that its accredited laboratories meet CLIA condition level requirements, and resubmits its application for approval as an accreditation organization in its entirety. If, however, an approved accreditation organization requests reconsideration of an adverse determination in accordance with subpart D (Reconsideration of Adverse Determinations—Deeming Authority for Accreditation Organizations and CLIA Exemption of Laboratories Under State Programs) of part 488 (Survey, Certification, and Enforcement Procedures) of our regulations, it may not submit a new application until HCFA issues a final reconsideration determination.

Should circumstances result in COLA having its approval withdrawn, HCFA will publish a notice in the **Federal Register** explaining the basis for removing its approval.

Authority: Section 353 of the Public Health Service Act (42 U.S.C. 263a).

Dated: September 18, 2000.

Nancy-Ann Min-DeParle,

Administrator, Health Care Financing Administration.

[FR Doc. 00–27956 Filed 10–30–00; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–4010–GNC]

RIN 0938–AK26

Medicare Program; Criteria and Standards for Evaluating Intermediary and Carrier Performance During Fiscal Year 2001

AGENCY: Health Care Financing Administration (HCFA), Health and Human Services (HHS).

ACTION: General notice with comment period.

SUMMARY: This notice describes the criteria and standards to be used for evaluating the performance of fiscal intermediaries and carriers in the administration of the Medicare program beginning October 1, 2000. The results of these evaluations are considered whenever we enter into, renew, or terminate an intermediary agreement or carrier contract or take other contract actions, for example, assigning or reassigning providers or services to an intermediary or designating regional or national intermediaries. We are requesting public comment on these criteria and standards.

EFFECTIVE DATE: The criteria and standards are effective October 1, 2000.

COMMENTS: Comments will be considered if we receive them at the appropriate address as provided below no later than 5 p.m. (EDT) on November 30, 2000.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing, Administration, Department of Health and Human Services, Attention: HCFA–4010–GNC, P.O. Box 8016, Baltimore, MD 21244–8016.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses:

Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC, or

Room C5–16–03, 7500 Security Boulevard, Baltimore, Maryland.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. When commenting, please refer to file code HCFA–4010–GNC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 443–G of the Department's office at 200 Independence Avenue,

SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

FOR FURTHER INFORMATION CONTACT: Sue Lathroum, (410) 786–7409.

SUPPLEMENTARY INFORMATION:

I. Background

A. Part A—Hospital Insurance

Under section 1816 of the Social Security Act (the Act), public or private organizations and agencies participate in the administration of Part A (Hospital Insurance) of the Medicare program under agreements with us. These agencies or organizations, known as fiscal intermediaries, determine whether medical services are covered under Medicare, determine correct payment amounts and then make payments to the health care providers (for example, hospitals, skilled nursing facilities (SNFs), community mental health centers, etc.) on behalf of the beneficiaries. Section 1816(f) of the Act requires us to develop criteria, standards, and procedures to evaluate an intermediary's performance of its functions under its agreement. Evaluations of Medicare fee-for-service performance need not be limited to the current fiscal year (FY), other fixed term basis, or agreement term. We may evaluate performance using a time frame that does not mirror the FY or other fixed term. The evaluation of intermediary performance is part of our contract management process.

B. Part B Medical Insurance

Under section 1842 of the Act, we are authorized to enter into contracts with carriers to fulfill various functions in the administration of Part B (Supplementary Medical Insurance) of the Medicare program. Beneficiaries, physicians, and suppliers of services submit claims to these carriers. The carriers determine whether the services are covered under Medicare and the payable amount for the services or supplies, and then make payment to the appropriate party. Under section 1842(b)(2) of the Act, we are required to develop criteria, standards, and procedures to evaluate a carrier's performance of its functions under its contract. Evaluations of Medicare fee-for-service performance need not be limited to the current FY, other fixed term basis, or contract term. We may evaluate performance using a timeframe that does not mirror the FY. The evaluation of carrier performance is part of our contract management process.

C. Development and Publication of Criteria and Standards

In addition to the statutory requirements, 42 CFR 421.120 and 421.122 provide for publication of a **Federal Register** notice to announce criteria and standards for intermediaries prior to implementation. Section 421.201 provides for publication of a **Federal Register** notice to announce criteria and standards for *carriers* prior to implementation. The current criteria and standards were published in the **Federal Register** on December 3, 1999 at 64 FR 67920.

To the extent possible, we make every effort to publish the criteria and standards before the beginning of the Federal FY, which is October 1. If we do not publish a **Federal Register** notice before the new FY begins, readers may presume that until and unless notified otherwise, the criteria and standards that were in effect for the previous FY remain in effect. In those instances in which we are unable to meet our goal of publishing the subject **Federal Register** notice before the beginning of the FY, we may publish the criteria and standards notice at any subsequent time during the year. If we choose to publish a notice in this manner, the evaluation period for any such criteria and standards that are the subject of the notice will be revised to be effective on the first day of the first month following publication. Any revised criteria and standards will measure performance prospectively; that is, we will not apply new measurements to assess performance on a retroactive basis.

It is not our intention to revise the criteria and standards that will be used during the evaluation period once this information has been published in a **Federal Register** notice. However, on occasion, either because of administrative action or congressional mandate, there may be a need for changes that have direct impact upon the criteria and standards previously published, or that require the addition of new criteria or standards, or that cause the deletion of previously published criteria and standards. If we must make these changes, we will publish a **Federal Register** notice prior to implementation of the changes. In all instances, necessary manual issuances will be published to ensure that the criteria and standards are applied uniformly and accurately. Also, as in previous years, this **Federal Register** notice will be republished and the effective date revised if changes are warranted as a result of the public comments received on the criteria and standards.

II. Analysis of and Response to Public Comments Received on FY 2000 Criteria and Standards

We received a total of 19 comments in response to the **Federal Register** notice published on December 3, 1999. All comments were reviewed, but none necessitated our reissuance of the FY 2000 Criteria and Standards. Medicare program components were advised of the concerns as appropriate. When warranted, revisions have been incorporated in this **Federal Register** notice. We are responding to the following performance evaluation issues:

Comment: We were advised that the Blue Cross and Blue Shield Medicare contractors have a different scope of work for fraud and abuse (F&A) activities than the commercial contractors. As a result, Blue Cross and Blue Shield Plans' performance would need to be evaluated against the negotiated scope of work, not our manuals, since not all of our manual requirements are addressed in the contract amendment.

Response: While it is true that there are some differences between performance expectations for Blue Cross and Blue Shield Plans as opposed to commercial contractors, the protocols used for evaluation of F&A activities in FY 2000 did not contain performance expectations that were not already contained in the Blue Cross and Blue Shield Medicare contract.

Comment: We were advised that references under the Fiscal Responsibility Criterion relating to the evaluation of a contractor's adherence to the Chief Financial Officers' Act (CFO), 31 USC 503, *et seq.* are incorrect. The expectation to comply with this law is applicable to us, not the contractors. The expectation should be reworded to reflect that contractors assist the Secretary with being compliant with the CFO Act.

Response: We agree that the requirement referenced in the above comment is applicable to us and not to the contractors. The FY 2001 **Federal Register** notice has been revised to correctly reflect language as contained in the contract. Language in the **Federal Register** notice now specifically references the Federal Managers' Financial Integrity Act (FMFIA), 31 U.S.C. 1105, et seq; rather than the CFO Act and also states that contractors must cooperate with us in complying with the FMFIA.

Comment: We were advised that the Agency issued a moratorium on the review of all demand bills because of the SNF prospective payment system

(PPS). It was suggested that we acknowledge that the standard would not be evaluated until the Agency issued instructions and intermediaries had a chance to train staff on such.

Response: The moratorium on the review of all demand bills was lifted, and we issued appropriate instructions in March 2000.

Comment: HCFA was advised that the carrier Customer Service criterion states that carriers are to achieve a monthly All Trunks Busy (ATB) Rate of not more than 5 percent. For callers choosing to speak with a customer service representative, 97.5 percent or more of the calls are to be answered within 120 seconds; no less than 85 percent are to be answered within the first 60 seconds. A question was raised as to whether this requirement applies only to call centers servicing beneficiaries (and providers, if the call centers are not separate).

Response: The telephone service requirement referenced in the above comment is applicable to call centers servicing beneficiaries (and providers if the centers are not separate). The requirement is not applicable to call centers that specifically service providers.

III. Criteria and Standards—General

Basic principles of the Medicare program are to pay claims promptly and accurately and to foster good beneficiary and provider relations. Contractors must administer the Medicare program efficiently and economically. The goal of performance evaluation is to ensure that contractors meet their contractual obligations. We measure contractor performance to ensure that contractors do what is required of them by law, regulation, contract and our directives. We have developed a contractor management program for FY 2001 that outlines expectations of the contractor; measures the performance of the contractor; evaluates the performance against the expectations; and, takes appropriate contract action based upon the evaluation of the contractor's performance. We work to develop and refine measurable performance standards in key areas in order to better evaluate contractor performance. In addition to evaluating performance based upon expectations for FY 2001, we may conduct follow-up evaluations in areas when contractor performance was out of compliance with laws, regulations, and our performance expectations during FY 2000, thus having required the contractor to submit a Performance Improvement Plan (PIP).

We have structured the FY 2001 Contractor Performance Evaluation into five criteria designed to meet those objectives. The first criterion is ''Claims Processing,'' which measures contractual performance against claims processing accuracy and timeliness requirements. Within the Claims Processing criterion, we have identified those performance standards that are mandated by either legislation, regulation, or judicial decision. These standards include claims processing timeliness, the accuracy of Explanations of Medicare Benefits (EOMBs) or Medicare Summary Notices (MSNs), the rate of cases reversed by the Administrative Law Judge (ALJ), the timeliness of intermediary reconsideration cases and the timeliness of carrier reviews and hearings. Further evaluation in the Claims Processing criterion may include, but is not limited to, the accuracy of bill and claims processing, the level of electronic claims payment, the percent of bills and claims paid with interest, and the accuracy of reconsiderations, reviews, and hearings.

The second criterion is ''Customer Service,'' which assesses the completeness of the service provided to customers by the contractor in its administration of the Medicare program. Mandated standards in the Customer Service criterion include timeliness of carrier replies to beneficiary telephone inquiries and the accuracy and clarity of responses to written inquiries. In FY 2001, customer feedback may be used to collect comparable data on customer satisfaction and identify areas in need of improvement. Further evaluation of services under this criterion may include, but is not limited to, a review of beneficiary relations; provider education; appropriateness of telephone inquiry responses; and walk-in service.

The third criterion is ''Payment Safeguards,'' which evaluates whether the Medicare Trust Fund is safeguarded against inappropriate program expenditures. Intermediary and carrier performance may be evaluated in the areas of medical review (MR), Medicare secondary payer (MSP), F&A (also referred to as benefits integrity (BI)), overpayments (OP) , provider enrollment (PE), and audit and reimbursement (A&R). Mandated performance standards in the Payment Safeguards criterion are the accuracy of decisions on SNF demand bills, and the timeliness of processing Tax Equity and Fiscal Responsibility Act (TEFRA) target rate adjustments, exceptions, and exemptions. Further evaluation in this criterion may include, but is not limited to, review of the efficient and effective compilation and analysis of data to bring about continuous improvement in a contractor's efforts to safeguard Medicare program dollars. Intermediaries and carriers may also be evaluated on any Medicare Integrity Program (MIP) activities if performed under their Part A agreement or Part B contract.

The fourth criterion is ''Fiscal Responsibility,'' which evaluates the contractor's efforts to protect the Medicare program and the public interest. Contractors must effectively manage Federal funds for both the payment of benefits and costs of administration under the Medicare program. Proper financial and budgetary controls, including internal controls, must be in place to ensure contractor compliance with its agreement with HHS and HCFA. Additional functions reviewed under this criterion may include, but are not limited to, adherence to approved budget, compliance with the BPRs, and financial reporting requirements.

The fifth and final criterion is ''Administrative Activities,'' which measures a contractor's administrative management of the Medicare program. A contractor must efficiently and effectively manage its operations to ensure constant improvement in the way it does business. Proper systems security (general and application controls), Automated Data Processing (ADP) maintenance, and disaster recovery plans must be in place. A contractor's evaluation under the Administrative Activities criterion may include, but is not limited to, establishment, application, documentation, and effectiveness of internal controls, which are essential in all aspects of a contractor's operation and the degree to which the contractor cooperates with us in complying with the FMFIA. Administrative Activities evaluations may also include reviews related to implementation of change management instructions and data and reporting requirements.

We have also developed separate measures for evaluating unique activities of Regional Home Health Intermediaries (RHHIs). Section 1816(e)(4) of the Act requires us to designate regional agencies or organizations, which are already Medicare intermediaries under section 1816, to perform bill processing functions with respect to freestanding home health agency (HHA) bills. The law requires that we limit the number of these regional intermediaries (RHHIs) to not more than 10; see 42 CFR 421.117 and the final rule published in the **Federal Register** on May 19, 1988 at 53 FR 17936 for more details about the RHHIs.

We have developed separate measures for RHHIs in order to evaluate the

distinct RHHI functions. These functions include the processing of bills from freestanding HHAs, hospital affiliated HHAs, and hospices. Through an evaluation using these criteria and standards, we may determine whether the RHHI functions should be moved from one intermediary to another in order to ensure effective and efficient administration of the program benefit.

Below, we list the criteria and standards to be used for evaluating the performance of intermediaries and carriers. In several instances, we identify a Medicare manual as a source of more detailed requirements. Intermediaries and carriers have copies of various Medicare manuals referenced in this notice. Members of the public also have access to our manualized instructions.

Medicare manuals are available for review at local Federal Depository Libraries (FDLs). Under the FDL Program, government publications are sent to approximately 1,400 designated public libraries throughout the United States. Interested parties may examine the documents at any one of the FDLs. Some may have arrangements to transfer material to a local library not designated as a FDL. To locate the nearest FDL, individuals should contact any public library.

In addition, individuals may contact regional depository libraries, which receive and retain at least one copy of nearly every Federal government publication, either in printed or microfilm form, for use by the general public. These libraries provide reference services and interlibrary loans; however, they are not sales outlets. Individuals may obtain information about the location of the nearest regional depository library from any library. Information may also be obtained from the following web site: *www.hcfa.gov/pubforms/progman.htm.* Some manuals may be obtained from the following web site: *www.hcfa.gov/pubforms/p2192toc.htm.* Finally, all of our Regional Offices (RO) maintain all Medicare manuals for public inspection. To find the location of the nearest available HCFA RO, you may call the individual listed at the beginning of this notice. That individual can also provide information about purchasing or subscribing to the various Medicare manuals.

IV. Criteria and Standards for Intermediaries

A. Claims Processing Criterion

The Claims Processing criterion contains 4 mandated standards.

Standard 1: 95 percent of clean electronically submitted non-Periodic Interim Payment (PIP) bills paid within statutorily specified time frames. Clean bills are defined as bills that do not require Medicare intermediaries and/or carriers to investigate or develop external to their Medicare operations on a prepayment basis. Specifically, clean, non-PIP electronic claims can be paid as early as the 14th day (13 days after the date of receipt) and must be paid by the 31st day (30 days after the date of receipt).

Standard 2: 95 percent of clean paper non-PIP bills paid within specified time frames. Specifically, clean, non-PIP paper claims can be paid as early as the 27th day (26 days after the date of receipt) and must be paid by the 31st day (30 days after the date of receipt).

Standard 3: Reversal rate by Administrative Law Judge (ALJ) is acceptable. We have defined an acceptable reversal rate by an ALJ as one that is at or below 5.0 percent.

Standard 4: 75 percent of reconsiderations are processed within 60 days and 90 percent are processed within 90 days.

Additional functions may be evaluated under this criterion. These functions include, but are not limited to, the—

- Bill processing accuracy;
- Establishment and maintenance of relationship with Common Working File (CWF) Host;
- Management of shared processing sub-contract;
- Analysis and validation of data; and
- Accuracy of processing reconsideration cases with clear responses and appropriate customer-friendly tone and clarity.

B. Customer Service Criterion

We may review the intermediary's efforts to enhance customer satisfaction through the use of customer feedback. Results of the feedback may be used to establish comparable data on customer satisfaction and to identify areas in need of improvement. The results may be summarized for publication in the Report of Contractor Performance (RCP) and shared with individual contractors.

Functions that may be evaluated under this criterion include, but are not limited to—

- Accuracy, timeliness and appropriateness of responses to telephone inquiries;
- Accuracy and timeliness of responses to written inquiries with appropriate customer-friendly tone and clarity;
- Establishment and maintenance of relationships with professional and beneficiary organizations;
- Use of focus groups; and
- Conduct of educational and outreach efforts.

C. Payment Safeguards Criterion

The Payment Safeguard criterion contains two mandated standards.

Standard 1—Decisions on SNF demand bills are accurate.

Standard 2—TEFRA target rate adjustments, exceptions, and exemptions are processed within mandated time frames. Specifically, applications must be processed to completion within 75 days after receipt by the contractor or returned to the hospitals as incomplete within 60 days of receipt.

Intermediaries may also be evaluated on any MIP activities if performed under their Part A agreement. These functions and activities include, but are not limited to—

- Medical Review.
- Applying analytical skills and focusing resources on particular providers or claim types that represent unnecessary or inappropriate care.
- Developing local and national data that identify aberrancies and form the basis of corrective actions, such as educating the provider, or become the basis of medical review policies or review screens as directed by Medicare program manuals and BPR requirements.
- Making decisions that comply with current coverage guidelines.
- Developing means of addressing aberrancies identified during the analysis of all local and national data.
- Medicare Secondary Payer.
- Identifying and recovering mistaken Medicare payments in accordance with appropriate Medicare Intermediary Manual instructions and other pertinent HCFA general instructions.
- Accurately reporting savings and following claim development procedures.
- Prioritizing and processing recoveries in compliance with instructions.
- Fraud and Abuse (also known as BI).
- Identifying fraud cases that exist within the intermediary's service area and taking appropriate actions to dispose of these cases.
- Investigating allegations of fraud made by beneficiaries, providers, HCFA, Office of Inspector General (OIG), and other sources.
- Putting in place effective fraud detection and deterrence programs.
- Overpayments.
- Collecting Medicare debts timely.
- Accurately reporting overpayments to HCFA.

• Adhering to our instructions for management of Medicare Trust Fund debts.
• Provider Enrollment.
• Complying with assignment of staff to the provider enrollment function and training the staff in procedures and verification techniques.
• Complying with the operational standards relevant to the process for enrolling providers.
• Audit and Reimbursement.
• Performing the activities specified in our general instructions for conducting audit and settlement of Medicare cost reports.
• Settling Medicare cost reports timely and accurately in establishing interim provider payments.

D. Fiscal Responsibility Criterion

We may review the intermediary's efforts to establish and maintain appropriate financial and budgetary internal controls over benefit payments and administrative costs. Proper internal controls must be in place to ensure that contractors comply with their agreements with us.

Additional matters to be reviewed under the Fiscal Responsibility criterion may include, but are not limited to—
• Adherence to approved program management and MIP budgets;
• Compliance with the BPRs;
• Compliance with financial reporting requirements and;
• Control of administrative cost and benefit payments.

E. Administrative Activities Criterion

We may measure an intermediary's administrative ability to manage the Medicare program. We may evaluate the efficiency and effectiveness of its operations, its system of internal controls, and its compliance with our directives and initiatives.

We may measure an intermediary's efficiency and effectiveness in managing its operations to ensure constant improvement in the way it does business. Proper systems security (general and application controls), ADP maintenance, and disaster recovery plans must be in place. An intermediary must also test system changes to ensure the accurate implementation of our instructions.

Our evaluation of an intermediary under the Administrative Activities criterion may include, but is not limited to, reviews of its—
• Systems security;
• ADP maintenance (configuration management, testing, change management, security, etc.);
• Disaster recovery plan;
• Change management plan implementation;
• Data and reporting requirements implementation; and
• Internal controls establishment and use, including the degree to which the contractor cooperates with the Secretary in complying with the FMFIA.

V. Criteria and Standards for Carriers

A. Claims Processing Criterion

The Claims Processing criterion contains five mandated standards.

Standard 1: 95 percent of clean electronically submitted claims processed within statutorily specified time frames. Specifically, clean electronic claims can be paid as early as the 14th day (13 days after the date of receipt) and must be paid by the 31st day (30 days after the date of receipt).

Standard 2: 95 percent of clean paper claims processed within specified time frames. Specifically, clean paper claims can be paid as early as the 27th day (26 days after the date of receipt) and must be paid by the 31st day (30 days after the date of receipt).

Standard 3: 98 percent of EOMBs and MSNs are properly generated.

Standard 4: 95 percent of review determinations are accurate and clear with appropriate customer-friendly tone and clarity, and are completed within 45 days.

Standard 5: 90 percent of carrier hearing decisions are accurate and clear with appropriate customer-friendly tone and clarity, and are completed within 120 days.

Additional functions may be evaluated under this criterion. These functions include, but are not limited to, the—
• Claims Processing accuracy;
• Management of shared processing sub-contract;
• Establishment and maintenance of relationship with the CWF Host; and
• Analysis and validation of data.

B. Customer Service Criterion

The Customer Service criterion contains two mandated standards.

Standard 1—Telephone inquiries are answered timely.

Carriers are to achieve a monthly ATB Rate of not more than 10%. For callers choosing to speak with a customer service representative, 97.5% or more of telephone calls are to be answered within 120 seconds; no less than 85% are to be answered within the first 60 seconds.

Standard 2—Accuracy and timeliness of responses to written inquiries with appropriate customer-friendly tone and clarity. Responses to beneficiary written inquiries are written at an appropriate reading level.

We may review the carrier's efforts to enhance customer satisfaction through the use of customer feedback. Results of the feedback may be used to establish comparable data on customer satisfaction and to identify areas in need of improvement. The results may be summarized for publication in the RCP and shared with individual contractors.

Additional functions may be evaluated under this criterion. These functions include, but are not limited to, the carrier's—
• Accuracy and appropriateness of responses to telephone inquiries;
• Establishment and maintenance of relationships with professional and beneficiary organizations;
• Use of focus groups;
• Conduct of educational and outreach efforts; and
• Walk-in services.

C. Payment Safeguards Criterion

Carriers may be evaluated on any MIP activities if performed under their Part B contracts. In addition other carrier functions and activities that may be reviewed under this criterion include, but are not limited to—
• Medical Review.
• Applying their analytical skills and focusing resources on particular providers or claim types that represent unnecessary or inappropriate care.
• Developing effective means of addressing aberrancies identified through analyzing data to target prepay and postpay review.
• Using medical coverage guidelines to determine if each medical review screen is supported by sufficient documentation.
• Developing means of addressing aberrancies identified during the analysis of all local and national data.
• Medicare Secondary Payer.
• Identifying and recovering mistaken Medicare payments in accordance with the appropriate Medicare Carriers Manual instructions, and other pertinent HCFA general instructions.
• Accurately reporting savings and following claim development procedures.
• Prioritizing and processing recoveries in compliance with instructions.
• Fraud and Abuse (also known as BI).
• Identifying fraud and abuse cases that exist within the carrier's service area and taking appropriate actions to dispose of these cases.
• Investigating allegations of fraud and/or abuse made by beneficiaries, providers, HCFA, OIG, and other sources.

• Putting in place effective fraud and abuse detection and deterrence programs.
• Overpayments.
• Collecting Medicare debts timely.
• Accurately reporting overpayments to HCFA.
• Adhering to our instructions for management of Medicare Trust Fund debts.
• Provider Enrollment
• Complying with assignment of staff to the provider enrollment function and training staff in procedures and verification techniques.
• Complying with the operational standards relevant to the process for enrolling providers.

D. Fiscal Responsibility Criterion

We may review the carrier's efforts to establish and maintain appropriate financial and budgetary internal controls over benefit payments and administrative costs. Proper internal controls must be in place to ensure that contractors comply with their agreements with us.

Additional matters to be reviewed under the Fiscal Responsibility criterion may include, but are not limited to—
• Adherence to approved program management and MIP budgets;
• Compliance with the BPRs;
• Compliance with financial reporting requirements; and
• Control of administrative cost and benefit payments.

E. Administrative Activities Criterion

We may measure a carrier's administrative ability to manage the Medicare program. We may evaluate the efficiency and effectiveness of its operations, its system of internal controls, and its compliance with our directives and initiatives.

A carrier must efficiently and effectively manage its operations to assure constant improvement in the way it does business. Proper systems security (general and application controls), ADP maintenance, and disaster recovery plans must be in place. Also, a carrier must test system changes to ensure accurate implementation of our instructions.

Our evaluation of a carrier under this criterion may include, but is not limited to, reviews of its—
• Systems security;
• ADP maintenance (configuration management, testing, change management, security, etc.);
• Disaster recovery plan;
• Change management plan implementation;
• Data and reporting requirements implementation; and
• Internal controls establishment and use including the degree to which the contractor cooperates with the Secretary in complying with the FMFIA.

VI. Criterion and Standards for RHHIs

The following standards are mandated for the RHHI criterion:

Standard 1: 95 percent of clean electronically submitted non-PIP HHA/hospice bills are paid within statutorily specified time frames. Specifically, clean, non-PIP electronic claims can be paid as early as the 14th day (13 pays after the date of receipt) and must be paid by the 31st day (30 days after the date of receipt).

Standard 2: 95 percent of clean paper non-PIP HHA/hospice bills are paid within specified time frames. Specifically, clean, non-PIP paper claims can be paid as early as the 27th day (26 days after the date of receipt) and must be paid by the 31st day (30 days after the date of receipt).

Standard 3: 75 percent of HHA/hospice reconsiderations are processed within 60 days and 90 percent are processed within 90 days.

We may use this criterion to review a RHHI's performance with respect to handling the HHA/hospice workload. This includes processing HHA/hospice bills timely and accurately; properly paying and settling HHA cost reports; and timely and accurately processing reconsiderations from beneficiaries, HHAs, and hospices, interim rate setting, and accuracy of MR coverage decisions.

VII. Action Based on Performance Evaluations

We evaluate a contractor's performance against applicable program requirements for each criterion. Each contractor must certify that all information submitted to us relating to the contract management process, including, without limitation, all files, records, documents and data, whether in written, electronic, or other form, is accurate and complete to the best of the contractor's knowledge and belief. A contractor will also be required to certify that its files, records, documents, and data have not been manipulated or falsified in an effort to receive a more favorable performance evaluation. A contractor must further certify that, to the best of its knowledge and belief, the contractor has submitted, without withholding any relevant information, all information required to be submitted with respect to the contract management process under the authority of applicable law(s), regulation(s), contracts, or HCFA manual provision(s). Any contractor that makes a false, fictitious, or fraudulent certification may be subject to criminal and/or civil prosecution, as well as appropriate administrative action. This administrative action may include debarment or suspension of the contractor, as well as the termination or nonrenewal of a contract.

If a contractor meets the level of performance required by operational instructions, it meets the requirements of that criterion. Any performance measured below basic operational requirements constitutes a program deficiency. The contractor will be required to develop and implement a PIP for each program deficiency identified. The contractor will be monitored to ensure effective and efficient compliance with the PIP, and to ensure improved performance when requirements are not met. The contractor will also be monitored when a program vulnerability in any performance area is identified. A program vulnerability exists when a contractor's performance complies with basic program requirements, but one or more weaknesses are present that could result in deficient performance if left ignored.

The results of performance evaluations and assessments under all five criteria will be used for contract management activities and will be published in the contractor's annual performance report. We may initiate administrative actions as a result of the evaluation of contractor performance based on these performance criteria. Under sections 1816 and 1842 of the Act, we consider the results of the evaluation in our determinations when—
• Entering into, renewing, or terminating agreements or contracts with contractors;
• Deciding other contract actions for intermediaries and carriers (such as deletion of an automatic renewal clause). These decisions are made on a case-by-case basis and depend primarily on the nature and degree of performance. More specifically, they depend on the—
• Relative overall performance compared to other contractors;
• Number of criteria in which deficient performance occurs;
• Extent of each deficiency;
• Relative significance of the requirement for which deficient performance occurs within the overall evaluation program; and
• Efforts to improve program quality, service, and efficiency.
• Deciding the assignment or reassignment of providers and

designation of regional or national intermediaries for classes of providers.

We make individual contract action decisions after considering these factors in terms of their relative significance and impact on the effective and efficient administration of the Medicare program.

In addition, if the cost incurred by the intermediary or carrier to meet its contractual requirements exceeds the amount that we find to be reasonable and adequate to meet the cost that must be incurred by an efficiently and economically operated intermediary or carrier, these high costs may also be grounds for adverse action.

VIII. Response to Public Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are unable to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the Dates section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble of that document.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

IX. Federalism

We have reviewed this notice under the threshold criteria of Executive Order 13132, Federalism. We have determined that the notice does not significantly affect the rights, roles, and responsibilities of States.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance, and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 8, 2000.

Nancy-Ann Min DeParle,

Administrator, Health Care, Financing Administration.

[FR Doc. 00–27955 Filed 10–30–00; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development.

ADDRESSES: Licensing information and a copy of the U.S. patent application referenced below may be obtained by contacting J. R. Dixon, Ph.D., at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804 (telephone 301/496–7056 ext 206; fax 301/402–0220; e-mail jd212g@NIH.GOV). A signed Confidential Disclosure Agreement is required to receive a copy of any patent application.

Entitled: ''USE OF 14–3–3σ AS A DIAGNOSTIC MARKER AND THERAPEUTIC TARGET''—A Method to Diagnosis and Determine the Prognosis of Breast and/or Ovarian Cancers.

Inventors: Drs. Olga Aprelikova (NCI) and Edison T. Liu (NCI) DHHS Ref. No. E–307–00/0, Filed with the USPTO on September 7, 2000.

Breast cancer is one of the most significant cancerous diseases that affects women. At the current rate, American women have a 1 in 8 risk of developing breast cancer by age 95 (American Cancer Society, 1992). Treatment of breast cancer at later stages is often futile and disfiguring, making early detection a high priority in medical management of the disease. Ovarian cancer, although less frequent than breast cancer is often rapidly fatal and is the fourth most common cause of cancer mortality in American women. Genetic factors contribute to an ill-defined proportion of breast cancer incidence, estimated to be about 5% of all cases but approximately 25% of cases diagnosed before age 40. Breast cancer has been subdivided into two types, early-age onset and late-age onset, based on an inflection in the age-specific incidence curve around age 50. Mutation of one gene, BRCA1, is thought to account for approximately 45% of familial breast cancer, but at least 80% of families with both breast and ovarian cancer.

The 14–3–3σ checkpoint control gene is significantly downregulated in BRCA1 -/-cells. The cell cycle profile of these cells treated with ionizing radiation showed an inability to sustain G2/M growth arrest typical for 14–3–3σ deprived cells. In addition, 14–3–3σ has been identified as a p53 inducible gene after DNA damage. Thus, BRCA1 synergistically activates p53 dependent transcription of 14–3–3σ gene. These observations demonstrate the role of 14–3–3σ, and the interaction of BRCA1, p53, and 14–3–3σ in neoplastic conditions, such as breast cancer or ovarian cancer.

The technology disclosed in the E–307–00/0 patent application is directed to a method to identify an agent that modulates 14–3–3σ. The 14–3–3σ checkpoint control gene is significantly downregulated in BRCA1 -/-cells. The method includes incubating the agent and a sample of interest, wherein the sample is capable of expressing 14–3–3σ, under conditions sufficient to allow the compound of interest to interact with the sample, and determining the effect of the compound on the expression or activity of 14–3–3σ. The effect of an agent on the interaction of 14–3–3σ with p53 and/or BRCA1 can also be assessed. A method is also provided for determining the prognosis of a subject diagnosed with a 14–3–3σ-associated disorder. The method includes contacting a sample from the subject with a reagent that binds to 14–3–3σ, detecting binding of the reagent to 14–3–3σ; and correlating the binding of the reagent to the sample with the prognosis of the disorder. The method can also include detecting p53 and/or BRCA1 mutations.

The above mentioned invention is available for licensing on an exclusive or non-exclusive basis.

Dated: October 23, 2000.

Jack Spiegel,

Director, Division of Technology Development & Transfer, Office of Technology Transfer.

[FR Doc. 00–27890 Filed 10–30–00; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Director's Council of Public Representatives, October 31–November 1, 2000, National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 6, Bethesda, MD 20982 which was published in the **Federal Register** on October 10, 2000, 65 FR 60200–60201.

The dates, times, and location of the meeting are the same but the agenda has changed to discuss human research protections and medical applications research. The meeting is open to the public.

Dated: October 17, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–27887 Filed 10–30–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

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 meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, NCI Scholars Program: RFA CA–01–007.

Date: November 14, 2000.

Time: 6 pm to 8 pm.

Agenda: To review and evaluate grant applications.

Place: The Georgetown Holiday Inn, 2101 Wisconsin Ave, NW, Washington, DC 20007.

Contact Person: Mary Bell, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8058, Bethesda, MD 20892, 301/496–7878.

This notice is being published less than 15 days prior to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction, 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 19, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–27879 Filed 10–30–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

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 meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Molecular Target Drug Discovery For Cancer.

Date: November 29, 2000.

Time: 8 am to 5 pm

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Lalita D. Palekar, PhD, Scientific Review Administrator, Special Review, Referral and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8066, Bethesda, MD 20892–7405, (301) 496–7575.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research' 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 19, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–27880 Filed 10–30–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

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 meeting of the Board of Scientific Counselors, National Cancer Institute.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(6) and 552b(c)(9)(B), Title 5 U.S.C. as amended. The discussions could reveal information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy and the premature disclosure of discussions related to personnel and programmatic issues would be likely to significantly frustrate the subsequent implementation or recommendations.

Name of Committee: Board of Scientific Counselors, National Cancer Institute, Subcommittee B—Basic Sciences.

Date: November 13, 2000.

Time: 8:30 am. 5:30 pm.

Agenda: Discussion of personnel and programmatic issues and review and evaluate individual Principal Investigators.

Place: National Cancer Institute, Building 31, C Wing, 6th Floor, Conference Room 6, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Florence Farber, PhD, Executive Secretary, Institute Review Office, Office of the Director, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 7017, Rockville, MD 20852, (301) 496–7628.

(Catalogue of Federal Domestic Assistance Program Nos. 93–392, Cancer Construction; 93.393. Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395 Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 18, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–27881 Filed 10–30–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

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 meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial

property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, The Regents of the University of Michigan.

Date: November 1–3, 2000.

Time: 7:30 pm to 12 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn (North Campus), 3600 Plymouth Road, Ann Arbor, MI 48105.

Contact Person: Mary Bell, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8058, Bethesda, MD 20892, 301/496–7878.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 17, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–27888 Filed 10–30–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; Notice of Closed Meeting

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 meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel, NCCAM Special Emphasis Panel C–07.

Date: November 14–16, 2000.

Time: 6:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: John C. Chah, PhD, Scientific Review Administrator, National Institutes of Health, NCCAM, Building 31, Room 5B50, 9000 Rockville Pike, Bethesda, MD 20892, 301–402–4334, johnc@od.nih.gov.

Dated: October 18, 2000,

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–27882 Filed 10–30–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; 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 meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB 4 J2.

Date: November 17, 2000.

Time: 3 pm to 4 pm.

Agenda: To review and evaluate grant applications.

Place: 2 Democracy Plaza, 6707 Democracy Boulevard, 6th Floor, Room #647, Bethesda, MD 20892–5452 (Telephone Conference Call).

Contact Person: William E. Elzinga, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 647, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600 (301) 594–8895.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–7 J3.

Date: November 19–20, 2000.

Time: 7:30 pm to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Lakshmanan Sankaran, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 659, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600 (301) 594–7799.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: October 19, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–27878 Filed 10–30–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIAID.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Allergy and Infectious Diseases, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIAID.

Date: December 11–13, 2000.

Time: December 11, 2000, 8 am to adjournment on December 13.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 4, Conference Room 433, 10 Center Drive, Bethesda, MD 20892.

Contact Person: Thomas J. Kindt, PhD, Director, Division of Intramural Research, National Inst. of Allergy & Infectious Diseases, Building 10, Room 4A31, Bethesda, MD 20892, 301 496–3006, tk9c@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology,

and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 18, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–27883 Filed 10–30–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Disease; Notice of Closed Meeting

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 meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel.

Date: November 14–15, 2000.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Swissotel Washington, The Watergate, 2650 Virginia Ave., NW., Washington, DC 20037.

Contact Person: Gerald L McLaughlin, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301–496–2550, gm145a@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 18, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–27884 Filed 10–30–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

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 meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel.

Date: November 6–7, 2000.

Time: 8:30 am to 2:00 pm.

Agenda: To review and evaluate contract proposals.

Place: Georgetown Holiday Inn, Fortune Room, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Dianne E. Tingley, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2220, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301–496–2550.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 18, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–27885 Filed 10–30–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; 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 meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552(b)(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Visual Sciences A Study Section.

Date: October 30–31, 2000.

Time: 8 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Radisson Barcelo Hotel, 2121 P St., NW, Washington, DC 20037.

Contact Person: Michael H. Chaitin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7850, Bethesda, MD 20892, (301) 435–0910.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 1–2, 2000.

Time: 8 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Gopal C. Sharma, DVM, MS, PhD, Diplomate American Board of Toxicology, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2184, MSC 7818, Bethesda, MD 20892, (301) 435–1783, sharmag@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 1, 2000.

Time: 10:30 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Michael Oxman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7848, Bethesda, MD 20892, 301/435–3565, oxmanm@mail.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Cardiovascular Sciences Integrated Review Group, Cardiovascular Study Sectin.

Date: November 2–3, 2000.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Gordon L. Johnson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7802, Bethesda, MD 20892, (301) 435–1212, johnsong@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 2, 2000.

Time: 8 am to 6 pm.

Agenda: To review and evaluate grant applications.

Place: River Inn, 924 25th Street, NW., Washington, DC 20037.

Contact Person: Stephen M. Nigida, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7812, Bethesda, MD 20892, (301) 435–3565.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Cell Development and Function Integrated Review Group, Cell Development and Function 6.

Date: November 2–3, 2000.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Richard D. Rodewald, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5142, MSC 7840, Bethesda, MD 20892, (301) 435–1024.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 2–3, 2000.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Tracy E. Orr, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5118, MSC 7812, Bethesda, MD 20892, (301) 435–1259.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: AIDS and Related Research Integrated Review Group, AIDS and Related Research 2.

Date: November 2–3, 2000.

Time: 8 am to 1:30 pm.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Sami A. Mayyasi, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7852, Bethesda, MD 20892, (301) 435–1169.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Reveiw Special Emphasis Panel.

Date: November 2–3, 2000.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Le Pavillon Hotel, 833 Poydras Street, New Orleans, LA 70112.

Contact Person: Michael Nunn, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7850, Bethesda, MD 20892, (301) 435–0910.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Genetic Sciences Integrated Review Group, Genome Study Section.

Date: November 2–3, 2000.

Time: 8:30 am to 1:30 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Cheryl M. Corsaro, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2204, MSC 7890, Bethesda, MD 20892, 301–435–1045 CORSAROC@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: AIDS and Related Research Integrated Review Group, AIDS and Related Research 3.

Date: November 2, 2000.

Time: 8:30 am to 6 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, Md 20815.

Contact Person: Randall J. Owens, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5102, MSC 7852, Bethesda, MD 20892, 301–435–1506.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Reveiw Special Emphasis Panel.

Date: November 2–3, 2000.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Karen Sirocco, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, (301) 435–0676.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 2–3, 2000.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select (New Orleans Airport), 2929 Williams Blvd., Kenner, LA 70062.

Contact Person: Mary Custer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5102, MSC 7850, Bethesda, MD 20892, (301) 435–1164.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 2–3, 2000.

Time: 9 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Chevy Chase Pavillion, 4300 Military Road, NW, Washington, DC 20015.

Contact Person: Anita Miller Sostek, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, (301) 435–1260.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 2, 2000.

Time: 1:30 pm to 2:30 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Gerhard Ehrenspeck, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5138, MSC 7840, Bethesda, MD 20892, (301) 435–1022, ehrenspg@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 3, 2000.

Time: 8:30 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Randall J. Owens, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5102, MSC 7852, Bethesda, MD 20892, 301–435–1506.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 3, 2000.

Time: 1:45 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, N.W., Washington, DC 20007.

Contact Person: Cheryl M. Corsaro, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2204, MSC 7890, Bethesda, MD 20892, 301–435–1045, corsaroc@csr.nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 3, 2000.

Time: 3:45 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, N.W., Washington, DC 20007.

Contact Person: Cheryl M. Corsaro, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2204, MSC 7890, Bethesda, MD 20892, 301–435–1045, corsaroc@csr.nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 3, 2000.

Time: 12:30 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Camilla E. Day, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2208, MSC 7890, Bethesda, MD 20892, (301) 435–1037, dayc@csr.nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 3, 2000.

Time: 5 pm to 1 pm.

Agenda: To review and evaluate grant applications.

Place: Best Western University Tower, 4507 Brooklyn Avenue, NE., Seattle, WA 98105.

Contact Person: Eugene Vigil, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5144, MSC 7840, Bethesda, MD 20892, (301) 435–1025.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 6, 2000.

Time: 8 am to 4 pm.

Agenda: To review and evaluate grant applications.

Place: Radisson Barcelo Hotel, 2121 P St., NW., Washington, DC 20037.

Contact Person: Lee Rosen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel HEM–1 (10B).

Date: November 6, 2000.

Time: 8 am to 4 pm.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Robert T. Su, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4134, MSC 7840, Bethesda, MD 20892, (301) 435–1195.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 6–8, 2000.

Time: 8:30 am to 5:30 pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, Kaleidoscope Room, 2101 Wisconsin Ave., NW., Washington, DC 20007.

Contact Person: Jerry L. Klein, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, MSC 7804, Bethesda, MD 20892, (301) 435–1213.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 6, 2000.

Time: 9 am to 10:30 am.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mariana Dimitrov, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3180, MSC 7848, Bethesda, MD 20892, 301–435–0902.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 6, 2000.

Time: 2 pm to 4 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Leonard Jakubczak, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5172, MSC 7844, Bethesda, MD 20892, 301–435–1247.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 7, 2000.

Time: 1 pm to 3 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Eugene M. Zimmerman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4202, MSC 7812, Bethesda, MD 20892, 301–435–1220, zimmerng@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 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: October 19, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Policy.

[FR Doc. 00–27877 Filed 10–30–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

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 meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections

552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Tropical Medicine and Parasitology Study Section.

Date: October 19–20, 2000.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, Versailles IV Room, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jean Hickman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4194, MSC 7808, Bethesda, MD 20892, (301) 435–1146.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 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: October 18, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–27886 Filed 10–30–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Insulin Producing Cells Differentiated From Non-Insulin Producing Cells by GLP–1 and Exendin-4 and Use Thereof; Correction

The notice published in the October 17, 2000 **Federal Register** (65 FR 61352)—announcing the prospective grant of an exclusive license for use of insulin producing cells differentiated from non-insulin producing cells—incorrectly listed the PCT Patent Application Serial Number as ''PCT/US99/180899'' and the PHS Ref. as ''E–151–97/1''. NIH is publishing this notice to correct the PCT application number to read ''E–251–97/1''.

Dated: October 23, 2000.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 00–27889 Filed 10–30–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4562 N–08]

Notice of Proposed Information Collection for Public Comment: Updating the Low-Income Housing Tax Credit Database

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* January 2, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 8226, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Steven R. Ehrlich, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; telephone (202) 708–0426 (this is not a toll-free number). Copies of the proposed data collection instruments and other available documents may be obtained from Mr. Ehrlich.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) 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; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Updating the Low Income Housing Tax Credit Database.

Description of the need for the information and proposed use:

Section 42 of the I.R.C. provides for Low-Income Housing Tax Credits (LIHTC) that encourage the production of qualified low-income housing units. Due to the decentralized nature of the LIHTC program, there are few data available on the units that are currently being developed with this federal tax subsidy. The Department of Housing and Urban Development, while not responsible for administering tax credits, has special responsibilities in understanding and evaluating credit usage, both because the LIHTC helps provide for the housing needs of low-income persons and because credits work in conjunction with HUD subsidies in some units.

Absent this data collection, HUD will not have at its disposal the most current, comprehensive LIHTC data, rendering HUD unable to determine the types of areas in which the units are located, the concentration of such units geographically and with respect to other subsidized housing types, or whether incentives to develop LIHTC units in a set of HUD designed Difficult Development Areas has been effective. In addition, without these data, both HUD and private researchers will be unable to conduct sample-based studies on the LIHTC due to the difficulty of constructing a valid sample without a complete data set on the universe of LIHTC projects.

Members of affected public: Information will be solicited from the 57 agencies (predominantly state-level) that allocate credits under section 42 of the I.R.C.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Number of respondents: 58.

Number of responses per respondent: 01.

Total number of responses per annum: 54.

Hours per response: 24.

Total Hours: 1,392.

Status of the proposed information collection: Pending OMB approval.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: October 23, 2000.

Lawrence L. Thompson,

General Deputy Assistant Secretary for Policy Development and Research.

[FR Doc. 00–27846 Filed 10–30–00; 8:45 am]

BILLING CODE 4210–62–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4561–N–71]

Notice of Submission of Proposed Information Collection to OMB; Request Voucher for Grant Payment & LOCCS Voice Response System Access Authorization

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* November 30, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2535–0102) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne_Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department. This Notice also lists the following information:

Title of Proposal: Request voucher for Grant Payment & LOCCS Voice Response System Access Authorization.

OMB Approval Number: 2535–0102.

Form Numbers: HUD–27053; HUD–27054.

Description of the Need for the Information and its Proposed Use: Request vouchers are used to prepare automated phone request for distribution of grant funds using the automated Voice Response System (VRS). Authorization form is submitted to establish access to voice activated payment system.

Frequency of Submission: on occasion.

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Reporting Burden	2,000	....	20.5	....	0.17	....	41,133

Total Estimated Burden Hours: 41,133.

Status: Reinstatement, without change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: October 24, 2000.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 00–27845 Filed 10–30–00; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4572–D–10]

Delegation of Authority to the Director of the Enforcement Center

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice of Delegation of Authority.

SUMMARY: The Secretary of HUD has established an Enforcement Center to consolidate HUD's enforcement actions. In addition, pursuant to the regulations at 24 CFR Part 30, the Assistant Secretary for Housing-Federal Housing Commissioner has the authority to initiate and resolve civil money penalty actions against multifamily mortgagors and may delegate this authority to a designee. The National Housing Act at 12 U.S.C. 1735f–15(c)(1)(B)(x), provides that among the violations subject to civil money penalty sanction is the failure by an FHA mortgagor to timely file annual audited financial reports. A similar provision is made with regard to Section 202 mortgagors pursuant to 12 U.S.C. 1701q–1(c)(1)(J). This delegation of authority permits the Director of the Enforcement Center to take enforcement action for violations of 12 U.S.C. 1735f–15(c)(1)(B)(x) and 12 U.S.C. 1701q–1(c)(1)(J), through the initiation of civil money penalty actions pursuant to 24 CFR 30.45.

EFFECTIVE DATE: September 20, 2000.

FOR FURTHER INFORMATION CONTACT: Dane M. Narode, Deputy Chief Counsel, Administrative Proceedings Branch, Department Enforcement Center, Department of Housing and Urban Development, Portals Building, 1250 Maryland Avenue, Suite 200, Washington, DC 20024, (202) 708–3856. This is not a toll free number. For the hearing/speech-impaired, the number may be accessed via TTY by calling the Federal Information Relay Service at 1–800–877–8399.

SUPPLEMENTARY INFORMATION: HUD regulations, at 24 CFR 30.45, permit the Assistant Secretary of Housing—Federal Housing Commissioner to initiate and resolve civil money penalty actions against participants in HUD multifamily insured housing programs. These participants include: a mortgagor of any

property that includes five or more living units and is subject to a mortgage insured, coinsured or held by the Secretary. Section 30.45 identifies the violations for which the Assistant Secretary may impose a penalty. Among the referenced violations is the mortgagor's failure to timely file audited financial reports. See 12 U.S.C. 1735f–15(c)(1)(B)(x) and 12 U.S.C. 1701q–1(c)(1)(J). Mortgagors are required to file annual financial reports within 60 days of the end of the mortgagor's fiscal year. These reports must be examined and certified by an independent or certified public accountant, and certified by an officer of the mortgagor.

Section 30.45 also provides that the Assistant Secretary may delegate his authority under the regulations to a designee. This document would make that delegation to the Director of the Enforcement Center. This delegation does not affect the authority of the Mortgagee Review Board to initiate civil money penalties, as described in 24 CFR 30.35, or the authority of the Assistant Secretary to initiate civil money penalties for violations identified in 12 U.S.C. 1735f–15(c)(1)(B)(x) and 12 U.S.C. 1701q–1(c)(1)(J).

Wherefore, the Assistant Secretary for Housing—Federal Housing Commissioner delegates authority, as follows:

Section A. Authority Delegate: The Director of the HUD Enforcement Center, as designee, is authorized to take all actions permitted under 24 CFR Part 30, as they pertain to violations identified in 12 U.S.C. 1735f–15(c)(1)(B)(x) and 12 U.S.C. 1701q–1(c)(1)(J).

Section B. Authority to Redelegate: The Director of the Enforcement Center is not authorized to redelegate, to another designee, the authority delegated under Section A.

Authority: Section 30.45 of Title 24 of the Code of Federal Regulations.

Dated: September 20, 2000.

William C. Apgar,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 00–27844 Filed 10–30–00; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Restoration and Compensation Determination Plan, Lower Fox River/Green Bay Natural Resource Damage Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 45-day comment period.

SUMMARY: Notice is given that the ''Restoration and Compensation Determination Plan, [for the] Lower Fox River and Green Bay Natural Resource Damage Assessment'' is available for public review and comment. The public comment period started at a public meeting in Green Bay, Wisconsin on October 25, 2000. In addition, comments are being accepted on each of the following documents, released previously. ''Fish Consumption Advisories in the Lower Fox River/Green Bay Assessment Area'' (November 24, 1998); ''Injuries to Avian Resources, Lower Fox River/Green Bay Natural Resource Damage Assessment'' (May 7, 1999); ''PCB Pathway Determination for the Lower Fox River/Green Bay Natural Resource Damage Assessment'' (August 30, 1999); ''Recreational Fishing Damages from Fish Consumption Advisories in the Waters of Green Bay'' (November 1, 1999); ''Injuries to Surface Water Resources, Lower Fox River/Green Bay Natural Resource Damage Assessment'' (November 8, 1999); and ''Injuries to Fishery Resources, Lower Fox River/Green Bay Natural Resource Damage Assessment'' (November 8, 1999).

The U.S. Department of the Interior (''Department''), the U.S. National Oceanic and Atmospheric Administration, the Menominee Indian Tribe of Wisconsin, the Oneida Tribe of Indians of Wisconsin, the Little Traverse Bay Bands of Odawa Indians, and the Michigan Attorney-General are acting as co-trustees for natural resources considered in this assessment, pursuant to subpart G of the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR 300.600 and 300.610, and Executive Order 12580.

The assessment, including the activities addressed in this restoration and compensation determination plan, is being conducted pursuant to the Natural Resource Damage Assessment Regulations found at 43 CFR Part 11. The public review of the restoration and compensation determination plan announced by this Notice is provided for in 43 CFR 11.81(d)(1).

Interested members of the public are invited to review and comment on the restoration and compensation determination plan, and on the published assessment results listed in the notice. Copies of the restoration and compensation determination plan, the published assessment results listed in this notice, and the ''Assessment Plan: Lower Fox River/Green Bay NRDA'' (''The Plan'') issued on August 23, 1996 (FR Doc. 96–21520), can be requested from the address listed below. The Restoration and Compensation Determination Plan does not represent final determination or claim for damages. The participating co-trustees may revise the Restoration and Compensation Determination Plan in response to issues raised during the comment period. All written comments will be considered and included in the Report of Assessment at the conclusion of the assessment process and the participating co-trustees will make the final determination for the assessment.

DATES: Written comments on the restoration and compensation determination plan and the published assessment results listed in this notice must be submitted on or before December 15, 2000.

ADDRESSES: The restoration and compensation determination plan, as well as the other documents listed in this notice, can be accessed online through the Internet at the following website: *http://midwest.fws.gov/nrda/.* Written requests for paper copies, or copies on compact disk, may be made to: David Allen, U.S. Fish and Wildlife Service, 1015 Challenger Court, Green Bay, Wisconsin 54311.

SUPPLEMENTARY INFORMATION: The purpose of this natural resource damage assessment is to confirm and quantify injuries to natural resources, resultant economic damages, and the natural resource restoration necessary to address those injuries in the Lower Fox River, Green Bay, and Lake Michigan environment resulting from exposure to polychlorinated biphenyls released by Fox River, Wisconsin paper mills. The injury and required restoration are assessed under the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, and the Clean Water Act, as amended.

William F. Hartwig,

Regional Director.

[FR Doc. 00–27944 Filed 10–30–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–930–01–1320–01]

Notice of Public Hearing and Call for Public Comment on Fair Market Value and Maximum Economic Recovery; Coal Lease Application UTU–78562; Whitmore Canyon Tract

AGENCY: Bureau of Land Management, Utah, Interior.

SUMMARY: The Bureau of Land Management (BLM) announces a public hearing concerning the proposed action of offering a Federal coal lease tract for competitive coal lease sale and requests public comment on the fair market value of the coal resources and acknowledgement of any environmental concerns concerning this proposed action. The lands included in the delineated Federal coal tract (Whitmore Canyon) are located in Carbon County, Utah, approximately 4 miles north of East Carbon City. The surface in this area is both private and BLM administered public land with the coal being Federally owned. The Whitmore Canyon track is described as follows:

T. 13 S., R. 13 E., SLM, Utah
Section 35: SE, S2SW;
T. 14 S., R. 13 E., SLM, Utah
Section 1: Lots 2–4, S2NW, SW, W2SE, SWNE;
Section 12: Lots 1–4, S@N2, SE, NESW;
Section 13: NENE;
T. 14 S., R. 14 E., SLM, Utah
Section 6: Lot 6;
Section 7: Lots 3 and 4;
Section 18: Lot 1, E2NW

Containing 1,646.34 acres more or less.

The Tract received application for a coal lease by Andalex Resources Inc. and the Intermountain Power Agency (a 50/50 joint ownership). The companies plan to mine the coal as an extension from their existing West Ridge Mining operating if the lease is obtained. The Whitmore Canyon Tract has one potentially minable coal seam which is the Upper Sunnyside Seam. The minable portions of the seam in this area are from 6 to 9 feet in thickness and average 8 feet. This tract contains an estimated 15–20 million tons of recoverable coal. In-place coal samples indicates the average coal quality as follows 12,682 Btu/lb., 7 percent moisture, 6.7 percent ash, and 1.02 percent sulfur. The public is invited to the hearing to make public or written comments on the environmental implications of leasing the proposed tract, and also to submit comments on the fair market value (FMV) and the maximum economic recovery (MER) of the tract.

SUPPLEMENTARY INFORMATION: In accordance with Federal coal management regulations 43 CFR 4322 and 4325, a public hearing shall be held on the proposed sale to allow public comment on and discussion of the potential effects of mining and proposed lease. Not less than 30 days prior to the publication of the notice of sale, the Secretary shall solicit public comments on fair market value appraisal and maximum economic recovery and on factors that may affect these two determinations. Proprietary data marked as confidential may be submitted to the Bureau of Land Management in response to this solicitation of public comments. Data so marked shall be treated in accordance with the laws and regulations governing the confidentiality of such information. A copy of the comments submitted by the public on fair market value and maximum economic recovery, except those portions identified as proprietary by the author and meeting exemptions stated in the Freedom of Information Act, will be available for public inspection at the Bureau of Land Management, Utah State Office during regular business hours (8:00 a.m. to 4:00 p.m.) Monday through Friday. Comments on fair market value and maximum economic recovery should be sent to the Bureau of Land Management and should address, but not necessarily be limited to, the following information:

1. The quality and quantity of the coal resource.
2. The mining method or methods which would achieve maximum economic recovery of the coal, including specifications of seams to be mined and the most desirable timing and rate of production.
3. The quantity of coal.
4. If this tract is likely to be mined as part of an existing mine and therefore be evaluated on a realistic incremental basis, in relation to the existing mine to which it has the greatest value.
5. If this tract should be evaluated as part of a potential larger mining unit and evaluated as a portion of a new potential mine (i.e., a tract which does not in itself form a logical mining unit).
6. The configuration of any larger mining unit of which the tract may be a part.
7. Restrictions to mining which may affect coal recovery.
8. The price that the mined coal would bring when sold.
9. Costs, including mining and reclamation, of producing the coal and the time of production.
10. The percentage rate at which anticipated income streams should be discounted, either in the absence of inflation or with inflation, in which case the anticipated rate of inflation should be given.
11. Depreciation and other tax accounting factors.
12. The value of any surface estate where held privately.
13. Documented information on the terms and conditions of recent and similar coal land transactions in the lease sale area.
14. Any comparable sales data of similar coal lands.

Coal quantities and the FMV of the coal developed by BLM may or may not change as a result of comments received from the public and changes in market conditions between now and when final economic evaluations are completed.

DATES: The public hearing will be held in the BLM Price Field Office located at 125 South, 600 West in Price, Utah, at 7:00 p.m. on November 14, 2000. Written comments on fair market value and maximum economic recovery must be received at the Bureau of Land Management, Utah State Office, by November 30, 2000.

FOR FURTHER INFORMATION CONTACT: Max Nielson, 801–539–4038, Bureau of Land Management, Utah State Office, Division of Natural Resources, P. O. Box 45155, Salt Lake City, Utah, 84145–0155.

Dated: October 6, 2000.

Ernest J. Eberhard,

Acting DSD, Natural Resources, Utah.

[FR Doc. 00–26305 Filed 10–30–00; 8:45 am]

BILLING CODE 4310–DQ–$$

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–500 0777–XQ–2527]

Front Range Resource Advisory Council (Colorado) Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C. Appendix, notice is hereby given that the next meeting of the Front Range Resource Advisory Council (Colorado) will be held on November 9 in Canon City, Colorado.

The meeting is scheduled to begin at 9:15 a.m. at the Holy Cross Abbey Community Center, 2951 E. Highway 50, Canon City, Colorado. Topics will include an update on the Revision of the Arkansas Headwaters Recreation Area Plan and election of officers. All Resource Advisory Council meetings are open to the public. Interested persons may make oral statements to the Council at 9:30 a.m. or written statements may be submitted for the Council's consideration. The Center Manager may limit the length of oral presentations depending on the number of people wishing to speak.

DATES: The meeting is scheduled for Thursday, November 9, 2000 from 9:15 a.m. to 4 p.m.

ADDRESSES: Bureau of Land Management (BLM), Front Range

Center, 3170 East Main Street, Canon City, Colorado 81212.

FOR FURTHER INFORMATION CONTACT: Ken Smith at (719) 269–8500.

SUPPLEMENTARY INFORMATION: Summary minutes for the Council meeting will be maintained in the Canon City Center and will be available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting.

Dated: October 19, 2000.

John Carochi,

Acting Front Range Center Manager.

[FR Doc. 00–27843 Filed 10–30–00; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–957–1430–BJ]

Idaho: Filing of Plats of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of the following described lands were officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m., on the dates specified: The plat representing the dependent resurvey of a portion of the subdivisional lines, and the subdivision of section 25, T. 1 N., R. 5 W., Boise Meridian, Idaho, Group Number 1048, was accepted July 12, 2000. The plat was prepared to meet certain administrative needs of the Bureau of Land Management. The field notes representing the correction of a portion of Mineral Survey Number 3683, Volume M–167, page 225, T. 12 N., R. 37 E., Boise Meridian, Idaho, was accepted July 27, 2000. The field notes were prepared to meet certain administrative needs of the Bureau of Land Management.

The plat representing the entire survey record for the dependent resurvey of a portion of the south boundary and subdivisional lines, and the subdivision of section 33, T. 9 S., R. 2 E., Boise Meridian, Idaho, Group Number 1074, was accepted September 1, 2000. The plat was prepared to meet certain administrative needs of the Bureau of Land Management.

The plat representing the entire survey record for the dependent resurvey of a portion of the subdivisional lines, and the subdivision of section 4, T. 10 S., R. 2 E., Boise Meridian, Idaho, Group Number 1076, was accepted September 1, 2000. The plat was prepared to meet certain administrative needs of the Bureau of Land Management.

A supplemental plat was prepared to identify various lands included in Mineral Patent Application IDI29690, in section 34, T. 7 S., R. 40 E., Boise Meridian, Idaho, accepted September 12, 2000. The plat was prepared to meet certain administrative needs of the Bureau of Land Management.

The plat representing the dependent resurvey of portions of the subdivisional lines, of canceled Mineral Survey No. 2806, and the segregation surveys of the Grey Eagle, Big Blue Bird, Golden Chest, Ruby, and the Golden Wedge Lodes, and the subdivision of sections 13, 14, and 23, T. 40 N., R. 1 E., Boise Meridian, Idaho, Group Number 1039, was accepted September 21, 2000. The plat was prepared to meet certain administrative needs of the U.S. Fish and Wildlife Service.

The plat representing the dependent resurvey of a portion of the north boundary and a portion of the subdivisional lines, and a metes-and-bounds survey in section 6, T. 44 N., R. 5 W., Boise Meridian, Idaho, Group Number 1071, was accepted September 21, 2000. The plat was prepared to meet certain administrative needs of the Bureau of Indian Affairs.

The plat representing the dependent resurvey of a portion of the subdivisional lines and a portion of the subdivision of section 18, and a metes-and-bounds survey within section 18, T. 44 N., R. 4 W., Boise Meridian, Idaho, Group Number 1079, was accepted September 28, 2000. The plat was prepared to meet certain administrative needs of the Bureau of Indian Affairs.

The plat representing the dependent resurvey of portions of the second standard parallel south (south boundary), north and west boundaries, and of the subdivision of sections 5, 6, 28, 29, and 32, T. 12 S., R. 21 E., Boise Meridian, Idaho, Group Number 1040, was accepted September 29, 2000. The plat was prepared to meet certain administrative needs of the Bureau of Land Management.

FOR FURTHER INFORMATION CONTACT: Duane Olsen, Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho, 83709–1657, 208–373–3980.

Dated: October 3, 2000.

Duane E. Olsen,

Chief, Cadastral Surveyor for Idaho.

[FR Doc. 00–26426 Filed 10–30–00; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Request for Reinstatement, With Change, of a Previously Approved Information Collection

AGENCY: National Park Service, DOI.

ACTION: Notice and request for comments.

SUMMARY: This notice announces that the National Park Service's (NPS') intention to request from the Office of Management and Budget (OMB) a reinstatement of, and revisions to, a previously approved information collection for certain activities related to 36 CFR Part 61. The title of 36 CFR Part 61 is Procedures for State, Tribal, and Local Government Historic Preservation Programs. NPS has based the proposed revisions on a fresh analysis of existing requirements for responding and record keeping in certain elements of State and local historic preservation programs. NPS is publishing this notice in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507 et seq.) and OMB rules (5 CFR Part 1320).

DATES: NPS must receive comments concerning this notice by January 2, 2001 to assure their consideration.

ADDRESSES: Send comments on this information collection to:

Mr. John W. Renaud, Project Coordinator, Branch of State, Tribal, and Local Programs Heritage Preservation Services, National Park Service, U.S. Department of the Interior, 1849 C St., NW, NC 200, Washington, DC 20240 or via e-mail at John_Renaud@nps.gov.

FOR FURTHER INFORMATION CONTACT: Mr. John W. Renaud, Project Coordinator, Branch of State, Tribal, and Local Programs, Heritage Preservations Services Division, National Park Service, U.S. Department of the Interior, P.O. Box 37127, Washington, DC 20013–7127, (202) 343–1059, John_Renaud@nps.gov.

SUPPLEMENTARY INFORMATION:

Title: 36 CFR Part 61, Procedures for State, Tribal, and Local Government Historic Preservation Programs.

OMB Number: 1024–0038.

Type of Request: Reinstatement, with change, of a previously approved collection for which approval has expired.

Abstract: This information collection has an impact on State, Tribal, and local governments that wish to participate formally in the national historic preservation program and who wish to apply for Historic Preservation Fund

grant assistance. The National Park Service uses the information to ensure compliance with the National Historic Preservation Act and government-wide grant requirements.

Respondents/Record Keepers: State, Tribal, and Local Governments.

Estimate of Burden: NPS estimates that the public reporting burden for this collection of information will average 9.06 hours per response and 0.60 hours per record, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and reviewing the collection of information.

Estimated Number of Respondents/ Record Keepers: NPS estimates that there are 450 respondents and 83 record keepers. This is the gross number of respondents and record keepers for all of the documents included in this information collection. The net number of States, Tribal, and local governments participating in this information collection annually is 136. The frequency of response varies depending upon activity. States complete Grant application and end-of-year report documents once a year. NPS requires project documents at the beginning and end of each subgrant with a large Federal share. NPS reviews each State's program once every four years. NPS requires information from a local government when it applies for certification. NPS requires that each State maintain one record for each property in its inventory and one record per project for tracking its responses to Federal agency requests for State review. Pursuant to Section 101(d) of the National Historic Preservation Act, federally recognized Indian Tribes, after agreement with the National Park Service (NPS), may assume responsibilities specified in Section 101(b)(3) and therefore use related information collections.

Estimated Number of Responses per Respondent: 1.

Estimated Number of Records per Record Keeper: 350.

Estimated Total Annual Burden on Respondents: 4,078 hours.

Estimated Total Annual Burden on Record Keepers: 17,430 hours.

Estimated Total Annual Burden: 21,508 hours.

You may obtain copies of this information collection from Mr. John W. Renaud, Project Coordinator.

NPS is soliciting comments regarding:

(1) Whether the collection of information is necessary for the proper performance of the functions of NPS, including whether the information will have practical utility;

(2) The accuracy of the burden estimate including the validity of the method and assumptions used;

(3) The quality, utility, and clarity of the information to be collected;

(4) Ways to minimize the burden, including through the use of automated collection or other forms of information technology; or,

(5) Any other aspect of this collection of information.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: October 25, 2000.

Leonard E. Stowe,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 00–27840 Filed 10–30–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan Revision, Environmental Impact Statement, Petrified Forest National Park, Arizona

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of intent to prepare an environmental impact statement for the general management plan revision, Petrified Forest National Park.

SUMMARY: Under the provisions of the National Environmental Policy Act, the National Park Service is preparing an environmental impact statement for the general management plan (GMP) revision for Petrified Forest National Park. The environmental impact statement will be approved by the Director, Intermountain Region.

Petrified Forest National Park was established as a unit of the National Park System to preserve the mineralized remains of Mesozoic Forests (commonly known as the ''Petrified Forest''), additional features of scenic and scientific interest, and the area's natural environment and cultural resources, for public use and benefit. It is located in northeastern Arizona. The Petrified Forest National Park Final General Management Plan/Development Concept Plans/Environmental Impact Statement was approved in 1992. The new GMP revision will address new perspectives on several key elements that were not fully considered at the time of the plan: (1) The potential impact of building/expanding proposed new facilities into previously undeveloped areas, particularly the increased visibility of facilities from busy visitor areas and wilderness, was not comprehensively addressed in the existing GMP; (2) The existing GMP did not recognize that many existing structures have historic significance and warrant full evaluation for adaptive re-use rather than the proposed removal. Further, the planned arrangement of buildings, parking, courtyards, and trails comprise significant cultural landscapes which would have been substantially altered by the existing plan without recognition of these values. There is a much greater awareness now of cultural values that warrant revision of the plan, including historic structures, cultural landscapes, archeology, ethnography, and the Native American Grave Protection and Repatriation Act; (3) It is unlikely that Petrified Forest National Park would receive the funding necessary to implement the proposals in the existing GMP; (4) The sustainability of proposing a lot of new construction versus the feasibility and sustainability of re-using existing structures was not adequately addressed in the existing plan; (5) More up-to-date information about handicapped accessibility is available; (6) Effectively preventing wood theft remains a very high priority, and more information on visitor behavior is now available; and (6) Bring plan into conformance with current NPS planning standards (NPS Director's Order 2).

The National Park Service is planning to begin public scoping in November, 2000 via a newsletter to American Indian tribes, neighboring communities, county commissioners, organizations, state and federal agencies, researchers and institutions, the Congressional Delegation, and visitors who signed up to be on the mailing list. There will also be a web site and press releases. The purpose of the newsletter, web site, and press release is to explain the planning process and to obtain comments concerning revision of the GMP. Comments may be addressed to the Superintendent, and should be received no later that 60-days from the publication of this Notice of Intent.

FOR FURTHER INFORMATION CONTACT: Superintendent Michelle Hellickson, Petrified Forest National Park, P.O Box 2217, Petrified Forest, AZ 86028; Tel: (520) 524–6228; FAX: (520) 524–3567; e-mail: *michelle_hellickson@nps.gov.*

Dated: October 13, 2000.

Ron Everhart,

Director, Intermountain Region.

[FR Doc. 00–27476 Filed 10–30–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Winter Use Plans, Final Environmental Impact Statement for the Yellowstone and Grand Teton National Parks and John D. Rockefeller, Jr., Memorial Parkway, Wyoming

AGENCY: National Park Service, Department of the Interior.

ACTION: Availability of the Winter Use Plans, Final Environmental Impact Statement for the Yellowstone and Grand Teton National Parks and John D. Rockefeller, Jr., Memorial Parkway.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the National Park Service announces the availability of the Winter Use Plans, Final Environmental Impact Statement for the Yellowstone and Grand Teton National Parks and John D. Rockefeller, Jr., Memorial Parkway, Wyoming and Montana.

DATES: The DEIS was on public review from July 30, 1999 to December 15, 1999. Responses to public comments are addressed in the FEIS. The National Park Service (NPS) will entertain comments on the FEIS, although it is not legally required to do so. All comments must be received by October 31, 2000 and should be sent to: Clifford Hawkes, PDS–P, National Park Service, 12795 West Alameda Parkway, Lakewood, Colorado 80228 or the email address: yell_winter_use@nps.gov. Comments received after this date will not be considered. Comments transmitted by facsimile machine will not be considered. To meet a deadline in a court-approved settlement agreement for this EIS, the NPS cannot extend the comment period.

ADDRESSES: Copies of the FEIS are available from Clifford Hawkes, National Park Service, Denver Service Center, 12795 West Alameda Parkway, Lakewood, Colorado 80228. Public reading copies of the plan are available on the Internet (www.nps.gov/planning) and will be available for review at the following locations:

Office of the Superintendent, Yellowstone NP, Yellowstone National Park, Wyoming 82190, Telephone: (307) 344–2010.

Office of the Superintendent, Grand Teton NP, P.O. Drawer 170, Moose, WY 83012–0170, Telephone: (307) 739–3452.

Planning and Environmental Quality, Intermountain Support Office-Denver, National Park Service, P.O. Box 25287, Denver, CO 80225–0287, Telephone: (303) 969–2851.

Office of Public Affairs, National Park Service, Department of Interior, 18th and C Streets NW, Washington, DC 20240, Telephone: (202) 208–6843.

SUPPLEMENTARY INFORMATION:

This document presents and analyzes 7 alternatives for winter use management in Yellowstone National Park (YNP), Grand Teton National Park (GTNP), and the John D. Rockefeller, Jr., Memorial Parkway (the Parkway).

Alternative G, the preferred alternative, emphasizes clean, quiet access to the parks using the technologies available today. It would allow over-snow access on all routes currently available via NPS-managed snowcoach only. Other key changes in recreation opportunities are: eliminating winter plowing on the Colter Bay to Flagg Ranch route, making Flagg Ranch a destination via over-snow transport, and eliminating all winter motorized use on Jackson Lake. This alternative addresses the full range of issues regarding safety, natural resource impacts, visitor experience and access. It addresses the issues in a way that would make it necessary for local economies to adapt, and for snowmobile users to access the parks using a different mode of transport. Under alternative A-No Action, current use and management practices in the parks and Parkway continue. The concept under alternative B provides a moderate range of affordable and appropriate winter visitor experiences. Air quality and oversnow motor vehicle sound would be addressed, and by the winter of 2008–2009, strict emission and sound requirements would be required by all oversnow vehicles entering the parks. This alternative also emphasizes an adaptive approach to park resource management, which would allow the results of new and ongoing research and monitoring to be incorporated. Alternative C maximizes winter visitor opportunities for a range of park experiences. Alternative D stresses visitor access to unique winter features in the parks. This alternative emphasizes clean, quiet modes of travel, visitor activities focused near destination areas, and a minimization of conflicts between nonmotorized and motorized users. Under alternative E the protection of wildlife and natural resources is emphasized while allowing park visitors access to a range of winter recreation experiences. Alternative E uses an adaptive planning approach that allows new information to be incorporated over time. Alternative F stresses the protection of wildlife resources by focusing winter visitor activities in YNP outside important winter range for large ungulate species, and closing north and west roads to winter use. For GTNP and the Parkway, this alternative emphasizes the protection of all resources by focusing developments, oversnow motorized trails and zones, and nonmotorized trails and zones in certain areas, while still allowing park visitors opportunities for a range of winter recreational experiences.

The details and impacts of the alternatives are described in this document. They include major long-term beneficial improvements to the protection of geothermal winter range and other park resources, some adverse effects from visitor use activities, and major beneficial improvements to the desired visitor experience for solitude, clean air, and natural quiet. These impacts vary by alternative.

FOR FURTHER INFORMATION CONTACT: Clifford Hawkes, National Park Service, Denver Service Center, 12795 West Alameda Parkway, Lakewood, Colorado 80228.

Dated: September 28, 2000.

Karen P. Wade,

Regional Director, Intermountain Region, National Park Service.

[FR Doc. 00–27478 Filed 10–30–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Park System Advisory Board; Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix (1994), that the National Park System Advisory Board will meet November 14–16, 2000. The Board will tour Biscayne National Park on November 14, and will convene its business meeting on November 15 and 16 in the Crystal Ballroom of the DoubleTree Hotel Miami Coconut Grove, 2649 South Bayshore Drive, Miami, Florida 33133.

On November 15, the Board will convene from 8:15 a.m. until 5:30 p.m. The Board will reconvene November 16 at 8:15 a.m. and adjourn at approximately 5:30 p.m. National Park Service Deputy Director Denis Galvin will address the Board. The Board will consider procedural matters relative to its study of the future of the National Park Service and the National Park System, and will consider reports from its Landmarks Committee, Cumberland

Island Committee, and Revolutionary War and War of 1812 Committee. National Historic Landmark nominations will be reviewed during the report of the Landmarks Committee at the November 16 morning session.

The Board may be addressed at various times by other officials of the National Park Service and the Department of the Interior; and other miscellaneous topics and reports may be covered. The order of the agenda may be changed, if necessary, to accommodate travel schedules or for other reasons.

The Board meeting will be open to the public. Space and facilities to accommodate the public are limited and attendees will be accommodated on a first-come basis. Anyone may file with the Board a written statement concerning matters to be discussed. The Board may also permit attendees to address the Board, but may restrict the length of the presentations, as necessary to allow the Board to complete its agenda within the allotted time.

Anyone who wishes further information concerning the meeting, or who wishes to submit a written statement, may contact Mr. Loran Fraser, Office of Policy, National Park Service, 1849 C Street, NW, Washington, DC 20240 (telephone 202–208–7456).

Draft minutes of the meeting will be available for public inspection about 12 weeks after the meeting, in room 2414, Main Interior Building, 1849 C Street, NW, Washington, DC.

Dated: October 24, 2000.

Robert Stanton,

Director, National Park Service.

[FR Doc. 00–27868 Filed 10–30–00; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: November 6, 2000 at 2:00 p.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–891 (Preliminary) (Foundry Coke from China)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on November 6, 2000; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on November 14, 2000.)
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: October 26, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–28018 Filed 10–27–00; 1:47 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities; Comment Request

ACTION: Notice of information collection under review; application for issuance or replacement of Northern Mariana card.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until January 2, 2001.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) 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;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) 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.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Issuance or Replacement of Northern Mariana Card.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–777. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This information collection is used by applications to apply for a Northern Mariana identification card if they received United States citizenship pursuant to Pub. L. 94–241 (Covenant to Establish a Commonwealth of the Northern Mariana Island).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100 responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 50 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, National Place Building, 1331 Pennsylvania Avenue, NW., Suite 1220, Washington, DC 20530.

Dated: October 26, 2000.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 00–27931 Filed 10–30–00; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: Notice of information collection under review; application for temporary protected status.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until January 2, 2001.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) 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;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) 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.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Temporary Protected Status.

(3) *Agency from number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–821. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The information provided on this collection is used by the INS to determine whether an applicant for Temporary Protected Status (TPS) meets the eligibility requirements. Such TPS benefits include employment authorization and relief from the threat of removal or deportation from the U.S. while in such status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 176,000 responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 88,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, National Place Building, 1331 Pennsylvania Avenue, NW., Suite 1220, Washington, DC 20530.

Dated: October 26, 2000.

Richard A. Sloan,

Department Clearance Officer, Immigration and Naturalization Service, Department of Justice.

[FR Doc. 00–27932 Filed 10–30–00; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: Notice of information collection under review; request for certification of military or naval service.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until January 2, 2001.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) 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;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) 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.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Request for Certification of Military or Naval Service.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form N–426. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form will be used by the Service to request a verification of the military or naval service claim by an applicant filing for naturalization on the basis of honorable service in the U.S. armed forces.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 45,000 responses at 45 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 33,750 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and

Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, National Place Building, 1331 Pennsylvania Avenue, NW., Suite 1220, Washington, DC 20530.

Dated: October 26, 2000.

Richard A. Sloan,

Department Clearance Officer, Immigration and Naturalization Service, Department of Justice.

[FR Doc. 00–27933 Filed 10–30–00; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: Notice of information collection under review; application to file declaration of intention.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until January 2, 2001.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) 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;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) 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 response.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application to File Declaration of Intention.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form N–300. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form will be used by permanent residents to file a declaration of intention to become a citizen of the United States. This collection is also used to satisfy documentary requirements for those seeking to work in certain occupations or professions, or to obtain various licenses.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,015 responses at 45 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 761 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, National Place Building, 1331 Pennsylvania Avenue, NW., Suite 1220, Washington, DC 20530.

Dated: October 26, 2000.

Richard A. Sloan,

Department Clearance Officer, Immigration and Naturalization Service, Department of Justice.

[FR Doc. 00–27934 Filed 10–30–00; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: Notice of information collection under review; application for replacement/initial nonimmigrant arrival-departure document.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until January 2, 2001.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) 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;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) 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.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Replacement/Initial Nonimmigrant Arrival-Departure Document.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–102. Adjudications

Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The information collection will be used by an alien temporarily residing in the United States to request a replacement of his or her arrival evidence. The information provided can be used to verify status and for determination as to the eligibility of the applicant for replacement.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 20,000 responses at 25 minutes (.416 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 8,320 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, National Place Building, 1331 Pennsylvania Avenue, Suite 1220, Washington, DC 20530.

Dated: October 26, 2000.

Richard A. Sloan,

Department Clearance Officer, Immigration and Naturalization Service. Department of Justice.

[FR Doc. 00–27935 Filed 10–30–00; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities; Comment Request

ACTION: Notice of information collection under review; application for action on an approved application or petition.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until January 2, 2001.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) 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;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) 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.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Application for Action on an Approved Application or Petition.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–824. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This information collection is used to request a duplicate approval notice, to notify and to verify to the U.S. Consulate that a petition has been approved or that a person has been adjusted to permanent resident status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 43,772 responses at 25 minutes (416) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 18,209 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, National Place Building, 1331 Pennsylvania Avenue, NW., Suite 1220, Washington, DC 20530.

Dated: October 26, 2000.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 00–27936 Filed 10–30–00; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Bureau of Justice Assistance

[OJP(BJA)–1296]

Notice of Availability of the Finding of No Significant Impact and the Environmental Assessment for BJA's Methamphetamine Law Enforcement Program

AGENCY: Office of Justice Programs, Bureau of Justice Assistance (BJA), Justice.

ACTION: Notice of availability of FONSI and EA.

SUMMARY: The Environmental Assessment, which is available to the public, concludes that the methamphetamine investigation and clandestine laboratory closure activities of the Methamphetamine/Drug Hot Spots Program will not have a significant impact on the quality of the human environment.

FOR FURTHER INFORMATION CONTACT: For copies of the Environmental Assessment, please contact: Pat Kim, BJA Environmental Coordinator, Bureau of Justice Assistance, 810 7th Street, NW., Room 7252, Washington, DC 20531; Phone: (202) 514–9677; E-mail: kimi@ojp.usdoj.gov. Copies of the Environmental Assessment are also available on BJA's Website at

www.ojp.usdoj.gov/bja/methenviron.htm.

SUPPLEMENTARY INFORMATION:

Program Description

The Bureau of Justice Assistance (BJA), 42 U.S.C. 3741, as required by the Council on Environmental Quality's regulations, 40 CFR parts 1500 through 1508, has prepared an Environmental Assessment for methamphetamine law enforcement programs, and with specific application for the Methamphetamine/Drug Hot Spots Program. The Methamphetamine/Drug Hot Spots Program addresses a broad array of law enforcement initiatives pertaining to the investigation of methamphetamine trafficking in many heavily impacted areas of the country. For the purposes of this program, law enforcement may include training of law enforcement officers in methamphetamine-related issues; collection and maintenance of intelligence and information relative to methamphetamine trafficking and traffickers; investigation, arrest and prosecution of producers, traffickers and users of methamphetamine; interdiction and removal of laboratories, finished products, and precursor chemicals and other elements necessary to produce methamphetamine; and preventive efforts to reduce the spread and use of methamphetamine. Individual projects will reflect a concentration on program areas consistent with the Congressional appropriations language.

Among the many challenges faced by law enforcement agencies in the Methamphetamine/Drug Hot Spots Program, will be discovery, interdiction, and dismantling of clandestine drug laboratories. These lab sites, as well as other methamphetamine crime venues must be comprehensively dealt with in compliance with a variety of health, safety and environmental regulations. The Bureau of Justice Assistance anticipates that law enforcement efforts funded under this program, when encountering illegal drug laboratories, will use grant funds to effect the proper removal and disposal of hazardous materials located at those laboratories and directly associated sites. Where grant funds are not used to effect clean-up of hazardous waste sites, grantees must document in their applications how they will remediate clandestine drug laboratories that are seized as a result of grant-related activities.

Environmental Assessment

BJA will award 16 grants to State and local criminal justice agencies consistent with congressional earmarks for the FY 2000 COPS Methamphetamine/Drug Hot Spots Program. The Environmental Assessment concludes that the funding of this program will not have a significant impact on the quality of the human environment. Therefore, an Environmental Impact Statement will not be prepared for the funding of this program.

Nancy E. Gist,

Director, Bureau of Justice Assistance.

[FR Doc. 00–27839 Filed 10–30–00; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

October 20, 2000.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ((202) 693–4127 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OSHA, and VETS contact Darrin King ((202) 693–4129 or by E-Mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

- 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;
- 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;
- Enhance the quality, utility, and clarity of the information to be collected; and
- 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.

Type of Review: Extension of currently approved collection.

Agency: Employment Standards Administration (ESA).

Title: Regulations Governing the Administration of the Longshore and Harbor Workers' Compensation Act.

OMB Number: 1215–0160.

Description: The regulations and associated forms cover the submission of information necessary for the processing of claims for benefits under the Longshore Act.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 00–27937 Filed 10–30–00; 8:45 am]

BILLING CODE 4510–49–M

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Investment Act, Section 171(d), Demonstration Program: Incumbent/Dislocated Worker Skill Shortage II Demonstration Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of Availability of Funds and Solicitation for Grant Applications (SGA).

This notice contains all of the necessary information and forms needed to apply for grant funding.

SUMMARY: The U.S. Department of Labor (DOL), Employment and Training Administration (ETA), announces a second demonstration program to test the ability of the workforce development system to create projects or industry-led consortia for the purpose of upgrading current workers, designing or adapting training curricula in skills shortage occupational areas, or in regionally important business/industry areas including manufacturing and machining, and specialized industrial areas such as plastics, telecommunications and the environment, and to recruit/retrain workers in these occupations.

DATES: The closing date for receipt of this application is January 16, 2001. Applications must be received by 4:00 p.m. Eastern Time. No exceptions to the mailing and hand-delivery conditions

set forth in this notice will be granted. Applications that do not meet the conditions set forth in this notice will not be considered. Telefacsimile (FAX) applications will not be honored.

ADDRESSES: Applications must be mailed or hand-delivered to: U.S. Department of Labor; Employment and Training Administration, Division of Federal Assistance, Attention: Marian G. Floyd, Reference: SGA/DAA 00–113, 200 Constitution Avenue, NW, Room S–4203, Washington, D.C. 20210.

Hand-Delivered Proposals. Proposals should be mailed at least five (5) days prior to the closing date. However, if proposals are hand delivered, they must be received at the designated address by 4:00 p.m., Eastern Time on Tuesday, January 16, 2001. All overnight mail will be considered to be hand-delivered and must be received at the designated place by the specified closing date and time. Telegraphed, e-mailed and/or faxed proposals will not be honored. Failure to adhere to the above instructions will be a basis for a determination of non responsiveness.

Late Proposals. A proposal received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before the award is made and was either:

- Sent by U.S. Postal Service Express Mail Next Day Service Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of the proposals. The term ''working days'' exclude weekends and U.S. Federal holidays.
- Sent by U.S. Postal Service registered or certified mail not later than the fifth (5th) calendar day before the date specified for receipt of applications (*e.g.,* an offer submitted in response to a solicitation requiring receipt of applications by the 20th of the month must be mailed by the 15th). The only acceptable evidence to establish the date of mailing of a late proposal sent by either U.S. Postal Service registered or certified mail is the U.S. postmark both on the envelope or wrapper and on the original receipt from the U.S. Postal Service. Both postmarks must show a legible date or the proposal shall be processed as if mailed late. ''Postmark'' means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by an employee of the U.S. Postal Service on the date of the mailing. Therefore, offerors should request the postal clerk to place a legible hand cancellation ''bull's eye'' postmark on both the receipt and the envelope or wrapper. Both postmarks must show a legible date, or the application shall be processed as though it had been mailed late.

Withdrawal of Applications. Applications may be withdrawn by written notice or telegram (including a mail gram) received at any time before an award is made. Applications may be withdrawn in person by the applicant or by an authorized representative thereof, if the representative's identity is made known and the representative signs a receipt for the proposal.

FOR FURTHER INFORMATION CONTACT: Fax questions to Marian G. Floyd, Division of Federal Assistance at (202) 219–8739 (this is not a toll-free number). All inquiries sent via a fax should include the SGA/DAA 00–113 and contact name, fax and phone number. This solicitation will also be published on the Internet on the Employment and Training Administration's (ETA) Home Page at *http://www.doleta.gov.* Award notifications will also be published on the ETA Home Page.

SUPPLEMENTARY INFORMATION: ETA is soliciting proposals on a competitive basis for the incumbent/dislocated workers' skill shortage II demonstration program. It is envisioned that the program will encompass the upgrading of current workers, designing or adapting training curricula in skills shortage occupational areas, or in regionally important business/industry areas including manufacturing and machining, and specialized industrial areas.

This announcement consists of five (5) parts:

- Part I—Background.
- Part II—Eligible Applicants and the Application Process.
- Part III—Statement of Work.
- Part IV—Rating Criteria and Award Selection Process.
- Part V—Monitoring, Reporting and Evaluation.

Part I. Background

A. Authority

Section 171(d) of the Workforce Investment Act of 1998 (WIA) (29 U.S.C. 2916) authorizes the use of funds for demonstration projects from funds made available to the Secretary under Section 132(a)(2)(A) of WIA (29 U.S.C. 2862). In addition, the DOL FY 2000 Appropriations Act of November 17, 1999, authorizes dislocated worker demonstration projects that provide assistance to new entrants in the workforce and incumbent workers. Demonstration program grantees must comply with all applicable federal and state laws and regulations in setting up and carrying out their program.

B. Purpose

The purpose of this demonstration program is to test the ability of the workforce development system to create projects or industry-led consortia for the purpose of upgrading current workers, designing or adapting training curricula in skills shortage occupational areas, or in regionally important business/industry areas including manufacturing and machining, and specialized industrial areas such as plastics, telecommunications and the environment, and to recruit/retrain workers in these occupations. The dislocated and/or incumbent workers who will be assisted by these efforts include specific groups such as agricultural workers, low skilled workers, and those needing assistance in overcoming barriers to employment. These barriers to employment may be caused by living in rural communities, having limited options for transportation to work, having inadequate or obsolete skills or having skills in declining occupations. The focus of these efforts will be on skills training in skills shortage occupations including welding and metals, new and growing occupations in technological fields such as information technology, telecommunications, and other fields in which technology skills are critical parts of the jobs emerging in their regional labor markets. Any consortia established as a result of this competition would also be expected to enhance the strategic planning efforts and policy efforts of local boards under the Workforce Investment Act in these areas.

This $8.2 million dislocated and incumbent worker demonstration program will support the creation of projects to respond to employer-identified skill shortages in regional labor markets with a focus on assisting the types of workers and types of occupational-industrial areas noted above. Such projects could encompass the creation of industry-led consortia which can design or adapt training curricula in skill shortage occupational areas or in key regional businesses. This program will build on two Departmental demonstration programs announced in June 2000—the $9.2 million comprehensive incumbent/dislocated worker retraining demonstration and the $10.3 million demonstration program for training in high skill jobs to meet critical labor shortages.

Part II. Eligible Applicants and the Application Process

A. Eligible Applicants and Participants

Any organization capable of fulfilling the terms and conditions of this solicitation may apply. Applicants should note that, prior to any selection as a grantee, ETA will review its agency records to assess the applicant organization's overall record in administering federal funds as provided in 20 CFR 667.170. Applicants also should know that this is a risk free federal program; therefore, all for profit organizations that apply will not be able to receive a fee if awarded a grant.

All participants who receive services in projects funded under this demonstration program must be either:

(a) Eligible dislocated workers as defined at Section 101(9) of the Workforce Investment Act. This section of the law may be viewed at *http://usworkforce.org/asp/act.asp* Proposed projects may target subgroups of the eligible population based on factors such as, but not limited to occupation, industry, nature of dislocation, and reason for unemployment; or

(b) Incumbent workers. These are currently-employed workers whose employers have determined that the workers require training in order to help keep their firms competitive and the subject workers employed, avert layoffs, upgrade workers' skills, increase wages earned by employees and/or keep workers' skills competitive. Such training would support further job retention and career development for improved economic self-sufficiency for employed workers, especially those most vulnerable to job loss, and increase the capability of the employing firm(s) to access and retain skilled workers.

B. Allowable Activities

Funds provided through this demonstration may be used only to provide services of the types described at Sections 134 (d)(2)(A–D)(J)(ii)(K), (d)(3)(C), (d)(4)(D), (e)(2), and (e)(3) of WIA. These encompass basic cores, more intensive, and training activities along with supportive services. The latter may be provided when they are necessary to enable an individual who is eligible for training, but cannot afford to pay for such supportive services, to participate in the training program. Supportive services are defined in Section 101(46) of WIA. (Use ETA's web site referenced above to view.)

Grant funds may be used to reimburse employers for extraordinary costs associated with on-the-job training of program participants, in accordance with the provisions of 20 CFR 663.710. In addition to those provisions, prospective applicants should be aware that grant funds may not be used for the following purposes:

(a) for training that an employer is in a position to provide and would have provided in the absence of the requested grant;

(b) to pay salaries for program participants; and

(c) for acquisition of production equipment.

Applicants may budget limited amounts of grant funds to work with technical experts or consultants to provide advice and develop more complete project plans after a grant award, however, the level of details in the project plan may affect the amount of funding provided.

Grant activities may include:

(a) development, testing and initial application of curricula focused on intensive, short-term training to get participants into productive, high demand employment as quickly as possible;

(b) working with employers to develop and apply worksite-based learning strategies that utilize cutting-edge technology and equipment;

(c) development of employer-based training programs that will take advantage of opportunities created by employers' needs for workers with new skills;

(d) development and initial application of contextual learning opportunities for participants to learn occupational theory in a classroom setting while applying that learning in an on-the-job setting;

(e) use of curriculum and skills training programs that are designed to impart learning to meet employer-specified or industry specific skill standards or certification requirements;

(f) convening of an Employer Advisory Board to identify skills gaps of job applicants and present workers which effect competitive production and to develop a strategy for retraining;

(g) innovative linkage and collaboration between employers and the local Workforce Investment Board (WIB) and/or One-Stop/Career Center system to ensure a steady supply of targeted workers.

The above are illustrative examples and are not intended to be an exhaustive listing of possible demonstration project designs or approaches which may achieve the purpose of this solicitation.

C. Coordination

In order to maximize the use of public resources and avoid duplication of effort, applicants will coordinate the delivery of services under this demonstration with the delivery of services under other programs (public or private), available to all or part of the target group. Projects linking or collaborating with an existing WIA funded One-Stop/Career Center and/or local Workforce Investment Board located within a project area fulfill this requirement. The use of Pell Grants for eligible workers or the use of State training or education funds provided for dislocated workers or certain types of employers should also be addressed in the application. Where appropriate, partnerships should also include trade unions, manufacturing extension programs, economic development organizations, training institutions, and other local stakeholders. Any efforts proposed in isolation will not have the maximum impact on building capacity within that region or industry and are not likely to be funded.

D. Wages

Proposals must provide assurance that all participating firms which employ successful training completers have committed to pay wages to these completers at the wage level set by any collective bargaining agreement which covers positions to be filled by the project participants, or, if no such agreement exists, at a level at least equal to meeting the lower living standard income level as defined in Section 101(24) of WIA.

E. Grant Awards

It is anticipated that $8.2 million will be available to fund these projects. DOL anticipates awarding 6 to 12 grants, with an estimated range of $200,000 to $3 million per grant, with no individual grant exceeding $3 million.

F. Period of Performance

The period of performance shall be 24 months from the date of execution by the Government.

G. Option To Extend

DOL may elect to exercise its option to extend these grants for an additional one (1) or two (2) years of operation, based on the availability of demonstration funding under the Workforce Investment Act, successful program operation, and the determination that a grantee's initial program findings could further inform the workforce development system through refinement of the present demonstration.

H. Proposal Submission

Applicants must submit four (4) copies of their proposal with original signatures. The proposal must consist of

two (2) distinct parts, Part I and Part II. Part I of the proposal, the financial application, shall contain the Standard Form SF–424, ''Application for Federal Assistance'' (Appendix A) and the Budget Information Sheet (Appendix B). The Federal Domestic Assistance Catalog number is 17.246. Applicants shall indicate on the SF–424 the organization's IRS status, if applicable. According to the Lobbying Disclosure Act of 1995, section 18, an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible for the receipt of federal funds constituting an award, grant, or loan. The individual signing the SF–424 on behalf of the applicant must represent the responsible financial and administrative entity for a grant should that application result in an award.

The budget must include on separate pages detailed breakouts of each proposed budget line item found in the budget information sheet including detailed administrative costs. The Salaries line item shall be used to document the project staffing plan by providing a detailed listing of each staff position providing more than .05 FTE support to the project, by annual salary, number of months assigned to demonstration responsibilities, and FTE percentage to be charged to the grant. In addition, for the Contractual line item, each planned contract and the amount of the contract shall be listed. For each budget line item that includes funds or in-kind contributions from a source other than the requested grant funds, the source, the amount, and in-kind contributions, including any restrictions that may apply to these funds, shall be identified. Costs associated with the development of curriculum and other one-time costs should be noted separately in order for reviewers to identify costs associated with development and start-up as well as ongoing participant costs. In addition, the budget shall provide sufficient funds for four persons' trips to meetings in Washington, D.C. and other locations.

Part II, the technical proposal, shall demonstrate the offerors's capabilities in accordance with the Statement of Work in Part III of this solicitation. The technical proposal shall be limited to thirty (30) double-spaced, single-side, 8.5-inch x 11-inch pages with 1-inch margins. An Executive Summary not to exceed two pages must be included and will be counted within the 30 page limits. Attachments shall not exceed twenty (20) pages including the required Appendices A–D listed at the end of this SGA. Text type shall be 11 point or larger. No cost data or reference to price shall be included in the technical proposal.

Part III. Statement of Work

Each technical proposal must follow the format outlined here. As noted in Part IV, each criterion on which proposals will be rated relates to specific sections of this Part against which the criterion will be applied. Failure to provide the information requested in the specific section prescribed in this Part will result in a reduced rating of the evaluation criterion(a) to which that section applies. For every section, A through F, the application should include: (1) Information that responds to the requirements in this Part; (2) information that indicates adherence to the provisions described in Parts I and II of this solicitation; and (3) other information the offerors believe will address the rating criteria identified in Part IV.

Information required under B and C below shall be provided separately for each labor market area where incumbent and dislocated workers will be served. To the extent that the project design differs for different geographic areas, information required under section D below shall be provided for each geographic area.

A. Project Purpose

Describe the specific purpose or purposes of the proposed project.

B. Skill/Occupational/Industrial Shortage Areas

Identify those skills/occupational/ industrial shortage areas to be addressed by the project. Such areas must be one or more of those identified in Part I.B above. The identity and geographic locations of those firms which currently have these shortages and which will be targeted for assistance under this project must be provided. Corroborating evidence (footnote sources) also should be presented, based on local or regional data and information, of the current existence of the identified shortages in the given geographic area with respect to both job demand and the lack of qualified job applicants.

Note: Information from the Bureau of Labor Statistics (BLS), available through a variety of web sites including BLS, O*NET and America's Labor Market Information System (ALMIS), should be considered as a key source of documentation. In addition, State Occupational Information Coordinating Committee (SOICC) and local WIB job training plans may also be considered. Other sources from the private sector such as Chamber of Commerce or local Technology Council surveys as well as university studies are also acceptable.

For each firm to be served, an authorizing letter should be included in the proposal's attachments indicating: (1) The skill area(s) of the firm's current shortage, (2) the duration of the shortage, (3) the magnitude of the shortage as reflected in the current and, if applicable, projected number of: (a) Unfilled job openings and/or (b) encumbered positions for which employees lack needed knowledge of the identified skill area, (4) plans for utilizing successful training completers, and (5) a commitment to adhere to the wage requirements for successful training completers as provided in Part II.D.

C. Targeted Workers

Identify the targeted workers who will receive the training and other services to be provided through this project. Indicate the number to be trained for each firm identified in section B above and whether they will be incumbent workers of the firm and/or recruited dislocated workers. For incumbent workers, discuss the types of positions these employees currently occupy, and, if training is voluntary, the availability of a sufficient number of workers. For dislocated workers, provide evidence that sufficient numbers of dislocated workers with appropriate backgrounds will be available for training and placement with participating firms. Describe the process to be used in documenting the incumbent or dislocated workers' status of the project participants consistent with the requirements in Part II.A.

D. Services

Describe the strategy and service components to be applied in addressing the skill/occupational/ industrial shortages identified in section B above. (Note: the services to be provided must be consistent with the provisions of Part II.B.) Insert a brief chart of the sequencing of the services to be provided. Include in this discussion detail regarding the service components identified below and any additional components proposed:

- Recruitment/outreach—depending on which type(s) of workers will be assisted by this project, indicate how incumbent workers will be recruited within the participating firms and/or how dislocated workers in the local/ regional area(s) served will be recruited. Briefly describe any recruitment materials to be developed.
- Training—its general content, duration, and methods of instruction. Indicate whether the curriculum to be used is ready for use, will need to be adapted from an existing version, or will

be developed. If applicable, briefly discuss the development process to be utilized. Discuss the appropriateness of the curriculum in addressing the identified shortages in section B above with particular reference to any pertinent skill or industrial standards. Discuss the suitability of the training in regard to the backgrounds and experience of the targeted workers described in section C above.

- Supportive services—describe each and the circumstances under which they would be provided.
- Placement—describe the process to be used once training is completed for placing dislocated workers into the skill shortage jobs identified in participating firms and how a firm's incumbent workers will be placed in either new jobs or their new skills will be utilized in their existing positions.
- Post-placement services—if applicable, describe such services and the circumstances under which they would be provided.

With reference to the service components to be utilized, describe the coordination of services to be undertaken. This description must include the requirements referenced in Part II.C. In addition, if applicable, describe any parallel efforts by participating firms to address their skill shortages in conjunction with the training being provided.

E. Performance Goals, Measures, and Outcomes

Describe the performance goals to be met by this project, the justification of the goals set, and the performance measures to be used in assessing the attainment of those goals in regard to the following outcomes:

- The reduction of identified shortages in participating firms as a result of the training/services provided
- The effect of reduced shortages on one or more dimensions of the participating firms' performance, e.g., productivity, sales, profitability, on time deliveries
- The effect on participating workers including skill gains, utilization of the new skills learned, wages, wage gains, and job satisfaction.

Note: in setting goals for wages, the wages for training completers must meet the requirements of Part II.D.

Projects may also include other performance goals and measures for other outcomes as applicable.

F. Staffing and Organization

Describe staffing for the project including the numbers and types of positions and associated full-time equivalents (FTE's), along with very brief (2–3 sentences) descriptions of duties. Include all positions for the project whether funded by federal grant funds or by other sources. This staffing description must be directly related to the proposal budget submitted in the financial application. Provide a project organizational chart identifying the positions and their relationships to each other. Include an explanation of this staffing in relation to the project's purpose, services, and performance goals.

Include, if applicable, a description of any industry-led consortium/Employer Advisory Board (existing or specially formed for this project) that will provide guidance to this project. Describe the consortium's role in this effort and its membership.

Describe the connection between this project and the local Workforce Investment Board(s) in the local areas in which the firms to be served are located with particular reference to: (1) The coordination of services to be provided worker participants (see Part II.C.) and (2) if applicable, the relationship of the industry-led consortium/Employer Advisory Board with the local WIB(s) in regard to strategy planning and policy efforts (see Part I.B.). Include as an attachment a letter(s) from the local WIB(s) indicating its commitments to working with this project, if funded.

Part IV. Rating Criteria and Award Selection Process

A careful evaluation of applications will be made by a technical review panel who will evaluate the applications against the criteria listed in the SGA. The panel results will be advisory in nature and not binding on the Grant Officer. The Government may elect to award grants with or without discussions with the offerors. In situations without discussions, an award will be based on the offerors's signature on the Standard Form SF–424, which constitutes a binding offer. The Grant Officer will make final award decisions based upon what is most advantageous to the Federal Government in terms of technical quality, responsiveness to this solicitation (including goals of the Department to be accomplished by this solicitation), geographical balance, and other factors.

Panelists shall evaluate proposals for acceptability based upon overall responsiveness in accordance with the factors below.

A. Documented Shortages and Available Workers (25 points)

Documentation is presented from those firms targeted for assistance attesting to their specific skill/occupational/industrial shortages in those shortage areas identified in the grant program purpose and the number of jobs affected. Sufficient corroborating information is provided demonstrating that the shortages identified by the firms also exist more generally in the local/regional areas where the target firms are located. Credible information is presented to demonstrate that there are incumbent and dislocated workers who are available to participate in training in sufficient numbers and with appropriate backgrounds to alleviate the shortages identified in participating firms. (Relates to information requested in Part III, sections B and C.)

B. Service Provision (25 points)

The services planned are appropriate, suitable, and responsive to: (1) The need for reducing the shortages identified through the successful recruitment, training, support, and placement of incumbent and dislocated workers and (2) the backgrounds and experience of those workers who are to be served. A high degree of coordination with other public and private programs will occur in order to maximize the use of other public services and resources and to avoid duplicative efforts. (Relates to information requested in Part III, section D.)

C. Performance Goals and Measures (15 points)

The justifications cited for the performance goals proposed show a clear and logical relationship between the goals and the solicitation's identified outcomes and any other outcomes proposed. The proposed performance measures to determine the extent to which the performance goals will be met are also appropriate for the task. (Relates to information requested in Part III, section E.)

D. Project Management (15 points)

The proposed staffing with regard to the number, types of positions, duties, associated full-time equivalents (FTE's), and staff relationships are clearly presented. The explanation provided of the staffing in regard to the project's purpose, services, and performance goals shows a clear, logical, and reasonable relationship. There is an explicit commitment by the local WIB(s) to participate in this project. (Relates to information requested in Part III, section F.)

E. Cost-Effectiveness (20 points)

The cost effectiveness of the project is reasonable and optimal as indicated by the relationship of proposed costs to the

number of participants to be served, the range of services to be provided, and the planned performance goals. (Relates to information requested in Part II, section H (on the financial application) and Part III, sections C, D, and E.)

Part V. Monitoring, Reporting and Evaluation

A. Monitoring

The Department shall be responsible for ensuring effective implementation of each competitive grant project in accordance with the Act, the Regulations, the provisions of this announcement and the negotiated grant agreement. Applicants should assume that at least one on-site project review will be conducted by Department staff, or their designees. This review will focus on the project's performance in meeting the grant's programmatic goals and participant outcomes, complying with the targeting requirements regarding participants who are served, expenditure of grant funds on allowable activities, collaboration with other organizations as required, and methods for assessment of the responsiveness and effectiveness of the services being provided. Grants may be subject to additional reviews at the discretion of the Department.

B. Reporting

DOL will arrange for or provide technical assistance to grantees in establishing appropriate reporting and data collection methods and processes taking into account the applicant's project management plan. An effort will be made to accommodate and provide assistance to grantees to be able to complete all reporting electronically. Applicants selected as grantees will be required to provide the following reports:

1. Monthly progress reports, during initial start-up and implementation of the project, and Quarterly Progress Reports thereafter.
2. Standard Form 269, Financial Status Report Form, on a quarterly basis.
3. Final Project Report including an assessment of project performance. This report will be submitted in hard copy and on electronic disk utilizing a format and instructions to be provided by the Department. A draft of the final report is due to the Department 45 days prior to the termination of the grant.

C. Evaluation

DOL will arrange for or conduct an independent evaluation of the outcomes, impacts, and benefits of the demonstration projects. Grantees must agree to make available records on participants and employers as well as project financial and management data and to provide access to personnel, as specified by the evaluator(s) under the direction of the Department.

Signed at Washington, D.C., this 25th day of October 2000.

Laura A. Cesario,

Grant Officer, Division of Federal Assistance.

Appendices

Appendix A—Application for Federal Assistance (SF–424)

Appendix B—Budget Information

Appendix C—Checklist

Appendix D—Implementation Benchmarks and Time Line

BILLING CODE 4510–30–U

Appendix A

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

2. DATE SUBMITTED	Applicant Identifier	
3. DATE RECEIVED BY STATE	State Application Identifier	
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier	

1. TYPE OF SUBMISSION:

Application: ☐ Construction ☐ Non-Construction

Preapplication: ☐ Construction ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:

Organizational Unit:

Address *(give city, county, State, and zip code)*:

Name and telephone number of person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER *(EIN)*:

☐☐ — ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other*(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐ — ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.)*:

13. PROPOSED PROJECT

Start Date	Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant

b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes **If "Yes," attach an explanation.** ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

Previous Edition Usable
Authorized for Local Reproduction

Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: -- "New" means a new assistance award. -- "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. -- "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

Appendix B

PART II – BUDGET INFORMATION

SECTION A – Budget Summary by Categories

	(A)	(B)	(C)
1. Personnel			
2. Fringe Benefits (Rate %)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)			
9. Indirect Cost (Rate %)			
10. Training Cost/Stipends			
11. TOTAL Funds Requested (Lines 8 through 10)			

SECTION B – Cost Sharing/ Match Summary (if appropriate)

	(A)	(B)	(C)
1. Cash Contribution			
2. In-Kind Contribution			
3. TOTAL Cost Sharing / Match (Rate %)			

NOTE: Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).

(INSTRUCTIONS ON BACK OF FORM)

INSTRUCTIONS FOR PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. *Personnel:* *Show salaries to be paid for project personnel.*

2. *Fringe Benefits:* *Indicate the rate and amount of fringe benefits.*

3. *Travel:* *Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.*

4. *Equipment:* *Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more.*

5. *Supplies:* *Include the cost of consumable supplies and materials to be used during the project period.*

6. *Contractual:* *Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.*

7. *Other:* *Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.*

8. *Total, Direct Costs:* *Add lines 1 through 7.*

9. *Indirect Costs:* *Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.*

10. *Training /Stipend Cost:* *(If allowable)*

11. *Total Federal funds Requested:* *Show total of lines 8 through 10.*

SECTION B - Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

NOTE:

PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

Appendix C

Application Checklist

Please complete and submit this checklist with your application. It should be used as a quick reference of key provisions of the Solicitation and whether or not these provisions have been included, complied with or addressed. This document is not intended to be comprehensive or address every aspect of the solicitation.

Organization Applying_____.

Contact Person_____.

Phone Number_____.

Date submitted_____.

Application Process

Please check below:

___Application is 30 pages or less.
___Attachments limited to 20 pages or fewer.
___An original and three copies submitted.
___SF424 (Appendix A) included.
___Budget Form Sheet (Appendix B) included.
___Checklist (Attachment C) included.
___Implementation schedule (Attachment D) included.
___Executive Summary of two pages or less included.

Appendix D

INCUMBENT/DISLOCATED WORKER SKILL SHORTAGE II DEMONSTRATION GRANT IMPLEMENTATION STRATEGY BENCHMARKS AND TIMETABLE FORM

Below are examples of the types of tasks found in implementing a demonstration grant. The tasks, methodology and tangible results for any particular project may be different and probably include more tasks than those illustrated below. It is important, however, for any demonstration planning process to set forth all of the necessary tasks to be accomplished and to think through the sequencing of subtasks and timing requirements necessary to assure the project can be accomplished effectively and efficiently within the period of performance. The time frames should be realistic ones that project administrators and operators can fulfill.

SPECIFIC TASKS TO BE COMPLETED	*(for use of grantee not to be included in application submittal)* ACCOUNTABLE PERSON (specify agency/ organization if outside grantee organization)	METHODOLOGY/APPROACH TO BE USED	TANGIBLE RESULT	TIME FRAME *(begin with Day 1 when notification of grant award is received)*	
				FROM	TO
1. Hire staff		a.Write job description b. Announce opening c. Interview candidates d. Select individual e. Individual reports for work f. All staff positions filled	a. Completed job description b. Announcement published c. Personnel papers completed on candidate d. Project at full staff complement		

2. Ensure adequate facilities to operate project		**a. Determine space needs b. Arrange for space c. Negotiate leases d. Obtain necessary furniture and other equipment e. Review maintenance and security needs**	**Lease signed**		
3. Establish participant reporting procedure's		**a. Review and identify participant data to be collected b. Form prepared to collect participant data or contract prepared for processing of data c. Staff trained in collection and coding of data d. Management report of data designed and tested**			

4. Development of customer satisfaction measures		a. Identify the areas in which to determine customer satisfaction b.With consultant, design and test customer satisfaction survey c. Train staff in customer satisfaction philosophy d. Determine schedule for collection of customer satisfaction data e. Analyze and report on customer satisfaction findings f. Use findings to make appropriate program adjustments	a. Areas identified with regard to participant, employer and training provider satisfaction b & c. Surveys developed and pilot tests conducted d. Staff training completed on customer satisfaction e. Schedule for customer satisfaction data collection established f. Report analyzing customer satisfaction prepared and shared with appropriate staff g. Data used to initiate program adjustments		

5. Develop procedures for collection and reporting of financial data		**a. Review required data and report forms to ensure that financial reporting system will collect required information** **b. Develop internal report that will ensure that project personnel with operational responsibility will be able to keep informed of project expenditures** **c. Assign staff responsibility to review reports regularly** **d. (Other tasks as appropriate)**			
6. Develop and implement participant recruitment plan		**a. Establish responsibility for recruitment results** **b. Determine appropriate entities to participate in recruitment efforts** **c. Design recruitment materials** **d. (Other tasks as appropriate)**			

7. Develop and implement agreements as necessary with other appropriate agencies and entities		a. Establish contact with ..... b. Develop draft agreements as necessary c. Negotiate and obtain necessary signatures....			
8. Establish training needs, curriculum and select training provider(s)		a. Using information from employers, identify training required for placement with interested employers b. Ensure that curriculum to meet employers' needs is available or develop curriculum in collaboration with employers c. Determine method for selection of training providers	a. Areas most in need of trained workers per area's employers are identified b. Curriculum reviewed with employers c. Training provider(s) selected d. Any necessary special arrangements with training provider(s) completed		
9. Establish a placement assistance plan for participants		a.			

10. Establish an industry-led consortium/ Employer Advisory Panel		**a. Identify appropriate members b. Select desired members and issue invitation to participate c. Conduct training of panel regarding responsibilities to project d. Schedule meetings and tentative agendas**			
11. Develop management benchmarks for program review and improvement		**a. Identify data to be used to determine effectiveness of project activities (recruitment, assessment, training enrollments, training completions, jobs placements, a wage rate, follow-up placement rates) b. Determine how data will be collected, the frequency of review, possible use of data collected, etc. c. (Other tasks as appropriate)**			

[FR Doc. 00–27930 Filed 10–30–00; 8:45 am]

BILLING CODE 4510–30–C

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0133(2001)]

Asbestos in General Industry Standard; Extension of the Office of Management of Budget's Approval of Information-Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of an opportunity for public comment.

SUMMARY: OSHA solicits public comment concerning its request for an extension of the information-collection requirements contained in its Asbestos in General Industry Standard at 29 CFR 1910.1001 (the ''Standard'').

Request for Comment: The Agency has a particular interest in comments on the following issues:

- Whether the information-collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of the Agency's estimate of the burden (time and costs) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information-collection and -transmission techniques.

DATES: Submit written comments on or before January 2, 2001.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–1218–0133(2001), OSHA, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2350. Commenters may transmit written comments of 10 pages or less in length by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Todd R. Owen, Directorate of Policy, OSHA, U.S. Department of Labor, Room N–3641, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2444. A copy of the Agency's Information-Collection Request (ICR) supporting the need for the information-collection requirements specified by the Standard is available for inspection and copying in the Docket Office, or you may request a mailed copy by telephoning Todd Owen at (202) 693–2444. For electronic copies of this ICR, contact OSHA on the Internet at *http://www.osha.gov.*

SUPPLEMENTARY INFORMATION

I. Background

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 continuing information-collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information burden is correct. The Occupational Safety and Health Act of 1970 (the ''Act'') authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657).

The basic purpose of the information-collection requirements in the Standard is to provide employees with information necessary for them to determine that they are receiving the required protection from hazardous asbestos exposure. Asbestos exposure results in asbestosis, an emphysema-like condition; mesothelioma; and gastrointestinal cancer.

Several provisions of the Standard specify paperwork requirements, including: Implementing an exposure monitoring program that notifies employees of their exposure-monitoring results; establishing a written compliance program; and informing laundry personnel of the requirement to prevent release of airborne asbestos above the time-weighted average and excursion limit. Other provisions associated with paperwork requirements include: Maintaining records of information obtained concerning the presence, location, and quantity of asbestos-containing materials (ACMs) and/or presumed asbestos-containing materials (PACMs) in a building/facility; notifying housekeeping employees of the presence and location of ACMs and PACMs in areas they may contact during their work; posting warning signs demarcating regulated areas; posting signs in mechanical rooms/areas that employees may enter and that contain ACMs and PACMs, informing them of the identity and location of these materials and work practices that prevent disturbing the materials; and affixing warning labels to asbestos-containing products and to containers holding such products. Additional provisions that contain paperwork requirements include: Developing specific information and training programs for employees; using information, data, and analyses to demonstrate that PACM does not contain asbestos; providing medical surveillance for employees potentially exposed to ACMs and/or PACMs, including administering an employee medical questionnaire, providing information to the examining physician, and providing the physician's written opinion to the employee; maintaining exposure-monitoring records, objective data used for exposure determinations, and medical-surveillance; making specified records (*e.g.,* exposure-monitoring and medical-surveillance records) available to designated parties; and transferring exposure-monitoring and medical-surveillance records to the National Institute for Occupational Safety and Health on cessation of business.

These paperwork requirements permit employers, employees and their designated representatives, OSHA, and other specified parties to determine the effectiveness of an employer's asbestos-control program. Accordingly, the requirements ensure that employees exposed to asbestos receive all of the protection afforded by the Standard.

II. Proposed Actions

OSHA proposes to extend the Office of Management and Budget's (OMB) approval of the collection-of-information (paperwork) requirements contained in the Standard. The Agency will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB to extend the approval of these information-collection requirements.

Type of Review: Extension of currently approved information-collection requirements.

Title: Asbestos in General Industry (29 CFR 1910.1001).

OMB Number: 1218–0133.

Affected Public: Business or other for-profit organizations; Federal, State, Local, or Tribal governments.

Number of Respondents: 233.

Frequency: On occasion.

Average Time per Response: Varies from 5 minutes to maintain records to 1.5 hours for employee training or medical evaluation.

Estimated Total Burden Hours: 35,523.

Estimated Cost (Operation and Maintenance): $1,625,143.

III. Authority and Signature

Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506) and Secretary of Labor's Order No. 3–2000 (65 FR 50017).

Signed at Washington, DC on October 26, 2000.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 00–27921 Filed 10–30–00; 8:45 am]

BILLING CODE 4510–26–U

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0195(2001)]

Asbestos in Shipyards Standard; Extension of the Office of Management and Budget's Approval of Information-Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of an opportunity for public comment.

SUMMARY: OSHA solicits public comment concerning its request for an extension of the information-collection requirements contained in its Asbestos in Shipyard Standard at 29 CFR 1915.1001 (the ''Standard'').

REQUEST FOR COMMENT: The Agency has a particular interest in comments on the following issues:

- Whether the information-collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of the Agency's estimate of the burden (time and costs) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information-collection and -transmission techniques.

DATES: Submit written comments on or before January 2, 2001.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–1218–0195(2001), OSHA, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2350. Commenters may transmit written comments of 10 pages or less in length by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Todd R. Owen, Directorate of Policy, OSHA, U.S. Department of Labor, Room N–3641, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2444. A copy of the Agency's Information-Collection Request (ICR) supporting the need for the information-collection requirements specified by the Standard is available for inspection and copying in the Docket Office, or you may request a mailed copy by telephoning Todd Owen at (202) 693–2444. For electronic copies of this ICR, contact OSHA on the Internet at *http://www.osha.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

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 continuing information-collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information burden is correct. The Occupational Safety and Health Act of 1970 (the ''Act'') authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657).

The basic purpose of the information-collection requirements in the Standard is to provide employees with information necessary for them to determine that they are receiving the required protection from hazardous asbestos exposure. Asbestos exposure results in asbestosis, an emphysema-like condition; mesothelioma; and gastrointestinal cancer.

Several provisions of the Standard specify paperwork requirements, including: Implementing an exposure-monitoring program that informs employees of their exposure-monitoring results; and, at multi-employer worksites, notification of other onsite employers by employers establishing regulated areas of the type of work performed with asbestos-containing materials (ACMs) and/or presumed asbestos-containing materials (PACMs), the requirements that pertain to regulated areas, and the measures they can use to protect their employees from asbestos overexposure. Other provisions associated with paperwork requirements include: Evaluating and certifying alternative control methods for Class I and Class II asbestos work and, for Class I asbestos work, a requirement to send a copy of the evaluation and certification to the OSHA national office; [1] informing laundry personnel of the requirement to prevent release of airborne asbestos above the time-weighted average and excursion limit; notification by employers and building/facility owners of designated personnel and employees regarding the presence, location, and quantity of ACMs and/or PACMs; using information, data, and analyses to demonstrate that PACM does not contain asbestos; posting signs in mechanical rooms/areas that employees may enter and that contain ACMs and PACMs, informing them of the identity and location of these materials and work practices that prevent disturbing the materials; posting warning signs demarcating regulated areas; and affixing warning labels to asbestos-containing products and to containers holding such products. Additional provisions of the Standard that contain paperwork requirements include: Developing specific information and training programs for employees; providing medical surveillance for employees potentially exposed to ACMs and/or PACMs, including administering an employee medical questionnaire, providing information to the examining physician, and providing the physician's written opinion to the employee; maintaining records of objective data used for exposure determinations, employee exposure-monitoring and medical-surveillance records, training records, the record (*i.e.,* information, data, and analyses) used to demonstrate that PACM does not contain asbestos, and notifications made and received by building/facility owners regarding the content of ACMs and PACMs; making specified records (*e.g.,* exposure-monitoring and medical-surveillance records) available to designated parties; and transferring exposure-monitoring and medical-surveillance records to the

[1] Class I asbestos work involves removing: Thermal-system insulation (*i.e.,* ACM applied to pipes, fittings, boilers, breeching, tanks, ducts or other structural components used to prevent heat loss or gain.) and surfacing ACMs and PACMs. Class II asbestos work involves removing ACM that is not thermal-system insulation or surfacing material. Such material includes, but is not limited to, asbestos-containing wallboard, floor tile and sheeting, roofing and siding shingles, and construction mastics.

National Institute for Occupational Safety and Health on cessation of business.

These paperwork requirements permit employers, employees and their designated representatives, OSHA, and other specified parties to determine the effectiveness of an employer's asbestos-control program. Accordingly, the requirements ensure that employees exposed to asbestos receive all of the protection afforded by the Standard.

II. Proposed Actions

OSHA proposes to extend the Office of Management and Budget's (OMB) approval of the collection-of-information (paperwork) requirements contained in the Standard. The Agency will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB to extend the approval of these information-collection requirements.

Type of Review: Extension of currently approved information-collection requirements.

Title: Asbestos in Shipyards (29 CFR 1915.1001).

OMB Number: 1218–0195.

Affected Public: Business or other for-profit organizations; Federal, State, Local, or Tribal governments.

Number of Respondents: 89.

Frequency: On occasion.

Average Time per Response: Varies from 5 minutes to maintain records to 17.3 hours for training a competent person.

Estimated Total Burden Hours: 1,484.

Estimated Cost (Operation and Maintenance): $36,497.

III. Authority and Signature

Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506) and Secretary of Labor's Order No. 3–2000 (65 FR 50017).

Signed at Washington, DC on October 26, 2000.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 00–27922 Filed 10–30–00; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0134 (2001)]

Asbestos in Construction Standard; Extension of the Office of Management and Budget's Approval of Information-Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of an opportunity for public comment.

SUMMARY: OSHA solicits public comment concerning its request for an extension of the information-collection requirements contained in its Asbestos in Construction Standard at 29 CFR 1926.1101 (the ''Standard'').

Request for Comment: The Agency has a particular interest in comments on the following issues:

- Whether the information-collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of the Agency's estimate of the burden (time and costs) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information-collection and -transmission techniques.

DATES: Submit written comments on or before January 2, 2001.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–1218–0134 (2001), OSHA, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW, Washington, DC 20210; telephone: (202) 693–2350. Commenters may transmit written comments of 10 pages or less in length by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Todd R. Owen, Directorate of Policy, OSHA, U.S. Department of Labor, Room N–3641, 200 Constitution Avenue, NW, Washington, DC 20210; telephone: (202) 693–2444. A copy of the Agency's Information-Collection Request (ICR) supporting the need for the information-collection requirements specified by the Standard is available for inspection and copying in the Docket Office, or you may request a mailed copy by telephoning Todd Owen at (202) 693–2444. For electronic copies of this ICR, contact OSHA on the Internet at *http://www.osha.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

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 continuing information-collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information burden is correct. The Occupational Safety and Health Act of 1970 (the ''Act'') authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657).

The basic purpose of the information-collection requirements in the Standard is to provide employees with information necessary for them to determine that they are receiving the required protection from hazardous asbestos exposure. Asbestos exposure results in asbestosis, an emphysema-like condition; mesothelioma; and gastrointestinal cancer.

Several provisions of the Standard specify paperwork requirements, including: Implementing an exposure-monitoring program that informs employees of their exposure-monitoring results; and, at multi-employer worksites, notification of other onsite employers by employers establishing regulated areas of the type of work performed with asbestos-containing materials (ACMs) and/or presumed asbestos-containing materials (PACMs), the requirements that pertain to regulated areas, and the measures they can use to protect their employees from asbestos overexposure. Other provisions associated with paperwork requirements include: Evaluating and certifying alternative control methods for Class I and Class II asbestos work and, for Class I asbestos work, a requirement to send a copy of the evaluation and certification to the OSHA national office; [1] informing laundry personnel of

[1] Class I asbestos work involves removing: Thermal-system insulation (i.e., ACM applied to pipes, fittings, boilers, breeching, tanks, ducts or other structural components used to prevent heat loss or gain.) and surfacing ACMs and PACMs. Class II asbestos work involves removing ACM that is not thermal-system insulation or surfacing

the requirement to prevent release of airborne asbestos above the time-weighted average and excursion limit; notification by employers and building/facility owners of designated personnel and employees regarding the presence, location, and quantity of ACMs and/or PACMs; using information, data, and analyses to demonstrate that PACM does not contain asbestos; posting signs in mechanical rooms/areas that employees may enter and that contain ACMs and PACMs, informing them of the identity and location of these materials and work practices that prevent disturbing the materials; posting warning signs demarcating regulated areas; and affixing warning labels to asbestos-containing products and to containers holding such products. Additional provisions of the Standard that contain paperwork requirements include: Developing specific information and training programs for employees; providing medical surveillance for employees potentially exposed to ACMs and/or PACMs, including administering an employee medical questionnaire, providing information to the examining physician, and providing the physician's written opinion to the employee; maintaining records of objective data used for exposure determinations, employee exposure-monitoring and medical-surveillance records, training records, the record (*i.e.,* information, data, and analyses) used to demonstrate that PACM does not contain asbestos, and notifications made and received by building/facility owners regarding the content of ACMs and PACMs; making specified records (*e.g.,* exposure-monitoring and medical-surveillance records) available to designated parties; and transferring exposure-monitoring and medical-surveillance records to the National Institute for Occupational Safety and Health on cessation of business.

These paperwork requirements permit employers, employees and their designated representatives, OSHA, and other specified parties to determine the effectiveness of an employer's asbestos-control program. Accordingly, the requirements ensure that employees exposed to asbestos receive all of the protection afforded by the Standard.

II. Proposed Actions

OSHA proposes to extend the Office of Management and Budget's (OMB) approval of the collection-of-information (paperwork) requirements contained in the Standard. The Agency will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB to extend the approval of these information-collection requirements.

Type of Review: Extension of currently approved information-collection requirements.

Title: Asbestos in Construction (29 CFR 1926.1101).

OMB Number: 1218–0134.

Affected Public: Business or other for-profit organizations; Federal, State, Local, or Tribal governments.

Number of Respondents: 286,821.

Frequency: On occasion.

Average Time per Response: Varies from 5 minutes to maintain records to 17.3 hours for training a competent person.

Estimated Total Burden Hours: 5,817,388.

Estimated Cost (Operation and Maintenance): $42,774,491.

III. Authority and Signature

Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506) and Secretary of Labor's Order No 3–2000 (65 FR 50017).

Signed at Washington, DC on October 26, 2000.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 00–27972 Filed 10–30–00; 8:45 am]

BILLING CODE 4510–20–U

material. Such material includes, but is not limited to, asbestos-containing wallboard, floor tile and sheeting, roofing and siding shingles, and construction mastics.

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10771, et al.]

Proposed Exemptions; Care Services Employees' 401(k) Profit Sharing Plan and Trust

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. Attention: Application No. _____, stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Avenue, NW, Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed

exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Care Services Employees' 401(k) Profit Sharing Plan and Trust (the Plan) Located in Beachwood, OH; Proposed Exemption

[Application No. D–10771]

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the (1) cash sale by the Plan, occurring on December 30, 1997, of certain assets (the Assets), to Mr. Warren L. Wolfson, a party in interest with respect to the Plan; and (2) the prospective cash resale of the Assets by the Plan to Mr. Wolfson.

The proposed exemption is subject to the following conditions:

(a) Each sale of the Assets was or will be a one-time transaction for cash.

(b) The Plan received or will receive no less than the fair market value of the Assets at the time of each sale.

(c) The sales price for each Asset was determined or will be determined by a qualified, independent appraiser at the time of each sale transaction.

(d) The terms of the past and prospective sales transactions were or will be no less favorable to the Plan than those obtainable in similar transactions negotiated at arm's length with unrelated parties.

(e) The Plan did not incur any fees or commissions in connection with the past sale of the Assets nor will it incur any fees or commissions expenses with respect to the prospective sale of such Assets.

(f) Within 60 days of the publication, in the **Federal Register**, of the notice granting this proposed exemption, Mr. Wolfson will file a Form 5330 with the Internal Revenue Service (the Service) and pay all appropriate excise taxes that may be due and owing with respect to prohibited transactions arising in connection with certain of the Assets.

Effective Date: If granted, this proposed exemption will be effective as of December 30, 1997 with respect to the initial sale of the Assets by the Plan to Mr. Wolfson. In addition, this proposed exemption will be effective as of the date of the grant with respect to the resale of the Assets by the Plan to Mr. Wolfson.

Summary of Facts and Representations

1. The Plan, which was established on December 16, 1983, is a defined contribution plan covering all eligible employees of W.W. Extended Care, Inc.; Richfield Nursing Center, Inc.; Villa Nursing Corporation; Cleveland Golden Age Hospital, Inc.; Pebble Creek Convalescent Center of Ohio, Inc.; Belcare, Inc.; LTC Remedies, Inc.; Richmond Nursing, Inc.; Wyatt Woods, L.L.C., and WLW, Inc., companies which have common ownership. As of December 31, 1999, the Plan had 710 participants and aggregate assets of approximately $3,306,853.

The Plan provides for participant-directed investments for its 401(k) portion. Investment discretion over the profit sharing portion of the Plan is exercised by Warren L. Wolfson, who serves as the Plan trustee. Mr. Wolfson is also a principal of W.L.W., Inc. (the Employer), which operates a chain of six long-term care facilities and an associated management company in northeast Ohio. The Employer does business under trade name ''Care Services Associates.''

2. To provide a more cohesive investment policy and reduce overall administrative costs to the Plan, the Employer and Mr. Wolfson wished to consolidate the Plan's investments with one investment adviser. The new investment adviser, The Heitner Corporation (Heitner), advised the Employer and Mr. Wolfson to dispose of certain of the Plan's investments inasmuch as Heitner did not desire to hold and manage these Assets.[1] The specific Assets targeted by Heitner included the Plan's investments in six bonds issued by the Government of Israel (the Israel Bonds), 50 shares of common stock in River Glen REIT, Inc. (the REIT Interests) and a ¼ limited partnership interest (the ¼ LP Unit) in the Apartment Opportunity Fund II, L.P., (the AOF II Partnership).[2]

3. The six Israel Bonds, which are set forth below in the table, were purchased by the Plan for cash from an unrelated party between November 1986 and July 1997.

Bond	Issuance date	Face value	Interest rate	Maturity date
One	11/1/86	$25,000	Variable	11/1/98
Two	11/1/88	25,000	Variable	11/1/00
Three	11/1/90	25,000	Variable	3/31/02
Four	11/1/93	25,000	6.0%, Fixed	9/30/03
Five	10/1/95	25,000	Variable	1/31/03
Six	7/1/97	25,000	7.5%, Fixed	5/31/07

The Israel Bonds were acquired by the Plan for their $25,000 face value and have (or had) terms ranging from 8 to 12 years. With the exception of Bond One, which matured on November 1, 1998, the other Israel Bonds are still in existence. Bonds One, Two, Three and Five carry (or carried) variable interest rates, based on the average of the prime rates quoted by Bank of America National Trust & Savings Association, Continental Bank, N.A. and Citibank, N.A. Bonds Four and Six bear fixed interest rates of 6 percent and 7.5 percent per annum. Interest has been paid on the Israel Bonds twice per year. During 1997, the Plan received interest payments on the Israel Bonds of $11,109.41.

4. On July 25, 1997, the Plan acquired 25 shares of common stock comprising

[1] In a letter dated May 17, 2000, Mr. Larry Flynn, Vice President and Financial Consultant of Huntleigh Financial Services, Inc. of St. Louis, Missouri, and a former employee of Heitner, stated that he advised Mr. Wolfson regarding the reallocation of the Plan's assets during 1997. Mr. Flynn explained that both he and Mr. Wolfson considered many third party administrators for the Plan. However, none of the prospective candidates expressed an interest in holding the Assets on behalf of the Plan because the investments could not be priced on a daily basis. Therefore, Mr. Flynn said he advised Mr. Wolfson to sell the subject Assets and reallocate the Plan's assets into mutual funds.

[2] It is represented that Mr. Wolfson did not invest in any of the aforementioned Assets in his personal capacity.

the REIT Interests from River Glen REIT, Inc. (River Glen REIT), an unrelated party, for $25,000. On September 11, 1997, the Plan acquired an additional 25 shares comprising the REIT Interests from River Glen REIT for $25,000. The Plan paid the consideration in cash. The REIT Interests are assignable only with the consent of River Glen REIT.

The seller, River Glen REIT, is a Virginia corporation that qualifies as a real estate investment trust for federal income tax purposes. River Glen REIT owns a 99 percent limited partnership interest in River Glen of Orlando Partners, Ltd. (the River Glen Partnership), which, in turn, owns a 396 residential unit located in Orlando, Florida. In addition, River Glen REIT has 5,800 shares of common stock authorized and outstanding with a par value of $1,000 per share.

During 1997, the Plan received no distributions with respect to the REIT Interests.

5. On February 24, 1997, the Plan purchased the ¼ LP Unit in the AOF II Partnership, from General Capital Corporation, an unrelated party, for a cash purchase price of $25,000. The AOF II Partnership is a Tennessee limited partnership which was organized on January 10, 1996 for the purpose of owning and operating apartment complexes located in Florida and Tennessee. The general partner (the General Partner) of the AOF II Partnership is General Capital Associates II, L.P., an affiliate of General Capital Corporation. The AOF II Partnership makes quarterly distributions to investors at an annual rate of 8 percent and anticipates selling or refinancing its underlying investments within 4 to 7 years after acquisition. Sales of AOF II Partnership interests, such as the ¼ LP Unit, require the approval of the General Partner.

During 1997, the Plan received a distribution of $1,086 from the AOF II Partnership with respect to the ¼ LP Unit.

6. Because the subject Assets are not publicly-traded, Mr. Wolfson, as Plan trustee, attempted to locate prospective purchasers. In this regard, Mr. Wolfson contacted the sellers from whom the Assets were purchased to determine whether there was a secondary market. [3] Upon learning that there was no secondary market for these Assets, Mr. Wolfson sought the advice of his accountant, who purportedly advised him to purchase the Assets, in his individual capacity, at their fair market value.

The fair market value of each of the Assets was determined by the entities from which they had been acquired. With respect to the Israel Bonds, the fair market value of such instruments was deemed to be equal to their face value by Ms. Evelyn Epstein of the State of Israel Bond Office in Cleveland, Ohio. In a verbal consultation with Mr. Wolfson, Ms. Epstein placed the aggregate fair market value of the Israel Bonds at $150,000 as of December 30, 1997.

In addition, by letter dated December 16, 1997, William J. Gordon, President of River Glen REIT, advised Mr. Wolfson that the fair market value of River Glen REIT common stock was $1,000 per share as of that date. Therefore, Mr. Gordon placed the total value of the Plan's River Glen REIT Interests at $50,000.

Further, on December 22, 1997, Maclin Davis, III, Controller/Secretary of the General Partner, informed Mr. Wolfson, in writing, that because there were no secondary market transactions in the AOF II Partnership interests, the best measure of the fair market value of the ¼ LP Unit was its original cost of $22,500.

Based upon the aforementioned valuations of the Assets, Mr. Wolfson obtained the requisite consents from the issuers and individually purchased all of the Israel Bonds, the REIT Interests and the ¼ LP Unit from the Plan at their respective fair market values on December 30, 1997 for a total cash purchase price of $222,500. The Plan paid no fees or commissions in connection with the sale. In January 1998, all of the remaining assets were transferred to Heitner for investment management.

7. In December 1998, the Plan's auditors discovered a $2,500 shortfall in the purchase price Mr. Wolfson had paid for the Assets. The discrepancy was attributed solely to the ¼ LP Unit for which Mr. Wolfson had erroneously paid $2,500 less than its fair market value through no fault of his own. The problem stemmed from Mr. Davis's December 22, 1997 letter to Mr. Wolfson in which Mr. Davis had mistakenly noted that the ¼ LP Unit's original cost was $22,500. This amount actually reflected the adjusted income tax basis for the ¼ LP Unit rather than its true original cost of $25,000.

Therefore, in an effort to resolve the pricing error, the Plan's auditors established a $2,500 account receivable, which was to be owed to the Plan by Mr. Wolfson. The auditors also recommended that the receivable carry an interest rate of 10 percent per annum from the time of the December 30, 1997 sale transaction. No other loan terms were negotiated by the Plan and Mr. Wolfson. No promissory note was ever executed and the loan amount was unsecured.

8. Also in December 1998, the Plan's auditors were advised by their legal counsel that the December 1997 sale had resulted in a prohibited transaction in violation of the Act. In order to ''correct'' the prohibited transaction, counsel advised the auditors to resell the Assets to the Plan for their fair market value. Accordingly, on December 31, 1998, Mr. Wolfson sold all of the previously purchased Assets back to the Plan at what was believed to be no more than the fair market value of such Assets.[4] The receivable owed to the Plan was also canceled. Further, Mr. Wolfson made a total restoration payment to the Plan of $18,290.56. Of this amount, $2,000.00 represented a distribution from the AOF II Partnership, $4,269.00 represented a dividend on the REIT Interests, $819.00 represented a non-taxable distribution attributed to the REIT Interests, $9,312.50 represented interest derived from the Israel Bonds, for a subtotal of $16,400.50. Of the subtotal, Mr. Wolfson made a 10 percent interest payment to the Plan in the amount of $1,640.06. In addition, Mr. Wolfson made a cash payment to the Plan of $250, reflecting a 10 percent interest factor on the receivable for its one year duration.[5]

Between January 1999 and August 2000, the Plan has received additional income with respect to the subject Assets. In regard to the Israel Bonds and the REIT Interests, the Plan has received total interest payments and distributions of $23,953 and $7,176, respectively. In

[3] Specifically, Mr. Wolfson attempted to sell. the Israel Bonds to several business acquaintances. However, these persons did not wish to purchase the Israel Bonds at that time due to their cost. With respect to the REIT Interests and the ¼ LP Unit, Mr. Wolfson was informed by officials at River Glen REIT and General Capital Corporation, respectively, that there was no buyers available to acquire these Assets.

[4] The Department has no jurisdiction with respect to section 53.491(e)–(c)(1) of the Foundation Excise Tax Regulations (the FETR). This provision applies to prohibited transactions under section 4975 of the Code by reason of Temporary Pension Excise Tax Regulation 141.4975–13. Under section 53.4941(e)–1(c)(1) of the FETR, any correction pursuant to Code section 4941 is not an act of self-dealing. Similarly, the Department has determined that the correction of a prior prohibited transaction is not a prohibited transaction under section 406 of the Act. Therefore, the Department expresses no opinion herein on whether the return of the Assets by Mr. Wolfson to the Plan was a proper correction.

[5] Specifically, the Plan repurchased the Israel Bonds for $150,000, the REIT Interests for $50,000 and the ¼ LP Unit for $22,500, for a total reacquisition price of $222,500. Along with the $18,290.56 total restoration payment made by Mr. Wolfson, the Plan received a total payback of $240,790.56 with respect to the subject Assets.

regard to the ¼ LP Unit, the Plan has received a total distribution of $11,457.

9. Mr. Wolfson believes that the safeguards necessary for the granting of a prospective exemption were present at the time the original sale transaction was consummated. It is represented that Mr. Wolfson acted in good faith and took reasonable and appropriate steps to protect the Plan from abuse and unnecessary risks by restoring the Assets to the Plan, returning all income and distributions he had received and making interest payments upon discovery that the transaction was prohibited. In addition, Mr. Wolfson represents that at no time was he aware that he was engaging in a prohibited transaction.

In this regard, the Department notes that there was no contemporaneous, written valuation for the Plan's sale of the Israel Bonds to Mr. Wolfson. Instead, Mr. Wolfson relied upon the oral valuation of Ms. Epstein to establish the fair market value of the Israel Bonds. In addition, with respect to the Plan's acquisition and holding of the $2,500 account receivable, the terms of this arrangement did not appear to reflect arm's length dealings between the parties since the loan was never collateralized, and there was no independent fiduciary to protect the interests of the Plan and its participants and beneficiaries.

Due to the absence of adequate independent safeguards necessary for the granting of an administrative exemption in both instances, the Department has decided not to provide exemptive relief for these transactions. Therefore, Mr. Wolfson represents that within sixty days of the publication, in the **Federal Register**, of the notice granting this proposed exemption, he will file a Form 5330 with the Service and pay all appropriate excise taxes that are due and owing with respect to the Plan's sale of the Israel Bonds and the extension of credit transaction.

10. Aside from the retroactive exemption request involving the sale by the Plan to Mr. Wolfson of the REIT Interests and the ¼ LP Unit, Mr. Wolfson is also seeking a prospective exemption from the Department which, if granted, will allow the Plan to resell the Assets to him, in his personal capacity. It is represented that the prospective exemption will simplify Plan administration, reduce recordkeeping costs, and ensure that the Plan receives a return on the Assets in excess of its original investment, and allow the Plan to dispose of illiquid assets. The proposed resale of the Assets will be a one-time transaction for cash and the Plan will receive fair market value for the Assets as determined by a qualified, independent appraiser. The Plan will not be required to pay any fees or commissions in connection with the resale of the Assets.

11. Donald C. May, CPA/ABV, CVA, a qualified, independent appraiser affiliated with the accounting firm of Howard Wershable & Co. of Cleveland, Ohio has valued the Assets for purposes of their potential resale. Following is a discussion of Mr. May's valuations of each of the subject Assets.

(a) *Israel Bonds.* In an appraisal report dated June 5, 2000, Mr. May valued the Israel Bonds as of April 15, 2000. With respect to Bonds Two, Three and Five, Mr. May concluded that the $25,000 face value of these Israel Bonds would be indicative of their fair market value as of April 15, 2000. He also noted that Bond One, which matured on November 1, 1998, was redeemed for its $25,000 face value.

With respect to Bond Four, Mr. May noted that as of April 15, 2000, rates on U.S. Treasury Notes having terms that were similar to the remaining term on Bond Four increased to 6.21 percent. Therefore, he placed the fair market value of Bond Four at $23,028 as of April 15, 2000.

With respect to Bond Six, Mr. May observed that as of April 15, 2000, the rate on U.S. Treasury Notes having terms similar to the remaining term of Bond Six was 6.16 percent. Because overall market interest rates had fallen since Bond Six's acquisition on July 1, 1997, he projected the fair market value of Bond Six, which carries a 7.5 percent fixed rate, to be $26,178 as of April 15, 2000.

In summary, the fair market values of each of the Israel Bonds, as determined by Mr. May, are reflected in the following table:

Bond	Face value	Fair market value as of 4/15/00
One	$25,000	Matured
Two	25,000	$25,000
Three	25,000	25,000
Four	25,000	23,028
Five	25,000	25,000
Six	25,000	26,178
Total		124,206

(b) *REIT Interests.* In an appraisal report dated May 17, 2000, Mr. May stated that the fair market value of a REIT unit should be determined by the value of the properties underlying the REIT. Because River Glen REIT owns a 99 percent interest in a parcel of property known as the ''Heather Glen,'' Mr. May believed that the book value of River Glen REIT, adjusted for the accumulated depreciation of Heather Glen, would reflect the fair market value of River Glen REIT as of April 15, 2000.

Based on the fact that management had been able to raise rents and occupancy for the property and the local economy had remained strong, Mr. May stated that the fair market value of the underlying property would at least be equal to its original cost. Although financial information was only available through December 31, 1999, Mr. May observed that there were no events which would significantly affect the value of the underlying property and require adjustments to other assets or liabilities. Therefore, Mr. May placed the fair market value of the REIT Interests at $57,500 (or $1,150 per share) as of April 15, 2000.

(c) *The ¼ LP Unit.* In an appraisal report dated May 15, 2000, Mr. May also noted that the fair market value of a real estate partnership unit should be determined by the value of the underlying properties in the partnership. Because the AOF II Partnership properties had been acquired in recent years, Mr. May asserted that the book value of such properties, with an adjustment for accumulated depreciation, would reasonably reflect the value of such properties as of April 15, 2000.

Based on the fact that management had been able to raise rents and occupancy for most of the properties and the local economies had remained stable or increased, Mr. May stated that the fair market value of the underlying properties was at least equal to their original acquisition costs. Although at the time of his appraisal, Mr. May stated that financial information was available through December 31, 1999, he noted that no events had taken place that would significantly affect the value of the ¼ LP Unit and require adjustments to other assets or liabilities. Therefore, as of April 15, 2000, Mr. May placed the fair market value of the ¼ LP Unit at $25,000. He also noted that there had been no recent sales of AOF II Partnership units.

12. Thus, based upon Mr. May's valuations of the Assets as of April 15, 2000, Mr. Wolfson proposes to purchase the five remaining Israel Bonds from the Plan for $124,206, the REIT Interests for $57,500 and the ¼ LP Unit for $25,000, which reflects the fair market value of such Assets. The aggregate purchase price of $206,706 [6] will be paid by Mr.

[6] To recap, during 1997 and between January 1999 and August 2000, the Plan has received—

• $44,374.91 in interest payments with respect to the Israel Bonds for which it had paid an aggregate

Wolfson to the Plan in cash. Mr. May will update his valuations of the Assets on the date of the sale.

13. In summary, it is represented that the transactions have satisfied or will satisfy the statutory exemptive relief that is available under section 408(a) of the Act because:

(a) Each sale of the Assets was or will be a one-time transaction for cash.

(b) The Plan received or will receive no less than the fair market value of the Assets at the time of each sale.

(c) The sales price for each Asset was determined or will be determined by a qualified, independent appraiser at the time of each sale transaction.

(d) The terms of the past and prospective sales transactions were or will be no less favorable to the Plan than those obtainable in similar transactions negotiated at arm's length with unrelated parties.

(e) The Plan did not incur any fees or commissions in connection with the past sale of the Assets nor will it incur any fees or commissions expenses with respect to the prospective sale of such Assets.

(f) Within 60 days of the publication, in the **Federal Register**, of the notice granting this proposed exemption, Mr. Wolfson will file a Form 5330 with the Service and pay all appropriate excise taxes that may be due and owing with respect to the sale of the Israel Bonds and the extension of credit transaction.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady, Department of Labor, telephone (202) 219–8881. (This is not a toll-free number.)

Gillespie Real Estate Professional Corporation Defined Benefit Plan (the Plan) Located in Phoenix, Arizona; Proposed Exemption

[Applicant No. D–10880]

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, subpart B (55 FR 32836, August 10, 1990). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975 (c)(1)(A) through (E) of the Code, shall not apply to the proposed cash sale (the Sale) of a certain residential lot (the Property) by the Plan[7] to Bruce and Ann Gillespie (the Applicants), disqualified persons with respect to the Plan, provided that the following conditions are met:

(a) The Sale is a one-time transaction for cash;

(b) The terms and conditions of the Sale are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party;

(c) The Plan receives the greater of $450,000 or the fair market value of the Property at the time of the Sale; and

(d) The Plan is not required to pay any commissions, costs or other expenses in connection with the Sale.

Summary of Facts and Representations

1. The Plan is a defined benefit plan which was established by the Applicants, the sole participants and beneficiaries. As of March 6, 2000, the Plan held assets valued at approximately $1.9 million. The trustees of the Plan are Bruce and Ann Gillespie.

2. The Property is a 34,372 square foot residential lot located at Forest Highlands, Lot 781, Coconino County, Arizona.

According to the Applicants, the Plan originally acquired the Property as a real estate investment. The Plan purchased the Property in June 24, 1998, from an unrelated third party, the Homeowners Association of the Forest Highlands.[8] First of American Mortgage served as the lender for the Plan's mortgage. The purchase price of the Property including settlement charges was $343,350.57. The Plan paid a cash deposit of $168,133.07 and financed the balance of the purchase price.

The Applicants represent that the only expenditures the Plan has paid since owning the Property are $2,397.46 in property taxes, $5,729.08 in association fees, and $13,977.81 in loan interest payments from 1998 (*i.e.*, the year of original acquisition) until August 18, 2000. Therefore, the total cost to the Plan for the Property is $365,454.92 as of August 18, 2000 ($343,350.57 + $2,397.46 + $13,977.81 + $5,729.08 = $365,454.92). From the time of the purchase through August 18, 2000, the Property has remained vacant and no income has been generated.

The Applicants represent that the Property has not been leased to, or used by, any disqualified persons.

3. The Applicants request an exemption for the Sale. The Applicants represent that the proposed transaction would be feasible because it would be a one-time transaction for cash. Furthermore, the Applicants state that the transaction would be in the best interest of the Plan because the Sale would enable the Plan to invest the proceeds from the Sale in assets with a higher rate or return. The Applicants desire to sell the Property because they wish to build a personal residence on the lot. Finally, the Applicants assert that the transaction will be protective of the rights of the Plan's participants and beneficiaries as indicated by the fact that the Plan will receive the fair market value of the Property, as determined by a qualified, independent appraiser on the date of the Sale, and will incur no commissions, costs, or other expenses as a result of the Sale.

4. Stephen G. Leach (Mr. Leach), an accredited appraiser with Cushman & Wakefield of Arizona, Inc., located in Phoenix, Arizona, appraised the Property on September 5, 2000. Mr. Leach states that he is a full time qualified, independent appraiser, as demonstrated by his status as a Certified Residential Real Estate Appraiser licensed by the State of Arizona. In addition, Mr. Leach represents that both he and his firm are independent of the Applicants.

In his appraisal, Mr. Leach relied primarily on the sales comparison approach. According to Mr. Leach, this method best represents the actions of buyers and sellers in the market place. This method of appraisal involves an analysis of similar recently sold properties in the area in question so as to derive the most probable sales price of the Property. Mr. Leach's appraisal indicates that he compared the Property to nine recently sold lots in the Forest Highland's complex before reaching a conclusion as to the value of the Property. After inspecting the Property and analyzing all relevant data, Mr. Leach determined that a fee simple interest in the Property had a fair market value of approximately $450,000, as of September 5, 2000.

5. In summary, the Applicants represent that the proposed transaction satisfies the statutory criteria of section 4975(c)(2) of the Code because: (a) The terms and conditions of the Sale would

purchase price of $150,000. Thus, the Plan's total net cost with respect to the Israel Bonds (excluding Bond One which matured on November 1, 1998 and was subsequently redeemed by the Plan for its $25,000 face value) is $80,625.09.

• $12,624 in distributions with respect to the REIT Interests. Because the Plan paid $50,000 for the REIT Interests, its net cost with respect to this investment is $37,376.

• $13,457 in distributions from the AOF II Partnership. Because the Plan had acquired the ¼ LP Unit for $22,500, its net cost with respect to the ¼ LP Unit is $9,043.

Thus, the Plan's overall net cost with respect to the Assets is $127,044.09.

[7] Because Bruce Gillespie is the sole shareholder of the Employer and he and his wife, Ann Gillespie, are the only participants in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act under section 4975 of the Code.

[8] The Department is expressing no opinion as to whether the acquisition and holding of the Land by the Plan was a prohibited transaction under section 4975(c)(1)(D) and (E) of the Code, and no relief is provided herein.

be at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated third party; (b) the Sale would be a one-time cash transaction allowing the Plan to divest itself of the Property and reinvest the proceeds of the Sale in assets that will yield a higher rate of return; (c) the Plan would receive an amount equal to the greater of $450,000, which represents the appraised fair market value of the Property, as appraised by Mr. Leach in September 2000, or the fair market value of the Property at the time of the Sale, based on an updated appraisal of the Property by Mr. Leach or another independent, qualified appraisal; and (d) the Plan would not be required to pay any commissions, costs or other expenses in connection with the Plan.

Notice to Interested Parties: Because Mr. Gillespie is the sole shareholder of the Employer and he and his wife, Ann Gillespie, are the only participants in the Plan, it has been determined that there is no need to distribute the notice of proposed exemption (the Notice) to interested persons. Comments and requests for a hearing are due thirty (30) days after publication of the Notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Khalif Ford of the Department, telephone (202) 219–8883 (this is not a toll-free number).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 25th day of October 2000.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 00–27915 Filed 10–30–00; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Services for Persons With Limited English Proficiency; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: The public is invited to comment on National Archives and Records Administration (NARA) programs and activities available to persons with limited English proficiency (LEP) and steps that the agency could take to ensure that persons with LEP have meaningful access to NARA services. NARA will use the information gathered from this notice and other outreach efforts to develop a plan to improve access to its programs and activities by eligible LEP persons.

DATES: Written comments should be received on or before November 30, 2000.

ADDRESSES: Comments should be sent to: Comments on Services for Persons with Limited English Proficiency, Attn: Diane Dimkoff (NWCC), Room 2400, National Archives and Records Administration, 8601 Adelphi Rd, College Park, MD 20740–6001; faxed to 301–713–7482; or electronically mailed to comments@arch2.nara.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Diane Dimkoff at telephone number 301–713–6107, or fax number 301–713–7482.

SUPPLEMENTARY INFORMATION:

Background

On August 11, 2000, President Clinton issued Executive Order 13166, entitled ''Improving Access to Services for Persons With Limited English Proficiency.'' 65 FR 50119 (August 16, 2000). The Executive Order directs each Federal agency to examine the services it provides to persons who, as a result of national origin, are limited in their English proficiency. Agencies must then develop a plan and implement measures that will enable persons with LEP to have meaningful access to the agency's programs and activities, consistent with the fundamental mission of the agency. NARA will submit its LEP plan to the Department of Justice for review and approval by December 11, 2000.

As part of this process, NARA is consulting its stakeholders for input on the needs of persons with LEP. NARA is requesting comment from persons with LEP, their representative organizations, as well as grant applicants and recipients, and any other individuals or entities that make use of NARA programs, facilities, activities and financial opportunities.

NARA's Programs and Activities

NARA establishes policies and procedures for managing U.S. Government records and assists Federal agencies in documenting their activities and administering records management programs. NARA preserves and provides access to the essential documentation of the three branches of Government through a nationwide system of archival facilities, records storage facilities, and Presidential Libraries. NARA operates research rooms, answers written and oral requests for information on its holdings, provides copies of records, offers public programs and exhibits, and makes information available on its web site at http://www.nara.gov. The National Historical Publications and Records Commission (NHPRC), a statutory body affiliated with NARA, makes grants nationwide to help nonprofit and educational organizations identify, preserve, and provide access to materials that document American history. NARA also publishes Federal laws and regulations, and Presidential and other public documents. It also

manages Federal classification and declassification policies.

Ensuring Meaningful Access to Persons With Limited English Proficiency

NARA will use the information gathered from this notice and other outreach activities to evaluate its services and develop a plan to ensure that eligible persons with LEP have meaningful access to NARA's programs and activities, including NHPRC grants. NARA will assess the language needs of its customers, develop a comprehensive written policy on language access, increase awareness of language needs in staff training and customer service, and regularly monitor and assess the language needs of customers and the effectiveness of NARA's language assistance program. NARA will provide its LEP customers with access to NARA's programs and activities in a way that is practical, effective, fiscally responsible, and capable of being readily implemented.

Dated: October 25, 2000.

John W. Carlin,

Archivist of the United States.

[FR Doc. 00–27901 Filed 10–30–00; 8:45 am]

BILLING CODE 7515–01–U

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that four meetings of the Combined Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, D.C., 20506 as follows:

Theater/Musical Theater (Access, Education, and Heritage/Preservation categories): November 27–December 1, 2000, Room 714. A portion of this meeting, from 3:00 p.m. to 5:00 p.m. on November 29th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9:30 a.m. to 7:00 p.m. on November 27th, 28th, and 30th, from 9:00 a.m. to 3:00 p.m. and 5:00 p.m. to 7:00 p.m. on November 28th, and from 9:30 a.m. to 5:00 p.m. on December 1st, will be closed.

Music Section A (Access, Education, and Heritage/Preservation categories): November 28–30, 2000, Room 730. A portion of this meeting, from 3:30 p.m. to 5:00 p.m. on November 30th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9:00 a.m. to 6:00 p.m. on November 28th and 29th, and from 9:00 a.m. to 3:30 p.m. on November 30th, will be closed.

Visual Arts (Access, Education, and Heritage/Preservation categories): November 29–December 1, 2000, Room 716. A portion of this meeting, from 11:00 a.m. to 12:30 p.m. on December 1st, will be open to the public for policy discussion. The remaining portions of this meeting, from 9:00 a.m. to 6:30 p.m. on November 29th and 30th, and from 9:00 a.m. to 11:00 a.m. and 12:30 p.m. to 4:00 p.m. on December 1st, will be closed.

Music Section B (Access, Education, and Heritage/Preservation categories): December 5–8, 2000, Room 730. A portion of this meeting, from 9:00 a.m. to 10:30 a.m. on December 7th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9:00 a.m. to 5:30 p.m. on December 5th and 6th, from 10:30 a.m. to 6:00 p.m. on December 7th, and from 9:00 a.m. to 3:00 p.m. on December 8th, will be closed.

The closed portions of these meetings are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 12, 2000, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, D.C., 20506, or call 202/682–5691.

Dated: October 25, 2000.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 00–27917 Filed 10–30–00; 8:45 am]

BILLING CODE 7537–01–U

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of October 30, November 6, 13, 20, 27, and December 4, 2000.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of October 30

There are no meetings scheduled for the Week of October 30.

Week of November 6—Tentative

There are no meetings scheduled for the Week of November 6.

Week of November 13—Tentative

Wednesday, November 15, 2000

10:00 a.m.—Briefing by the Executive Branch (Closed—Ex. 1)

Friday, November 17

9:25 a.m.—Affirmation Session (Public Meeting) (if needed)

9:30 a.m.—Briefing on Risk-Informed Regulation Implementation Plan (Public Meeting) (Contact: Tom King, 301–415–5790)

This meeting will be webcast live at the Web address—*www.nrc.gov/live.html.*

Week of November 20—Tentative

There are no meetings scheduled for the Week of November 20.

Week of November 27—Tentative

Monday, November 27, 2000

9:00 a.m.—Briefing by DOE on Plutonium Disposition and MOX Fuel Fabrication Facility Licensing (Public Meeting)

This meeting will be webcast live at the Web address—*www.nrc.gov/live.html.*

Week of December 4—Tentative

Monday, December 4

1:55 p.m.—Affirmation Session (Public Meeting) (if needed)

2:00 p.m.—Briefing on License Renewal Generic Aging Lessons Learned

(GALL) Report, Standard Review Plan (SRP), and Regulatory Guide (Public Meeting) (Contact: Chris Grimes, 301–415–1183)

This meeting will be webcast live at the Web address—*www.nrc.gov/live.html.*

Note: The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415–1292. Contact Person for more information: Bill Hill (301) 415–1661.

SUPPLEMENTARY INFORMATION: By a vote of 5–0 on October 23, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that ''Affirmation of Final Rules—10 CFR Part 35, 'Medical Use of Byproduct Material' and 10 CFR Part 20, 'Standards for Protection Against Radiation' '' be held on October 23, and on less than one week's notice to the public.

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: October 27, 2000.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 00–28035 Filed 10–27–00; 2:15 pm]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Notice of Availability for Referencing in License Amendment Applications—Model Safety Evaluation on Technical Specification Improvement To Eliminate Requirements on Post Accident Sampling Systems Using the Consolidated Line Item Improvement Process

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: Notice is hereby given that the staff of the Nuclear Regulatory Commission (NRC) has prepared a model safety evaluation (SE) relating to the elimination of requirements on post accident sampling imposed on licensees through orders, license conditions, or technical specifications. The NRC staff has also prepared a model no significant hazards consideration (NSHC) determination relating to this matter. The purpose of these models is to permit the NRC to efficiently process amendments that propose to remove requirements for the Post Accident Sampling System (PASS). Licensees of nuclear power reactors to which the models apply may request amendments, in accordance with Section 50.90 of Title 10 to the Code of Federal Regulations, confirming the applicability of the SE and NSHC determination to their reactors and providing the requested plant-specific verifications and commitments.

DATES: The period during which licensees may reference the model SE and NSHC determination expires October 31, 2001. Applications for amendments after this date must include plant-specific justifications for the proposed changes and an analysis about the issue of no significant hazards consideration.

FOR FURTHER INFORMATION CONTACT: William Reckley, Mail Stop: O–7D1, Division of Licensing Project Management, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–1323.

SUPPLEMENTARY INFORMATION:

Background

Regulatory Issue Summary 2000–06, ''Consolidated Line Item Improvement Process for Adopting Standard Technical Specification Changes for Power Reactors,'' was issued on March 20, 2000. The consolidated line item improvement process (CLIIP) is intended to improve the efficiency of NRC licensing processes. This is accomplished by processing proposed changes to the Standard Technical Specifications (STS) in a manner that supports subsequent license amendment applications. The CLIIP includes an opportunity for the public to comment on proposed changes to the STS following a preliminary assessment by the NRC staff and finding that the change will likely be offered for adoption by licensees. The CLIIP directs the NRC staff to evaluate any comments received for a proposed change to the STS and to either reconsider the change or to proceed with announcing the availability of the change for proposed adoption by licensees. Those licensees opting to apply for the subject change to their technical specifications are responsible for reviewing the staff's evaluation, referencing the applicable technical justifications, and providing any necessary plant-specific information. Each amendment application made in response to the notice of availability would be processed and noticed in accordance with applicable rules and NRC procedures.

This proposed change was proposed for incorporation into the Standard Technical Specifications by the Westinghouse Owners Group (WOG) and the Combustion Engineering Owners Group (CEOG) participants in the Technical Specification Task Force (TSTF) and is designated TSTF–366. A notice of opportunity to comment on the use of CLIIP for the elimination of requirements for PASS and related administrative controls in technical specifications for plants with Westinghouse and Combustion Engineering designs was published in the **Federal Register** on August 11, 2000 (65 FR 49271). The nine comments submitted to the NRC staff in response to the solicitation are addressed later in this notice.

Applicability

This application of the CLIIP to remove requirements for PASS from technical specifications (and other elements of the licensing bases) is applicable to plants with Westinghouse and Combustion Engineering designs.

To efficiently process the incoming license amendment applications, the staff requests each licensee applying for the changes addressed by TSTF–366 using the CLIIP to address the plant-specific verifications and regulatory commitments that are identified in the model SE. The CLIIP does not prevent licensees from requesting an alternative approach or proposing the changes without the requested verifications and regulatory commitments. Licensees choosing to request an approach different than that described in this notice should submit applications with appropriate plant-specific justifications for the proposed changes and an analysis about the issue of no significant hazards consideration. Variations from the approach recommended in this notice may require additional review by the NRC staff and may increase the time and resources needed for the review.

In making the requested regulatory commitments, each licensee should address: (1) That the subject capability exists (or will be developed) and will be maintained; (2) where the capability or procedure will be described (e.g., severe accident management guidelines, emergency operating procedures, emergency plan implementing

procedures); and (3) a schedule for implementation. The amendment request need not provide details about designs or procedures. Each licensee should verify that it has, and make a regulatory commitment to maintain (or make a regulatory commitment to develop and maintain):

a. Contingency plans for obtaining and analyzing highly radioactive samples from the reactor coolant system, containment sump, and containment atmosphere;

b. A capability for classifying fuel damage events at the Alert level threshold (typically this is 300 μCi/ml dose equivalent iodine). This capability may use the normal sampling system and/or correlations of sampling or letdown line dose rates to coolant concentrations; and

c. The capability to monitor radioactive iodines that have been released to offsite environs.

Public Notices

The staff issued a **Federal Register** Notice (64 FR 66213, November 24, 1999) that requested public comment on the NRC's pending action to approve topical reports submitted by the WOG and the CEOG in which they proposed to eliminate regulatory requirements for PASS. In particular, the staff sought comment from offsite emergency response organizations so that any impact of the elimination of PASS on their response could be factored into the staff's evaluation. Appendices to the staff's safety evaluations for topical reports submitted by the CEOG and the WOG contain a synopsis of the public comments received and the staff's evaluation of the comments. The topical reports as well as the NRC staff's safety evaluations for the topical reports may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, (the Electronic Reading Room). The staff's safety evaluations that address the public comments about the topical reports are available on ADAMS (Accession Numbers ML003715250 dated May 16, 2000, for the CEOG topical report and ML003723268 dated June 14, 2000, for the WOG topical report).

A notice soliciting comments from interested members of the public about the use of the CLIIP for elimination of requirements for PASS was published in the **Federal Register** on August 11, 2000 (65 FR 49271). The staff received nine comments (six from individual licensees, one from the Nuclear Energy Institute, one from a law firm that represents licensees, and one from a member of the public) as a result of the notice of opportunity to comment about the subject technical specification changes. Five of the letters received included general comments in favor of the CLIIP and its use in eliminating requirements for PASS. Specific comments on the model SE were offered in four of the comment letters. The specific comments are discussed below:

1. A licensee suggested that the model SE include a discussion indicating that the contingency plans do not have to be carried out in emergency plans and exercises. A similar statement was included in the staff's SE for the topical report prepared by the WOG. The staff agrees with the comment and added a sentence to the model SE.

2. A licensee stated that some plants have safety-related hydrogen monitors with ranges significantly above hydrogen concentrations of 10% that could be used for severe accident conditions. The staff believes that the model SE provides the necessary flexibility for plant-specific differences in the ranges of the monitors by stating that the appropriate decision-makers may determine if a grab sample is necessary and practical during the management of a severe accident. A contingency plan for sampling the containment atmosphere also serves to confirm the indications from the monitors and provide information on parameters other than hydrogen concentrations (*e.g.,* the mix of radionuclides) and should, for consideration of the amendment as part of the CLIIP, be part of the plant-specific regulatory commitment discussed in the model SE. The staff did not revise the model SE in response to this comment.

3. A licensee suggested that the Alert level threshold (typically 300 μCi/ml dose equivalent iodine) recognize an alternative of 2% to 5% fuel clad damage and that instrumentation such as core exit thermocouples or radiation monitors might also be indicative of fuel clad damage. The staff did not intend to preclude the use of other parameters as an indication of the loss of or challenge to the fuel clad fission product barrier. The staff included the regulatory commitment (item 4.2) in the model SE to address classifying certain types of events (such as reactivity excursions or mechanical damage) which could cause fuel damage without having an indication of overheating on core exit thermocouples. The mention of normal sampling or letdown line dose rates in the model SE is intended to be alternatives for those licensees that currently use PASS for assessing the 300 μCi/ml does equivalent iodine criterion for declaration of an Alert. The staff did not revise the model SE in response to this comment.

4. A commenter suggested that the use of the CLIIP to eliminate PASS requirements be expanded to all licensed facilities. The staff may choose to use the CLIIP to address the removal of PASS from plants with other than Westinghouse and Combustion Engineering designs. Such a use of the CLIIP would follow a specific proposal and justification from the applicable owners groups similar to the TSTF submitted by the WOG and CEOG. The staff did not revise the model SE in response to this comment.

This notice is announcing the availability of the model safety evaluation and model NSHC determination for referencing in applications for amendments to technical specifications for applicable plants. Licensees wishing to adopt the change must submit an application in accordance with applicable regulatory requirements. The staff will in turn issue for each application a notice of consideration of issuance of amendment to facility operating license(s), a proposed NSHC determination, and an opportunity for a hearing. A notice of issuance of an amendment to operating license(s) will also be issued to announce the elimination of the PASS requirements for each plant that applies for and receives the requested change.

Model Safety Evaluation

U.S. Nuclear Regulatory Commission

Office of Nuclear Reactor Regulation

Consolidated Line Item Improvement

Technical Specification Task Force (TSTF) Change TSTF–366

Elimination of Requirements for Post Accident Sampling System (PASS)

1.0 Introduction

In the aftermath of the accident at Three Mile Island (TMI), Unit 2, the Nuclear Regulatory Commission (NRC) imposed requirements on licensees for commercial nuclear power plants to install and maintain the capability to obtain and analyze post-accident samples of the reactor coolant and containment atmosphere. The desired capabilities of the Post Accident Sampling System (PASS) were described in NUREG–0737, ''Clarification of TMI Action Plan Requirements.'' The NRC issued orders to licensees with plants operating at the time of the TMI accident to confirm the installation of PASS capabilities

(generally as they had been described in NUREG–0737). A requirement for PASS and related administrative controls was added to the technical specifications (TS) of the operating plants and was included in the initial TS for plants licensed during the 1980s and 90s. Additional expectations regarding PASS capabilities were included in Regulatory Guide 1.97, ''Instrumentation for Light-Water-Cooled Nuclear Power Plants To Assess Plant and Environs Conditions During and Following an Accident.''

Significant improvements have been achieved since the TMI accident in the areas of understanding risks associated with nuclear plant operations and developing better strategies for managing the response to potentially severe accidents at nuclear plants. Recent insights about plant risks and alternate severe accident assessment tools have led the NRC staff to conclude that some TMI Action Plan items can be revised without reducing the ability of licensees to respond to severe accidents. The NRC's efforts to oversee the risks associated with nuclear technology more effectively and to eliminate undue regulatory costs to licensees have prompted the NRC to consider eliminating the requirements for PASS in TS and other parts of the licensing bases of operating reactors.

The staff has completed its review of the topical reports submitted by the Combustion Engineering Owners Group (CEOG) and the Westinghouse Owners Group (WOG) that proposed the elimination of PASS. The justifications for the proposed elimination of PASS requirements center on evaluations of the various radiological and chemical sampling and their potential usefulness in responding to a severe reactor accident or making decisions regarding actions to protect the public from possible releases of radioactive materials. As explained in more detail in the staff's safety evaluations for the two topical reports, the staff has reviewed the available sources of information for use by decision-makers in developing protective action recommendations and assessing core damage. Based on this review, the staff found that the information provided by PASS is either unnecessary or is effectively provided by other indications of process parameters or measurement of radiation levels. The staff agrees, therefore, with the owners groups that licensees can remove the TS requirements for PASS, revise (as necessary) other elements of the licensing bases, and pursue possible design changes to alter or remove existing PASS equipment.

2.0 Background

In a letter dated May 5, 1999 (as supplemented by letter dated April 14, 2000), the CEOG submitted the topical report CE NPSD–1157, Revision 1, ''Technical Justification for the Elimination of the Post-Accident Sampling System From the Plant Design and Licensing Bases for CEOG Utilities.'' A similar proposal was submitted on October 26, 1998 (as supplemented by letters dated April 28, 1999, April 10 and May 22, 2000), by the WOG in its topical report WCAP–14986, ''Post Accident Sampling System Requirements: A Technical Basis.'' The reports provided evaluations of the information obtained from PASS samples to determine the contribution of the information to plant safety and accident recovery. The reports considered the progression and consequences of core damage accidents and assessed the accident progression with respect to plant abnormal and emergency operating procedures, severe accident management guidance, and emergency plans. The reports provided the owners groups' technical justifications for the elimination for the various PASS sampling requirements. The specific samples and the staff's findings are described in the following evaluation.

The NRC staff prepared this model safety evaluation (SE) relating to the elimination of requirements on post accident sampling and solicited public comment (65 FR 49271) in accordance with the consolidated line item improvement process (CLIIP). The use of the CLIIP in this matter is intended to help the NRC to efficiently process amendments that propose to remove the PASS requirements from TS. Licensees of nuclear power reactors to which this model apply were informed [FR] that they could request amendments confirming the applicability of the SE to their reactors and providing the requested plant-specific verifications and commitments.

3.0 Evaluation

The technical evaluations for the elimination of PASS sampling requirements are provided in the safety evaluations dated May 16, 2000, for the CEOG topical report CE NPSD–1157 and June 14, 2000, for the WOG topical report WCAP–14986. The NRC staff's safety evaluations approving the topical reports are located in the NRC's Agencywide Documents Access and Management System (ADAMS) (Accession Numbers ML003715250 for CE NPSD–1157 and ML003723268 for WCAP–14986).

The ways in which the requirements and recommendations for PASS were incorporated into the licensing bases of commercial nuclear power plants varied as a function of when plants were licensed. Plants that were operating at the time of the TMI accident are likely to have been the subject of confirmatory orders that imposed the PASS functions described in NUREG–0737 as obligations. The issuance of plant specific amendments to adopt this change, which would remove PASS and related administrative controls from TS, supersede the PASS specific requirements imposed by post-TMI confirmatory orders.

As described in its safety evaluations for the topical reports, the staff finds that the following PASS sampling requirements may be eliminated for plants of Combustion Engineering and Westinghouse designs:

1. Reactor coolant dissolved gases
2. Reactor coolant hydrogen
3. Reactor coolant oxygen
4. Reactor coolant pH
5. Reactor coolant chlorides
6. Reactor coolant boron
7. Reactor coolant conductivity
8. Reactor coolant radionuclides
9. Containment atmosphere hydrogen concentration
10. Containment oxygen
11. Containment atmosphere radionuclides
12. Containment sump pH
13. Containment sump chlorides
14. Containment sump boron
15. Containment sump radionuclides

The staff agrees that sampling of radionuclides is not required to support emergency response decision making during the initial phases of an accident because the information provided by PASS is either unnecessary or is effectively provided by other indications of process parameters or measurement of radiation levels. Therefore, it is not necessary to have dedicated equipment to obtain this sample in a prompt manner.

The staff does, however, believe that there could be significant benefits to having information about the radionuclides existing post-accident in order to address public concerns and plan for long-term recovery operations. As stated in the safety evaluations for the topical reports, the staff has found that licensees could satisfy this function by developing contingency plans to describe existing sampling capabilities and what actions (*e.g.,* assembling temporary shielding) may be necessary to obtain and analyze highly radioactive samples from the reactor coolant system (RCS), containment sump, and containment atmosphere. (See item 4.1

under Licensee Verifications and Commitments.) These contingency plans must be available to be used by a licensee during an accident; however, these contingency plans do not have to be carried out in emergency plan drills or exercises. The contingency plans for obtaining samples from the RCS, containment sump, and containment atmosphere may also enable a licensee to derive information on parameters such as hydrogen concentrations in containment and boron concentration and pH of water in the containment sump. The staff considers the sampling of the containment sump to be potentially useful in confirming calculations of pH and boron concentrations and confirming that potentially unaccounted for acid sources have been sufficiently neutralized. The use of the contingency plans for obtaining samples would depend on the plant conditions and the need for information by the decision-makers responsible for responding to the accident.

In addition, the staff considers radionuclide sampling information to be useful in classifying certain types of events (such as a reactivity excursion or mechanical damage) that could cause fuel damage without having an indication of overheating on core exit thermocouples. However, the staff agrees with the topical reports' contentions that other indicators of failed fuel, such as letdown radiation monitors (or normal sampling system), can be correlated to the degree of failed fuel. (See item 4.2 under Licensee Verifications and Commitments.)

In lieu of the information that would have been obtained from PASS, the staff believes that licensees should maintain or develop the capability to monitor radioactive iodines that have been released to offsite environs. Although this capability may not be needed to support the immediate protective action recommendations during an accident, the information would be useful for decision makers trying to limit the public's ingestion of radioactive materials. (See item 4.3 under Licensee Verifications and Commitments.)

The staff believes that the changes related to the elimination of PASS that are described in the topical reports, related safety evaluations and this proposed change to TS are unlikely to result in a decrease in the effectiveness of a licensee's emergency plan. Each licensee, however, must evaluate possible changes to its emergency plan in accordance with 10 CFR 50.54(q) to determine if the change decreases the effectiveness of its site-specific plan. Evaluations and reporting of changes to emergency plans should be performed in accordance with applicable regulations and procedures.

The staff notes that redundant, safety-grade, containment hydrogen concentration monitors are required by 10 CFR 50.44(b)(1), are addressed in NUREG–0737 Item II.F.1 and Regulatory Guide 1.97, and are relied upon to meet the data reporting requirements of 10 CFR Part 50, Appendix E, Section VI.2.a.(i)(4). The staff concludes that during the early phases of an accident, the safety-grade hydrogen monitors provide an adequate capability for monitoring containment hydrogen concentration. The staff sees value in maintaining the capability to obtain grab samples for complementing the information from the hydrogen monitors in the long term (*i.e.,* by confirming the indications from the monitors and providing hydrogen measurements for concentrations outside the range of the monitors). As previously mentioned, the licensee's contingency plan (see item 4.1) for obtaining highly radioactive samples will include sampling of the containment atmosphere and may, if deemed necessary and practical by the appropriate decision-makers, be used to supplement the safety-related hydrogen monitors.

[Note 1—Each licensee should specify a desired implementation period for its specific amendment request. The implementation period would be that period necessary to develop and implement the items in 4.1 through 4.3 and, as necessary, to make other changes to documentation or equipment to support the elimination of PASS requirements. As an alternative, the licensee may choose to have a shorter implementation period and include the scheduling of items 4.1 through 4.3 as part of the regulatory commitments associated with this amendment request. Amendment requests that include commitments for implementation of the items in Section 4 within 6 months of the implementation of the revised TS will remain within the CLIIP.]

[Note 2—There may be some collateral changes to the TS as a result of the removal of the administrative controls section for PASS. The following paragraphs address three potential changes that the staff is aware of (editorial changes, mention of PASS as a potential leakage source outside containment, and revision of the bases section for post accident monitoring instrumentation].

(A) The elimination of the TS and other regulatory requirements for PASS would result in additional changes to TS such as [*e.g.,* the renumbering of sections or pages or the removal of references]. [If applicable: The elimination of PASS requirements requires the (elimination or modification) of Condition [2.C.x] in the operating license.] The changes are included in the licensee's application to revise the TS in order to take advantage of the CLIIP. The staff has reviewed the changes and agrees that the revisions are necessary due to the removal of the TS section on PASS. The changes do not revise technical requirements beyond that reviewed by the NRC staff in connection with the supporting topical reports or the preparation of the TS improvement incorporated into the CLIIP.

(B) The TS include an administrative requirement for a program to minimize to levels as low as practicable the leakage from those portions of systems outside containment that could contain highly radioactive fluids during a serious transient or accident. The program includes preventive maintenance, periodic inspections, and leak tests for the identified systems. PASS is specifically listed in TS [5.5.2] as falling under the scope of this requirement. The applicability of this specification depends on whether or not PASS is maintained as a system that is a potential leakage path. (Note that several options (see following) exist for handling the impact that eliminating PASS requirements would have on the specification for the program to control leakage outside containment.)

(i) The licensee has stated that a plant change will be implemented such that PASS will not be a potential leakage path outside containment for highly radioactive fluids (e.g., the PASS piping that penetrates the containment would be cut and capped). The modification will be made during the implementation period for this amendment such that it is appropriate to delete the reference to PASS in TS [5.5.2]. Requirements in NRC regulations (e.g., 10 CFR Part 50, Appendix J) and other TS provide adequate regulatory controls over the licensee's proposed modification to eliminate PASS as a potential leakage path.

(ii) The licensee has stated that a plant change might be implemented such that PASS would not be a potential leakage path outside containment for highly radioactive fluids (e.g., the PASS piping that penetrates the containment might be cut and capped). The modification will not, however, be made during the implementation period for this amendment. The licensee has proposed to add the following phrase to the reference to PASS in TS [5.5.2]: ''(until such time as a modification

eliminates the PASS penetration as a potential leakage path).''

The above phrase makes clear that TS [5.5.2] remains applicable to the PASS as long as it is a possible leakage path and reflects that the actual modification of the piping system may be scheduled beyond the implementation period for this amendment. Requirements in NRC regulations (10 CFR Part 50, Appendix J) and other TS provide adequate regulatory controls over the licensee's modification to eliminate PASS as a potential leakage path. Following the modification to eliminate PASS as a potential leakage path, the licensee may elect (in order to maintain clarity and simplicity of the requirement) to revise TS [5.5.2] to remove the reference to PASS, including the phrase added by this amendment.

(iii) The licensee has stated that the configuration of the PASS will continue to be a potential leakage path outside containment for highly radioactive fluids (e.g., the PASS piping will penetrate the containment with valves or other components in the system from which highly radioactive fluid could leak). The licensee has [not proposed to change TS (5.5.2) or has changed TS (5.5.2) to revise the reference to this system from PASS to ( )]. The staff agrees [that TS 5.5.2 is not affected or that the change to revise the reference from PASS to ( )] is acceptable. A separate amendment request will be required if the licensee, subsequent to this amendment, decides to modify the plant to eliminate this potential leakage path and proposes to change the requirements of TS (5.5.2)].

(C) [Note-optional section if licensee provides markup of affected Bases pages] The elimination of PASS affects the discussion in the Bases section for TS [3.3.3, ''Post Accident Monitoring Instrumentation'']. The current Bases mention the capabilities of PASS as part of the justification for allowing both hydrogen monitor channels to be out of service for a period of up to 72 hours. Although the licensee's application included possible wording for the revised Bases discussion for TS [3.3.3], the licensee will formally address the change to the Bases in accordance with [the Bases Control Program or its administrative procedure for revising Bases].

4.0 Verifications and Commitments

As requested by the staff in the notice of availability for this TS improvement, the licensee has addressed the following plant-specific verifications and commitments.

4.1 Each licensee should verify that it has, and make a regulatory commitment to maintain (or make a regulatory commitment to develop and maintain), contingency plans for obtaining and analyzing highly radioactive samples of reactor coolant, containment sump, and containment atmosphere.

The licensee has [verified that it has or made a regulatory commitment to develop] contingency plans for obtaining and analyzing highly radioactive samples from the RCS, containment sump, and containment atmosphere. The licensee has committed to maintain the contingency plans within its [specified document or program]. The licensee has [implemented this commitment or will implement this commitment by (specified date)].

4.2 Each licensee should verify that it has, and make a regulatory commitment to maintain (or make a regulatory commitment to develop and maintain), a capability for classifying fuel damage events at the Alert level threshold (typically this is 300 μCi/ml dose equivalent iodine). This capability may utilize the normal sampling system and/or correlations of sampling or letdown line dose rates to coolant concentrations.

The licensee has [verified that it has or made a regulatory commitment to develop] a capability for classifying fuel damage events at the Alert level threshold. The licensee has committed to maintain the capability for the Alert classification within its [specified document or program]. The licensee has [implemented this commitment or will implement this commitment by (specified date)].

4.3 Each licensee should verify that it has, and make a regulatory commitment to maintain (or make a regulatory commitment to develop and maintain), the capability to monitor radioactive iodines that have been released to offsite environs.

The licensee has [verified that it has or made a regulatory commitment to develop] the capability to monitor radioactive iodines that have been released to offsite environs. The licensee has committed to maintain the capability for monitoring iodines within its [specified document or program]. The licensee has [implemented this commitment or will implement this commitment by (specified date)].

The NRC staff finds that reasonable controls for the implementation and for subsequent evaluation of proposed changes pertaining to the above regulatory commitments are provided by the licensee's administrative processes, including its commitment management program. Should the licensee choose to incorporate a regulatory commitment into the emergency plan, final safety analysis report, or other document with established regulatory controls, the associated regulations would define the appropriate change-control and reporting requirements. The staff has determined that the commitments do not warrant the creation of regulatory requirements which would require prior NRC approval of subsequent changes. The NRC staff has agreed that NEI 99–04, Revision 0, ''Guidelines for Managing NRC Commitment Changes,'' provides reasonable guidance for the control of regulatory commitments made to the NRC staff. (See Regulatory Issue Summary 2000–17, Managing Regulatory Commitments Made by Power Reactor Licensees to the NRC Staff, dated September 21, 2000.) The commitments should be controlled in accordance with the industry guidance or comparable criteria employed by a specific licensee. The staff may choose to verify the implementation and maintenance of these commitments in a future inspection or audit.

5.0 State Consultation

In accordance with the Commission's regulations, the [ ] State official was notified of the proposed issuance of the amendments. The State official had [(1) no comments or (2) the following comments—with subsequent disposition by the staff].

6.0 Environmental Consideration

The amendments change a requirement with respect to the installation or use of a facility component located within the restricted area as defined in 10 CFR Part 20 and change surveillance requirements. The NRC staff has determined that the amendments involve no significant increase in the amounts and no significant change in the types of any effluents that may be released offsite, and that there is no significant increase in individual or cumulative occupational radiation exposure. The Commission has previously issued a proposed finding that the amendments involve no significant hazards consideration, and there has been no public comment on such finding (FR). Accordingly, the amendments meet the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Pursuant to 10 CFR 51.22(b) no environmental impact statement or environmental assessment need be prepared in connection with the issuance of the amendments.

7.0 Conclusion

The Commission has concluded, based on the considerations discussed above, that: (1) There is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) such activities will be conducted in compliance with the Commission's regulations, and (3) the issuance of the amendments will not be inimical to the common defense and security or to the health and safety of the public.

Model No Significant Hazards Consideration Determination

Description of Amendment Request: The proposed amendment deletes requirements from the Technical Specifications (and, as applicable, other elements of the licensing bases) to maintain a Post Accident Sampling System (PASS). Licensees were generally required to implement PASS upgrades as described in NUREG–0737, ''Clarification of TMI [Three Mile Island] Action Plan Requirements,'' and Regulatory Guide 1.97, ''Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident.'' Implementation of these upgrades was an outcome of the lessons learned from the accident that occurred at TMI, Unit 2. Requirements related to PASS were imposed by Order for many facilities and were added to or included in the technical specifications (TS) for nuclear power reactors currently licensed to operate. Lessons learned and improvements implemented over the last 20 years have shown that the information obtained from PASS can be readily obtained through other means or is of little use in the assessment and mitigation of accident conditions.

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on August 11, 2000 (65 FR 49271) on possible amendments to eliminate PASS, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on [ ] (65 FR). The licensee affirmed the applicability of the following NSHC determination in its application dated [ ].

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The PASS was originally designed to perform many sampling and analysis functions. These functions were designed and intended to be used in post accident situations and were put into place as a result of the TMI–2 accident. The specific intent of the PASS was to provide a system that has the capability to obtain and analyze samples of plant fluids containing potentially high levels of radioactivity, without exceeding plant personnel radiation exposure limits. Analytical results of these samples would be used largely for verification purposes in aiding the plant staff in assessing the extent of core damage and subsequent offsite radiological dose projections. The system was not intended to and does not serve a function for preventing accidents and its elimination would not affect the probability of accidents previously evaluated.

In the 20 years since the TMI–2 accident and the consequential promulgation of post accident sampling requirements, operating experience has demonstrated that a PASS provides little actual benefit to post accident mitigation. Past experience has indicated that there exists in-plant instrumentation and methodologies available in lieu of a PASS for collecting and assimilating information needed to assess core damage following an accident. Furthermore, the implementation of Severe Accident Management Guidance (SAMG) emphasizes accident management strategies based on in-plant instruments. These strategies provide guidance to the plant staff for mitigation and recovery from a severe accident. Based on current severe accident management strategies and guidelines, it is determined that the PASS provides little benefit to the plant staff in coping with an accident.

The regulatory requirements for the PASS can be eliminated without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. The elimination of the PASS will not prevent an accident management strategy that meets the initial intent of the post-TMI–2 accident guidance through the use of the SAMGs, the emergency plan (EP), the emergency operating procedures (EOP), and site survey monitoring that support modification of emergency plan protective action recommendations (PARs).

Therefore, the elimination of PASS requirements from Technical Specifications (TS) (and other elements of the licensing bases) does not involve a significant increase in the consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The elimination of PASS related requirements will not result in any failure mode not previously analyzed. The PASS was intended to allow for verification of the extent of reactor core damage and also to provide an input to offsite dose projection calculations. The PASS is not considered an accident precursor, nor does its existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radionuclides within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The elimination of the PASS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety. Methodologies that are not reliant on PASS are designed to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The use of a PASS is redundant and does not provide quick recognition of core events or rapid response to events in progress. The intent of the requirements established as a result of the TMI–2 accident can be adequately met without reliance on a PASS.

Therefore, this change does not involve a significant reduction in the margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested

change does not involve a significant hazards consideration.

Dated at Rockville, Maryland, this 25th day of October 2000.

For the Nuclear Regulatory Commission.

William D. Beckner,

Chief, Technical Specification Branch, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 00–27941 Filed 10–30–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guides; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment drafts of two new guides in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Draft Regulatory Guide DG–1102, ''Design, Inspection, and Testing Criteria for Air Filtration and Adsorption Units of Post-Accident Engineered-Safety-Feature Atmosphere Cleanup Systems in Light-Water-Cooled Nuclear Power Plants,'' as a proposed Revision 3 to Regulatory Guide 1.52, is being developed to describe methods acceptable to the NRC staff for complying with the NRC's regulations with regard to the design, inspection, and testing criteria for air filtration and iodine adsorption units of engineered-safety-feature atmosphere cleanup systems in light-water-cooled nuclear power plants. This guide applies only to post-accident atmosphere cleanup systems that are designed to mitigate the consequences of postulated accidents.

Draft Regulatory Guide DG–1103, ''Design, Inspection, and Testing Criteria for Air Filtration and Adsorption Units of Normal Ventilation Exhaust Systems in Light-Water-Cooled Nuclear Power Plants,'' as a proposed Revision 2 to Regulatory Guide 1.140, is being developed to present methods acceptable to the NRC staff for meeting the NRC's regulations with regard to the criteria for air filtration and adsorption units installed in the normal ventilation exhaust systems of light-water-cooled nuclear power plants.

These draft guides have not received complete staff approval and do not represent an official NRC staff position.

Comments may be accompanied by relevant information or supporting data. Written comments may be submitted to the Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Comments will be most helpful if received by December 29, 2000.

You may also provide comments via the NRC's interactive rulemaking website through the NRC home page (http://www.nrc.gov). This site provides the availability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905; e-mail *CAG@NRC.GOV.* Electronic copies of these draft guides, under Accession Numbers ML003714744 for DG–8026 and ML003714764 for DG–8027, are available in NRC's Public Electronic Reading Room, which can also be accessed through NRC's web site, <*WWW.NRC.GOV*>. For information about the draft guides, contact Mr. J. Segala at (301) 415–1858; e-mail JPS1@NRC.GOV.

Although a time limit is given for comments on these draft guides, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 11555 Rockville Pike, Rockville, MD. Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Reproduction and Distribution Services Section; or by fax to (301) 415–2289, or by email to <DISTRIBUTION@NRC.GOV>. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a)).

Dated at Rockville, Maryland, this 19th day of October 2000.

For the Nuclear Regulatory Commission.

Clare V. Kasputys,

Deputy Director, Program Management, Policy Development & Analysis Staff, Office of Nuclear Regulatory Research.

[FR Doc. 00–27939 Filed 10–30–00; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Cost of Hospital and Medical Care Treatment Furnished by the United States; Certain Rates Regarding Recovery From Tortiously Liable Third Persons

By virtue of the authority vested in the President by Section 2(a) of Public Law 87–693 (76 Stat. 593; 42 U.S.C. 2652), and delegated to the Director of the Office of Management and Budget by Executive Order No. 11541 of July 1, 1970 (35 FR 10737), the three sets of rates outlined below are hereby established. These rates are for use in connection with the recovery, from tortiously liable third persons, of the cost of hospital and medical care and treatment furnished by the United States (Part 43, Chapter I, Title 28, Code of Federal Regulations) through three separate Federal agencies. The rates have been established in accordance with the requirements of OMB Circular A–25, requiring reimbursement of the full cost of all services provided. The rates are established as follows:

1. Department of Defense

The FY 2001 Department of Defense (DoD) reimbursement rates for inpatient, outpatient, and other services are provided in accordance with Title 10, United States Code, section 1095. Due to size, the sections containing the Drug Reimbursement Rates (section IV.C.) and the rates for Ancillary Services Requested by Outside Providers (section IV.D.) are not included in this package. Those rates are available from the TRICARE Management Activity's Uniform Business Office website, *http://www.tricare.osd.mil/ebc/rm/rm__home.html.* The medical and dental service rates in this package (including the rates for ancillary services and other procedures requested by outside providers) are effective October 1, 2000. Pharmacy rates are updated on an as needed basis.

2. Health and Human Services

The FY 2001 tortiously liable rates for Indian Health Service health facilities are based on Medicare cost reports. The obligations for the Indian Health Service hospitals participating in the cost report

project were identified and combined with applicable obligations for area offices costs and headquarters costs. The hospital obligations were summarized for each major cost center providing medical services and distributed between inpatient and outpatient. Total inpatient costs and outpatient costs were then divided by the relevant workload statistic (inpatient day, outpatient visit) to produce the inpatient and outpatient rates. In calculation of the rates, the Department's unfunded retirement liability cost and capital and equipment depreciation costs were incorporated to conform to requirements set forth in OMB Circular A–25.

In addition, the obligations for each cost center include obligations from certain other accounts, such as Medicare and Medicaid collections and the Contract Health fund, that were used to support the inpatient and outpatient workload. Obligations were excluded for certain cost centers that primarily support workloads outside of the directly operated hospitals or clinics (public health nursing, public health nutrition, health education). These obligations are not a part of the traditional cost of hospital operations and do not contribute directly to the inpatient and outpatient visit workload.

Separate rates per inpatient day and outpatient visit were computed for Alaska and the rest of the United States. This gives proper weight to the higher cost of operating medical facilities in Alaska.

1. Department of Defense

For the Department of Defense, effective October 1, 2000 and thereafter:

Inpatient, Outpatient and Other Rates and Charges

1. Inpatient Rates[12]

Per inpatient day	International Military Education and Training (IMET)	Interagency and other Federal agency sponsored patients	Other (full/third party)
A. Burn Center	$4,144.00	$5,694.00	$6,016.00
B. Surgical Care Services (Cosmetic Surgery)	1,895.00	2,604.00	2,752.00
C. All Other Inpatient Services (Based on Diagnosis Related Groups (DRG)[3].			

Average FY01 Direct Care Inpatient Reimbursement Rates

Adjusted standard amount	IMET	Interagency	Other (full/third party)
Large Urban	$2,986.00	$5,712.00	$6,002.00
Other Urban/Rural	3,468.00	6,633.00	7,004.00
Overseas	3,872.00	9,045.00	9,489.00

2. Overview

The FY01 inpatient rates are based on the cost per DRG, which is the inpatient full reimbursement rate per hospital discharge weighted to reflect the intensity of the principal diagnosis, secondary diagnoses, procedures, patient age, etc. involved. The average cost per Relative Weighted Product (RWP) for large urban, other urban/rural, and overseas facilities will be published annually as an inpatient adjusted standardized amount (ASA) (see paragraph I.C.1., above). The ASA will be applied to the RWP for each inpatient case, determined from the DRG weights, outlier thresholds, and payment rules published annually for hospital reimbursement rates under the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) pursuant to 32 CFR 199.14(a)(1), including adjustments for length of stay (LOS) outliers. Each large urban or other urban/rural MTF providing inpatient care has their own ASA rate—The MTF-specific ASA rate is the published ASA rate adjusted for area wage differences and indirect medical education (IME) for the discharging hospital (see Attachment 1). The MTF-specific ASA rate submitted on the claim is the rate that payers will use for reimbursement purposes. For a more complete description of the development of MTF-ASAs and how they are applied refer to the ASA Primer at *http://www.tricare.osd.mil/org/pae/asa—primer/asa—primer1.html.*

Overseas MTFs use the rates specified in paragraph I. C. 1. For providers performing inpatient care at a civilian facility for a DoD beneficiary, see note 3. An example of how to apply DoD costs to a DRG standardized weight to arrive at DoD costs is contained in paragraph I.C.3., below.

3. Example of Adjusted Standardized Amounts for Inpatient Stays

Figure 1 shows examples for a non-teaching hospital (Reynolds Army Community Hospital) in an Other Urban/Rural area.

a. The cost to be recovered is the military treatment facility's cost for medical services provided. Billings will be at the third party rate.

b. DRG 020: Nervous System Infection Except Viral Meningitis. The RWP for an inlier case is the CHAMPUS weight of 2.2244. (DRG statistics shown are from FY 1999.)

c. The MTF-applied ASA rate is $6,831 (Reynolds Army Community Hospital's third party rate as shown in Attachment 1).

d. The MTF cost to be recovered is the RWP factor (2.2244) in subparagraph 3.b., above, multiplied by the amount ($6,831) in subparagraph 3.c., above.

e. Cost to be recovered is $15,195.

FIGURE 1.—THIRD PARTY BILLING EXAMPLES

DRG number	DRG description	DRG weight	Arithmetic mean LOS	Geometric mean LOS	Short stay threshold	Long stay threshold
020	Nervous System Infection Except Viral Meningitis.	2.2244	8.3	5.8	1	29

Hospital	Location	Area wage rate index	IME adjustment	Group ASA	MTF-applied ASA
Reynolds Army Community Hospital	Other urban/rural	.9156	1.0	$7,004	$6,831

Patient	Length of stay (days)	Days above threshold	Relative weighted product			TPC Amount***
			Inlier*	Outlier**	Total	
#1	7	0	2.2244	000	2.2244	$15,195
#2	21	0	2.2244	000	2.2244	$15,195
#3	35	6	2.2244	.7594	2.9838	$20,382

* DRG Weight
** Outlier calculation = 33 percent of per diem weight × number of outlier days
= .33 (DRG Weight/Geometric Mean LOS) × (Patient LOS—Long Stay Threshold)
= .33 (2.2244/5.8) × (35–29)
= .33 (.38352) × 6 (take out to five decimal places)
= .12656 × 6 (carry to five decimal places)
= .7594 (carry to four decimal places)
*** MTF-Applied ASA × Total RWP

II. OUTPATIENT RATES

[Per Visit [1,2]]

MEPRS code [4]	Clinical service	International military education and training (IMET)	Interagency and other federal agency sponsored patients	Other (full/third party)
	A. Medical Care:			
BAA	Internal Medicine	$147.00	$204.00	$216.00
BAB	Allergy	80.00	111.00	117.00
BAC	Cardiology	129.00	180.00	190.00
BAE	Diabetic	105.00	146.00	154.00
BAF	Endocrinology (Metabolism)	151.00	210.00	222.00
BAG	Gastroenterology	183.00	255.00	269.00
BAH	Hematology	286.00	398.00	420.00
BAI	Hypertension	216.00	301.00	318.00
BAJ	Nephrology	221.00	307.00	324.00
BAK	Neurology	165.00	229.00	242.00
BAL	Outpatient Nutrition	69.00	96.00	101.00
BAM	Oncology	201.00	280.00	295.00
BAN	Pulmonary Disease	186.00	259.00	273.00
BAO	Rheumatology	139.00	194.00	205.00
BAP	Dermatology	115.00	160.00	169.00
BAQ	Infectious Disease	181.00	252.00	266.00
BAR	Physical Medicine	115.00	160.00	169.00
BAS	Radiation Therapy	169.00	235.00	248.00
BAT	Bone Marrow Transplant	190.00	264.00	279.00
BAU	Genetic	330.00	460.00	485.00
BAV	Hyperbaric	344.00	480.00	506.00
	B. Surgical Care:			
BBA	General Surgery	215.00	299.00	316.00
BBB	Cardiovascular and Thoracic Surgery	419.00	584.00	616.00
BBC	Neurosurgery	249.00	347.00	366.00
BBD	Ophthalmology	130.00	181.00	191.00
BBE	Organ Transplant	1,106.00	1,541.00	1,625.00
BBF	Otolaryngology	149.00	207.00	219.00
BBG	Plastic Surgery	168.00	235.00	247.00
BBH	Proctology	125.00	174.00	184.00
BBI	Urology	164.00	228.00	240.00
BBJ	Pediatric Surgery	89.00	125.00	131.00
BBK	Peripheral Vascular Surgery	98.00	137.00	145.00
BBL	Pain Management	138.00	193.00	203.00
BBM	Vascular and Interventional Radiology	493.00	687.00	724.00
	C. Obstetrical and Gynecological (OB–GYN) Care:			
BCA	Family Planning	76.00	106.00	111.00

II. OUTPATIENT RATES—Continued

[Per Visit [1,2]]

MEPRS code [4]	Clinical service	International military education and training (IMET)	Interagency and other federal agency sponsored patients	Other (full/third party)
BCB	Gynecology	127.00	177.00	187.00
BCC	Obstetrics	104.00	144.00	152.00
BCD	Breast Cancer Clinic	240.00	334.00	352.00
	D. Pediatric Care:			
BDA	Pediatric	92.00	128.00	134.00
BDB	Adolescent	83.00	115.00	121.00
BDC	Well Baby	63.00	87.00	92.00
	E. Orthopaedic Care:			
BEA	Orthopaedic	143.00	200.00	211.00
BEB	Cast	89.00	123.00	130.00
BEC	Hand Surgery	76.00	106.00	112.00
BEE	Orthotic Laboratory	93.00	130.00	137.00
BEF	Podiatry	80.00	112.00	118.00
BEZ	Chiropractic	38.00	53.00	55.00
	F. Psychiatric and/or Mental Health Care:			
BFA	Psychiatry	165.00	230.00	242.00
BFB	Psychology	115.00	160.00	169.00
BFC	Child Guidance	92.00	128.00	135.00
BFD	Mental Health	148.00	206.00	217.00
BFE	Social Work	147.00	205.00	217.00
BFF	Substance Abuse	141.00	197.00	208.00
	G. Family Practice/Primary Medical Care:			
BGA	Family Practice	107.00	149.00	157.00
BHA	Primary Care	109.00	151.00	160.00
BHB	Medical Examination	111.00	155.00	163.00
BHC	Optometry	72.00	100.00	105.00
BHD	Audiology	52.00	73.00	77.00
BHE	Speech Pathology	122.00	170.00	180.00
BHF	Community Health	85.00	118.00	125.00
BHG	Occupational Health	108.00	151.00	159.00
BHH	TRICARE Outpatient	74.00	104.00	109.00
BHI	Immediate Care	161.00	225.00	237.00
	H. Emergency Medical Care:			
BIA	Emergency Medical	173.00	242.00	255.00
	I. Flight Medical Care:			
BJA	Flight Medicine	124.00	173.00	182.00
	J. Underseas Medical Care:			
BKA	Underseas Medicine	77.00	108.00	114.00
	K. Rehabilitative Services:			
BLA	Physical Therapy	56.00	79.00	83.00
BLB	Occupational Therapy	75.00	104.00	110.00

III. AMBULATORY PROCEDURE VISIT (APV)

[Per visit [5]]

MEPRS code [4]	Clinical service	International military education and training (IMET)	Interagency and other federal agency sponsored patients	Other (full/third party)
	Medical Care:			
BB	Surgical Care	$1,313.00	$1,829.00	$1,929.00
BE	Orthopaedic Care	1,664.00	2,319.00	2,446.00
All Other	B clinics other than BB and BE, to include those B clinics where: 1. There is an APU established within DoD guidelines AND— 2. There is a rate established for that clinic in section II. Some B clinics, such as BF, BI, BJ and BL, perform the type of services where the establishment of an APU would not be within appropriate clinical guidelines.	378.00	527.00	556.00

IV. Other Rates and Charges [1 2]

MEPRS code [4]	Clinical service	International military education and training (IMET)	Interagency and other federal agency sponsored patients	Other (full/third party)
	A. Per Each:			
FBI	Immunization	$22.00	$31.00	$32.00
	B. Family Member Rate: $11.45 (formerly Military Dependents Rate)			
	C. Reimbursement Rates For Drugs Requested By Outside Providers: [6 15]			
	D. Ancillary Services Requested by an Outside Provider—Per Procedure: [7 15]			
DB	Laboratory procedures requested by an outside provider CPT '00 Weight Multiplier.	15.00	22.00	23.00
DC, DI	Radiology procedures requested by an outside provider CPT '00 Weight Multiplier.	79.00	115.00	120.00
	E. Dental Rate—Per Procedure: [11]			
	Dental Services ADA code weight multiplier	73.00	112.00	117.00
	F. Ambulance Rate—Per Hour: [12]			
FEA	Ambulance	81.00	113.00	120.00
	G. AirEvac Rate—Per Trip (24 hour period): [13]			
	AirEvac Services—Ambulatory	339.00	473.00	499.00
	AirEvac Services—Litter	989.00	1,379.00	1,454.00
	H. Observation Rate—Per hour—[14]			
	Observation Services—Hour	20.00	28.00	30.00

V. Elective Cosmetic Surgery Procedures and Rates

Cosmetic surgery procedure	International classification diseases (ICD–9)	Current procedural terminology (CPT) [8]	FY 2001 Charge [9]	Amount of charge
Mammaplasty—augmentation	85.50	19325	Inpatient Surgical Care Per Diem or APV	(a) (b)
	85.32	19324		
	85.31	19318		
Mastopexy	85.60	19316	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate	(a) (b) (c)
Facial	86.82	15824	Inpatient Surgical Care Per Diem or APV	(a) (b)
Rhytidectomy	86.22			
Blepharoplasty	08.70	15820	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate	(a) (b) (c)
	08.44	15821		
		15822		
		15823		
Mentoplasty (Augmentation/or Reduction)	76.68	21208	Inpatient Surgical Care Per Diem APV or applicable Outpatient Clinic Rate	(a) (b) (c)
	76.67	21209		
Abdominoplasty	86.83	15831	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate	(a) (b) (c)
Lipectomy	86.83	15876	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate	(a) (b) (c)
Suction per region 10		15877		
		15878		
		15879		
Rhinoplasty	21.87	30400	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate	(a) (b) (c)
	21.86	30410		

V. ELECTIVE COSMETIC SURGERY PROCEDURES AND RATES—Continued

Cosmetic surgery procedure	International classification diseases (ICD–9)	Current procedural terminology (CPT) [8]	FY 2001 Charge [9]	Amount of charge
Scar Revisions beyond CHAMPUS	86.84	1578__	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate	([a]) ([b]) ([c])
Mandibular or Maxillary Repositioning	76.41	21194	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate	([a]) ([b]) ([c])
Dermabrasion	86.25	15780	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate	([a]) ([b]) ([c])
Hair Restoration	86.64	15775	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate	([a]) ([b]) ([c])
Removing Tattoos	86.25	15780	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate	([a]) ([b]) ([c])
Chemical Peel	86.24	15790	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate	([a]) ([b]) ([c])
Arm/Thigh: Dermolipectomy	86.83	15836/	Inpatient Surgical Care Per Diem or APV APV or applicable Outpatient Clinic Rate	([a]) ([b]) ([b]) ([c]) ([e])
Refractive surgery		15832		
Radial Keratotomy		65771		
Other Procedure (if applies to laser or other refractive surgery)		66999		
Otoplasty		69300	APV or applicable Outpatient Clinic Rate	([b]) ([c])
Brow Lift	86.3	15839	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate	([a]) ([b]) ([c])

Notes on Cosmetic Surgery Charges

[a] Per diem charges for inpatient surgical care services are listed in section I.B. (See notes 8 through 10, below, for further details on reimbursable rates.)

[b] Charges for ambulatory procedure visits (formerly same day surgery) are listed in section III. (See notes 8 through 10, below, for further details on reimbursable rates.) The ambulatory procedure visit (APV) rate is used if the elective cosmetic surgery is performed in an ambulatory procedure unit (APU).

[c] Charges for outpatient clinic visits are listed in sections II.A–K. The outpatient clinic rate is not used for services provided in an APU. The APV rate should be used in these cases.

[d] Charge is solely determined by the location of where the care is provided and is not to be based on any other criteria. An APV rate can only be billed if the location has been established as an APU following all required DoD guidelines and instructions.

[e] Refer to HA Policy on Vision Correction Via Laser Surgery For Non-Active Duty Beneficiaries, April 7, 2000 for further guidance on billing for these services. It can be downloaded from *http://www.tricare.osd.mil/policy/2000poli.htm.*

Notes on Reimbursable Rates

[1] Percentages can be applied when preparing bills for both inpatient and outpatient services. Pursuant to the provisions of 10 U.S.C. 1095, the inpatient Diagnosis Related Groups and inpatient per diem percentages are 98 percent hospital and 2 percent professional charges. The outpatient per visit percentages are 89 percent outpatient services and 11 percent professional charges.

[2] DoD civilian employees located in overseas areas shall be rendered a bill when services are performed.

[3] The cost per Diagnosis Related Group (DRG) is based on the inpatient full reimbursement rate per hospital discharge, weighted to reflect the intensity of the principal and secondary diagnoses, surgical procedures, and patient demographics involved. The adjusted standardized amounts (ASA) per Relative Weighted Product (RWP) for use in the direct care system is comparable to procedures used by the Health Care Financing Administration (HCFA) and the Civilian Health and Medical Program for the Uniformed Services (CHAMPUS). These expenses include all direct care expenses associated with direct patient care. The average cost per RWP for large urban, other urban/rural, and overseas will be published annually as an adjusted standardized amount (ASA) and will include the cost of inpatient professional services. The DRG rates will apply to reimbursement from all sources, not just third party payers.

MTFs without inpatient services, whose providers are performing inpatient care in a civilian facility for a DoD beneficiary, can bill payers the percentage of the charge that represents professional services as provided in [1] above. The ASA rate used in these cases, based on the absence of a ASA rate for the facility, will be based on the average ASA rate for the type of metropolitan statistical area the MTF resides, large urban, other urban/rural, or overseas. (see paragraph I.C.1.). The Uniform Business Office must receive documentation of care provided in order to produce a bill.

[4] The Medical Expense and Performance Reporting System (MEPRS) code is a three

digit code which defines the summary account and the sub account within a functional category in the DoD medical system. MEPRS codes are used to ensure that consistent expense and operating performance data is reported in the DoD military medical system. An example of the MEPRS hierarchical arrangement follows:

	MEPRS Code
Outpatient Care (Functional Category).	B.
Medical Care (Summary Account).	BA.
Internal Medicine (Subaccount)	BAA.

[5] Ambulatory procedure visit is defined in DoD Instruction 6025.8, ''Ambulatory Procedure Visit (APV),'' dated September 23, 1996, as immediate (day of procedure) pre-procedure and immediate post-procedure care requiring an unusual degree of intensity and provided in an ambulatory procedure unit (APU). An APU is a location or organization within an MTF (or freestanding outpatient clinic) that is specially equipped, staffed, and designated for the purpose of providing the intensive level of care associated with APVs. Care is required in the facility for less than 24 hours. All expenses and workload are assigned to the MTF-established APU associated with the referring clinic. The BB and BE APV rates are to be used only by clinics that are subaccounts under these summary accounts (see [4] for an explanation of MEPRS hierarchical arrangement). The All Other APV rate is to be used only by those clinics that are not a subaccount under BB or BE. In addition, APV rates may only be utilized for clinics where there is a clinic rate established. For example, BLC, Neuromuscular Screening, no longer has an established rate. Therefore, an APU can not be defined and an APV can not be billed for this clinic.

[6] Third party payers (such as insurance companies) shall be billed for prescription services when beneficiaries who have medical insurance obtain medications from a Military Treatment Facility (MTF) that are prescribed by providers external to the MTF (*e.g.,* physicians and dentists). Eligible beneficiaries (family members or retirees with medical insurance) are not liable personally for this cost and shall not be billed by the MTF. Medical Services Account (MSA) patients, who are not beneficiaries as defined in 10 U.S.C. 1074 and 1076, are charged at the ''Other'' rate if they are seen by an outside provider and only come to the MTF for prescription services. The standard cost of medications ordered by an outside provider includes the DoD-wide average cost of the drug, calculated by National Drug Code (NDC) number. The prescription charge is calculated by multiplying the number of units (*e.g.,* tablets or capsules) by the unit cost and adding $6.00 for the cost of dispensing the prescription. Dispensing costs include overhead, supplies and labor, etc. to fill the prescription.

The list of drug reimbursement rates is too large to include in this document. Those rates are available from the TRICARE Management Activity's Uniform Business Office website, *http://www.tricare.osd.mil/ebc/rm/rm__home.html.*

[7] The list of FY 2001 rates for ancillary services requested by outside providers and obtained at a Military Treatment Facility is too large to include in this document. Those rates are available from the TRICARE Management Activity's Uniform Business Office website, *http://www.tricare.osd.mil/ebc/rm/rm__home.html.*

Charges for ancillary services requested by an outside provider (*e.g.,* physicians and dentists) are relevant to the Third Party Collection Program. Third party payers (such as insurance companies) shall be billed for ancillary services when beneficiaries who have medical insurance obtain services from the MTF which are prescribed by providers external to the MTF. Laboratory and Radiology procedure costs are calculated by multiplying the DoD established weight for the Physicians' Current Procedural Terminology (CPT 00) code by either the laboratory or radiology multiplier (section IV.D.). Radiology procedures performed by Nuclear Medicine use the same methodology as Radiology for calculating a charge because their workload and expenses are included in the establishment of the Radiology multiplier.

Eligible beneficiaries (family members or retirees with medical insurance) are not personally liable for this cost and shall not be billed by the MTF. MSA patients, who are not beneficiaries as defined by 10 U.S.C. 1074 and 1076, are charged at the ''Other'' rate if they are seen by an outside provider and only come to the MTF for ancillary services.

[8] The attending physician is to complete the CPT 00 code to indicate the appropriate procedure followed during cosmetic surgery. The appropriate rate will be applied depending on the treatment modality of the patient: ambulatory procedure visit, outpatient clinic visit or inpatient surgical care services.

[9] Family members of active duty personnel, retirees and their family members, and survivors shall be charged elective cosmetic surgery rates. Elective cosmetic surgery procedure information is contained in section V. The patient shall be charged the rate as specified in the FY 2001 reimbursable rates for an episode of care. The charges for elective cosmetic surgery are at the full reimbursement rate (designated as the ''Other'' rate) for inpatient per diem surgical care services in section I.B., ambulatory procedure visits as contained in section III., or the appropriate outpatient clinic rate in sections II.A–K. The patient is responsible for the cost of the implant(s) and the prescribed cosmetic surgery rate. (Note: The implants and procedures used for the augmentation mammaplasty are in compliance with Federal Drug Administration guidelines.)

[10] Each regional lipectomy shall carry a separate charge. Regions include head and neck, abdomen, flanks, and hips.

[11] Dental service rates are based on a dental rate multiplied by the DoD established weight for the American Dental Association (ADA) code performed. For example, for ADA code 00270, bite wing single film, the weight is 0.15. The weight of 0.15 is multiplied by the appropriate rate, IMET, IAR, or Full/Third Party rate to obtain the charge. If the Full/Third Party rate is used, then the charge for this ADA code will be $17.55 ($117 × .15 = $17.55).

The list of FY 2001 ADA codes and weights for dental services is too large to include in this document. Those rates are available from the TRICARE Management Activity's Uniform Business Office website, *http://www.tricare.osd.mil/ebc/rm/rm_home.html.*

[12] Ambulance charges shall be based on hours of service in 15 minute increments. The rates listed in section IV.F. are for 60 minutes or 1 hour of service. Providers shall calculate the charges based on the number of hours (and/or fractions of an hour) that the ambulance is logged out on a patient run. Fractions of an hour shall be rounded to the next 15 minute increment (e.g., 31 minutes shall be charged as 45 minutes).

[13] Air in-flight medical care reimbursement charges are determined by the status of the patient (ambulatory or litter) and are per patient during a 24 hour period. The appropriate charges are billed only by the Air Force Global Patient Movement Requirement Center (GPMRC). These charges are only for the cost of providing medical care. Flight charges are billed by GPMRC separately.

[14] Observation Services are billed at the hourly charge. Begin counting when the patient is placed in the observation bed and round to the nearest hour. For example, if a patient has received one hour and 20 minutes of observation, then you bill for one hour of service. If the status of a patient changes to inpatient, the charges for observation services are added to the DRG assigned to the case and not separately billed. If a patient is released from observation status and is sent to an APV, the charges for observation services are not billed separately but are added to the APV rate to recover all expenses.

[15] Final rule 32 CFR part 220, published February 16, 2000, eliminated the dollar threshold for high cost ancillary services and the associated term ''high cost ancillary service.'' The phrase ''high cost ancillary service'' is replaced with the phrase ''ancillary services requested by an outside provider.'' The elimination of the threshold also eliminated the need to bundle costs whereby a patient is billed if the total cost of ancillary services in a day (defined as 0001 hours to 2400 hours) exceeds $25.00. The elimination of the threshold is effective as per date stated in final rule 32 CFR Part 220.

ATTACHMENT 1.—ADJUSTED STANDARDIZED AMOUNTS (ASA) BY MILITARY TREATMENT FACILITY

DMISID	MTF name	Serv	Full cost rate	Inter-agency rate	IMET rate	TPC rate
0003	Lyster AH—Ft. Rucker	A	$6,637	$6,286	$3,286	$6,637
0004	502nd Med Grp—Maxwell AFB	F	6,984	6,614	3,458	6,984
0005	Bassett ACH—Ft. Wainwright	A	7,152	6,774	3,541	7,152
0006	3rd Med Grp—Elmendorf AFB	F	7,041	6,668	3,486	7,041
0009	56th Med Grp—Luke AFB	F	5,986	5,697	2,978	5,986
0014	60th Med Grp—Travis AFB	F	9,912	9,387	4,907	9,912
0018	30th Med Grp—Vandenberg AFB	F	7,035	6,663	3,483	7,035
0019	95th Med Grp—Edwards AFB	F	7,004	6,633	3,468	7,004
0024	NH Camp Pendleton	N	7,614	7,245	3,787	7,614
0028	NH Lemoore	N	6,997	6,627	3,465	6,997
0029	NH San Diego	N	9,744	9,273	4,847	9,744
0030	NH Twenty Nine Palms	N	6,111	5,815	3,039	6,111
0032	Evans ACH—Ft. Carson	A	6,946	6,578	3,439	6,946
0033	10th Med Grp—USAF Academy	F	6,994	6,623	3,463	6,994
0037	Walter Reed AMC— Washington DC	A	9,010	8,574	4,482	9,010
0038	NH Pensacola	N	8,939	8,465	4,426	8,939
0039	NH Jacksonville	N	7,537	7,173	3,749	7,537
0042	96th Med Grp—Eglin AFB	F	8,309	7,869	4,114	8,309
0043	325th Med Grp—Tyndall AFB	F	7,002	6,631	3,467	7,002
0045	6th Med Grp—MacDill AFB	F	5,991	5,702	2,980	5,991
0047	Eisenhower AMC—Ft. Gordon	A	8,550	8,098	4,233	8,550
0048	Martin ACH—Ft. Benning	A	7,987	7,564	3,954	7,987
0049	Winn ACH—Ft. Stewart	A	6,644	6,292	3,289	6,644
0052	Tripler AMC—Ft. Shafter	A	9,533	9,029	4,720	9,533
0053	366th Med Grp—Mountain Home AFB	F	6,982	6,612	3,457	6,982
0055	375th Med Grp—Scott AFB	F	7,625	7,256	3,793	7,625
0056	NH Great Lakes	N	6,063	5,770	3,016	6,063
0057	Irwin AH—Ft. Riley	A	6,521	6,176	3,229	6,521
0060	Blanchfield ACH—Ft. Campbell	A	6,605	6,255	3,270	6,605
0061	Ireland ACH—Ft. Knox	A	6,829	6,467	3,381	6,829
0064	Bayne-Jones ACH—Ft. Polk	A	6,573	6,225	3,254	6,573
0066	89th Med Grp—Andrews AFB	F	8,062	7,672	4,010	8,062
0067	NNMC Bethesda	N	9,786	9,313	4,868	9,786
0073	81st Med Grp—Keesler AFB	F	8,772	8,308	4,343	8,772
0075	Wood ACH—Ft. Leonard Wood	A	6,539	6,193	3,237	6,539
0078	55th Med Grp—Offutt AFB	F	8,697	8,236	4,306	8,697
0079	99th Med Grp—Nellis AFB	F	6,002	5,712	2,986	6,002
0083	377th Med Grp—Kirtland AFB	F	6,971	6,602	3,452	6,971
0084	49th Med Grp—Holloman AFB	F	7,004	6,633	3,468	7,004
0086	Keller ACH—West Point	A	7,296	6,909	3,612	7,296
0089	Womack AMC—Ft. Bragg	A	7,817	7,403	3,870	7,817
0091	NH Camp LeJeune	N	6,744	6,387	3,339	6,744
0092	NH Cherry Point	N	6,788	6,429	3,361	6,788
0093	319th Med Grp—Grand Forks AFB	F	7,032	6,660	3,482	7,032
0094	5th Med Grp—Minot AFB	F	6,857	6,494	3,395	6,857
0095	74th Med Grp—Wright-Patterson AFB	F	10,371	9,822	5,135	10,371
0096	72nd Med Grp—Tinker AFB	F	6,001	5,711	2,985	6,001
0097	97th Med Grp—Altus AFB	F	6,976	6,607	3,454	6,976
0098	Reynolds ACH—Ft. Sill	A	6,831	6,469	3,382	6,831
0100	NH Newport	N	6,002	5,712	2,986	6,002
0101	20th Med Grp—Shaw AFB	F	6,964	6,595	3,448	6,964
0103	NH Charleston	N	6,879	6,514	3,406	6,879
0104	NH Beaufort	N	6,871	6,507	3,402	6,871
0105	Moncrief ACH—Ft. Jackson	A	6,961	6,592	3,446	6,961
0106	28th Med Grp—Ellsworth AFB	F	6,939	6,572	3,436	6,939
0108	Wm Beaumont AMC—Ft. Bliss	A	8,329	7,888	4,124	8,329
0109	Brooke AMC—Ft. Sam Houston	A	8,511	8,099	4,233	8,511
0110	Darnall AH—Ft. Hood	A	8,606	8,151	4,261	8,606
0112	7th Med Grp—Dyess AFB	F	6,892	6,528	3,413	6,892
0113	82nd Med Grp—Sheppard AFB	F	6,903	6,537	3,418	6,903
0117	59th Med Wing—Lackland AFB	F	8,640	8,222	4,297	8,640
0119	75th Med Grp—Hill AFB	F	5,983	5,693	2,976	5,983
0120	1st Med Grp—Langley AFB	F	5,954	5,666	*2,962*	5,954
0121	McDonald ACH—Ft. Eustis	A	5,649	5,376	2,810	5,649
0123	Dewitt AH—Ft. Belvoir	A	8,237	7,839	4,097	8,237
0124	NH Portsmouth	N	7,469	7,107	3,715	7,469
0125	Madigan AMC—Ft. Lewis	A	11,018	10,435	5,455	11,018
0126	NH Bremerton	N	8,165	7,733	4,043	8,165
0127	NH Oak Harbor	N	6,283	5,979	3,125	6,283
0129	90th Med Grp—F.E. Warren AFB	F	6,989	6,619	3,460	6,989

ATTACHMENT 1.—ADJUSTED STANDARDIZED AMOUNTS (ASA) BY MILITARY TREATMENT FACILITY—Continued

DMISID	MTF name	Serv	Full cost rate	Inter-agency rate	IMET rate	TPC rate
0131	Weed ACH—Ft. Irwin	A	7,003	6,633	3,467	7,003
0449	24th Med Grp—Howard	F	9,489	*9,045*	3,872	9,489
0606	95th CSH—Heidelberg	A	9,489	9,045	3,872	9,489
0607	Landstuhl Rgn MC	A	9,489	9,045	3,872	9,489
0609	67th CSH—Wurzburg	A	9,489	9,045	3,872	9,489
0612	121st Gen Hosp—Seoul	A	9,489	9,045	3,872	9,489
0615	NH Guantanamo Bay	N	9,489	9,045	3,872	9,489
0616	NH Roosevelt Roads	N	9,489	9,045	3,872	9,489
0617	NH Naples	N	9,489	9,045	3,872	9,489
0618	NH Rota	N	9,489	9,045	3,872	9,489
0620	NH Guam	N	9,489	9,045	3,872	9,489
0621	NH Okinawa	N	9,489	9,045	3,872	9,489
0622	NH Yokosuka	N	9,489	9,045	3,872	9,489
0623	NH Keflavik	N	9,489	9,045	3,872	9,489
0624	BH Sigonella	N	9,489	9,045	3,872	9,489
0633	48th Med Grp—RAF Lakenheath	F	9,489	*9,045*	*3,872*	*9,489*
0635	39th Med Grp—Incirlik AB	F	9,489	*9,045*	*3,872*	*9,489*
0638	51st Med Grp—Osan AB	F	9,489	9,045	3,872	9,489
0639	35th Med Grp—Misawa	F	9,489	9,045	3,872	9,489
0640	374th Med Grp—Yokota AB	F	9,489	9,045	3,872	9,489
0805	52nd Med Grp—Spangdahlem	F	9,489	9,045	3,872	9,489
0808	31st Med Grp—Aviano	F	9,489	9,045	3,872	9,489

2. Department of Health and Human Services

For the Department of Health and Human Services, Indian Health Service, effective October 1, 2000 and thereafter:

Hospital Care Inpatient Day

General Medical Care

Alaska—$1,837
Rest of the United States—$1,357

Outpatient Medical Treatment

Outpatient Visit

Alaska—$337
Rest of the United States—$189

For the period beginning October 1, 2000, the rates prescribed herein superceded those established by the Director of the Office of Management and Budget, November 1, 1999 (64 FR 58862).

Jacob J. Lew,

Director, Office of Management and Budget.

[FR Doc. 00–27726 Filed 10–30–00; 8:45 am]

BILLING CODE 3110–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (CyberSentry, Inc., Common Stock, $.001 Par Value) File No. 1–15871

October 25, 2000.

CyberSentry, Inc., a Delaware corporation (''Company''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.001 par value (''Security''), from listing and registration on the American Stock Exchange LLC (''Amex'').

The Amex halted trading in the Security on September 8, 2000, because of concerns about the company's ability to meet the Amex's continued listing maintenance requirements. As a result of preliminary discussions held with the Amex, the Company determined to voluntarily withdraw its Security from listing and registration on the Amex and to arrange for its quotation in the unlisted over-the-counter market. As of the date on which the Company filed its application with the Commission, the Company had not effected a new listing or quotation for its Security. The Company has stated in its application that its Board of Directors has authorized the Company to take actions necessary to become quoted in the unlisted over-the-counter market.

The Company has stated in its application that it has complied with the rules of the Amex governing the withdrawal of its Security and that its application relates solely to the withdrawal of the Security from listing and registration on the Amex and shall have no effect upon the Security's continued registration under section 12(g) of the Act.[3]

Any interested person may, on or before November 16, 2000, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the commission, by the Division of Market Regulation, pursuant to delegated authority. [4]

Jonathan K. Katz,

Secretary.

[FR Doc. 00–27912 Filed 10–03–00; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(g).

[4] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27260]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

October 24, 2000.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by November 20, 2000, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After November 20, 2000, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

GPU, Inc., et al. (70–7727)

GPU, Inc. (''GPU''), a registered holding company located at 300 Madison Avenue, Morristown, New Jersey 07960, GPU International, Inc. (''GPUI''), a non-utility subsidiary of GPU, and its nonutility subsidiaries Elmwood Energy Corporation, Geddes II Corporation, Geddes Cogeneration Corporation, EI Selkirk, Inc., EI Canada Holding Limited, EI Services Canada Limited, EI Brooklyn Power Limited, NCP Energy, Inc., NCP Lake Power Inc., NCP Gem, Inc., Lake Investment, L.P., NCP Pasco, Inc., NCP Dade Power, Inc., Dade Investment, L.P., NCP Houston Power, Inc., NCP Perry Inc., NCP New York Inc., GPU Generation Services—Pasco, Inc., GPU Generation Services—Lake, Inc., GPUI Lake Holdings, Inc., EI Fuels Corporation, EI Services, Inc., NCP Ada Power, Inc., NCP Commerce Power, Inc., Umatilla Groves, Inc., NCP Brooklyn Power, Inc., Armstrong Energy Corporation, GPU Power, Inc., Guaracachi America, Inc., EI Barranquilla, Inc., Barranquilla Lease Holdings, Inc., EI International, Los Amigos Leasing Company, Ltd., GPUI Colombia, Ltda., International Power Advisors, Inc., Hanover Energy Corporation, Austin Cogeneration Corporation, Austin Cogeneration Partners, L.P., GPU Power Philippines, GPU International Asia, Inc., GPU Power Ireland, Inc., EI Brooklyn Investments Limited, and GPU Mississippi Energy, Inc., all located at One Upper Pond Road, Parsippany, New Jersey 07054, have filed a post-effective amendment under sections 6(a), 7, 12(b), 32, and 33 of the Act and rule 45(a) under the Act to a previously filed application-declaration.

By orders dated November 16, 1995 (HCAR No. 26409), June 14, 1995 (HCAR No. 26307), December 28, 1994 (HCAR 26205), September 12, 1994 (HCAR No. 26123), December 18, 1992 (HCAR No. 25715), and June 26, 1990 (HCAR No. 25108) (collectively, ''Prior Orders''), GPUI is authorized to engage in preliminary project development and administrative activities (''Project Activities'') for its investments in qualifying facilities, exempt wholesale generators (''EWGs''), and foreign utility companies (''FUCOs''). Under the terms of the Prior Orders, GPU is authorized to provide guarantees and other forms of credit support in connection with the obligations of GPUI or its subsidiaries, guarantee the securities and other obligations of EWGs and FUCOs, and assume the liabilities of these entities (collectively, ''GPU Authority''). The GPU Authority is for an aggregate amount of up to $500 million.

By order dated December 22, 1997 (HCAR No. 26802) (''1997 Order''), GPUI is authorized to provide guarantees and assume liabilities of EWGs and FUCOs (collectively, ''GPUI Authority'') in an aggregate amount of up to $150 million (''GPUI Limit''). In addition, GPUI subsidiaries that are not EWGs or FUCOs are authorized, under the terms of the 1997 Order, to guarantee obligations of their direct or indirect subsidiaries (''GPUI Subsidiaries' Authority''). The GPUI Authority and the GPUI Subsidiaries' Authority are for guarantees and other credit support arrangements not exempt under rules 45 and 52 under the Act, and the GPUI Subsidiaries' Authority is subject to the GPUI Limit.

The GPU Authority, GPUI Authority, and GPUI Subsidiaries' Authority (collectively, ''Previous Authorizations'') expire on December 31, 2000. Applicants request that the Commission extend the duration of the Previous Authorizations through June 30, 2004.

American Electric Power Co., et al. (70–8205)

American Electric Power Company, Inc. (''AEP''), a registered holding company, Central and South West Corporation (''CSW''), a registered holding company that is a wholly owned subsidiary of AEP, and CSW Energy, Inc. (''CSW Energy''), a wholly owned non-utility subsidiary of CSW, all located at 1 Riverside Plaza, Columbus, Ohio 43215, have filed a post-effective amendment to their application under section 12(b) of the Act and rule 45(a) under the Act.

By order dated November 28, 1995 (HCAR No. 26416), the Commission authorized CSW and CSW Energy to issue letters of credit, bid bonds or guarantees (collectively, ''Guarantees'') in connection with the development of qualifying cogeneration facilities, qualifying small power production facilities and independent power facilities (''Facilities''), including exempt wholesale generators as defined in section 32(e) of the Act, in an aggregate amount not to exceed $75 million (''Guarantee Limit'').

Applicants now request authority to issue Guarantees through March 31, 2006 in amounts that would not, in the aggregate, exceed the Guarantee Limit. Applicants state that this expanded authority is necessary to enable AEP, CSW, CSW Energy and other AEP subsidiaries to continue and to diversify the development program with respect to Facilities.

GPU, Inc., et al. (70–8593)

GPU, Inc. (''GPU''), a registered holding company, its nonutility subsidiaries GPU Service, Inc., GPU Capital, Inc., GPU Electric, Inc., Victoria Electric Holdings, Inc., El UK Holdings, Inc., Avon Energy Partners Holdings, Avon Energy Partners plc, GPU Australia Holding, Inc., Austran Holdings, Inc., VicGas Holdings, Inc., GPU Argentina Holdings, Inc., GPU Argentina Services Ltd., GPU International Australia Pty Ltd., and GPU Brasil, Inc., all located at 300 Madison Avenue, Morristown, New Jersey 07960; GPU's public utility subsidiaries, Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company (collectively, ''Applicants''), whose mailing address is P.O. Box 16001, Reading, Pennsylvania 19640; and GPU International, Inc., El Services, Inc., Geddes II Corporation, Geddes Cogeneration Corporation, El Selkirk,

Inc., El Canada Holding Limited, El Brooklyn Power Limited, El Services Canada Limited, NCP Houston Power, Inc., NCP Perry, Inc., GPU Power, Inc., Guaracachi America, Inc., El Barranquilla, Inc., Barranquilla Lease Holdings, Inc., El International, Los Amigos Leasing Company, Ltd., GPUI Colombia, Ltda., International Power Advisors, Inc., Hanover Energy Corporation, Austin Cogeneration Corporation, Austin Cogeneration Partners, L.P., GPU Power Philippines, GPU International Asia, Inc., and GPU Power Ireland, Inc., all nonutility subsidiaries of GPU, all located at One Upper Pond Road, Parsippany, New Jersey 07960, have filed a post-effective amendment under sections 6(a), 7, 9(a), 10, 12, 32, and 33 of the Act and rules 43, 45, and 54 under the Act to a previously filed declaration-application.

GPU is currently authorized by order dated December 22, 1997 (HCAR No. 26800) (''Prior Order'') to finance investments, through December 31, 2000 (''Authorization Period''), of up to 100% of its consolidated retained earnings in exempt wholesale generators and foreign utility companies (collectively, ''Exempt Entities''),[1] and in other subsidiaries that are not Exempt Entities, but are exclusively engaged, directly or indirectly, in the business of owning and holding ownership interests in Exempt Entities and of engaging in related project development activities (''Project Parents'').[2] The Commission also authorized Project Parents in the Prior Order to guarantee or assume liabilities with respect to securities issued by, or other obligations of, their direct or indirect subsidiaries through the Authorization Period,[3] to the extent these guarantees are not exempt under rules 45 and 52 under the Act, in an aggregate amount outstanding at any one time not to exceed $1 billion.

Applicants seek to extend the Authorization Period to engage in these transactions until June 30, 2003.

[1] Investments in Exempt Entities may take the form of: guarantees of indebtedness or other obligations of Exempt Entities; assumptions of liability of Exempt Entities; and guarantees and letter of credit reimbursement agreements in support of equity contribution obligations or otherwise in connection with project development activities of Exempt Entities.

[2] Investments in Project Parents may take the form of cash capital contributions or open account advances; promissory notes; guarantees of the principal of or interest on promissory notes or other evidence of indebtedness or obligations of a Project Parent; undertakings to contribute equity to a Project Parent; and assumptions of a Project Parent's liability.

[3] These guarantees include support instruments or bank letter of credit reimbursement agreements or similar instruments or undertakings.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–27859 Filed 10–30–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of October 30, 2000.

A closed meeting will be held on Thursday, November 2, 2000 at 11 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(A) and (10), permit consideration for the scheduled matters at the closed meeting.

The subject matters of the closed meeting scheduled Thursday, November 2, 2000 will be:

- Institution and settlement of injunctive actions; and
- Institution and settlement of administrative proceedings of an enforcement nature

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, mattes have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: October 25, 2000.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–27987 Filed 10–27–00; 11:13 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43468; File No. SR–Amex–00–23]

Self Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Relating to Member Firm Transactions With Exchange Employees

October 20, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19B–4 thereunder,[2] notice is hereby given that on April 13, 2000, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission or SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On September 25, 2000, the Amex filed Amendment No. 1 to the proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change.

The Exchange is proposing to amend Amex rules relating to member firm transactions with Exchange employees. proposed new language is *italicized*, proposed deletions are in brackets.

* * * * *

Rule 416. [Accounts of Employees of Exchange and Members]

Member Employee Transactions with Another Member Organization

No member or member organization shall open a cash or margin account or execute any transaction in securities or commodities in which an employee of [the Exchange or of any corporate subsidiary of the Exchange or of any] *another* is directly or indirectly interested without the prior written consent of the employer. Where such prior consent has been obtained, duplicate confirmations and account statements shall be sent to the employer.

Commentary

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Letter from Bruce Ferguson, Associate General Counsel, Legal & Regulatory policy, Amex, to Jack Drogin, Assistant Director, Division of Market Regulation, Commission, September 25, 2000 (''Amendment No. 1''). Amendment No. 1 made a revision to the text of Amex Rule 417(c) to remove a specific reference to the Code of Conduct of the National Association of Securities Dealers, Inc. (''NASD'').

[.01 Employees of Exchange—An employee of the Exchange, who wishes to open a securities or commodities account shall apply for permission from the Human Resources Department of the Exchange.]

[.02] *.01* The requirement to send duplicate conformations and statements shall be as stated in Commentary .02 to Rule 415.

Amendments.
March 3, 1954.
December 9, 1993.
May 16, 1995.

* * * * *

Rule 15. Loans by [Exchange Officers] *Members*

Without the prior approval of the Board of Governors, *(i) no member, member organization, approved person, employee or any employee or any employee pension, retirement or similar plan of any member organization (''Member'') shall directly or indirectly make any loan of money or securities to, or obtain any such loan from, any member of the Board of Governors, any member of any committee of the Exchange, or any Trustee of the Gratuity Fund (''Designated Person'') and (ii)* no [member of the Board of Governors or of any committee of the Exchange, no Trustee of the Gratuity Fund and no officer or employee of the Exchange] *Such Designated Person* shall directly or indirectly make any *such* loan [of money or securities] to, or obtain any such loan form, any [member, member organization, approved person, employee or any employee pension, retirement or similar plan of any member organization] *Member,* unless such loan be:

(a) Fully secured by readily marketable collateral, or

(b) Made by a Governor, committee member of Trustee to, or obtained by a Governor, committee member or Trustee from, the member organization of which he is a member or employee or a member or employee therein or a party to a registered joint account in which such Governor, committee member or Trustee participates.

Amendments.
September 6, 1962.
June 1, 1970.

* * * * *

[Rule 348. Gratuities to Employees of Exchange]

[No member or member organization may, without the prior written approval of the Exchange, employ or give any compensation or gratuity to any employee of the Exchange or any employee of any corporate subsidiary of the Exchange.]

[Amendment.
July 29, 1965, effective August 16, 1965.]

[Commentary]

[.01 Gratuity Defined.—A gratuity is a gift of any nature. Pursuant to Exchange policy, however, gratuities valued at $50 or less in total to any one person during a calendar year are considered an exception to Rule 348, and prior written approval of the Exchange is not required.]

[.02 Records.—Records must be retained by members and member organizations as to any gratuity as required by Commentary 2 to Rule 347 above.]

[.03 Obtaining Written Approval.—Requests for approval of any employment or gratuity under Rule 348 should be directed to the Secretary's Office.]

[Amendments.
Adopted July 29, 1965, effective August 16, 1965.
December 14, 1977.]

* * * * *

Rule 417. Transactions Involving Exchange Employees

(a) When a member or member organization has actual notice that an Exchange employee has a financial interest in, or controls trading in, an account, the member or member organization shall promptly obtain and implement an instruction from the Exchange employee directing that duplicate account statements be provided by the member or member organization to the Exchange.

(b) No member or member organization shall directly or indirectly make any loan of money or securities to any Exchange employee; provided, however, that this prohibition does not apply to loans made in the context of disclosed, routine banking and brokerage agreements, or loans that are clearly motivated by a personal or family relationship.

(c) No member or member organization shall directly or indirectly give, or permit to be given, anything of more than nominal value to any Exchange employee who has responsibility for a regulatory matter that involves the member or member organization. For purposes of this subsection, the term ''regulatory matter'' includes, but is not limited to, examinations, disciplinary proceedings, membership applications, listing applications, delisting proceedings, and dispute resolution proceedings that involve the member or member organization. Members and member organizations may not otherwise give business gifts or courtesies to Exchange employees other than to the extent Exchange employees are permitted to accept such gifts and courtesies under the Code of Conduct applicable to Exchange employees. Records of all gifts and courtesies shall be kept and retained by the member or member organization for the period specified in SEC Rule 17a–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 Exchange 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. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In 1998, the Amex completed a transaction pursuant to which it joined the family of companies headed by the NASD. The American Stock Exchange, Inc. transferred substantially all of its assets and liabilities to the American Stock Exchange LLC, a new limited liability company controlled by the NASD.[4] The Exchange therefore proposes to amend its rules relating to member firm transactions with Exchange employees so that they conform with the NASD Code of Conduct. Specifically, the Exchange proposes to amend Amex Rule 15 (Loans by Exchange Officers) and Amex rule 416 (Accounts of Employees of Exchange and Members), to delete Amex Rule 348 (Gratuities to Employees of Exchange), and to add new Amex Rule 417 (Transactions Involving Exchange Employees).[5]

a. Member Loans to Exchange Employees. The NASD and Amex employees from accepting loans from members, issuers, or any person with whom the NASD or Amex transacts

[4] *See* Letter, from James F. Duffy, Executive Vice President and General Counsel, Legal and Regulatory Policy, Amex, to Lori Richards, Director, Office of Compliance Inspections and Examinations (''OCIE''), Commission, February 5, 1999.

[5] The NASD has filed a proposed rule change to adopt a new rule very similar to new Amex Rule 471 (SR–NASD–00–50).

business.[6] Amex Rule 15 also prohibits Exchange employees from accepting loans from members without prior written approval of the Exchange, but does not specifically prohibit members from making those loans to Exchange employees.

The SEC staff has recommended that the Amex adopt a rule expressly prohibiting members from making loans to Amex employees, outside routine brokerage or banking relationships.[7] The SEC's recommendation resulted from an OCIE examination of the ethical conduct and conflicts of interest rules, policies, and procedures of the Exchange. The SEC staff report noted a 1996 incident in which an Amex member made a $70,000 loan to an Amex floor employee. When the Amex through its own internal procedures became aware of the loan, it promptly terminated the employees for violating its conflict of interest policies in accepting the loan. The SEC staff has stated that rules of self-regulatory organizations (''SROs'') should explicitly prohibit SRO members from extending loans to SRO employees.[8]

The Amex therefore proposes to amend Amex Rule 15 to expressly provide that no member shall make a loan to an Exchange employee without prior approval of the Amex Board of Governors. Paragraph (b) of new Amex Rule 417(b) would prohibit members from making loans to Exchange employees outside of disclosed, routine banking and brokerage agreements. Consistent with existing Code of Conduct provisions, the prohibition on member loans to Exchange employees in new Amex Rule 417(b) would not apply to loans that are clearly motivated by a family or personal relationship. Thus, for example, a registered representative would not be precluded from making a personal loan to an adult child who works at the Amex.

b. Brokerage Accounts of Exchange Employees. The NASD Code of conduct requires disclosure of all security and commodity accounts that an employee maintains and accounts in which an employee has a financial interest or controls trading.[9] Employees are required to instruct the institutions where such accounts are maintained to provide duplicate account statements (but not confirmations) to the NASD Office of General Counsel, which records transaction information in a database. The database can generate certain types of exception reports (i.e., reports of apparent Code violations). These reports are forwarded to department heads for follow-up action.

Commentary .01 to Amex Rule 416 currently requires members to obtain the Exchange's prior written approval before opening an account for an Exchange employees and to provide duplicate confirmations and statements to the Exchange. To conform Amex rules to the NASD Code of Conduct, the Exchange approval requirement for the opening of accounts and the requirement to furnish duplicate confirmations are being deleted. The requirements to provide duplicate statements to the Exchange is being retained. The Amex also proposes to adopt new Amex Rule 417(a), which provides that when a member has actual notice that an Exchange employee has a financial interest in an account or controls trading in an account, duplicate account statements shall be provided by the member to the Exchange.

The Amex believes that the elimination of the Amex approval requirement for the opening of employee accounts will substantially lessen the NASD's administrative burden with respect to these accounts. The Amex represents that the proposed rule change will simply require employees to obtain a duplicate instruction form (available on OASIS, the NASD's Intranet), complete and sign the form, and provide it to the broker/dealer at which the employee has, or wishes to open, an account. The provision of duplicate statements by the member would allow the NASD to then properly monitor trading in employee accounts.

c. Member Gifts to Exchange Employees. Currently under Amex Rule 348, Amex members must obtain approval from the Corporate Secretary's Office before giving an Exchange employee gifts valued at over $50 per year. The Secretary's Office does not approve gifts that exceed the $50 threshold for employees in the Exchange's Member Firm Regulation area.

There is no pre-approval mechanism under the NASD Code of Conduct.[10] Employees are prohibited from accepting any business gifts, including cash or cash equivalents (e.g., gift certificates) and gifts of tickets (e.g., tickets to a sporting event), from any NASD or Amex member, Nasdaq or Amex issuer, or any person or entities that are involved in any matter in which the employee is involved.[11] Where gifts are permissible, they may not exceed $100 in aggregate value from a single source during a calendar year. All gifts, regardless of value, must be reported.[12] At least once each quarter, department heads are required to review all gifts reported by their staffs.[13]

To conform Amex rules to the NASD Code of Conduct, Amex Rule 348 (Gratuities to Employees of Exchange) will be deleted and replaced with new Amex Rule 417(c), a provision that parallels the NASD Code of Conduct. Under paragraph (c) of new Amex Rule 417, members are permitted to give non-cash business gifts with an aggregate annual value of $100 to Exchange employees when no conflict of interest exists, but members are prohibited from giving business gifts or courtesies of more than nominal value to any Exchange employee who has responsibility for a specific regulatory matter that involves the member. A ''regulatory matter'' would include such matters as examinations, disciplinary proceedings, membership applications, listing applications, delisting proceedings, and dispute resolution proceedings involving the member. The proposed rule would permit members to give items of nominal value to employees responsible for regulatory matters affecting the member. The Amex represents that, for example, a member would be permitted to offer minor refreshments, such as a soft drink or coffee, to Amex employees conducting an on-site examination.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[14] in general, and furthers the objectives of section 6(b)(5)[15] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices.

B. Self-Regulatory Organization's Statement on Burden or Competition

C. Self-Regulatory Organizations Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange did not solicit or receive written comments on the proposed rule change.

[6] NASD Code of Conduct, Section IX, Paragraph C.3.

[7] *See* Letter from Lori Richards, Director, OCIE, Commission, to Richard Syron, Chairman and Chief Executive Officer, Amex, November 6, 1998.

[8] *Id.*

[9] NASD Code of Conduct, Section VIII, Paragraph C.

[10] NASD Code of Conduct, Section IX, Paragraph B.1.

[11] NASD Code of Conduct, Section IX, Paragraph C.

[12] NASD Code of Conduct, Section IX, Paragraph B.1.

[13] NASD Code of Conduction, Section IX, Interpretation 3.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 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 90 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 Exchange 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, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. 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 at the Commission's Public Reference Room.

Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–00–23 and should be submitted by November 21, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. [16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–27860 Filed 10–30–00; 8:45 am]

BILLING CODE 8010–01–M

[1] 17 CFR 200.30–3(a)(12).

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Industry Functional Advisory Committee for Customs Matters (IFAC–1)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of meeting.

SUMMARY: The Industry Functional Advisory Committee for Customs Matters will hold a meeting on November 9, 2000, from 9:30 a.m. to 1 p.m. The meeting will be closed to the public from 9:30 a.m. to 12 noon, and opened to the public from 12 noon to 1 p.m.

DATES: The meeting is scheduled for November 9, 2000, unless otherwise notified.

ADDRESSES: The meeting will be held at the Department of Commerce, Room B841B, located at 14th Street and Constitution Avenue, NW., Washington, DC, unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Dan Gardner, (202) 482–3681 and Katherine Wiehagen (202) 482–0357, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, or Dominic Bianchi, Office of the U.S. Trade Representative, 1724 F Street, NW., Washington, DC 20508, (202) 395–6120.

SUPPLEMENTARY INFORMATION: During the opened portion of the meeting the U.S. Customs Entry Revision Project (ERP) will be discussed by representatives from the U.S. Customs Service and the Bureau of the Census. The ERP was introduced by the Customs Service in 1999 as a proposal to change U.S. customs laws and make them more consistent with current business practices and promote effective compliance. This discussion is an opportunity for the Industry Functional Advisory Committee for Customs Matters to be briefed and invite comments on ERP progress to date.

Dominic Bianchi,

Acting Assistant United States Trade Representative for Intergovernmental Affairs and Public Liaison.

[FR Doc. 00–27861 Filed 10–30–00; 8:45 am]

BILLING CODE 3190–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Public Comment With Respect to the Annual National Trade Estimate Report on Foreign Trade Barriers

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: Pursuant to section 303 of the Trade and Tariff Act of 1984, as amended, USTR is required to publish annually the National Trade Estimate Report on Foreign Trade Barriers (NTE). With this notice, the Trade Policy Staff Committee (TPSC) is requesting interested parties to assist it in identifying significant barriers to U.S. exports of goods, services and overseas direct investment for inclusion in the NTE. Particularly important are impediments materially affecting the actual and potential financial performance of an industry sector. The TPSC invites written comments that provide views relevant to the issues to be examined in preparing the NTE.

DATES: Public comments are due not later than November 27, 2000.

ADDRESSES: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative, 600 17th Street NW., Room 122, Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Gloria Blue, Office of Policy Coordination, Office of the United States Trade Representative, (202) 395–3475.

SUPPLEMENTARY INFORMATION: Last year's report may be found on USTR's Internet Home Page (www.ustr.gov) under the section on Reports. In order to ensure compliance with the statutory mandate for reporting foreign trade barriers that are significant, we will focus particularly on those restrictions where there has been active private sector interest.

The information submitted should relate to one or more of the following ten categories of foreign trade barriers:

(1) import policies (*e.g.,* tariffs and other import changes, quantitative restrictions, import licensing, and customs barriers);

(2) standards, testing, labeling, and certification (including unnecessarily restrictive application of phytosanitary standards, refusal to accept U.S. manufacturers' self-certification of conformance to foreign product standards, and environmental restrictions);

(3) government procurement (*e.g.,* ''but national'' policies and closed bidding);

(4) export subsidies *e.g.,* export financing on preferential terms and agricultural export subsidies that displace U.S. exports in third country markets);

(5) lack of intellectual property protection *e.g.,* inadequate patent, copyright, and trademark regimes);

(6) services barriers *e.g.,* limits on the range of financial services offered by foreign financial institutions, regulation of international data flows, restrictions on the use of data processing, quotas on imports of foreign films, and barriers to the provision of services by

professionals *e.g.,* lawyers, doctors, accountants, engineers, nurses, etc.);

(7) investment barriers *e.g.,* limitations on foreign equity participation and on access to foreign government-funded R&D consortia, local content, technology tansfer and export performance requirements, and retrictions on repatriation of earnings, capital, fees and royalties);

(8) anticompetitive practices with trade effects tolerated by foreign governments (including anticompetitve activities of both state-owned and private firms that apply to services or to goods and that retrict the sale of U.S. products to any firm, not just to foreign firms that perpetuate the practices);

(9) trade restrictions affecting electronic commerce *e.g.,* taraiff and non-tariff measures, burdensome and discrimiantory regulations and standards, discriminatory taxation); and

(10) other barriers *i.e.,* barriers that encompass more than one category, *e.g.,* bribery and corruption, or that affect a single sector).

As in the case of last year's NTE, we are asking that particular emphasis be placed on any practices that may violate U.S. trade agreements. We are also interested in receiving any new or updated information pertinent to the barriers covered in last year's report as well as new information. Please note that the information not used in the NTE will be maintained for use in future negotiations.

It is MOST IMPORTANT that your submission contain estimates of the potential increase in exports that would result from the removal of the barrier, as well as a clear discussion of the method(s) by which the estimates were computed. Estimates should fall within the following value ranges: less than $5 million; $5 to $25 million; $25 million to $50 million; $50 million to $100 million; $100 million to $500 million; or over $500 million. Such assessments enhance USTR's ability to conduct meaningful comparative analyses of a barrier's effect over a range of industries.

Please note that interested parties discussing barriers in more than one country should provide a separate submission *i.e.,* one that is self-contained) for each country.

Written Comments: All written comments should be addressed to: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative, 600 17th Street NW., Room 122, Washington, DC 20508.

All submissions must be in English and should conform to the information requirements of 15 CFR 2003. A party must provide ten copies of its submission which must be received at USTR no later than, November 27, 2000.

If the submission contains business confidential information, ten copies of a confidential version must also be submitted. A justification as to why the information contained in the submission should be treated confidentially must be included in the submission. In addition, any submissions containing business confidential information must be clearly marked ''Confidential'' at the top and bottom of the cover page (or letter) and of each succeeding page of the submission. The version that does not contain confidential information should also be clearly marked, at the top and bottom of each page, ''public version'' or ''non-confidential.''

Written comments submitted in connection with this request, except for information granted ''business confidential'' status pursuant to 15 CFR 2003.6, will be available for public inspection shortly after the filing deadline. Inspection is by appointment only with the staff of the USTR Public Reading Room and can be arranged by calling Brenda Webb (202) 395–6186. The Reading Room is open to the public from 9:30 a.m. to 12 noon, and from 1 p.m. to 4 p.m., Monday through Friday.

Carmen Suro-Bredie,

Chairman, Trade Policy Staff Committee.

[FR Doc. 00–27950 Filed 10–30–00; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA, Inc.; Government/Industry Certification Steering Committee

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for RTCA Government/Industry Certification Steering Committee meeting to be held November 14, 2000, from 10:00 a.m. to 2:00 p.m. The meeting will be held at Federal Aviation Administration (FAA), 800 Independence Avenue, SW., Washington, DC 20591, in the Bessie Coleman Conference Center, Room 2AB.

The agenda will include: (1) Welcome and Introductory Remarks; (2) Report from Certification Select Committee: (a) Select Committee Actions from Previous Meeting; (b) Report on Working Group-1/SOIT Interface; (c) Report on FAA Reauthorization ACT vis-a-vis Task Force 4 Recommendations 11 and 14; (3) Review of Select Committee Products; (d) Presentation of Completed Deliverables; (e) Timeline for Remaining Deliverables; (4) Demonstration of Proposed Certification Home Page; (5) Other Business; (6) Date and Location of Next Meeting; (7) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the co-chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on October 23, 2000.

Janice L. Peters,

Designated Official.

[FR Doc. 00–27903 Filed 10–30–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2000–8198]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel MACCOBOY III.

SUMMARY: As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR Part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before November 30, 2000.

ADDRESSES: Comments should refer to docket number MARAD–2000–8198. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at http://dmses.dot.gov/submit/. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Gordon Angell, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–5129.

SUPPLEMENTARY INFORMATION: Title V of Public Law 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR § 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR Part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested. Name of vessel: Maccoboy III. Owner: Don A. Slater.

(2) Size, capacity and tonnage of vessel. According to the applicant: ''gross tonnage = 51, net tonnage = 41, registered length = 51.2ft, registered beam = 16.1ft, and registered depth = 7.6ft.''

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: ''I would like to be able to charter the vessel to carry six passengers and a captain for coastwise cruises, also bare boat charters if charterers are qualified.'' ''I would like the ability to cruise from California, Oregon to Alaska. Via Canada.''

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1967. Place of construction: Ditzum, Germany.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: ''The fact that the Maccoboy III is a old, slow, wooden boat with an abundance of character and sea keeping ability of north sea heritage is very unique. In studying the applicable charter listings I don't find any true comparable. Therefore I don't believe that the ''Maccoboy III'' will have more than a negligible affect on the present market, but might in fact establish a new market for this type vessel.''

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: ''The vessel will continue to be maintained in U.S. Shipyards.''

Dated: October 26, 2000.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 00–27929 Filed 10–30–00; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket No. 00–23]

Strategic Plan

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice and request for comment.

SUMMARY: The Office of the Comptroller of the Currency (OCC) hereby gives notice that a draft of its strategic plan is available at http://www.occ.treas.gov/spln2000.pdf. Certain high level aspects of this strategic plan have been summarized in the strategic plan of the Department of the Treasury which was sent to Congress on September 29, 2000, in compliance with the Government Performance and Results Act. Copies of the OCC draft strategic plan have also been submitted to committees of Congress for consultation purposes. This OCC draft strategic plan will help guide the operations of OCC, and may be adjusted through interim adjustments in annual performance plans sent to Congress.

DATES: Comments must be received on or before November 30, 2000.

ADDRESSES: Comments should be sent to Office of the Comptroller of the Currency, 250 E Street, SW., Third floor, Attention: Docket #00–23, Washington, DC 20219. You may submit comments electronically to regs.comments@occ.treas.gov.

FOR FURTHER INFORMATION CONTACT: Sheila Zukor, Assistant Chief Financial Officer, Planning and Budget, Office of the Comptroller of the Currency, (202) 874–4518.

Dated: October 24, 2000.

Paul R. Gentille,

Deputy Chief Financial Officer.

[FR Doc. 00–27911 Filed 10–30–00; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 00–76]

Revocation of Customs Broker Licenses

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Customs Broker License Revocations.

I, as Assistant Commissioner, Office of Field Operations, pursuant to section 641 of the Tariff Act of 1930, as amended (19 U.S.C. 1641) and the Customs Regulations (19 CFR 111), hereby revoke by operation of law the following Customs broker licenses without prejudice based on the authority as annotated:

Name	Port	License No.	Authority
Scott J. Goldberg	New York	10686	19 CFR 111.30 (d)(4).
Kenneth T. Brock	New York	11266	19 CFR 111.30 (d)(4).
Ronald Lee	New York	07337	19 CFR 111.30 (d)(4).
SAIMA Avandero USA, Inc	New York	10718	19 CFR 111.45(a).

Dated: October 25, 2000.

Bonni G. Tischler,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 00–27838 Filed 10–30–00; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 00–77]

Cancellation of Customs Broker Licenses

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Customs Broker License Cancellations.

I, as Assistant Commissioner, Office Field Operations, pursuant to Section 641 of the Tariff Act of 1930, as amended (19 U.S.C. 1641), and the Customs Regulations (19 CFR 111), hereby cancel the following Customs broker's licenses without prejudice based on the authority as annotated:

Name	Port	License No.	Authority
United Motor Freight, Inc	Seattle	14362	19 CFR 111.51(a).
ClearFreight Corporation	San Francisco	06174	19 CFR 111.51(a).

Dated: October 25, 2000.

Bonni G. Tischler,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 00–27837 Filed 10–30–00; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Customs Trade Symposium 2000

AGENCY: Customs Service, Treasury.

ACTION: Notice of symposium.

SUMMARY: This document announces that the Customs Service will convene a major trade symposium to discuss the agency's programs, strategic plans, and its vision for trade in the 21st century. Members of the international trade and transportation community are invited, and, if interested, are requested to register early.

DATES: The symposium will be held on Thursday, November 30, 2000, from 8:00 a.m. to 6:00 p.m. All registrations must be made on-line and confirmed by November 24, 2000.

ADDRESSES: The meeting will be held in Washington, D.C. at the Ronald Reagan Building and International Trade Center, Amphitheater Auditorium, at 1300 Pennsylvania Avenue, N.W.

FOR FURTHER INFORMATION CONTACT: ACS Client Representatives; Customs Account Managers; or the Office of the Trade Ombudsman at (202) 927–1440 (trade.ombudsman@customs.treas.gov). To obtain the latest information on program changes or to register on-line, visit the Customs website at http://www.customs.gov/trade2000.

SUPPLEMENTARY INFORMATION: Customs will be convening a major trade symposium (Customs Trade Symposium 2000) on Thursday, November 30, 2000, from 8:00 a.m. to 6:00 p.m. at the Ronald Reagan Building and International Trade Center Amphitheater Auditorium, 1300 Pennsylvania Avenue, N.W., Washington, D.C. The symposium will highlight Customs present programs and strategic plans, and its vision of international trade in the 21st century. The symposium will feature Commissioner Raymond W. Kelly as the keynote speaker, presentations by senior Customs officials, and a luncheon address by nationally-known political analyst Mark Shields. A reception will follow the program at which senior Customs officials will be available to answer questions.

Symposium program topics include:

Customs Strategic Vision—Preparation for a new era of global trade and the challenges that must be addressed;

The Automated Commercial Environment (ACE)—Timetable for implementation;

Trade Compliance—New policies to drive compliance improvements and to deliver benefits to low-risk importers;

The Entry Revision Project (ERP)—The future of Customs entry processing;

The Reconcilliation Prototype (RECON II)—Streamlining the process and providing a path to periodic filing of post entry amendments;

Post Entry Amendments—Implementation of new policies designed to simplify the Supplemental Information Letter and improve compliance; and

Drawback—Proposals for major legislative changes to modernize the drawback process.

Members of the international trade and transportation community are invited to attend the Symposium. The cost is $ 150 per individual. This includes the cost of the symposium, continental breakfast, luncheon, and a post-symposium reception. Interested parties are requested to register early. All registrations must be made on-line at the Customs website (http://www.customs.gov/trade2000). Registration, which will be accepted on a space available basis, must be confirmed by November 24, 2000.

Dated: October 25, 2000.

Joseph M. Rees,

Trade Ombudsman, U.S. Customs Service.

[FR Doc. 00–27836 Filed 10–30–00; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Treasury Current Value of Funds Rate

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice of rate for use in Federal debt collection and discount evaluation.

SUMMARY: Pursuant to Section 11 of the Debt Collection Act of 1982 (31 U.S.C. 3717), the Secretary of the Treasury is responsible for computing and publishing the percentage rate to be used in assessing interest charges for outstanding debts on claims owed the Government. Treasury's Cash Management Regulations (I TFM 6–8000) also prescribe use of this rate by agencies as a comparison point in evaluating the cost-effectiveness of a cash discount. Notice is hereby given that the applicable rate is 6 percent for calendar year 2001.

DATES: The rate will be in effect for the period beginning on January 1, 2001 and ending on December 31, 2001.

FOR FURTHER INFORMATION CONTACT: Inquiries should be directed to the Program Compliance Division, Financial Management Service, Department of the Treasury, 401 14th Street, SW., Washington, DC 20227 (Telephone: (202) 874–6630).

SUPPLEMENTARY INFORMATION: The rate reflects the current value of funds to the Treasury for use in connection with Federal Cash Management systems and

is based on investment rates set for purposes of Pub. L. 95–147, 91 Stat. 1227. Computed each year by averaging investment rates for the 12-month period ending every September 30 for applicability effective January 1, the rate is subject to quarterly revisions if the annual average, on the moving basis, changes by 2 per centum. The rate in effect for calendar year 2001 reflects the average investment rates for the 12-month period that ended September 30, 2000.

Dated: October 25, 2000.

Bettsy H. Lane,

Assistant Commissioner, Federal Finance.

[FR Doc. 00–27895 Filed 10–30–00; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 12813, 12814, 12815 and 12816

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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)). Currently, the IRS is soliciting comments concerning Forms 12813, 12814, 12815, and 12816, Return Post Card for the Community Based Outlet Participants.

DATES: Written comments should be received on or before January 2, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Return Post Card for the Community Based Outlet Participants.

OMB Number: 1545–1703.

Form Numbers: 12813, 12814, 12815, and 12816.

Abstract: These post card forms are to be used by the community based outlet participants (i.e. grocery stores, credit unions, copy centers, and corporations) to order tax products. The post card will be returned to the Western Area Distribution Center for processing and order fulfillment.

Current Actions: There are no changes being made to these forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 18,000.

Estimated Time Per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 1,501.

The following paragraph applies to all of the collections of information covered by this notice:

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

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the 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 of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 24, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–27961 Filed 10–30–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Information Reporting Program Advisory Committee; Meeting

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Open Meeting of the Information Reporting Program Advisory Committee.

SUMMARY: In 1991 the IRS established the Information Reporting Program Advisory Committee (IRPAC) in response to a recommendation made by the United States Congress. The primary purpose of IRPAC is to provide an organized public forum for discussion of relevant information reporting issues between the officials of the IRS and representatives of the payer/practitioner community. IRPAC offers constructive observations about current or proposed policies, programs, and procedures and, when necessary, suggests ways to improve the operation of the Information Reporting Program (IRP).

There will be a meeting of IRPAC on Thursday, November 16, 2000. The meeting will be held in Room 3313 of the Internal Revenue Service Main Building, which is located at 1111 Constitution Avenue, NW., Washington, DC. A summarized version of the agenda along with a list of topics that are planned to be discussed are listed below.

Summarized Agenda For Meeting

9:00—Meeting Opens
11:30—Break for Lunch
1:00—Meeting Resumes
4:00—Meeting Adjourns

The topics that are planned to be covered are as follows:

(1) Electronic Payee Statements
(2) Proposed Regulations under Sections 6041 & 6045 (''Middleman'' Regulation)
(3) Hope and Lifetime Learning Credit Proposed Regulation
(4) Section 1441 Regulation and Related Forms & Instructions
(5) Employment Tax Administration and Compliance
(6) IRPAC's Articles in the ''IRS/SSA Reporter''
(7) File Information Returns Electronically (FIRE) System
(8) Expansion of the Combined Federal/State Information Return Filing Program
(9) Medical Service Provider and Sole Proprietor Alerts
(10) Proposed IRP Web-Site
(11) Section 457 (b) Plans
(12) Usage of Multiple Codes for Reporting Roth and Education IRA Distributions

(13) Reporting Excess Contributions under 403 (b) Plans
(14) Information Reporting Forms and Publications
(15) Underreporter and the Substitute-for-Return Programs

Note: Last minute changes to these topics are possible and could prevent advance notice.

SUPPLEMENTARY INFORMATION: IRPAC currently reports to the Director, National Public Liaison, who is the executive responsible for administering this formally chartered federal advisory committee. IRPAC is instrumental in providing advice to enhance the IRP Program. Increasing participation by external stakeholders in the planning and improvement of the tax system will help achieve the goals of increasing voluntary compliance, reducing burden, and improving customer service.

IRPAC is currently comprised of representatives from various segments of the information reporting payer/practitioner community. IRPAC members are not paid for their time or services, but consistent with Federal regulations, they are reimbursed for their travel and lodging expenses to attend two public meetings each year.

DATES: The meeting will be open to the public, and will be in a room that accommodates approximately 80 people, including members of IRPAC and IRS officials. Seats are available to members of the public on a first-come, first-served basis. In order to get your name on the building access list, *notification of intent to attend this meeting must be made with Ms. Romona Johnson no later than Monday, November 13, 2000.* Ms. Johnson can be reached by e-mail at romona.e.johnson@irs.gov, or by telephone at 202–622–6440. Notification of intent to attend should include your name, organization and phone number. If you leave this information for Ms. Johnson in a voice-mail message, please spell out all names. A draft of the agenda will be available via e-mail or facsimile transmission the week prior to the meeting. Please call or e-mail Ms. Romona Johnson on or after Wednesday, November 8, 2000, to have a copy of the agenda faxed or e-mailed to you. Please note that a draft agenda will not be available until that date.

ADDRESSES: If you would like to have IRPAC consider a written statement at a future IRPAC meeting (not this upcoming meeting), please write to Ms. Kate LaBuda at the IRS, National Public Liaison, CL:NPL:PAC, Room 7559, 1111 Constitution Avenue, NW., Washington, DC, 20224, or e-mail her at *kate.labuda@irs.gov.*

FOR FURTHER INFORMATION CONTACT: To get on the access list to attend this meeting, or to have a copy of the agenda faxed to you on or after November 8, 2000, please e-mail Ms. Romona Johnson at romona.e.johnson@irs.gov, or call her at 202–622–6440. For general information about IRPAC, please e-mail Ms. Kate LaBuda at kate.labuda@irs.gov or call her at 202–622–8028.

Susanne M. Sottile,

Director, National Public Liaison, Office of Communication and Liaison.

[FR Doc. 00–27962 Filed 10–30–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

National Research Advisory Council; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Veterans Affairs National Research Advisory Council will meet at the Ronald Reagan Building and International Trade Center, Continental Room, 1300 Pennsylvania Avenue, NW., Washington, DC 20004, on November 13, 2000, from 10 to 11:30 a.m. and 1:30 to 3 p.m. The agenda for the first session of the inaugural meeting will include the history and overview of the policies of VA research, followed by a background session on the challenges for the direction of the research and development program as related to policy, research centers, staffing, and operations. Established by the Secretary of Veterans Affairs, the purpose of the Council is to provide external advice and review for VA's research mission. Those planning to attend the open meeting should contact Ms. Sandra Young, Office of Research and Development at (202) 273–8284.

Dated: October 24, 2000.

Marvin R. Eason,

Committee Management Officer.

[FR Doc. 00–27960 Filed 10–30–00; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Tuesday,
October 31, 2000

Part II

Department of Housing and Urban Development

24 CFR Part 81

HUD's Regulation of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac); Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 81

[Docket No. FR–4494–F–02]

RIN 2501–AC60

HUD's Regulation of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac)

AGENCY: Office of the Assistant Secretary for Housing '' Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule establishes new housing goal levels for the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the ''Government Sponsored Enterprises,'' or the ''GSEs'') for the years 2001 through 2003. The new housing goal levels are established in accordance with the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (FHEFSSA), and govern the purchase by Fannie Mae and Freddie Mac of mortgages financing low- and moderate-income housing, special affordable housing, and housing in central cities, rural areas and other underserved areas. Specifically, the final rule increases the Low- and Moderate-Income Housing Goal to 50 percent, the Geographically Targeted Goal to 31 percent, and the Special Affordable Housing Goal to 20 percent of units backing each GSE's annual eligible mortgage transactions. The Special Affordable Multifamily Subgoal increases to one percent of each GSE's average annual total dollar mortgage purchases in 1997 through 1999. This rule also establishes new provisions and clarifies certain other provisions of HUD's rules for counting different types of mortgage purchases towards the goals, including provisions regarding the use of bonus points for mortgages that are secured by certain single family rental properties and small multifamily properties; and the disallowance of goals credit for mortgage loans with predatory characteristics.

While Fannie Mae and Freddie Mac have been successful in providing stability and liquidity in the market for certain types of mortgages, their share of the affordable housing market is substantially smaller than their share of the total conventional, conforming mortgage market. There are several reasons for these disparities, related to the GSEs' purchase and underwriting guidelines; and to their relatively low level of activity in specific mortgage markets that provide financing for housing serving low- and moderate-income families, including small multifamily rental properties, single family owner-occupied rental properties, manufactured housing, and markets for seasoned mortgages on properties with affordable housing. As the GSEs continue to grow their businesses, the new goals will provide strong incentives for the two enterprises to more fully address the housing finance needs for very low-, low- and moderate-income families and residents of underserved areas and, thus, more fully realize their public purposes.

In addition, as government sponsored enterprises and market leaders, Fannie Mae and Freddie Mac have a public responsibility to help eliminate predatory mortgage lending practices which are inimical to the home financing and homeownership objectives that the GSEs were established to serve. Fannie Mae and Freddie Mac have adopted policies stating that they will not purchase mortgage loans with certain predatory characteristics. This final rule affirms the GSEs' actions by disallowing housing goals credit for mortgages having features that the GSEs themselves have identified as unacceptable.

EFFECTIVE DATE: January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Director, Office of Government Sponsored Enterprises Oversight, Office of Housing, Room 6182, telephone 202–708–2224. For questions on data or methodology, contact John L. Gardner, Director, Financial Institutions Regulation Division, Office of Policy Development and Research, Room 8234, telephone (202) 708–1464. For legal questions, contact 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, SW., Washington, DC 20410. Persons with hearing and speech impairments may access the phone numbers via TTY by calling the Federal Information Relay Service at (800) 877–8399.

SUPPLEMENTARY INFORMATION

I. General

A. Purpose

This final rule revises existing regulations implementing the Department of Housing and Urban Development's (the ''Department'' or ''HUD'') authority to regulate the GSEs. The authority exercised by the Department 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.*); and

(3) FHEFSSA, enacted as Title XIII of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992) (12 U.S.C. 4501–4641).

(4) Section 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)), which provides that the Secretary may make such rules and regulations as may be necessary to carry out his functions, powers, and duties, and may delegate and authorize successive redelegations of such functions, powers, and duties to officers and employees of the Department.

FHEFSSA substantially changed the Department's regulatory authorities governing the GSEs by establishing a separate safety and soundness regulator within the Department and clarified and expanded the Department's regulation of the GSEs' missions. Regulations first implementing the Department's authorities with respect to the GSEs' missions under FHEFSSA were issued on December 1, 1995 (24 CFR part 81).

This rule revises certain portions of those regulations concerning the GSEs' affordable housing goals and provisions related to how mortgage loans are treated in the calculation of performance under the housing goals. The remaining part of the preamble contains several endnotes. These endnotes appear at the end of the preamble.

B. Background

1. Fannie Mae and Freddie Mac

Fannie Mae and Freddie Mac engage in two principal businesses: investing in residential mortgages and guaranteeing securities backed by residential mortgages. Fannie Mae and Freddie Mac are chartered by Congress as Government Sponsored Enterprises 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 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.[1]

Fannie Mae and Freddie Mac receive significant explicit benefits through their status as GSEs that are not enjoyed by any other shareholder-owned corporations in the mortgage market. These benefits include: (1) Conditional access to a $2.25 billion line of credit from the U.S. Treasury; [2] (2) exemption from the securities registration requirements of the Securities and Exchange Commission and the States; [3] and (3) exemption from all State and local taxes except property taxes.[4]

Additionally, although the securities the GSEs guarantee and the debt instruments they issue are not backed by the full faith and credit of the United States, and nothing in this final rule should be construed otherwise, such securities and instruments trade at yields only a few basis points over those of U.S. Treasury securities and at yields lower than those for securities issued by comparable firms that are fully private but may be higher capitalized. The market prices for GSE debt and mortgage-backed securities, and the fact that the market does not require that those securities be rated by a national rating agency, suggest that investors perceive that the government implicitly backs the GSEs' debt and securities. This perception evidently arises from the GSEs' relationship to the Federal Government, including their public purposes, their Congressional charters, their potential direct access to U.S. Department of Treasury funds, and the statutory exemptions of their debt and mortgage-backed securities (MBS) from otherwise mandatory security laws. Consequently, each GSE enjoys a significant implicit benefit—its cost of doing business is significantly less than that of other firms in the mortgage market. According to a U.S. Department of Treasury 1996 study, the benefits of federal sponsorship are worth almost $6 billion annually to Fannie Mae and Freddie Mac. Of this amount, reduced operating costs (*i.e.,* exemption from SEC filing fees and from state and local income taxes) represent approximately $500 million annually. These estimates are broadly consistent with estimates by the Congressional Budget Office and General Accounting Office. According to the Department of the Treasury, Fannie Mae and Freddie Mac appear to pass through part of these benefits to consumers through reduced mortgage costs and retain part for their own stockholders.[5]

The GSEs have achieved an important part of their mission: providing stability and liquidity to large segments of the housing finance markets. As a result of the GSEs' activities, many home buyers have benefited from lower interest rates and increased access to capital, contributing, in part, to a record national homeownership rate of 66.8 percent in 1999. While the GSEs have been successful in providing stability and liquidity to certain portions of the mortgage market, the GSEs must further utilize their entrepreneurial talents and power in the marketplace and ''lead the mortgage finance industry'' to ''ensure that citizens throughout the country enjoy access to the public benefits provided by these federally related entities.'' [6]

Despite the record national homeownership rate in 1999, lower homeownership rates have prevailed for certain minorities, especially for African-American households (46.3 percent) and Hispanics (45.5 percent). These gaps are only partly explained by differences in income, age, and other socioeconomic factors. Disparities in mortgage lending are a contributing factor to lower homeownership rates and are reflected in loan denial rates of minority groups when compared to white applicants. Denial rates for conventional (non-government-backed) home purchase mortgage loans in 1998 were 54 percent for African Americans, 53 percent for Native American applicants, 39 percent for Hispanic applicants, 26 percent for White applicants, and 12 percent for Asian applicants.[7] Despite strong economic growth, low unemployment, low mortgage interest rates, and relatively stable home prices, housing problems continue to persist for low-income families and certain minorities.

In addition to disparities across racial groups, populations who live in certain types of housing have not benefited to the same degree as have others from the advantages and efficiencies provided by Fannie Mae and Freddie Mac. The GSEs have been much less active in purchasing mortgages in markets where there is a need for additional financing to address persistent housing needs including financing for small multifamily rental properties, manufactured housing, single family owner-occupied rental properties, seasoned affordable housing mortgages, and older housing in need of rehabilitation.

While HUD recognizes that the GSEs have played a significant role in the mortgage finance industry by providing a secondary market and liquidity for mortgage financing for certain segments of the mortgage market, it is this recognition of their ability, along with HUD's comprehensive analyses of the size of the mortgage market and the opportunities available, America's unmet housing needs, identified credit gaps, and HUD's consideration of the statutory factors under FHEFSSA that causes HUD to increase the level of the housing goals so that as the GSEs grow their businesses so they will address new markets and persistent housing finance needs.

2. Regulation of the GSEs

In 1968, Congress assigned HUD general regulatory authority over Fannie Mae,[8] and in 1989, Congress granted the Department essentially identical regulatory authority over Freddie Mac.[9] Under the 1968 law, HUD was authorized to require that a portion of Fannie Mae's mortgage purchases be related to the national goal of providing adequate housing for low- and moderate-income families. Accordingly, the Department established two housing goals—a goal for mortgages on low- and moderate-income housing and a goal for mortgages on housing located in central cities—by regulation, for Fannie Mae in 1978.[10] Each goal was established at the level of 30 percent of mortgage purchases. Similar housing goals for Freddie Mac were proposed by the Department in 1991 but were not finalized before October 1992, when Congress revised the Department's GSE regulatory authorities including requirements for new housing goals.

In 1992, Congress enacted the Federal Housing Enterprises Financial Safety and Soundness Act (FHEFSSA) as Title XIII of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992) (12 U.S.C. 4501–4641), which established the Office of Federal Housing Enterprise Oversight (OFHEO) as the GSEs' safety and soundness regulator and affirmed, clarified and expanded the Secretary of Housing and Urban Development's responsibilities for GSE mission regulation. FHEFSSA provided that, except for the specific authority of the Director of OFHEO, the Secretary retained general regulatory power over the GSEs.[11] FHEFSSA also detailed and expanded the Department's specific

[11] 11. Sec. 1321.

powers and authorities, including the power to establish, monitor, and enforce housing goals for the GSEs' purchases of mortgages that finance housing for low- and moderate-income families; housing located in central cities, rural areas, and other underserved areas; and special affordable housing, affordable to very low-income families and low-income families in low-income areas.[12] The Department is required to establish each of the goals after consideration of certain prescribed factors relevant to the particular goal.[13]

FHEFSSA provided for a transition period during 1993 and 1994 and required HUD to establish interim goals for the transition period (58 FR 53048; October 13, 1993) (59 FR 61504; November 30, 1994). In November 1994, HUD extended the interim goals established for 1994 for both GSEs through 1995 while the Department completed its development of post transition goals.

The Department issued proposed and final rules in 1995 establishing and implementing the housing goals for the years 1996 through 1999. The rule provided that the housing goals for 1999 would continue beyond 1999 if the Department did not change the goals, and further provided that HUD may change the level of the goals for the years 2000 and beyond based upon HUD's experience and in accordance with HUD's statutory authority and responsibility.

In addition to establishing the level of the housing goals, the 1995 final rule included counting requirements for purposes of calculating performance under the housing goals. The new regulations also prohibited the GSEs from discriminating in any manner on any prohibited basis in their mortgage purchases, implemented procedures by which HUD exercises its authority to review new programs of the GSEs, required reports from the GSEs, established a public use data base on the GSEs' mortgage purchase activities while providing protections for confidential and proprietary information, and established enforcement procedures under FHEFSSA.

C. The Proposed Rule

On March 9, 2000,[14] HUD published a rule proposing new housing goal levels for Fannie Mae and Freddie Mac. The rule proposed to increase the level of the housing goals for the purchase by Fannie Mae and Freddie Mac of mortgages financing low- and moderate-income housing, special affordable housing, and housing in central cities, rural areas, and other underserved areas. The rule also proposed to clarify HUD's guidelines for counting different types of mortgage purchases under the housing goals, including treatment of missing affordability data and purchases of seasoned mortgage loans; use of bonus points for goals credit for purchases of mortgages secured by single family rental and small multifamily properties; and providing greater public access to certain types of mortgage data on the GSEs' mortgage purchases in HUD's public use database. The rule also solicited public comments on several other issues related to the housing goals including the appropriate role of credit enhancements in furthering affordable housing lending and whether the use of credit enhancements should be considered in calculating housing goal performance.

D. This Final Rule

In response to the proposed rule, HUD received over 250 comments. The comments came from the GSEs; individuals; representatives of lending institutions; non-profit organizations; community, consumer groups and civil rights organizations; local and State governments; and others. Following full consideration of the comments, HUD developed this final rule. The final rule is consistent with the approach announced in the proposed rule but does include some revisions adopted in light of the comments received. The final rule: (1) Increases the level of the housing goals for the years 2001 through 2003 as a result of HUD's review of the statutory factors under FHEFSSA to ensure that the GSEs continue and strengthen their efforts to carry out Congress' intent that the GSEs provide the benefits of the secondary market to families throughout the nation—the Low- and Moderate-Income Housing Goal increases to 50 percent, the Geographically Targeted Goal increases to 31 percent, the Special Affordable Housing Goal increases to 20 percent; and the Special Affordable Multifamily Subgoal increases to the respective average of one percent of each GSE's total mortgage purchases over 1997 through 1999; (2) establishes the use of bonus points for small multifamily properties with 5 to 50 units and for single family owner-occupied rental properties for the years 2001 through 2003; (3) establishes a temporary adjustment factor for Freddie Mac's multifamily mortgage purchases for the years 2001 through 2003; (4) prohibits the counting of high cost mortgage loans with predatory features for goals credit; (5) provides or clarifies counting rules for the treatment of missing affordability data, purchases of seasoned mortgage loans, purchases of federally insured mortgage loans and purchases of mortgage loans on properties with expiring assistance contracts; (6) provides for HUD's review of transactions to determine appropriate goal treatment; and (7) includes certain definitional and technical corrections to the regulations issued in 1995.

Specific changes included in the Final Rule from the provisions included in the Proposed Rule are as follows:

(1) The period covered by the housing goals is 2001 through 2003 and there is no transition year. The proposed rule had suggested the goals cover the period from 2000 through 2003 with 2000 serving as a transition year.

(2) The Special Affordable Multifamily Subgoal uses the average of 1997 through 1999 as the base period for establishing the level of the goal over the 2001 through 2003 period, rather than 1998 as the base period, as proposed. The subgoal remains a fixed dollar amount for each year of the period covered by the housing goals base equal to one percent of each GSE's average total mortgage purchases in 1997 through 1999.

(3) The final rule does not allow goals credit for predatory mortgage loans, and the rule describes specific characteristics, in addition to the HOEPA definition suggested in the proposed rule, to determine what types of loans are considered predatory. The final rule also identifies good lending practices with which mortgages should conform in order to count towards goals credit.

(4) The proposed provisions for the treatment of missing affordability data are retained but the final rule includes a five percent ceiling on the use of estimated affordability information for multifamily units.

(5) The guidance provided on how to determine if seasoned mortgage loan purchases meet the recycling requirements of the Special Affordable Housing Goal was expanded to (1) include additional types of lending organizations with affordable housing missions that are presumed to meet the recycling requirements; (2) adjust the Community Reinvestment Act (CRA) examination requirement for Federally regulated financial institutions to one ''Satisfactory'' rating for financial institutions with assets of $250 million or less to accommodate a less frequent examination schedule; and (3) specify requirements that a seller must meet for purposes of evaluating whether the seller meets the recycling requirements of 12 U.S.C. 4563(b)(1)(B).

(6) The final rule does not make changes to the definition of underserved

area other than the inclusion of tribal lands in underserved areas and does not address the public availability of mortgage data in the public use data base. As explained below, HUD will publish a decision on which data elements will be accorded proprietary and non-proprietary treatment by separate Order following publication of this final rule.

The analysis of Fannie Mae's and Freddie Mac's affordable housing performance, which is the basis for many of the changes in the final rule, is primarily based on data from 1997, 1998 and 1999. The GSEs' actual performance is presented through 1999. However, Home Mortgage Disclosure Act (HMDA) data which provides data on the conventional, conforming market was not available for 1999 at the time HUD prepared its analysis supporting this final rule. As HMDA data for 1999 were not available, comparisons between the GSEs and the market as a whole for that year are not possible. Further, as 1998 was a year with a large percentage of refinance mortgage transactions, at times 1997 data is utilized as it presents a more normal year in terms of home purchase mortgage transactions.

In finalizing these regulations, the Department is guided by and affirms the following principles established in the 1995 rulemaking:

(1) To fulfill the intent of FHEFSSA, the GSEs should lead the industry in ensuring that access to mortgage credit is made available for very low-, low- and moderate-income families and residents of underserved areas. HUD recognizes that, to lead the mortgage industry over time, the GSEs will have to stretch to reach certain goals and close the gap between the secondary mortgage market and the primary mortgage market. This approach is consistent with Congress' recognition that ''the enterprises will need to stretch their efforts to achieve'' the goals.[15]

(2) The Department's role as a regulator is to set broad performance standards for the GSEs through the housing goals, but not to dictate the specific products or delivery mechanisms the GSEs will use to achieve a goal. Regulating two exceedingly large financial enterprises in a dynamic market requires that HUD provide the GSEs with sufficient latitude to use their innovative capacities to determine how best to develop products to carry out their respective missions. HUD's regulations should allow the GSEs to maintain their flexibility and their ability to respond quickly to market opportunities. At the same time, the Department must ensure that the GSEs' strategies serve families in underserved markets and address unmet credit needs. The addition of bonus points to the regulatory structure provides an additional means of encouraging the GSEs' affordable housing activities to address identified, persistent credit needs while leaving the specific approaches to meeting these needs to the GSEs.

(3) Discrimination in lending—albeit sometimes subtle and unintentional—has denied racial and ethnic minorities the same access to credit to purchase a home that has been available to similarly situated non-minorities. The GSEs have a central role and responsibility to promote access to capital for minorities and other identified groups and to demonstrate the benefits of such lending to industry and borrowers alike. The GSEs also have an integral role in eliminating mortgage lending practices that are predatory.

(4) In addition to the GSEs' purchases of single family home loans, the GSEs also must continue to assist in the creation of an active secondary market for multifamily loans. Affordable rental housing is essential for those families who cannot afford or choose not to become homeowners. The GSEs must assist in making capital available to assure the continued development of rental housing.

II. Discussion of Public Comments

A. Overview

1. Public Comment

Of the over 250 comments received, by far the most detailed were the submissions of the two directly affected GSEs—Fannie Mae and Freddie Mac. Each GSE's comments were in large measure supportive of the overall goal structure proposed by the Department. The GSEs, however, did provide extensive appendices questioning the Department's methodology in determining market share for the three affordable housing goals, a key component for establishing the appropriate level of the housing goals.

Other commenters included national and regional industry related groups, non-profit organizations, state and local government officials, lenders, and individuals. In large measure, these commenters were also supportive of the Department's proposal to increase the affordable housing goals and the related provisions designed to streamline the counting rules used to calculate performance under the housing goals.

Other than the goals framework, the areas generating the largest response from commenters were the treatment of high cost mortgages, the role of credit enhancements in affordable lending transactions, and the availability of data on the public use data base. It should be noted that in evaluating these comments a large number of comments were received that included substantially similar responses, in both language and tone, to those submitted by Fannie Mae.

In addressing the appropriate goals treatment for high cost mortgages, one group of commenters, comprised primarily of non-profit and housing advocacy groups, felt the provisions included in the proposed rule disallowing credit for loans that meet the HOEPA definition should be strengthened. Other commenters, consistent with the comments provided by Fannie Mae, opposed any limitation of goals credit for predatory mortgage loans.

With regard to credit enhancements, a substantial majority of commenters noted that credit enhancements are a critical component of many affordable housing transactions. There was little support for limiting goals credit for affordable housing transactions that include credit enhancements without a better understanding of how to ensure that there are not negative implications for affordable housing transactions.

The Department received comments supporting both increased data availability and limited availability of data. One group of commenters, including non-profit organizations and academic researchers, felt the provisions included in the proposed rule should be adopted and, in some instances, expanded in order to fully understand and challenge the GSEs on their affordable housing activities. Again, another group of commenters, consistent with the comments provided by Fannie Mae, opposed the availability of additional data on the public use data base. This group of commenters included both lenders and non-profit organizations which felt the additional data would release confidential business information and could compromise the privacy of individuals, respectively. This final rule does not, however, address the availability of data on the public use data base.

A discussion of the general and specific comments on the rule follows in subsequent sections. While comments are summarized, not all of the comments are addressed explicitly in this preamble. HUD fully considered all of the comments and HUD's response is either explicit in this final rule or implicit in the general discussion of the rule or other comments. HUD is appreciative of the full range of public comments received and acknowledges the value of all of the comments

submitted in response to the proposed rule.

2. Other Public Input

As part of the public comment process, the Department conducted extensive outreach to educate and inform interested parties of the nature and extent of the GSEs' affordable housing activities. The outreach was undertaken in order to encourage comments on the proposed rule from a wide range of individuals, organizations and businesses that are interested in or are affected by Congress' charge to the GSEs to further the financing needs of underserved families and neighborhoods. The Department's outreach in this regard included two forums, three subject matter meetings, and meetings with various industry trade groups and non-profit organizations to discuss the provisions of the proposed rule. These sessions are described below. Further, additional information on these meetings is contained in the public docket file of this rule in Room 10276 at HUD Headquarters.

a. Forums. The Department conducted two forums designed to give participants an in-depth look at how well the GSEs are supporting affordable housing activities in local communities. One forum was held in Hartford, Connecticut and the other in Durham, North Carolina. Each forum had approximately 125 participants. In addition to sessions held at both forums that reviewed the GSEs' progress in meeting the affordable housing needs in the respective region, each forum had a session that addressed issues and needs specific to the region. In Hartford, a session was held on the role of multifamily housing in meeting affordable housing needs. Research was presented on how small multifamily properties disproportionately serve low-income families and data was provided on the extent of the GSEs' purchases of mortgages on small multifamily properties. Panel members discussed the unique problems of financing small multifamily properties and how Fannie Mae and Freddie Mac can better serve these markets. In Durham, a session was held on predatory lending. Panel members identified abusive practices and discussed the impacts that predatory lenders were having particularly on the elderly and in minority neighborhoods. Serious questions were raised as to whether Fannie Mae and Freddie Mac should be involved in this market.

b. Subject Matter Meetings. HUD also held three smaller discussion group sessions designed to address specific subject matters included in the proposed rule. Subject matter meetings were held on the availability of data on the public use data base, issues related to identifying and meeting the credit needs of non-metropolitan areas, and the role of credit enhancements in affordable housing lending.

c. Other Meetings. In addition to the meetings described above, the Department met with various industry trade groups and non-profit organizations to present the changes suggested in the proposed rule and the rationale for the changes. HUD also met with Fannie Mae and Freddie Mac to discuss their concerns regarding the proposed rule.

B. Subpart A—General

HUD proposed to revise the definitions of ''median income,'' ''metropolitan area,'' and ''underserved area'' in order to provide greater clarity, consistency and technical guidance. The few comments received on these definitions were supportive of the proposed technical changes. HUD also proposed certain changes to several aspects of the definition of underserved area to solicit public input on how best to identify the areas that are underserved by the mortgage credit markets.

1. Median Income

HUD proposed to change the definition of ''median income'' to require the GSEs to use HUD estimates of median family income to further clarify the appropriate process for the GSEs' determination of area incomes. HUD has implemented this change in this final rule. As part of this change to the definition of ''median income,'' HUD will provide the GSEs, on an annual basis, information specifying how HUD's published median family income estimates are to be applied. This change is needed because, in some cases, HUD publishes area median family income estimates for portions of areas rather than whole metropolitan statistical areas (MSAs) or primary metropolitan statistical areas (PMSAs).

2. Metropolitan Area

HUD proposed to clarify the definition of ''metropolitan area'' by revising the description of the relevant area for determining median incomes to eliminate the reference in § 81.2 to consolidated metropolitan statistical areas (CMSAs). HUD has implemented this change in the final rule. ''Metropolitan area'' was defined in § 81.2 under the 1995 final rule as an MSA, a PMSA, or a CMSA, designated by the Office of Management and Budget of the Executive Office of the President. This definition raised questions as to the definition of ''underserved area'' and the denominator of the affordability ratio used to compute the Low- and Moderate-Income Housing Goal and the Special Affordable Housing Goal regarding whether to use the median income of the CMSA or the PMSA. HUD has consistently relied upon median incomes of PMSAs in defining underserved areas and determining denominators for the other goals and this final rule clarifies this point.

3. Underserved Area

a. Technical Definition. HUD proposed to revise the definition of ''underserved area'' to clarify the parameters of rural underserved areas. The definition under HUD's 1995 final rule omitted the requirement for a comparison between the ''greater of the State non-metropolitan median income or nationwide non-metropolitan median income'' from the ''income/minority'' provision even though it had provided for this comparison when qualifying mortgage purchases under the ''income-only'' provision. HUD proposed to add the comparative language to the ''income/minority'' provision for rural underserved areas. The revision applies the same median income standard to both the ''income-only'' and the ''income/minority'' definitions. HUD has implemented this change in § 81.2 of this final rule. (HUD also proposed other changes to the definition of ''underserved areas.'' These are discussed in Subpart B—Housing Goals.)

b. Other Changes Proposed and/or Comments Requested. The proposed rule described additional changes to the definition of underserved area relating to tribal lands and requested comments on possible changes to the income and minority requirements of the definition.

(1) Tribal Lands. HUD proposed to revise the definition of ''underserved areas'' in § 81.2 to designate all qualifying Indian reservations and trust lands as underserved areas.

c. Summary of Comments. Fannie Mae stated that it is ''particularly appropriate'' to include these lands in the definition of underserved areas. Fannie Mae added that it ''does not think it is feasible, practical, or appropriate to split trust lands between served and underserved designations, depending on the designation of the surrounding tracts or counties.'' Fannie Mae further commented that HUD's proposal could lead to ''split or proportional treatment of any one trust land,'' and that such areas should be

included as underserved areas ''without regard to income or minority status.'' Fannie Mae added that HUD should consider postponing this change until ''the new boundary files and data files'' become available from the 2000 Census. Fannie Mae further stated that HUD's proposal to define some underserved areas in terms of income and minority composition for the balance of a county or census tract excluding the area within any Federal or State American Indian reservation or tribal or individual trust land ''raises operational issues that will be difficult to overcome.''

Freddie Mac stated that ''In principal [sic], Freddie Mac has no objection to treating an American Indian Reservation or tribal land as a geographic whole'' for determining underserved areas. It added, however, that ''adoption of a definition that would involve geocoding rural loans at the subcounty level could present formidable practical problems.'' Freddie Mac recommended that HUD ''designate entire tracts in metropolitan areas and entire counties in nonmetropolitan areas that contain qualifying reservations and trust lands as underserved.''

Other commenters were generally supportive of the Department's proposal. One commenter called for an expansion of the proposal to include tribal service areas and urban living Native Americans.

d. HUD's Determination. HUD believes that treating tribal lands as separate geographic entities implies that the balance of counties or tracts excluding such areas would logically be treated as separate entities, but it recognizes Fannie Mae's argument that this could raise ''operational issues.'' HUD will issue operational guidance on this matter prior to the effective date of this Final Rule.

HUD evaluated Fannie Mae's recommendation to classify all American Indian and Alaskan Native (AIAN) areas as underserved areas, without regard to income or minority status, in light of the problems involved in obtaining a mortgage on even the very few higher-income (or low minority) tribal lands. HUD analyzed data on 1989 median incomes and minority concentrations for AIAN areas provided by the U.S. Bureau of the Census. HUD's analysis showed that, out of 248 AIAN areas with sufficient population to determine an area median family income, 19 areas, or 6.7 percent, would be classified as served and 265 areas, or 93.3 percent, as underserved. The 19 areas include some with very low minority concentrations and some with very high median incomes. HUD concludes that implementation of Fannie Mae's recommendation would, in a small but significant number of instances, substantially breach the principle that underserved areas are areas with low median incomes and/or high minority concentrations, as established in the 1995 Final Rule. Accordingly, HUD has not implemented Fannie Mae's recommendation.

HUD believes that designating entire tracts or counties that contain qualifying tribal lands as underserved areas is not appropriate. The purpose of the definitional change in underserved areas to include all tribal lands is to focus attention on the mortgage financing needs of Native American communities. By designating the entire county or census tract as underserved by virtue of the presence of tribal lands in a portion of it, this focus is lost. HUD believes that any geocoding problems arising from this proposal can be resolved. HUD will issue operational guidance on this matter prior to the effective date of this final rule.

HUD believes that underserved areas must have relatively fixed definitions—tribal service areas are evolving over time. The underserved areas goal is defined broadly by both geographic and area wide demographic features so that borrowers living in underserved areas benefit from the increased attention paid to lending in such areas as a result of HUD's geographic goal.

(2) Enhanced Tract Definition. In the proposed rule, comments were sought on possible changes to the current metropolitan underserved areas definition to better target underserved areas with higher mortgage denial rates and thereby promote better access to mortgage credit for these areas. Specifically, HUD proposed changing the current tract income ratio to an ''enhanced'' tract income ratio requiring that for tracts to qualify as underserved they must have a tract income ratio at or below the maximum of 80 percent of area median income or 80 percent of U.S. median income in metropolitan areas. The proposed change would make the underserved areas definition used by the GSEs consistent with the requirements of Federally insured depository institutions under the Community Reinvestment Act (CRA). The Department believes the concept has substantial merit, and there was a sizeable group of commenters that supported the concept, at least in part. However, there were a number of commenters, including the GSEs, that said that since the redesignation of census tracts as underserved would be based on data from the 1990 Census, and since data from the 2000 Census would not be available for a few years, it would not be appropriate to make such a change at this time. Rather, they suggested that the Department wait until updated information from the 2000 Census is available to analyze. The Department agrees that, with more current information to become available from the 2000 Census in the near future, the timing is not optimal to make a change in the underserved areas designation. Once information from the 2000 Census is available, the Department will determine whether this proposal merits consideration.

(3) Minority Composition. Similarly, the proposed rule requested comment on another approach to target high mortgage denial rate areas. The alternative approach would be to increase the minority component required to identify an area as underserved by increasing the requirement from 30 percent to 50 percent minority. Several commenters noted that increasing the minority component of a census tract to qualify as underserved would have a disproportionately negative impact on the Hispanic population. Commenters observed that Hispanic residential living patterns are not as concentrated as those of other minority groups. In addition, comments were provided suggesting that any changes in this area be considered once data from the 2000 Census is available before making a final determination in this regard. The Department has determined that it will obtain and analyze 2000 Census data and consider various minority population patterns and their relationship to the availability of mortgage credit before deciding whether this proposal continues to merit consideration.

(4) Rural Areas. The proposed rule requested comments on how best to define underserved rural areas, posing questions on whether the underserved rural areas should be identified by census tract or by county. HUD received comments that supported both approaches. Again, the commenters raised the issue of the 2000 Census. Consistent with the Department's other determinations regarding significant changes to the definition of underserved areas, HUD will not make any changes at this time in defining underserved rural areas and will wait for the opportunity to analyze the data from the 2000 Census.

C. Subpart B—Housing Goals

1. Overview

Comments received overwhelmingly supported the Department's proposal to increase the level of the affordable

housing goals. Both GSEs commented that, while meeting these goals will be a challenge (particularly the Underserved Areas Goal), they are committed to doing so. While some commenters, including the GSEs, expressed concern that the market scenarios used by HUD did not adequately consider an economic downturn, those commenters still felt that higher goals levels were appropriate. This section of the final rule reviews the statutory factors the Department must consider in setting the level of the housing goals, specific comments on the housing goals including the market methodology, and the determination made with regard to the level for each of the housing goals.

2. Statutory Considerations in Setting the Level of the Housing Goals

In establishing the housing goals, FHEFSSA requires the Department to consider six factors—national housing needs; economic, housing and demographic conditions; performance and effort of the GSEs toward achieving the goal in previous years; size of the conventional mortgage market serving the targeted population or areas, relative to the size of the overall conventional mortgage market; ability of the GSEs to lead the industry in making mortgage credit available for the targeted population or areas; and the need to maintain the sound financial condition of the GSEs. These factors are discussed in more detail in the following sections of this preamble and in the Appendices to this rule. A summary of HUD's findings relative to each factor follows:

a. National Housing Needs. Analysis and research by HUD and others in the housing industry indicate that there are, and will continue to be in the foreseeable future, substantial unmet housing needs among lower-income and minority families. Data from the American Housing Surveys demonstrate that there are substantial unmet housing needs among lower-income families. Many households are burdened by high homeownership costs or rent payments and will likely continue to face serious housing problems, given the dim prospects for earnings growth in entry-level occupations. According to HUD's ''Worst Case Housing Needs'' report, 21 percent of owner households faced a moderate or severe cost burden in 1997. Affordability problems were even more common among renters, with 40 percent paying more than 30 percent of their income for rent in 1997.[16]

Despite the growth during the 1990s in affordable housing lending, disparities in the mortgage market remain, with certain minorities, particularly African-American and Hispanic families, lagging the overall market in rate of homeownership. In addition, there is evidence that the aging stocks of single family rental properties and small multifamily properties with 5–50 units, which play a key role in lower-income housing, have experienced difficulties in obtaining financing. The ability of the nation to maintain the quality and availability of the existing affordable housing stock and to stabilize neighborhoods depends on an adequate supply of affordable credit to rehabilitate and repair older units.

(1) Single Family Mortgage Market. 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. Over the past several years, economic expansion, accompanied by low interest rates and increased outreach on the part of the mortgage industry, has improved affordability conditions for lower-income families. Between 1994 and 1999, record numbers of lower-income and minority families purchased homes. First time homeowners have become a major driving force in the home purchase market over the past five years. Thus, the 1990s have seen the development of a strong affordable lending market. Despite the growth of lending to minorities, disparities in the mortgage market remain. For example, African-American applicants are still twice as likely to be denied a loan as white applicants, even after controlling for income.

(2) Multifamily Mortgage Market. Since the early 1990s, the multifamily mortgage market has become more closely integrated with global capital markets, although not to the same degree as the single family mortgage market. Loans on multifamily properties are still viewed as riskier by some than mortgages on single family properties. Property values, vacancy rates, and market rents of multifamily properties appear to be highly correlated with local job market conditions, creating greater sensitivity of loan performance to economic conditions than may be experienced for single family mortgages.

There is a need for an on-going GSE presence in the multifamily secondary market both to increase liquidity and to further affordable housing efforts. The potential for an increased GSE presence is enhanced by the fact that an increasing proportion of multifamily mortgages are now originated in accordance with secondary market standards.

The GSEs can play a role in promoting liquidity for multifamily mortgages and increasing the availability of long-term, fixed rate financing for these properties. Increased GSE presence would provide greater liquidity to lenders, *i.e.*, a viable ''exit strategy,'' that in turn would serve to increase their lending. It appears that the financing of small multifamily rental properties with 5–50 units, where a substantial portion of the nation's affordable housing stock is concentrated, have been adversely affected by excessive borrowing costs. Multifamily properties with significant rehabilitation needs also appear to have experienced difficulty gaining access to mortgage financing. Moreover, the flow of capital into multifamily housing for seniors has been historically characterized by a great deal of volatility.

b. Economic, Housing, and Demographic Conditions. Studies indicate that changing population demographics will result in a need for the mortgage market to meet nontraditional credit needs and to respond to diverse housing preferences. The U.S. population is expected to grow by an average of 2.4 million persons per year over the next 20 years, resulting in 1.1 to 1.2 million new households per year. In particular, the continued influx of immigrants will increase the demand for rental housing while those who immigrated during the 1980s will be in the market to purchase owner-occupied housing. The aging of the baby-boom generation and the entry of the small baby-bust generation into prime home buying age is expected, however, to result in a lessening of housing demand. Non-traditional households have, and will, become more important as overall household formation rates slow down. With later marriages, divorce, and non-traditional living arrangements, the fastest growing household groups have been single parent and single person households. With continued house price appreciation and favorable mortgage terms, ''trade-up buyers'' will also increase their role in the housing market. There will also be increased credit needs from new and expanding market sectors, such as manufactured housing and housing for senior citizens. These demographic trends will lead to greater diversity in the homebuying market, which, in turn, will require greater adaptation by the primary and secondary mortgage markets.

As a result of the above demographic forces, housing starts are expected to average 1.5 million units annually between 2000 and 2003, essentially the same as in 1996–99.[17] Refinancing of

existing mortgages, which accounted for 50 percent of originations in 1998 and 34 percent in 1999, is expected to return to lower levels during 2000. The mortgage market remained strong with $1.3 trillion dollars in originations during 1999. A lower number of originations is expected in 2000 with approximately $962 billion in originations being projected by the Mortgage Bankers Association of America.

c. Performance and Effort of the GSEs Toward Achieving the Goal in Previous Years. Both Fannie Mae and Freddie Mac have improved their affordable housing loan performance since the enactment of FHEFSSA in 1992 and HUD's establishment of housing goals under the law. However, the GSEs' mortgage purchases continue to lag the overall market in providing financing for affordable housing to low- and moderate-income families, underserved borrowers and their neighborhoods, indicating that there is more that the GSEs can do to improve their performance. In addition, a large percentage of the lower-income loans purchased by the GSEs have relatively high down payments, which raises questions about whether the GSEs are adequately meeting the needs of those lower-income families who have little cash for making large down payments but can fully meet their monthly payment obligations. The discussion of the performance and effort of the GSEs toward achieving the housing goals in previous years is specific to each of the three housing goals. This topic is discussed below and further details are provided in the Appendices to this rule.

d. Size of the Mortgage Market Serving the Targeted Population or Areas, Relative to the Size of the Overall Conventional, Conforming Mortgage Market. The Department's analyses indicate that the size of the conventional, conforming market relative to each housing goal is greater than earlier estimates (based mainly on HMDA data for 1992 through 1994) used in establishing the 1996–1999 housing goals. The discussion of the size of the conventional mortgage market serving targeted populations or areas relative to the size of the overall conventional, conforming mortgage market is specific to each of the three housing goals. The Department's estimate of the size of the conventional mortgage market is discussed below and further details are provided in the Appendices to this rule.

e. Ability of the GSEs To Lead the Industry in Making Mortgage Credit Available for the Targeted Population or Areas. Research concludes that the GSEs have generally not been leading the market, but have lagged behind the primary market in financing housing for lower-income families and housing in underserved areas. However, the GSEs' state-of-the-art technology, staff resources, share of the total conventional, conforming market, and their financial strength suggest that the GSEs have the ability to lead the industry in making mortgage credit available for lower-income families and underserved neighborhoods.

The legislative history of FHEFSSA indicates Congress's strong concern that the GSEs need to do more to benefit low- and moderate-income families and residents of underserved areas that lack access to credit.[18] The Senate Report on FHEFSSA emphasized that the GSEs should ''lead the mortgage finance industry in making mortgage credit available for low- and moderate-income families.'' [19] FHEFSSA, therefore, specifically required that HUD consider the ability of the GSEs to lead the industry in establishing the level of the housing goals. FHEFSSA also clarified the GSEs' responsibility to complement the requirements of the Community Reinvestment Act [20] and fair lending laws [21] in order to expand access to capital to those historically underserved by the housing finance market.

While leadership may be exhibited through the GSEs' introduction of innovative products, technology, and processes and through establishing partnerships and alliances with local communities and community groups, leadership must always involve increasing the availability of financing for homeownership and affordable rental housing. Thus, the GSEs' obligation to lead the industry entails leadership in facilitating access to affordable credit in the primary market for borrowers at different income levels and housing needs, as well as for underserved urban and rural areas.

While the GSEs cannot be expected to solve all of the nation's housing problems, the efforts of Fannie Mae and Freddie Mac have not matched the opportunities that are available in the primary mortgage market. Although the GSEs were directed by Congress to lead the mortgage finance industry in making mortgage credit available for low- and moderate-income families, depository and other lending institutions have been more successful than the GSEs in providing affordable loans to lower-income borrowers and in historically underserved neighborhoods. In 1998 for example, very low-income borrowers accounted for 9.9 percent of Freddie Mac's acquisitions of home purchase mortgage loans, 11.4 percent of Fannie Mae's acquisitions, 15.2 percent of such mortgage loans originated and retained by depository institutions, and 13.3 percent of such mortgage loans originated in the overall conventional, conforming market. Similarly, mortgage purchases on properties located in underserved areas accounted for 20.0 percent and 22.5 percent of Freddie Mac's and Fannie Mae's purchases of home purchase loans, respectively, 26.1 percent of home purchase mortgages originated and retained by depository institutions and 24.6 percent of home purchase mortgages originated in the overall conventional, conforming market.

Between 1993 and 1998, Fannie Mae improved its affordable lending performance and made progress toward closing the gap between its performance and that of the overall mortgage market. During that period Freddie Mac showed less improvement and, as a result, did not make as much progress in closing the gap between its performance and that of the overall market for home loans. However, during 1999, Freddie Mac's purchases of goals qualifying home loans increased significantly relative to Fannie Mae's purchases and, as a result Freddie Mac now matches or out-performs Fannie Mae in several affordable lending categories. For example, during 1999, very low-income borrowers accounted for 11.0 percent of Freddie Mac's purchases of home loans in metropolitan areas, compared with 10.8 percent of Fannie Mae's. Similarly, mortgages on properties in underserved census tracts accounted for 21.2 percent of Freddie Mac's acquisitions of home purchase mortgage loans in metropolitan areas, compared with 20.6 percent of Fannie Mae's. The extent to which Freddie Mac has closed its performance gap relative to depositories and the overall market will be clarified once HUD has the opportunity to analyze 1999 HMDA data for metropolitan areas.

The Department estimates the GSEs provided financing for 55 percent of units financed by conventional, conforming mortgages in 1998.[22] However, the GSEs' mortgage market presence varies significantly by property type. While the GSEs accounted for about 68 percent of the owner-occupied units financed in the primary market in that year, their role was much less in the market for mortgages on rental properties. Specifically, HUD estimates that Fannie Mae and Freddie Mac accounted for only about 24 percent of rental units financed in 1998. Thus, the GSEs' presence in the rental mortgage market was well under half their presence in the market for mortgages on

single family owner-occupied properties.

Within the rental category, GSE purchases have accounted for 29 percent of the multifamily dwelling units that were financed in 1998. The GSEs have yet to play a major role in financing mortgages for rental units in single family rental properties (those with at least one rental unit and no more than four units in total), where their market share was only 19 percent.

As noted above, the GSEs continue to lag the overall conforming, conventional market in providing affordable home purchase loans to lower-income families and for properties in underserved neighborhoods. Additionally, a large percentage of the lower-income loans purchased by both GSEs have relatively high down payments, which raises questions about whether the GSEs are adequately meeting the needs of those lower-income families who find it difficult to raise enough cash for a large down payment. Also, while rental properties are an important source of low- and moderate-income rental housing, they represent only a small portion of the GSEs' business.

The appendices to this rule provide more information on HUD's analysis of the extent to which the GSEs have lagged the mortgage industry in funding loans to underserved borrowers and neighborhoods. From this analysis of the GSEs' performance in comparison with the primary mortgage market and with other participants in the mortgage markets, it is clear that the GSEs need to improve their performance relative to the primary market of conventional, conforming mortgage lending. The need for improvements in the GSEs' performance is especially apparent with respect to the single family and multifamily rental markets.

f. Need To Maintain the Sound Financial Condition of the GSEs. Based on HUD's economic analysis and discussions with the Office of Federal Housing Enterprise Oversight, HUD has concluded that the level of the goals as proposed would not adversely affect the sound financial condition of the GSEs. Further discussion of this issue is found in Appendix A.

3. Determinations Regarding the Level of the Housing Goals

There are several reasons the Department, having considered all the statutory factors, is increasing the level of the housing goals.

a. Market Needs and Opportunities. First, the GSEs appear to have substantial room for growth in serving the affordable housing mortgage market. For example, as discussed above, the Department estimates that the two GSEs' mortgage purchases accounted for 55 percent of the total (single family and multifamily) conventional, conforming mortgage market during 1998. In contrast, GSE purchases comprised only 44 percent of the low- and moderate-income mortgage market in 1998, 46 percent of the underserved areas market, and, a still smaller, 33 percent of the special affordable market. As discussed above, the GSE presence in mortgage markets for rental properties, where much of the nation's affordable housing is concentrated, is far below that in the single family owner-occupied market.

The GSEs' role in the mortgage market varies somewhat from year to year in response to changes in interest rates, mortgage product types, and a variety of other factors. Underlying market trends, however, show a clear and significant increase in the GSEs' role. Specifically, OFHEO estimates that the share (in dollars) of single family mortgages outstanding accounted for by mortgage-backed securities issued by the GSEs and by mortgages held in the GSEs' portfolios has risen from 31 percent in 1990 to 42 percent in 1999. In absolute terms, the GSEs' presence has grown even more sharply, as the total volume of single family mortgage debt outstanding has increased rapidly over this period.

The GSEs have indicated that they expect their role in the mortgage market to continue to increase in the future, as they develop new products, refine existing products, and enter markets where they have not played a major role in the past. The Department's housing goals for the GSEs also anticipate that their involvement in the mortgage market will continue to increase.

There are a number of segments of the multifamily, single family owner, and single family rental markets that the GSEs have not tapped in which the GSEs might play an enhanced role thereby increasing their shares of targeted loans and their performance under the housing goals. Six such areas are discussed below.

(1) Small Multifamily Properties. One sector of the multifamily mortgage market where the GSEs could play an enhanced role involves loans on small multifamily properties—those containing 5–50 units. These loans account for 39 percent of the units in recently mortgaged multifamily properties, according to the 1991 Survey of Residential Finance. However, the GSEs typically purchase relatively few of these loans. HUD estimates that the GSEs acquired loans financing only three percent of units in small multifamily properties originated during 1998. This is substantially less than the GSEs' presence in the overall multifamily mortgage market, which the Department estimates was 29 percent in 1998.

Increased purchases of small multifamily mortgages would make a significant contribution to performance under the goals, since the percentages of these units qualifying for the income-based housing goals are high—in 1999, 95 percent of units backing Fannie Mae's multifamily mortgage transactions qualified for the Low- and Moderate-Income Housing Goal, with a corresponding figure of 90 percent for Freddie Mac. That year, 43 percent of units backing Freddie Mac's multifamily transactions qualified for the Special Affordable Housing Goal, with a corresponding figure of 56 percent for Fannie Mae.

(2) Multifamily Rehabilitation Loans. Another multifamily market segment holding potential for expanded GSE presence involves properties with significant rehabilitation needs. Properties that are more than 10 years old are typically classified as ''C'' or ''D'' properties, and are considered less attractive than newer properties by many lenders and investors. Multifamily rehabilitation loans accounted for only 0.5 percent of units backing Fannie Mae's 1998 mortgage purchases and for 1.6 percent in 1999. These loans accounted for 1.9 percent of Freddie Mac's 1998 multifamily mortgage purchase total (with none indicated in 1999).

(3) Single Family Rental Properties. Studies show that single family rental properties are a major source of affordable housing for lower-income families, yet these properties are only a small portion of the GSEs' overall business.

HUD estimates that approximately 203,000 mortgages were originated on owner-occupied single family rental properties in 1998. These mortgages financed a total of 458,000 units—the owners' units plus an additional 254,000 rental units.[23] Data submitted to HUD by the GSEs indicate that, in 1998, together the GSEs acquired mortgages backed by 188,000 such units, 41 percent of the number of units financed in the primary market, well below the GSEs' overall 1998 market share of 55 percent.[24]

There is ample room for an enhanced GSE role in this goal-rich market. For the GSEs combined, 65 percent of the units in these properties qualified for the Low- and Moderate-Income Housing Goal in 1999, 32 percent qualified for the Special Affordable Housing Goal, and 54 percent qualified for the

Geographically Targeted Goal. Thus, significant gains could be made in performance on all of the goals if Fannie Mae and Freddie Mac played a larger role in the market for mortgages on single family owner-occupied rental properties (two to four units).

(4) Manufactured Homes. The Manufactured Housing Institute, in its Annual Survey of Manufactured Home Financing, reported that 116 reporting institutions originated $15.6 billion in consumer loans on manufactured homes in 1998, and that, with an average loan amount of about $30,000, approximately 520,000 loans were originated.

While the GSEs have traditionally played a minimal role in financing manufactured housing, they have recently stepped up their activity in this market. However, even with their increased level of activity, the GSEs' purchases probably accounted for less than 15 percent of total loans on manufactured homes in 1998—a figure well below their overall market presence of 55 percent.

There is ample room for an enhanced GSE role in this market, with its high concentration of goals qualifying mortgage loans. In 1998, for loans reported by 21 manufactured housing lenders (that are required by HMDA to report loan data), 76 percent qualified for the Low- and Moderate-Income Housing Goal in 1998, 42 percent qualified for the Special Affordable Housing Goal, and 47 percent qualified for the Geographically Targeted Goal. Thus, manufactured housing has significantly higher shares of goal qualifying loans than all single family owner-occupied properties, though purchases of these loans are not quite as goal-rich as loans on multifamily properties. In general, goal performance could be enhanced substantially if the GSEs were to play an increased role in the manufactured housing mortgage market.

(5) A-minus Loans. Industry sources estimate that subprime mortgage originations amounted to about $160 billion in 1999, and that these loans are divided evenly between the more creditworthy (''A-minus'') borrowers and less creditworthy (''B,'' ''C,'' and ''D'') borrowers. Based on HMDA data for 200 subprime lenders, the Department estimates that 58 percent of the units financed by subprime loans qualified for the Low- and Moderate-Income Housing Goal in 1998, 29 percent qualified for the Special Affordable Housing Goal, and 45 percent qualified for the Geographically Targeted Goal.

Freddie Mac has estimated that 10 to 30 percent of subprime borrowers would qualify for a prime conventional loan. Fannie Mae Chairman Franklin Raines has stated that half of all mortgages in the high cost subprime market are candidates for purchase by Fannie Mae. Both Fannie Mae and Freddie Mac recently introduced programs aimed at borrowers with past credit problems that would lower the interest rates for those borrowers that were timely on their mortgage payments. Freddie Mac has also purchased subprime loans through structured transactions that limit Freddie Mac's risk to the ''A'' piece of a senior-subordinated transaction.

However, there may be ample room for further enhancement of both GSEs' roles in the A-minus market. A larger role by the GSEs might help standardize mortgage terms in this market, possibly leading to lower interest rates.

(6) Seasoned Mortgages. Over the past five years, depository institutions (banks and thrifts) have been expanding their affordable loan programs and, as a result, have originated substantial numbers of loans to low-income and minority borrowers and to low-income and predominantly minority neighborhoods, under the incentive of the Community Reinvestment Act (CRA),[25] which requires many depository institutions to help meet the credit needs of their communities. As the GSEs noted in their comments, some of these loans, when originated, may not have met the GSEs' underwriting guidelines. A large number of the ''CRA-type'' loans that have been recently originated remain in thrift and bank portfolios; selling these loans on the secondary market would free up capital for depositories to originate new CRA loans. Given its enormous size, the CRA market segment provides an opportunity for Fannie Mae and Freddie Mac to expand their affordable housing financing programs. The Department recognizes that purchasing these loans may present some challenges for the GSEs. However, it appears these loans are beginning to be purchased by GSEs after the loans have seasoned and through various structured transactions. As explained in Appendix A, Fannie Mae's purchases of seasoned loans improved its performance on the housing goals in 1997 and 1998. Seasoned loan purchases did not have a similar impact in 1999. Freddie Mac, on the other hand, has not been as active as Fannie Mae in purchasing seasoned CRA type loans. With billions of dollars worth of CRA loans in bank portfolios, the early experience of Fannie Mae suggests that purchasing these loans could be an important strategy for reaching the housing goals and provide needed liquidity for a market that is serving the needs of low-income and minority homeowners.

(7) Lending to Minority Borrowers. The GSEs have an opportunity to play a leadership role in making mortgage credit more widely available to African American and other minority borrowers, who represent yet another underserved market. In 1998, for example, African American borrowers accounted for five percent of conventional, conforming single family mortgage loans originated in metropolitan areas, as shown in Appendix A.[26] By contrast, African American borrowers accounted for only 3.1 percent of Fannie Mae's metropolitan area mortgage purchases and three percent of Freddie Mac's mortgage purchases. Hispanic borrowers accounted for 5.2 percent of the metropolitan area conventional, conforming mortgage market in 1998, 4.8 percent of Fannie Mae's mortgage purchases and 4.4 percent of Freddie Mac's mortgage purchases.[27]

b. Market Share Higher than Goal Levels. The shares of the mortgage markets that would qualify for each of the housing goals are higher than the goal levels as they were set through 1999. Specifically, the Low- and Moderate-Income Housing Goal for 1997 through 1999 was 42 percent, but the market share for low- and moderate-income mortgages has been estimated at 50–55 percent. The Geographically Targeted Goal for 1997 through 1999 was 24 percent, but the estimated market share of geographically targeted mortgages has been estimated at 29–32 percent. The Special Affordable Housing Goal for 1997 through 1999 was 14 percent, but the estimated special affordable market share is 23–26 percent.[28] Thus, the increases in the housing goals implemented in this final rule and described below will significantly reduce the disparities that existed between the previous housing goals and HUD's market estimates. HUD's analysis indicates that the goal levels established in the final rule are reasonable and feasible and that its market estimates reflect significantly more adverse economic environments than have recently existed. Reasons for the remaining disparity between the GSE housing goals established in this final rule and the respective shares of the overall mortgage market qualifying for each of the housing goals are discussed below. See Appendix D for further discussion of these issues.

c. Need for Increased Affordable Single Family Mortgage Purchases. Higher housing goals are needed to assure that both Fannie Mae and Freddie Mac increase their purchases of

single family mortgages for lower-income families. The GSEs lag behind depository institutions and other lenders in the conventional, conforming market in providing mortgage funds for underserved families and their neighborhoods. Numerous studies have concluded that Fannie Mae and Freddie Mac have room to increase their purchases of affordable loans originated by primary lenders. The single family affordable market, which had only begun to grow when HUD set housing goals in 1995, has now established itself with seven straight years (1993–1999) of solid performance. Current projections suggest that the demand for affordable housing by minorities, immigrants, and non-traditional households will be maintained in the post-1999 period, leading to additional opportunities for the GSEs to support mortgage lending benefiting families targeted by the housing goals.

d. Market Disparities. Despite the recent growth in affordable lending, there are many groups who continue to face problems obtaining mortgage credit and who would benefit from a more active and targeted secondary market. Homeownership rates for lower-income families, certain minorities, and central city residents are substantially below those of other families, and the disparities cannot simply be attributed to differences in income. Immigrants represent a ready supply of potential first-time home buyers and need access to mortgage credit. Special needs in the market, such as rehabilitation of older two- to four-unit properties, could be helped by new mortgage products and more flexibility in underwriting and appraisal guidelines. The GSEs, along with primary lenders and private mortgage insurers, have been making efforts to reach out to these underserved portions of the markets. However, more needs to be done, and the proposed increases in the housing goals are intended to encourage additional efforts by Fannie Mae and Freddie Mac.

e. Impact of Multifamily Mortgage Purchases. When the 1996–99 goals were established in December 1995, Freddie Mac had only recently reentered the multifamily mortgage market, after an absence from the market in the early 1990s. Freddie Mac has made progress in rebuilding its multifamily mortgage purchase program, with its purchases of these loans rising from $191 million in 1993 to $7.6 billion in 1999. Freddie Mac's limited role in the multifamily market was a significant constraint when HUD set the level of the housing goals for 1996 through 1999. While Freddie Mac has made progress in recent years in significantly increasing its multifamily mortgage purchases, Freddie Mac's smaller multifamily portfolio relative to that of Fannie Mae has meant fewer refinance opportunities from within its portfolio. Accordingly, the Department is providing Freddie Mac with a temporary adjustment factor for purchases of mortgages in multifamily properties with more than 50 units under the 2001–2003 goals as it continues to increase its multifamily mortgage purchases, as discussed in more detail, below.

f. Financial Capacity to Support Affordable Housing Lending. A wide variety of quantitative and qualitative indicators demonstrate that the GSEs' have ample, indeed robust, financial strength to improve their affordable lending performance. For example, the combined net income of the GSEs has risen steadily over the last decade, from $677 million in 1987 to over six billion dollars in 1999. This financial strength provides the GSEs with the resources to lead the industry in making mortgage financing available for families and neighborhoods targeted by the housing goals.

g. Closing the Gap Between the GSEs and the Market. This section discusses the relationship between the housing goals, the GSEs' performance and HUD's market estimates; and identifies key segments of the affordable market in which the GSEs have had only a weak presence. To lay the groundwork for this discussion, the following table summarizes the Department's findings regarding GSE performance under the 1997–2000 goals and the new goal levels for 2001–2003 as compared to HUD's estimates for 1995–1998 markets as well as HUD's projected market estimates for 2001–2003:

Percentage of Eligible Units Financed

	1997-2000 Goals	2001-2003 Goals	GSEs' Average performance 1996-1999 (Fannie Mae /Freddie Mac	HUD's Estimated 1995-1998 Market Average[29]	HUD's Projected market Estimate
Low- and Moderate Income	42%	50%	45.3% 43.2%	56%	50-55%
Geographically Targeted	24%	31%	27.7% 26.2%	33%	29-32%
Special Affordable Housing	14%	20%	16.1% 15.6%	28%	23-26%

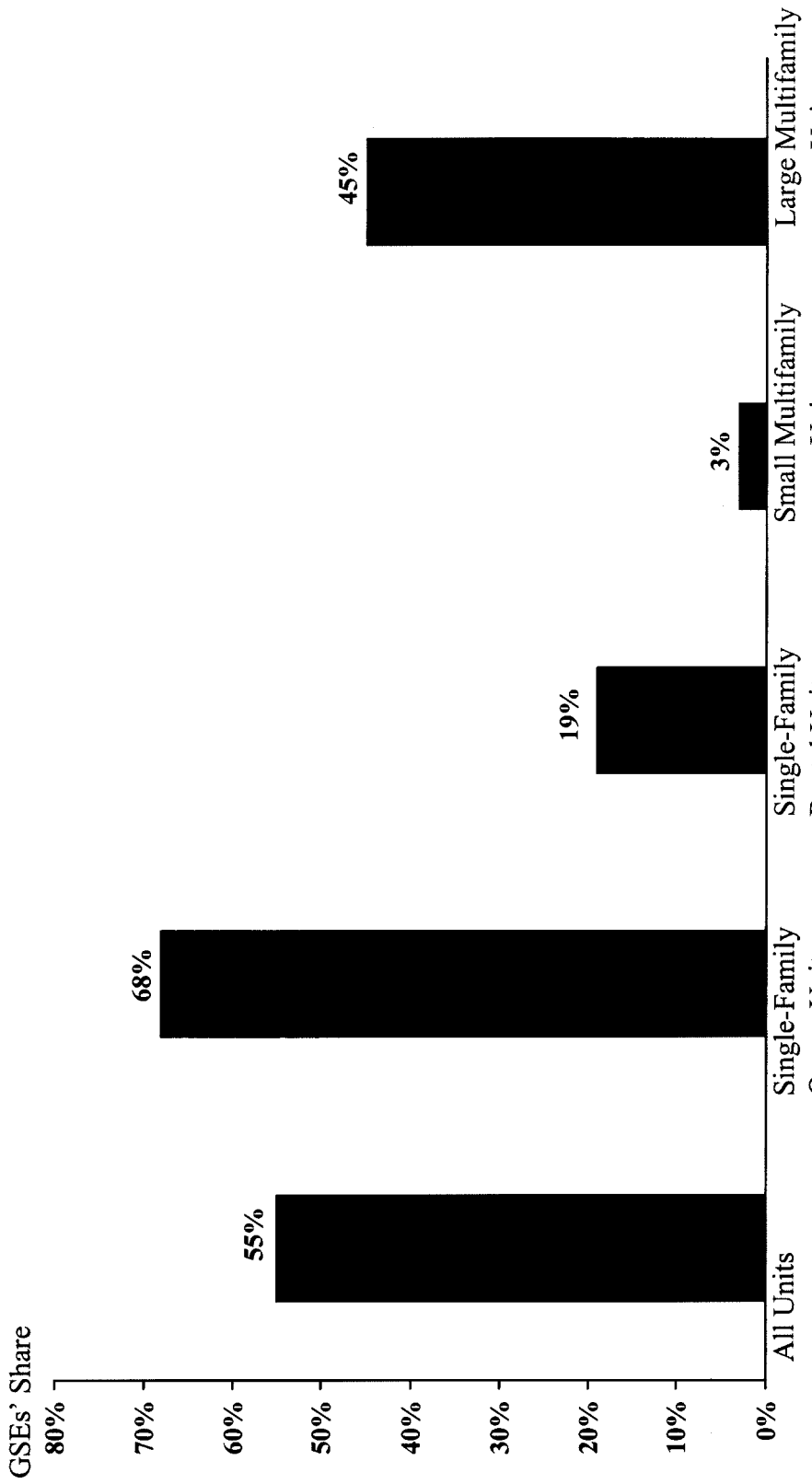
It is evident from this table that the new goal levels for the Low- and Moderate-Income Housing Goal and Special Affordable Housing Goal are below HUD's projected market estimate for the years covered by the new housing goals. One reason for this disparity can be discerned by disaggregating GSE purchases by property type, which shows that the GSEs have little presence in some important segments of the affordable housing market. For example, as shown in Figure 1, in 1998, the GSEs purchased loans representing only 19 percent of rental units in single family rental properties, and only three percent of units in small multifamily properties mortgaged that year. Figure 2 provides additional detail providing unit data comparing the GSEs' with the conventional, conforming market. Typically, about 90 percent of rental units in single family rental and small multifamily properties qualify for the Low- and Moderate-Income Housing Goal. One reason that the GSEs' performance under the Low- and Moderate-Income Housing Goal falls short of HUD's market estimate is that the GSEs have had only a weak and inconsistent presence in financing these important sources of affordable housing, notwithstanding that these market segments are important components in the market estimate. In the overall conventional, conforming mortgage market, rental units in single family properties and in small multifamily properties are expected to represent approximately 21 percent of the overall mortgage market, and 33 percent of units backing mortgages qualifying for the Low- and Moderate-Income Housing Goal. Yet in 1999, units in such properties accounted for 6.6 percent of the GSEs' overall purchases, and only 11.5 percent of the GSEs' purchases meeting the Low- and Moderate-Income Housing Goal. The continuing weakness in GSE purchases of mortgages on single

family rental and small multifamily properties is a major factor explaining the shortfall between GSE performance and that of the primary mortgage market.

For a variety of reasons, the GSEs have historically viewed the single family rental and small multifamily market segments as more difficult for them to penetrate than the single family owner-occupied mortgage market. In order to provide the GSEs with an incentive to enter these markets and to provide this housing the benefits of greater financing through the secondary market, HUD is proposing to award ''bonus points'' for the GSEs' purchases of mortgages on owner-occupied single family rental properties and small multifamily properties in calculating credit toward the housing goals. The bonus points will make the Department's increased housing goals easier for the GSEs to attain if they devote resources to affordable market segments where their past role has been limited and there are significant needs for greater secondary market involvement.

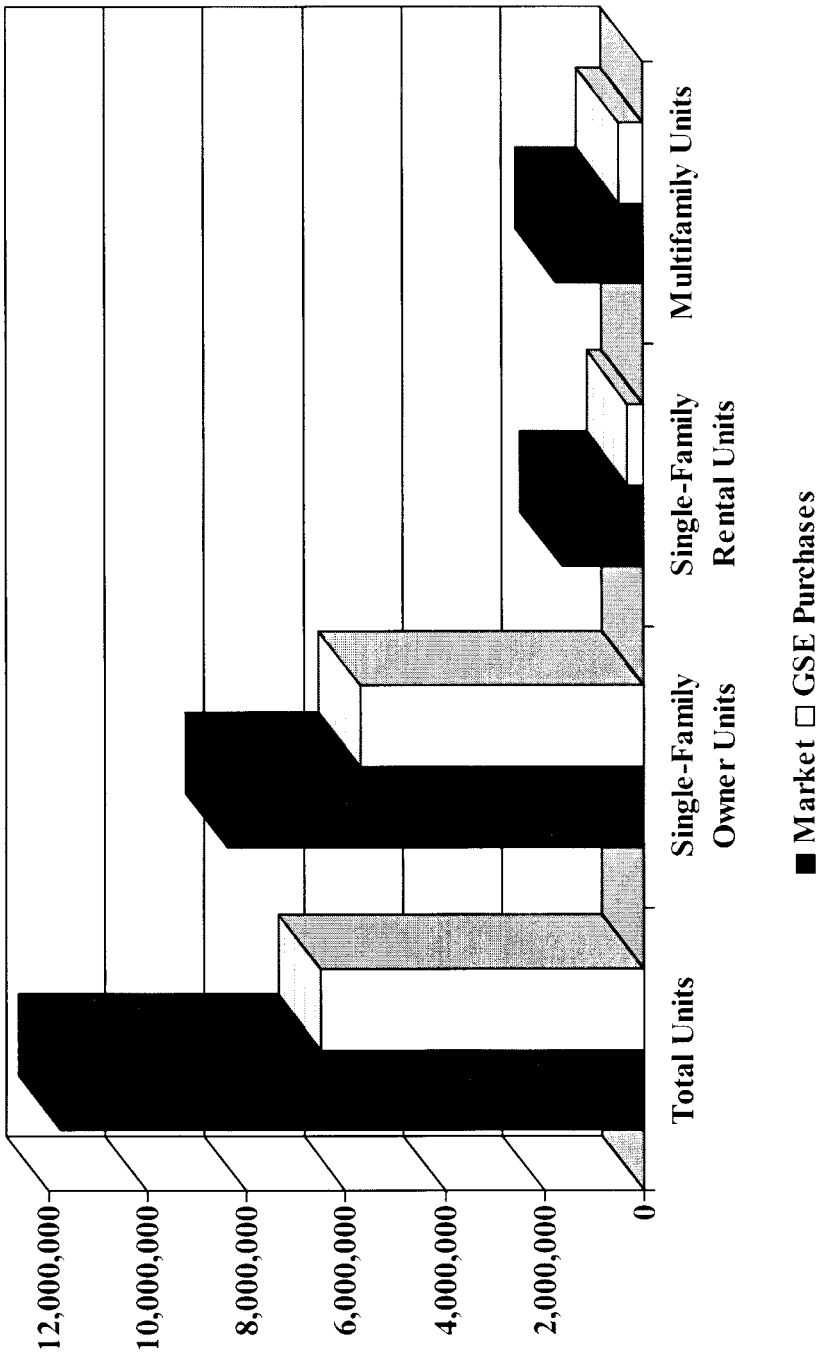
BILLING CODE 4210–27–P

Figure 1
GSEs' Share of the 1998 Conventional Conforming Market by Property Type



Source: See Table A.7b, Appendix A, and discussion of mortgages on small multifamily properties in Appendix A, Section G.

Figure 2
Units in the 1998 Conventional Conforming Mortgage Market Compared to GSE Purchases By Property Type



Source: See Table A.7b, Appendix A.

4. Summary of Comments on HUD's Analysis of Statutory Factors

HUD received several comments on the factors for determining the goal levels. Fannie Mae and Freddie Mac provided numerous technical comments on HUD's analyses in the appendices to the proposed rule. Most of the comments focused on two related topics concerning HUD's market methodology: (a) HUD's model for the determining the market size for each of the three housing goals; and (b) HUD's analysis of the GSEs' performance in the single family owner-occupied portion of the conventional, conforming mortgage market. Section A of Appendices A, B and C and Section B of Appendix D provide a more extensive discussion of HUD's response to the various questions raised by the GSEs about the factors for determining the housing goals.

a. Market Share Methodology. In Appendix D, HUD estimates the following market shares for the three housing goals during 2001–2003: 50–55 percent for the Low-Mod Goal, 23–26 percent for the Special Affordable Goal, and 29–32 percent for the Geographically Targeted Goal. Neither GSE objected to HUD's basic approach to calculating these market shares, which involves estimating (1) the share of the market (in dwelling units) by type of property (single family owner-occupied, 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 total market by weighting each such goal share by the corresponding market share. In fact, both Fannie Mae and Freddie Mac stated that HUD's market share model was a reasonable approach

for estimating the goals qualifying shares of the mortgage market. Freddie Mac stated that the Department took the correct approach in estimating the size of the conventional, conforming market by examining several different data sets, using alternative methodologies, and conducting sensitivity analyses. Fannie Mae expressed similar sentiments asserting that HUD's model for assessing the size of the affordable housing market is reasonable.

Both GSEs were critical, however, of HUD's implementation of its market methodology. Their major comments on the market methodology fall into two general areas. First, the GSEs expressed concern about HUD's assumptions and use of specific data elements both in constructing the distribution of property shares among single family owner-occupied, single family rental, and multifamily properties and in estimating the goals qualifying shares for each property type. The GSEs contended that HUD chose assumptions and data sources that resulted in an overstatement of the market estimate for each of the housing goals. In particular, the GSEs claimed that HUD overstated the importance of rental properties (both single family and multifamily) in its market model and overstated the Low- and Moderate-Income, Special Affordable, and Geographically Targeted shares of the single family owner market. Second, both GSEs argued that HUD's market estimates depended heavily on a continuation of recent conditions of economic expansion and low interest rates. According to the GSEs, HUD's range of market estimates did not include periods of adverse economic and affordability conditions such as those which existed in the early 1990s.

b. GSEs' Performance in Single Family Owner-Occupied Market. Both GSEs differed with HUD's conclusions that they lag the conventional, conforming market in funding mortgages for the goals qualifying segments of the single family owner-occupied market. Rather, the GSEs hold strongly that they have led the mortgage market, from both quantitative and qualitative perspectives. The GSEs expressed concern about HUD's assumptions and treatment of HMDA data in estimating the goals qualifying shares for single family owner-occupied mortgages. The GSEs assert that certain portions of the conforming mortgage market (such as manufactured housing loans and selected CRA loans)—those market segments where they have not been very active—should be excluded from HUD's definition of the owner market. From their own analysis that excludes these markets from HMDA data, the GSEs conclude that they match or exceed the market in funding affordable loans.

It should be noted that the GSEs extend their criticism to other researchers that have examined this issue of their leading the market with HMDA and related data. Appendix A summarizes findings of several research studies that have reached the same conclusion as HUD—that the GSEs have lagged the market in affordable lending

c. Volatility of the Mortgage Market. Both GSEs claimed that HUD had not adequately considered the impact that changes in the national economy could have on the size of the affordable lending market and that HUD should significantly lower its market estimates to reflect adverse economic conditions. The GSEs commented that HUD based its market estimates on the unusually favorable economic and housing market conditions that have existed since 1995. The GSEs relied on a Freddie Mac funded study by PriceWaterhouse-Coopers (PWC) which concluded that the low- and moderate-income share of the mortgage market was heavily influenced by interest rate movements and changes in the rate of economic growth.[30] PWC claims that the low-mod share of the market ranged from 35 percent to 56 percent during the 1990s, with a mean of 46 percent. HUD's analysis, on the other hand, finds that the low- and moderate-income share of the market averaged 53 percent during the 1990s.

In HUD's view, a major shortcoming of the PWC report is that it underestimates the size of the multifamily mortgage market by relying on multifamily originations reported in HMDA data. While HMDA is for many purposes a preeminent data source on single family lending, its usefulness as a multifamily data source is much more limited due to severe underreporting of loan originations. Indeed, HMDA is not widely used as a multifamily data source in published works by highly regarded independent researchers, nor by Fannie Mae in its comments submitted in response to HUD's proposed rule.

The discussion of single family lending in the PWC document initially appears to contradict HUD's analysis in Appendix D of the proposed rule, but this is mainly because HUD's analysis is based upon the conforming, conventional mortgage market, whereas PWC includes FHA loans and loans above the conforming loan limit, at least in the same years.[31] Because the GSEs are prohibited from purchasing loans above the conforming limit, and because HUD is directed by statute to focus on the conventional market in setting the housing goals, it is necessary to restrict analyses of the mortgage market to the conventional, conforming market for purposes of establishing the housing goals.

As explained in Appendices A and D, HUD is aware that the mortgage market is dynamic in character and susceptible to significant changes in conditions that would affect the overall level of affordable lending to lower-income families. In response to concerns expressed about the volatility of the mortgage markets over time, HUD has estimated a range of market shares for each of the housing goals for the years 2001–2003 of 50–55 percent for the Low- and Moderate-Income Housing Goal, 23–26 percent for the Special Affordable Housing Goal, and 29–32 percent for the Geographically Targeted Goal—that reflect economic environments significantly more adverse than those which existed during the period between 1995 and 1998, when the units financed in the conventional, conforming market meeting the Low- and Moderate-Income Housing Goal averaged 56 percent, the Special Affordable Housing Goal, 28 percent, and the Geographically Targeted Goal, 33 percent.

HUD conducted detailed sensitivity analyses for each of the housing goals to reflect affordability conditions that are less conducive to lower-income homeownership than those that existed during the mid- to late-1990s. For example, the low- and moderate-income percentage for single family home purchase loans can fall to as low as 34 percent—or four-fifths of its 1995–98 average of over 42 percent—before the projected low- and moderate-income share of the overall market would fall below 50 percent. Additional sensitivity analyses examining recession and proportionately higher refinance scenarios and varying other key assumptions, such as the size of the multifamily market, show that HUD's market estimates consider a range of mortgage market and affordability conditions and provide a sound basis for setting housing goals for the years 2001–03.

HUD recognizes that under certain adverse circumstances, the goals qualifying market shares could fall below its estimates. However, as HUD stated in its 1995 GSE Rule, while the housing goals must be feasible, setting goals so that they can be met even under the very worst of circumstances is unreasonable. As HUD stated in its 1995 Final GSE Rule, policy should not be based on market estimates that include the worst possible economic scenarios.

HUD believes that the range for the market shares should be broad enough to reflect the likely scenarios including an expected range of volatility in the mortgage market over the period during which the new housing goals will be in effect.

FHEFSSA and HUD recognize that conditions could change in ways that would require revised expectations. Thus, HUD is given the statutory discretion to revise the goals if the need arises. Further, current regulations require that, if a GSE fails or if there is a substantial probability that a GSE will fail one or more of the housing goals, notice be provided to the GSE and an opportunity provided for the GSE to explain the reason for the failure, or potential failure, and to provide information as to the feasibility of achieving the housing goal. The Department then makes a determination, taking into consideration market and economic conditions and the financial condition of the GSE, as to whether the goal was feasible. If the goal is determined not to be feasible, no further action is taken. If the goal is determined to be feasible, the GSE is given the opportunity to submit, for HUD's approval, a housing plan demonstrating how the goal will be achieved in the future. Thus, there are adequate protections for the GSEs if they are unable to achieve one or more of their housing goals due to a dramatic downturn in the market.

d. Shortcomings of Mortgage Market Data Bases. Major mortgage market data bases such as HMDA and the American Housing Survey (AHS) are used to implement HUD's market share model. The GSEs made extensive criticisms of these data bases, concluding from their critiques that the ranges for the estimates of the goals-qualifying market shares should be wider to reflect uncertainty due to inadequate data. Examples of problems asserted by the GSEs include: overstating of low-income loans in HMDA data; inability of HMDA data to identify important segments of the market (such as subprime lenders); underreporting of multifamily mortgages in HMDA data and generally unreliable reporting of rental mortgages in other data bases; underreporting of income in the AHS; and the fact that some important mortgage market data bases such as the 1991 Residential Mortgage Finance Survey are dated.

HUD agrees that a single comprehensive source of information on mortgage markets is not available. Nevertheless, HUD considered and analyzed a number of data sources for the purpose of estimating market size, since no single source could provide all the data elements needed for its market model. In the appendices, HUD carefully defines the range of uncertainty associated with each data source, pulls together estimates of important market parameters from independent sources, and conducts sensitivity analyses to show the effects of various assumptions. In fact, Freddie Mac noted that ''We support the Department's approach for addressing the empirical challenges of setting the goals by examining several different data sets, using alternative methodologies, and conducting sensitivity analysis.''

While HUD recognizes the shortcomings of the various data and the inability to derive precise point estimates of various market parameters, HUD does not believe that these limitations call for expanding the range of the market estimates, as suggested by the GSEs. One purpose of the appendices is to demonstrate that careful consideration of independent data sources can lead to reliable ranges of estimates for the goals-qualifying shares of the mortgage market. HUD demonstrates the robustness of its market estimates by reporting the results of numerous sensitivity analyses that examine a range of assumptions about the existing data on the rental and owner markets. It should also be emphasized that while there are some problems with existing mortgage market data, there is a wealth of information on important components of the market. For example, HMDA data provide wide coverage of the single family owner market in metropolitan areas, yielding important information on the borrower income and census tract (underserved area) characteristics of that market, and thus providing useful information on the affordability characteristics of the single family rental and multifamily housing stock.

HUD's specific responses to the GSEs' comments on data are included mainly in Section A of Appendices A, B and C and Section B of Appendix D. For example, as noted there, HUD disagrees with the GSEs' assertions regarding the seriousness of the bias problem (*i.e.*, overstating low-income loans) in HMDA data. HUD does not rely heavily on some of the data bases that the GSEs criticize (*e.g.*, the borrower income data from the AHS and the 1991 Residential Finance Survey).

e. Size of the Multifamily Market. Because a high proportion of multifamily units qualify for the housing goals (*e.g.*, 90 percent typically qualify for the Low- and Moderate-Income Housing Goal and about 50 percent for the Special Affordable Goal), the size of the multifamily market is an important determinant of the overall market shares for the housing goals, as estimated by HUD's model. Both GSEs commented that HUD overstated the role of multifamily financing, which they asserted led to HUD's overstated estimated market shares. Freddie Mac and PriceWaterhouseCoopers, in particular, advocated the use of HMDA data for measuring the size of the multifamily market.

As explained in Appendix D, HUD disagrees with Freddie Mac's and PWC's analysis of the multifamily market. That appendix contains a detailed discussion of the size of the multifamily mortgage market that considers a number of alternative data sources providing ample evidence on multifamily origination volume over the years 1990 to 1999. HUD finds that newly mortgaged multifamily units represent an average of 16–17 percent of units financed during the 1990s. HUD's estimated multifamily market shares exceed estimates prepared by PWC (averaging 8.7 percent for 1991–1998); Appendix D outlines what HUD regards as errors in the PWC study that led to its unrealistically low estimates of the multifamily origination market. The three multifamily market shares—13.5 percent, 15 percent, and 16.5 percent—that HUD emphasizes in its market share model accommodates the possibility of a recession or heavy refinance year.

f. GSEs' Affordable Lending Performance—Defining the Relevant Market. As noted earlier, HUD uses HMDA data to show that even though the GSEs have improved their performance since 1993, they have lagged depositories and others in the conventional, conforming market in funding affordable loans, both since 1993 and particularly during the more recent 1996–98 period when the new housing goals were in effect. In their analyses, the GSEs reach the opposite conclusion—each concludes that they already match or even lead the market, depending on the affordable category being considered. The GSEs obtain this result by adjusting HMDA market data to exclude single family loans that they perceive as not being available for them to purchase.

Both GSEs provided numerous comments concerning the types of mortgages that HUD should exclude from the definition of the single family owner market. Fannie Mae states that it ''can only purchase or securitize mortgages that primary market lenders are willing to sell'' and that ''HUD fails to adjust for those housing markets that are not fully available to Fannie Mae

and Freddie Mac.'' Freddie Mac states that it ''has not achieved, and is unlikely to achieve in the near term, the same penetration in the subprime and manufactured housing segments of the market as it has achieved in the conventional, conforming market'' and, therefore, HUD should not include these segments in its market definition. According to the GSEs, markets that are ''not available'' to them or where they are not a ''full participant'' should be excluded from HUD's market definition. In addition to the subprime and manufactured housing markets, examples of market segments mentioned by the GSEs for exclusion consisted of the following: low-down payment mortgages (those with loan-to-value ratios greater than 80 percent) without private mortgage insurance or some other credit enhancement; loans financed through state and local housing finance agencies; below-market-interest-rate mortgages; specialized CRA mortgages; and portions of depository portfolios that are not available for purchase by the GSEs at the time of mortgage origination.

HUD disagrees with the comments offered by the GSEs advocating exclusion of those market segments that they have not yet been able to penetrate. The conventional, conforming market represents the appropriate benchmark for evaluating GSE performance as discussed previously, even if this is not the market that the GSEs perceive as available for them to purchase. However, with respect to the subprime market, HUD believes that the risky, B&C portion of that market should be excluded from the market estimates for each of the housing goals. Thus, HUD includes only the A-minus portion of the subprime market in its overall estimates of the goals-qualifying market shares.

Excluding other important segments of the mortgage market as the GSEs recommend would render the resulting market benchmark useless for evaluating the GSEs' performance. The loans that the GSEs would exclude are important sources of goals credit and, in fact, are the very loans the GSEs are supposed to be reaching out to finance. A recent report by the Department of Treasury demonstrated the targeting of CRA-type loans to lower-income and minority families. Numerous studies have shown that the manufactured home sector is an important source of low-income housing. In many of these markets, a more active secondary market could encourage lending to traditionally underserved borrowers. While HUD recognizes that some segments of the market may be more challenging for the GSEs to enter than others, the data reported in Figure 2 of this Appendix show that the GSEs have ample opportunities to purchase goals-qualifying mortgages. Furthermore, HUD recognizes the challenge of reaching segments of these markets by not setting each goal at the very top of its market estimate range.

Finally, it should also be noted that the GSEs' purchases under the housing goals are not limited to new mortgages that are originated in the current calendar year. The GSEs can purchase loans from the substantial, existing stock of affordable loans—after these loans have seasoned and the GSEs have had the opportunity to observe their payment performance.

g. HUD's Determination. HUD carefully examined the comments on its analysis of the statutory factors used to determine the appropriate level of the housing goals, particularly the methodology used to establish the market share for each of the goals. Based on that evaluation, as well as HUD's additional analysis of its estimates, HUD determined that its basic methodology is a reasonable and valid approach to estimating market share and that the percentage ranges for each of the three market share estimates do not need to be adjusted from those provided in the proposed rule. While a number of technical changes have been made in this final rule in response to the comments, the approach for determining market size has not been modified substantially. The detailed evaluations show that the methodology, as modified, produces conservative estimates of the market share for each goal. HUD recognizes the uncertainty regarding some of these estimates, which has led the Department to undertake a number of sensitivity and other analyses to reduce this uncertainty and also to provide a range of market estimates (rather than precise point estimates) for each of the housing goals.

5. Period Covered by the Housing Goals

This final rule establishes housing goals for the years 2001 through 2003. The proposed rule would have established housing goals for the GSEs for the year 2000 as well as 2001–2003, with higher housing goals than currently required for 2000, a transition year, and still higher goals for 2001–2003.

The GSEs commented that since the proposed rule would have set transitional goals for 2000, if the goals are established later in 2000, then 2001 should become the transition year.

HUD has considered the issue and concluded that while it could establish higher ''transitional'' goals for 2000 as were proposed late in the year, and require that the GSEs perform at the new goal levels, given the publication date of this final rule, HUD will not require that the GSEs meet higher goals for 2000.

At the same time, HUD has determined that establishing 2001 as a transition year is unnecessary and unwarranted. The goal levels for the years 2001–2003, and 2000, were announced in July 1999 and formally proposed earlier this year, providing the GSEs ample notice of the goal levels expected for these years. Indeed, data indicate that the GSEs have increased their efforts in 2000 in light of the proposed 2001–2003 levels. Moreover, the Department's analysis of the statutory factors supports establishment of the goals for 2001–2003 at the levels proposed as both reasonable and feasible. Accordingly, the housing goals for 2000 shall remain at the levels previously established in accordance with §§ 81.12(c)(3), 81.13(c)(3), and 81.14(c)(3) of the regulations as they existed prior to the effectiveness of this final rule. The housing goals for 2001–2003 are established at the levels HUD proposed.

The Department believes the new goal levels established by this rule to be appropriate based upon consideration of the statutory factors and comments received. Setting the goal levels for years 2001–2003 provides the GSEs with a level of predictability to enable them to develop and implement business strategies to achieve the goals.

6. Low- and Moderate-Income Housing Goal, § 81.12

This section discusses the Department's consideration of the statutory factors in arriving at and the comments received on the new housing goal level for the Low- and Moderate-Income Housing Goal, which targets mortgages on housing for families with incomes at or below the area median income. After consideration of these factors, this final rule establishes the goal for the percentage of dwelling units to be financed by each GSE's mortgage purchases for each of the years 2001–2003 that are affordable to low- and moderate-income families at 50 percent. A short discussion of the statutory factors received follows. Additional information analyzing each of the statutory factors is provided in Appendix A, ''Departmental Considerations to Establish the Low- and Moderate-Income Housing Goal,'' and Appendix D, ''Estimating the Size of the Conventional Conforming Market for each Housing Goal.''

a. Market Estimate for the Low- and Moderate-Income Housing Goal. The Department estimates that dwelling units serving low- and moderate-income families will account for 50–55 percent of total units financed in the overall conventional, conforming mortgage market during the period 2001 through 2003. HUD has developed a reasonable range, rather than a point estimate, that accounts for significantly more adverse economic conditions than have existed recently.

b. Past Performance of the GSEs under the Low- and Moderate-Income Housing Goal. During the transition period from 1993 through 1995, Fannie Mae's performance under the Low- and Moderate-Income Housing Goal jumped sharply in one year, from 34.2 percent in 1993 to 44.8 percent in 1994, before declining to 42.3 percent in 1995. It then stabilized at just over 45 percent in 1996 and 1997. Fannie Mae's performance in 1998 declined to 44.1 percent due in large measure to the high volume of refinance loans that Fannie Mae funded in 1998, before rising to 45.9 percent in 1999.

During the same period, Freddie Mac demonstrated more consistent gains in performance under the Low- and Moderate-Income Housing Goal, from 29.7 percent in 1993 to 37.4 percent in 1994 and 38.9 percent in 1995. Freddie Mac then achieved 41.1 percent in 1996, and 42.6 percent and 42.9 percent in 1997 and 1998, respectively. In 1999, Freddie Mac's performance increased sharply to 46.1 percent.

The housing goals that have been in effect prior to this final rule specified that in 1996 at least 40 percent of the number of units financed by mortgage purchases of the GSEs and eligible to count toward the Low- and Moderate-Income Goal should qualify as low- and moderate-income, and at least 42 percent should qualify as such in each year from 1997 through 1999. Fannie Mae surpassed these goal levels by 5.6 percentage points in 1996, 3.7 percentage points in 1997, 2.1 percentage points in 1998, and 3.9 percentage points in 1999. Freddie Mac surpassed the goals by 1.1 percentage points, 0.6 percentage points, 0.9 percentage points and 4.1 percentage points in 1996, 1997, 1998 and 1999, respectively.

Fannie Mae's performance on the Low- and Moderate-Income Housing Goal has surpassed Freddie Mac's in every year but one, 1999, when Freddie Mac slightly outperformed Fannie Mae (46.1 percent versus 45.9 percent). However, Freddie Mac's 1999 performance represented a 55 percent increase over its 1993 level, exceeding the 34 percent increase by Fannie Mae over the same period, recognizing, however, that Fannie Mae's 1993 performance was significantly greater than Freddie Mac's.

The GSEs' performance under the Low- and Moderate-Income Housing Goal for the 1996 through 1999 period is summarized below:

SUMMARY OF GSEs' PERFORMANCE UNDER THE LOW- AND MODERATE-INCOME HOUSING GOAL 1996–1999 [32]

[In percentages]

	1996	1997	1998	1999
Required Goal Level	40	42	42	42
Fannie Mae: Percent Low- and Moderate-Income	45.6	45.7	44.1	45.9
Freddie Mac: Percent Low- and Moderate-Income	41.1	42.6	42.9	46.1

Freddie Mac's improved performance since 1993 is due mainly to its increased purchases of multifamily loans as it has again become active in this market. Some housing industry observers believe that the establishment of the Low- and Moderate-Income Housing Goal has been an important factor in explaining Freddie Mac's re-entry into the multifamily market. In fact, as indicated above, multifamily mortgage purchases represent a significant component of both GSEs' activities in meeting the Low- and Moderate-Income Housing Goal, even though multifamily loans comprise a relatively small portion of the GSEs' business activities. In 1999, while Fannie Mae's multifamily purchases represented only nine percent of its total mortgage acquisition volume measured in terms of dwelling units, these purchases comprised 20 percent of units qualifying for the Low- and Moderate-Income Housing Goal. Multifamily purchases were eight percent of the units financed by Freddie Mac's 1999 mortgage purchases but represented 17 percent of the units comprising Freddie Mac's low- and moderate-income mortgage purchases.

c. Summary of Comments. A number of commenters recommended that the Low- and Moderate-Income Housing Goal include separate goals targeting a portion of the GSEs' business to multifamily housing and a portion to single family housing. While there are distinctly different issues relevant to the single family market and the multifamily market, the Department does not believe that it is necessary or appropriate to establish separate goals for those two markets. First, the increased level of the Low- and Moderate-Income Housing Goal in this final rule will require an increase in both single family and multifamily mortgage purchases. HUD's present analysis of these markets indicates that a unitary goal will best achieve increased performance in both markets. Second, this final rule adopts a number of incentives to encourage the GSEs to move into markets with unmet needs including the financing of smaller multifamily properties. HUD will, however, continue to examine market needs and evaluate the effects of the goal structure established in this final rule on the GSEs' single family and multifamily mortgage purchase performance. Based on this ongoing review, HUD may at a future date consider separate single family and multifamily goals or subgoals under the Low- and Moderate-Income Housing Goal, as warranted.

Fannie Mae expressed no objection to the higher goal level, provided the Department retains the proposed housing goals framework, including the proposed changes to the counting rules, in the final rule. Freddie Mac supports the goal framework included in the proposed rule and is committed to meeting the new goal levels. The Department's response to the issues raised by Fannie Mae and Freddie Mac relative to HUD's market share methodologies and its analysis of the statutory factors are discussed above.

Overall, other commenters were supportive of the proposed increase in the Low- and Moderate-Income Housing Goal. One group of commenters thought that, since the GSEs are mandated to lead the market, the level of the Low- and Moderate-Income Housing Goal should be increased further. Another group of commenters supported the increased level of the goal, but felt the Department needed to be prepared to

accommodate shifts in economic conditions that may have a negative impact on the GSEs' ability to meet the housing goals.

d. HUD's Determination. The Low- and Moderate-Income Housing Goal established in this final rule is reasonable and appropriate having considered the factors set forth in FHEFSSA. HUD set the level of the housing goal conservatively, relative to the Department's market share estimates, in order to accommodate a variety of economic scenarios. Moreover, current examination of the gaps in the mortgage markets, along with the estimated 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 new goal.

Therefore, having considered all the statutory factors including housing needs, projected economic and demographic conditions for 2001 to 2003, the GSEs' past performance, the size of the market serving low- and moderate-income families, and the GSEs' ability to lead the market while maintaining a sound financial condition; HUD has determined that the annual goal for mortgage purchases qualifying under the Low- and Moderate-Income Housing Goal will be 50 percent of eligible units financed in each of the years 2001, 2002 and 2003. The new goal level will increase the GSEs' current level of performance to a level that is consistent with reasonable estimates of the low- and moderate-income housing market.

7. Central Cities, Rural Areas, and Other Underserved Areas Goal, § 81.13

This section discusses the Department's consideration of the statutory factors in arriving at and comments received on the proposed new housing goal level for the Central Cities, Rural Areas, and Other Underserved Areas Housing Goal (the Geographically Targeted Goal).

The Geographically Targeted Goal focuses on areas currently underserved by the mortgage finance system. The 1995 Final Rule provided that mortgage purchases count toward the Geographically Targeted Goal if such purchases finance properties that are located in underserved census tracts. In § 81.2, HUD defined ''underserved areas'' for metropolitan areas (in central cities and other underserved areas) as census tracts where either: (1) The tract median income is at or below 90 percent of the area median income (AMI); or (2) the minority population is at least 30 percent and the tract median income is at or below 120 percent of AMI. The AMI ratio is calculated by dividing the tract median income by the MSA median income. The minority percent of a tract's population is calculated by dividing the tract's minority population by its total population.

For properties in non-metropolitan (rural) areas, mortgage purchases count toward the Geographically Targeted Goal where such purchases finance properties that are located in underserved counties. These are defined as counties where either: (1) The median income in the county does not exceed 95 percent of the greater of the state or nationwide non-metropolitan median income; or (2) minorities comprise at least 30 percent of the residents and the median income in the county does not exceed 120 percent of the state non-metropolitan median income.

After analyzing the statutory factors and considering the comments, this final rule establishes the goal for the percentage of dwelling units financed by each GSE's mortgage purchases on properties that are located in underserved areas for each of the years 2001–2003 be 31 percent. A short discussion of the statutory factors follows. Additional information analyzing each of the statutory factors is provided in Appendix B, ''Departmental Considerations to Establish the Central Cities, Rural Areas, and Other Underserved Areas Goal,'' and Appendix D, ''Estimating the Size of the Conventional Conforming Market for Each Housing Goal.''

a. Market Estimate for the Geographically Targeted Goal. The Department estimates that dwelling units in underserved areas will account for 29–32 percent of total units financed in the overall conventional, conforming mortgage market during the period 2001 through 2003. HUD has developed a reasonable range, rather than a point estimate, that accounts for significantly more adverse economic conditions than have existed recently.

b. *Past Performance of the GSEs under the Geographically Targeted Goal.* The housing goals that have been in effect prior to this final rule required that in 1996 at least 21 percent of the units financed by the GSEs' mortgage purchases should count toward the Geographically Targeted Goal, and at least 24 percent in 1997 through 1999. Fannie Mae surpassed the goal by 7.1 percentage points in 1996, 4.8 percentage points in 1997, 3.0 percentage points in 1998, and 2.8 percentage points in 1999. Freddie Mac surpassed the goal by 4.0, 2.3, 2.1 and 3.5 percentage points in 1996, 1997, 1998, and 1999, respectively. The GSEs' performance for the 1996–99 period is summarized below:

SUMMARY OF GSE PERFORMANCE UNDER THE GEOGRAPHICALLY TARGETED GOAL 1996–1999 [33]

[In percentages]

	1996	1997	1998	1999
Required Goal Level	21	24	24	24
Fannie Mae: Percent Geographically Targeted	28.1	28.8	27.0	26.8
Freddie Mac: Percent Geographically Targeted	25.0	26.3	26.1	27.5

Although both GSEs have improved their performance in underserved areas, on average, their mortgage purchases continue to lag the primary market in providing financing for housing in these areas. On average, during the 1996–1998 period, mortgage purchases on properties in underserved areas accounted for 19.9 percent of Freddie Mac's purchases of single family home purchase mortgages, compared with 22.9 percent of Fannie Mae's purchases, 25.8 percent of mortgages retained by portfolio lenders, and 24.9 percent of all home purchase mortgages originated in the conventional, conforming market. These figures indicate that Freddie Mac has been less likely than Fannie Mae to purchase mortgages on properties in underserved neighborhoods. Through 1998, Freddie Mac had not made progress in reducing the gap between its performance and that of the overall market. In 1992, underserved areas accounted for 18.6 percent of Freddie Mac's purchases of home purchase mortgages and for 22.2 percent of such mortgage loans originated in the conforming market, which yields a ''Freddie Mac-to-Market'' ratio [34] of

0.84. By 1998, the ''Freddie Mac-to-Market'' ratio had actually fallen to 0.81. During the same period, the ''Fannie Mae-to-Market'' ratio increased from 0.82 to 0.93. However, in 1999, Freddie Mac's purchase share for underserved area loans increased while Fannie Mae's declined. In 1999, underserved areas accounted for 21.2 percent of Freddie Mac's home purchase mortgage loan acquisitions, compared with 20.6 percent for Fannie Mae.[35]

In evaluating the GSEs' past performance, it should be noted that while borrowers in underserved metropolitan areas tend to have much lower incomes than borrowers in other areas, this does not mean that GSE performance in underserved areas must be derived from mortgages on housing for lower income families. In 1999, housing for above median-income households accounted for about half of the single family owner-occupied mortgages the GSEs purchased in underserved areas.

c. Summary of Comments. Fannie Mae expressed no objection to the higher goal level provided the Department retains the proposed housing goals framework, including the proposed changes to the counting rules, in the final rule. Freddie Mac supported the overall goal framework included in the proposed rule but recommended that the Geographically Targeted Goal be set at 30 percent. Freddie Mac noted that it was committed to stretching to meet the proposed new goal levels, but believed that the level of the Geographically Targeted Goal was set too far toward the high end of the market estimate, making it more difficult to achieve. The Department's response to the issues raised by both Fannie Mae and Freddie Mac relative to HUD's estimates of the markets and its analysis of the statutory factors used to set the level of the goals was discussed above.

Overall, other commenters were supportive of the proposed increase in the Geographically Targeted Goal. Certain commenters noted that by placing the level of the goal around the midpoint of the estimate of market size, the GSEs will be encouraged to move into a market leadership position. Another group of commenters supported the increased level of the goal, but felt the Department needed to be prepared to accommodate changes in economic circumstances that may have a negative impact on the GSEs' ability to meet the housing goals.

d. HUD's Determination. The Geographically Targeted Goal established in this final rule is reasonable and appropriate, considering the factors set forth in FHEFSSA. The Department's market share estimates for the Geographically Targeted Goal accommodate a variety of economic scenarios. In addition, a current examination of the gaps in the mortgage markets, along with the estimated size of the market available to the GSEs, demonstrates the opportunities for the GSEs to purchase mortgages secured by housing in underserved areas of the nation.

Therefore, having considered all statutory factors including housing needs, projected economic and demographic conditions for 2001 to 2003, the GSEs' past performance, the size of the market for central cities, rural areas and other underserved areas, and the GSEs' ability to lead the market while maintaining a sound financial condition; HUD is establishing the annual goal for mortgage purchases qualifying under the Geographically Targeted Goal to be 31 percent of eligible units financed in each of the years 2001, 2002 and 2003. The new goal level will increase the GSEs' current level of performance to a level that is consistent with reasonable estimates of the housing market in underserved areas.

8. Special Affordable Housing Goal, § 81.14

This section discusses the Department's consideration of the statutory factors in arriving at, and the comments received on, the new housing goal level for the Special Affordable Housing Goal, which counts mortgages on housing for very low-income families and low-income families living in low-income areas. After consideration of these factors and the comments received, this final rule establishes the goal for the percentage of the total number of dwelling units financed by each GSE's mortgage purchases for housing affordable to very low-income families and low-income families living in low-income areas for each of the years 2001–2003 at 20 percent. A short discussion of the statutory factors follows. Additional information analyzing each of the statutory factors is provided in Appendix C, ''Departmental Considerations to Establish the Special Affordable Housing Goal,'' and Appendix D, ''Estimating the Size of the Conventional Conforming Market for Each Housing Goal.

a. Market Estimate for the Special Affordable Housing Goal. The Department estimates that dwelling units serving very low-income families and low-income families living in low-income areas will account for 23–26 percent of total units financed in the overall conventional, conforming mortgage market during the period 2001 through 2003. HUD has developed a reasonable range, rather than a point estimate, that accounts for significantly more adverse economic conditions than have existed recently.

b. Past Performance of the GSEs under the Special Affordable Housing Goal. The Special Affordable Housing Goal is designed to ensure that the GSEs serve the very low- and low-income portion of the housing market. However, analysis of HMDA data shows that the shares of mortgage loans for very low-income homebuyers are smaller for the GSEs' mortgage purchases than for depository institutions and others originating mortgage loans in the conforming conventional market. HUD's analysis suggests that the GSEs should improve their performance in providing financing for the very low-income housing market.

The housing goals that have been in effect prior to this final rule specified that in 1996 at least 12 percent of the number of units eligible to count toward the Special Affordable Housing Goal should qualify as special affordable, and at least 14 percent in 1997 through 1999. As indicated below, Fannie Mae surpassed the goal by 3.4 percentage points in 1996, 3.0 percentage points in 1997, 0.3 percentage points in 1998 and 3.6 percentage points in 1999. Freddie Mac surpassed the goal by 2.0, 1.2, 1.9, and 3.2 percentage points in 1996, 1997, 1998, and 1999, respectively. The GSEs' performance for the 1996–99 period is summarized below:

SUMMARY OF GSE PERFORMANCE UNDER THE SPECIAL AFFORDABLE HOUSING GOAL 1996–1999[36]

	1996 (in percent)	1997 (in percent)	1998 (in percent)	1999 (in percent)
Required Goal Level	12	14	14	14
Fannie Mae:				
Percent Low-and Moderate-Income	15.4	17.0	14.3	17.6
Freddie Mac:				

SUMMARY OF GSE PERFORMANCE UNDER THE SPECIAL AFFORDABLE HOUSING GOAL 1996–1999 [36]—Continued

	1996 (in percent)	1997 (in percent)	1998 (in percent)	1999 (in percent)
Percent Low-and Moderate-Income	14.0	15.2	15.9	17.2

As noted above, HMDA and GSE data for metropolitan areas show that both GSEs lag depository institutions and other lenders in providing financing for home loans that qualify for the Special Affordable Housing Goal. Special affordable loans, which include loans for very low-income borrowers and low-income borrowers living in low-income areas, accounted for 9.8 percent of Freddie Mac's purchases of home purchase mortgages during 1996–98, 11.9 percent of Fannie Mae's purchases, 16.7 percent of newly originated loans retained by depository institutions, and 15.3 percent of all new originations in the conventional, conforming market. While Freddie Mac has improved its special affordable lending since the housing goals were put in place in 1993, up until 1999 it had not made as much progress as Fannie Mae in closing the gap with depository institutions and other lenders in the home loan market. In 1998, Freddie Mac's special affordable performance was 73 percent of the primary market proportion of home loans that would qualify under the Special Affordable Housing Goal, compared to Fannie Mae's performance of 85 percent during the same period. In 1999, Freddie Mac did match Fannie Mae, as special affordable loans accounted for 12.5 percent of its home loan purchases versus 12.3 percent of Fannie Mae's home loan purchases. Market data for 1999 are not yet available.

The multifamily market is especially important in the establishment of the Special Affordable Housing Goal for Fannie Mae and Freddie Mac because of the relatively high percentage of multifamily units meeting the Special Affordable Housing Goal. For example, in 1999, 56 percent of units financed by Fannie Mae's multifamily mortgage purchases met the Special Affordable Housing Goal, representing 31 percent of units counted toward the Special Affordable Housing Goal, at a time when multifamily units represented only nine percent of its total purchase volume.[37]

c. Summary of Comments. Fannie Mae expressed no objection to the higher goal level, provided the Department retains the proposed housing goals framework, including the proposed changes to the counting rules, in the final rule. Freddie Mac supported the goal framework included in the proposed rule and is committed to stretching to meet the new goal levels. The Department's response to the issues raised by both Fannie Mae and Freddie Mac relative to HUD's market share methodologies and its analysis of the statutory factors used to set the level of the goals was discussed above.

Overall, other commenters were supportive of the proposed increase in the Special Affordable Housing Goal. One group of commenters thought that, since the GSEs are mandated to lead the market, the level of the Special Affordable Housing Goal should be increased even more, at a minimum, to the lower range of the Department's market share, at 23–24 percent. Another group of commenters supported the increased level of the goal but felt the Department needed to be prepared to accommodate changes in economic circumstances that may have a negative impact on the GSEs' ability to meet the housing goals.

d. HUD Determination. The Special Affordable Housing Goal established in the final rule is reasonable and appropriate, considering the factors set forth in FHEFSSA. The market share estimates for this goal reflect a variety of economic scenarios significantly more adverse than have existed recently. Current examination of the gaps in the mortgage markets, along with the estimated size of the market available to the GSEs, demonstrates that the number of mortgages secured by housing for special affordable families is more than sufficient for the GSEs to achieve the goal.

Having considered all statutory factors including housing needs, projected economic and demographic conditions for 2001 to 2003, the GSEs' past performance, the size of the market serving very low-income families and low-income families living in low-income areas, and the GSEs' ability to lead the market while maintaining a sound financial condition; HUD is establishing the annual goal for mortgage purchases qualifying under the Special Affordable Housing Goal at 20 percent of eligible units financed by each GSE in each of the years 2001, 2002 and 2003. This new goal level will increase the GSEs' current level of performance to a level that is consistent with reasonable estimates of the special affordable housing market.

e. Special Affordable Housing Goal: Multifamily Subgoal. This final rule modifies the proposed rule by implementing a multifamily subgoal based upon each GSE's respective average mortgage purchase volume for the years 1997 through 1999. The proposed rule suggested that the subgoal be established at 0.9 percent of each GSE's dollar volume of combined 1998 mortgage purchases in 2000 and at 1.0 percent of combined 1998 mortgage purchases from 2001 through 2003. In this final rule, the level of the subgoal is established at a fixed level of one percent of the average of each GSE's respective dollar volume of combined (single family and multifamily) mortgage purchases in the years 1997, 1998 and 1999. This level is $2.85 billion for Fannie Mae and $2.11 billion for Freddie Mac, in each of the years 2001 through 2003.

f. Summary of Comments. Both Fannie Mae and Freddie Mac opposed establishing the special affordable multifamily subgoal as a percentage of their 1998 transaction volumes, stating that 1998 was in some respects an unusual year in the mortgage markets. Instead, they both recommended that the special affordable multifamily subgoal be established as a percentage of a five year average of each GSE's transactions volume. Freddie Mac commented further that HUD's proposed subgoal was unreasonably high.

Many other commenters supported the multifamily subgoal, although they questioned whether 1998 was the appropriate base year upon which to establish the subgoal. Some commenters asserted that the proposed subgoal was too high, in light of an expected decline in multifamily origination volume. Other commenters noted that the subgoal was too low, based on the needs of very low- and low-income families and those in rural areas. Yet, others agreed the subgoal should continue to be percentage based, but argued that the baseline year should move from year to year. Still other commenters felt that the multifamily subgoal should be eliminated, as it no longer appears to serve a purpose, particularly since Freddie Mac has re-entered the multifamily market.

g. HUD's Determination. Both the multifamily mortgage market and Freddie Mac's multifamily transactions volume have grown significantly during the 1990's, indicating both increased opportunity and capacity to grow by Freddie Mac. While Freddie Mac continues to lag behind Fannie Mae somewhat in its multifamily volume, it appears to be within reach of catching up with its larger competitor with regard to the multifamily proportion of total purchases. In 1999, Fannie Mae's multifamily mortgage purchases were 9.5 percent of its total mortgage purchases and Freddie Mac's multifamily mortgage purchases were 8.3 percent of its total mortgage purchases.

Freddie Mac's multifamily special affordable transactions volume was $2.7 billion in 1998 and $2.3 billion in 1999, which demonstrates Freddie Mac's capacity to generate significant multifamily special affordable volume in a favorable market environment. However, the Department is mindful of the fact that the multifamily market conditions experienced during 1998 were very favorable and may not be fully representative of future years. HUD expects conventional multifamily volume in 2001 through 2003 to be somewhat lower than the level reached during 1998.

The Special Affordable Housing Multifamily Subgoal established in this final rule is reasonable and appropriate based on the Department's analysis of this market. The Department's decision to retain the multifamily subgoal is based on the fact that HUD's analysis indicates that multifamily housing still serves the housing needs of lower-income families and families in low-income areas to a greater extent than single family housing. By retaining the multifamily subgoal, the Department ensures that the GSEs continue their activity in this market and that they achieve, at least, a minimum level of special affordable multifamily mortgage purchases that are affordable to lower-income families. Now that more recent data is available, it is apparent that taking 1999 mortgage volume into consideration, along with that of 1997 and 1998, more accurately corresponds to the relative size and respective capabilities of the GSEs over the 2001–2003 goals period. Accordingly, as noted above, this final rule establishes each GSE's special affordable multifamily subgoal at the respective average of one percent of that GSEs' combined mortgage purchases over 1997 through 1999.

h. Multifamily Subgoal Alternatives. In the proposed rule, HUD identified three alternative approaches for specifying multifamily subgoals for the GSEs based on a (i) minimum number of units; (ii) minimum percentage of multifamily acquisition volume; and (iii) minimum number of mortgages acquired. While some of these proposals did receive support from commenters, HUD does not see any compelling reason to alter the dollar based structure of the multifamily subgoal as established in the regulations, which can be updated and adapted to the current market environment by basing it upon recent acquisition volume. It is noteworthy that the Special Affordable Housing Goal, as a percentage of business goal based on the number of units financed, combines elements of options (i) and (iii). HUD's decision to award bonus points toward the housing goals for GSE transactions involving small multifamily properties with 5–50 units will achieve some of the intended policy objectives associated with option (iii).

9. Bonuses and Subgoals

a. Overview. The Department proposed to introduce a system of bonus points to encourage the GSEs to increase their activity in specified underserved markets that serve low- and moderate-income families and families in underserved areas. Bonus points were specifically proposed to encourage increased involvement by the GSEs under goals established for the years 2000–2003 for purchases of mortgages financing small multifamily properties (5–50 units) and two to four unit owner-occupied properties that contain rental units. The areas for which bonus points were suggested are areas in which the GSEs' mortgage purchases have traditionally played a minor role but which provide significant sources of affordable housing and for which the need for mortgage credit persists. As a regulatory incentive to encourage the GSEs to increase their mortgage purchase activity in underserved markets, the Department proposed the use of bonus points for mortgage purchases in these important segments of the housing market. HUD also sought comments on the utility of applying bonus points and other regulatory incentives such as subgoals to other underserved segments of the market including manufactured housing, multifamily properties in need of rehabilitation, and properties in tribal areas.

This final rule incorporates the use of bonus points for small multifamily properties and owner-occupied single family rental properties as proposed for the years 2001 through 2003.

b. Summary of Comments. Fannie Mae and Freddie Mac commented in detail on the use of bonus points and subgoals. Fannie Mae supported the use of bonus points to provide incentives to expand its presence in the markets for both the small multifamily and single family owner-occupied, 2–4 unit property. Fannie Mae opposed the use of subgoals for that purpose, however, arguing that they would result in micromanagement of its business operation. Fannie Mae added that ''these two property types pose great difficulties for the secondary market to serve and will require new channels, new products, new modes of operation, and significant investments to better understand the risks.'' Fannie Mae also recommended that if the Department adopts bonus points, the points should continue beyond 2003.

Freddie Mac supported using bonus points and opposed using subgoals for small multifamily and single family owner-occupied, 2–4 unit property mortgage acquisitions. As with Fannie Mae, Freddie Mac commented that subgoals would result in micromanagement of its business. Freddie Mac also recommended calculating the threshold for 2–4 unit properties based on the period from 1995–1999 instead of using a five-year rolling average. Overall, Freddie Mac commented that it would prefer bonus points to subgoals for any targeted market segments.

Other commenters were generally supportive of the use of bonus points, with many noting that bonus points were preferable to additional subgoals. This group of commenters felt that additional subgoals would result in micromanagement of the GSEs' business operations but felt that bonus points provided an incentive rather than a mandate to move into markets that were underserved.

One group of commenters was opposed to bonus points. Among many of these commenters, however, there was support for incentives for the GSEs to purchase mortgages on small rental properties, noting that the market is underserved and provides an excellent source of affordable rental housing. Specific comments regarding the use of bonus points concluded that bonus points would: (a) Allow the GSEs to meet the goals with less effort and that they might lead the GSEs to relax their single family efforts; and (b) inflate goal performance numbers. It was suggested by several commenters that subgoals would be a more appropriate vehicle to encourage the GSEs' involvement in those segments of the market as well as other segments, *e.g.,* mortgages made to

minority borrowers and home purchase mortgages. Some commenters suggested that since there was evidence that the small multifamily mortgage market is well served by community banks, thrifts and small life insurance companies, there is no need for HUD to award bonus points as an incentive for the GSEs to enter that market.

c. HUD's Determination. This final rule adopts the two categories for bonus points that were proposed by the Department. Bonus points are a temporary incentive for the GSEs to step up their efforts to serve this particular need. Availability of bonus points for this purpose beyond 2003, therefore, will require a determination by the Department that the bonus points continue to serve this need. HUD's research and analysis indicates that there is substantial unmet need in these two areas and believes that these are markets the GSEs should serve better. While HUD has determined to establish bonus points in the two market areas proposed, HUD does not believe that either the use of subgoals, that would be unenforceable under FHEFSSA (except for the Special Affordable Housing Goal), or bonus points amounts to micromanagement of the GSEs. By utilizing bonus points the GSEs can choose whether to increase their presence in these markets, and by evaluating the impact of these incentives on the GSEs' mortgage purchase patterns, the Department can evaluate the reasonableness and effectiveness of bonus points as a tool to increase activity in specific markets.

d. Additional Bonus Points and Subgoals. Commenters suggested a wide variety of other areas to consider for either bonus points and/or subgoals including those for which views were invited. Suggestions by commenters for subgoals included home purchase mortgages and mortgages to minority borrowers. Commenters also suggested either bonus points and/or subgoals for reverse mortgages, groups with low homeownership rates, rural multifamily housing programs, manufactured housing, and expiring Section 8 assistance contracts, among other types of transactions. While there was some support for directing bonus points for encouraging GSE financing for minorities there was, however, no consensus among the commenters for this or other specific categories that bonus points and subgoals should address. Since HUD believes that the increased goals under this rule will result in increased financing of affordable housing and increased home ownership opportunities for minorities and other families in underserved areas, HUD has determined to establish bonus points only in the two categories proposed at this time. As indicated above, HUD will, however, monitor the effectiveness of these bonus points closely, based on these results and future housing needs, may establish bonus points for other mortgage purchases in the future.

10. Temporary Adjustment Factor for Freddie Mac

a. Overview. To overcome any lingering effects of Freddie Mac's decision to dismantle and then cautiously reestablish a multifamily mortgage purchase program in the early 1990s, the Department proposed an incentive for Freddie Mac to further expand its scope of multifamily operations through the use of a temporary adjustment factor for its multifamily mortgage purchases in calculating its performance under the Low- and Moderate-Income Housing Goal and the Special Affordable Housing Goal. In determining Freddie Mac's performance for each of these two goals, the Department proposed that each unit in a property with more than 50 units meeting either of these two housing goals would be counted as 1.2 units in the numerator of the respective housing goal percentage. The temporary adjustment factor would be limited to properties with more than 50 units to avoid overlap with the proposal to award bonus points for multifamily properties with 5–50 units. Comments were requested on whether the proposed temporary adjustment factor for Freddie Mac was set at an appropriate level and whether such an adjustment factor should be phased out prior to 2003.

This final rule incorporates the temporary adjustment factor for Freddie Mac for multifamily properties, other than those small multifamily units receiving bonus credit, as proposed for the years 2001 through 2003.

b. Summary of Comments. Fannie Mae and Freddie Mac commented in detail on the application of a temporary adjustment factor for Freddie Mac's multifamily business. Fannie Mae opposed the application of a temporary adjustment factor for Freddie Mac's multifamily business. Fannie Mae stated that Freddie Mac made a business decision to leave the multifamily market and HUD's action would effectively punish Fannie Mae for staying in the market. Fannie Mae recommended that instead of a temporary adjustment factor, HUD should lower Freddie Mac's goals to levels that would represent a similar ''stretch'' as the higher goal levels that would be established for Fannie Mae.

Freddie Mac supported the idea of a temporary adjustment factor but recommended that it be set at a multiplier of 1.35 instead of 1.2. Noting that the difference in size and age between Freddie Mac's and Fannie Mae's multifamily portfolios makes goal achievement easier for Fannie Mae, Freddie Mac also recommended that the temporary adjustment factor apply to all three goals. Freddie Mac also opposed any phasing out or elimination of the adjustment factor.

Other comments on the proposal were mixed. While there were many comments in support of the proposal, a number of commenters objected to the proposal, observing that by providing the temporary adjustment factor, HUD would be rewarding Freddie Mac for leaving the multifamily mortgage market in previous years. Commenters also suggested that the same objective could be achieved through the Special Affordable Multifamily Subgoal or by establishing separate housing goals for the single family and multifamily market. Many of these commenters said that, if the temporary adjustment factor were adopted for Freddie Mac, it should be phased out over a period of time.

c. HUD's Determination. In the period since HUD's interim housing goals took effect in January 1993, the volume of Freddie Mac's multifamily mortgage purchase transactions has grown significantly, both in absolute terms and as a proportion of its total mortgage purchases. Freddie Mac's 1993 multifamily transactions volume was only $191 million, compared with $7.6 billion in 1999. In 1999, Freddie Mac's multifamily transactions volume represented 8.3 percent of units backing its total mortgage purchases, close to the Fannie Mae proportion of 9.5 percent. Thus, while Freddie Mac continues to lag behind Fannie Mae somewhat in its multifamily volume, it appears to be within reach of catching up with Fannie Mae with regard to the multifamily proportion of total purchases.

In discussing the Department's appropriations for fiscal year 2000, the Conference Report stated in October, 1999 that ''* * * the stretch affordable housing efforts required of each of Freddie Mac and Fannie Mae should be equal, so that both enterprises are similarly challenged in attaining the goals. This will require the Secretary to recognize the present composition of each enterprise's overall portfolio in order to ensure regulatory parity in the application of regulatory guidelines measuring goal compliance.'' [38]

Consistent with Congress' October 1999 guidance, HUD's analysis indicates that a 1.2 adjustment factor applied to Freddie Mac's mortgage purchases for multifamily properties of more than 50 units for purposes of the Low- and Moderate-Income and Special Affordable Housing Goals, as proposed, is sufficient both to overcome any lingering effects of Freddie Mac's decision to leave the multifamily market in the early 1990s and to ''ensure regulatory parity,'' taking account of the recent magnitude of difference between the GSEs' respective multifamily shares of business and the multifamily market projections detailed in Appendix D. Therefore, while the goals are set at the same levels, the Department has decided to implement the temporary adjustment factor as proposed. The temporary adjustment factor of 1.2 will be applied to the Low- and Moderate-Income Housing Goal and the Special Affordable Housing Goal. The temporary adjustment factor will terminate December 31, 2003. The temporary adjustment factor will not apply to Fannie Mae.

11. High Cost Mortgages

a. Overview. The proposed rule requested comments on whether HUD should disallow goals credit for high cost mortgage loans, and if so, whether HUD should define high cost mortgage loans using the Home Ownership and Equity Protection Act (HOEPA) [39] or an alternative definition. HOEPA defines high cost mortgages as those that meet an annual percentage rate (APR) threshold (more than 10 percentage points above the yield on Treasury securities of comparable maturity; the Federal Reserve Board can adjust the threshold down to 8 percent or up to 12 percent), or a threshold for points and fees charged (exceeding the greater of 8 percent of the loan amount or $400—adjusted for inflation to $451 for the year 2000). HOEPA requires additional disclosures and restricts certain loan terms (*e.g.*, prepayment penalties, balloon payments, and negative amortization) and practices (*e.g.* failing to consider a borrower's ability to repay) for those mortgages.[40]

The proposed rule also requested comments on the potential benefits, if any, associated with the GSEs' presence in the various higher cost mortgage markets, such as the standardization of underwriting guidelines or reductions in interest rates, as well as the potential dangers, if any, associated with the GSEs' presence in those markets. Finally, the proposed rule requested comments on what additional data would be useful for the purposes of monitoring the GSEs' activities in this area and on whether certain of these data elements should be included in the public use data base. The proposed rule noted that possible data elements that could be collected from the GSEs for monitoring include loan level data on the annual percentage rate, debt-to-income ratio, points and fees, and prepayment penalties.

b. HUD/Treasury Report. On June 20, 2000, HUD and the Department of Treasury jointly released a report entitled ''Curbing Predatory Home Mortgage Lending,'' which detailed predatory or abusive lending practices in connection with higher cost loans in the subprime mortgage market. These practices include charging excessive fees, lending to borrowers without regard to their ability to repay, establishing prepayment penalties that prevent high cost borrowers from refinancing into lower cost loans, abusive terms and conditions that include packing loans with products such as single premium credit insurance, and other practices, including failing to steer borrowers to the lowest-cost product for which they qualify and incomplete reporting of borrowers' payment history to credit bureaus. The report recommended legislative and regulatory action to combat predatory lending while maintaining access to credit for low- and moderate-income borrowers. Respecting the secondary mortgage market, the report recommended that HUD restrict the GSEs from funding loans with predatory features since such loans may undermine homeownership by low- and moderate-income families. HUD and Treasury noted ''while the GSEs currently play a relatively small role in the subprime market today, they are beginning to reach out with new products in this marketplace.''

Recently the GSEs have each announced corporate policies against the purchase of loans with certain features. Fannie Mae has established greater limitations than Freddie Mac, although Fannie Mae has been less involved in the subprime market to date. Fannie Mae announced that ''[f]or loans delivered to Fannie Mae, the points and fees charged to a borrower should not exceed 5 percent, except where this would result in an unprofitable origination,'' and that Fannie Mae will not purchase high cost mortgages as defined under HOEPA. Fannie Mae announced further that it ''will not purchase or securitize any mortgage for which a prepaid single-premium credit life insurance policy was sold to the borrower,'' and that it will generally only allow prepayment penalties under the terms of a negotiated contract and where the lender adheres to the following criteria: A mortgage that has a prepayment penalty should provide some benefit to the borrower (such as a rate or fee reduction for accepting the prepayment premium); the borrower also should be offered the choice of another mortgage product that does not require payment of such premium; the terms of the mortgage provision that requires a prepayment penalty should be adequately disclosed to the borrower, and the prepayment penalty should not be charged when the mortgage debt is accelerated as a result of the borrower's default in making his or her mortgage payments.

Fannie Mae also announced that it will not purchase loans from lenders who steer borrowers to higher cost products if those borrowers qualify for lower cost products. Freddie Mac announced that it will not purchase HOEPA loans, nor will it purchase mortgage loans with single-premium credit life insurance. Both GSEs have announced that they will require lenders who sell them loans to file monthly full-file credit reports on every borrower. While the GSEs' policies differ somewhat in their scope and specificity, both have publicly expressed strong concern about predatory lending practices and have adopted policies requiring them to look harder at particular loan terms and their seller/servicers' business practices, and restricting their purchases of loans originated with such terms and practices. However, the GSEs' broad guidelines describing the characteristics of loans that they intend to make ineligible for purchase lack important details and are subject to changes in corporate direction, or other changes. Therefore, HUD and Treasury recognized in the report that such corporate policies may not be sufficient and that regulations would be needed to address this issue.

c. Summary of Comments. Many commenters on the proposed rule supported the disallowance of credit under the GSE housing goals for high cost mortgages. Some of these commenters commended the GSEs for beginning to offer quality loan products to credit-impaired borrowers. Those commenters argued, however, that restrictions on goals credit for certain loans would not prohibit the GSEs from purchasing all subprime loans but merely those that are likely to be predatory and wealth-stripping. Other commenters argued that without adequate controls, the GSEs' forays into the subprime market will not translate

into lower costs for borrowers, but will only lower the cost of capital for subprime lenders.

Some commenters wrote that the GSEs should not receive credit under the housing goals for high cost mortgages that are subject to HOEPA. Many other commenters felt that such a standard would not go far enough, and that the GSEs should not receive goals credit for purchasing loans with certain features. Such features would include fees greater than 3 percent of the loan amount, prepayment penalties on high cost loans, and prepaid single premium credit life insurance that is to be financed in the loan. Commenters also provided additional features for which the GSEs should not receive goals credit, including negative amortization and accelerating indebtedness, fees to renew or modify, balloon payments, yield spread premiums, mandatory arbitration, or high cost loans for which the borrower did not receive homeownership counseling.

One commenter suggested that the Department should treat loans purchased from an institution that engages in predatory lending the same as loans that actually have predatory features in order to send a message that such lenders are not responsible business partners and to restrict further the availability of mortgage credit for such loans. Other commenters suggested that the GSEs should not be allowed to purchase subprime loans at all, so that they will have an incentive to develop conventional mortgage products to reach out to those borrowers. Another suggestion was that the GSEs should be affirmatively penalized for purchasing certain abusive mortgages (*i.e.,* by subtracting points from the numerator but fully counting such loans in the denominator).

A number of commenters suggested that GSEs should be required to conduct fair lending reviews of subprime loans before they purchase them in order to receive credit. Such reviews would include determining whether the lending institution is reporting borrowers' full payment histories to credit bureaus.

Many of the commenters that supported the disallowance of goals credit for high cost loans and loans with certain harmful features asserted that the GSEs' support of such lending poses great risks. These commenters argued that the types of mortgage products that strip equity out of homes and lead to higher foreclosures are not consistent with the GSEs' public mission. Further, to the extent that defaults on these loans lead to losses, these commenters asserted that the GSEs' financial condition will likely be affected.

With regard to data collection and reporting, several commenters suggested that the GSEs should be required to provide full information on their subprime loans, including the APR, total closing costs, points, and fees (including financed credit insurance premiums), delinquency and foreclosure rates, and the length of time between purchase and refinance on an aggregate basis.

Both GSEs and a large group of commenters objected to the Department's proposal regarding the disallowance of goals credit for purchases of high cost mortgages. Many of those commenting in this regard provided substantially similar responses to those submitted by Fannie Mae. These commenters emphasized the difference between legitimate subprime lending and lending through the use of abusive and predatory practices such as those outlined in the HUD/Treasury report. Several of these commenters expressed concern that the Department should not take any action that would discourage the GSEs from serving the subprime market. The GSEs both remarked that they are using enhanced technology (*e.g.,* their respective automated underwriting systems) to allow them to offer products targeted toward borrowers with impaired credit, and that they are, therefore, able to move into the legitimate subprime market in a responsible and prudent manner, bringing liquidity, standardization, and efficiency to that market. The GSEs argue that disallowing goals credit for high cost mortgages will provide a disincentive for them to reach out to those borrowers and will do nothing to combat the predatory lending practices about which the Department is concerned. Indeed, Fannie Mae argued that disallowing goals credit for high cost mortgages would simply drive predatory lending ''into the government market or to secondary market sources who are less responsible than Fannie Mae on this issue.''

Fannie Mae argued that disallowing goals credit for high cost mortgages is inconsistent with the Department's inclusion of A-minus mortgages in the market estimates to which the Department compares the GSEs' performance. Fannie Mae further argued that the Department would need to ''recalibrate the goals'' in order to implement a system of disallowing goals credit for high cost mortgages, which would be ''extremely difficult, if not impossible'' due to ''the lack of reliable market data on loan costs.''

Nonetheless, Fannie Mae urged the Department to work with other regulatory agencies to collect more data on the problem. Freddie Mac urged the Department to await the outcome of any Federal legislative or regulatory initiatives that may arise as a result of the widespread concern and focus on these issues among members of Congress and regulatory agencies.

The GSEs also both objected to any additional reporting requirements related to monitoring their purchases of high cost mortgages. Fannie Mae argued that the relevant information is not now captured in the primary market, and that collecting and reporting this information would force a ''tremendous change to the way the market operates.'' Freddie Mac similarly argued that the required data elements are not stored uniformly across lenders, and collecting and reporting such data elements would require ''substantial investments,'' the economic impacts of which would likely be considerable.

d. HUD's Determination. After considering the issues raised by the commenters, the Department has determined that, in accordance with the Secretary's authority under section 1336(a)(2) of FHEFSSA, the GSEs should not be assigned credit toward the Affordable Housing Goals for purchasing certain high cost mortgages including mortgages with certain unacceptable features. The GSEs have a statutory responsibility to lead the industry in making mortgage credit available to low and moderate income families and underserved areas. In carrying out this responsibility, the GSEs should seek to make the lowest cost credit available while ensuring that they do not purchase loans that actually harm borrowers and support unfair lending practices. The HUD/Treasury report recommended regulatory and/or legislative restrictions that would go beyond the matter of goals credit and would prohibit the GSEs from purchasing certain types of loans with high costs and/or predatory features altogether. These proposals stem from the concern that mortgages with predatory features undermine homeownership by low-and moderate-income families in derogation of the GSEs' Charter missions. As pointed out in the HUD/Treasury Report, ''While the secondary market could be viewed as part of the problem of abusive practices in the subprime mortgage market, it may also represent a large part of the solution to the problem. If the secondary market refuses to purchase loans that carry abusive terms, or loans originated by lenders engaging in abusive practices, the primary market might

react to the resulting loss of liquidity by ceasing to make these loans.''

Accordingly, consistent with and combining restrictions already voluntarily undertaken by both GSEs, this final rule restricts credit under the goals for purchases of high cost loans including mortgages with certain unacceptable terms and resulting from unacceptable practices. Specifically, the GSEs will not receive credit toward any of the Affordable Housing Goals for dwelling units financed by mortgages that come within HOEPA's thresholds for high cost mortgages, nor will they receive credit for mortgages with certain unacceptable features or resulting from unacceptable practices. The housing goals provide incentives to encourage GSE efforts to finance housing for low and moderate income families, housing in underserved areas, and special affordable housing. Therefore, HUD has determined that the GSEs should not receive the incentive of goals credit for purchasing high cost mortgages including mortgages with unacceptable features.

(1) Mortgages that Come Within HOEPA's Thresholds. The final rule disallows goals credit for dwelling units financed by mortgages that come within HOEPA's thresholds, *i.e.,* with an APR of 10 percentage points or higher above the yield on Treasury securities of comparable maturity, or with points and fees that are above the greater of 8 percent of the loan amount or $451. HOEPA's thresholds provide a discernible and standard industry measure of a class of loans that are very high cost, that present a very high risk that their borrowers will lose their homes, and that the GSEs themselves have determined not to purchase. While originating such loans is not illegal, but rather made subject to additional disclosures and protections under HOEPA, loans at these levels should not be encouraged by receiving credit under the goals. In incorporating the HOEPA high cost loan standards in this rule, the thresholds are subject to adjustment by the Federal Reserve Board [41] or Congress. This rule is established to encompass such adjustments unless the GSEs are otherwise notified in writing by HUD. While HOEPA itself only covers closed end loans made to refinance existing mortgages and closed end home equity loans, this final rule also applies the HOEPA thresholds to home purchase mortgages.

(2) Mortgages with Unacceptable Terms or Conditions or Resulting from Unacceptable Practices. This final rule also disallows goals credit for dwelling units financed by mortgages with features that the GSEs themselves, either through announced policies or practices, have identified as unfair to borrowers and unacceptable. Specifically, these include mortgages with:

(a) *Excessive fees,* where the total points and fees charged to a borrower exceed 5 percent of the loan amount, except where this restriction would result in an unprofitable origination. For such cases, involving small loans, this rule provides a maximum dollar amount of $1000, or such other amount as may be requested by a GSE and determined appropriate by the Secretary, as an alternative to the 5 percent limit. For purposes of this provision, points and fees include: (i) Origination fees, (ii) underwriting fees, (iii) broker fees, (iv) finder's fees, and (v) charges that the lender imposes as a condition of making the loan—whether they are paid to the lender or a third party. For purposes of this provision, points and fees would not include: (i) Bona fide discount points; (ii) fees paid for actual services rendered in connection with the origination of the mortgage, such as attorneys' fees, notary's fees, and fees paid for property appraisals, credit reports, surveys, title examinations and extracts, flood and tax certifications, and home inspections; (iii) the cost of mortgage insurance or credit-risk price adjustments; (iv) the costs of title, hazard, and flood insurance policies; (v) state and local transfer taxes or fees; (vi) escrow deposits for the future payment of taxes and insurance premiums; and (vii) other miscellaneous fees and charges that, in total, do not exceed 0.25 percent of the loan amount.

This restriction on goals credit for mortgages with excessive fees does not, of course, supplant the restriction on goals credit for HOEPA loans. If a mortgage has fees that exceed 5 percent of the loan amount as described in the immediately preceding paragraph, but do not exceed the 8 percent/$451 threshold under HOEPA, the mortgage would not receive credit toward the goals. HUD, Treasury, the GSEs, and many others have recognized that mortgages with excessive fees are a particularly onerous problem and disproportionately affect the low- and moderate-income borrowers that the GSEs are to serve. Therefore, this final rule will remove any incentive under the goals for the GSEs to purchase loans with excessive fees as described above. Having said that, the HUD/Treasury report called upon the Federal Reserve Board to expand the HOEPA ''points and fees'' threshold to include certain additional types of fees, including (i) fees and amounts imposed by third party closing agents (except payments for escrow and primary mortgage insurance), (ii) prepayment penalties that are levied on a refinancing, and (iii) all compensation received by a mortgage broker in connection with the mortgage transaction. As mentioned above, if the Federal Reserve changes the HOEPA thresholds, such changes will be encompassed within HUD's housing goals, unless HUD notifies the GSEs otherwise.

(b) Prepayment penalties, except where: (i) the mortgage provides some benefits to the borrower (*e.g.,* such as rate or fee reduction for accepting the prepayment premium); (ii) the borrower is offered the choice of a mortgage that does not contain such a penalty; (iii) the terms of the mortgage provision containing the prepayment penalty are adequately disclosed to the borrower; and (iv) the prepayment penalty is not charged when the mortgage debt is accelerated as the result of the borrower's default in making his or her mortgage payments.

(c) Single premium credit life insurance products sold in connection with the origination of the mortgage.

(d) Evidence that the lender did not adequately consider the borrower's ability to make payments, i.e., mortgages that are originated with underwriting techniques that focus on the borrower's equity in the home, and do not give full consideration to the borrower's income and other obligations. Ability to repay must be based upon relating the borrower's income, assets, and liabilities to the mortgage payments.

(3) Mortgages Contrary to Good Lending Practices. As the GSEs have recognized in their own policies and many of the commenters pointed out as well, while good mortgage lending practices can reduce costs to borrowers, contrary practices can result in loans that are higher cost to borrowers in ways that are not directly reflected in the interest rate, points, or fees. Therefore, to remove any goals incentive for the GSEs to purchase mortgages or categories of mortgages regarding which there is evidence that lenders engaged in specific practices contrary to good lending practices identified in the rule, this rule provides that the GSEs may not receive goals credit for such loans or categories of loans. These specific practices identified in this rule that lenders employ to avoid abusive lending include regularly reporting complete borrower information to credit agencies, avoiding steering borrowers to higher cost products, and complying with fair lending requirements.

FHEFSSA and HUD's GSE regulations at 24 CFR 81.41, prohibit the GSEs from discriminating in any manner in making

any mortgage purchases because of race, color, religion, sex, handicap, familial status, age or national origin. Since abusive lenders often specifically target and aggressively solicit homeowners in predominantly lower-income and minority communities who may lack sufficient access to mainstream sources of credit, it is essential that the GSEs scrutinize lender practices to protect against buying loans that are the result of unlawful discrimination. For example, good lending practices that help lenders avoid unlawful discrimination include employee training programs, periodic loan sampling, specifically tailored recordkeeping and reporting requirements, and other reviews. The GSEs have reported, consistent with their pledges not to buy certain harmful loans, that they will be looking closer at the lending practices of entities with which they do business, and HUD commends those efforts. HUD will review the processes the GSEs employ to ascertain positive practices to avoid unlawful discrimination and steering borrowers to higher cost products, as well as monthly credit reporting. This final rule provides that where HUD finds evidence that loans or categories of loans do not conform to such positive practices, HUD may deny goals credit for such loans in accordance with § 81.16(d) of this rule.

HUD recognizes that the particular loan terms and practices that are identified as abusive and unacceptable may change as some unscrupulous actors adjust to new restrictions and as the GSEs and HUD gain experience with abuses. Accordingly, to allow flexibility this rule allows the Department to modify the list of terms and practices that will not receive goals credit, by providing that the GSEs may request modifications to the list and that the Secretary will after reviewing such submissions determine whether or not to change the abuses for which goals credit will be restricted. HUD also will continue to monitor the mortgage industry with regard to abusive lending practices and may determine that future modifications are necessary and require further rulemaking.

The restrictions and provisions in sections (1), (2), and (3), above, address terms and practices that are harmful to mortgage borrowers. Accordingly, these restrictions and provisions in this rule apply to mortgages purchased through the GSEs' ''flow'' business, as well as mortgages purchased or guaranteed through structured transactions. Since these restrictions and provisions are consistent with the GSEs' own measures, the Department does not believe that any of these restrictions will provide a disincentive for the GSEs to provide financing for borrowers with slightly impaired credit through innovative products that can bring competition and efficiencies to the legitimate subprime market.

While the GSEs themselves will presumably be obtaining certain additional data and information to carry out their previously announced purchase restrictions and to monitor lending practices, HUD is not establishing any requirements for additional data to carry out these provisions under this rule. Subsequently, HUD plans to request only such additional data as is necessary. In this regard, HUD will consult with the GSEs, as practicable, to develop reasonable data reporting requirements that will not present an undue additional burden.

12. Data On Unit Affordability, § 81.15

The GSEs have reported that at times it can be difficult and costly for them to obtain the data on incomes and rents that is necessary to establish affordability for goals purposes, especially for seasoned loan transactions and some negotiated transactions. HUD proposed to allow (1) the use of estimation techniques to approximate unit rents in multifamily properties where current rental information is unavailable and (2) the exclusion of units, both single family and multifamily, from goal calculations where it is impossible to obtain full data or estimate values, subject to certain limits.

As has been discussed, GSE purchases of mortgages on rental properties disproportionately serve the affordable housing market. Typically, around 90 percent of rental units backing GSE mortgage purchases would count towards the Low- and Moderate-Income Housing Goal and around 50 percent would meet the affordability requirements of the Special Affordable Housing Goal (excluding missing data). HUD did not want the lack of data on affordability to act as a disincentive for the GSEs to purchase mortgages in these important sectors, which have been identified by HUD as having substantial unmet credit needs in the mortgage market. While single family owner-occupied units are also affected by missing data, these units are typically not as affordable as the GSEs' rental purchases. Consequently, the provision in the proposed rule to exclude units from the numerator and denominator for single family owner-occupied properties is limited to properties located in lower income areas and is subject to a cap.

a. Multifamily Rental Units.

(1) Overview. The Department proposed allowing the use of estimated rents for multifamily units with missing data, subject to HUD review and approval of the data sources and methodologies used in computing them. The Department asked for comment on whether it should establish a percentage ceiling on the use of estimated rents.

HUD further proposed that, in cases where multifamily rents are missing and where application of estimated rents is not possible, such units be excluded from both the denominator and numerator for purposes of calculating performance under the Low- and Moderate-Income Housing Goal and the Special Affordable Housing Goal. The Department requested comment on whether it should establish a percentage ceiling for the exclusion of multifamily units with missing data from the denominator for goal calculation purposes.

(2) Summary of Comments. Several commenters endorsed the concept of using estimated data to calculate performance toward the Low- and Moderate-Income Housing Goal and the Special Affordable Housing Goal when multifamily rent data are missing. No commenters indicated opposition to allowing the use of estimated rents.

In its comments, Fannie Mae stated that HUD should, in order to provide operational certainty, incorporate an approved methodology into the regulations for estimating rents on multifamily properties where actual rent data are missing. Freddie Mac commented that the GSEs should be given the choice of whether to provide estimated rents or to exclude units from the denominator for purposes of calculating goals performance in instances of missing multifamily rent data.

In cases where calculation of estimated rents is not feasible, a number of commenters wrote in support of excluding the units in question from the denominator as well as the numerator for purposes of calculating performance toward the Low- and Moderate-Income Housing Goal and the Special Affordable Housing Goal. One commenter opposed such exclusion, noting that by including all multifamily units in the denominator whether or not the GSEs have the required income and rent data places a more serious burden on the GSEs to obtain the data and focus on affordable lending in the multifamily area.

With regard to the issue of percentage ceilings, Freddie Mac suggested a two-percent (2%) ceiling on the exclusion of multifamily units from the denominator

because of missing rents. Other commenters suggested alternative limits, *e.g.*, a half-of-one percent (0.5%) ceiling or a one-percent (1%) ceiling for the combined total of multifamily units with estimated rent and units excluded from the denominator. Only Fannie Mae indicated opposition to such a ceiling, writing that ''Enforcement of percentage ceilings will perpetuate penalties against and create a disincentive for Fannie Mae to engage in the very business that HUD has identified for expanded penetration—single family, owner-occupied, 2–4 unit housing and small multifamily rental properties.''

(3) HUD's Determination. In order to promote liquidity in the multifamily mortgage market, including mortgages on properties which may not have current data on the affordability of such units the Department believes that it is reasonable for the GSEs to provide estimated affordability data for such properties, which would be utilized for purposes of calculating performance toward the Low- and Moderate-Income Goal and the Special Affordable Housing Goal as long as the data sources and methodology are reliable. The data sources and methodology used by a GSE to estimate affordability data are, therefore, subject to HUD review and approval. Estimated affordability data may be used up to a maximum of five (5) percent of units backing GSE multifamily purchases in any given year.

In its evaluation of whether to accept a proposed methodology for estimating affordability data, the Department will seek to determine: (a) The reliability of the data source(s) used including the size of the sample used; (b) the accuracy of the calculations; and (c) the reasonableness of the proposed methodology with regard to providing an unbiased measure of GSE performance toward the Low- and Moderate-Income Housing Goal and the Special Affordable Housing Goal, including the degree to which the methodology accurately predicts affordability information and goals performance on units backing GSE acquisitions in cases where current affordability data are known. The GSEs will be required to certify that any proposed estimated affordability methodology meets these standards. Methodologies that tend to understate actual rents, or which otherwise tend to overstate the affordability of GSE multifamily mortgage purchases or exaggerate GSE goals performance relative to actual performance, will not be considered acceptable by HUD.

Once a methodology is approved, the Department will closely monitor its implementation and its effects on calculated goals performance. Withdrawal of Departmental approval of an estimated affordability methodology could be warranted if evidence becomes available indicating that use of estimated affordability methodologies is unreliable or has undermined GSE incentives to collect and maintain rent data.

HUD does not believe it is necessary to codify in the regulations the specific methodology for estimating affordability data. The concept of estimating affordability data is new relative to the affordable housing goals. Both HUD and the GSEs need to evaluate the implications of the methodology proposed, monitor performance over time using such data, evaluate new data sources that may become available and become more predictive. HUD needs the flexibility to make changes and refinements to the approved methodology based on experience, without unnecessary limitations. In approving any methodology and data sources, HUD will, of course, be mindful of the GSEs' needs for operational certainty in making determinations.

With regard to circumstances where estimation of affordability on multifamily properties with missing data is not feasible, HUD believes it is reasonable to exclude such units from the denominator as well as the numerator for purposes of calculating performance toward the Low- and Moderate-Income Goal and the Special Affordable Housing Goal. The Department does not believe that a percentage ceiling on the exclusion of multifamily units with missing data from the denominator is needed in order to preserve incentives for data collection, and could actually be harmful from the standpoint of the reliability of the housing goals as a measure of actual GSE performance. Because the percent of multifamily units qualifying for the Low- and-Moderate Income Goal is so much higher than the average across all property types (over 90 percent for multifamily, compared with approximately 45 percent overall), an incentive will remain in place for the GSEs to collect rent data or obtain reliable estimated rents wherever it is feasible to do so. For the same reason, the Department believes that applying a ceiling on exclusion of units from the denominator as well as the numerator for goal calculation purposes would undermine the reliability of the Low- and Moderate Income Goal as a measure of actual GSE performance, since multifamily units above the ceiling would be counted as not being affordable when, in fact, there is approximately a 90 percent probability that such units do meet the requirements of the Low- and Moderate-Income Housing Goal. Similar arguments could be made with regard to the Special Affordable Housing Goal. Therefore, a percentage ceiling on removal of units from the denominator as well as the numerator is not necessary or warranted at this time.

b. Single Family Rental Units.

(1) Overview. The Department further proposed to exclude rental units in 1–4 unit properties with missing rent data from the denominator as well as the numerator in calculating performance under the Low- and Moderate-Income Housing Goal and the Special Affordable Housing Goal. HUD asked for comment on whether it should establish a percentage ceiling for such exclusions.

This final rule retains the provision excluding rental units in 1–4 unit properties with missing rent data from the numerator and the denominator in calculating performance under the two goals. These properties disproportionately serve affordable housing markets and the GSEs should be active in this segment of the market. As the Department is awarding bonus points for the units in owner-occupied single family rental properties, the GSEs have a large incentive to obtain the required affordability data. When the data is not available, however, the Department does not wish to create a disincentive to purchase mortgages on these properties simply because affordability data is not available.

(2) Summary of Comments. A number of commenters wrote in favor of excluding rental units in 1–4 unit properties from the denominator as well as the numerator for purposes of calculating performance toward the Low- and Moderate-Income Housing Goal and the Special Affordable Housing Goal when rent data are missing. No commenters indicated opposition to such exclusion.

Writing in support of the ceiling concept, Freddie Mac suggested a two-percent (2%) ceiling on the exclusion of single family rental units from the denominator. Fannie Mae objected to such a ceiling, commenting that a ceiling was unnecessary given that it is in Fannie Mae's interest to obtain rent data on single family rental properties when it is cost effective to do so. Other commenters endorsed a percentage ceiling on the number of single family rental units that would be excluded from the denominator as well as the numerator for purposes of calculating performance toward the Low- and Moderate-Income Housing Goal and the

Special Affordable Housing Goal when rent data are missing.

Fannie Mae and Freddie Mac both suggested that the use of estimated rents should be permitted for single family rental properties with missing data.

(3) HUD's Determination. With regard to single family rental units with missing rent data, HUD believes it is reasonable to remove such units from the denominator as well as the numerator for purposes of calculating performance toward the Low- and Moderate-Income Goal and the Special Affordable Housing Goal. Because of the high degree of affordability of single family rental units, the Department does not believe that a percentage ceiling on exclusion of single family rental units with missing data from the denominator is needed in order to preserve incentives for data collection, and could actually be harmful from the standpoint of the reliability of the housing goals as a measure of actual GSE performance. HUD will monitor the GSEs' use of missing data provisions to ensure that they are being used in a reasonable way.

The Department has determined not to permit the use of estimated affordability data where it is missing for single family rental units. There are several reasons why HUD believes this a reasonable and prudent decision.

A decision to exclude units with missing affordability data from the numerator as well as the denominator for certain goals calculation purposes on single family rental properties removes a potential disincentive to an expanded GSE presence in the markets for mortgages on single family rental properties at the same time. The Department believes this segment of the market has unmet credit needs. To encourage the GSEs to move into this market, it is awarding bonus points for the rental and owner-occupied units in owner-occupied single family rental properties. The use of bonus points will serve as an additional incentive to the GSEs to obtain the necessary affordability data in order to obtain bonus credit.

Furthermore, HUD calculates affordability of single family rental units for purposes of the housing goals using origination-year rents, in contrast to multifamily, where acquisition year rents are used. While acquisition year rents on multifamily properties may sometimes be difficult to provide on seasoned and negotiated transactions where lenders have not continued to collect annual rent data following loan origination, this situation does not apply to single family rental properties, since information on rent at the time of loan origination is ordinarily required by lenders and secondary market institutions as part of the loan underwriting process.

The Department's decision to allow the estimation of affordability data with the limitations provided in this rule for multifamily rental units affords an opportunity to pilot the estimated rent methodology in an appropriately controlled environment.

c. Single Family Owner-Occupied Units.

(1) Overview. The Department also proposed to exclude single family owner-occupied units from the denominator as well as the numerator for purposes of calculating performance toward the Low- and Moderate-Income Housing Goal and the Special Affordable Housing Goal when data on borrower income are missing, provided the unit is located in a census tract with median income less than or equal to area median. HUD proposed to restrict this exclusion up to a ceiling of one percent (1%) of the total number of single family, owner-occupied dwelling units eligible to be counted toward the respective housing goal.

This final rule retains the provision to exclude single family owner-occupied mortgages from both the numerator and the denominator when borrower income is missing for properties located in lower income areas subject to a one percent maximum.

(2) Summary of Comments. A number of commenters wrote in favor of excluding at least some single family owner-occupied units from the denominator as well as the numerator for purposes of calculating performance toward the Low- and Moderate-Income Housing Goal and the Special Affordable Housing Goal when income data are missing. One commenter indicated opposition to such exclusion.

Both Fannie Mae and Freddie Mac expressed opposition to restricting the exclusion of single family owner-occupied units with missing income data from the denominator only in lower-income areas. They recommended a two percent ceiling without these geographic restrictions.

In its comments, Fannie Mae stated that ''the place-based restriction that HUD proposes implies an unreasonable assumption that all the units that are missing data outside of the low-income census tracts are not affordable. The effect of the cap is to deny credit for units that are missing data and even when those units have some statistical likelihood of serving loans to low- and moderate-income borrowers. HUD's proposed methodology treats loans to low- and moderate-income borrowers differently simply because the borrower chose to purchase a property in a higher-income area.'' While opposed, in principle, to the concept of a ceiling on the exclusion of missing single family owner-occupied units from the denominator for goals calculation purposes, Fannie Mae stated that any ceiling established by the Department should be set at ''not less than two percent.''

Similarly, Freddie Mac wrote that ''A substantial fraction of mortgages in above-average income tracts are made to low- and moderate-income families' citing 1998 HMDA data in support of this contention. Consequently, ''geographic restrictions would erroneously exclude many low- and moderate-income loans from performance measures.''

Several commenters endorsed HUD's proposed one percent ceiling on exclusion of single family owner-occupied units with missing data from the denominator although some commenters thought the ceiling should be lower than one percent. A number of other commenters expressed opposition to this ceiling. No comments were received on the geographic restrictions aside from those from the GSEs.

(3) HUD's Determination.

With regard to single-family owner-occupied units with missing income data, HUD believes it is reasonable to remove such units from the denominator as well as the numerator up to one percent of the eligible total for purposes of calculating performance toward the Low- and Moderate-Income Goal and the Special Affordable Housing Goal provided such units are located in tracts where median income is less than or equal to area median income.

The percentage ceiling and the restriction to tracts where median income is less than or equal to area median income are both necessary in order to ensure that the exclusion does not result in undue exaggeration of GSE performance as calculated in achieving the housing goals as compared to actual performance. Because single family owner-occupied units are significantly less affordable than all other property types in the conventional, conforming mortgage market according to HUD's estimates (approximately 36 percent single family owner-occupied units meet the Low-and Moderate-Income Housing Goal, compared with 45 percent overall), excluding single family owner-occupied units with missing data from the denominator as well as the numerator could significantly raise the proportion of GSE acquisitions counting toward the Low-and Moderate-Income and Special Affordable Housing Goals

above actual performance. The one-percent ceiling on exclusion of single family owner-occupied units from the denominator places a limit on the degree to which such exclusions bias or affect the data, and the restriction to tracts with income less than area median serves to increase the likelihood that the affordability characteristics of the excluded units resembles that of the ''typical'' GSE purchase, further limiting the bias that would otherwise be introduced.

In HUD's view, the proposed geographic restriction on the exclusion of missing single family owner-occupied units from the denominator as well as the numerator for certain goals calculation purposes is, therefore, reasonable and necessary to correct for the bias that would otherwise be introduced even with a one-percent ceiling. Fannie Mae's contention that ''the place-based restriction that HUD proposes implies an unreasonable assumption that all the units that are missing data outside of the low-income census tracts are not affordable'' is not pertinent to HUD's determination. The Department made no such assumption. HUD is well aware that many low-income borrowers choose to live in tracts with median income above the area median, as pointed out by Fannie Mae. Conversely, however, a significant number of above median-income borrowers choose to live in tracts with median income below the area median. HMDA data does, however, show a strong correlation between borrower income as a percent of area median and tract income as a percent of area median, suggesting that tract income serves as a useful predictor of borrower of income. For example, in 1998, 55 percent of conforming, conventional owner-occupied loans in tracts where median income was less than area median were to low-and moderate-income borrowers. In contrast, only 33 percent of loans in high-income tracts were to low-and moderate-income borrowers. (Overall, 42 percent of single family owner-occupied loans in HMDA data were to low-and moderate-income borrowers.) HUD's analysis of GSE loan-level data reveal a similar correlation between borrower income as a percent of area median and tract income as a percent of area median, although the low-mod percentage of GSE acquisitions is lower than in HMDA data.

Accordingly, HMDA findings support the conclusions that HUD's proposed geographic restrictions on the exclusion of missing single family owner-occupied data will (i) result in goals calculations that more accurately track actual performance than would otherwise be the case and (ii) respond appropriately to any perceived weakening of incentives for the GSEs to collect affordability data to the extent feasible.

d. Other Matters. Freddie Mac argued that units with missing census tract data should be excluded from the denominator as well as the numerator for purposes of calculating performance toward the Underserved Areas Goal up to a maximum of 0.5 percent of the total.

The Department has not determined, however, that it is reasonable to remove units with missing geographic information from the denominator as well as the numerator for purposes of calculating performance toward the Underserved Areas Goal. In those limited instances where census tract (for metropolitan areas) or county (for nonmetropolitan areas) cannot be determined using automated methods, manual methods can be used.

13. Seasoned Mortgage Loan Purchases ''Recycling'' Requirement

a. Overview. Under section 1333(b)(1)(B) of FHEFSSA, [42] special rules apply for counting purchases of portfolios of seasoned mortgages under the Special Affordable Housing Goal. Specifically, the statute requires that purchases of seasoned mortgage portfolios receive full credit toward the achievement of the Special Affordable Housing Goal if ''(i) the seller is engaged in a specific program to use the proceeds of such sales to originate additional loans that meet such goal; and (ii) such purchases or refinancings support additional lending for housing that otherwise qualifies under such goal to be considered for purposes of such goal.'' [43] HUD refers to this provision as the ''recycling requirement.''

The proposed rule suggested changes to § 81.14(e)(4) of the current regulations. The proposed language was intended to provide guidance to the GSEs with regard to the recycling requirements described above and to provide new, simpler rules when it is evident based on the characteristics of a mortgage seller that the recycling requirements would likely be met.

The rule proposed that certain categories of lenders could be presumed to conduct a lending program meeting the recycling requirements of the statute and regulations. These categories include federally regulated financial institutions with satisfactory ratings on recent Community Reinvestment Act examinations and specific categories of lenders with affordable housing missions.

b. Guidance Provided on Recycling Requirements. Commenters were generally supportive of the overall guidance proposed by the Department with regard to determining when recycling requirements were met in order to count purchases of seasoned mortgage loans toward the Special Affordable Housing Goal, assuming they otherwise qualified for the goal. These provisions are included in the final rule with three specific changes based on the comments received. The changes made in the proposed language relate to the satisfactory CRA requirement for Federally insured financial institutions, identification of other institutions and/or organizations presumed to meet the recycling requirements, and the treatment of third party originations under the recycling provision. Changes made in the final rule on these three aspects are discussed in more detail below.

c. CRA Requirement.

(1) Summary of Comments. Overall commenters supported the proposed changes identifying specific criteria and standards for the recycling requirements. However, many commenters disagreed with HUD's requirement that a financial institution subject to CRA examinations must have received ''at least a satisfactory performance evaluation rating for at least the two most recent examinations under the Community Reinvestment Act'' to be presumed to meet the recycling requirements.

Fannie Mae, Freddie Mac and several other commenters suggested that a satisfactory performance evaluation rating on the most recent examination is sufficient, as opposed to the two most recent examinations, since the period between examinations can be as long as 60 months. A number of commenters noted that this could be a particularly difficult requirement for small institutions, who are examined much less frequently.

Other commenters suggested that two consecutive outstandings is a more suitable standard, as 78 percent of banks received satisfactory ratings in their 1999 CRA exams and about 75 percent received these ratings in previous years.

Still other commenters were supportive of HUD's proposal of at least a satisfactory performance evaluation rating for at least the two most recent examinations under the Community Reinvestment Act because it would reduce the compliance burden of both the GSEs and depository institutions, allowing them to spend more time on the business of financing housing loans.

(2) HUD's Determination. HUD has reviewed these comments and noted that the proposed rule, in establishing the CRA examinations and ratings of financial depository institutions as a

basis for determining that a financial institution met the recycling requirements for seasoned loan purchases under the Special Affordable Housing Goal, did not make a distinction between small and large depository institutions as intended and reflected in the CRA regulation [44] and the Gramm-Leach-Bliley Act of 1999. [45] The 1995 CRA regulation distinguishes, for examination purposes, four different types of financial institutions based on their size, structures, and operations: Small banks, large banks, wholesale banks, and limited purpose banks. Accordingly, the 1995 regulation provides different performance procedures, standards, ratings, and cycles for small banks, large banks, wholesale banks, and limited purpose banks. All of the procedures reflect the intent of the regulation to establish performance-based CRA examinations that are complete and accurate but, to the maximum extent possible, mitigate the compliance burden for institutions.

Under section 712 of the Gramm-Leach-Bliley Act, small banks with aggregate assets of not more than $250 million will be subject to routine examination:

- Not more than once every 60 months for an institution that has achieved a rating of ''outstanding record of meeting community credit needs'' at its most recent examination;
- Not more than once every 48 months for an institution that has received a rating of ''satisfactory record of meeting community credit needs'' at its most recent examination.
- As deemed necessary by the appropriate federal financial supervisory agency for an institution that has received a rating of ''less than satisfactory record of meeting community credit needs'' at its most recent examination.

In view of the comments received and based on its analysis of the 1995 CRA regulations and the Gramm-Leach-Bliley Act of 1999, this rule includes the recycling requirement that a financial institution have ''at least a satisfactory performance evaluation rating for at least the two most recent examinations under the Community Reinvestment Act'' for large banks and wholesale banks that are subject to CRA examinations. Limited purpose banks are not making home mortgage loans and therefore are not relevant for this analysis. This final rule adds a provision for small institutions with assets of no more than $250 million that such institutions must have received ''a satisfactory performance evaluation rating for the most recent examination under the Community Reinvestment Act to be presumed to meet the requirements in paragraphs (e)(4)(i) through (e)(4)(iv) of this section for seasoned loans.'' This safe harbor provision will also apply to the affiliates of depository institutions, provided that these affiliates are subject to the CRA examinations.

With regard to the suggestion that the standard for CRA examinations be two consecutive outstanding ratings, the Department believes that such a standard would be counterproductive. The purpose of the standard is to identify those financial institutions that are in the business of serving affordable housing markets. Using a satisfactory CRA examination rating achieves that purpose and is retained in the final rule.

d. Classes or Categories of Organizations Presumed to Meet Recycling Requirement.

(1) Summary of Comments. With regard to other additional classes of institutions or organizations that should be recognized as meeting the recycling requirements, most commenters, including the GSEs, agreed with HUD's proposal that State Housing Finance Agencies or Special Affordable Housing Loan Consortia should be presumed to meet the recycling requirements. However, both GSEs urged that HUD provide them with ''as much flexibility as possible on this provision.'' Fannie Mae opposed HUD approval of additional lending institutions or organizations and, instead recommended that HUD provide a list of HUD-approved institutions, and criteria for the GSEs to qualify lenders or certain kinds of lending or transactions. Freddie Mac suggested HUD ''broaden the regulatory presumption of recycling to all sellers of mortgages so long as they originate or purchase qualifying special affordable housing goal mortgages in the ordinary course of business.''

A great number of commenters suggested that HUD's list also include other ''non-traditional lenders'' who serve targeted communities and who could potentially benefit from the liquidity that the change could provide. These commenters mentioned the following institutions: Community development financial institutions, minority owned lenders, women owned lenders, non-profit lenders, and public revolving loan funds.

Other commenters urged HUD to include all credit unions in HUD's list because credit unions originate low-cost residential loans that make housing affordable to millions of credit union members even though they are exempt from CRA requirements. At a minimum, it was suggested that ''seasoned loans purchased from community development credit unions, which are chartered to serve low-income communities, should qualify for goal credit.

(2) HUD's Determination. HUD has reviewed the above comments and agreed to expand the safe harbor provision to include the following institutions or classes of institutions that the GSEs may presume meet the recycling requirements as long as these institutions have an affordable housing mission: State housing finance agencies; affordable housing loan consortia; Federally insured credit unions that are either (a) community development credit unions, or (b) credit unions that are members of the Federal Home Loan Bank System and meet the first-time homebuyer standard of the Community Support Program; community development financial institutions; public loan funds; and non-profit lenders. The final rule retains the requirement that any additional classes of institutions or organizations must be approved by the Department. The final rule establishes a reasonable set of lender characteristics that are presumed to meet the recycling provisions that cover a large portion of the affordable lending market. For those lenders falling outside of these parameters, the final rule provides the GSEs with broad guidance as to what a recycling program should include if a lender does not fall into an accepted category. The GSEs have broad latitude to evaluate the circumstances of a particular lender in counting seasoned loan purchases toward the Special Affordable Housing Goal. A GSE does not have to get prior approval to do business with a lender that does not fall into the presumptive category as long as the GSE verifies and monitors that the lender is conducting an affordable lending program consistent with the guidelines provided. Prior approval is only required if a seller of loans falls outside the boundaries established in the final rule and the GSE wants them designated among the category of institutions already identified and presumed to meet the requirements. The Department does not anticipate that such action will limit the GSEs ability to conduct business in any material way, but rather will relieve the burden of having to verify and monitor the lending programs of those entities presumed to meet the recycling requirements.

e. Third Party Transactions.

(1) Overview. In the proposed rule, HUD solicited comments on the treatment under the recycling provisions of structured transactions where the mortgage loans included in the transaction were originated by a

depository institution or mortgage banker engaged in mortgage lending on special affordable housing but acquired, packaged and re-sold by a third-party, *e.g.,* an investment banking firm that is not in the business of affordable housing lending.

(2) Summary of Comments. Fannie Mae believes that ''the appropriate approach is to extend the streamlined application to third party deliveries.'' Fannie Mae argues that when it purchases loans delivered by third parties, it ''is supporting the marketplace dynamic that provides liquidity,'' and therefore ''the intermediate step in no way degrades the liquidity support provided to the institutions or the mortgage products.''

Freddie Mac did not address this issue directly but pointed out that Congressional intent underlying the seasoned, recycling requirement was ''to ensure that the proceeds will be used in a manner that increases the availability of mortgage credit for the benefit of low-income families.'' According to Freddie Mac, Congress' interest was to ensure that ''mortgage proceeds were funneled back into the mortgage market, not that specific types of lending programs should be used to recycle these proceeds.'' Thus, Freddie Mac recommends that HUD include all mortgage sellers that regularly engage in originating or purchasing mortgages that meet the special affordable housing goal criteria. The alternative, according to Freddie Mac, would be ''adoption of the BIF/SAIF regulatory presumption while maintaining the current regulatory scheme.''

(3) HUD's Determination. HUD recognizes that Congress intended that the housing goals generally and the recycling provisions specifically were to expand the availability of affordable housing with particular emphasis on the purchase of loans that are originated in conjunction with affordable housing programs, the creation of innovative product lines, or the building of institutional capacity and infrastructure among others in the industry.[46] If the mortgages were, in fact, originated by an entity that meets the new recycling presumptions, *i.e.,* is regularly in the business of mortgage lending; is a BIF-insured or SAIF-insured depository institution; and is subject to, and has received at least a satisfactory performance evaluation rating under the Community Reinvestment Act, or is among the enumerated class or classes of organizations whose primary business is financing affordable housing mortgages; but the mortgages were delivered to the GSEs by a third party seller after a relatively short holding period, the purchase of such mortgages would meet the intent of Congress and fulfill the spirit of the recycling requirement. Therefore, in this final rule, HUD will allow mortgages delivered by such third party sellers to meet the recycling presumptions in § 81.14(e)(4)(vi) and (vii) of this final rule if the mortgages were originated by an entity that comes within the recycling presumptions; and the seller acted for, or in conjunction with, such entity in the transaction with the GSE. A seller that holds loans itself for more than six months is not presumed to be acting for, or in conjunction with, such an entity. Accordingly, the final rule excepts such sellers from the benefit of the presumption. Notwithstanding, a seller that otherwise meets the tests of the recycling provisions may qualify under the rules on its own behalf. Moreover, in any case, if the mortgages were originated by an entity that does not meet the recycling presumptions, the GSEs can still get goals credit under the Special Affordable Housing Goal if they verify and monitor that the originator, acting in conjunction with a seller, meets the recycling requirements in § 81.14(e)(4)(i) through (iv).

14. Counting Federally Insured Mortgages Including HECMs, Mortgages on Housing in Tribal Areas and Mortgages Guaranteed by the Rural Housing Service Under the Housing Goals

a. Overview. Under § 81.16(b)(3) of HUD's regulations prior to this final rule, non-conventional mortgages—mortgages that are guaranteed, insured or otherwise obligations of the United States—did not generally count under the three housing goals. However, mortgage loans under the Home Equity Conversion Mortgage (HECM) Program and the RHS's Guaranteed Rural Housing Loan Program have received credit under the Special Affordable Housing Goal. FHEFSSA specifically provides that mortgages that cannot be readily securitized through the Government National Mortgage Association (GNMA) or another Federal agency and for which a GSE's participation substantially enhances the affordability should receive full credit under the Special Affordable Housing Goal. On this basis, those two categories of mortgages would count under that goal if they finance housing for very low-income families or low-income families in low-income areas and meet recycling requirements if seasoned.

In the proposed rule, HUD proposed to amend § 81.16(b)(3) to count and give full credit for the following types of mortgage loans toward all three housing goals: mortgage loans under the HECM Program, mortgages guaranteed by RHS, and mortgage loans made under FHA's Section 248 program and HUD's Section 184 program for properties in tribal lands. (This section has also been amended as described herein at paragraph 14, Expiring Assistance Contracts.) HUD also proposed that other types of mortgages involving Federal guarantees, insurance or other Federal obligation may be eligible for credit under the goals if a GSE submits documentation to HUD that supports eligibility for HUD's approval and the Department determines, in writing, that the financing needs addressed by such programs are not well served and that the mortgage purchases under such program should count under the housing goals.

b. Summary of Comments. Commenters other than the GSEs generally supported the proposed change allowing goals credit for the GSEs' purchases of HECMs and rural and tribal mortgages. They stressed the need for liquidity for such programs and for encouraging the GSEs to better serve these markets. They pointed out that these markets are still undeveloped and underserved.

Fannie Mae supported the proposed changes with regard to government loans, but Freddie Mac made no comment.

A few commenters recommended that HUD count all reverse mortgages, not just HECMs, toward the three goals. Other commenters suggested that loans guaranteed by the RHS' Sections 538 and 515 programs should also receive goals credit as they provide high quality affordable multifamily housing for lower-income families in rural areas.

Some commenters suggested that HUD also should include all mortgages that are supported in some way by state and local governments. Others recommended that predevelopment grants or loans, interim development or bridge financing, and permanent financing be considered.

Fannie Mae objected to the proposal for HUD's review and approval of goals credit for other types of government loan programs and requested that HUD provide a set of criteria for the GSEs to apply and make their own determinations. According to Fannie Mae, the GSEs should receive goal credit for the purchase of specialized government program loans if two conditions are met: (1) Loans are made under any federally-insured programs (except for FHA loans insured under section 203(b) or VA loans insured under the VA single family insurance program); and (2) the GSEs add valuable

liquidity, lower costs, additional credit enhancements, or some other value to the financing of these loans.

c. HUD's Determination. In view of this general support for the proposed changes and based upon its review of data on the GSEs' mortgage purchases of HECMs, RHS mortgages and loans made to Native Americans under FHA's Section 248 program and HUD's Section 184 program, this final rule amends § 81.16(b)(3) to except mortgages under the HECM program, single-family mortgages guaranteed by RHS under the Section 502 program, and loans made under FHA's Section 248 program and HUD's Section 184 program on properties in tribal lands from the general exclusion from goals credit for non-conventional loans. This final rule allows goal credit for those specific Federally insured or guaranteed mortgage loans.

As proposed, the final rule provides that HUD will review other types of mortgages involving Federal guarantees, insurance or other Federal obligation for goals credit. HUD's review of the GSEs' non-conventional mortgage purchases is needed, among other reasons, to ensure compliance with FHEFSSA, which permits mortgages that cannot be readily securitized through GNMA or another Federal agency and for which a GSE's participation substantially enhances liquidity, to receive full credit under the Special Affordable Housing Goal. In view of the ample liquidity among the great majority of FHA loans, HUD must exercise ongoing responsibility to evaluate whether the GSEs' mortgage purchases under non-conventional mortgage programs (other than HECM program, specified RHS mortgage programs, and FHA's Section 248 program and HUD's Section 184 program on properties in tribal lands) should count under the Special Affordable Housing Goal. Beyond its responsibility under the Special Affordable Housing Goal, HUD must continually determine whether goals credit should be provided for particular GSE purchases. HUD has evaluated and considered the specific programs enumerated above and, at this time, is able to determine that goals credit should be given for the GSEs purchases of mortgages under these programs because these purchases will address credit needs that are not well served. For other programs, HUD must make the same careful and complete evaluation before it can decide in accordance with FHEFSSA whether goals credit is warranted.

This final rule retains a provision that to the extent categories of non-conventional mortgage purchases that now count toward the goals, they no longer will be excluded from the denominator of the GSEs' mortgage purchases as are other non-conventional loans that do not receive credit under the goals.

15. Expiring Section 8 Assistance Contracts

a. Overview. Over 900,000 housing units in approximately 10,000 multifamily projects have been financed with FHA-insured mortgages and supported by project based Section 8 housing assistance contracts.[47] Many of these contracts will expire over the next five years. A significant portion of these contracts currently provide for rents for assisted units that substantially exceed the rents for comparable unassisted units in the local market. Simply reducing rents to a level which may not support the project's debt service would risk likely defaults on the FHA-insured mortgage payments resulting in substantial claims to FHA's insurance funds.

In October 1997, Congress enacted the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA; 42 U.S.C. 1737f) specifically to address the problem of expiring contract for project-based Section 8 rent subsidies for certain multifamily rental projects, most of which are insured by FHA. MAHRA authorized a new Mark-to-Market Program designed to preserve low-income rental housing affordability while reducing the long-term costs of Federal rental assistance for these projects.[48] MAHRA establishes processes and standards for debt restructuring under the program where it is determined that such restructuring is appropriate and necessary.

MAHRA also amended section 1335(a) of FHEFSSA (12. U.S.C. 4565(a)(5)) to require Fannie Mae and Freddie Mac to ''assist in maintaining the affordability of assisted units in eligible multifamily housing projects with expiring contracts.'' MAHRA amendments further stipulate that such actions shall constitute part of the contribution of each GSE toward meeting its housing goals as determined by the Secretary. In the proposed rule, HUD proposed to provide partial to full credit under the housing goals as determined by HUD for actions that maintain the affordability of assisted units in eligible multifamily housing projects with expiring contracts include the restructuring or refinancing of mortgages, and credit enhancements or risk-sharing arrangements to modified or refinanced mortgages. HUD solicited comments on how and to what extent the GSEs should receive credit for such actions.

b. Summary of Comments. Commenters who addressed this issue were generally supportive of HUD's proposal to award credit for these activities. Although Freddie Mac did not express an opinion in its comments, Fannie Mae expressed some support for HUD's approach. However, Fannie Mae requested that HUD consider some revisions to its proposal. Specifically, Fannie Mae suggested that HUD broaden its definition of actions which would receive credit to include the purchase of FHA-insured mortgages, mortgage revenue bonds and equity investments, including Low Income Housing Tax Credits. Fannie Mae suggested that HUD strike the language ''* * * as determined by HUD'' from the final rule to avoid a regulatory process that requires prior HUD approval for determining goals credit. Fannie Mae also suggested that actions qualifying for credit under this section should always receive full, rather than partial, credit.

c. HUD's Determination. HUD has determined that it is both appropriate and consistent with the statutory mandates of FHEFSSA and MAHRA that actions taken by the GSEs to assist in maintaining the affordability of assisted multifamily units with expiring contracts receive goals credit as part of the GSEs' contributions in meeting their housing goals as determined by the Secretary. HUD's current counting rules permit the GSEs to receive full credit for purchases of mortgages or interests in mortgages as set forth in 24 CFR 81.16. Those rules address goals eligibility standards for credit enhancements, the purchase of refinanced mortgages, mortgage revenue bonds and risk-sharing. Because HUD intends that goals credit for actions in conjunction with expiring assistance contracts should conform to actions that are already awarded credit in other transactions, HUD has determined that it is not necessary to restate these rules with respect to eligibility of actions for goals credit that assist the Mark-to-Market program. Accordingly, this final rule revises the language to eliminate redundancies by referencing current regulations.

HUD agrees with Fannie Mae that the purchase of FHA-insured mortgages resulting from restructured financings of projects with expiring assistance contracts is an appropriate activity to include in actions eligible for goals credit. Accordingly, HUD has amended § 81.14(e)(3) to specify that purchases of mortgages on projects with expiring assistance contracts that meet the

requirements of 12 U.S.C. 4563(b)(1)(A)(i) and (ii) will receive full credit toward achievement of the special affordable housing goal.

This final rule also clarifies the counting treatment for actions a GSE takes to modify or restructure the terms of mortgages with expiring assistance contracts which it may hold in portfolio, provided such restructuring results in lower debt service costs to the project's owner. HUD has added § 81.16(c)(9)(ii) to provide full credit under any housing goal for these activities.

HUD has reviewed comments from Fannie Mae, Freddie Mac, and others regarding awarding goals credit for equity investments, particularly Low Income Housing Tax Credits (LIHTCs). These comments, while not necessarily offered in response to this section of the proposed rule, indicate a continuing interest in counting these transactions under the goals. The Department agrees that the GSEs' participation in LIHTCs plays a vital role in the development of affordable housing. By excluding these investments from goals credit HUD does not intend to convey any lack of appreciation for their importance. However, FHEFSSA imposes certain standards on what can and cannot be counted towards the housing goals.[49]

Specifically, only mortgage purchases as defined in FHEFSSA and the implementing regulation meet the standard for eligibility. As described in the preamble to HUD's 1995 regulation, the purchase of LIHTCs is not a mortgage purchase or the equivalent of a mortgage purchase and, therefore, is not eligible for goals credit under HUD's general counting requirements as set forth in the implementing regulation.

While MAHRA does provide that actions to maintain the affordability of assisted units under MAHRA will count under the goals, MAHRA does not specifically impose standards for counting actions with respect to expiring assistance contracts under the goals but leaves this matter to HUD's determination. In determining whether actions count under the goals, HUD will generally be guided by definitions and counting conventions set forth in the implementing regulation. In instances where a GSE engages in actions not specified in the implementing regulation but which it believes warrant goals credit, or where a GSE provides more than one form of assistance for a single project, the GSE must submit the transaction to HUD for a determination on the appropriate level of credit to be awarded if the goals credit is sought. In making a determination, HUD will award counting treatment for those actions that are required under MAHRA and that may count under FHEFSSA.

A few commenters expressed concern about the counting treatment for mortgage purchases on projects with expiring contracts that ''opt out'' of the assisted program. One commenter suggested that HUD impose additional affordability requirements as a condition of awarding goals credit for such transactions. However, HUD finds that the issue of affordability relative to goals credit is already well established. HUD's current regulations address the income requirements for determining how mortgage purchases are counted under any of the housing goals. There are other statutory provisions that also address long-term affordability. Projects that rely upon or intend to rely upon equity investments from the LIHTC program must meet tax code requirements for affordability for a 15-year period.[50] Mortgages secured by projects subject to restructuring plans must provide for a Use Agreement that includes affordability restrictions and remains in effect for at least 30 years.[51] HUD believes that the current counting rules and statutory definitions under FHEFSSA and MAHRA are sufficient to ensure that goals credit is awarded appropriately for mortgage purchases that meet prescribed housing affordability standards.

16. Provision for HUD to Review New Activities To Determine Appropriate Counting Under the Housing Goals

a. Overview. In order to address confusion about whether a given transaction will receive credit under the housing goals, HUD proposed adding a provision at § 81.16(d) to further clarify its position regarding HUD's authority review new activities, or classes of transactions, to determine appropriate counting treatment under the housing goals.

While the GSEs participate in transactions and activities that support community and housing development in general, FHEFSSA is clear that only ''mortgage purchases'' count toward performance on the housing goals. Section 81.16(a) of the regulations stipulates that 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. As provided in § 81.16(b), HUD has determined that certain transactions do not meet those criteria and, therefore, will not count toward a GSE's housing goals performance. Examples include equity investments in housing development projects; commitments, options or rights of first refusal to acquire mortgages; mortgage purchases financing secondary residences; purchases of non-conventional mortgages and government housing bonds except under certain circumstances. As provided in § 81.16(c), HUD has determined that certain other transactions, including credit enhancements in certain situations, REMIC purchases and guarantees in certain circumstances, and others, do count as mortgage purchases.

HUD believes that, in order to meet higher goal levels, the GSEs will need to continue to develop new products and approaches while also remaining mindful of FHEFSSA's requirements. HUD invited comment on this proposal.

b. Summary of Comments. Commenters who addressed this issue generally offered support for the proposal. Some commenters, however, confused HUD's proposal to review classes of transactions for goals counting treatment with the Department's New Programs Approval authority as set forth in § 81.51 which relates to HUD's review of a new GSE activity to determine whether it is a new program and whether it is authorized under the GSE's charter and in the public interest. The provision in § 81.16(d) of the proposed rule concerns instead whether a class of transactions counts as mortgage purchases that will receive credit under the housing goals. In HUD's proposed rule, no regulatory changes to the New Programs Approval authority were proposed.

Of the comments received, Fannie Mae addressed the issue of counting classes of transactions under the goals in some detail. Generally, Fannie Mae expressed an overall objection to any regulatory provisions that would require prior HUD approval for goals counting purposes, believing instead that HUD should codify clear but flexible rules that remove all uncertainty regarding goals counting treatment. Fannie Mae further stated that prior HUD review could ''put in place a disincentive to the development of new and innovative products.'' Fannie Mae did not suggest any specific examples of classes of transactions or characteristics that HUD should exclude from a prior review process nor did it specify how regulatory guidance could be constructed to address future events. However, Fannie Mae did suggest that HUD impose a 30-day time frame for review after which the transaction(s) would be approved for goals credit unless HUD had notified the GSE otherwise during the review period.

Another commenter expressed concern that HUD intends to count

transactions that are not formally mortgages if HUD believes they serve a new market or add liquidity to an existing market, thereby potentially allowing the GSEs to expand their activities into areas now served by others.

c. HUD's Determination. In assessing these concerns, HUD believes that Fannie Mae's suggestions for additional codified regulatory guidance in lieu of any HUD review are impractical and unnecessary. The regulation already includes numerous provisions that address eligible transactions and their counting treatment. In fact, virtually all transactions in current use which could be substantially equivalent to a mortgage purchase have been addressed elsewhere in the counting rules. Nevertheless, given the pace of innovation in the mortgage and investment markets and the likelihood that the GSEs will devise new lending and marketing approaches in the future, providing a prior-review requirement to address goals counting treatment for these future transactions is both an efficient and practical solution while a more prescriptive approach may not be sufficiently foresighted or encompassing thereby disadvantaging both the public's and the GSEs' interests.

HUD regards concerns that by adding § 81.16(d) to the regulation, HUD is opening the door to counting non-mortgage transactions towards the goals as unwarranted. The regulatory language is explicit in stating that, in order to count towards goals performance, transactions must be ''mortgage purchases'' in accordance with FHEFSSA. The regulatory language does not use ''liquidity'' as a criteria for review and approval to count transactions for goals credit, and ''liquidity'' is not a defining element of ''mortgage purchase'' under this regulation. Further, the regulation explicitly states which classes of transactions are currently ineligible, and it provides guidance on criteria necessary for qualifying other classes of transactions. Thus the plain meaning of the regulations including the counting rule conventions set forth in the regulation would preclude a broader interpretation of § 81.16(d).

HUD has further determined that establishment of a time limit for HUD review of GSE requests to count transactions is unnecessary. While HUD is aware of the need for responsive action to a GSE's request for guidance and will respond to such requests reasonably, rigid time frames may not provide sufficient review of complex transactions to best serve the public interest. Accordingly, HUD has implemented § 81.16(d) as originally proposed.

17. Counting Rules—Clarifying Technical Provisions

a. Especially Low Income. Section 81.14(d)(1)(i) of the regulations provides that dwelling units in a multifamily property will count toward the Special Affordable Housing Goal if 20 percent of the units are affordable to families whose incomes do not exceed 50 percent of the area median income. HUD's regulations at §§ 81.17 through 81.19 stipulate that the income requirements are to be adjusted based on family size and provide adjustment tables for qualifying family income where incomes do not exceed from 60 percent to 100 percent of area median income. However, there has been no similar adjustment table provided for families whose incomes do not exceed 50 percent of area median income. HUD proposed to amend those sections to provide additional adjustment tables for such families. To be consistent, HUD also proposed to designate such families as ''especially low-income families'' for purposes of the Department's GSE regulations and to reflect this change in § 81.14. HUD received no comments on these proposals. Therefore, this final rule implements the changes as proposed in § 81.14 and §§ 81.17 through 81.19.

b. Defining the ''Denominator''. HUD proposed amending the calculation of ''Denominator'' to clarify that the denominator does not include GSE transactions or activities that are not mortgages or transactions that are specifically excluded. HUD received no comments on this proposed change, and this final rule implements the change as proposed in 81.14(a)(2).

c. Balloon Note Conversions. HUD proposed to amend the definition of ''Refinancing'' at § 81.2 to exclude a conversion of a balloon mortgage note on a single family property to a fully amortizing mortgage note provided the GSE already owns or has an interest in the balloon note at the time of the conversion. HUD also proposed amending the counting rules at § 81.16(b)(9) to exclude these transactions from the denominator. Fannie Mae suggested deleting other proposed language which sought to clarify that single family loans with conversion features which had already been exercised prior to purchase by the GSE would count as new purchases. Fannie Mae believed this additional language created confusion and was unnecessary stating that the revised definition of ''Refinancing'' at § 81.2 already provided sufficient clarification. HUD agrees with this comment. Accordingly, this final rule implements the proposed changes to § 81.2 and to § 81.16(b)(9), with slight revisions to § 81.16(b)(9) to avoid any potential confusion.

d. Title I. HUD proposed awarding the GSEs half credit for purchases of mortgage loans insured under HUD's Title I property improvement and manufactured homes program. Fannie Mae and one other commenter asked that the Department award full credit for Title I mortgages saying that these mortgages support affordable housing needs. Fannie Mae noted that purchases of these loans were difficult transactions to undertake and for this reason should receive more than half credit. One other commenter recommended that no goals credit be given for Title I loans, asserting that such loans do not directly support affordable housing needs.

Given the limited number of comments and their conflicting nature, the Department decided to retain the provision in the final rule that purchases of Title I loans will receive half credit under the housing goals. As explained in more detail in the appendices to this final rule, HUD has determined that such loans finance an important source of affordable housing and an enhanced GSEs role could improve the affordability of such loans for lower-income families.

18. Credit Enhancements

a. Overview. The GSEs utilize a large variety of credit enhancements, for both single family and multifamily mortgage purchases, to reduce the credit risk to which they might otherwise be exposed. For example, the GSEs generally require the use of mortgage insurance on single family loans with loan-to-value ratios exceeding 80 percent. While more common in the multifamily mortgage market, seller-provided credit enhancements may also be required for GSE purchases of single family mortgage loans. Other types of credit enhancements include arrangements such as credit enhancements in structured transactions where a GSE may acquire a pool of loans, mortgage-backed securities (MBS), or real estate mortgage investment conduits (REMICs), and then create separate senior and subordinated securities, structured so that the subordinated securities absorb credit losses; spread accounts, in which a GSE may create a special class of unguaranteed securities where pass-through payments will cease in the event of default of the underlying mortgage collateral; acquisition of senior tranches of REMIC securities by the GSEs which are enhanced by the

presence of subordinate tranches and where the collateral is already credit enhanced prior to purchase; and agency pool insurance coverage provided by a mortgage seller.

Since enactment of FHEFSSA in 1992, HUD's regulations have awarded full goals credit for the purchase of most mortgages or interests in mortgages that otherwise qualify under the definition for each goal regardless of the level of credit risk a GSE might bear in the transaction. However, the increasing complexity of, and prevalence in, the use of credit enhancements have raised questions about whether the GSEs should receive full credit towards the goals for transactions where their credit risk exposure is minimal. In the proposed rule, HUD sought comments on various questions regarding the appropriate goals treatment for transactions with credit enhancements. For example, assuming credit risk can be measured, HUD asked commenters to consider whether HUD should establish a sliding scale from 0 to 100 percent for awarding goals credit depending on the GSE's risk exposure in a transaction. HUD also asked for comments on other issues including whether a minimum risk threshold should be established in order for a transaction to receive any goals credit as well as comments on whether HUD should measure counterparty risk on seller-provided credit enhancements.

b. Summary of Comments. The overwhelming majority of commenters, including Fannie Mae and Freddie Mac, responded with strong opposition to the concept of basing goals credit on the level of credit risk borne by a GSE in the transaction. Freddie Mac expressed concern that, in addition to being inconsistent with the Freddie Mac Act and FHEFSSA, discounting goals credit for protections against default cost would lead to a host of unintended consequences and practical problems, including measurement problems. For example, with regard to multifamily mortgages especially, Freddie Mac stated that ''when cross-default or cross-collateralization techniques are used to price credit enhancements, there is no ready and straightforward method of allocating default cost protection to the risks presented by the individual mortgages, let alone to the housing units that are financed by each of those mortgages.''

Fannie Mae also strongly opposed any goals scoring approach based on the level of credit enhancement. Fannie Mae stated that credit enhancements are essential to its safe and sound operation and, in fact, are explicitly recognized under OFHEO's risk-based capital standard as an important risk management tool. Fannie Mae further stated that reducing goals credit based on the level of credit enhancement ''is contrary to our charter, misconstrues the purpose of Fannie Mae, distorts the efficient functioning of the capital markets, increases the cost of homeownership, restricts the availability of capital, and weakens the financial soundness of Fannie Mae.''

Commenters representing state and local housing finance agencies, for-profit and non-profit advocacy and consumer groups, trade associations, and the mortgage lending and investment industry were nearly unanimous in voicing objections to any regulatory approach that considered levels of credit enhancements in assigning goals credit. The recurring objection held that such an approach would undermine the purpose of the housing goals regulation by disrupting the risk-sharing partnerships that are critical to making affordable housing lending a reality, thereby resulting in a negative consequence to homeownership. For example, some commenters expressed concern that such an approach could interfere with the GSEs' incentive to develop new affordable mortgage products using risk-sharing arrangements while others felt that reducing goals credit based on the level of risk would have the effect of reducing the amount and liquidity of funds available for affordable housing lending rather than force the GSEs to take on more risk than they felt they could effectively manage. These commenters remarked that since risk sharing arrangements allow more industry partners to bring more capital to the mortgage market, they were concerned that the affordable housing market would be adversely impacted if HUD adopted a regulatory counting scheme that penalized the GSEs for sharing risk.

Two commenters, however, suggested there may be instances in which goals credit should be limited and suggested further review and study of the issue. One commenter stated that the financial benefits of GSE status can and should function as an offset for the assumption of some amount of credit risk but also cautioned that HUD must carefully consider the effects of any regulatory change in this area, especially how OFHEO and the financial markets would view encouraging the GSEs to assume certain credit risks and what effect this approach could have on mortgage rates. Another commenter suggested that HUD establish an industry working group to examine these issues in greater detail. This commenter also supported limiting goals credit on the GSEs' purchase of seasoned mortgages when the selling institution provides a credit enhancement beyond customary representations and warranties, and also supported some limitation on goals credit for loans securitized in commercial mortgage-backed securities (CMBS) and REMIC structures to the risk level of the tranches purchased by the GSEs.

One commenter suggested that, in assigning goals credit based on the GSEs' actual involvement in facilitating the flow of private capital into low/mod communities, there may be a useful prototype in the CRA provisions for allotting goals credit based upon the type of mortgage purchase transaction, *i.e.,* the purchase of newly originated loan versus other mortgage investments. HUD appreciates this suggestion and plans to consider it further.

c. HUD's Determination. HUD has taken the position that GSE credit enhancement transactions provide needed liquidity to the mortgage markets and play a key role in affordable housing lending. As explained in a study HUD has undertaken with the Urban Institute to assess recent innovations in the secondary market for low- and moderate-income lending, the GSEs' purchase of interests in CRA loans is identified as one approach to how the enterprises facilitate liquidity for loans that do not conform to standard guidelines.[52] Investment analysts also report that the GSEs' credit enhancement of CRA REMIC securities results in a more attractive debt instrument for investors and a higher return for issuers which benefits lenders seeking to liquidate their CRA portfolios and ultimately borrowers.

HUD recognizes there also are other valid reasons to grant the GSEs full credit under the housing goals for mortgage purchase transactions involving credit enhancements even where the enterprises bear relatively minimal credit risk. For example, in the absence of private mortgage insurance for multifamily mortgages, seller provided credit enhancements apparently are a viable means by which secondary market purchasers may delegate certain of their underwriting responsibilities and share risks. When a GSE purchases a mortgage subject to a recourse agreement or similar arrangement with the lender, the GSE still retains credit risk with respect to holders of the GSEs' mortgage-backed security or, where the mortgage is held in portfolio, for its own account. Of course, even if the GSE is not bearing

substantial credit risk, the GSE may still be bearing other types of risk. For example, the protection afforded to the GSE under recourse agreements is dependent on the soundness of the party to whom the GSE has recourse. In addition, the GSE assumes interest rate risk for mortgages that are retained in portfolio.

In analyzing credit enhancement issues, thus far, there has emerged no clear approach to establishing an appropriate ''risk threshold'' associated with mortgages purchased by a GSE, below which credit toward the goals should not be granted. Under typical recourse agreements or similar arrangements, GSEs rarely divest themselves of credit risk associated with mortgage purchases in clear-cut percentages of risk. Some arrangements have time or dollar limits. The relative risk assumed by the GSE on one loan compared to another relates not only to the relative risk management characteristics (including mortgage insurance and recourse arrangements), but also to loan-to-value ratios, multifamily debt coverage ratios, interest rate risk, and many other parameters. Moreover, whether there is subsequent securitization or resecuritization of a GSE interest also bears upon the degree of credit risk retained by the GSE in a transaction.

Any determination about discounting goals credit based on the level of risk borne by a GSE in the transaction also must take into account consistency with the GSEs' Charter Acts which require the GSEs to obtain mortgage insurance or its equivalent for certain single family mortgages, and must consider the financial safety and soundness requirements under FHEFSSA as well as its housing goals provisions.

Accordingly, HUD has determined, based on its analysis of available information on the GSEs' credit enhanced transactions, comments and other input received on the proposed rule, as well as its analysis of the law, the complexity of these issues requires additional evaluations before changes are made to these rules. These evaluations will further assess the extent to which the GSEs' use of credit enhancements add value and liquidity to the marketplace, especially for affordable housing lending, as well as the impact their use has on the GSEs' mandate to play a leadership role in the mortgage markets. To assist its evaluations, HUD is undertaking further review and analysis on credit enhancements. Topics being covered in this review include the GSEs' use of credit enhancements provided by seller-servicers, third party vendors, and buyers of subordinated debt in the GSEs' single family and multifamily mortgage transactions. In addition, HUD will continue its assessments of credit enhancement structures including newly introduced structures to determine how and to what extent, if any, HUD's goal counting rules should be modified in the future.

19. Public Use Data Base and Public Information

Section 1323 of FHEFSSA requires that HUD make available to the public data relating to the GSEs' mortgage purchases. In the legislative history of FHEFSSA, Congress indicated its intent that the GSE public use data base is to supplement HMDA data.[53] The purpose of the GSE data base is to assist the public, including mortgage lenders, planners, researchers, and housing industry groups, as well as HUD and other government agencies, in studying the GSEs' mortgage activities and the flow of mortgage credit and capital into the nation's communities. At the same time, section 1326 of FHEFSSA protects from public access and disclosure, proprietary data and information that the GSEs submit to the Department and requires HUD to protect such data or information by order or regulation.

To comply with FHEFSSA, HUD established a public use data base to collect and make available to the public, loan-level data on the GSEs' single family and multifamily mortgage purchases. In Appendix F to the December 1, 1995 final rule, the Department specified the structure of the GSE public use data base and identified the data to be withheld from public use.

The single family data was to be disclosed in three separate files—a Census Tract File (with geographic identifiers down to the census tract level), a National File A (with mortgage-level data on owner-occupied 1-unit properties), and a National File B (with unit-level data on all single family properties). The national files do not have geographic indicators. The multifamily data was to be disclosed in two separate files ''a Census Tract File and a National File. Each file consists of two parts, one part containing mortgage loan level data and the other containing unit level data for all multifamily properties. For each file, Appendix F identified data elements that were considered proprietary and those that were not proprietary and available to the public, and specified further that certain proprietary elements would be recoded or categorized into ranges to protect the proprietary information and to permit the release of non-proprietary information to the public. This multi-file structure was designed to allow the greatest dissemination of loan-level data, without disclosing proprietary data of the GSEs and causing competitive harm by, for example, allowing competitors to determine the GSEs' marketing and pricing strategies at the local level.

On October 17, 1996, a Final Order describing each data element submitted by the GSEs and the proprietary or nonproprietary nature of each element was published in the **Federal Register**. The Final Order also recoded, adjusted, and categorized in ranges certain proprietary loan-level data elements to protect proprietary GSE information. HUD released the recoded data elements and the data elements that were identified as non-proprietary information to the public.

In the fall of 1996, the Department released the first publicly available GSE loan level data base, containing non-proprietary information on every mortgage purchased by the GSEs from 1993 to 1995. Subsequently, HUD has made the 1996, 1997, 1998, and 1999 databases available to the public. In addition, HUD issued an order determining that certain aggregations of data that may otherwise be proprietary at the loan level is not proprietary at an aggregated level. Through that order, it is possible for HUD to make available to the public specific tables of nonproprietary information about the GSEs' activities and housing goal performance.

After consideration of the current structure of the GSE public use data base, the Department proposed several changes to its classifications of the GSEs' mortgage data. Those proposed changes were either technical in nature or would, by reclassifying certain data from proprietary to non-proprietary, make available to the public the same data from the GSEs that is made available by primary lenders under the Home Mortgage Disclosure Act (HMDA).

HUD received comments from both GSEs as well as trade organizations, advocacy groups, researchers, and lenders on this issue. Comments were almost evenly divided between those groups approving of increased data disclosure at the loan-level and those that opposed the proposals, mostly out of concern for protecting the privacy of borrowers' and lenders' business strategies. Both GSEs were strongly opposed to increased disclosure, citing competitive issues resulting from the release of what each GSE considered to be proprietary, confidential business information. Fannie Mae and Freddie Mac expressed general concern that

recoding certain loan-level data as non-proprietary at either the census tract or national file level would reveal information about lender relationships, pricing arrangements, and management of credit and interest rate risks. Fannie Mae also took issue with HUD's efforts to conform data available in the GSE public use data base to HMDA data for research purposes, contending that both databases are fundamentally different and cannot be readily reconciled. Lenders expressed a similar concern about the potential for additional public data to reveal business strategies, commenting that the more data HUD makes available through the public use data base, the more likely that other lenders would be able to discern the competition's lending strategies.

Some trade organizations viewed the proposed changes as potentially harmful to consumers. Their viewpoints were representative of similar concerns expressed by lenders and the GSEs. One organization wrote that exposing more detailed information about the consumer to the general public will only enhance the ability of sellers of credit to take unfair advantage of the consumer, particularly the urban and minority consumer.'' Another urged that HUD be ''sensitive to emerging technology when deciding what data elements to make public on the [public use data base] files. Consumer financial and credit information privacy must be a paramount concern to the Department.'' A third organization strongly opposed releasing additional data out of concern for borrowers' privacy and ''potential exposure of association members' confidential business information.'' Another commenter, however, supported increased disclosure of data, contending that access to more data should lead to a better understanding of the affordable housing market and to reduced costs for those operating in the market.

Housing and community organizations generally viewed HUD's proposed changes as a series of improvements that would make the public use data base more compatible with HMDA data and, therefore, more valuable as a research tool. One commenter also supported bringing the public use data base into conformity with HMDA stating that comparisons between the two databases are ''extremely important'' in evaluating the GSEs'' mandate to lead the primary market.

HUD recognizes the potential harm that the release of truly proprietary data could have on the GSEs as well as their lending partners and is cognizant of its responsibilities under FHEFSSA to preserve and protect such data from public disclosure. Also, any implication that additional disclosure of GSE data might in fact facilitate a further loss of borrower privacy or encourage predatory lending practices are issues that HUD believes warrant especially close scrutiny.

In recognition of its responsibilities to proceed with the utmost caution in releasing data, HUD follows a rigorous six-factor determination process in considering whether to accord proprietary treatment to mortgage data. For every data element under consideration for non-proprietary treatment, HUD evaluates:

(1) The type of data or information involved and the nature of the adverse consequences to the GSE, financial or otherwise, that could result from disclosure;

(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 and similar data before and after its submission to the Secretary;

(4) The extent to which the mortgage data 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; and

(6) Such additional facts and legal and other authorities as the Secretary may consider appropriate, including the extent to which particular mortgage data, when considered together with other information, could reveal proprietary information.

Section 1326 of FHEFSSA and § 81.75 of the regulations provide that the Department may, by regulation or order, issue a list of information that shall be accorded proprietary treatment. HUD utilized the proposed rule to suggest changes to the proprietary treatment of certain GSE data. The comments received in response offered useful insights into concerns of many different organizations including the GSEs' respecting the proposed changes.

Based on the comments received, HUD is not making a determination on this matter as part of this rulemaking. HUD will issue a decision on which data elements will be accorded proprietary and non-proprietary treatment by separate order following publication of this final rule in accordance with the Department's regulations at §§ 81.72 through 81.74.

20. Other Considerations

a. Data Reporting. Many of the changes included in the final rule involve changes in data reporting requirements. The Department will not establish those requirements in this final rule, but rather will establish them in accordance with FHEFSSA and 24 CFR part 81, considering the proprietary concerns of the GSEs and other considerations in the public interest.

Specific areas where additional data will need to be collected include but are not limited to indicators for mortgages located in tribal lands, identification of units with estimated affordability data mortgage loans receiving bonus points and the temporary adjustment factor, and mortgages relating to Section 8 assistance contracts.

One area in particular that will require additional data elements is high cost mortgage loans. In order to monitor and enforce the restrictions included in this final rule, new data and reporting requirements may be required, as appropriate. The Department notes that the HUD/Treasury report recommended that the Federal Reserve amend its regulations to require the collection of similar data items under the Home Mortgage Disclosure Act (HMDA), including information on loan price (APR and cost of credit) and borrower debt-to-income ratio for HOEPA loans. If such recommendations are implemented, it may affect the data reporting required under this rule.

b. Comments Regarding Regional Issues. Several commenters offered comments on the need to inform various communities and regions around the country of the GSEs' affordable housing goal performance in those areas. Separate from this rulemaking, as described above, HUD has recently taken steps to make more MSA level information, on an aggregated basis, about the GSEs mortgage purchases available to the public. HUD encourages the residents of local communities and regions of the country to increase their knowledge of the roles the GSEs' play in their areas and, toward that end, HUD will make available information to build understanding of the GSEs' activities.

c. Technical Correction. Section 81.76(d) describes the protection of GSE information by HUD officers and employees. That section has cited HUD's Standards of Conduct regulations in 24 CFR part 0. HUD's Standards of Conduct regulations in part 0 were, however, largely superseded by new financial disclosure regulations codified in 5 CFR part 2634, new executive

branch-wide Standards of Conduct codified in 5 CFR part 2635, and supplemental HUD-specific Standards of Conduct codified in 5 CFR part 7501. Consequently, in 1996, HUD removed the current text of 24 CFR part 0 and replaced it with a single section (§ 0.1) that provides cross-references to those provisions. (See final rules published in the **Federal Register** on April 5, 1996 (61 Fed. Reg. 15,350), and on July 9, 1996 (61 Fed. Reg. 36,246).) In order to correct § 81.76(d), this final rule will revise the references to those provisions accordingly.

III. Findings and Certifications

Executive Order 12866

The Office of Management and Budget (OMB) reviewed this final rule under Executive Order 12866, *Regulatory Planning and Review*, which the President issued on September 30, 1993. This rule was determined economically significant under E.O. 12866. Any changes made to this final rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC. The Economic Analysis prepared for this rule is also available for public inspection in the Office of the Rules Docket Clerk.

Congressional Review of Major Final Rules

This rule is a ''major rule'' as defined in Chapter 8 of 5 U.S.C. The rule has been submitted for Congressional review in accordance with this chapter.

Paperwork Reduction Act

HUD's collection of information on the GSEs' activities has been reviewed and authorized by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), as implemented by OMB in regulations at 5 CFR part 1320. The OMB control number is 2502–0514.

Environmental Impact

In accordance with 24 CFR 50.19(c)(1) of HUD's regulations, this final rule would not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate real property acquisition, disposition, lease, rehabilitation, alteration, demolition, or new construction; nor would it establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Therefore, this final rule is categorically excluded from the requirements of the National Environmental Policy Act.

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. This final regulation is applicable only to the GSEs, which are not small entities for purposes of the Regulatory Flexibility Act, and, thus, does not have a significant economic impact on a substantial number of small entities.

Executive Order 13132, Federalism

Executive Order 13132 (''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the Executive Order are met. This final rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and the private sector. This final rule would not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

Endnotes to Preamble

1. See sec. 301 of the Federal National Mortgage Association Charter Act (Fannie Mae Charter Act) (12 U.S.C. 1716); sec. 301(b) of the Federal Home Loan Mortgage Corporation Act (Freddie Mac Act) (12 U.S.C. 1451 note).
2. Secs. 306(c)(2) of the Freddie Mac Act and 304(c) of the Fannie Mae Charter Act.
3. Secs. 306(g) of the Freddie Mac Act and 304(d) of the Fannie Mae Charter Act.
4. Secs. 303(e) of the Freddie Mac Act and 309(c)(2) of the Fannie Mae Charter Act.
5. U.S. Department of Treasury, *Government Sponsorship of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation* (1996), page 3.
6. S. Rep. No. 282, 102d Cong., 2d Sess. 34 (1992).
7. FFIEC Press Release, July 29, 1999.
8. Section 802(ee) of the Housing and Urban Development Act of 1968 (Pub. L. 90–448, approved August 1, 1968; 82 Stat. 476, 541).
9. See sec. 731 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (Pub. L. 101–73, approved August 9, 1989), which amended the Freddie Mac Act.
10. See 24 CFR 81.16(d) and 81.17 (1992 codification).
11. Sec. 1321.
12. See generally secs. 1331–34.
13. Secs. 1332(b), 1333(a)(2), 1334(b).
14. 65 FR 12632–12816
15. S. Rep. No. 282, 102d Cong., 2d Sess. 34 (1992) at 35.
16. *Rental Housing Assistance—The Worsening Crisis: A Report to Congress on Worst Case Housing Needs,* Department of Housing and Urban Development, Office of Policy Development and Research, (March 2000).
17. *Standard & Poor's DRI Review of the U.S. Economy.* (June 2000), p. 57.
18. See, *e.g.,* S. Rep. at 34.
19. S. Rep. at 34.
20. 12 U.S.C. 2901 *et seq.*
21. See section 1335(3)(B).
22. The following discussion is based on analysis of conventional, conforming mortgage loans which were originated in 1998, and which may have been acquired by the GSEs in 1998 or 1999. Appendix A contains further details regarding GSE acquisitions of 1997 originations as well. HUD will analyze GSE purchases in relation to the 1999 mortgage market once HUD has the opportunity to analyze 1999 HMDA data for metropolitan areas.
23. Totals do not add due to rounding.
24. This percentage differs from the GSEs' 19 percent market share for rental units in single family rental properties financed in 1998 chiefly because the 41 percent figure reported here includes owner-occupied units in 2–4 unit properties which also have rental units.
25. A recent Treasury-sponsored report on CRA found that banks and thrifts increased the share of their mortgage originations to low-income borrowers and communities from 25 percent in 1993 to 28 percent in 1998. See Robert E. Litan, Nicolas P. Retsinas, Eric S. Belsky, and Susan White Haag, *The Community Reinvestment Act After Financial Modernization: A Baseline Project,* U.S. Department of Treasury, April 25, 2000.
26. African American borrowers accounted for 6.5 percent of all conforming home loans, including FHA and VA loans, in metropolitan areas in 1998. Further information on the GSEs' purchases of mortgage loans to minority borrowers may be found in Appendix A.
27. Hispanic borrowers were 6.7 percent of all conforming metropolitan area home loans, including FHA and VA loans, in 1998. Further information on the GSEs' purchases of mortgage loans to minority borrowers may be found in Appendix A.

28. The low- and moderate-income market share is the estimated proportion of newly mortgaged units in the market serving low- and moderate-income families. The two other shares are similarly defined. HUD's conservative range of estimates (such as 50–55 percent) reflects uncertainty about future market conditions.

29. Appendix D explains the specific reasons for the 1995–98 market estimates for the low-mode and special affordable housing goals are higher than the upper end of HUD's market projections for the years 2001–2003. Based on average 1993–1998 experience, HUD's projection model assumes that refinance borrowers have higher incomes than home purchase borrowers; however, between 1995 and 1997, refinance borrowers had lower incomes. On average, the 1995–98 period also exhibited a slightly higher percentage of rental units financed than assumed in HUD's projection model. See Appendix D for other reasons the 1995–1998 average market estimates are higher than those projected for the years 2001–2003.

30. PriceWaterhouse-Coopers, ''The Impact of Economic Conditions on the Size and the Composition of the Affordable Housing Market'' (April 5, 2000).

31. In 1998, PWC estimates the size of the single family mortgage market at $1.5 trillion. This estimate is identical to the widely used estimate by the Mortgage Bankers Association for the entire single family mortgage market, including FHA and jumbo loans.

32. The figures presented for goal performance are based on HUD analysis of the GSEs' loan level data. Some results differ marginally from the corresponding figures presented by Fannie Mae and Freddie Mac in their respective Annual Housing Activities Reports (AHARs) to HUD, reflecting differences in application of counting rules.

33. The figures presented for goal performance are based on HUD's analysis of the GSEs' loan level data. Some results differ marginally from the corresponding figures presented by the GSEs in their AHARs, reflecting differences in application of counting rules.

34. GSE to market ratio is calculated by dividing the performance of the respective GSE by the performance of the market.

35. Freddie Mac-to-Market and Fannie Mae-to-Market ratios cannot be calculated until 1999 HMDA data is available.

36. The figures presented for goal performance are based on HUD's analysis of the GSEs' loan level data. Some results differ from the corresponding figures presented by Fannie Mae in its AHARs by one to two percentage points. The difference largely reflects differences between HUD and Fannie Mae in application of counting rules relating to counting of seasoned mortgage loans for purposes of this goal. Freddie Mac's AHAR figures for this goal differ marginally from the official figures presented above, also reflecting differences in application of counting rates.

37. The percentage of Freddie Mac's multifamily transactions counting toward the Special Affordable Goal was unusually low in 1999 relative to previous years, but the multifamily sector still contributed significantly to Freddie Mac's performance on the Special Affordable Goal. In 1999, 43 percent of units backing Freddie Mac's multifamily transactions met the Special Affordable Goal, representing 22% of units counted toward the Goal. Multifamily units were eight per cent of Freddie Mac's total purchase volume in 1999.

38. U.S. House of Representatives, *Congressional Record.* (October 13, 1999), p. H10014.

39. 15 U.S.C. 1601 note; Title I, Subtitle B of the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103–325 (Sept. 23, 1994); 108 Stat. 2190–98.

40. Currently, HOEPA covers refinancings of mortgages. 15 U.S.C. 1601(aa)(1).

41. As mentioned above, HOEPA grants the Federal Reserve Board authority to lower the APR trigger to 8 percentage points over comparable treasuries (or to raise it to 12 percentage points above), 15 U.S.C. 1602(aa)(2), and to broaden the class of costs counted toward the fees trigger, 15 U.S.C. 1602(aa)(4)(D).

42. 12 U.S.C. 4563(b)(1)(B).

43. *Id.*

44. CRA regulations were published as a joint final rule on May 4, 1995. The regulation is codified at 12 CFR Part 25, CFR Parts 228 and 203, 12 CFR Part 345, and 12 CFR Part 563e for the Office of the Comptroller of the Currency, the Federal Reserve Board, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision, respectively.

45. Pub. L. 106–102; approved November 12, 1999.

46. See S. Rep. No. 282, 102nd Cong., 2nd Sess. 39 (1992); H.R. Rept. 206, 102nd Cong., 1st Sess. 59 (1991)

47. *Ibid.*

48. 24 CFR parts 401 and 402, Multifamily Housing Mortgage and Housing Assistance Restructuring Program (Mark-to-Market): Final Rule, March 22, 2000.

49. The 1992 House committee report on the bill that later became FHEFSSA emphasizes that ''the goals included in this legislation are specifically not to include purchases of equity for low-income housing tax credits.'' (House of Representatives Report 102–206, 102d Congress, 1st Session, p. 60.)

50. *Handbook of Housing and Development Law,* 1996, p. 10–8 and IRC Sec. 42 (i)(1).

51. 42 U.S.C. 1437f, sec. 514(e)(6)

52. Kenneth Temkin, Jennifer E. H. Johnston, and Charles Calhoun, *An Assessment of Recent Innovations in the Secondary Market for Low- and Moderate-Income Lending,* report submitted to the U.S. Department of Housing and Urban Development (March 2000).

53. See S. Rep. No. 282, 102d Cong., 2d Sess. 39 (1992).

List of Subjects in 24 CFR Part 81

Accounting, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Securities.

Accordingly, 24 CFR part 81 is amended 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)

1. The authority citation for 24 CFR part 81 continues to read as follows:

Authority: 12 U.S.C. 1451 *et seq.*, 1716–1723h, and 4501–4641; 42 U.S.C. 3535(d) and 3601–3619.

2. Section 81.2, is amended by revising the definitions of ''*Median income*'' ''*Metropolitan area,*'' and ''*Underserved area*,'' by adding a new paragraph (7) to the definition of ''*Refinancing*,'' and by adding new definitions for ''*HOEPA mortgage,*'' ''*Mortgages contrary to good lending practices*,'' and ''*Mortgages with unacceptable terms or conditions or resulting from unacceptable practices*,'' to read as follows:

§ 81.2 Definitions.

* * * * *

''*HOEPA mortgage*'' means a mortgage for which the annual percentage rate (as calculated in accordance with the relevant provisions of section 107 of the Home Ownership Equity Protection Act (HOEPA) (15 U.S.C. 1606)) exceeds the threshold described in section 103(aa)(1)(A) of HOEPA (15 U.S.C. 1602(aa)(1)(A)), or for which the total points and fees payable by the borrower exceed the threshold described in section 103(aa)(1)(B) of HOEPA (15 U.S.C. 1602(aa)(1)(B)), as those thresholds may be increased or decreased by the Federal Reserve Board or by Congress, unless the GSEs are otherwise notified in writing by HUD. Notwithstanding the exclusions in section 103(aa)(1) of HOEPA, for purposes of this part, the term ''*HOEPA mortgage*'' includes all types of mortgages as defined in this section, including residential mortgage transactions as that term is defined in section 103(w) of HOEPA (15 U.S.C. 1602(w)), but does not include reverse mortgages.

* * * * *

Median income means, with respect to an area, the unadjusted median family income for the area as most recently determined and published by HUD. HUD will provide the GSEs annually with information specifying how HUD's published median family income estimates for metropolitan areas are to be applied for the purposes of determining median family income.

Metropolitan area means a metropolitan statistical area (''MSA''), or primary metropolitan statistical area (''PMSA''), or a portion of such an area

for which median family income estimates are published annually by HUD.

* * * * *

''*Mortgages contrary to good lending practices*'' means a mortgage or a group or category of mortgages entered into by a lender and purchased by a GSE where it can be shown that a lender engaged in a practice of failing to:

(1) Report monthly on borrowers' repayment history to credit repositories on the status of each GSE loan that a lender is servicing;

(2) Offer mortgage applicants products for which they qualify, but rather steer applicants to high cost products that are designed for less credit worthy borrowers. Similarly, for consumers who seek financing through a lender's higher-priced subprime lending channel, lenders should not fail to offer or direct such consumers toward the lender's standard mortgage line if they are able to qualify for one of the standard products;

(3) Comply with fair lending requirements; or

(4) Engage in other good lending practices that are:

(i) Identified in writing by a GSE as good lending practices for inclusion in this definition; and

(ii) Determined by the Secretary to constitute good lending practices.

''*Mortgages with unacceptable terms or conditions or resulting from unacceptable practices*'' means a mortgage or a group or category of mortgages with one or more of the following terms or conditions:

(1) Excessive fees, where the total points and fees charged to a borrower exceed the greater of 5 percent of the loan amount or a maximum dollar amount of $1000, or an alternative amount requested by a GSE and determined by the Secretary as appropriate for small mortgages.

(i) For purposes of this definition, points and fees include:

(A) Origination fees;

(B) Underwriting fees;

(C) Broker fees;

(D) Finder's fees; and

(E) Charges that the lender imposes as a condition of making the loan, whether they are paid to the lender or a third party.

(ii) For purposes of this definition, points and fees do not include:

(A) Bona fide discount points;

(B) Fees paid for actual services rendered in connection with the origination of the mortgage, such as attorneys' fees, notary's fees, and fees paid for property appraisals, credit reports, surveys, title examinations and extracts, flood and tax certifications, and home inspections;

(C) The cost of mortgage insurance or credit-risk price adjustments;

(D) The costs of title, hazard, and flood insurance policies;

(E) State and local transfer taxes or fees;

(F) Escrow deposits for the future payment of taxes and insurance premiums; and

(G) Other miscellaneous fees and charges that, in total, do not exceed 0.25 percent of the loan amount.

(2) Prepayment penalties, except where:

(i) The mortgage provides some benefits to the borrower (*e.g.,* such as rate or fee reduction for accepting the prepayment premium);

(ii) The borrower is offered the choice of another mortgage that does not contain payment of such a premium;

(iii) The terms of the mortgage provision containing the prepayment penalty are adequately disclosed to the borrower; and

(iv) The prepayment penalty is not charged when the mortgage debit is accelerated as the result of the borrower's default in making his or her mortgage payments.

(3) The sale or financing of prepaid single-premium credit life insurance products in connection with the origination of the mortgage;

(4) Evidence that the lender did not adequately consider the borrower's ability to make payments, *i.e.,* mortgages that are originated with underwriting techniques that focus on the borrower's equity in the home, and do not give full consideration of the borrower's income and other obligations. Ability to repay must be determined and must be based upon relating the borrower's income, assets, and liabilities to the mortgage payments; or

(5) Other terms or conditions that are:

(i) Identified in writing by a GSE as unacceptable terms or conditions or resulting from unacceptable practices for inclusion in this *definition;* and

(ii) Determined by the Secretary as an unacceptable term or condition of a mortgage for which goals credit should not be received.

* * * * *

Refinancing means * * *

* * * * *

(7) A conversion of a balloon mortgage note on a single family property to a fully amortizing mortgage note where the GSE already owns or has an interest in the balloon note at the time of the conversion.

* * * * *

Underserved area means:

(1) For purposes of the definitions of ''Central city'' and ''Other underserved area,'' a census tract, a Federal or State American Indian reservation or tribal or individual trust land, or the balance of a census tract excluding the area within any Federal or State American Indian reservation or tribal or individual trust land, 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 whole county, a Federal or State American Indian reservation or tribal or individual trust land, or the balance of a county excluding the area within any Federal or State American Indian reservation or tribal or individual trust land, having:

(A) A median income at or below 120 percent of the greater of the State non-metropolitan median income or the nationwide non-metropolitan 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 State non-metropolitan median income or nationwide non-metropolitan median income.

(ii) In New England, a whole county having the characteristics in paragraphs (2)(i)(A) or (2)(i)(B) of this definition; a Federal or State American Indian reservation or tribal or individual trust land, having the characteristics in paragraphs (2)(i)(A) or (2)(i)(B) of this definition; or the balance of a county, excluding any portion that is within any Federal or State American Indian reservation or tribal or individual trust land, or metropolitan area where the remainder has the characteristics in paragraphs (2)(i)(A) or (2)(i)(B) of this definition.

(3) Any Federal or State American Indian reservation or tribal or individual trust land that includes land that is both within and outside of a metropolitan area and that is designated as an underserved area by HUD. In such cases, HUD will notify the GSEs as to applicability of other definitions and counting conventions.

* * * * *

3. Section 81.12 is amended as follows:

a. Paragraph (b) is amended by revising the last sentence; and

b. Paragraph (c) is revised, to read as follows:

§ 81.12 Low- and Moderate-Income Housing Goal.

* * * * *

(b) *Factors.* * * * A statement documenting HUD's considerations and findings with respect to these factors, entitled ''Departmental Considerations to Establish the Low-and Moderate-Income Housing Goal,'' was published in the **Federal Register** on October 31, 2000.

(c) *Goals.* The annual goals for each GSE's purchases of mortgages on housing for low-and moderate-income families are:

(1) For each of the years 2001–2003, 50 percent of the total number of dwelling units financed by that GSE's mortgage purchases in each of those years unless otherwise adjusted by HUD in accordance with FHEFSSA; and

(2) For the year 2004 and thereafter HUD shall establish annual goals. Pending establishment of goals for the year 2004 and thereafter, the annual goal for each of those years shall be 50 percent of the total number of dwelling units financed by that GSE's mortgage purchases in each of those years.

4. Section 81.13 is amended as follows:

a. Paragraph (b) is amended by revising the last sentence; and

b. Paragraph (c) is revised, to read as follows:

§ 81.13 Central Cities, Rural Areas, and Other Underserved Areas Housing Goal.

* * * * *

(b) *Factors.* * * * A statement documenting HUD's considerations and findings with respect to these factors, entitled ''Departmental Considerations to Establish the Central Cities, Rural Areas, and Other Underserved Areas Housing Goal,'' was published in the **Federal Register** on October 31, 2000.

(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 each of the years 2001–2003, 31 percent of the total number of dwelling units financed by that GSE's mortgage purchases in each of those years unless otherwise adjusted by HUD in accordance with FHEFSSA; and

(2) For the year 2004 and thereafter HUD shall establish annual goals. Pending establishment of goals for the year 2004 and thereafter, the annual goal for each of those years shall be 31 percent of the total number of dwelling units financed by that GSE's mortgage purchases in each of those years.

* * * * *

5. Section 81.14 is amended as follows:

a. Paragraph (b) is amended by revising the last sentence;

b. Paragraph (c) is revised;

c. Paragraph (d) is amended by revising paragraph (d)(1)(i);

d. Paragraph (e) is amended by revising paragraphs (e)(2), (e)(3), and (e)(4);

e. Paragraph (f) is redesignated as paragraph (g) and the last sentence of the newly redesignated paragraph (g) is revised; and

f. A new paragraph (f) is added; to read as follows:

§ 81.14 Special Affordable Housing Goal.

* * * * *

(b) * * * A statement documenting HUD's considerations and findings with respect to these factors, entitled ''Departmental Considerations to Establish the Special Affordable Housing Goal,'' was published in the **Federal Register** on October 31, 2000.

(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 each of the years 2001, 2002, and 2003, 20 percent of the total number of dwelling units financed by that GSE's mortgage purchases in each of those years unless otherwise adjusted by HUD in accordance with FHEFSSA. The goal for each year shall include mortgage purchases financing dwelling units in multifamily housing totaling not less than 1.0 percent of the average annual dollar volume of combined (single family and multifamily) mortgages purchased by the respective GSE in 1997, 1998 and 1999, unless otherwise adjusted by HUD in accordance with FHEFSSA; and

(2) For the year 2004 and thereafter HUD shall establish annual goals. Pending establishment of goals for the year 2004 and thereafter, the annual goal for each of those years shall be 20 percent of the total number of dwelling units financed by that GSE's mortgage purchases in each of those years. The goal for each such year shall include mortgage purchases financing dwelling units in multifamily housing totaling not less than 1.0 percent of the annual average dollar volume of combined (single family and multifamily) mortgages purchased by the respective GSE in the years 1997, 1998 and 1999.

(d) * * *

(1) * * *

(i) 20 percent of the dwelling units in the particular multifamily property are affordable to especially low-income families; or

* * * * *

(e) * * *

(2) Mortgages insured under HUD's Home Equity Conversion Mortgage (''HECM'') Insurance Program, 12 U.S.C. 1715 z–20; mortgages guaranteed under the Rural Housing Service's Single Family Housing Guaranteed Loan Program, 42 U.S.C. 1472; mortgages on properties on tribal lands insured under FHA's Section 248 program, 12 U.S.C. 1715 z–13, HUD's Section 184 program, 12 U.S.C. 1515 z–13a, or Title VI of the Native American Housing Assistance and Self-Determination Act of 1996, 25 U.S.C. 4191–4195; meet the requirements of 12 U.S.C. 4563(b)(1)(A)(i) and (ii).

(3) HUD will give full credit toward achievement of the Special Affordable Housing Goal for the activities in 12 U.S.C. 4563(b)(1)(A), provided the GSE submits documentation to HUD that supports eligibility under 12 U.S.C. 4563(b)(1)(A) for HUD's approval.

(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 on-going, discernible, active, and verifiable program directly targeted at the origination of new mortgage loans that qualify under the Special Affordable Housing Goal.

(ii) A seller's activities must evidence a current intention or plan to reinvest the proceeds of the sale into mortgages qualifying under the Special Affordable Housing Goal, with a current commitment of resources on the part of the seller for this purpose.

(iii) A seller's actions must evidence willingness to buy qualifying loans when these loans become available in the market as part of active, on-going, sustainable efforts to ensure that additional loans that meet the goal are originated.

(iv) Actively participating in such a program includes purchasing qualifying loans from a correspondent originator, including a lender or qualified housing group, that operates an on-going program resulting in the origination of loans that meet the requirements of the goal, has a history of delivering, and currently delivers qualifying loans to the seller.

(v) The GSE must verify and monitor that the seller meets the requirements in paragraphs (e)(4)(i) through (e)(4)(iv) of this section and develop any necessary mechanisms to ensure compliance with the requirements, except as provided in paragraph (e)(4)(vi) and (vii) of this section.

(vi) 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 paragraphs (e)(4)(i) through (e)(4)(iv) of this section. Sellers that are institutions that are:

(A) Regularly in the business of mortgage lending;

(B) A BIF-insured or SAIF-insured depository institution; and

(C) Subject to, and has received at least a satisfactory performance evaluation rating for

(*1*) At least the two most recent consecutive examinations under, the Community Reinvestment Act, if the lending institution has total assets in excess of $250 million; or

(*2*) The most recent examination under the Community Reinvestment Act if the lending institutions which have total assets no more than $250 million are identified as sellers that are presumed to have a primary business of originating mortgages on housing that qualifies under this Special Affordable Housing Goal and, therefore, are presumed to meet the requirements in paragraphs (e)(4)(i) through (e)(4)(iv) of this section.

(vii) Classes of institutions or organizations that are presumed have as their primary business originating mortgages on housing that qualifies under this Special Affordable Housing Goal and, therefore. are presumed in paragraphs (e)(4)(i) through (e)(4)(iv) of this section to meet the requirements are as follows: State housing finance agencies; affordable housing loan consortia; Federally insured credit unions that are:

(A) Members of the Federal Home Loan Bank System and meet the first-time homebuyer standard of the Community Support Program; or

(B) Community development credit unions; community development financial institutions; public loan funds; or non-profit mortgage lenders. HUD may determine that additional classes of institutions or organizations are primarily engaged in the business of financing affordable housing mortgages for purposes of this presumption, and if, so will notify the GSEs in writing.

(viii) For purposes of paragraph (e)(4) of this section, if the seller did not originate the mortgage loans, but the originator of the mortgage loans fulfills the requirements of either paragraphs (e)(4)(i) through (e)(4)(iv), paragraph (e)(4)(vi) or paragraph (e)(4)(vii) of this section; and the seller has held the loans for six months or less prior to selling the loans to the GSE, HUD will consider that the seller has met the requirements of this paragraph (e)(4) and of 12 U.S.C. 4563(b)(1)(B).

* * * * *

(f) *Partial credit activities.* Mortgages insured under HUD's Title I program, which includes property improvement and manufactured home loans, shall receive one-half credit toward the Special Affordable Housing Goal until such time as the Government National Mortgage Association fully implements a program to purchase and securitize Title I loans.

(g) *No credit activities.* * * * For purposes of this paragraph (g), ''mortgages or mortgage-backed securities portfolios'' includes mortgages retained by Fannie Mae or Freddie Mac and mortgages utilized to back mortgage-backed securities.

6. In § 81.15, paragraph (a) is revised, paragraph (d) is amended by revising the second sentence and by adding two new sentences at the end, and paragraph (e) is amended by re-designating paragraph (e)(6) as (e)(7), and by adding a new paragraph (e)(6), to read as follows:

§ 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.

(1) *The numerator.* 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.

(2) *The denominator.* 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 denominator shall not include GSE transactions or activities that are not mortgages or mortgage purchases as defined by HUD or transactions that are specifically excluded as ineligible under § 81.16(b).

(3) *Missing data or information.* When a GSE lacks sufficient data or 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, except under the circumstances described in paragraphs (d) and (e)(6) of this section.

* * * * *

(d) *Counting owner-occupied units.* * * * To determine whether mortgagors may be counted under a particular family income level, *i.e.* especially low, very low, low or moderate income, the income of the mortgagors is compared to the median income for the area at the time of the mortgage application, using the appropriate percentage factor provided under § 81.17. When the income of the mortgagors is not available to determine whether the purchase of a mortgage originated after 1992 counts toward achievement of the Low- and Moderate-Income Housing Goal or the Special Affordable Housing Goal, a GSE may exclude single family owner-occupied units located in census tracts with median income less than or equal to area median income according to the most recent census from the denominator as well as the numerator, up to a ceiling of one percent of the total number of single family owner-occupied dwelling units eligible to be counted toward the respective housing goal in the current year. Mortgage purchases in excess of the ceiling will be included in the denominator and excluded from the numerator if they are missing data.

(e) * * *

(6) *Affordability data unavailable.* (i) *Multifamily.* When information regarding the affordability of a rental unit is not available, a GSE's performance with respect to such a unit may be evaluated with estimated affordability information, so long as the Department has reviewed and approved the data source and methodology for such estimated data. The use of estimated information to determine affordability may be used up to a maximum of five percent of the total number of units backing the GSEs' multifamily mortgage purchases in the current year, adjusted for REMIC percentage and participation percent. When the application of affordability data based on an approved market rental data source and methodology is not possible, and therefore the GSE lacks sufficient information to determine whether the purchase of a mortgage originated after 1992 counts toward the achievement of the Low- and Moderate-Income Housing Goal or the Special Affordable Housing Goal, HUD will exclude units in multifamily properties from the denominator as well as the numerator in calculating performance under those goals.

(ii) *Rental units in 1–4 unit single family properties.* When neither the income of prospective or actual tenants of a rental unit in a 1–4 unit single family property nor actual or average rent data is available, and, therefore, the GSE lacks sufficient information to determine whether the purchase of a mortgage originated after 1992 counts toward achievement of the Low- and Moderate-Income Housing Goal or the

Special Affordable Housing Goal, a GSE may exclude rental units in 1–4 unit single family properties from the denominator as well as the numerator in calculating performance under those goals.

* * * * *

7. Section 81.16 is amended as follows:

a. Paragraph (a) is revised;

b. Paragraph (b) is amended by revising paragraphs (b)(3) and (b)(9) and by adding a new paragraph (b)(10);

c. Paragraph (c) is amended by adding introductory text, by revising paragraph (c)(6), and by adding new paragraphs (c)(9), (c)(10), (c)(11), (c)(12), and (c)(13); and

d. A new paragraph (d) is added; to read as follows:

§ 81.16 Special counting requirements.

(a) *General.* HUD shall determine whether a GSE shall receive full, partial, or no credit for a transaction toward achievement of any of the housing goals. In this determination, HUD will 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, provided however that such mortgage purchase actually fulfills the GSE's purposes and is in accordance with its Charter Act.

(b) * * *

(3) Purchases of non-conventional mortgages except:

(i) Where such mortgages are acquired under a risk-sharing arrangement with a Federal agency;

(ii) Mortgages insured under HUD's Home Equity Conversion Mortgage (''HECM'') insurance program, 12 U.S.C. 1715z–20; mortgages guaranteed under the Rural Housing Service's Single Family Housing Guaranteed Loan Program, 42 U.S.C. 1472; mortgages on properties on lands insured under FHA's Section 248 program, 12 U.S.C. 1715z–13, or HUD's Section 184 program, 12 U.S.C. 1515z–13a, or Title VI of the Native American Housing Assistance and Self-Determination Act of 1996, 25 U.S.C. 4191–4195; and mortgages with expiring assistance contracts as defined at 42 U.S.C. 1737f;

(iii) Mortgages under other mortgage programs involving Federal guarantees, insurance or other Federal obligation where the Department determines in writing that the financing needs addressed by the particular mortgage program are not well served and that the mortgage purchases under such program should count under the housing goals, provided the GSE submits documentation to HUD that supports eligibility and that HUD makes such a determination, or

(iv) As provided in § 81.14(e)(3)

* * * * *

(9) Single family mortgage refinancings that result from conversion of balloon notes to fully amortizing notes, if the GSE already owns or has an interest in the balloon note at the time conversion occurs.

(10) Any combination of factors in paragraphs (b)(1) through (9) of this section.

(c) *Other special rules.* Subject to HUD's primary determination of whether a GSE shall receive full, partial, or no credit for a transaction toward achievement of any of the housing goals as provided in paragraph (a) of this section, the following supplemental rules apply:

* * * * *

(6) *Seasoned mortgages.* A GSE's purchase of a seasoned mortgage shall be treated as a mortgage purchase for purposes of these goals and shall be included in the numerator, as appropriate, and the denominator in calculating the GSE's performance under the housing goals, except where the GSE has already counted the mortgage under a housing goal applicable to 1993 or any subsequent year, or where the Department determines, based upon a written request by a GSE, that a seasoned mortgage or class of such mortgages should be excluded from the numerator and the denominator in order to further the purposes of the Special Affordable Housing Goal.

* * * * *

(9) *Expiring assistance contracts.* In accordance with 12 U.S.C. 4565(a)(5), actions that assist in maintaining the affordability of assisted units in eligible multifamily housing projects with expiring contracts shall receive credit under the housing goals as provided in paragraph (b)(3)(ii) and in accordance with paragraphs (b) and (c)(1) through (c)(9) of this section.

(i) For restructured (modified) multifamily mortgage loans with an expiring assistance contract where a GSE holds the loan in portfolio and facilitates modification of loan terms that results in lower debt service to the project's owner, the GSE shall receive full credit under any of the housing goals for which the units covered by the mortgage otherwise qualify.

(ii) Where a GSE undertakes more than one action to assist a single project or where a GSE engages in an activity that it believes assists in maintaining the affordability of assisted units in eligible multifamily housing projects but which is not otherwise covered in paragraph (c)(9)(i) of this section, the GSE must submit the transaction to HUD for a determination on appropriate goals counting treatment.

(10) *Bonus points.* The following transactions or activities, to the extent the units otherwise qualify for one or more of the housing goals, will receive bonus points toward the particular goal or goals, by receiving double weight in the numerator under a housing goal or goals and receiving single weight in the denominator for the housing goal or goals. Bonus points will not be awarded for the purposes of calculating performance under the special affordable housing multifamily subgoal described in § 81.14(c). All transactions or activities meeting the following criteria will qualify for bonus points even if a unit is missing affordability data and the missing affordability data is treated consistent with § 81.15(e)(6)(i). Bonus points are available to the GSEs for purposes of determining housing goal performance for each year 2001 through 2003. Beginning in the year 2004, bonus points are not available for goal performance counting purposes unless the Department extends their availability beyond December 31, 2003 for one or more types of activities and notifies the GSEs by letter of that determination.

(i) *Small multifamily properties.* HUD will assign double weight in the numerator under a housing goal or goals for each unit financed by GSE mortgage purchases in small multifamily properties (5 to 50 physical units), provided, however, that bonus points will not be awarded for properties that are aggregated or disaggregated into 5–50 unit financing packages for the purpose of earning bonus points.

(ii) *Units in 2–4 unit owner-occupied properties.* HUD will assign double weight in the numerator under the housing goals for each unit financed by GSE mortgage purchases in 2- to 4-unit owner-occupied properties, to the extent that the number of such units financed by mortgage purchases are in excess of 60 percent of the yearly average number of units qualifying for the respective housing goal during the five years immediately preceding the year of mortgage purchase.

(11) *Temporary adjustment factor for Freddie Mac.* In determining Freddie Mac's performance on the Low- and Moderate-Income Housing Goal and the Special Affordable Housing Goal, HUD will count each qualifying unit in a property with more than 50 units as 1.2 units in calculating the numerator and as one unit in calculating the

denominator, for the respective housing goal. HUD will apply this temporary adjustment factor for each year from 2001 through 2003; for the year 2004 and thereafter, this temporary adjustment factor will no longer apply.

(12) *HOEPA mortgages and mortgages with unacceptable terms and conditions.* HOEPA mortgages and mortgages with unacceptable terms or conditions as defined in § 81.2 will not receive credit toward any of the three housing goals.

(13) *Mortgages contrary to good lending practices.* The Secretary will monitor the practices and processes of the GSEs to ensure that they are not purchasing loans that are contrary to good lending practices as defined in § 81.2. Based on the results of such monitoring, the Secretary may determine in accordance with paragraph (d) of this section that mortgages or categories of mortgages where a lender has not engaged in good lending practices will not receive credit toward the three housing goals.

(d) *HUD review of transactions.* HUD will determine whether a class of transactions counts as a mortgage purchase under the housing goals. If a GSE seeks to have a class of transactions counted under the housing goals that does not otherwise count under the rules in this part, the GSE may provide HUD detailed information regarding the transactions for evaluation and determination by HUD in accordance with this section. In making its determination, HUD may also request and evaluate additional information from a GSE with regard to how the GSE believes the transactions should be counted. HUD will notify the GSE of its determination regarding the extent to which the class of transactions may count under the goals.

8. Section 81.17 is amended by adding a new paragraph (d), to read as follows:

§ 81.17 Affordability—Income level definitions—family size and income known (owner-occupied units, actual tenants, and prospective tenants).

* * * * *

(d) *Especially-low-income* means, 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	35
2	40
3	45
4	50
5 or more	(*)

*50% plus (4.0% multiplied by the number of persons in excess of 4).

9. Section 81.18 is amended by adding a new paragraph (d), to read as follows:

§ 81.18 Affordability—Income level definitions—family size not known (actual or prospective tenants).

* * * * *

(d) *For especially-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	35
1 bedroom	37.5
2 bedrooms	45
3 bedrooms or more	(*)

*52% plus (6.0% multiplied by the number of bedrooms in excess of 3).

10. In § 81.19, paragraph (d) is re-designated as paragraph (e), a new paragraph (d) is added and the second sentence of the newly re-designated paragraph (e) is revised, to read as follows:

§ 81.19 Affordability—Rent level definitions—tenant income is not known.

* * * * *

(d) *For especially-low-income,* maximum affordable rents to count as housing for especially-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	10.5
1 bedroom	11.25
2 bedrooms	13.5
3 bedrooms or more	(*)

*15.6% plus (1.8% multiplied by the number of bedrooms in excess of 3).

* * * * *

(e) *Missing Information.* * * * 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 except as provided in § 81.15(e)(6)(i)

11. In § 81.76, paragraph (d) is revised to read as follows:

§ 81.76 FOIA requests and protection of GSE information.

* * * * *

(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 the executive branch-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 5 CFR part 2635 to criminal prosecution.

* * * * *

Dated: October 16, 2000.

William C. Apgar,

Assistant Secretary for Housing—Federal Housing Commissioner.

Note: The Following Appendices Will Not Appear in the Code of Federal Regulations.

Appendix A—Departmental Considerations To Establish the Low- and Moderate-Income Housing Goal

A. Introduction and Response to Comments

Sections 1 and 2 provide a basic description of the rule process. Section 3 discusses comments on the proposed rule and the Department's responses. Section 4 discusses conclusions based on consideration of the factors.

1. Establishment of Goal

In establishing the Low- and Moderate-Income Housing Goals for the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac), collectively referred to as the Government-Sponsored Enterprises (GSEs), Section 1332 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4562) (FHEFSSA) 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;
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 on data from the 1995 American Housing Survey (AHS), the 1990 Census of Population and Housing, the 1991 Residential Finance Survey (RFS), the 1995 Property Owners and Managers Survey (POMS), other government reports, reports submitted in accordance with the Home Mortgage Disclosure Act (HMDA), and the GSEs. In order to measure performance toward achieving the Low- and Moderate-Income Housing Goal in previous years, HUD analyzed the loan-level data on all mortgages purchased by the GSEs for 1993–99 in accordance with the goal counting provisions established by the Department in the December 1995 rule (24 CFR part 81).

3. Response to Comments

a. Introduction

Fannie Mae and Freddie Mac provided detailed comments on HUD's discussion of the factors for determining the goal levels in Appendix A of the proposed rule. A major portion of their substantive comments concerned HUD's analysis of the GSEs' performance relative to the market. Both GSEs disagreed with HUD's conclusions that they lag the conventional conforming market in funding mortgages for the goals-qualifying segments (low-mod borrowers, special affordable borrowers, and underserved neighborhoods) of the single-family owner market. The GSEs argued strongly that they have led the mortgage market, from both quantitative and qualitative perspectives (explained below). The GSEs expressed concern about HUD's assumptions and treatment of specific data in estimating the goals-qualifying shares for single-family owner mortgages. The GSEs concluded that HUD chose assumptions and data sources that result in an overstatement of the low-mod, special affordable, and underserved areas shares of owner mortgages.

It should be noted that the GSEs extended their criticisms to other researchers who have examined this issue of their targeted lending performance relative to the overall mortgage market. Section E.3 of this appendix summarizes findings of several independent studies that have also concluded that the GSEs have lagged the market in affordable lending. For the most part, these studies have used the same HMDA-based methodology described in Section E.2 of this appendix.

The GSEs focused many of their comments on the adequacy of HMDA data, the main source for the goals-qualifying shares of the conventional conforming market, against which the GSEs are compared. The GSEs argued that HMDA data are biased (*i.e.,* overstate the goals-qualifying shares of the market) and that significant portions of HMDA data are not relevant for calculating the market standard for evaluating GSE performance in the conventional conforming market. These and related comments of the GSEs are discussed below in subsections b–f.

Both GSEs also argued that HUD's analysis and conclusions depended on a continuation of recent conditions of economic expansion and low interest rates. According to the GSEs, HUD's range of market estimates did not include periods of adverse economic and affordability conditions, such as existed in the early 1990s. HUD discusses the GSEs' comments on economic volatility in Section B of Appendix D. As explained there, HUD's ranges of market estimates for each of the housing goals are conservative, because they allow for economic and interest rate conditions much more adverse than existed during the mid- to late-1990s.

The discussion that follows summarizes HUD's responses to the GSEs' comments on the ''leading the market'' analysis that HUD has conducted in Section E.2 of this appendix—that section fully develops the various concepts referenced here. The final two subsections, g and h, discuss additional issues that the GSEs raised about HUD's analysis of the factors in Appendix A.

b. Overview of Leading the Owner Market—Quantitative Analysis

The analysis of HMDA data in Section E.2 of this appendix indicates demonstrates that even though the GSEs have improved their performance since 1993, they have lagged depositories and others in the conventional conforming market in funding affordable loans, both since 1993 and during the more recent 1996–98 period when the new housing goals have been in effect. For example, underserved areas accounted for 22.9 (19.9) percent of Fannie Mae's (Freddie Mac's) purchases of home loans between 1996 and 1998, compared with 24.4 percent for the entire conforming market (excluding B&C loans). Based on comparisons such as these, HUD concludes that the GSEs need to continue improving their performance so that they can match or exceed the overall market in affordable lending.

In their comments, the GSEs reached the opposite conclusion—each stated that they already match or even lead the market, depending on the affordable category being considered. The GSEs also assert that HUD's analysis does not accurately reflect their performance relative to the overall market. Freddie Mac stated that ''the shares of Freddie Mac's loan purchases serving low- and moderate-income families, families in underserved areas and minority families mirror those of the primary market''. Freddie Mac said that its market calculations ''account for the limitations on loans we [Freddie Mac] can purchase'' (see below). Similarly, Fannie Mae stated that ''an appropriate comparison between Fannie Mae and the primary single-family market shows that we [Fannie Mae] serve a higher percentage of low- and moderate-income borrowers, a higher percentage of minority borrowers, and a higher percentage of borrowers in underserved areas than does the primary market''.

Both the GSEs and HUD rely on HMDA data for the market estimates. However, as suggested by the GSEs' comments, they frequently adjust HMDA data to exclude loans in the market that they perceive as not being available for them to purchase. The types of adjustments made by the GSEs, and HUD's response to those adjustments, are discussed in the next subsection. HUD's conclusions about the appropriate definition of the conventional conforming market are also discussed in Section E of this appendix, which provides a detailed analysis of the GSEs' goals-qualifying purchases in the single-family-owner market, and in Appendix D, which provides overall (both single-family and multifamily) estimates of the goals-qualifying shares of the market. In Appendix D, HUD excludes B&C loans from its overall estimates of the market. In this appendix, HUD illustrates (to the extent HMDA data allow) the effects of excluding B&C loans on the GSE-market comparisons, as well as the effects of excluding other loan categories such as manufactured housing loans. However, as explained below, HUD does not believe that HMDA data for the conventional conforming market should be adjusted to reflect the GSEs' perceptions about the characteristics of loans that are available for them to purchase.

c. Relevant Market for Single-Family Owner Properties

Both GSEs provided numerous comments concerning the types of mortgages that HUD should exclude from the definition of the single-family owner market, both when HUD is evaluating the GSEs' performance relative to the conventional conforming owner market (*i.e.,* determining whether the GSEs' lead or lag the market for single-family-owner mortgages) and when HUD is calculating the overall market shares for each housing goal (as described in Appendix D). Fannie Mae stated that it ''can only purchase or securitize mortgages that primary market lenders are willing to sell'' and that certain types of products (such as ARMs) ''are particularly difficult to structure for sale to the secondary market''. Fannie Mae added that ''HUD fails to adjust for those housing markets that are not fully available to Fannie Mae and Freddie Mac''. Freddie Mac stated that it ''has not achieved, and is unlikely to achieve in the near term, the same penetration in the subprime and manufactured housing segments of the market as it has achieved in the conventional, conforming market'' and therefore HUD should not include these segments in its market definition. According to the GSEs, markets that are ''not available'' to them or where they are not a ''full participant'' should be excluded from HUD's market definition. In addition to the subprime and manufactured housing markets, examples of market segments mentioned by the GSEs for exclusion included: low-down payment mortgages (those with loan-to-value ratios greater than 80 percent) without private mortgage insurance or some other credit enhancement; loans financed through state and local housing finance agencies; below-market-interest-rate mortgages; specialized CRA mortgages; and portions of depository portfolios that are not available at mortgage origination for purchase by the GSEs.

To analyze the availability of loans originated by depositories to the GSEs, Fannie Mae funded a study by KPMG Barefoot-Marrinan (KPMG). According to Fannie Mae, KPMG found that the advent of the Community Reinvestment Act (CRA) had encouraged depositories to hold lower-income loans in portfolio. Depositories may not offer their products for sale on the secondary market not only because they are

outside of the GSEs' guidelines, but also because of business and portfolio strategy reasons (such as the interest-rate-duration advantage of holding ARMs in portfolio).

Freddie Mac estimated the impacts on HUD's market estimates of excluding from the market definition both specialized community development (CRA-type) loans and portions of depository portfolios. Based on Freddie Mac's analysis, the low-mod (underserved areas) share of the owner market would fall by four (three) percentage points and HUD's overall low-mod and underserved areas market estimates would each fall by about two percentage points. In commenting on whether Freddie Mac leads or lags depositories in affordable lending, Freddie Mac said that the HMDA data for depositories should be adjusted downward to exclude depositories' high-LTV loans without private mortgage insurance, their below-market rate loans, their subprime loans, and coverage bias in HMDA (see the next subsection). Based on these adjustments, Freddie Mac reduced the 1998 HMDA-reported underserved areas percentage for depositories from 26.1 percent to 20.0, which led Freddie Mac to conclude that its performance equals or exceeds the performance of depositories on loans that are likely to be sold to Freddie Mac.

HUD's Response. In general, HUD disagrees with the comments offered by the GSEs about excluding those market segments that they haven't yet been able to penetrate fully. Congress stated that HUD was to estimate the size of the conventional conforming mortgage market, not the market that the GSEs perceive as available for them to purchase. However, with respect to the subprime market, HUD believes that the risky, B&C portion of that market should be excluded from the market definition for each of the housing goals. Thus, HUD includes only the A-minus portion of the subprime market in its overall estimates of the goals-qualifying market shares. In Appendix D, HUD explains its methodology for adjusting the overall market estimates to exclude B&C loans. Section E.2 of this appendix uses HMDA data and the GSEs' loan-level data to examine the GSEs' performance in the single-family owner portion of the conventional conforming mortgage market in metropolitan areas. B&C loans are not identified in HMDA data; however, HUD shows the effects of adjusting the owner market definition for subprime and B&C loans by using a list of lenders that specialize in subprime loans (see Table A.4b).

Excluding other important segments of the lower-income mortgage market, as the GSEs recommend, would render the resulting market benchmark useless for evaluating the GSEs' performance. The loans that the GSEs would exclude are important sources of lower-income credit and, in fact, are among the very loans the GSEs are supposed to be funding. A recent report by the Department of Treasury demonstrated the targeting of CRA-type loans to lower-income and minority families. Numerous studies have shown that the manufactured home sector is an important source of low-income housing. In many of these markets, a more active secondary market would encourage lending to traditionally underserved borrowers. While HUD recognizes that some segments of the market may be more challenging for the GSEs than others, the data reported in Tables A.7a and A.7b of this Appendix show that the GSEs have ample opportunities to purchase goals-qualifying mortgages. As market leaders, the GSEs should be looking for innovative ways to pursue this business, rather than suggesting that it is not available to the secondary market. Furthermore, there is evidence that the GSEs can earn reasonable returns on their goals business. The Economic Analysis that accompanies this final rule provides evidence that the GSEs have been earning financial returns on their purchases of goals-qualifying loans that are only slightly below their 20–25 percent return on equity from their normal business.

HUD also disagrees with other specific comments offered by the GSEs. For example, HUD does not think that the data for depositories should be adjusted downward as proposed by Freddie Mac and Fannie Mae. Both types of institutions receive government benefits and both operate in the conventional conforming market. Furthermore, if a GSE makes a business decision to not pursue certain types of goals-qualifying loans in one segment of the market, they are free to pursue goals-qualifying owner and rental property mortgages in other segments of the market. With respect to loans that are originated without private mortgage insurance, the GSEs have been quite innovative in structuring transactions to provide alternative credit enhancements. Between 1997 and 1999, Freddie Mac was involved in 16 structured transactions totaling $8.1 billion, with Freddie Mac's 1999 business accounting for over $5 billion of this total.[1] HUD gives full goals credit for such credit-enhanced transactions.

Finally, it should be noted that the GSEs' purchases under the housing goals are not limited to new mortgages that are originated in the current calendar year. The GSEs can purchase loans from the substantial, existing stock of affordable loans held in lenders' portfolios, after these loans have seasoned and the GSEs have had the opportunity to observe their payment performance. In fact, based on Fannie Mae's experience in 1997–98, the purchase of seasoned loans appears to be one useful strategy for purchasing goals-qualifying loans. In Section E.2, HUD's comparisons of the GSEs' single-family performance with those of depositories and the overall single-family market include the GSEs' purchases of prior-year as well newly-originated loans.

d. Bias in HMDA Data

Both GSEs refer to findings from a study by Peter Zorn and Jim Berkovec concerning potential bias in HMDA data.[2] Based on a comparison of the borrower and census tract characteristics between Freddie Mac-purchased loans (from Freddie Mac's own data) and loans identified in 1993 HMDA data as sold to Freddie Mac, Zorn and Berkovec conclude that HMDA data overstates the percentage of conventional, conforming loans originated for lower-income borrowers and for properties located in underserved census tracts. The data reported in Table A.4a of this appendix, which are based on more recent data than the Zorn and Berkovec paper, do not appear to support their findings. With respect to the goals-qualifying percentages for GSE purchases, comparing columns 2 and 4 for Fannie Mae, and columns 6 and 8 for Freddie Mac, show that the HMDA-reported goals-qualifying percentages for loans sold to the GSEs are not always larger than the corresponding percentages for loans the GSEs report as purchased. In fact, the HMDA-reported percentages are more likely to be smaller than the GSE-reported percentages for the Special Affordable and Underserved Areas Goals, yielding conclusions different from those drawn by Zorn and Berkovec with regard to bias in the HMDA data. In addition, as noted in Appendix D, other research has concluded that a portion of lower-income loan originations are not even reported to HMDA. Thus it is not clear that more recent and complete data would support the Zorn and Berkovec findings.

e. Other Technical Comments Related to GSE Performance in Single-Family Owner Market

MSA-Level Analysis. In its comments, Fannie Mae raised several concerns about HUD's comparisons between Fannie Mae and the primary market at the metropolitan statistical area (MSA) level (see Table A.5 in this appendix). Essentially, Fannie Mae questioned the relevance of any analysis at the local level, given that the housing goals are national-level goals. HUD believes that its metropolitan-area analyses support and clarify the national analyses on GSE performance. While official goal performance is measured only at the national level, HUD believes that analyses of, for example, the numbers of MSAs where Fannie Mae and Freddie Mac lead or lag the local market increases public understanding of the GSEs' performance. For example, if the national aggregate data showed that one GSE lagged the market in funding loans in underserved areas, it would be of interest to the public to determine if this reflected particularly poor performance in a few large MSAs or if it reflected shortfalls in many MSAs. In this case, an analysis of individual MSA data would increase public understanding of that GSE's performance.

Missing Data. Both GSEs mentioned the increasing problem of missing information in HMDA data and in their own data bases—particularly with regard to borrower race/ethnicity. HUD agrees that treatment of missing data is an important issue when measuring GSE performance and developing estimates of the size of the affordable market. Both Appendices A and D use several techniques for situations where data are limited or missing. HUD's treatment of missing data reflects a consistent commitment to fair and reasonable analyses, and is designed to permit ''apples-to-apples'' comparisons between the GSEs and the market to the extent possible. When calculating portfolio percentages for different sectors of the mortgage market, HUD followed its usual procedure of excluding loans with missing data. In certain analyses involving market shares, HUD used a variety of techniques such as reallocating missing data, making adjustments for undercoverage by HMDA data, or using data from other

sources to estimate the absolute number of mortgage originations. In general, HUD believes that methods for addressing missing data are reasonable and appropriate.

Lender-Purchased Loans. When analyzing HMDA data, Fannie Mae included loans purchased by lenders, as well as loans originated by lenders, in its market definition. HUD included only HMDA-reported mortgage originations in its market definition—mortgages purchased by lenders were not included in HUD's market data. To do so would involve double counting loan originations in the HMDA data.

Prior-Year/Current-Year Analysis. Fannie Mae raised a number of concerns about HUD's separation of its purchases into ''prior-year'' loans and ''current-year'' loans. Section E.2 of this appendix discusses this issue in some detail. Much of HUD's analysis is conducted along the lines that Fannie Mae recommends—considering each GSE's total purchases (of both prior-year mortgages and current-year mortgages) in a single calendar year. For example, see the discussion of the GSEs' past performance in Section E of this appendix and the data in Tables A.3 and A.4. But HUD believes the GSEs' performance should also be analyzed by focusing on the total number of mortgages from a particular origination year that the GSEs have purchased to date. Comparing the GSEs' current-year purchases, including prior-year originations, with newly-originated mortgages would result in somewhat of an ''apples-to-oranges'' comparison. Hence, to conduct more of an ''apples-to-apples'' comparison between the GSEs and the market, it is necessary to restrict the analysis to GSE loan acquisitions originated in a particular year (see Tables A.7a and A.7b). HUD recognizes some of the problems that result from analyses that focus on a single origination year. However, as indicated by the variety of analyses provided in Appendix A, HUD believes that both frameworks are useful for understanding the GSEs' role in the affordable lending market.

f. Leading the Market—The Qualitative Dimension

The GSEs commented that they make a sizable contribution toward serving the housing needs of a wide range of American families through their innovative outreach and the overall leadership they provide to the affordable lending market. This ''qualitative'' dimension of market leadership comes from their normal operations in the market. Each GSE gave numerous examples of their market leadership, similar to the discussion that HUD provides in Section G of this appendix. Fannie Mae noted its *Trillion Dollar Commitment,* its programs with minority-and women-owned lenders, its initiative with Community Development Financial Institutions, and its numerous initiatives in the technology area. Freddie Mac noted similar program initiatives and outreach efforts, and stated that it has been a ''leader in removing historical barriers to mortgage credit'' and that a recent HUD-commission study commended both Freddie Mac and Fannie Mae for their leadership in the liberalization of mortgage underwriting standards.

HUD understands the important role that the GSEs play in the market and applauds their efforts to re-examine their underwriting standards and to reach out to traditionally underserved borrowers and neighborhoods. This perspective is reflected in Section G of this appendix, which discusses qualitative dimensions of the GSEs' ability to lead the industry. HUD concludes that due to their dominant role in the market, their ability to influence the types of loans that lenders will originate, their utilization of state-of-the-art technology, and their financial strength, the GSEs have the ability to lead the market in affordable lending and to reach out to those markets that have traditionally not received the benefits of an active secondary market.

g. Linking Housing Needs to GSEs

Fannie Mae commented that HUD's analysis of housing needs in Appendix A needed to more carefully identify the appropriate roles for the public sector and the GSEs. Similar to its comments on HUD's 1995 rule, Fannie Mae expressed concern that HUD did not distinguish between general housing needs of low- and moderate-income households and those needs that the GSEs can reasonably be expected to address. In this appendix, HUD presents 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 is 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 alone can not mitigate some of the more extreme problems identified in this analysis.

However, with more focused effort, the GSEs can assist in addressing several problems discussed in this appendix with regard to single-family and multifamily housing. On the single-family side, the GSEs can develop secondary market programs for ''untapped'' markets such as 2–4 unit rental properties and properties needing rehabilitation in the nation's inner cities. The GSEs can increase their support of more customized mortgage products and underwriting, with greater outreach to those families who have not been served with traditional products, underwriting, and marketing. Particularly important in this regard, the GSEs can ensure that their automated underwriting systems recognize the special circumstances of lower-income and minority borrowers. As discussed in Section 3.d of this appendix, HUD and others are concerned about potential negative effects of mortgage scoring on industry efforts to reach out to lower-income and minority families.

On the multifamily side, with new product development and partnerships, the GSEs can more fully address the credit needs of the current market for affordable rental housing. This appendix cities several areas where the GSEs can help. One segment that would benefit from a more active secondary market is small multifamily properties—an important part of the rental housing market that is currently not being adequately served by the GSEs. The GSEs can work to improve overall efficiency and stability in this market by developing new products and promoting increased standardization and streamlined procedures.

The GSEs have been immensely successful in the financing of traditional single-family housing. HUD recognizes that ''untapped'' markets will present some difficulties and challenges for the GSEs. But by helping develop a secondary market in these areas, the GSEs will bring increased liquidity, added stability, and ultimately lower interest rates and rents for lower-income families in these segments of the market.

h. Barriers to Higher GSE Performance on the Housing Goals

Fannie Mae raised concerns with respect to the interplay of the housing goals and the risk-based capital standard proposed by OFHEO. Fannie Mae stated that ''the risk-based capital proposal represents another potentially significant barrier to meeting the goals that was not analyzed by the Department.'' OFHEO previously addressed this question in their notice of proposed rulemaking, dated April 13, 1999, concluding that ''the risk-based capital standard will not affect the Enterprises' ability to purchase affordable housing loans.'' [3] In part, this conclusion was based on the finding that in 1996 and 1997, Freddie Mac would have enjoyed capital surpluses under OFHEO's proposed rule, despite increased purchases of loans meeting the housing goals. OFHEO concluded that even in more adverse economic environments, ''the capital cost of single family loans meeting the Enterprises' affordable housing goals should not be materially different, on average, from the cost of other loans.''

Of the various issues mentioned by Fannie Mae in relation to OFHEO's proposed regulation, implications of the rule for high-LTV and multifamily lending are of the greatest relevance with regard to affordable lending and the GSEs' housing goals.

High-LTV Lending. Fannie Mae stated concerns regarding the impacts of the proposed OFHEO regulation on high-LTV lending:

> The risk-based capital regulation as proposed imposes disproportionately high capital requirements on high-LTV loans. These requirements will impair our ability to serve those borrowers with limited resources. High-LTV lending is critically important to our affordable housing initiatives and outreach to first-time homebuyers.[4]

It is not apparent that OFHEO's proposed rulemaking would impose ''disproportionate'' capital requirements on high-LTV loans. Because high-LTV loans typically have higher default rates, it is reasonable to require the GSEs to hold more capital against high-LTV loans than against low-LTV loans, other things being equal.

If Fannie Mae's view is that the proposed OFHEO regulation requires the GSEs to hold more capital against high-LTV loans than is the case for other financial institutions, their comments submitted in response to HUD's proposed housing goals rule do not contain any material documenting such a claim.

However, it is noteworthy that the GSEs enjoy benefits not conferred on other financial institutions (*e.g.,* exemption from state and local taxes and exemption from securities registration). There is no evidence that Congress intended for the GSE risk-based capital requirements to be strictly comparable to capital standards for other regulated financial institutions.

OFHEO's proposed rule would require the GSEs to hold more capital against high-LTV loans, assuming the GSEs charge the same guarantee against such loans as they do against low-LTV loans. In practice, however, the GSEs implicitly charge higher guarantee fees on high-LTV loans, mitigating the need for additional capital beyond what is added through the guarantee fee. In its discussion of this issue, OFHEO concluded that ''Both Enterprises use internal capital models that reflect the higher risk of high LTV loans and already may incorporate higher capital costs into the implicit fees charged for these loans.'' [5]

In addition, OFHEO observed that multifamily loans, which predominantly benefit low-and moderate-income households, act as a hedge against high-LTV loans in a down-rate environment ''so that higher costs on high LTV single family loans are substantially offset by lower costs on multifamily loans,'' reducing the amount of capital that the GSEs would otherwise be required to hold against high-LTV loans.

Multifamily Risk-Sharing. Fannie Mae contends that, under the provisions of OFHEO's proposed rule, its Delegated Underwriting and Servicing (DUS) multifamily program ''will be impaired because of the onerous ''haircuts'' specified in the proposed capital regulation.'' The ''haircuts'' mentioned by Fannie Mae refer to adjustments for counterparty risk proposed by OFHEO under risk-sharing provisions such as those governing the DUS program.

Because of the importance of counterparty risk to GSE safety and soundness, it is certainly reasonable and necessary for OFHEO to take such risk into consideration in formulating its risk-based capital regulation for the GSEs. HUD notes that OFHEO received extensive comments from the GSEs and others on this issue in response to its proposed rule. Because the OFHEO capital standard is presently at the proposed rule stage, and not a final rule, it would be premature and inappropriate for HUD to speculate at this time on the possible implications of OFHEO's capital standards on GSE multifamily performance. The multifamily market and the GSEs' capabilities within it will continue to evolve during and after the time period when OFHEO revises and finalizes its proposed capital regulation in response to comments. Any implications of the OFHEO capital standards for GSE activities related to multifamily mortgages or affordable housing will merit consideration in future rounds of HUD's GSE rulemaking.

4. Conclusions Based on Consideration of the Factors

The discussion of the first two factors covers a range of topics on housing needs and economic and demographic trends that are important for understanding mortgage markets. Information is provided which describes the market environment in which the GSEs must operate (for example, trends in refinancing activity) and is 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.

The third factor (past performance) and the fifth factor (ability of the GSEs to lead the industry) are also discussed in some detail in this Appendix. The fourth factor (size of the market) and the sixth factor (need to maintain the GSEs' sound financial condition) are mentioned only briefly in this Appendix. Detailed analyses of the fourth factor and the sixth factor are contained in Appendix D and in the economic analysis of this rule, respectively.

The factors are discussed in sections B through H of this appendix. Section I summarizes the findings and presents the Department's conclusions concerning the Low- and Moderate-Income Housing Goal. The consideration of the factors in this appendix has led the Secretary to the following conclusions:

- Despite the record national homeownership rate of 66.8 percent in 1999, much lower rates prevailed for minorities, especially for African-American households (46.7 percent) and Hispanics (45.5 percent), and these lower rates are only partly accounted for by differences in income, age, and other socioeconomic factors.
- Pervasive and widespread disparities in mortgage lending continued across the nation in 1998, when the loan denial rate was 10.2 percent for white mortgage applicants, but 23.9 percent for African Americans and 18.9 percent for Hispanics.[6]
- Despite strong economic growth, low unemployment, the lowest mortgage rates in 1998–99 in 25 years, and relatively stable home prices, there is clear and compelling evidence of deep and persistent housing problems for Americans with the lowest incomes. The number of very-low-income American households with ''worst case'' housing needs is at an all-time high—5.4 million.[7]
- Changing population demographics will result in a need for the primary and secondary mortgage markets to meet nontraditional credit needs, respond to diverse housing preferences and overcome information barriers that many immigrants and minorities face. In addition, market segments such as single-family rental properties, small multifamily properties, manufactured housing, and older inner city properties would benefit from the additional financing and pricing efficiencies of a more active secondary mortgage market.
- The Low- and Moderate-Income Housing Goals for both GSEs were 40 percent in 1996 and 42 percent in 1997–1999. Fannie Mae surpassed these goals, with a performance of 45.6 percent in 1996, 45.7 percent in 1997, 44.1 percent in 1998, and 45.9 percent in 1999. Freddie Mac's performance of 41.1 percent in 1996, 42.6 percent in 1997 and 42.9 percent in 1998 narrowly exceeded these goals, but Freddie Mac's performance jumped sharply in 1999 to 46.1 percent, exceeding Fannie Mae's performance for the first time, by a narrow margin.
- Several studies have shown that both Fannie Mae and Freddie Mac lag behind depository institutions and the overall conventional conforming market in providing affordable home loans to lower-income borrowers and underserved neighborhoods. Though 1998 Fannie Mae made efforts to improve its performance, while Freddie Mac made less improvement, and therefore fell behind Fannie Mae, depositories, and the overall market in serving lower-income and minority families and their neighborhoods. This indicated that there was room for both GSEs (but particularly Freddie Mac) to improve their funding of single-family home mortgages for lower-income families and underserved communities. Data on the performance of depositories and the primary market is not yet available for 1999, thus it is not possible to determine if the GSEs continued to lag these sectors of the market last year. But, based on the data provided by the GSEs to the Department, Freddie Mac's single-family low- and moderate-income performance in 1999 exceeded Fannie Mae's performance. It remains to be seen whether this represents a new trend, or a temporary reversal of the pattern for the 1996–98 period.
- The GSEs' presence in the goal-qualifying market is significantly less than their presence in the overall mortgage market. Specifically, HUD estimates that they accounted for 40 percent of all owner-occupied and rental units financed in the primary market in 1997, but only 32 percent of low- and moderate-income units financed. Their role was even lower for low-and moderate-income rental properties, where they accounted for 26 percent of low- and moderate-income multifamily units financed and only 14 percent of low- and moderate-income single-family rental units financed. These general patterns were also evident in 1998, a heavy refinance year, except that the GSEs had a higher share of the single-family owner market.
- Other issues have also been raised about the GSEs' affordable lending performance. A large percentage of the lower-income loans purchased by the enterprises have relatively high down payments, which raises questions about whether the GSEs are adequately meeting the mortgage credit needs of lower-income families who do not have sufficient cash to make a high down payment. Also, while single-family rental properties are an important source of low- and moderate-income rental housing, they represent only a small portion of the GSEs' business.
- Freddie Mac has re-entered the multifamily market, after withdrawing for a time in the early 1990s. Thus, concerns regarding Freddie Mac's multifamily capabilities no longer constrain their performance with regard to the Low- and Moderate-Income Housing Goal and the Special Affordable Housing Goal to the same degree that prevailed at the time the Department issued its 1995 GSE regulations. However, Freddie Mac's multifamily presence remains proportionately lower than that of Fannie Mae. For example, units in

multifamily properties accounted for 7.3 percent of Freddie Mac's mortgage purchases during 1994–99, compared with 11.8 percent for Fannie Mae. Because a relatively large proportion of multifamily units qualify for the Low- and Moderate-Income Housing Goal and the Special Affordable Housing Goal, through 1998 Freddie Mac's lower multifamily presence was a major factor contributing to its weaker overall performance on these two housing goals relative to Fannie Mae. But in 1999, multifamily units accounted for 8.2 percent of total units financed by Freddie Mac and 9.5 percent of total units financed by Fannie Mae, the narrowest gap of the 1994–99 period.

- The overall presence of both GSEs in the multifamily mortgage market falls short of their involvement in the single-family market. Specifically, the GSEs' purchases of 1997 originations accounted for 50 percent of the owner market, but only 24 percent of the multifamily market. Further expansion of the presence of both GSEs in the multifamily market is needed in order for them to make significant progress in closing the gaps between the affordability of their mortgage purchases and that of the overall conventional market.
- The GSEs have proceeded cautiously in expanding their multifamily purchases during the 1990s. Fannie Mae's multifamily lending has been described by Standard & Poor's as ''extremely conservative,'' and Freddie Mac has not experienced a single default on the multifamily mortgages it has purchased since 1993.[8] By the end of 1999, both GSEs' multifamily performance had improved to the point where multifamily delinquency rates were lower than those for single-family loans.[9]
- Because of the advantages conferred by Government sponsorship, the GSEs are in a unique position to provide leadership in addressing the excessive cost and difficulty in obtaining mortgage financing for underserved segments of the multifamily market, including small properties with 5–50 units and properties in need of rehabilitation.

B. Factor 1: National Housing Needs

This section reviews the general housing needs of low- and moderate-income families that exist today and are expected to continue in the near future. In so doing, the section focuses on the affordability problems of lower- income families and on racial disparities in homeownership and mortgage lending. It also notes some special problems, such as the need to rehabilitate our older urban housing stock.

1. Homeownership Gaps

Despite a record national homeownership rate, many Americans, including disproportionate numbers of racial and ethnic minorities, are shut out of homeownership opportunities. Although the national homeownership rate for all Americans was at an all-time high of 67.1 percent in the first quarter of 2000, the rate for minority households was lower. The homeownership rate for African-American households was 47.4 percent. Similarly, just 45.7 percent of Hispanic households owned a home.

Importance of Homeownership. Homeownership is one of the most common forms of property ownership as well as savings.[10] Historically, home equity has been the largest source of wealth for most Americans. Only recently has stock equity exceeded home equity as a share of total household wealth. Even with stocks appreciating faster than home prices over the past decade, still 59 percent of all homeowners in 1998 held more than half of their net wealth in the form of home equity. Among low-income homeowners (household income less than $20,000), half held more than 70 percent of their wealth in home equity in 1995.[11] Median net wealth for renters was less than four percent of the median net wealth for homeowners in 1998. For low-income households, renter median net wealth is less than two percent of homeowner median net wealth.[12] Thus a homeownership gap translates directly into a wealth gap.

Homeownership promotes social and community stability by increasing the number of stakeholders and reducing disparities in the distributions of wealth and income. There is growing evidence that planning for and meeting the demands of homeownership may reinforce the qualities of responsibility and self-reliance. White and Green [13] provide empirical support for the association of homeownership with a more responsible, self-reliant citizenry. Both private and public benefits are increased to the extent that developing and reinforcing these qualities improve prospects for individual economic opportunities.

Barriers 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 also 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 large fractions of family income for home mortgage payments. Thus, during that period, fewer households had the financial resources to meet down payment requirements, closing costs, and monthly mortgage payments.

Economic expansion and lower mortgage rates substantially improved homeownership affordability during the 1990s. Many young, lower-income, and minority families who were closed out of the housing market during the 1980s re-entered the housing market during the last decade. However, many households still lack the financial resources and earning power to take advantage of today's homebuying opportunities. Several trends have contributed to the reduction in the real earnings of young adults without college education over the last 15 years, including technological changes that favor white-collar employment, losses of unionized manufacturing jobs, and wage pressures exerted by globalization. Fully 45 percent of the nation's population between the ages of 25 and 34 have no advanced education and are therefore at risk of being unable to afford homeownership.[14] African Americans and Hispanics, who have lower average levels of educational attainment than whites, are especially disadvantaged by the erosion in wages among less educated workers.

In addition to low income, high debts are a primary reason households cannot afford to purchase a home. According to a 1993 Census Bureau report, nearly 53 percent of renter families have both insufficient income and excessive debt problems that may cause difficulty in financing a home purchase.[15] High debt-to-income ratios frequently make potential borrowers ineligible for mortgages based on the underwriting criteria established in the conventional mortgage market.

An additional barrier to homeownership is the fear and uncertainty about the buying process and the risks of ownership. A study using focus groups with renters found that even among those whose financial status would make them capable of homeownership, many felt that the buying process was insurmountable because they feared rejection by the lender or being taken advantage of.[16] Also, many feared the obligations of ownership, because of concerns about the risk of future deterioration of the house or the neighborhood.

Finally, discrimination in mortgage lending continues to be a barrier to homeownership. Disparities in treatment between borrowers of different races and neighborhoods of different racial makeup have been well documented. These disparities are discussed in the next section.

2. Disparities in Mortgage Financing

Disparities Between Borrowers of Different Races. Research based on Home Mortgage Disclosure Act (HMDA) data suggests pervasive and widespread disparities in mortgage lending across the Nation. For 1998, the denial rate for white mortgage applicants was 10.2 percent, while 23.9 percent of African-American and 18.9 percent of Hispanic applicants were denied. Even after controlling for income, the African-American denial rate was approximately twice that of white applicants. A major study by researchers at the Federal Reserve Bank of Boston found that mortgage denial rates remained substantially higher for minorities in 1991–93, even after controlling for indicators of credit risk.[17] African-American and Hispanic applicants in Boston with the same borrower and property characteristics as white applicants had a 17 percent denial rate, compared with the 11 percent denial rate experienced by whites. A subsequent study conducted at the Federal Reserve Bank of Chicago reported similar findings.[18]

Several possible explanations for these lending disparities have been suggested. The studies by the Boston and Chicago Federal Reserve Banks found that racial disparities cannot be explained by reported differences in creditworthiness. In other words, minorities are more likely to be denied than whites with similar credit characteristics, which suggests lender discrimination. In addition, loan officers, who may believe that race is correlated with credit risk, may use race as a screening device to save time, rather

than devote effort to distinguishing the creditworthiness of the individual applicant.[19] This violates the Fair Housing Act.

Underwriting Rigidities. Underwriting rigidities may fail to accommodate creditworthy low-income or minority applicants. For example, under traditional underwriting procedures, applicants who have conscientiously paid rent and utility bills on time but have never used consumer credit would be penalized for having no credit record. Applicants who have remained steadily employed, but have changed jobs frequently, would also be penalized. Over the past few years, lenders, private mortgage insurers, and the GSEs have adjusted their underwriting guidelines to take into account these special circumstances of lower-income families. Many of the changes recently undertaken by the industry to expand homeownership have focused on finding alternative underwriting guidelines to establish creditworthiness that do not disadvantage creditworthy minority or low-income applicants.

However, because of the enhanced roles of credit scoring and automated underwriting in the mortgage origination process, it is unclear to what degree the reduced rigidity in industry standards will benefit borrowers who have been adversely impacted by the traditional guidelines. Some industry observers have expressed a concern that the greater flexibility in the industry's written underwriting guidelines may not be reflected in the numerical credit and mortgage scores which play a major role in the automated underwriting systems that the GSEs and others have developed. Thus lower-income and minority loan applicants, who often have lower credit scores than other applicants, may be dependent on the willingness of lenders to take the time to look beyond such credit scores and consider any appropriate ''mitigating factors,'' such as the timely payment of their bills, in the underwriting process. For example, there is a concern in the industry that a ''FICO'' score less than 620 means an automatic rejection of a loan application without further consideration of any such factors.[20] This could disproportionately affect minority applicants. More information on the distribution of credit scores and on the effects of implementing automated underwriting systems is needed.[21]

Disparities Between Neighborhoods. Mortgage credit also appears to be less accessible in low-income and high-minority neighborhoods. As discussed in Appendix B, 1998 HMDA data show that mortgage denial rates are nearly twice as high in census tracts with low-income and/or high-minority composition, as in other tracts (19.4 percent versus 10.3 percent). Numerous studies have found that mortgage denial rates are higher in low-income census tracts, even accounting for other loan and borrower characteristics.[22] These geographic disparities can be the result of cost factors, such as the difficulty of appraising houses in these areas because of the paucity of previous sales of comparable homes. Sales of comparable homes may also be difficult to find due to the diversity of central city neighborhoods. The small loans prevalent in low-income areas are less profitable to lenders because up-front fees to loan originators are frequently based on a percentage of the loan amount, although the costs incurred are relatively fixed. Geographic disparities in mortgage lending and the issue of mortgage redlining are discussed further in Appendix B.

3. Affordability Problems and Worst Case Housing Needs

The severe problems faced by low-income homeowners and renters are documented in HUD's ''Worst Case Housing Needs'' reports. These reports, which are prepared biennially for Congress, are based on the American Housing Survey (AHS), conducted every two years by the Census Bureau for HUD. The latest report analyzes data from the 1997 AHS and focuses on the housing problems faced by low-income renters, but some data is also presented on families living in owner-occupied housing. In introducing the most recent study, Secretary Cuomo noted that it found that ''despite the booming economy, worst case housing needs continue to increase'' and such needs ''have now reached an all-time high of million households.'' [23]

The ''Worst Cases'' report measures three types of problems faced by homeowners and renters:

- Cost or rent burdens, where housing costs or rent exceed 50 percent of income (a ''severe burden'') or range from 31 percent to 50 percent of income (a ''moderate burden'');
- The presence of physical problems involving plumbing, heating, maintenance, hallway, or the electrical system, which may lead to a classification of a residence as ''severely inadequate'' or ''moderately inadequate;'' and
- Crowded housing, where there is more than one person per room in a residence.

The study reveals that in 1997, 5.4 million households had ''worst case'' housing needs, defined as housing costs greater than 50 percent of household income or severely inadequate housing among unassisted households.

a. Problems Faced by Owners

Of the 65.5 million owner households in 1997, 5.5 million (8.5 percent) confronted a severe cost burden and another 8.3 million (12.7 percent) faced a moderate cost burden. There were 725,000 households with severe physical problems and 916,000 which were overcrowded. The report found that 25.4 percent of American homeowners faced at least one severe or moderate problem.

Not surprisingly, problems were most common among very low-income owners.[24] More than a third of these households faced a severe cost burden, and an additional 23 percent faced a moderate cost burden. And 7 percent of these families lived in severely or moderately inadequate housing, while 2 percent faced overcrowding. Only 38 percent of very low-income owners reported no problems.

Over time the percentage of owners faced with severe or moderate physical problems has decreased, as has the portion living in overcrowded conditions. However, affordability problems have grown—the shares facing severe (moderate) cost burdens were only 3 percent (5 percent) in 1978, but rose to 5 percent (11 percent) in 1989 and 8 percent (13 percent) in 1997. The increase in affordability problems apparently reflects a rise in mortgage debt in the late 1980s and early 1990s, from 21 percent of homeowners' equity in 1983 to 36 percent in 1995.[25] The Joint Center for Housing Studies also attributes this to the growing gap between housing costs and the incomes of the nation's poorest households.[26] As a result of the increased incidence of severe and moderate cost burdens, the share of owners reporting no problems fell from 84 percent in 1978 to 78 percent in 1989 and 75 percent in 1997.

b. Problems Faced by Renters

Problems of all three types listed above are more common among renters than among homeowners. In 1997 there were 6.7 million renter households (20 percent of all renters) who paid more than 50 percent of their income for rent.[27] Another 6.8 million faced a moderate rent burden, thus in total 40 percent of renters paid more than 30 percent of their income for rent.

Among very low-income renters, 72 percent faced an affordability problem, including 44 percent who paid more than half of their income in rent. More than one-third of renters with incomes between 51 percent and 80 percent of area median family income also paid more than 30 percent of their income for rent.

Affordability problems have increased over time among renters. The shares of renters with severe or moderate rent burdens rose from 32 percent in 1978 to 36 percent in 1989 and 42 percent in 1997.

The share of families living in inadequate housing in 1997 was higher for renters (12 percent) than for owners (4 percent), as was the share living in overcrowded housing (6 percent for renters, but only 1 percent for owners). Crowding and inadequate housing were more common among lower-income renters, but among even the lowest income group, affordability was the dominant problem. The prevalence of inadequate and crowded rental housing diminished over time until 1995, while affordability problems grew. But in 1997 there were also sharp increases in the inadequate and crowded shares of rental housing.

Other problems faced by renters discussed in the ''Worst Cases'' report include the loss between 1991 and 1997 of 370,000 rental units affordable to very low-income families, the increase in ''worst case needs'' among working families between 1991 and 1997, and the shortage of units affordable to very low-income households (especially in the West).

4. Other National Housing Needs

In addition to the broad housing needs discussed above, there are additional needs confronting specific sectors of the housing and mortgage markets. This section presents a brief discussion of three such areas and the roles that the GSEs play or might play in addressing the needs in these areas. Other needs are discussed throughout these appendices.

a. Single-family Rental Housing

The 1996 Property Owners and Managers Survey reported that 51 percent of all rental

housing units are located in ''multifamily'' properties—*i.e,* properties that contain 5 or more rental units. The remaining 49 percent of rental units are found in the ''mom and pop shops'' of the rental market—''single-family'' rental properties, containing 1–4 units. These small properties are largely individually-owned and managed, and in many cases the owner-managers live in one of the units in the property. They include many properties in older cities, such as the duplexes in Baltimore and the triple-deckers in Boston. A number of these single-family rental properties are in need of financing for rehabilitation, discussed in the next subsection.

Single-family rental units play an especially important role in lower-income housing. The 1997 AHS found that 59 percent of such units were affordable to very low-income families—exceeding the corresponding share of 53 percent for multifamily units. These units also play a significant role in the GSEs' performance on the housing goals, since 30 percent of the single-family rental units financed by the GSEs in 1999 were affordable to very low-income families.

There is not, however, a strong secondary market for single-family rental mortgages. While single-family rental properties comprise a large segment of the rental stock for lower-income families, they make up a small portion of the GSEs' business. In 1999 the GSEs purchased $26 billion in mortgages for such properties, but this represented 5 percent of the total dollar volume of each enterprise's 1999 business and 8 percent of total single-family units financed by each GSE. With regard to their market share, HUD estimates that the GSEs have financed only about 19 percent of all single-family rental units that received mortgages in 1998, well below the GSEs' estimated market share of 68 percent for single-family owner properties.

Given the large size of this market, the high percentage of these units which qualify for the GSEs' housing goals, and the weakness of the secondary market for mortgages on these properties, an enhanced presence by Fannie Mae and Freddie Mac in the single-family rental mortgage market would seem warranted.[28]

b. Rehabilitation Problems of Older Areas

A major problem facing lower-income households is that low-cost housing units continue to disappear from the existing housing stock. Older properties are in need of upgrading and rehabilitation. These aging properties are concentrated in central cities and older inner suburbs, and they include not only detached single-family homes, but also small multifamily properties that have begun to deteriorate.

The ability of the nation to maintain the quality and availability of the existing affordable housing stock and to stabilize the neighborhoods where it is found depends on an adequate supply of credit to rehabilitate and repair older units. But obtaining the funds to fix up older properties can be difficult. The owners of small rental properties in need of rehabilitation may be unsophisticated in obtaining financing. The properties are often occupied, and this can complicate the rehabilitation process. Lenders may be reluctant to extend credit because of a sometimes-inaccurate perception of high credit risk involved in such loans.

The GSEs and other market participants have recently begun to pay more attention to these needs for financing of affordable rental housing rehabilitation.[29] However, extra effort is required, due to the complexities of rehabilitation financing, as there is still a need to do more.

c. Small Multifamily Properties

There is evidence that small multifamily properties with 5–50 units have been adversely affected by differentials in the cost of mortgage financing relative to larger properties.[30] While mortgage loans can generally be obtained for most properties, the financing that is available is relatively expensive, with interest rates as much as 150 basis points higher than those on standard multifamily loans. Loan products are characterized by shorter terms and adjustable interest rates. Borrowers typically incur costs for origination and placement fees, environmental reviews, architectural certifications (on new construction or substantial rehabilitation projects), inspections, attorney opinions and certifications, credit reviews, appraisals, and market surveys.[31] Because of a large fixed element, these costs are usually not scaled according to the mortgage loan amount or number of dwelling units in a property and consequently are often prohibitively high on smaller projects.

d. Other Needs

Further discussions of other housing needs and mortgage market problems are provided in the following sections on economic, housing, and demographic conditions. In the single-family area, for example, an important trend has been the growth of the subprime market and the GSEs' participation in the A-minus portion of that market. Manufactured housing finance and rural housing finance are areas that could be served more efficiently with an enhanced secondary market presence. In the multifamily area, properties in need of rehabilitation represent a market segment where financing has sometimes been difficult. Other housing needs and mortgage market problems are also discussed.

C. Factor 2: Economic, Housing, and Demographic Conditions: Single-Family Mortgage Market

This section discusses economic, housing, and demographic conditions that affect the single-family mortgage market. After a review of housing trends and underlying demographic conditions that influence homeownership, the discussion focuses on specific issues related to the single-family owner mortgage market. This subsection includes descriptions of recent market interest rate trends, homebuyer characteristics, and the state of affordable lending. Section D follows with a discussion of the economic, housing, and demographic conditions affecting the multifamily mortgage market.

1. Recent Trends in the Housing Market

Solid economic growth, low interest rates, price stability, and an unemployment rate of 4.2 percent, the lowest rate since 1969, combined to make 1999 a very strong year for the housing market. The employment-population ratio reached a record 64.3 percent last year, and a broad measure of labor market distress, combining the number of unemployed and the duration of unemployment, was down by 54 percent from its 1992 peak.[32] Rising real wages, a strong stock market, and higher home prices all contributed to a continuation of the rise in net household worth, contributing to the strong demand for housing.

Homeownership Rate. In 1980, 65.6 percent of Americans owned their own home, but due to the unsettled economic conditions of the 1980s, this share fell to 63.8 percent by 1989. Major gains in ownership have occurred over the last few years, with the homeownership rate reaching a record level of 66.8 percent in 1999, when the number of households owning their own home was 7 million greater than in 1994, an unprecedented five-year increase.

Gains in homeownership have been widespread in over the last six years.[33] As a result, the homeownership rate rose from:

- 42.0 percent in 1993 to 46.7 percent in 1999 for African American households,
- 39.4 percent in 1993 to 45.5 percent in 1999 for Hispanic households,
- 73.7 percent in 1993 to 77.6 percent in 1999 for married couples with children,
- 65.1 percent in 1993 to 67.2 percent in 1999 for household heads aged 35–44, and
- 48.9 percent in 1993 to 50.4 percent in 1999 for central city residents.

However, as these figures demonstrate, sizable gaps in homeownership remain.

Sales of New and Existing Homes.[34] New home sales rose at a rate of 7.5 percent per year between 1991 and 1999, and exceeded the previous record level (set in 1998) by 2 percent in 1999. The market for new homes has been strong throughout the nation, with record sales in the South and Midwest during 1999. New home sales in the Northeast and West, while strong, are running below the peak levels attained during their strong job markets of the mid-1980s and late-1970s, respectively.

The National Association of Realtors reported that 5.2 million existing homes were sold in 1999, overturning the old record set in 1998 by 5 percent. Combined new and existing home sales also set a record of 6.2 million last year. Since existing homes account for more than 80 percent of the total market and sales of existing homes are strong throughout the country, combined sales reach record levels in three of the four major regions of the nation and came within 97 percent of the record in the Northeast.

One of the strongest sectors of the housing market in recent years has been shipments of manufactured homes, which more than doubled between 1991 and 1996, and essentially leveled off at the 1996 record during 1997–99. Two-thirds of manufactured home placements were in the South, where they comprised more than one-third of total new homes sold in 1999.

Economy/Housing Market Prospects. As noted above, the U.S. economy is coming off

several years of economic expansion, accompanied by low interest rates and high housing affordability. In fact, 1999 was a record year for housing sales. The remainder of this subsection discusses the future prospects for the housing market.

According to Standard & Poor's DRI, the housing market is slowing down from the record breaking pace of over five million single-family existing homes sold during 1999.[35] Sales of existing single-family homes are on a pace of 4.5 million units for 2000. Between 2001 and 2004, existing single-family home sales are expected to average 4.2 million units. Housing starts are expected to average 1.5 million units over the same period. Housing should remain affordable, as indicated by out-of-pocket costs as a share of disposable income, which are expected to continue their downward trend through 2004, dipping below 24 percent by 2003. According to Standard & Poor's DRI, the 30-year fixed rate mortgage rate is expected to average 8.4 percent in 2000, and then trend down to 7.7 percent by 2004.

The Congressional Budget Office (CBO)[36] projects that real Gross Domestic Product will grow at an average rate of 2.7 percent from 2001 through 2005, down from the expected 4.9 percent growth rate during 2000. The ten-year Treasury rate is projected to average 6.0 percent between 2001 and 2005. Inflation, as measured by the Consumer Price Index (CPI) is projected to remain modest during the same period, averaging 2.7 percent. The unemployment rate is expected to remain low over the next four years, averaging 4.3 percent.

Certain risks exist, however, which could undermine the wellbeing of the economy. The probability of a recession still exists for the next couple of years. Under a pessimistic scenario (10 percent probability), Standard & Poor's DRI predicts that if a stock-market correction were to occur toward the end of 2000, housing starts could fall to 1.2 million units. With relatively low inflation, DRI anticipates that the Federal Reserve would respond quickly by lower interest rates. This would revive the housing market, although the recovery would be slow, with starts not returning to pre-recession levels until late 2004.[37] An alternative scenario has a recession arriving in 2002, resulting from a Federal Reserve overreaction to higher inflation and a stock market correction in late 2001 or early 2002 (which DRI predicts with a probability of 35 percent). Under this scenario, housing starts would fall to almost one million units. As a result of lower interest rates, the housing market would rebound strongly, with starts reaching near-record levels by the end of 2004.[38]

In addition to DRI and CBO, the Mortgage Bankers Association predicts that for 2000/2001 housing starts will reach 1.6/1.5 million units for 2000 and 2001 and the 30-year fixed rate mortgage rate will average 8.5/9.0 percent.[39] Fannie Mae predicts that the Federal Reserve will successfully engineer a soft landing, with real growth of the economy slowing to a two to three percent pace in 2001. As a result, mortgage originations should decline to $967 billion, 27 percent less than the 1998 record level.[40]

2. Underlying Demographic Conditions

Over the next 20 years, the U.S. population is expected to grow by an average of 2.4 million per year. This will likely result in 1.1 to 1.2 million new households per year, creating a continuing need for additional housing.[41] This section discusses important demographic trends behind these overall household numbers that will likely affect housing demand in the future. These demographic forces include the baby-boom, baby-bust and echo baby-boom cycles; immigration trends; ''trade-up buyers;'' non-traditional and single households; and the growing income inequality between people with different levels of education.

As explained below, the role of traditional first-time homebuyers, 25-to-34 year-old married couples, in the housing market will be smaller in the next decade due to the aging of the baby-boom population.[42] However, growing demand from immigrants and non-traditional homebuyers will likely fill in the void. The Joint Center for Housing Studies recently projected that the share of the U.S. population accounted for by racial and ethnic minorities would increase from 25 percent to 30 percent by the year 2010.[43] The echo baby-boom (that is, children of the baby-boomers) will also add to housing demand later in the next decade. Finally, the growing income inequality between people with and without a post-secondary education will continue to affect the housing market.

The Baby-Boom Effect. The demand for housing during the 1980s and 1990s was driven, in large part, by the coming of homebuying age of the baby-boom generation, those born between 1945 and 1964. Homeownership rates for the oldest of the baby-boom generation, those born in the 1940s, rival those of the generation born in the 1930s. Due to significant house price appreciation in the late-1970s and 1980s, older baby-boomers have seen significant gains in their home equity and subsequently have been able to afford larger, more expensive homes. Circumstances were not so favorable for the middle baby-boomers. Housing was not very affordable during the 1980s, their peak homebuying age period. As a result, the homeownership rate, as well as wealth accumulation, for the group of people born in the 1950s lags that of the generations before them.[44]

As the youngest of the baby-boomers, those born in the 1960s, reached their peak homebuying years in the 1990s, housing became more affordable. While this cohort has achieved a homeownership rate equal to the middle baby-boomers, they live in larger, more expensive homes. As the baby-boom generation ages, demand for housing from this group is expected to wind down.[45]

The baby-boom generation was followed by the baby-bust generation, from 1965 through 1977. Since this population cohort is smaller than that of the baby-boom generation, it is expected to lead to reduced housing demand during the next decade, though, as discussed below, other factors have kept the housing market very strong in the 1990s. However, the echo baby-boom generation (the children of the baby-boomers, who were born after 1977), while smaller than the baby-boom generation, will reach peak homebuying age later in the first decade of the new millennium, softening the blow somewhat.[46]

Immigrant Homebuyers. Past, present, and future immigration will also help keep homeownership growth at a respectable level. During the 1980s, 6 million legal immigrants entered the United States, compared with 4.2 million during the 1970s and 3.2 million during the 1960s.[47] As a result, the foreign-born population of the United States doubled from 9.6 million in 1970 to 19.8 million in 1990, and is expected to reach 31 million by 2010.[48] While immigrants tend to rent their first homes upon arriving in the United States, homeownership rates are substantially higher among those that have lived here for at least 6 years. In 1996, the homeownership rate for recent immigrants was 14.7 percent while it was 67.4 percent for native-born households. For foreign-born naturalized citizens, the homeownership rate after six years was a remarkable 66.9 percent.[49]

Immigration is projected to add even more new Americans in the 1990s, which will help offset declines in the demand for housing caused by the aging of the baby-boom generation. While it is projected that immigrants will account for less than four percent of all households in 2010, without the increase in the number of immigrants, household growth would be 25 percent lower over the next 15 years. As a result of the continued influx of immigrants and the aging of the domestic population, household growth over the next decade should remain at or near its current pace of 1.1–1.2 million new households per year, even though population growth is slowing. If this high rate of foreign immigration continues, it is possible that first-time homebuyers will make up as much as half of the home purchase market over the next several years.[50]

Past and future immigration will lead to increasing racial and ethnic diversity, especially among the young adult population. As immigrant minorities account for a growing share of first-time homebuyers in many markets, HUD and others will have to intensify their focus on removing discrimination from the housing and mortgage finance systems. The need to meet nontraditional credit needs, respond to diverse housing preferences, and overcome the information barriers that many immigrants face will take on added importance.

Trade-up Buyers. The fastest growing demographic group in the early part of the next millennium will be 45-to 65-year olds. This will translate into a strong demand for upscale housing and second homes. The greater equity resulting from recent increases in home prices should also lead to a larger role for ''trade-up buyers'' in the housing market during the next 10 to 15 years.

Nontraditional and Single Homebuyers. While overall growth in new households has slowed down, nontraditional households have become more important in the homebuyer market. With later marriages and more divorces, single-person and single-parent households have increased rapidly. First-time buyers include a record number of never-married single households, although

their ownership rates still lag those of married couple households. According to the Chicago Title and Trust's Home Buyers Surveys, the share of first-time homebuyers who were never-married singles rose from 21 percent in 1991 to 37 percent in 1996, and to a record 43 percent in 1997. However, in 1999 never-married singles fell to 30 percent of first-time homebuyers.[51] The shares for divorced/separated and widowed first-time homebuyers have stayed constant over the period, at eight percent and one percent, respectively.[52] The National Association of Realtors reports that ''single individuals, unmarried couples and minorities are entering the market as first-time buyers in record numbers.'' [53] With the increase in single person households, it is expected that there will be a greater need for apartments, condominiums and townhomes.

Due to weak house price appreciation, traditional ''trade-up buyers'' stayed out of the market during the early 1990s. Their absence may explain, in part, the large representation of nontraditional homebuyers during that period. However, since 1995 home prices have increased 20 percent. Single-parent households are also expected to decline as the baby-boom generation ages out of the childbearing years. For these reasons, nontraditional homebuyers may account for a smaller share of the housing market in the future.

Growing Income Inequality. The Census Bureau recently reported that the top 5 percent of American households received 21.4 percent of aggregate household income in 1998, up sharply from 16.1 percent in 1977. The share accruing to the lowest 80 percent of households fell accordingly, from 56.5 percent in 1977 to 50.8 percent in 1998. The share of aggregate income accruing to households between the 80th and 95th percentiles of the income distribution was virtually unchanged over this period.[54]

The increase in income inequality over the past two decades has been especially significant between those with and those without post-secondary education. The Census Bureau reports that by 1997, the mean income of householders with a high school education (or less) was less than half that for householders with a bachelor's degree (or more). According to the Joint Center for Housing Studies, inflation-adjusted median earnings of men aged 25 to 34 with only a high-school education decreased by 14 percent between 1989 and 1995.[55] So, while homeownership is highly affordable, this cohort lacks the financial resources to take advantage of the opportunity. As discussed earlier, the days of the well-paying unionized factory job have passed. They have given way to technological change that favors white-collar jobs requiring college degrees, and wages in the manufacturing jobs that remain are experiencing downward pressures from economic globalization. The effect of this is that workers without the benefit of a post-secondary education find their demand for housing constrained.

3. Single-Family Owner Mortgage Market

The mortgage market has undergone a great deal of growth and change over the past few years. Low interest rates, modest increases in home prices, and growth in real household income have increased the affordability of housing and resulted in a mortgage market boom. Total originations of single-family loans increased from $458 billion in 1990 to $859 billion in 1997 and then jumped to a record $1.507 trillion during the heavy refinancing year of 1998, before declining to $1.287 billion in 1999, the second highest level recorded.[56] There have also been many changes in the structure and operation of the mortgage market. Innovations in lending products, added flexibility in underwriting guidelines, the development of automated underwriting systems and the rise of the subprime market, have had impacts on both the overall market and affordable lending during the 1990s.

The section starts with a review of trends in the market for mortgages on single-family owner-occupied housing. Next, trends in affordable lending, including new initiatives and changes to underwriting guidelines and the prospects for potential homebuyers are discussed. The section concludes with a summary of the activity of the GSEs relative to originations in the primary mortgage market.

a. Basic Trends in the Mortgage Market

Interest Rate Trends. The high and volatile mortgage rates of the 1980s and early 1990s have given way to a period with much lower and more stable rates in the last six years. Interest rates on mortgages for new homes were above 12 percent as the 1980s began and quickly rose to more than 15 percent.[57] After 1982, they drifted downward slowly to the 9 percent range in 1987–88, before rising back into double-digits in 1989–90. Rates then dropped by about one percentage point a year for three years, reaching a low of 6.8 percent in October-November 1993 and averaging 7.2 percent for the year as a whole.

Mortgage rates turned upward in 1994, peaking at 8.3 percent in early 1995, but fell to the 7.5 percent-7.9 percent range for most of 1996 and 1997. However, rates began another descent in late-1997 and averaged 6.95 percent for 30-year fixed rate conventional mortgages during 1998, the lowest level since 1968, before rising to an average of 7.44 percent in 1999.[58]

Other Loan Terms. When mortgage rates are low, most homebuyers prefer to lock in a fixed-rate mortgage (FRM). Adjustable-rate mortgages (ARMs) are more attractive when rates are high, because they carry lower rates than FRMs and because buyers may hope to refinance to a FRM when mortgage rates decline. Thus the Federal Housing Finance Board (FHFB) reports that the ARM share of the market jumped from 20 percent in the low-rate market of 1993 to 39 percent when rates rose in 1994.[59] The ARM share has since trended downward, falling to 22 percent in 1997 and a record low of 12 percent in 1998, before rising back to 22 percent in 1999.

In 1997 the term-to-maturity was 30 years for 83 percent of conventional home purchase mortgages. Other maturities included 15 years (11 percent of mortgages), 20 years (2 percent), and 25 years (1 percent). The average term was 27.5 years, up slightly from 26.9 years in 1996, but within the narrow range of 25–28 years which has prevailed since 1975.

One dimension of the mortgage market which has changed in recent years is the increased popularity of low- or no-point mortgages. FHFB reports that average initial fees and charges (''points'') have decreased from 2.5 percent of loan balance in the mid-1980s to 2 percent in the late-1980s, 1.5 percent in the early 1990s, and less than 1.0 percent in 1995–97. In 1998, 21 percent of all loans were no-point mortgages. These lower transactions costs have increased the propensity of homeowners to refinance their mortgages.[60]

Another recent major change in the conventional mortgage market has been the proliferation of high loan-to-value ratio (LTV) mortgages. Loans with LTVs greater than 90 percent (that is, down payments of less than 10 percent) made up less than 10 percent of the market in 1989–91, but 25 percent of the market in 1994–97. Loans with LTVs less than or equal to 80 percent fell from three-quarters of the market in 1989–91 to an average of 56 percent of mortgages originated in 1994–97. As a result, the average LTV rose from 75 percent in 1989–91 to nearly 80 percent in 1994–97.[61]

The statistics cited above pertain only to home purchase mortgages. Refinance mortgages generally have shorter terms and lower loan-to-value ratios than home purchase mortgages.

Mortgage Originations: Refinance Mortgages. Mortgage rates affect the volume of both home purchase mortgages and mortgages used to refinance an existing mortgage. The effects of mortgage rates on the volume of home purchase mortgages are felt through their role in determining housing affordability, discussed in the next subsection. However, the largest impact of rate swings on single-family mortgage originations is reflected in the volume of refinancings.

During 1992–93, homeowners responded to the lowest rates in 25 years by refinancing existing mortgages. In 1989–90 interest rates exceeded 10 percent, and refinancings accounted for less than 25 percent of total mortgage originations.[62] The subsequent sharp decline in mortgage rates drove the refinance share over 50 percent in 1992 and 1993 and propelled total single-family originations to more than $1 trillion in 1993—twice the level attained just three years earlier.

The refinance wave subsided after 1993, because most homeowners who found it beneficial to refinance had already done so and because mortgage rates rose once again.[63] Total single-family mortgage originations bottomed out at $639 billion in 1995, when the refinance share was only 15 percent. This meant that refinance volume declined by more than 80 percent in just two years.

A second surge in refinancings began in late-1997, abated somewhat in early 1998, but regained momentum in June 1998. The refinance share rose above 30 percent in mid-1997, exceeded 40 percent in late-1997, and peaked at 64 percent in January, before falling to 40 percent by May 1998. This share increased steadily over the June–September 1998 period, and averaged 50 percent for

1998. The refi boom ended abruptly in early 1999, as the share of loans for refinancings fell from 60 percent in the first quarter to 27 percent in the second quarter and 22 percent in the third and fourth quarters. Total originations, driven by the volume of refinancings, amounted to $859 billion in 1997 and were $1.507 trillion in 1998, nearly 50 percent higher than the previous record level of $1.02 trillion attained in 1993, before falling to $1.287 trillion last year. Total refinance mortgage volume in 1998 was estimated to be nearly 10 times the level attained in 1995. The refinance wave from 1997 through early 1999 reflects other factors besides interest rates, including greater borrower awareness of the benefits of refinancing, a highly competitive mortgage market, and the enhanced ability of the mortgage industry (including the GSEs), utilizing automated underwriting and mortgage origination systems, to handle this unprecedented volume expeditiously.

Mortgage Originations: Home Purchase Mortgages. In 1972 the median price of existing homes in the United States was $27,000 and mortgage rates averaged 7.52 percent; thus with a 20 percent down payment, a family needed an income of $7,200 to qualify for a loan on a median-priced home. Actual median family income was $11,100, exceeding qualifying income by 55 percent. The National Association of Realtors (NAR) has developed a housing affordability index, calculated as the ratio of median income to qualifying income, which was 155 in 1972.

By 1982 NAR's affordability index had plummeted to 70, reflecting a 154 percent increase in home prices and a doubling of mortgage rates over the decade. That is, qualifying income rose by nearly 400 percent, to $33,700, while median family income barely doubled, to $23,400. With so many families priced out of the market, single-family mortgage originations amounted to only $97 billion in 1982.

Declining interest rates and the moderation of inflation in home prices have led to a dramatic turnaround in housing affordability in the last decade and a half. Remarkably, qualifying income was $27,700 in 1993—$6,000 less than it had been in 1982. Median family income reached $37,000 in 1993, thus the NAR's housing affordability index reached 133. Housing affordability remained at about 130 for 1994–97, with home price increases and somewhat higher mortgage rates being offset by gains in median family income.[64] Falling interest rates and higher income led to an increase in affordability to 143 in 1998, reflecting the most affordable housing in 25 years. Affordability remained high in 1999, despite the increase in mortgage rates.

The high affordability of housing, low unemployment, and high consumer confidence meant that home purchase mortgages reached a record level in 1997. However, this record was surpassed in 1998, as a July 1998 survey by Fannie Mae found that "every single previously cited barrier to homeownership—from not having enough money for a down payment, to not having sufficient information about how to buy a home, to the confidence one has in his job, to discrimination or social barriers—has collapsed to the lowest level recorded in the seven years Fannie Mae has sponsored its annual National Housing Survey."[65] Specifically, the Mortgage Bankers Association estimates that home purchase mortgages rose to about $754 billion in 1998, well above the previous record of $574 billion established in 1997. The boom continued in 1999, with home purchase mortgage volume increasing further, to $824 billion.

First-time Homebuyers. 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 decreased from 28.3 percent in 1980 to 25.4 percent in 1992.[66] Even though this cohort is smaller, first-time homebuyers increased their share of home sales. First-time buyers accounted for about 45 percent of home sales in 1999. Participation rates for first-time homebuyers so far this decade are all greater than or equal to 45 percent. This follows participation rates that averaged 40 percent in the 1980s, including a low of 36 percent in 1985. The highest first-time homebuyer participation rate was achieved in 1977, when it was 48 percent.[67]

The Chicago Title and Trust Company reports that the average first-time buyer in 1999 was 32 years old and spent 5 months looking at 12 homes before making a purchase decision. Most such buyers are married couples, but in 1999 29 percent had never been married, 9 percent were divorced or separated, and 1 percent were widowed.

First-time buyers paid an average of 34 percent of after-tax income, or $1,090 per month, on their mortgage payments in 1999, and saved for 2.2 years to accumulate a down payment. The National Association of Realtors reports that the median mortgage amount for first-time buyers was $104,000 in 1999, corresponding to an LTV of 97 percent, compared with a median mortgage amount of $150,000 and an average LTV of 81 percent for repeat buyers.

GSEs' Acquisitions as a Share of the Primary Single-Family Mortgage Market. The GSEs' single-family mortgage acquisitions have generally followed the volume of originations in the primary market for conventional mortgages, falling from 5.3 million mortgages in the record year of 1993 to 2.2 million mortgages in 1995, but rebounding to 2.9 million mortgages in 1996. In 1997, however, single-family originations were essentially unchanged, but the GSEs' acquisitions declined to 2.7 million mortgages.[68] This pattern was reversed in 1998, when originations rose by 73 percent, but the GSEs' purchases jumped to 5.8 million mortgages. In 1999 the GSEs' acquired 4.8 million single-family mortgages, a decline of 17 percent, which approximated the 15 percent decline in single-family originations.

Reflecting these trends, the Office of Federal Housing Enterprise Oversight (OFHEO) estimates that the GSEs' share of total originations in the single-family mortgage market, measured in dollars, declined from 37 percent in 1996 to 32 percent in 1997—well below the peak of 51 percent attained in 1993. OFHEO attributes the 1997 downturn in the GSEs' role to increased holdings of mortgages in portfolio by depository institutions and to increased competition with Fannie Mae and Freddie Mac by private label issuers. However, OFHEO estimates that the GSEs' share of the market rebounded sharply in 1998–99, to 43–42 percent.

Mortgage Market Prospects. The Mortgage Bankers Association (MBA) reports that mortgage originations in 1999 were $1.3 trillion. This followed the record-breaking year of 1998, with $1.5 trillion in mortgage originations. Refinancing of existing mortgages was down from 1998's 50 percent share of total mortgage originations to 34 percent in 1999, still higher than an average year. Meanwhile, the ARM share in 1999 increased from 12 percent in 1998 to 22 percent of originations, reflecting the rise in overall interest rates. The MBA predicts that mortgage originations will amount to $962 billion and $912 billion, with refinancings representing 16 and 12 percent of originations, during 2000 and 2001, which is more in line with a normal pace. ARMs are expected to account for a larger share, 32 percent in 2000 and 34 percent in 2001, of total mortgage originations.[69] Fannie Mae projects that mortgage originations will fall to $967 billion for 2000, with 19 percent coming from refinancings, while 30 percent of originations will be in the form of ARMs.[70]

b. Affordable Lending in the Mortgage Market

In the past few years, conventional lenders, private mortgage insurers and the GSEs have begun implementing changes to extend homeownership opportunities to lower-income and historically underserved households. The industry has started offering more customized products, more flexible underwriting, and expanded outreach so that the benefits of the mortgage market can be extended to those who have not been adequately served through traditional products, underwriting, and marketing. This section summarizes recent initiatives undertaken by the industry to expand affordable housing. The section also discusses the significant role FHA plays in making affordable housing available to historically underserved groups.

Down Payments. GE Capital's 1989 Community Homebuyer Program first allowed homebuyers who completed a program of homeownership counseling to have higher than normal payment-to-income qualifying ratios, while providing less than the full 5-percent down payment from their own funds. Thus the program allowed borrowers to qualify for larger loans than would have been permitted under standard underwriting rules. Fannie Mae made this Community Homebuyer Program a part of its own offerings in 1990. Affordable Gold is a similar program introduced by Freddie Mac in 1992. Many of these programs allowed 2 percentage points of the 5-percent down payment to come from gifts from relatives or grants and unsecured loans from local governments or nonprofit organizations.

In 1994, the industry (including lenders, private mortgage insurers and the GSEs) began offering mortgage products that required down payments of only 3 percent, plus points and closing costs. Other industry efforts to reduce borrowers' up front costs have included zero-point-interest-rate mortgages and monthly insurance premiums with no up front component. These new plans eliminated large up front points and premiums normally required at closing.

During 1998, Fannie Mae introduced its ''Flexible 97'' and Freddie Mac introduced its ''Alt 97'' low down payment lending programs. Under these programs borrowers are required to put down only 3 percent of the purchase price. The down payment, as well as closing costs, can be obtained from a variety of sources, including gifts, grants or loans from a family member, the government, a non-profit agency and loans secured by life insurance policies, retirement accounts or other assets. While these programs started out slowly, by November 1998 both GSEs' programs reached volumes of $200 million per month.

In early 1999, Fannie Mae announced that it would introduce several changes to its mortgage insurance requirements. The planned result is to provide options for low downpayment borrowers to reduce their mortgage insurance costs. Franklin D. Raines, Fannie Mae chairman and chief executive officer stated, ''Now, thanks to our underwriting technology, our success in reducing credit losses, and innovative new arrangements with mortgage insurance companies, we can increase mortgage insurance options and pass the savings directly on to consumers.'' [71]

Partnerships. In addition to developing new affordable products, lenders and the GSEs have been entering into partnerships with local governments and nonprofit organizations to increase mortgage access to underserved borrowers. Fannie Mae's partnership offices in more than 40 central cities, serving to coordinate Fannie Mae's programs with local lenders and affordable housing groups, are an example of this initiative. Another example is the partnership Fannie Mae and the National Association for the Advancement of Colored People (NAACP) announced in January 1999.[72] Under this partnership, Fannie Mae will provide funding for technical assistance to expand the NAACP's capacity to provide homeownership information and counseling. It will also invest in NAACP-affiliated affordable housing development efforts and explore structures to assist the organization in leveraging its assets to secure downpayment funds for eligible borrowers. Furthermore, Fannie Mae will provide up to $110 million in special financing products, including a new $50 million underwriting experiment specifically tailored to NAACP clientele.

Freddie Mac does not have a partnership office structure similar to Fannie Mae's, but it has undertaken a number of initiatives in specific metropolitan areas. Freddie Mac also announced on January 15, 1999 that it entered into a broad initiative with the NAACP to increase minority homeownership. Through this alliance, Freddie Mac and the NAACP seek to expand community-based outreach, credit counseling and marketing efforts, and the availability of low-downpayment mortgage products with flexible underwriting guidelines. As part of the initiative, Freddie Mac has committed to purchase $500 million in mortgage loans.[73]

The programs mentioned above are examples of the partnership efforts undertaken by the GSEs. There are more partnership programs than can be adequately described here. Fuller descriptions of these programs are provided in their Annual Housing Activity Reports.

Underwriting Flexibility. Lenders, mortgage insurers, and the GSEs have also been modifying their underwriting standards to attempt to address the needs of families who find qualifying under traditional guidelines difficult. The goal of these underwriting changes is not to loosen underwriting standards, but rather to identify creditworthiness by alternative means that more appropriately measure the circumstances of lower-income households. The changes to underwriting standards include, for example:

- Using a stable income standard rather than a stable job standard. This particularly benefits low-skilled applicants who have successfully remained employed, even with frequent job changes.
- Using an applicant's history of rent and utility payments as a measure of creditworthiness. This measure benefits lower-income applicants who have not established a credit history.
- Allowing pooling of funds for qualification purposes. This change benefits applicants with extended family members.
- Making exceptions to the ''declining market'' rule and clarifying the treatment of mixed-use properties.[74] These changes benefit applicants from inner-city underserved neighborhoods.

These underwriting changes have been accompanied by homeownership counseling to ensure homeowners are ready for the responsibilities of homeownership. In addition, the industry has engaged in intensive loss mitigation to control risks.

Increase in Affordable Lending During the 1990s.[75] Home Mortgage Disclosure Act (HMDA) data suggest that the new industry initiatives may be increasing the flow of credit to underserved borrowers. Between 1993 and 1997 (prior to the heavy refinancing during 1998), conventional loans to low-income and minority families increased at much faster rates than loans to higher income and non-minority families. As shown below, over this period home purchase originations to African Americans and Hispanics grew by almost 60 percent, and purchase loans to low-income borrowers (those with incomes less than 80 percent of area median income) increased by 45 percent.

	1993–97 (in percent)	1995–97 (in percent)
All Borrowers	28.1	11.1
African Americans/Hispanics.	57.7	−0.2
Whites	21.9	8.9
Income Less Than 80% AMI	45.1	15.4
Income Greater Than 120% AMI	31.5	24.5

However, as also shown, in the latter part of this period conventional lending for some groups slowed significantly. Between 1995 and 1997, the slowing of the growth of home purchase originations was much greater for low-income borrowers than for higher-income borrowers. Moreover, even though remaining at near-peak levels in 1997, conventional home purchase originations to African Americans and Hispanics actually decreased by two-tenths of a percent over the past three years. It should be noted, however, that total loans (conventional plus government) originated to African-American and Hispanic borrowers increased between 1995 and 1997, but this was mainly the result of a 40.0 percent increase in FHA-insured loans originated for African-American and Hispanic borrowers.

Affordable Lending Shares by Major Market Sector. The focus of the different sectors of the mortgage market on affordable lending can be seen by examining Tables A.1a, A.1b, and A.1c. Tables A.1a and A.1b present affordable lending percentages for FHA, the GSEs, depositories (banks and thrift institutions), the conventional conforming sector, and the overall market.[76] The discussion below will center on Table A.1a, which provides information on home purchase loans and thus, homeownership opportunities. Table A.1b, which provides information on total (both home purchase and refinance) loans, is included to give a complete picture of mortgage activity. Both 1997 and 1998 HMDA data are included in these tables; the year 1997 represents a more typical year of mortgage activity than 1998, which was characterized by heavy refinance activity. The tables also include GSE data for 1999; the 1999 HMDA data will be incorporated when it is made available.

The affordable market shares reported in parentheses for the conventional conforming market in Tables A.1a and A.1b were derived by excluding the estimated number of B&C loans from the HMDA data. HUD's method for excluding B&C loans is explained in

Section F.3a of Appendix D. Because B&C lenders operate mainly in the refinance sector, excluding these loans from the market totals has little impact on the home purchase percentages reported in Table A.1a. The reductions in the market shares are more significant for total loans (reported in Table A.1b) which include refinance as well as home purchase loans.

The interpretation of the "distribution of business" percentages, reported in Table A.1a for several borrower and neighborhood characteristics, can be illustrated using the FHA percentage for low-income borrowers: during 1997, 47.5 percent of all FHA-insured home purchase loans in metropolitan areas were originated for borrowers with an income less than 80 percent of the local area median income. Table A.1c, on the other hand, presents "market share" percentages that measure the portion of all home purchase loans for a specific affordable lending category (such as low-income borrowers) accounted for by a particular sector of the mortgage market (FHA or the GSEs). In this case, the FHA market share of 33 percent for low-income borrowers is interpreted as follows: of all home purchase loans originated in metropolitan areas during 1997, 33 percent were FHA-insured loans. Thus, this "market share" percentage measures the importance of FHA to the market's overall funding of loans for low-income borrowers.

BILLING CODE 4210-27-P

Table A.1a

Affordable Lending Shares for Major Sectors of the Home Purchase Mortgage Market in Metropolitan Areas, 1997-1999*

			Conventional Conforming Market					
Borrower Characteristics	Total Market	FHA	Freddie Mac	Fannie Mae	Both GSEs	Depositories	Total Conforming Market	
Low-Income: 1997	32.0 %	47.5 %[1]	19.2 %	22.6 %	21.2 %	29.4 %	27.3	(27.3) %**
1998	32.3	49.1	22.3	25.0	23.9	29.9	27.8	(27.7)
1999			24.5	24.3	24.4			
African American: 1997	7.8	14.4	3.2	4.5	4.0	4.7	5.1	(5.0)
1998	7.4	14.2	3.2	3.8	3.6	4.8	4.9	(4.7)
1999			3.5	3.4	3.4			
Hispanic: 1997	8.7	17.8	5.1	6.3	5.8	5.1	5.9	(5.9)
1998	8.6	18.6	4.7	6.0	5.5	5.5	6.1	(6.0)
1999			5.5	6.0	5.8			
Minority: 1997	21.4	35.8	14.0	17.7	16.2	14.6	16.5	(16.3)
1998	21.0	36.5	13.1	16.3	15.0	15.2	16.6	(16.2)
1999			14.9	17.3	16.3			
Neighborhood Characteristics								
Low-Income Tract: 1997	12.8 %	19.1 %	7.9 %	9.5 %	8.9 %	12.0 %	10.9	(10.8) %
1998	12.3	18.7	7.9	9.4	8.8	12.1	10.7	(10.5)
1999			8.4	8.1	8.2			
High-Minority Tract: 1997	17.3	27.1	11.4	15.3	13.8	12.2	14.1	(13.9)
1998	16.9	27.0	10.8	14.0	12.7	12.6	14.1	(13.7)
1999			12.3	12.7	12.5			
High African-American Tract: 1997	5.8	9.6	3.0	4.8	4.1	4.7	4.6	(4.5)
1998	5.5	9.2	3.2	3.8	3.6	4.7	4.5	(4.3)
1999			3.4	3.0	3.2			
Underserved Areas: 1997	29.1	41.3	19.9	23.5	22.1	26.3	25.2	(25.0)
1998	28.2	41.2	20.0	22.5	21.7	26.1	24.6	(24.2)
1999			21.2	20.6	20.9			

Notes: All the data are for home purchase mortgages. The FHA, depositories, and the two market percentages are derived from 1997 and 1998 HMDA data. The GSE percentages are derived from the loan-level data that Fannie Mae and Freddie Mac provide to HUD. The GSE data include conventional home loans home loans purchased during 1997, 1998, and 1999; thus, these data include their purchases of seasoned loans (i.e., mortgages originated prior to 1997 or 1998 or 1999) as well as their purchases of mortgages originated during 1997, 1998, and 1999. The "Total Market" combines the government sector (FHA and VA loans) and the conventional conforming market. Thus, it includes all loans except "jumbo" loans above the 1997 (1998) conforming loan limit of $214,600 ($227,150). The "Depositories" data refer to new originations that are not sold by banks and thrift institutions during 1997-1998 and thus are retained in depository portfolios. The HMDA data for low-income borrowers exclude mortgages with a loan-to-borrower-income ratio greater than six. 1999 HMDA data were not available for the various non-GSE categories.

[1] Each percentage represents the share of a sector's portfolio accounted for by the borrower or neighborhood characteristic. For example, 47.5 percent of FHA-insured home loans were loans for low-income borrowers.

* It should be noted that Table A.1a includes only the GSEs' purchases of conventional loans; the same table in the proposed rule also included the GSEs' purchases of government (particularly FHA-insured) loans.

** The percentgages in parenthesis are HMDA-based market shares that have been adjusted to exclude the B&C portion of the subprime market. It should be recognized that there exists some uncertainty regarding the number of B&C loans in the HMDA data. The adjustment assumes that the B&C loans represent one-half of the subprime market. The adjustment for home purchase loans is small because subprime (B&C) loans are mainly refinance loans.

Table A.1b

Affordable Lending Shares for Major Sectors of the Home Purchase and Refinance Mortgage Market in Metropolitan Areas, 1997-1999*

			Conventional Conforming Market					
Borrower Characteristics	Total Market	FHA	Freddie Mac	Fannie Mae	Both GSEs	Depositories	Total Conforming Market	
Low-Income: 1997	31.1 %	47.1 %[1]	20.5 %	22.3 %	21.6 %	28.0 %	28.1	(27.3) %**
1998	28.1	48.2	21.6	22.2	21.9	26.2	25.8	(24.9)
1999			25.2	23.9	24.4			
African American: 1997	8.0	14.2	3.2	4.1	3.7	4.8	6.3	(5.6)
1998	6.5	13.7	3.0	3.1	3.0	4.4	5.0	(4.4)
1999			3.7	3.4	3.5			
Hispanic: 1997	7.4	17.8	4.8	5.7	5.3	4.6	5.4	(5.3)
1998	6.7	17.2	4.4	4.8	4.6	4.5	5.2	(5.1)
1998			5.6	5.6	5.6			
Minority: 1997	20.1	35.6	13.1	16.2	14.9	13.4	16.7	(15.9)
1998	18.0	34.8	12.2	13.8	13.1	13.1	15.3	(14.6)
1999			15.1	16.3	15.8			
Neighborhood Characteristics								
Low-Income Tract: 1997	13.6 %	18.9 %	8.6 %	9.5 %	9.1 %	11.9 %	12.7	(11.9) %
1998	11.5	17.4	8.1	8.2	8.1	10.9	10.7	(10.0)
1999			9.2	8.5	8.8			
High-Minority Tract: 1997	17.8	27.5	11.8	14.9	13.7	12.2	15.9	(14.9)
1998	16.2	27.2	11.5	12.9	12.3	12.2	14.5	(13.6)
1999			14.2	13.6	13.8			
High African-American Tract: 1997	7.1	9.7	3.5	4.5	4.1	5.1	6.6	(5.8)
1998	5.8	9.1	3.6	3.3	3.4	4.7	5.3	(4.6)
1999			4.0	3.5	3.7			
Underserved Areas: 1997	30.0	41.1	21.5	23.6	22.8	26.5	27.8	(26.7)
1998	26.8	39.9	20.9	21.2	21.1	25.0	24.8	(23.7)
1999			23.5	21.8	22.5			

Notes: All the data are for home purchase and refinance mortgages. The FHA, depositories, and the two market percentages are derived from 1997 and 1998 HMDA data. The GSE percentages are derived from the loan-level data that Fannie Mae and Freddie Mac provide to HUD. The GSE data include conventional loans purchased during 1997, 1998, and 1999; thus, these data include their purchases of seasoned loans (i.e., mortgages originated prior to 1997 or 1998 or 1999) as well as their purchases of mortgages originated during 1997, 1998, and 1999. The "Total Market" combines the government sector (FHA and VA loans) and the conventional conforming market. Thus, it includes all loans except "jumbo" loans above the 1997 (1998) conforming loan limit of $214,600 ($227,150). The "Depositories" data refer to new originations that are not sold by banks and thrift institutions during 1997-1998 and thus are retained in depository portfolios. The HMDA data for low-income borrowers exclude mortgages with a loan-to-borrower-income ratio greater than six. 1999 HMDA data were not available for the various non-GSE categories.

[1] Each percentage represents the share of a sector's portfolio accounted for by the borrower or neighborhood characteristic. For example, 47.1 percent of FHA-insured home loans were loans for low-income borrowers. It should be noted that due to FHA's streamline refinance program, borrower income data were not available for almost 70 percent of FHA's refinance loans.

* It should be noted that Table A.1b includes only the GSEs' purchases of conventional loans; the same table in the proposed rule also included the GSEs' purchases of government (particularly FHA-insured) loans.

** The percentgages in parenthesis are HMDA-based market shares that have been adjusted to exclude the B&C portion of the subprime market. It should be recognized that there exists some uncertainty regarding the number of B&C loans in the HMDA data. The adjustment assumes that the B&C loans represent one-half of the subprime market.

Table A.1c

FHA-Insured Loans and GSE Purchases As Shares of Home Purchase Mortgages Originated in Metropolitan Areas During 1997

	FHA-Insured	GSE Purchases
Low-Income Borrowers	33% [1]	28-30%
African-American and Hispanic Borrowers	44%	24-27%
Low-Income Tracts	35%	31%
High Minority Tracts	37%	35%
Underserved Areas[2]	33%	33%
All Loans	23%	44%

Source: 1997 HMDA data and 1997 GSE data.

Notes: The FHA figures (first column) refer to percentages of all newly-mortgaged home purchase mortgage loans (except jumbo loans above the conforming loan limit of $214,600) in metropolitan areas that were FHA insured during 1997. The GSE figures (second column) are defined differently-- they include GSE purchases in metropolitan areas during 1997 of both 1997 and prior-year conventional mortgage originations. (About one-fourth of the GSEs' 1997 purchases were mortgages originated prior to 1997.) See Table A.7a for an analyis that focuses only on the GSEs' purchases of 1997 mortgage originations. The second GSE figure for the borrower income and race variables is calculated by reallocating missing GSE data for the variables. As with the FHA data, the GSE purchases are expressed as a percentage of the total market in metropolitan areas. In this table, the "total market" includes all (government and conventional) home purchase mortgages originated in metropolitan areas during 1997 that were below the conforming loan limit of $214,600. The market data reported in HMDA are adjusted upward by 10 percent, which assumes that HMDA covers 90 percent of the metropolitan mortgage market. A lower coverage assumption would increase the market totals and thus reduce the GSE and FHA market shares. Assumptions about HMDA's coverage of FHA loans were based on a comparison of FHA loans as reported by 1996 HMDA data with FHA loans as reported by FHA for 1996. Thus, an updating of this FHA coverage analysis could change the FHA market shares reported here.

[1] That is, it is estimated that FHA insured for 33 percent of all home purchase loans that were originated during 1997 and were for low-income borrowers in metropolitan areas.

[2] Metropolitan census tracts with (1) median income less than or equal to 90 percent of AMI or (2) minority concentration greater than or equal to 30 percent and tract median income less than or equal to 120 percent of AMI.

BILLING CODE 4210–27–C

Four main conclusions may be drawn from the data presented in Tables A.1a and A.1c. First, FHA places much more emphasis on affordable lending than the other market sectors. Low-income borrowers accounted for 47.5 percent of FHA-insured loans during 1997, compared with 21.2 percent of the home loans purchased by the GSEs, 29.4 percent of home loans retained by depositories, and 27.3 percent of conventional conforming loans.[77] Likewise, 41.3 percent of FHA-insured loans were originated in underserved census tracts, while only 22.1 percent of the GSE-purchased loans and 25.2 percent of conventional conforming loans were originated in these tracts.[78] As shown in Table A.1c, while FHA insured only 23 percent of all home purchase mortgages originated in metropolitan areas during 1997, it insured 33 percent of all mortgages originated in underserved areas.[79]

Second, the affordable lending shares for the conventional conforming sector are low for minority borrowers, particularly African-American borrowers. For example, African-American borrowers accounted for only 5.0 percent of all conventional conforming home purchase loans originated during 1997 and 1998, compared with over 14 percent of FHA-insured loans and over 7.5 percent of all home purchase loans originated in the market. The African-American share of the GSEs' purchases is even lower than the corresponding share for the conventional conforming market. In 1998, home purchase loans to African-Americans accounted for 3.2 percent of Freddie Mac's purchases, 3.8 percent of Fannie Mae's purchases, and 4.9 percent of loans originated in the conventional conforming market (or 4.7 percent if B&C loans are excluded from the market definition).[80] As shown in Table A.1a, the results change when other minority borrowers are considered. Fannie Mae purchased mortgages for minority borrowers and their neighborhoods at higher rates than these loans were originated by primary lenders in the conventional conforming market. During 1997, 17.7 percent of Fannie Mae's purchases were mortgages for minority borrowers, compared with 16.5 percent of conventional conforming loans. During 1998, 14.0 percent of Fannie Mae's purchases financed homes in high-minority census tracts, compared with 14.1 percent of conventional conforming loans (or 13.7 percent without B&C loans). However, as suggested by the data presented above, the minority lending performance of conventional lenders has been subject to much criticism in recent studies. These studies contend that primary lenders in the conventional market are not doing their fair

share of minority lending which forces minorities, particularly African-American and Hispanic borrowers, to the more costly FHA and subprime markets.[81]

Third, the GSEs, but particularly Freddie Mac, lagged the conventional conforming market in funding affordable loans for low-income families and their neighborhoods during 1997 and 1998—in 1998, for example, low-income census tracts accounted for 7.9 percent of Freddie Mac's purchases, 9.4 percent of Fannie Mae's purchases, 12.1 percent of loans retained by depositories, and 10.7 percent of all home loans originated by conventional conforming lenders. This pattern of Freddie Mac lagging all market participants during 1997 and 1998 holds up for all of the borrower and neighborhood categories examined in Table A.1a. One encouraging trend for Freddie Mac is the significant increases in its purchases of affordable loans between 1997 and 1999—for example, from 19.2 percent to 24.5 percent for low-income borrowers, resulting in Freddie Mac surpassing Fannie Mae in the funding of home loans for low-income families. With respect to the GSEs' total (combined home purchase and refinance) purchases, Freddie Mac matched or out-performed Fannie Mae in 1999 on all categories in Table A.1b except minority borrowers. A more complete analysis of the GSEs' purchases of mortgages qualifying for the housing goals is provided below in Section E.

Finally, within the conventional conforming market, depository institutions stand out as important providers of affordable lending for lower-income families and their neighborhoods (see Table A.1a).[82] Depository lenders have extensive knowledge of their communities and direct interactions with their borrowers, which may enable them to introduce flexibility into their underwriting standards without unduly increasing their credit risk. Another important factor influencing the types of loans held by depository lenders is the Community Reinvestment Act, which is discussed next.

Seasoned CRA Loans. The Community Reinvestment Act (CRA) requires depository institutions to help meet the credit needs of their communities. CRA provides an incentive for lenders to initiate affordable lending programs with underwriting flexibility.[83] CRA loans are typically made to low- and moderate-income borrowers earning less than 80 percent of median income for their area, and in moderate-income neighborhoods. They are usually smaller than typical conventional mortgages and also are likely to have a high LTV, high debt-to-income ratios, no payment reserves, and may not be carrying private mortgage insurance (PMI). Generally, at the time CRA loans are originated, many do not meet the underwriting guidelines required in order for them to be purchased by one of the GSEs. Therefore, many of the CRA loans are held in portfolio by lenders, rather than sold to Fannie Mae or Freddie Mac. On average, CRA loans in a pool have three to four years seasoning.[84]

However, because of the size, LTV and PMI characteristics of CRA loans, they have slower prepayment rates than traditional mortgages, making them attractive for securitization. CRA loan delinquencies also have very high cure rates.[85] For banks, selling CRA pools will free up capital to make new CRA loans. As a result, the CRA market segment may provide an opportunity for Fannie Mae and Freddie Mac to expand their affordable lending programs. In mid-1997, Fannie Mae launched its Community Reinvestment Act Portfolio Initiative. Under this pilot program Fannie Mae purchases seasoned CRA loans in bulk transactions taking into account track record as opposed to relying just on underwriting guidelines. By the end of 1997, Fannie Mae had financed $1 billion in CRA loans through this pilot.[86] With billions of dollars worth of CRA loans in bank portfolios the market for securitization should improve. Section E, below, presents data showing that Fannie Mae's purchases of CRA-type seasoned mortgages have increased recently. Fannie Mae also started another pilot program in 1998 where they purchase CRA loans on a flow basis, as they are originated. Results from this four-year $2 billion nationwide pilot should begin to be reflected in the 1999 production data.[87]

c. Potential Homebuyers

While the growth in affordable lending and homeownership has been strong in recent years, attaining this Nation's housing goals will not be possible without tapping into the vast pool of potential homebuyers. The National Homeownership Strategy has set a goal of achieving a homeownership rate of 67.5 percent by the end of the year 2000. Due to the aging of the baby boomers, this rate reached an annual record of 66.8 percent in 1999, and rose further to 67.1 percent in the first quarter of 2000. This section discusses the potential for further increases beyond those resulting from current demographic trends.

The Urban Institute estimated in 1995 that there was a large group of potential homebuyers among the renter population who were creditworthy enough to qualify for homeownership.[88] Of 20.3 million renter households having low- or moderate-incomes, roughly 16 percent were better qualified for homeownership than half of the renter households who actually did become homeowners over the sample period. When one also considered their likelihood of defaulting relative to the average expected for those who actually moved into homeownership, 10.6 percent, or 2.15 million, low- and moderate-income renters were better qualified for homeownership, assuming the purchase of a home priced at or below median area home price. These results indicate the existence of a significant lower-income population of low-risk potential homebuyer households that might become homeowners with continuing outreach efforts by the mortgage industry.

Other surveys conducted by Fannie Mae indicate that renters desire to become homeowners, with 60 percent of all renters indicating in the July 1998 National Housing Survey that buying a home ranks from being a ''very important priority'' to their ''number-one priority,'' the highest level found in any of the seven National Housing Surveys dating back to 1992. Immigration is expected to be a major source of future homebuyers—Fannie Mae's 1995 National Housing Survey reported that immigrant renter household were 3 times as likely as renter households in general to list home purchase as their ''number-one priority.''

Further increases in the homeownership rate also depend on whether or not recent gains in the homeowning share of specific groups are maintained. Minorities accounted for 18 percent of homeowners in 1999, but the Joint Center for Housing Studies has pointed out that minorities account were responsible for nearly 40 percent of the 6.9 million increase in the number of homeowners between 1994 and 1999. Minority demand for homeownership continues to be high, as reported by the Fannie Mae Foundation's April 1998 Survey of African Americans and Hispanics. For example, 38 percent of African Americans surveyed said it is fairly to very likely that they will buy a home in the next 3 years, compared with 25 percent in 1997.[89] The survey also reports that 67 percent of African Americans and 65 percent of Hispanics cite homeownership as being a ''very important priority'' or ''number-one priority.''[90]

The Joint Center for Housing Studies has stated that if favorable economic and housing market trends continue, and if additional efforts to target mortgage lending to low-income and minority households are made, the homeownership rate could reach 70 percent by 2010.

d. Automated Mortgage Scoring

This, and the following two sections, discuss special topics that have impacted the primary and secondary mortgage markets in recent years. They are automated mortgage scoring, subprime loans and manufactured housing.

Automated mortgage scoring was developed as a high-tech tool with the purpose of identifying credit risks in a more efficient manner. As time and cost are reduced by the automated system, more time can be devoted by underwriters to qualifying marginal loan applicants that are referred by the automated system for more intensive review. Fannie Mae and Freddie Mac are in the forefront of new developments in automated mortgage scoring technology. Both enterprises released automated underwriting systems in 1995—Freddie Mac's Loan Prospector and Fannie Mae's Desktop Underwriter. Each system uses numerical credit scores, such as those developed by Fair, Isaac, and Company, and additional data submitted by the borrower, such as loan-to-value ratios and available assets, to calculate a mortgage score that evaluates the likelihood of a borrower defaulting on the loan. The mortgage score is in essence a recommendation to the lender to accept the application, or to refer it for further review through manual underwriting. Accepted loans benefit from reduced document requirements and expedited processing.

Along with the promise of benefits, however, automated mortgage scoring has raised concerns. These concerns are related to the possibility of disparate impact and the proprietary nature of the mortgage score inputs. The first concern is that low-income

and minority homebuyers will not score well enough to be accepted by the automated underwriting system resulting in fewer getting loans. The second concern relates to the ''black box'' nature of the scoring algorithm. The scoring algorithm is proprietary and therefore it is difficult, if not impossible, for applicants to know the reasons for their scores.

Federal Reserve Study. Four economists at the Board of Governors of the Federal Reserve System conducted a conceptual and empirical study on the use of credit scoring systems in mortgage lending.[91] Their broad assessment of the models was that:

> ''[C]redit scoring is a technological innovation which has increased the speed and consistency of risk assessment while reducing costs. Research has uniformly found that credit history scores are powerful predictors of future loan performance. All of these features suggest that credit scoring is likely to benefit both lenders and consumers.''[92]

The authors evaluated the current state-of-the-art of development of credit scoring models, focusing particularly on the comprehensiveness of statistical information used to develop the scoring equations. They presented a conceptual framework in which statistical predictors of default include regional and local market conditions, individual credit history, and applicants' characteristics other than credit history. The authors observed that the developers of credit scoring models have tended to disregard regional and local market conditions in model construction, and such neglect may tend to reduce the predictive accuracy of scoring equations. To determine the extent of the problem, they analyzed Equifax credit scores together with mortgage payment history data for households living in each of 994 randomly selected counties from across the country. The authors used these data to assess the variability of credit scores relative to county demographic and economic characteristics.

The authors found a variety of pieces of evidence which confirmed their suspicions: Credit scores tended to be relatively lower in counties with relatively high unemployment rates, areas that have experienced recent rises in unemployment rates, areas with high minority population, areas with lower median educational attainment, areas with high percentages of individuals living in poverty, areas with low median incomes and low house values, and areas with relatively high proportions of younger populations and lower proportions of older residents.

This analysis suggests the need for a two-step process of improvement of the equations and their application, in which (a) new statistical analyses would be performed to incorporate the omitted environmental variables, and (b) additional variables bearing on individuals' prospective and prior circumstances will be taken into account in determining their credit scores.

These authors also discussed the relationship between credit scoring and discrimination. They found a significant statistical relationship between credit history scores and minority composition of an area, after controlling for other locational characteristics. From this, they concluded that concerns about potential disparate impact merit future study. However, a disparate impact study must include a business justification analysis to demonstrate the ability of the score card to predict defaults and an analysis of whether any alternative, but equally-predictive, score card has a less disproportionate effect.

Urban Institute Study. The Urban Institute submitted a report to HUD in 1999 on a four-city reconnaissance study of issues related to the single-family underwriting guidelines and practices of Fannie Mae and Freddie Mac.[93] The study included interviews with informants knowledgeable about mortgage markets and GSE business practices on the national level and in the four cities.

The study observed, as did the Fed study summarized above, that minorities are more likely than whites to fail underwriting guidelines. Therefore, as a general matter the GSEs' underwriting guidelines—as well as the underwriting guidelines of others in the industry—do have disproportionate adverse effects on minority loan applicants.[94]

Based on the field reconnaissance in four metropolitan housing markets, the study made several observations about the operation of credit scoring systems in practice, as follows:[95]

- Credit scores are used in mortgage underwriting to separate loans that must be referred to loan underwriters from loans that may be forwarded directly to loan officers; for example, a 620 score was mentioned by some respondents as the line below which the loan officer must refer the loan for manual underwriting. It is very difficult for applicants with low credit scores to be approved for a mortgage, according to the lenders interviewed by the Urban Institute.
- Some respondents believe the GSEs are applying cutoffs inflexibly, while others believe that lenders are not taking advantage of flexibility allowed by the GSEs.
- Some respondents believe that credit scores may not be accurate predictors of loan performance, despite the claims of users of these scores. Respondents who voiced this opinion tended to base these observations on their personal knowledge of low-income borrowers who are able to keep current on payments, rather than on an understanding of statistical validation studies of the models.
- Respondents indicate that the ''black box'' nature of the credit scoring process creates uncertainty among loan applicants and enhances the intimidating nature of the process for them.

Based on these findings, the authors concluded that ''the use of automated underwriting systems and credit scores may place lower-income borrowers at a disadvantage when applying for a loan, even though they are acceptable credit risks.''

The Urban Institute report included several recommendations for ongoing HUD monitoring of the GSEs' underwriting including their use of credit scoring models. One suggestion was to develop a data base on the GSEs' lending activities relevant for analysis of fair lending issues. The data would include credit scores to reveal the GSEs' patterns of loan purchase by credit score. A second suggestion was to conduct analyses of the effects of credit scoring systems using a set of ''fictitious borrower profiles'' that would reveal how the systems reflect borrower differences in income, work history, credit history, and other relevant factors. HUD has begun following up on the Urban Institute's recommendations. For instance, in February 1999, HUD requested the information and data needed to analyze the GSEs' automated underwriting systems.

Concluding Observations. It is important to note that both of the studies reviewed above comment on the problem of correlation of valid predictors of default (income, etc.) with protected factors (race, etc.). Both studies suggest that, ultimately, the question whether mortgage credit scoring models raise any problems of legal discrimination based on disparate effects would hinge on a business necessity analysis and analysis of whether any alternative underwriting procedures with less adverse disproportionate effect exist.

It should be noted that the GSEs have taken steps to make their automated underwriting systems more transparent. Both Fannie Mae and Freddie Mac have published the factors used to make loan purchase decisions in Desktop Underwriter and Loan Prospector, respectively. The three most predictive factors are down payment, credit performance or bureau score, and financial cushion.

In response to criticisms aimed at using FICO scores in mortgage underwriting, Fannie Mae's new version of Desktop Underwriter (DU) 5.0 replaces credit scores with specific credit characteristics and provides expanded approval product offerings for borrowers who have blemished credit. The specific credit characteristics include variables such as past delinquencies; credit records, foreclosures, and accounts in collection; credit card line and use; age of accounts; and number of credit inquiries.

e. Subprime Loans

Another major development in housing finance has been the recent growth in subprime loans. In the past borrowers traditionally obtained an ''A'' quality (or ''investment grade'') mortgage or no mortgage. However, an increasing share of recent borrowers have obtained ''subprime'' mortgages, with their quality denoted as ''A-minus,'' ''B,'' ''C,'' or even ''D.'' The subprime borrower typically is someone who has experienced credit problems in the past or has a high debt-to-income ratio.[96] Through the first nine months of 1998, ''A-minus'' loans accounted for 63 percent of the subprime market, with ''B'' loans representing 24 percent and ''C'' and ''D'' loans making up the remaining 13 percent.[97]

Because of the perceived higher risk of default, subprime loans typically carry mortgage rates that in some cases are substantially higher than the rates on prime mortgages. While in many cases these perceptions about risk are accurate, some housing advocates have expressed concern that there are a number of cases in which the perceptions are actually not accurate. The Community Reinvestment Association of North Carolina (CRA–NC), conducted a study based on HMDA data, records of deeds, and personal contacts with affected borrowers in Durham County, NC. They found that

subprime lenders make proportionally more loans to minority borrowers and in minority neighborhoods than to whites and white neighborhoods at the same income level. African-American borrowers represented 20 percent of subprime mortgages in Durham County, but only 10 percent of the prime market.[98] As a result, these borrowers can end up paying very high mortgage rates that more than compensate for the additional risks to lenders. High subprime mortgage rates make homeownership more expensive or force subprime borrowers to buy less desirable homes than they would be able to purchase if they paid lower prime rates on their mortgages.

The HMDA database does not provide information on interest rates, points, or other loan terms that would enable researchers to separate more expensive subprime loans from other loans. However, the Department has identified 200 lenders that specialize in such loans, providing some information on the growth of this market.[99] This data shows that mortgages originated by subprime lenders, and reported in the HMDA data, has increased from 104,000 subprime loans in 1993 to 210,000 in 1995 and 997,000 in 1998. Most of the subprime loans reported in the HMDA data are refinance loans; for example, refinance loans accounted for 80 percent of the subprime loans reported by the specialized subprime lenders in 1997.

An important question is whether borrowers in the subprime market are sufficiently creditworthy to qualify for more traditional loans. Freddie Mac has said that one of the promises of automated underwriting is that it might be better able to identify borrowers who are unnecessarily assigned to the high-cost subprime market. It has estimated that 10–30 percent of borrowers who obtain mortgages in the subprime market could qualify for a conventional prime loan through Loan Prospector, its automated underwriting system.[100]

Most of the subprime loans that were purchased by the GSEs in past years were purchased through structured transactions. Under this form of transaction, whole groups of loans are purchased, and not all loans necessarily meet the GSEs' traditional underwriting guidelines. The GSEs typically guarantee the so-called ''A'' tranche, which is supported by a ''B'' tranche that covers default costs.

An expanded GSE presence in the subprime market could be of significant benefit to lower-income families, minorities, and families living in underserved areas. HUD's research shows that in 1998: African-Americans comprised 5.0 percent of market borrowers, but 19.4 percent of subprime borrowers; Hispanics made up 5.2 percent of market borrowers, but 7.8 percent of subprime borrowers; very low-income borrowers accounted for 12.1 percent of market borrowers, but 23.3 percent of subprime borrowers; and borrowers in underserved areas amounted to 24.8 percent of market borrowers, but 44.7 percent of subprime borrowers.[101]

The GSEs. Fannie Mae and Freddie Mac have shown increasing interest in the subprime market throughout the latter half of the 1990s. Both GSEs now purchase A-minus and Alt-A mortgages on a flow basis.[102] The GSEs' interest in the subprime market has coincided with a maturation of their traditional market (the conforming conventional mortgage market), and their development of mortgage scoring systems, which they believe allows them to accurately model credit risk.

Freddie Mac has been the more aggressive GSE in the subprime market. In early 1996, Freddie Mac stated that its interest in subprime loans was for the development of a subprime module for Loan Prospector (Freddie Mac's automated underwriting system), a joint project with Standard & Poor's to score subprime mortgages.[103] Freddie Mac increased its subprime business through structured transactions, with Freddie Mac guaranteeing the senior classes of senior/subordinated securities backed by home equity loans. Between 1997 and 1999, Freddie Mac was involved in 16 transactions totaling $8.1 billion, with Freddie Mac's 1999 business accounting for over $5 billion of this total.[104] During 1999, Freddie Mac did four transactions with Option One Mortgage, including its largest subprime deal to date, $930.4 million, in November of that year.

Freddie Mac also offers a product for A-minus borrowers through its Loan Prospector system and it recently announced a product similar to the ''Timely Payment Rewards'' mortgage offered by Fannie Mae. In total, Freddie Mac purchased approximately $12 billion in subprime loans during 1999—$7 billion of A-minus and alternative-A loans through its standard flow programs and $5 billion through structured transactions.[105] Freddie Mac is projecting to increase its subprime purchases to $17.5 billion in the year 2000, consisting of $9.5 billion in subprime flow purchases and $8.0 billion in security purchases.[106]

Fannie Mae has not focused on structured transactions as Freddie Mac has. However, Fannie Mae initiated its Timely Payments product in September 1999, under which borrowers with slightly damaged credit can qualify for a mortgage with a higher interest rate than prime borrowers. Under this product, a borrower's interest rate will be reduced by 100 basis points if the borrower makes 24 consecutive monthly payments without a delinquency. Fannie Mae has revamped its automated underwriting system (Desktop Underwriter) so loans that were traditionally referred for manual underwriting are now given four risk classifications, three of which identify potential A-minus loans.[107]

Because the GSEs have a funding advantage over other market participants, they have the ability to underprice their competitors and increase their market share.[108] This advantage, as has been the case in the prime market, could allow the GSEs to eventually play a significant role in the subprime market. As the GSEs become more comfortable with subprime lending, the line between what today is considered a subprime loan versus a prime loan will likely deteriorate, making expansion by the GSEs look more like an increase in the prime market. Since, as explained earlier in this chapter, one could define a prime loan as one that the GSEs will purchase, the difference between the prime and subprime markets will become less clear. This melding of markets could occur even if many of the underlying characteristics of subprime borrowers and the market's (*i.e.,* non-GSE participants) evaluation of the risks posed by these borrowers remain unchanged.

Increased involvement by the GSEs in the subprime market might result in more standardized underwriting guidelines. As the subprime market becomes more standardized, market efficiencies might possibly reduce borrowing costs. Lending to credit-impaired borrowers will, in turn, increasingly make good business sense for the mortgage market.

f. Loans on Manufactured Housing

Manufactured housing provides low-cost, basic-quality housing for millions of American households, especially younger, lower-income families in the South, West, and rural areas of the nation. Many households live in manufactured housing because they simply cannot afford site-built homes, for which the construction cost per square foot is much higher. Because of its affordability to lower-income families, manufactured housing is one of the fastest-growing parts of the American housing market.[109]

The American Housing Survey found that 16.3 million people lived in 6.5 million manufactured homes in the United States in 1997, and that such units accounted for 6.6 percent of the occupied housing stock, an increase from 5.4 percent in 1985. Shipments of manufactured homes rose steadily from 171,000 units in 1991 to 373,000 units in 1998, before tailing off to 348,000 units in 1999. The industry grew much faster over this period in sales volume, from $4.7 billion in 1991 to $15.3 billion in 1999, reflecting both higher sales prices and a major shift from single-section homes to multisection homes, which contain two or three units which are joined together on site.[110]

Despite their eligibility for mortgage financing, only about 10–20 percent of manufactured homes [111] are financed with mortgages secured by the property, even though half of owners hold title to the land on which the home is sited. Most purchasers of manufactured homes take out a personal property loan on the home and, if they buy the land, a separate loan to finance the purchase of the land.

In 1995, the average loan size for a manufactured home was $24,500, with a 15 percent down payment and term of 13 years. Rates averaged about 3 percentage points higher than those paid on 15-year fixed rate mortgages, but borrowers benefit from very rapid loan-processing and underwriting standards that allow high debt payment-to-income (''back-end'') ratios.

Traditionally loans on manufactured homes have been held in portfolio, but a secondary market has emerged since trading of asset-backed securities collateralized by manufactured home loans was initiated in 1987. Investor interest has been reported as strong due to reduced loan losses, low prepayments, and eligibility for packaging of such loans into real estate mortgage investment conduits (REMICs). The GSEs'

underwriting standards allow them to buy loans on manufactured homes that meet the HUD construction code, if they are owned, titled, and taxed as real estate.

The GSEs are beginning to expand their roles in the manufactured home loan market.[112] A representative of the Manufactured Housing Institute has stated that ''Clearly, manufactured housing loans would fit nicely into Fannie Mae's and Freddie Mac's affordable housing goals.'' [113] Given that manufactured housing loans often carry relatively high interest rates, an enhanced GSE role could also improve the affordability of such loans to lower-income families.

D. Factor 2: Economic, Housing, and Demographic Conditions: Multifamily Mortgage Market

Since the early 1990s, the multifamily mortgage market has become more closely integrated with global capital markets, approaching the same degree as the single-family mortgage market by the end of the decade. In 1999, 58.8 percent of multifamily mortgage originations were securitized, compared with 60.8 percent of single-family originations.[114]

Loans on multifamily properties are typically viewed as riskier than their single-family counterparts. Property values, vacancy rates, and market rents in multifamily properties appear to be highly correlated with local job market conditions, creating greater sensitivity of loan performance to economic conditions than may be experienced in the single-family market.

Within much of the single-family mortgage market, the GSEs occupy an undisputed position of industrywide dominance, holding loans or guarantees with an unpaid principal comprising 39.0 percent of outstanding single-family mortgage debt and guarantees as of the end of 1999. In multifamily, the overall market presence of the GSEs is more modest. At the end of 1999, the GSEs' direct holdings and guarantees represented 17.3 percent of outstanding multifamily mortgage debt.[115] It is estimated that GSE acquisitions of multifamily loans originated during 1997 represented 24 percent of the conventional multifamily origination market.[116]

1. Special Issues and Unmet Needs

Recent studies have documented a pressing unmet need for affordable housing. For example, the Harvard University Joint Center for Housing Studies, in its report *State of the Nation's Housing 2000,* points out that:

- Despite recent job and income growth, renters in the bottom quarter of the income distribution experienced a decline in real income from 1996–1998, at a time when real rents increased by 2.3 percent.
- Between 1993 and 1995, the number of unsubsidized units affordable to very low-income households decreased by nearly 900,000 units, or 8.6 percent.
- One-quarter of very low-income working households paid 30 percent or more of their incomes for housing.
- Rising home prices and interest rates are raising the cost of homeownership.
- Reductions in federal subsidies may contribute to further losses in the affordable stock.

The affordable housing issues go beyond the need for greater efficiency in delivering capital to the rental housing market. In many cases, subsidies are needed in order for low-income families to afford housing that meets adequate occupancy and quality standards. Nevertheless, greater access to reasonably priced capital can reduce the rate of losses to the stock, and can help finance the development of new or rehabilitated affordable housing when combined with locally funded subsidies. Development of a secondary market for affordable housing is one of many tools needed to address these issues.

Recent scholarly research suggests that more needs to be done to develop the secondary market for affordable multifamily housing.[117] Cummings and DiPasquale (1998) point to the numerous underwriting, pricing, and capacity building issues that impede the development of this market. They suggest the impediments can be addressed through the establishment of affordable lending standards, better information, and industry leadership.

- More consistent standards are especially needed for properties with multiple layers of subordinated financing (as is often the case with affordable properties allocated Low Income Housing Tax Credits and/or local subsidies).
- More comprehensive and accurate information, particularly with regard to the determinants of default, can help in setting standards for affordable lending.
- Leadership from the government or from a GSE is needed to develop consensus standards; it would be unprofitable for any single purely private lender to provide because costs would be borne privately but competitors would benefit.

2. Underserved Market Segments

There is evidence that segments of the multifamily housing stock have been affected by costly, difficult, or inconsistent availability of mortgage financing. Small properties with 5–50 units represent an example. The fixed-rate financing that is available is typically structured with a 5–10 year term, with interest rates as much as 150 basis points higher than those on standard multifamily loans, which may have adverse implications for affordability.[118] This market segment appears to be dominated by thrifts and other depositories who keep these loans in portfolio. In part to hedge interest rate risk, loans on small properties are often structured as adjustable-rate mortgages.

Multifamily properties with significant rehabilitation needs have experienced difficulty in obtaining mortgage financing. Properties that are more than 10 years old are typically classified as ''C'' or ''D'' properties, and are considered less attractive than newer properties by many lenders and investors.[119] Multifamily rehabilitation loans accounted for only 0.5 percent of units backing Fannie Mae's 1998 purchases and for 1.6 percent in 1999. These loans accounted for 1.9 percent of Freddie Mac's 1998 multifamily total (with none indicated in 1999).

Historically, the flow of capital into housing for seniors has been characterized by a great deal of volatility. A continuing lack of long-term, fixed-rate financing jeopardizes the viability of a number of some properties. There is evidence that financing for new construction remains scarce.[120] Both Fannie Mae and Freddie Mac offer Senior Housing pilot programs.

Under circumstances where mortgage financing is difficult, costly, or inconsistent, GSE intervention may be desirable. Follain and Szymanoski (1995) say that ''a [market] failure occurs when the market does not provide the quantity of a particular good or service at which the marginal social benefits of another unit equal the marginal social costs of producing that unit. In such a situation, the benefits to society of having one more unit exceeds the costs of producing one more unit; thus, a rationale exists for some level of government to intervene in the market and expand the output of this good.''[121] It can be argued that the GSEs have the potential to contribute to the mitigation of difficult, costly, or inconsistent availability of mortgage financing to segments of the multifamily market because of their funding cost advantage, and even a responsibility to do so as a consequence of their public missions, especially in light of the limitations on direct government resources available to multifamily housing in today's budgetary environment.

3. Recent History and Future Prospects in Multifamily

The expansion phase of the real estate cycle been well underway for several years now, at least insofar as it pertains to multifamily. Rental rates have been rising, and vacancy rates have been relatively stable, contributing to a favorable environment for multifamily construction and lending activity.[122] Delinquencies on commercial mortgages reached an 18-year low in 1997.[123] Some analysts have warned that recent prosperity may have contributed to overbuilding in some markets and deterioration in underwriting standards.[124] A September 1998, report by the Office of the Comptroller of the Currency anticipates continued decline in credit standards at the 77 largest national banks as a consequence of heightened competition between lenders, and the Federal Deposit Insurance Corporation has expressed similar concerns regarding 1,212 banks it examined.[125]

Growth in the multifamily mortgage market has been fueled by investor appetites for Commercial Mortgage Backed Securities (CMBS). Nonagency securitization of multifamily and commercial mortgages received an initial impetus from the sale of nearly $20 billion in mortgages acquired by the Resolution Trust Corporation (RTC) from insolvent depositories in 1992–1993. Nonagency issuers typically enhance the credit-worthiness of their offerings through the use of senior-subordinated structures, combining investment-grade senior tranches with high-yield, below investment-grade junior tranches designed to absorb any credit losses.[126]

Because of their relatively low default risk in comparison with loans on other types of income property, multifamily mortgages are often included in mixed-collateral financing structures including other commercial

property such as office buildings, shopping centers, and storage warehouses. CMBS volume reached $30 billion in 1996; $44 billion in 1997; $78 billion in 1998; and $67 billion in 1999. Approximately 25 percent of each year's total is comprised of multifamily loans.[127]

During the financial markets turmoil in the fall of 1998, investors expressed reluctance to purchase the subordinated tranches in CMBS transactions, jeopardizing the ability of issuers to provide a cost-effective means of credit-enhancing the senior tranches as well.[128] When investor perceptions regarding credit risk on subordinated debt escalated rapidly in August and September, the GSEs, which do not typically use subordination as a credit enhancement, benefited from a ''flight to quality.'' [129]

Depository institutions and life insurance companies, formerly among the largest holders of multifamily debt, have experienced a decline in their share of the market at the expense of CMBS conduits.[130] Increasingly, depositories and life insurance companies are participating in multifamily markets by holding CMBS rather than whole loans, which are often less liquid, more expensive, and subject to more stringent risk-based capital standards.[131] In recent years a rising proportion of multifamily mortgages have been originated to secondary market standards, a consequence of a combination of factors including the establishment of a smoothly functioning securitization ''infrastructure;'' the greater liquidity of mortgage-related securities as compared with whole loans; and the desire for an ''exit strategy'' on the part of investors.[132]

Because of their limited use of mortgage debt, increased equity ownership of multifamily properties by REITs may have contributed to increased competition among mortgage originators, servicers and investors for a smaller mortgage market than would otherwise exist. During the first quarter of 1997, REITs accounted for 45 percent of all commercial real estate transactions, and the market capitalization of REITs at the end of January 1998 exceeded that of outstanding CMBS.[133]

Demographic factors will contribute to continued steady growth in the new construction segment of the multifamily mortgage market. The number of apartment households is expected to grow approximately 1.1 percent per year over 2000–2005. Taking into consideration losses from the housing stock, it has been projected that approximately 250,000–275,000 additional multifamily units will be needed in order to meet anticipated demand.[134] This flow is approximately half that of the mid-1980s, but twice that of the depressed early 1990s. In 1999, 291,800 apartment units were completed. [135]

The high degree of volatility of multifamily new construction experienced historically is consistent with a view that this sector of the housing market is driven more by fluctuations in the availability of financing than by demographic fundamentals. The stability and liquidity of the housing finance system is therefore a significant determinant of whether the volume of new construction remains consistent with demand.

Past experience suggests that the availability of financing for all forms of commercial real estate is highly sensitive to the state of the economy. In periods of economic uncertainty, lenders and investors sometimes raise underwriting and credit standards to a degree that properties that would be deemed creditworthy under normal circumstances are suddenly unable to obtain financing. Ironically, difficulty in obtaining financing may contribute to a fall in property values that can exacerbate a credit crunch.[136] The sensitivity of commercial real estate markets to investor perceptions regarding global volatility was demonstrated by the rise in CMBS spreads in September, 1998.[137] Thus, market disruptions could have adverse implications on U.S. commercial and residential mortgage markets.

4. Recent Performance and Effort of the GSEs Toward Achieving the Low- and Moderate-Income Housing Goal: Role of Multifamily Mortgages

The GSEs have rapidly expanded their presence in the multifamily mortgage market in the period since the housing goals were established in 1993. Fannie Mae has played a larger role in the multifamily market, with a portfolio of $47.4 billion in retained loans and outstanding guarantees, compared with $16.8 billion for Freddie Mac.[138] Freddie Mac has successfully rebuilt its multifamily program after a three-year hiatus during 1991–1993 precipitated by widespread defaults.

Multifamily loans represent a relatively small portion of the GSEs' business activities. For example, multifamily loans held in portfolio or guaranteed by the GSEs at the end of 1999 represented less than three percent of their combined single- and multi-family holdings and guarantees. In comparison, multifamily mortgages *not* held or guaranteed by the GSEs represent approximately ten percent of the overall non-GSE stock of mortgage debt.

However, the multifamily market contributes disproportionately to GSE purchases meeting both the Low- and Moderate-Income and Special Affordable Housing goals. In 1999, Fannie Mae's multifamily purchases represented 9.5 percent of their total acquisition volume, measured in terms of dwelling units. Yet these multifamily purchases comprised 20.4 percent of units qualifying for the Low- and Moderate-Income Housing Goal, and 31.3 percent of units meeting the Special Affordable goal. Multifamily purchases were 8.2 percent of units backing Freddie Mac's 1999 acquisitions, 16.8 percent of units meeting the Low- and Moderate-Income Housing Goal, and 21.6 percent of units qualifying for the Special Affordable Housing Goal.[139] The multifamily market therefore comprises a significant share of units meeting the Low- and Moderate-Income and Special Affordable Housing Goals for both GSEs, and the goals may have contributed to increased emphasis by both GSEs on multifamily in the period since the previous final rule took effect in 1996.[140]

The majority of units backing GSE multifamily transactions meet the Low- and Moderate-Income Housing Goal because the great majority of rental units are affordable to families at 100 percent of median income, the standard upon which the Low- and Moderate-Income Housing Goal is defined. For example, 38.5 percent of units securing Freddie Mac's 1999 single-family, one-unit owner-occupied mortgage purchases met the Low- and Moderate-Income Housing Goal, compared with 90.0 percent of its multifamily transactions. Corresponding figures for Fannie Mae were 37.9 percent and 94.8 percent. [141] For this reason, multifamily purchases represent a crucial component of the GSEs' efforts in meeting the Low- and Moderate-Income Housing Goal.

Because such a large proportion of multifamily units qualify for the Low- and Moderate-Income Housing Goal and for the Special Affordable Housing Goal, Freddie Mac's weaker multifamily performance adversely affects its overall performance on these two housing goals relative to Fannie Mae. Units in multifamily properties accounted for 7.2 percent of Freddie Mac's mortgage purchases during 1994–1999, compared with 11.8 percent for Fannie Mae. Fannie Mae's greater emphasis on multifamily is a major factor contributing to the strength of its housing goals performance relative to Freddie Mac.

5. A Role for the GSEs in Multifamily Housing

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. In addition, standardization of underwriting terms and loan documents by the GSEs has the potential to reduce transactions costs. As the GSEs gain experience in areas of the multifamily mortgage market affected by costly, difficult, or inconsistent access to secondary markets, they gain experience that enables them to better measure and price default risk, yielding greater efficiency and further cost savings.

Ultimately, greater liquidity, stability, and efficiency in the secondary market due to a significant presence by the GSEs will benefit lower-income renters by enhancing the availability of mortgage financing for affordable rental units—in a manner analogous to the benefits the GSEs provide homebuyers. Providing liquidity and stability is the main role for the GSEs in the multifamily market, just as in the single-family market.

Recent volatility in the CMBS market underlines the need for an ongoing GSE presence in the multifamily secondary market. The potential for an increased GSE presence is enhanced by virtue of the fact that an increasing proportion of multifamily mortgages are originated to secondary market standards, as noted previously. While the GSEs have also been affected by the widening of yield spreads affecting CMBS, historical experience suggests that agency spreads will converge to historical magnitudes as a consequence of the perceived benefits of federal sponsorship.[142] When this occurs, the capability of the GSEs to serve and compete

in the multifamily secondary market will be enhanced.[143]

6. Multifamily Mortgage Market: GSEs' Ability To Lead the Industry

Holding 12.8 percent of the outstanding stock of multifamily mortgage debt and guarantees as of the end of 1999, Fannie Mae is regarded as an influential force within the multifamily market. Its Delegated Underwriting and Servicing (DUS) program, in which Fannie Mae delegates underwriting responsibilities to originators in return for a commitment to share in any default risk, now accounts for more than half its multifamily acquisitions, and has been regarded as highly successful.

Freddie Mac's presence in the multifamily market is not as large as that of Fannie Mae. Freddie Mac's direct holdings of multifamily mortgages and guarantees outstanding as of the end of 1999, $16.8 billion, are much smaller than that Fannie Mae's $47.4 billion, not only in absolute terms, but also a percentage of all mortgage holdings and guarantees. Freddie Mac's multifamily holdings and guarantees are 2.1 percent of its total, compared with 4.3 percent for Fannie Mae.[144] However, Freddie Mac is credited with rapidly rebuilding its multifamily operations since 1993. The GSEs' ability to lead the multifamily industry is discussed further below.

7. GSEs' Performance in the Multifamily Mortgage Market

GSE activity in the multifamily mortgage market has expanded rapidly since 1993, as noted previously. However, it is not clear that the potential of the GSEs to lead the multifamily mortgage industry has been fully exploited. In particular, the GSEs' multifamily purchases do not appear to be consistently contributing to mitigation of excessive cost of mortgage financing facing small properties with 5–50 units. Based on data from the Survey of Residential Finance showing that 39.4 percent of units in recently mortgaged multifamily properties were in properties with 5–49 units, it appears reasonable to assume that loans backed by small properties account for 39.4 percent of multifamily units financed each year. As a share of units backing their multifamily transactions, however, GSE purchases of loans on small multifamily properties are typically less than 5 percent, and have never approached the estimated 39.4 percent market share, as shown in Table A.2.

TABLE A.2.—GSE MULTIFAMILY TRANSACTIONS BY SIZE OF PROPERTY, 1994–1999 ACQUISITION YEAR

	1994	1995	1996	1997	1998	1999
Fannie Mae:						
Small (5–50 units)	8,717	45,488	5,838	8,111	64,753	12,351
As % Fannie Mae Multifamily Total	3.9	19.3	2.1	3.2	16.5	4.2
Freddie Mac:						
Small (5–50 units)	1,165	5,461	4,100	3,963	10,244	4,068
As % Freddie Mac Multifamily Total	2.6	3.6	4.2	4.0	4.6	2.1

Source: GSE loan-level data.

In order to more usefully compare the GSEs with the market, it is desirable to supplement the data presented in Table A.2 by acquisition year with findings organized by year of origination. Based on HUD's analysis of loans originated in 1997 and acquired by the GSEs in 1997, 1998, and 1999, the GSEs have purchased loans backed by 24 percent of units financed in the overall conventional multifamily mortgage market in 1997, but their acquisitions of loans on small multifamily properties have been only 2.3 percent of such properties financed that year.[145]

GSE multifamily acquisitions tend to involve larger properties than are typical for the market as a whole.[146] For example, the average number of units in Fannie Mae's 1997 multifamily transactions was 163, with a corresponding figure of 158 for Freddie Mac. Both of these averages are significantly higher than the overall market average of 33.4 units per property on 1995 originations estimated from the HUD Property Owners and Managers (POMS) survey.[147] A factor possibly contributing to the GSEs' emphasis on larger properties is the relatively high fixed multifamily origination costs, including appraisal, environmental review, and legal fees typically required under GSE underwriting guidelines.[148]

A recent noteworthy development is Fannie Mae's announcement of a new product through its Delegated Underwriting and Servicing (DUS) program for multifamily properties with 5–50 units. Features include a streamlined underwriting process designed, in part, to reduce borrower costs for third-party reports; use of FICO scores to evaluate borrower creditworthiness; and recourse to the borrower in the event of default.[149]

Another area underserved by mortgage markets, in which the GSEs have not demonstrated market leadership is rehabilitation loans. Both GSEs' relatively weak performance in the multifamily rehabilitation market segment is related to the fact that, since the inception of the interim housing goals in 1993, the great majority of units backing GSE multifamily mortgage purchases have been in properties securing refinance loans with an established payment history, in a proportion exceeding 80 percent in some years.[150]

The GSEs have been conservative in their approach to multifamily credit risk.[151] HUD's analysis of prospectus data indicates that the average loan-to-value (LTV) ratio on pools of seasoned multifamily mortgages securitized by Freddie Mac during 1995 through 1996 was 55 percent. In comparison, the average LTV on private-label multifamily conduit transactions over 1995–1996 was 73 percent based on HUD's analysis of Commercial Mortgage Backed Security data. Fannie Mae utilizes a variety of credit enhancements to further mitigate default risk on multifamily acquisitions, including loss sharing, recourse agreements, and the use of senior/subordinated debt structures.[152] Freddie Mac is less reliant on credit enhancements than is Fannie Mae, possibly because of a more conservative underwriting approach.[153]

The GSEs' ambivalence historically regarding the perception of credit risk in lending on affordable multifamily properties is evident with regard to pilot programs established in 1991 between Freddie Mac and the Local Initiatives Managed Assets Corporation (LIMAC), a subsidiary of the Local Initiatives Support Corporation (LISC), and in 1994 between Fannie Mae and Enterprise Mortgage Investments (EMI), a subsidiary of the Enterprise Foundation. Cummings and DiPasquale (1998) conclude that both initiatives had mixed results, although the Fannie Mae/EMI pilot was more successful in a number of regards. The Freddie Mac/LIMAC initiative was suspended after two years with only one completed transaction, involving eight loans with an aggregate loan amount of $4.6 million. As of June, 1997, 15 transactions comprising $20.5 million had been completed under the Fannie Mae/EMI pilot, which is ongoing.

Both programs suffered initially from documentation requirements that borrowers perceived as burdensome. Cummings and DiPasquale observe that ''The smaller, nonprofit, and CDC developers that these programs intended to bring to the market were unprepared, and perhaps unwilling or unable, to meet the high costs of Freddie Mac's and Fannie Mae's due diligence requirements.''

E. Factor 3: Performance and Effort of the GSEs Toward Achieving the Low- and Moderate-Income Housing Goal in Previous Years

This section first discusses each GSE's performance under the Low- and Moderate-Income Housing Goal over the 1993–99 period. The data presented are ''official results''—*i.e.,* they are based on HUD's in-depth analysis of the loan-level data submitted to the Department and the counting provisions contained in HUD's regulations in 24 CFR part 81, subpart B. As explained below, in some cases these ''official results'' differ from goal performance reported to the Department by the GSEs in their Annual Housing Activities Reports.

Following this analysis, the GSEs' past performance in funding low- and moderate-income borrowers in the single-family mortgage market is provided. Performance indicators for the Geographically-Targeted and Special Affordable Housing Goals are also included in order to present a complete picture in Appendix A of the GSEs' funding of single-family mortgages that qualify for the three housing goals. In addition, the findings from a wide range of studies—employing both quantitative and qualitative techniques to analyze several performance indicators and conducted by HUD, academics, and major research organizations—are summarized below.

Organization and Main Findings. Section E.1 reports the performance of Fannie Mae and Freddie Mac on the Low- and Moderate-Income Housing Goal. Section E.2 uses HMDA data and the loan-level data that the GSEs provide to HUD on their mortgage purchases to compare the characteristics of GSE purchases of single-family loans with the characteristics of all loans in the primary mortgage market and of newly-originated loans held in portfolio by depositories. Section E.3 summarizes the findings from several studies that have examined the role of the GSEs in supporting affordable lending. Section E.4 discusses the findings from a recent HUD-sponsored study of the GSEs' underwriting guidelines.[154] Finally, Section E.5 reviews the GSEs' support of the single-family rental market.

The Section's main findings with respect to the GSEs' single-family mortgage purchases are as follows:

- Both Fannie Mae and Freddie Mac surpassed the Low- and Moderate-Income Housing Goals of 40 percent in 1996 and 42 percent in 1997–99.
- Both Fannie Mae and Freddie Mac have improved their affordable lending [155] performance over the past seven years but, on average, they have lagged the primary market in providing mortgage funds for lower-income borrowers and underserved neighborhoods. This finding is based both on HUD's analysis of GSE and HMDA data as well as on numerous studies by academics and research organizations.
- The GSEs show very different patterns of home loan lending.[156] Through 1998, Freddie Mac was less likely than Fannie Mae to fund single-family home mortgages for low-income families and their communities. However, this pattern did not continue in 1999. The percentages of Freddie Mac's purchases through 1998 benefiting historically underserved families and their neighborhoods were also substantially less than the corresponding shares of total market originations. Through 1998 Freddie Mac had not made much progress closing the gap between its performance and that of the overall home loan market. HMDA data to analyze the affordable lending shares of the primary market in 1999 were not available at the time this appendix was prepared. But since the GSEs are such major participants in the mortgage market, the fact that Freddie Mac surpassed Fannie Mae last year in many dimensions of affordable lending suggests that they may well have narrowed the gap between their performance and that of the primary market.
- Through 1998 Fannie Mae's purchases more nearly matched the patterns of originations in the primary market than did Freddie Mac's. However, during the 1993–98 period as a whole and the 1996–98 period during which the new goals were in effect, Fannie Mae lagged depositories and others in the conforming market in providing funding for the lower-income borrowers and neighborhoods covered by the three housing goals. HMDA data are not currently available to compare Fannie Mae's performance relative to the primary market for 1999.
- A large percentage of the lower-income loans purchased by the GSEs have relatively high down payments, which raises questions about whether the GSEs are adequately meeting the needs of lower-income families who have little cash for making large down payments.
- A study by The Urban Institute of lender experience with the GSEs' underwriting standards finds that the enterprises have stepped up their outreach efforts and have increased the flexibility in their underwriting standards, to better accommodate the special circumstances of lower-income borrowers. However, this study concludes that the GSEs' guidelines remain somewhat inflexible and that they are often hesitant to purchase affordable loans. Lenders also told the Urban Institute that Fannie Mae has been more aggressive than Freddie Mac in market outreach to underserved groups, in offering new affordable products, and in adjusting their underwriting standards.
- While single-family rental properties are an important source of low-income rental housing, they represent only a small portion of the GSEs' business. In addition, many of the single-family rental properties funded by the GSEs are one-unit detached units in suburban areas rather than the older, 2–4 units commonly located in urban areas.

1. Past Performance on the Low- and Moderate-Income Housing Goal

HUD's goals specified that in 1996 at least 40 percent of the number of units eligible to count toward the Low- and Moderate-Income Goal should qualify as low-or moderate-income, and at least 42 percent should qualify in 1997–99. Actual performance, based on HUD's analysis, was as follows:

	1996	1997	1998	1999
Fannie Mae:				
Units Eligible to Count Toward Goal	1,831,690	1,710,530	3,468,428	2,925,347
Low- and Moderate-Income Units	834,393	782,265	1,530,308	1,530,308
Percent Low- and Moderate-Income	45.6	45.7	44.1	45.9
Freddie Mac:				
Units Eligible to Count Toward Goal	1,293,424	1,173,915	2,654,850	2,224,849
Low- and Moderate-Income Units	532,219	499,590	1,137,660	1,024,660
Percent Low- and Moderate-Income	41.1	42.6	42.9	46.1

Thus, Fannie Mae surpassed the goals by 5.6 percentage points and 3.7 percentage points in 1996 in 1997, respectively, while Freddie Mac surpassed the goals by 1.1 and 0.6 percentage points. In 1998 Fannie Mae's performance fell by 1.6 percentage points, while Freddie Mac's reported performance continued to rise, by 0.3 percentage point. Freddie Mac showed a sharp gain in performance to 46.1 percent in 1999, exceeding its previous high by 3.2 percentage points. Fannie Mae's performance was also at a record level of 45.9 percent, which, for the first time, slightly lagged Freddie Mac's performance.

The figures for goal performance presented above differ from the corresponding figures presented by Fannie Mae and Freddie Mac in their Annual Housing Activity Reports to HUD by 0.2–0.3 percentage points in both 1996 and 1997, reflecting minor differences in application of counting rules. These differences also persisted for Freddie Mac for 1998–99, but the goal percentages shown above for Fannie Mae for these two years are the same as the results reported by Fannie Mae to the Department.

Fannie Mae's performance on the Low- and Moderate-Income Goal jumped sharply in just one year, from 34.1 percent in 1993 to 45.1 percent in 1994, before tailing off to 42.8 percent in 1995. As indicated, it then stabilized at the 1994 level, just over 45 percent, in 1996 and 1997, before tailing off to 44.1 percent in 1998, but rose to 45.9 percent last year. Freddie Mac has shown more steady gains in performance on the Low- and Moderate-Income Goal, from 30.0 percent in 1993 to 38.0 percent in 1994 and 39.6 percent in 1995, before surpassing 41 percent in 1996 and 42 percent 1997, and rising to nearly 43 percent in 1998 and to 46 percent last year.

Fannie Mae's performance on the Low- and Moderate-Income Goal surpassed Freddie Mac's in every year through 1998. This pattern was reversed last year, as Freddie Mac surpassed Fannie Mae in goal performance for the first time, though by only 0.2 percentage point. This improved relative performance of Freddie Mac is due to its increased purchases of multifamily loans, as it re-entered that market, and to increases in

the goal-qualifying shares of its single-family mortgage purchases.

2. Comparisons With the Primary Mortgage Market

This section summarizes several analyses conducted by HUD on the extent to which the GSEs' loan purchases through 1998 mirror or depart from the patterns found in the primary mortgage market. The GSEs' affordable lending performance is also compared with the performance of major portfolio lenders such as commercial banks and thrift institutions. Dimensions of lending considered include the borrower income and underserved area dimensions covered by the three housing goals. In addition, this section also analyzes Fannie Mae and Freddie Mac purchases during 1999; however, market data from HMDA were not available for 1999 at the time this analysis was prepared. Subsection *a* defines the primary mortgage market, subsection *b* addresses some questions that have recently arisen about HMDA's measurement of GSE activity, and subsections *c–e* present the findings.[157]

The market analysis in this section is based mainly on HMDA data for home purchase loans originated in metropolitan areas during the years 1992 to 1998. The discussion below will often focus on the year 1997, as that year represents more typical mortgage market activity than the heavy refinancing year of 1998. Still, important shifts in mortgage funding that occurred during 1998 will be highlighted in order to offer a complete analysis.

a. Definition of Primary Market

First it is necessary to define what is meant by ''primary market'' in making these comparisons. In this section this term includes all mortgages on single-family owner-occupied properties that are originated in the conventional conforming market.[158] The source of this market information is the data provided by loan originators to the Federal Financial Institutions Examination Council (FFIEC) in accordance with the Home Mortgage Disclosure Act (HMDA).

There is a consensus that the following loans should be excluded from the HMDA data in defining the ''primary market'' for the sake of comparison with the GSEs' purchases of goal-qualifying mortgages:

- Loans with a principal balance in excess of the loan limit for purchases by the GSEs—$240,000 for a 1-unit property in most parts of the United States in 1999.[159] Loans not in excess of this limit are referred to as ''conforming mortgages'' and larger loans are referred to as ''jumbo mortgages.''[160]
- Loans which are backed by the Federal government, including those insured by the Federal Housing Administration and those guaranteed by the Department of Veterans Affairs, which are generally securitized by the Government National Mortgage Association (''Ginnie Mae''), as well as Rural Housing Loans, guaranteed by the Farmers Home Administration.[161] Generally, the GSEs do not receive credit on the housing goals for purchasing loans with Federal government backing. Loans without Federal government backing are referred to as ''conventional mortgages.''

Questions have arisen about whether loans on manufactured housing should be excluded when comparing the primary market with the GSEs. As discussed elsewhere in this Appendix, the GSEs have not played a significant role in the manufactured housing mortgage market in the past. However, the manufactured home mortgage market is changing in ways that make a higher percentage of such loans eligible for purchase by the GSEs, and the GSEs are looking for ways to increase their purchases of these loans. But more importantly, the manufactured housing sector is one of the most important providers of affordable housing, which makes it appropriate to include this sector in the market definition. As discussed earlier in Section A.3c, HUD believes that excluding important low-income sectors such as manufactured housing from the market definition would render the resulting market benchmark useless for evaluating the GSEs' performance. For comparison purposes, data are presented for the primary market defined both to include and exclude mortgages originated by manufactured housing lenders. This issue of the market definition is discussed further in Appendix D, which calculates the market shares for each housing goal.

Questions have also arisen about whether subprime loans should be excluded when comparing the primary market with the GSEs. Appendix D, which examines this issue in some detail, reports the effects of excluding the B&C portion of the subprime market from HUD's estimates of the goal-qualifying shares of the overall (combined owner and rental) mortgage market. As explained Section C.3.e of this appendix, the low-income and minority borrowers in the A-minus portion of the subprime market could benefit from the standardization and lower interest rates that typically accompany an active secondary market effort by the GSEs. A-minus loans are not nearly as risky as B&C loans and Freddie Mac has been purchasing A-minus loans, both on a flow basis and through negotiated transactions. Fannie Mae recently introduced a new program targeted at A-minus borrowers. Thus, HUD does not believe that A-minus loans should be excluded from the market definition.

Unfortunately, HMDA does not identify subprime loans, much less separating them into their A-minus and B&C components. There is some evidence that many subprime loans are not reported to HMDA but there is nothing conclusive on this issue.[162] Thus, it is not possible to exclude B&C loans from the comparisons reported below. However, HUD staff has identified HMDA reporters that primarily originate subprime loans.[163] The text below will report the effects of excluding data for these lenders from the primary market. The effects are minor mostly because the analysis below focuses on home purchase loans, which accounted for only twenty percent of the mortgages originated by the subprime lenders. During 1997 and 1998, the subprime market was primarily a refinance market.

b. Methods and Data for Measuring GSE Performance

Several issues have arisen about the methods and the data used to measure the GSEs' performance relative to the characteristics of the mortgages being originated in the primary market. While most of these issues will be discussed throughout the appendices, one issue, the reliability of HMDA data in measuring GSE performance, needs to be addressed before presenting the market comparisons, which utilize the HMDA data. Fannie Mae, in particular, has raised questions about HUD's reliance on HMDA data for measuring its performance.

There are two sources of loan-level information on the characteristics of mortgages purchased by the GSEs—the GSEs themselves and HMDA data. The GSEs provide detailed data on their mortgage purchases to HUD on an annual basis. As part of their annual HMDA reporting responsibilities, lenders are required to indicate whether their new mortgage originations or purchased loans are sold to Fannie Mae, Freddie Mac or some other entity. As discussed later, there have been numerous studies by HUD staff and other researchers that use the HMDA data to compare the borrower and neighborhood characteristics of loans sold to the GSEs with the characteristics of all loans originated in the market. One question is whether the HMDA data, which is widely available to the public, provides an accurate measure of GSE performance, as compared with the GSEs' own data.[164] Fannie Mae has argued that HMDA data have understated its past performance, where performance is defined as the percentage of Fannie Mae's mortgage purchases accounted for by one of the goal-qualifying categories such as underserved areas. As explained below, HMDA provided reliable national-level information through 1997 on the goals-qualifying percentages for the GSEs' purchases of newly-originated loans but not for their purchases of prior-year loans. In 1998, HMDA data differed from data that the GSEs reported to HUD on their purchases of newly-originated loans.

In any given calendar year, the GSEs can purchase mortgages originated in that calendar year or mortgages originated in a prior calendar year. In 1997, purchases of prior-year mortgages accounted for 30 percent of the single-family units financed by Fannie Mae's mortgage purchases and 20 percent of the single-family units financed by Freddie Mac's mortgage purchases.[165] HMDA data provides information mainly on newly-originated mortgages that are sold to the GSEs—that is, HMDA data on loans sold to the GSEs will not include many of their purchases of prior-year loans.[166] The implications of this for measuring GSE performance can be seen in Tables A.3 and A.4a.[167]

Table A.3 summarizes affordable lending by the GSEs, depositories and the conforming market for the six-year period between 1993 and 1998 and for the borrower and census tract characteristics covered by the housing goals. The GSE percentages presented in Table A.3 are derived from the GSEs' own data that they provide to HUD, while the depository and market percentages are taken

from HMDA data. Annual data on the borrower and census tract characteristics of GSE purchases are provided in Table A.4a. According to Fannie Mae's own data, 9.9 percent of its purchases during 1997 were loans for very low-income borrowers (see Table A.4a). According to HMDA data (also reported in Table A.4a), only 8.8 percent of Fannie Mae's purchases were loans for very low-income borrowers.[168] Thus, in this case the HMDA data underestimate the share of Fannie Mae's mortgage purchases for very low-income borrowers. Similarly, Fannie Mae reports a very low-income percentage of 11.4 percent for its 1998 purchases while HMDA reports only 9.2 percent.

BILLING CODE 4210–27–P

Table A.3

GSE Purchases and Single-Family Lending in Metropolitan Areas
Goal-Qualifying Home Purchase Mortgages, 1993-1998

Borrower and Tract Characteristics	Fannie Mae	Freddie Mac	Depository Portfolio	Conforming Market Total	Conforming Market W/O Mfg Homes
Very Low-Income					
1993-1998	9.2 %	7.6 %	14.5 %	12.4 %	10.7 %
1993-1995	8.1	6.6	14.5	11.6	10.3
1996-1998	10.1	8.4	14.5	13.0 (13.0)	11.1
Special Affordable					
1993-1998	11.0	9.0	17.0	14.6	12.7
1993-1995	9.9	7.9	17.1	13.8	12.3
1996-1998	11.9	9.8	16.7	15.3 (15.2)	13.1
Less than Area Median Income					
1993-1998	37.4	33.8	43.6	41.8	39.4
1993-1995	36.3	32.4	44.1	40.8	39.0
1996-1998	38.4	34.9	43.1	42.6 (42.4)	39.6
Underserved Area					
1993-1998	22.9	19.7	26.3	24.5	23.4
1993-1995	22.9	19.4	26.8	24.0	23.2
1996-1998	22.9	19.9	25.8	24.9 (24.4)	23.5

Source: The Fannie Mae and Freddie Mac data include information on all their purchases of home loans and are from the loan-level data that they provide to HUD. All mortgages are conventional conforming mortgages. The Depository Portfolio and Conforming Market data are from HMDA; loans with a loan-to-income ratio greater than six are excluded from the borrower income calculations. The numbers in parenthesis for the 1996-98 "Total Conforming Market" are the average market percentages after deducting loans adjusted by subprime lenders (see text for explanation). The "Conforming Market W/O Mfg Homes" data for borrower income exclude loans less than $15,000 and loans from lenders that primarily originate manufactured housing loans. Special affordable includes very low-income borrowers and low-income borrowers in low-income census tracts. Data with missing values are excluded.

Table A.4a

Annual Trends in GSE Purchases and Single-Family Lending in Metropolitan Areas
Goal-Qualifying Home Purchase Mortgages, 1992-1999

	Fannie Mae Data			HMDA Data	Freddie Mac Data			HMDA Data	Conforming Market	
Very Low-Income	Prior Yr	Current Yr	All	for Fannie Mae	Prior Yr	Current Yr	All	for Freddie Mac	All	W/O Mfg Homes
1992				5.2 %				5.3 %	8.7 %	7.6 %
1993	6.5 %	6.7 %	6.7 %	7.4	4.2 %	6.2 %	6.0 %	6.6	10.8	9.6
1994	7.9	8.9	8.7	9.4	6.4	6.8	6.7	7.8	11.9	10.7
1995	11.2	8.9	9.3	8.5	7.7	6.8	7.0	7.5	12.0	10.5
1996	8.8	8.4	8.5	8.7	7.2	7.4	7.4	8.0	12.7	10.8
1997	13.4	8.7	9.9	8.8	7.5	7.6	7.6	8.0	13.0	11.0
1998	15.1	10.5	11.4	9.2	10.1	9.8	9.9	8.4	13.3	11.4
1999	10.4	10.9	10.8		11.3	10.9	11.0			
Special Affordable										
1992				6.3				6.5	10.4	9.3
1993	8.2	8.1	8.1	8.8	5.1	7.4	7.2	7.8	12.6	11.3
1994	9.5	10.8	10.6	11.4	7.6	8.1	8.0	9.2	14.1	12.8
1995	13.2	10.8	11.2	10.5	9.1	8.2	8.3	8.9	14.4	12.7
1996	10.6	10.2	10.3	10.5	8.4	8.7	8.7	9.4	15.0	12.8
1997	16.0	10.2	11.7	10.5	9.2	9.0	9.0	9.4	15.3	13.0
1998	17.9	12.1	13.2	10.7	11.8	11.2	11.3	9.7	15.5	13.4
1999	12.1	12.4	12.3		12.9	12.5	12.5			
Less Than Area Median Income										
1992				29.2				28.7	34.4	33.0
1993	30.4	33.5	33.2	35.0	24.9	32.1	31.6	32.3	38.9	37.4
1994	35.6	38.9	38.3	40.1	31.5	33.6	33.2	35.6	41.8	40.3
1995	38.6	37.7	37.8	37.1	33.6	32.1	32.4	33.9	41.4	39.2
1996	35.5	36.8	36.5	37.7	31.8	33.5	33.2	35.3	42.2	39.4
1997	41.1	36.4	37.6	37.5	33.7	34.2	34.1	35.4	42.5	39.6
1998	45.3	39.2	40.4	38.1	36.1	37.0	36.9	36.2	43.0	40.4
1999	37.5	39.9	39.3		38.7	40.3	40.0			
Underserved Areas										
1992				18.3				18.6	22.2	21.5
1993	23.8	19.4	20.3	18.2	19.5	18.2	18.4	17.6	21.9	21.1
1994	26.6	23.6	24.3	22.5	21.0	19.4	19.7	19.2	24.4	23.5
1995	27.4	23.9	24.7	22.8	22.6	19.4	20.1	19.1	25.5	24.2
1996	23.4	21.9	22.3	21.6	22.3	19.1	19.7	19.0	25.0	23.1
1997	30.1	20.8	23.5	21.0	22.2	19.3	19.9	18.6	25.2	23.3
1998	28.4	21.0	22.9	19.6	22.0	19.5	20.0	17.4	24.6	22.8
1999	22.0	20.2	20.6		23.4	20.6	21.2			

Source: The Fannie Mae and Freddie Mac data for their purchases of "Prior Year" mortgages, "Current Year" mortgages, and "All" mortgages are from the loan-level data that they provide to HUD. All mortgages are conventional conforming home purchase mortgages. The "HMDA Data" are those mortgages that HMDA identifies as being sold to the GSEs.The Conforming Market data are from HMDA; loans with a loan-to-income-ratio greater than six are excluded from the borrower income calculations. The "Conforming Market W/O Mfg Homes" data exclude loans less than $15,000 and loans from lenders that primarily originate manufactured housing loans. Special affordable includes very low-income borrowers and low-income borrowers living in low-income census tracts. Data with missing values are excluded.

Table A.4b

Annual Trends in GSE Purchases and Single-Family Lending in Metropolitan Areas
Goal-Qualifying Home Purchase Mortgages, 1992-1999
Various Market Definitions

			Conventional Conforming Market Originations					
Very Low-Income	Fannie Mae Purchases	Freddie Mac Purchases	Total Market	W/O Mfg Loans Only	W/O Loans Less Than $15K	W/O Mfg and Less Than $15K Loans	W/O Subprime Loans	W/O Subprime and Less Than $15K Loans
1992	5.2 %	5.3 %	8.7 %	8.3 %	7.9 %	7.6 %	8.7% %	7.9 %
1993	6.7	6.0	10.8	10.2	10.0	9.6	10.8%	10.0
1994	8.7	6.7	11.9	11.2	11.2	10.7	11.9%	11.2
1995	9.3	7.0	12.0	11.0	11.3	10.5	12.0%	11.2
1996	8.5	7.4	12.7	11.2	12.0	10.8	12.7%	12.0
1997	9.9	7.6	13.0	11.4	12.4	11.0	13.0%	12.3
1998	11.4	9.9	13.3	11.7	12.8	11.4	13.1%	12.6
1999	10.8	11.0						
Special Affordable								
1992	6.3	6.5	10.4	10.0	9.5	9.3	10.4	9.5
1993	8.1	7.2	12.6	12.0	11.8	11.3	12.6	11.8
1994	10.6	8.0	14.1	13.4	13.4	12.8	14.1	13.3
1995	11.2	8.3	14.4	13.3	13.6	12.7	14.4	13.6
1996	10.3	8.7	15.0	13.3	14.2	12.8	15.0	14.2
1997	11.7	9.0	15.3	13.5	14.6	13.0	15.2	14.5
1998	13.2	11.3	15.5	13.7	15.0	13.4	15.2	14.7
1999	12.3	12.5						
Less Than Area Median Income								
1992	29.2	28.7	34.4	33.8	33.4	33.0	34.4	33.4
1993	33.2	31.6	38.9	38.0	38.1	37.4	38.9	38.0
1994	38.3	33.2	41.8	40.8	41.1	40.3	41.8	41.1
1995	37.8	32.4	41.4	39.8	40.5	39.2	41.3	40.3
1996	36.5	33.2	42.2	39.9	41.1	39.4	42.2	41.4
1997	37.6	34.1	42.5	40.1	41.8	39.6	42.4	41.6
1998	40.4	36.9	43.0	40.7	42.5	40.4	42.6	42.1
1999	39.3	40.0						
Underserved Areas								
1992	18.3	18.6	22.2	21.9	21.7	21.5	22.1	21.6
1993	20.3	18.4	21.9	21.5	21.5	21.1	21.8	21.3
1994	24.3	19.7	24.4	23.9	24.0	23.5	24.3	23.8
1995	24.7	20.1	25.5	24.6	25.0	24.2	25.3	24.9
1996	22.3	19.7	25.0	23.5	24.5	23.1	24.8	24.4
1997	23.5	19.9	25.2	23.7	24.8	23.3	24.7	24.3
1998	22.9	20.0	24.6	23.1	24.3	22.8	23.7	23.4
1999	20.6	21.2						

Source: The Fannie Mae and Freddie Mac percentages are based on the loan-level data that they provide to HUD. All mortgages are conventional conforming home purchase mortgages. The Conforming Market data are from HMDA; loans with a loan-to-income-ratio greater than six are excluded from all borrower income calculations. See the text for an explanation of the adjustments for manufactured housing (mfg) and subprime loans. Given that there is little differential between the "Total Market" and "W/O Subprime Loans" columns, an intermediate column adjusting for B&C loans is not included in the table (see text). Special affordable includes very low-income borrowers and low-income borrowers living in low-income census tracts. Data with missing values are excluded.

BILLING CODE 4210–27–C

Table A.4c

Annual Trends in GSE Purchases and Single-Family Lending in Metropolitan Areas Goal-Qualifying Home Purchase and Refinance Mortgages, 1996-1999 Various Market Definitions

				Conventional Conforming Market Originations			
	Fannie Mae Purchases	Freddie Mac Purchases	Ratio of Fannie Mae to Freddie Mac	Total Market	W/O Mfg and Less Than $15K Loans	W/O Subprime Loans	W/O B&C Loans (Estimated)
Special Affordable							
1996	10.4	9.3	1.12	15.3	13.7	14.4	14.9
1997	11.5	9.9	1.16	16.4	14.9	14.8	15.6
1998	11.1	10.9	1.02	14.2	13.3	12.7	13.5
1999	12.3	13.3	0.93	NA	NA	NA	NA
Less Than Area Median Income							
1996	36.6	34.5	1.06	42.4	40.5	41.4	41.9
1997	33.2	35.7	1.06	43.7	41.8	41.9	42.8
1998	37.1	36.4	1.02	40.9	39.7	39.0	40.0
1999	38.8	40.7	0.95	NA	NA	NA	NA
Underserved Areas							
1996	23.0	20.9	1.10	26.7	25.3	25.3	26.0
1997	23.6	21.5	1.10	27.8	26.6	25.5	26.7
1998	21.2	20.9	1.01	24.8	23.9	22.6	23.7
1999	21.8	23.5	0.93	NA	NA	NA	NA

Source: The Fannie Mae and Freddie Mac percentages are based on the loan-level data that they provide to HUD. All mortgages are conventional conforming home purchase and refinance mortgages. The Conforming Market data are from HMDA; loans with a loan-to-income-ratio greater than six are excluded from all borrower income calculations. See the text for an explanation of the adjustments for manufactured housing (Mfg), subprime, and B&C loans. Special affordable includes very low-income borrowers and low-income borrowers living in low-income census tracts. Data with missing values are excluded.

The reason that HMDA data underestimate those purchases can be seen by disaggregating Fannie Mae's purchases during 1997 into their ''Prior Year'' and ''Current Year'' components. Table A.4a shows that the overall figure of 9.9 percent for very low-income borrowers is a weighted average of 13.4 percent for Fannie Mae's purchases during 1997 of ''Prior Year'' mortgages and 8.7 percent for its purchases of ''Current Year'' purchases. HMDA data report that 8.8 percent of Fannie Mae's 1997 purchases consisted of loans to very low-income borrowers is based mainly on newly-mortgaged (current-year originations) loans that lenders report they sold to Fannie Mae. Therefore, the HMDA data figure is similar in concept to the ''Current Year'' percentage from the GSEs'' own data. As Table A.4a shows, HMDA data and ''Current Year'' figures are practically the same in this case (about nine percent). Thus, the relatively large share of very low-income mortgages in Fannie Mae's 1997 purchases of ''Prior Year'' mortgages is the primary reason why Fannie Mae's own data show an overall (both prior-year and current-year) percentage of very low-income loans that is higher than that reported in HMDA data.

A review of the data in Table A.4a yields the following insights about the reliability of HMDA data at the national level for metropolitan areas. First, comparing the HMDA data on GSE purchases with the GSE ''Current Year'' data suggests that HMDA data provided reasonable estimates of the GSEs' current year purchases through 1997.[169] Second, the HMDA data percentages through 1997 are actually rather close to Freddie Mac's *overall* percentages because Freddie Mac's prior-year purchases often resembled their current-year originations. Fannie Mae, on the other hand, was more apt to purchase seasoned loans with a relatively high percentage of low-income loans, which means that HMDA data was more likely to underestimate its overall performance. However, this underestimation of the share of Fannie Mae's goal-qualifying loans in the HMDA data first arose in 1997, when Fannie Mae's purchases of prior-year loans were particularly targeted to affordable lending groups. For the years 1993 to 1996, Fannie Mae's prior-year loan purchases more closely resembled their current-year originations.[170]

Third, the 1998 data show that even the GSEs' ''Current Year'' data differ from the HMDA-reported data on GSE purchases. For example, special affordable loans accounted for 12.1 percent of Fannie Mae's current-year purchases in 1998 compared with only 10.7 percent of Fannie Mae's special affordable purchases as reported by HMDA. Similarly, underserved areas accounted for 21.0 percent of Fannie Mae's current-year purchases compared with only 19.6 percent of Fannie Mae's underserved area purchases as reported by HMDA. The same patterns exist for Freddie Mac's 1998 data for the special affordable and underserved area categories. Thus, 1998 HMDA data do not provide a reliable estimate at the national level of the goals-qualifying percentages for the GSEs' purchases of current-year (newly-mortgaged) loans. More research on this issue is needed.[171]

The next section compares the GSE performance with that of the overall market. The fact that the GSE data includes prior-year as well as current-year loans, while the market data includes only current-year originations, means that the GSE-versus-market comparisons are defined somewhat inconsistently for any particular calendar year. Each year, the GSEs have newly-originated affordable loans available for purchase, but they can also purchase loans from a large stock of seasoned loans currently being held in the portfolios of depository lenders. Depository lenders have originated a large number of CRA-type loans over the past six years and many of them remain on their books. In fact, HUD has encouraged the GSEs to purchase seasoned, CRA-type loans that have demonstrated their creditworthiness. One method for making the data more consistent is to aggregate the data over several years, instead of focusing on annual data. This provides a clearer picture of the types of loans that have been originated and are available for purchase by the GSEs. This approach is taken in Table A.3.

c. Affordable Lending by the GSEs and the Primary Market

Table A.3 summarizes goal-qualifying lending by the GSEs, depositories and the conforming market for the six-year period between 1993 and 1998 and for the more recent 1996–98 period, which covers the period since the most recent housing goals have been in effect. As noted above, the data are aggregated over time to provide a clearer picture of how the GSEs' purchases of both current-year and prior-year loans compare with the types of mortgages that have been originated during the past few years. All of the data are for home purchase mortgages in metropolitan areas. Several points stand out concerning the affordable lending performance of Freddie Mac and Fannie Mae through 1998.

Freddie Mac—1993–98 Performance Relative to Market. The data in Table A.3 show that Freddie Mac substantially lagged both Fannie Mae and the primary market in funding affordable home loans between 1993 and 1998. During that period, 7.6 percent of Freddie Mac's mortgage purchases were for very low-income borrowers, compared with 9.2 percent of Fannie Mae's purchases, 14.5 percent of loans originated and retained by depositories, and 12.4 percent of loans originated in the conforming market (or 10.7 percent if manufactured home loans are excluded from the conforming market definition).[172] As shown by the annual data reported in Table A.4a, Freddie Mac did improve its funding of very low-income borrowers during this period, from 6.0 percent in 1993 to 7.6 percent in 1997, and then to 9.9 percent in 1998. However, Freddie Mac did not make as much progress as Fannie Mae (discussed below) in closing the gap between its performance and that of the overall market. During the 1996–98 period in which the new goals have been in effect, the ratio of Freddie Mac's average performance (8.4 percent) to that of the overall market (13.0 percent) was only 0.65; this ''Freddie-Mac-to-market'' ratio remained at only 0.76 even when manufactured homes are excluded from the market definition.

A similar conclusion about Freddie Mac's performance can be drawn for the other goal-qualifying categories presented in Tables A.3 and A.4a: Freddie Mac's performance was well below the market between 1993 and 1998. For example, during the recent 1996–98 period, mortgages financing properties in underserved areas accounted for only 19.9 percent of Freddie Mac's purchases, compared with 22.9 percent of the loans purchased by Fannie Mae and 24.9 percent of the mortgages originated in the conforming market. Similarly, mortgages originated for low- and moderate-income borrowers represented 34.9 percent of Freddie Mac's purchases during that period, compared with 42.6 percent of all mortgages originated in the conforming market.

One encouraging sign for Freddie Mac is that the borrower-income categories showed a rather large increase between 1997 and 1998, followed by another significant increase between 1998 and 1999. Special affordable (low-mod) loans increased from 9.0 (34.1) percent in 1997 to 11.3 (36.9) percent in 1998 to 12.3 (40.0) percent in 1999. The reasons for this increase require further study, but certainly, an interesting question going forward is whether Freddie Mac can continue this 1997–99 pattern and thus further close its performance gap relative to the overall market. It is somewhat surprising that Freddie Mac's purchases of home loans in underserved areas did not increase (in percentage terms) between 1997 and 1998; as shown in Table A.4a, the underserved areas share of Freddie Mac's home loan purchases remained constant at approximately 20 percent between 1994 and 1998 before rising to 21.2 percent in 1999.

Fannie Mae—1993–98 Performance Relative to the Market. The data in Table A.3 show that Fannie Mae has also lagged depositories and the primary market in the funding of homes for lower-income borrowers and underserved neighborhoods. Between 1993 and 1998, 37.4 percent of Fannie Mae's purchases were for low- and moderate-income borrowers, compared with 43.6 percent of loans originated and retained by depositories and with 41.8 percent of loans originated in the primary market. Over the more recent 1996–98 period, 22.9 percent of Fannie Mae's purchases financed properties in underserved neighborhoods, compared with 25.8 percent of loans originated by depositories and 24.9 percent of loans originated in the conventional conforming market.

However, Fannie Mae's affordable lending performance between 1993 and 1998 can be distinguished from Freddie Mac's. First, Fannie Mae performed much better than Freddie Mac on every goal-category examined here. For example, home loans for special affordable loans accounted for 13.2 percent of Fannie Mae's purchases in 1998, compared with only 11.3 percent of Freddie Mac's purchases (see Table A.4a). In that same year, 22.9 percent of Fannie Mae's purchases were in underserved census tracts, compared with only 20.0 percent of Freddie Mac's purchases.

Second, Fannie Mae improved its performance between 1993 and 1998 and made more progress than Freddie Mac in

closing the gap between its performance and the market's performance on the goal-qualifying categories examined here. In fact, by 1998, Fannie Mae's performance was close to that of the primary market for some important components of affordable lending. For example, in 1992, very low-income loans accounted for 5.2 percent of Fannie Mae's purchases and 8.7 percent of all loans originated in the conforming market, giving a ''Fannie Mae-to-market'' ratio of 0.60. By 1998, this ratio had risen to 0.86, as very low-income loans had increased to 11.4 percent of Fannie Mae's purchases and to 13.3 percent of market originations.

A similar trend in market ratios can be observed for Fannie Mae on the underserved areas category. Fannie Mae improved its performance relative to the market; for example, the ''Fannie-Mae-to-market'' ratio for underserved areas increased from 0.82 in 1992 to 0.93 in 1998. This improved performance relative to the overall market by Fannie Mae is in sharp contrast to Freddie Mac's record during the same 1992 to 1998 period—the ''Freddie-Mac-to-market'' ratio for underserved areas actually declined, from 0.84 in 1992 to 0.81 in 1998. As a result, Fannie Mae approached the home loan market in underserved areas while Freddie Mac lost ground relative to overall primary market.

B&C Home Purchase Loan. As explained earlier, HMDA does not identify subprime loans, much less separate them into their A-minus and B&C components. Randall Scheessele at HUD has identified 200 HMDA reporters that primarily originate subprime loans and probably accounted for at least half of the subprime market during 1998.[173] As shown in Table A.4b, excluding the home purchase loans originated by these lenders from the primary market data has only minor effects on the goal-qualifying shares of the market. The average market percentages for 1998 are reduced as follows: low- and moderate-income (43.0 to 42.6 percent); special affordable (15.5 to 15.2 percent); and underserved areas (24.6 to 23.7 percent). As explained earlier, the effects are minor mostly because this analysis focuses on home purchase loans, which accounted for only 20 percent of the mortgages originated by these 200 subprime lenders—the subprime market has been mainly a refinance market.

GSEs' Purchases of Home Loans in 1999. Although market data are not yet available for 1999, the GSEs have reported their purchase data to HUD for that year. As shown in Table A.4a, the 1993–98 pattern discussed above of Freddie Mac lagging behind Fannie Mae in funding affordable loans changed in 1999, as Freddie Mac matched or slightly out-performed Fannie Mae on all three goals-qualifying categories. For example, special affordable loans accounted for similar percentages of Freddie Mac's (12.5 percent) and Fannie Mae's (12.3 percent) purchases of home loans during 1999. Low-mod (underserved areas) loans accounted for 40.0 (21.2) percent of Freddie Mac's 1999 purchases, compared with 39.3 (20.6) percent of Fannie Mae's 1999 purchases. Between 1998 and 1999, Fannie Mae's shares of goals-qualifying home loans declined in every case while Freddie Mac's goals-qualifying shares increased. For example, the low-mod share of Freddie Mac's purchases of home loans increased by 3.1 percentage points from 36.9 percent to 40.0 percent between 1998 and 1999; this compares to a decrease of 1.1 percentage point for Fannie Mae, from 40.4 percent to 39.3 percent. Data from 1999 HMDA will enable HUD to examine the extent to which Freddie Mac has closed its performance gap relative to the overall conventional conforming market.

d. Prior-Year Loans

An important source of the past differential in affordable lending between Fannie Mae and Freddie Mac concerns the purchase of prior-year loans. As shown in Table A.4a, the prior-year mortgages that Fannie Mae was purchasing through 1998 were much more likely to be loans for lower-income families and underserved areas than the newly-originated mortgages that they were purchasing. For example, 30.1 percent of Fannie Mae's 1997 purchases of prior-year mortgages were loans financing properties in underserved areas, compared with 20.8 percent of its purchases of newly-originated mortgages. These purchases of prior-year mortgages were one reason Fannie Mae improved its performance relative to the primary market, which includes only newly-originated mortgages, in 1997. Sixteen percent of its prior-year mortgages qualified for the Special Affordable Goal, compared with only 10.2 percent of its purchases of newly-originated loans. The same patterns are exhibited by the 1998 data. For example, 17.9 percent of Fannie Mae's prior-year purchases during 1998 qualified for the Special Affordable Goal, compared with only 12.1 percent of its 1998 purchases of newly-originated loans. Through 1998, Fannie Mae seem to be purchasing affordable loans that were originated by portfolio lenders in previous years.

Freddie Mac, on the other hand, does not seem to be pursuing such a strategy, or at least not to the same degree as Fannie Mae. In 1997, 1998, and 1999, Freddie Mac's purchases of prior-year mortgages and its purchases of newly-originated mortgages had similar percentages of special affordable and low-and moderate-income borrowers. As Table A.4a shows, there is a small differential between Freddie Mac's prior-year and newly-originated mortgages for the underserved areas category but it is much smaller than the differential for Fannie Mae. Thus, during 1997 and 1998, Freddie Mac's purchases of prior-year mortgages were less likely to qualify for the housing goals, and this was one reason Freddie Mac's overall affordable lending performance was below Fannie Mae's during those years. In 1999, on the other hand, there was surprisingly little difference between the goals-qualifying percentages for Fannie Mae's prior-year and its current-year purchases.

e. GSE Purchases of Total (Home Purchase and Refinance) Loans

The above sections have examined the GSEs' acquisitions of home purchase loans, which is appropriate given the importance of the GSEs for expanding homeownership opportunities. To provide a complete picture of the GSEs' mortgage purchases in metropolitan areas, this section briefly considers the GSEs' purchases of all single-family-owner mortgages, including both home purchase loans and refinance loans.[174] As shown in Table A.4c, shifting the analysis to consider all (home purchase and refinance) mortgages does not change the basic finding that both GSEs lag the primary market in serving low-income borrowers and underserved neighborhoods. For example, in 1998 underserved areas accounted for 21.2 (20.9) percent of Fannie Mae's (Freddie Mac's) purchases, compared to approximately 25 percent for both depository institutions and the overall primary market. Similarly, special affordable loans accounted for 11.1 (10.9) percent of Fannie Mae's (Freddie Mac's) purchases of single-family-owner loans, compared to 14.9 percent for depository institutions and 14.2 percent for the overall primary market.

There are two changes when one shifts the analysis from only home purchase loans to include all mortgages—one concerning the relative performance of Fannie Mae and Freddie Mac and one concerning the impact of subprime mortgages on the goals-qualifying percentages. These are discussed next.

Fannie Mae versus Freddie Mac Performance—1997 to 1998. As indicated by the above percentages for 1998, the borrower-income and underserved area comparisons between Fannie Mae and Freddie Mac change when the analysis switches from their acquisitions of only home purchase loans to their acquisitions of total (both home purchase and refinance) loans—in the case of total loans, Freddie Mac's performance resembles Fannie Mae's performance in 1998 and surpasses Fannie Mae's performance in 1999 (see Table A.4c). These important shifts in the relative performance of Fannie Mae and Freddie Mac are best described by analyzing the 1997 to 1998 changes that led to Freddie Mac catching up with Fannie Mae in overall affordable lending, and then examining the 1998 to 1999 changes that led to Freddie Mac surpassing Fannie Mae in overall affordable lending.

Consider the special affordable income category for 1997 and 1998. As shown earlier in Table A.4a, special affordable loans accounted for a much higher percentage of Fannie Mae's acquisitions of home purchase loans than of Freddie Mac's in each of these two years. Similarly, in 1997, special affordable loans accounted for 11.5 percent of Fannie Mae's total (both home purchase and refinance) purchases, compared with 9.9 percent of Freddie Mac's total purchases. However, between 1997 and 1998, the special affordable percentage of Freddie Mac's total purchases increased from 9.9 percent to 10.9 percent, while the corresponding percentage for Fannie Mae actually declined from 11.5 percent to 11.1 percent. Thus, in 1998, Freddie Mac's overall special affordable percentage (10.9 percent) was approximately the same as Fannie Mae's (11.1 percent). This is reflected in Table A.4c by the ''Fannie-Mae-to-Freddie-Mac'' ratio of 1.02 for the special affordable category.

Further analysis shows that this improvement of Freddie Mac relative to

Fannie Mae was due to Freddie Mac's better performance on refinance loans during 1998. The special affordable percentage of Fannie Mae's refinance loans fell from 11.1 percent in 1997 to 9.7 percent in 1998, which is not surprising given that middle-and upper-income borrowers typically dominate heavy refinance markets such as 1998. But the special affordable percentage of Freddie Mac's refinance loans did not drop very much, falling from 11.3 percent in 1997 to 10.7 percent in 1998.[175] Thus, Freddie Mac's higher special affordable percentage (10.7 percent versus 9.7 percent for Fannie Mae) on refinance loans in 1998 enabled Freddie Mac to close the gap between its overall single-family performance and that of Fannie Mae.

The GSEs' low-mod and underserved areas percentages followed a somewhat similar pattern as their special affordable percentages between 1997 and 1998. In 1997, Freddie Mac's underserved area percentage (21.6 percent) for total purchases was significantly less than Fannie Mae's (23.6), but in 1998, Freddie Mac's underserved areas percentage (20.9) was about the same as Fannie Mae's (21.2 percent), as indicated by a ''Fannie Mae to Freddie Mac'' ratio of 1.01. This convergence was mainly due to a sharper decline in Fannie Mae's underserved area percentage for refinance loans between 1997 and 1998.

Fannie Mae versus Freddie Mac Performance—1998 to 1999. In 1998, the ''Fannie-Mae-to-Freddie-Mac'' ratios for all three goals-qualifying categories were approximately one, indicating similar performance for the two GSEs. As shown in Table A.4c, the 1999 ratios were 0.93 for special affordable loans, 0.95 for low-mod loans, and 0.93 for underserved areas loans—indicating that Freddie Mac, for the first time, had significantly surpassed Fannie Mae in overall performance. For instance, in 1999, underserved areas accounted for 21.8 percent of Fannie Mae's purchases, compared with 23.5 percent of Freddie Mac's purchases. For each of the three housing goal categories, Fannie Mae's performance increased between 1998 and 1999, but Freddie Mac's increased even more. For example, Fannie Mae's special affordable performance increased by 1.2 percentage points (from 11.1 percent to 12.3 percent) between 1998 and 1999 while Freddie Mac's performance increased 2.4 percentage points (from 10.9 percent to 13.3 percent).

B&C Loans. Table A.4b shows that the estimates for the home purchase market do not change much when loans for subprime lenders were excluded from the HMDA analysis; the reason was that these lenders operate primarily in the refinance market. Therefore, in this section's analysis of the total market (including refinance loans), one would expect the treatment of subprime lenders to significantly affect the market estimates. As indicated in Table A.4c, excluding 200 subprime lenders reduced the goal-qualifying shares of the total market in 1998 as follows: special affordable (from 14.2 to 12.7 percent); low-mod (from 40.9 to 39.0 percent); and underserved areas (from 24.8 to 22.6 percent). As discussed earlier, the GSEs have been entering the subprime market over the past two years, particularly the A-minus portion of that market. Industry observers estimate that A-minus loans account for 50–70 percent of all subprime loans while the more risky B&C loans account for the remaining 30–50 percent. Thus, one proxy for excluding B&C loans originated by the 200 specialized lenders from the overall market benchmark might be to reduce the goal-qualifying percentages from the HMDA data by half the above differentials; accounting for B&C loans in this manner would reduce the 1998 HMDA-reported goal-qualifying shares of the total conforming market as follows: special affordable (from 14.2 to 13.5 percent); low-mod (from 40.9 to 40.0 percent); and underserved areas (from 24.8 to 23.7 percent). However, as discussed in Appendix D, much uncertainty exists about the size of the subprime market and its different components. More data and research are obviously needed on this growing sector of the mortgage market.[176]

f. GSE Mortgage Purchases in Individual Metropolitan Areas

While the above analyses, as well as earlier studies,[177] concentrate on national-level data, it is also instructive to compare the GSEs' purchases of mortgages in individual metropolitan areas (*e.g.* MSAs). In this section, the GSEs' purchases of single-family owner-occupied home purchase loans are compared to the market in individual MSAs.[178] To do so, total primary market mortgage originations from three years, 1995, 1996 and 1997, are summed up by year, by MSA, and for GSE purchases of these loans. The GSEs' purchases of 1995 originations include all 1995 originations purchased by each GSE between 1995 and 1998 from 324 MSAs. For their purchases of 1996 originations, all 1996 originations purchased between 1996 and 1999 from 326 MSAs are included. All 1997 originations purchased between 1997 and 1999 from 328 MSAs are included for 1997 originations. This should cover 90 to 95 percent of the 1995 through 1997 originated loans that will be purchased by the GSEs, thus making the GSE data comparable to HMDA market data. The loans are then grouped by the GSE housing goal categories for which they qualify and the ratio of the housing goal category originations to total originations in each MSA is calculated for each GSE and the market. The GSE-to-market ratio is then calculated by dividing each GSE ratio by the corresponding market ratio. For example, if it is calculated that one of the GSEs' purchases of Low- and Moderate-Income loans in a particular MSA is 47 percent of their overall purchases in that MSA, while 49 percent of all originations in that MSA are Low-Mod, then that GSE-to-market ratio is 47/49 (or 0.96).

Table A.5 shows the performance of the GSEs by MSA for 1995, 1996 and 1997 originations of home purchase loans. A GSE's performance is determined to be lagging the market if the ratio of the GSE housing goal loan purchases to their overall purchases is less than 99 percent of that same ratio for the market.[179] For the above example, that GSE is considered to be lagging the market. These results are then summarized in Table A.5, which reports the number of MSAs in which each GSE under-performs the market with respect to the housing goal categories.

BILLING CODE 4210–27–P

Table A.5

Analysis of GSEs' Purchases Across MSAs by Housing Goal Category

1995 Originations

	Underserved Areas		Low-Mod Income		Special Affordable	
Number of MSAs Analyzed	324	100.0%	324	100.0%	324	100.0%
Fannie Mae lags the Market	243	75.0%	264	81.5%	291	89.8%
Freddie Mac lags the Market	300	92.6%	319	98.5%	321	99.1%
Fannie Mae lags Freddie Mac	65	20.1%	26	8.0%	37	11.4%
Freddie Mac lags Fannie Mae	246	75.9%	295	91.0%	281	86.7%

1996 Originations

	Underserved Areas		Low-Mod Income		Special Affordable	
Number of MSAs Analyzed	326	100.0%	326	100.0%	326	100.0%
Fannie Mae lags the Market	268	82.2%	288	88.3%	295	90.5%
Freddie Mac lags the Market	296	90.8%	322	98.8%	323	99.1%
Fannie Mae lags Freddie Mac	106	32.5%	54	16.6%	63	19.3%
Freddie Mac lags Fannie Mae	210	64.4%	255	78.2%	256	78.5%

1997 Originations

	Underserved Areas		Low-Mod Income		Special Affordable	
Number of MSAs Analyzed	328	100.6%	328	100.6%	328	100.6%
Fannie Mae lags the Market	286	87.7%	301	92.3%	311	95.4%
Freddie Mac lags the Market	288	88.3%	319	97.9%	317	97.2%
Fannie Mae lags Freddie Mac	165	50.6%	101	31.0%	129	39.6%
Freddie Mac lags Fannie Mae	152	46.6%	209	64.1%	185	56.7%

Source: Fannie Mae and Freddie Mac data include information on all of their purchases for the years 1995 through 1999 and are from the loan-level data they provide to HUD. The conforming market data are originations as reported by HMDA; loans with a loan-to-income ratio greater than six are excluded from Low-Mod Income and Special Affordable categories.

Notes: The GSE loans in this analysis include all single-family owner-occupied conventional conforming home purchase mortgages in metropolitan areas (as defined by OMB in 1995, 1996 or 1997) purchased by the GSEs between 1995 and 1998 for loans originated during 1995, between 1996 and 1999 for loans originated during 1996 and between 1997 and 1999 for loans originated during 1997.

A GSE is determined to lag the market (other GSE) if the ratio of its category share to the market (other GSE) category share is less than 99%.

Exceptions to the "lag" determination:

When there are less than 5 reported category loans in the HMDA data and less than 5 category loans from only one of the GSEs, that GSE will count as approximating the market regardless of calculated ratio.

When there are more than 5 reported category loans in the HMDA data and less than 5 category loans from each of the GSEs, it will count as Fannie Mae approximating Freddie Mac regardless of calculated ratio.

BILLING CODE 4210–27–C

For 1996 originations, Fannie Mae:

- Lagged the market in 268 (83 percent) of the MSAs in the purchase of Underserved Area loans,
- Lagged the market in 288 (88 percent) of the MSAs in the purchase of Low- and Moderate-Income loans, and
- Lagged the market in 295 (90 percent) of the MSAs in the purchase of Special Affordable loans.

Freddie Mac lagged the market to an even greater extent in 1996. Specifically, the market outperformed Freddie Mac in:

- 296 (91 percent) of the MSAs in the purchase of Underserved Area loans,
- 322 (99 percent) of the MSAs in the purchase of Low- and Moderate-Income loans, and
- 323 (99 percent) of the MSAs in the purchase of Special Affordable loans.

Thus Freddie Mac was behind Fannie Mae in at least three-quarters of the MSAs for all three goal categories. As shown in Table A.5, the results for loans originated in 1995 and 1997 are similar.

g. High Down Payments on GSEs' Lower-Income Loans

Recent studies have raised questions about whether the lower-income loans purchased by the GSEs are adequately meeting the needs of some lower-income families. In particular, the lack of funds for down payments is one of the main impediments to homeownership, particularly for many lower-income families who find it difficult to accumulate enough cash for a down payment. As this section explains, a noticeable pattern among lower-income loans purchased by the GSEs is the predominance of loans with high down payments.

HUD's 1996 report to Congress on the possible privatization of Fannie Mae and Freddie Mac [180] found, rather surprisingly, that the mortgages taken out by lower-income borrowers and purchased by the GSEs were as likely to have high down payments as the mortgages taken out by higher-income borrowers and purchased by the GSEs. For example, considering the GSEs' purchases of home purchase loans in 1995, 58 percent of very low-income borrowers made a down payment of at least 20 percent, compared with less than 50 percent of borrowers from other groups. In addition, a surprisingly large percentage of the GSEs' first-time homebuyer loans had high down payments. In 1995, 35 percent of Fannie Mae's and 41 percent of Freddie Mac's first-time homebuyer loans had down payments of 20 percent or more.

Table A.6 presents similar data for the GSEs' purchases of total loans during 1999. Over three-fourths (75.1 percent) of the GSEs' very low-income loans had a down payment more than 20 percent, compared with 72.1 percent of their remaining purchases. Essentially, the GSEs have been purchasing lower-income loans with large down payments. [181]

BILLING CODE 4210–27–P

Table A.6

Down Payment Characteristics of GSE Purchases, 1999

GSE Purchases	Size of Down Payment: Less Than 5 Percent Down	5 to 10 Percent Down	10 to 20 Percent Down	20 Percent or More Down	Total [1]
All Loans	118,425	486,288	632,894	3,274,965	4,512,572
Very- Low-Income Loans	17,457	43,336	55,514	350,576	466,883
Less- Than-Median Income Loans	61,612	183,933	231,896	1,196,870	1,674,311
Percentage Distribution					
All Loans	2.6%	10.8%	14.0%	72.6%	100.0%
Very- Low-Income Loans	3.7%	9.3%	11.9%	75.1%	100.0%
Less- Than-Median Income Loans	3.7%	11.0%	13.9%	71.5%	100.0%

Source: Data include all owner-occupied one-unit mortgages (home purchase, refinance, and second loans) purchased by the GSEs in 1999.

[1] Loans with missing down payments are excluded.

BILLING CODE 4210–27–C

These results are consistent with previous studies that show that the proportion of large down payment loans purchased by the GSEs from lower-income borrowers is greater than that for all loan purchases.[182]

As discussed in Section C, both Fannie Mae and Freddie Mac have introduced high-LTV products: "Flexible 97" and "Alt 97" respectively. By lowering the required down payment to three percent and adding flexibility to the source of the down payment, these loans should be more affordable. The down payment, as well as closing costs, can come from, gifts, grants or loans from a family member, the government, a non-profit agency and loans secured by life insurance policies, retirement accounts or other assets.

However, in order to control default risk, these loans also have stricter credit history requirements.

Fed Study. An important study by three economists—Glenn Canner, Wayne Passmore and Brian Surette [183]—at the Federal Reserve Board showed the implications of the GSEs' focus on high down payment loans. Canner, Passmore, and Surette examined the degree to which different mortgage market institutions—the GSEs, FHA, depositories and private mortgage insurers—are taking on the credit risk associated with funding affordable mortgages. The authors combined market share and down payment data with data on projected foreclosure losses to arrive at an estimate of the credit risk assumed by each institution for each borrower group. This study found that Fannie Mae and Freddie Mac together provided only 4 to 5 percent of the credit support for lower-income and minority borrowers and their neighborhoods. The relatively small role of the GSEs providing credit support is due to their low level of funding for these groups and to the fact that they purchase mainly high down payment loans. FHA, on the other hand, provided about two-thirds of the credit support for lower-income and minority borrowers, reflecting FHA's large market shares for these groups and the fact that most FHA-insured loans have less-than-five-percent down payments.

3. Other Studies of the GSEs Performance Relative to the Market

This section summarizes briefly the main findings from other studies of the GSEs' affordable housing performance. These include studies by the HUD and the GSEs as well as studies by academics and research organizations.

a. Studies by Bunce and Scheessele

Harold Bunce and Randall Scheessele of the Department have published two studies of affordable lending. In December 1996, they published a study titled *The GSEs' Funding of Affordable Loans.*[184] This report analyzed HMDA data for 1992–95, including a detailed comparison of the GSEs' purchases with originations in the primary market. In July 1998, they updated their earlier study to analyze the mortgage market and the GSEs' activities in 1996.[185] The findings were largely similar in both studies: [186]

- Both GSEs lagged the primary conventional market, depositories, and (particularly) FHA in funding mortgages for lower-income and historically underserved borrowers. FHA stands out as the major funder of affordable loans. In 1996, approximately 30 percent of FHA-insured loans were for African-American and Hispanic borrowers, compared with only 10 percent of the loans purchased by the GSEs or originated in the conventional market.
- The two GSEs show very different patterns of lending—Fannie Mae is much more likely than Freddie Mac to serve underserved borrowers and their neighborhoods. Since 1992, Fannie Mae has narrowed the gap between its affordable lending performance and that of the other lenders in the conforming market. Freddie Mac's improvement has been more mixed—in some cases it has improved slightly relative to the market but in other cases it has actually declined relative to the market. The findings with respect to Freddie Mac are similar to those discussed earlier in Section E.2.c.

b. Studies by Freddie Mac

In 1995 Freddie Mac published *Financing Homes for A Diverse America*, which contained a wide variety of statistics and charts on the mortgage market. Several of the exhibits contained comparisons between the primary mortgage market and Freddie Mac's purchases in 1993 and 1994:

- While not asserting strict parity, this report presented comparable frequency distributions of primary market originations and Freddie Mac's purchases by borrower and census tract income, concluding that Freddie Mac ''finances housing for Americans of all incomes'' and it ''buys mortgages from neighborhoods of all incomes.''
- With regard to minority share of census tracts, the report stated that Freddie Mac's ''share of minority neighborhoods matches the primary market.''
- The report acknowledged that Freddie Mac's purchases did not match the primary market in terms of borrower race. It found that in 1994 African-Americans and Hispanics each accounted for 4.9 percent of the primary market but only 2.7 percent and 4.0 percent respectively of Freddie Mac's purchases. On the other hand, Whites and Asian Americans accounted for 83.7 percent and 3.2 percent of the primary market, but 86.3 percent and 3.9 percent respectively of Freddie Mac's acquisitions.

In its March 1998 Annual Housing Activities Report (AHAR) submitted to the Department and Congress, Freddie Mac presented data on this issue for 1996 and 1997. This report stated that its purchases ''essentially mirror[ed] the overall distribution of mortgage originations in terms of borrower income.'' However, the data underlying Exhibit 4 of the AHAR indicated that the share of Freddie Mac's 1997 purchases for borrowers with income (in 1996 dollars) less than $40,000 was more than 4 percentage points below the corresponding share for the primary market in 1996. A similar pattern prevailed in terms of census tract income—the data underlying Exhibit 5 of the AHAR indicated that the share of Freddie Mac's 1997 purchases in tracts with income in excess of 120 percent of area median income exceeded the corresponding share for the primary market in 1996 by about 4 percentage points.

In its March 1998 AHAR, Freddie Mac found a much closer match between the distributions of home purchase mortgages by down payment for Freddie Mac's 1997 acquisitions and the primary market in 1997, as the latter was reported by the Federal Housing Finance Board. Specifically, Exhibit 6 of the AHAR reported that 42 percent of borrowers in each category made down payments of less than 20 percent.[187]

c. Studies by Fannie Mae

Fannie Mae has not published any studies on the comparability of its mortgage purchases with the primary market. However, in an October 1998 briefing for HUD staff, Fannie Mae presented the results of several comparisons of its purchases, based on the data supplied to the Department by Fannie Mae, with loans originated in the conventional conforming market, based on the HMDA data. In these analyses, Fannie Mae stated that:

- The percentage of Fannie Mae's home purchase loans serving minorities exceeded the corresponding percentage in the conventional conforming market by 2.6 percentage points in 1995, 2.0 percentage points in 1996, and 2.7 percentage points (18.6 percent vs. 15.9 percent) in 1997;
- The percentage of Fannie Mae's home purchase loans for low-and moderate-income households exceeded the corresponding percentage in the conventional conforming market by 0.2 percentage point in 1995, fell 0.1 percentage point short of the market in 1996, but exceeded it again, by 1.2 percentage points (38.5 percent vs. 37.3 percent), in 1997;
- The percentage of Fannie Mae's home purchase loans for households in underserved areas fell 0.04 percentage point short of the conventional conforming market in 1996, but exceeded the corresponding percentage in the conventional conforming market by 1.4 percentage points (25.5 percent vs. 24.1 percent) in 1997;
- The percentage of Fannie Mae's home purchase loans for very low-income households and low-income households in low-income areas fell 1.0 percentage point short of the conventional conforming market in 1995 and 0.9 percentage point short in 1996, but exceeded the corresponding percentage in the conventional conforming market by 2.2 percentage points (12.7 percent vs. 10.5 percent) in 1997.

Some of these findings by Fannie Mae differ from those of other researchers. This is due in part to the fact that most other studies have utilized HMDA data for both the primary market and sales to the GSEs, but Fannie Mae compared the primary market, based on HMDA data, with the patterns in the GSE loan-level data submitted to the Department.[188] [189]

d. Other Studies

Lind. John Lind examines HMDA data in order to compare the GSEs' loan purchase activity to mortgage originations in the primary conventional conforming market.[190] Like other studies, Lind presents an aggregate comparison of GSE/primary market correspondence for Black, Hispanic, low-income borrowers, and low- and moderate-income Census tracts. Unlike other studies, however, Lind also examines market correspondence at the individual metropolitan area and regional levels.

Lind finds that the GSEs are not leading the market, but that Fannie Mae, in particular, improved its performance between 1993 and 1994. In 1994, Lind finds that the shares of Fannie Mae's home purchase loans to minority and low-income borrowers were comparable to the industry's shares. But the share of its home purchase loans for low- and moderate-income census tracts and the shares of Freddie Mac's home purchase loans for all categories examined trailed those for the industry as a whole. For refinance mortgages, on the other hand, both

GSEs trailed the industry in terms of the shares of their loans for the groups analyzed. In a subsequent study, Lind found that the difference between the affordable lending performance of Fannie Mae and Freddie Mac was caused by differences in policy and operating procedures of the GSEs, and not differences in the make-up of their suppliers of loans.[191]

Ambrose and Pennington-Cross. There exists a wide variation in the market shares of the GSEs, FHA and portfolio lenders across geographic mortgage markets. Brent Ambrose and Anthony Pennington-Cross analyze FHA, GSE and portfolio lender market shares to find insights into what factors affect the market shares for FHA eligible (under the FHA loan limit) loans.[192] They hypothesize that the GSEs try to mitigate higher perceived risks at the MSA level by tightening lending standards, generating a prediction of higher FHA market share in locations with characteristically higher or dynamically worsening risk. A second hypothesis is that market share of portfolio lenders increases in areas with higher risk due to ''reputation effects'' and GSE repurchase requirements. In their model, they account for cyclical risk, permanent risk, demographic, lender and regional differences.

Ambrose and Pennington-Cross found that the GSEs exhibit risk averse behavior as evidenced by lower GSE market presence in MSAs experiencing increasing risk and in MSAs that historically exhibit high-risk tendencies. FHA market shares, in contrast, are associated with high or deteriorating risk conditions. Portfolio lenders increase their mortgage portfolios during periods of economic distress, but increase the sale of originations out of portfolio during periods of increasing house prices. Lenders in MSAs with historically high delinquency hold more loans in portfolio. MSA risk is therefore concentrated among portfolio lenders and in FHA, with the GSEs bearing relatively little credit risk of this kind. The study does find that, other things being equal, the GSEs do have a higher presence in underserved areas and in areas where the minority population is highly segregated.

MacDonald (1998). Heather MacDonald [193] examined the impact of the central city housing goal from HUD's 1993–1995 interim housing goals. Census tracts were clustered according to five variables (median house value, median house age, proportion of renters, percent minority and proportion of 2 to 4 units) argued to impede secondary market purchases of homes in some neighborhoods. Borrower characteristics and lending patterns were compared across the clusters of tracts, and across central city and suburban tracts. Clustered tracts were found to be more strongly related to a set of key lending variables than are tracts divided according to central city/suburban boundaries. MacDonald concludes that targeting affirmative lending requirements on the basis of neighborhood characteristics rather than political or statistical divisions may provide a more appropriate framework for efforts to expand access to credit.

MacDonald (1999). In a 1999 study, Heather MacDonald investigated variations in GSE market share among a sample of 426 nonmetropolitan counties in eight census divisions.[194] Conventional conforming mortgage originations were estimated using residential sales data, adjusted to exclude government-insured and nonconforming loans. Multivariate analysis was used to investigate whether GSE market shares differed significantly by location, after controlling for the economic, demographic, housing stock and credit market differences among counties that could affect use of the secondary markets. The study also investigated whether there were significant differences between the nonmetropolitan borrowers served by Fannie Mae and those served by Freddie Mac.

MacDonald found that space contributes significantly to explaining variations in GSE market shares among nonmetropolitan counties, but its effects are quite specific. One region—non-adjacent West North Central counties—had significantly lower GSE market shares than all others. The disparity persisted when analysis was restricted to underserved counties only. The study also suggested significant disparities between the income levels of the borrowers served by each agency, with Freddie Mac buying loans from borrowers with higher incomes than the incomes of borrowers served by Fannie Mae. An important limitation on any study of nonmetropolitan mortgages was found to be the lack of Home Mortgage Disclosure Act data. This meant that more precise conclusions about the extent to which the GSEs mirror primary mortgage originations in nometropolitan areas could not be reached.

McClure. Kirk McClure examined the twin mandates of FHEFSSA: to direct mortgage credit to neighborhoods that have been underserved by mortgage lenders; and to direct mortgage credit to low-income and minority households.[195] Using the Kansas City metropolitan area as a case study, mortgages purchased by the GSEs in 1993–96 were compared with mortgages held by portfolio lenders in order to determine the performance of the GSEs in serving these two objectives. Kansas City provides a useful case study area for this analysis, because it includes a range of weak and strong housing market areas where homebuyers have been able to move easily to serve their housing, employment, and neighborhood needs.

McClure found that borrowers are better served if credit is directed to them independent of location. Very low-income and minority borrowers fared better, in terms of the demographic, housing, and employment opportunities of the neighborhoods into which they located, than borrowers in underserved neighborhoods, suggesting that directing credit to low-income and minority households has had the desired effect of helping these households purchase homes in areas where they would find good homes and good employment prospects. According to McClure, HUD's 1996–99 housing goals defined underserved tracts very broadly, such that nearly one-half of the tracts in the Kansas City area are categorized as underserved. Because the definition of underserved is so broad, directing credit to these tracts means only increasing the flow of mortgage credit to the lesser one-half of all tracts, which includes many areas with stable housing stocks and viable job markets.

The alternative approach of directing credit to underserved areas was found to be helpful only insofar as it has helped direct credit to neighborhoods with slightly lower household income levels and higher incidence of minorities than found elsewhere in the metropolitan area. McClure concluded that neighborhoods that receive very low levels of mortgage credit seemed to provide insufficient housing or employment opportunities to justify the effort that would be required to direct additional mortgage credit to them.

McClure concluded that whatever the approach, the GSEs have not been performing as well as the primary credit lenders in the Kansas City metropolitan area. In terms of helping underserved areas, the GSEs lagged behind the industry in the proportion of loans found in these areas. In terms of helping low-income and minority borrowers, the GSEs also lagged behind the industry. However, to the extent that the GSEs served these targeted populations, these households used this credit to move to neighborhoods with better housing and employment opportunities than were generally present in the underserved areas.

Williams.[196] This study looks at mortgage lending in underserved markets in the primary and secondary mortgage markets for the MSAs in Indiana. A more extensive analysis is provided for South Bend/St. Joseph County, Indiana that looks at the GSE purchases in underserved markets by type of primary market lender in both 1992 and 1996. It shows the percentage of loans bought by the GSEs and the loan they did not buy. This study found that the GSEs were more aggressive in closing the gap in St. Joseph County than in other MSAs in Indiana. It also found that Fannie Mae's underserved market performance was slightly better than Freddie Mac's performance.

Williams compared the GSEs performance in underserved markets and CRA institutions between 1992 and 1995. It shows that the GSEs have narrowed the gap between themselves and lenders while CRA institutions have lost ground relative to non-CRA lenders. A pattern observed across all Indiana MSAs is that the GSEs do not appear to lead the market but rather almost perfectly mirrored the performance of mortgage companies.

Williams looked at the impact of size and location of lenders on the home mortgage market. Large lenders were more likely to finance mortgages for very low-income and African American borrowers than smaller lenders. Lenders headquartered in Indiana were more likely to purchase mortgages in underserved areas than lenders who only had branches or no apparent physical presence in Indiana. This suggest that served markets might benefit more than underserved areas from increased competition from non-local lenders.

Gyourko and Hu. This study focuses on the GSEs' housing goals looking at the intra-metropolitan distribution of mortgage acquisitions by Fannie Mae and Freddie Mac

and the spatial distribution of households within 22 MSAs.[197] The data on the GSEs' mortgage purchases is provided by the Census Tract File of Public Use Data Base and data on households is provided by the 1990 census. The study found that the distribution of goal-qualifying loan purchases by the GSEs does not match the distribution of goal-qualifying households. On average 44 percent of Low- and Moderate-Income Goal and 46 percent of Special Affordable Goal qualifying households are located in central cities. This compares to the GSEs' mortgage purchases where 26 percent of Low- and Moderate-Income Goal and 36 percent of Special Affordable Goal were located in central cities.

This study develops criteria for evaluating the GSEs' mortgage purchasing performance in census tracts. The first measure is a ratio. The numerator of the ratio is the share of the GSEs' mortgage purchases that qualify for the Special Affordable Housing Goal in the census tract. The denominator is the share of households that are targeted by the Special Affordable Housing Goal in the census tract. A ratio is also computed for the Low- and Moderate-Income Housing Goal. If the ratio is less than 0.80 then the census tract is called under-represented, meaning that the share of the GSEs' mortgage purchases which qualify for the housing goal is less than 80 percent of the share of the households that the goal targets. The analysis of these ratios shows that: (1) Central cities are more likely to be under-represented in terms of the share of affordable loans purchased by the GSEs, (2) in suburbs, the larger the census tracts' percent minority the greater the probability that affordable loan purchases are under-represented, and (3) the higher the tract's median income, the greater the likelihood that census tract is over-represented.

Gyourko and Hu's results are broadly consistent across the 22 MSAs analyzed; however, some noteworthy exceptions are made. In a few MSAs, particularly Miami and New York, the mismatch of affordable GSE purchases to affordable households is much less severe. In Boston, Los Angeles and New York, census tracts with higher relative median incomes are more likely to be under-represented.

Case and Gillen. This study provides a descriptive analysis of market share and logistic regression analysis of the GSEs' mortgage purchase patterns in 44 metropolitan areas over the period from 1993 to 1996.[198] The study compares the GSEs and the market along several borrower and neighborhood characteristics.

This descriptive analysis of market shares finds that, compared with mortgages originated in the market, the GSEs' are less likely to purchase loans made to lower-income borrowers, minority borrowers, borrowers in lower-income neighborhoods, and borrowers in central city neighborhoods. The GSEs are more likely to purchase loans made to higher income borrowers, white borrowers, borrowers in higher income neighborhoods, and suburban borrowers than the non-GSEs. Case and Gillen find that Fannie Mae provides a higher proportion of total GSE funding for mortgage lending to lower-income and minority borrowers and to borrowers living in lower income, predominantly minority, central city, and geographically targeted areas than Freddie Mac.

A logistic regression analysis was conducted to look at the influence of specific borrower and neighborhood characteristics on the probability that a loan is purchased by one the GSEs. The results support the findings of the descriptive analysis with some exceptions. In contrast to the descriptive analysis, the impact of geographically targeted census tracts and neighborhood minority composition on the GSEs' purchasing behavior was inconsistent over the 44 areas. [199, 200]

The logistic regression analysis was extended to test for changes in the GSEs' purchasing behavior over time (1993–1996). Changes in the GSEs' purchasing activity are observed, but no systematic time trend was found. One explanation that was given for this result was that changes in the GSEs' purchases over time might be related to changes in overall market activity rather than changes in purchasing behavior by either of the GSEs.

Myers. Earlier studies have shown that racial minority groups—particularly African Americans and Latinos—are less likely to be approved for home mortgage loans than members of majority populations. It has been suggested that primary lenders may use the difficulty of selling loans to the GSEs on the secondary market as a pretext for not approving loans to racial minority group members. This study uses the residual difference approach to measure racial discrimination in mortgage lending and estimates differential treatment by the GSEs of minority and nonminority first-time homeowner loans in the 23 largest metropolitan statistical areas (MSAs).[201]

The residual difference approach decomposes racial gaps in HMDA-reported loan-rejection rates between the component that can be explained and that which cannot be explained by racial differences in characteristics. Characteristics Myers uses to explain poor credit history and denial rates include borrower, neighborhood, and loan variables from HMDA, the GSE Public Use Data Base, and Census 1990.[202] Myers interprets the unexplained gap as being ''discrimination''. The residual difference method permits the estimation of minority loan rejection rates when minorities are treated like equally qualified white borrowers (*i.e.* equal treatment values).

There are three main findings of this study. First, there are unexplained disparities in loan-rejection rates between black and white applicants for home mortgage loans in HMDA data; that is, blacks have higher denial rates than whites even after controlling for variables such as income. Second, the probability that a loan won't sell on the secondary market systematically increases the probability that a loan will be rejected by the lender.[203] Third, African American and Hispanic loans are often less likely to sell on the secondary market than white loans.

The study also looks at whether the GSEs' purchasing behavior explains racial gaps in loan rejection rates. It compares the residual difference on racial disparities in loan rejection rates with and without controlling for GSE decisions. If the equal-treatment rejection rate is higher than the equal-treatment rejection rate that accounts for the GSE effect, then the purchase policies of the GSEs ''explains part of the lending gap''. If the equal-treatment value without accounting for racial difference in GSE effects is equal to or lower than the corresponding value than accounts for racial difference in GSE effect, then GSEs effect does not explain racial lending gaps.

Myers concludes that there are no consistent patterns for the GSE effect, either across racial groups or across MSAs—that is, the GSE discussions do not systematically explain the observed racial disparities in loan rejection rates. In many MSAs, the GSE effect can account for some of the high rejection rates of blacks and ''others''. Among other racial groups, however, there are as many MSAs where there is no such finding as there are ones where the effect seems to hold. But even in those cases where the effect seems to hold the amount explained is small. Myers finds that the impact is so small that even large differences in actual probabilities that loans are not sold to GSEs cannot explain the substantial racial difference in loan-rejection rates.

Bradford. In a case study comparison of the Chicago and Washington D.C. mortgage markets, Bradford found that minority areas received considerably lower levels of GSE purchases than white areas in the Chicago market, but about equal and sometimes higher levels of GSE purchases in the D.C. study area.[204] Bradford's interprets this finding as partially the result of the exceptionally large minority population in the D.C. area living in new development and suburban areas when compared to the minority population distribution in the Chicago market. In his view, the fact that many minority homeowners in the D.C. area reside in suburban and new growth areas provides for increasing housing values and high levels of demand that help mitigate the effects of mortgage default by providing borrowers with more options to refinance or sell their homes to escape from foreclosure. This makes the minority market in the D.C. area generally more attractive to lenders and secondary market investors.

Bradford argues that the role of individual lenders is an important factor in explaining the disparate racial patterns between the Chicago and D.C. study areas. The large GSE lenders and the large lenders serving minority markets tend to be the same lenders in the D.C. market. He contends that the parity in the racial markets in the D.C. area would disappear and would be replaced by levels of disparity comparable to those in the Chicago market if just a handful of large GSE lenders in the minority areas reduced their GSE levels to the norm for the entire market.

Bradford also examines differences between Fannie Mae and Freddie Mac in the two study areas. Both Fannie Mae and Freddie Mac showed lower levels of purchases in minority areas than in white areas in the Chicago market, based on his research. While there were some instances where Freddie Mac made improvements

relative to Fannie Mae (notably in the Chicago market in 1996), Fannie Mae's relative performance in different racial markets was better than that of Freddie Mac. In the Chicago market, for example, Fannie Mae had higher levels of market shares in the racially changing areas than in the white areas while Freddie Mac always had lower market shares in the racially changing areas compared to the white areas. In the D.C. market, Bradford found that while the GSEs as a whole showed relative parity in the different racial markets, this was largely due to Fannie Mae's performance that countered the systematic disparities in the Freddie Mac purchases.

Harrison, et. al. Theories of ''information externalities,'' supported by recent empirical evidence, suggest that property transactions in a particular market area generate information making similar future transactions in that same market area less risky for prospective lenders. Specifically, home sales generate information useful to independent appraisers in generating more precise value estimates. This increased precision, in turn, reduces the uncertainty (risk) faced by lenders, and hence, may increase acceptance rates and the flow of funds to the given market area.

Using a sample of GSE purchasing activities across twelve Florida counties, Harrison *et al.* find some evidence that both Fannie Mae and Freddie Mac are more active in neighborhoods with historically low transaction volume than they are in other neighborhoods.[205] In addition, the results of their investigation are generally consistent with the previous literature suggesting Fannie Mae outperformed Freddie Mac in historically underserved market segments in 1993–95.

4. GSEs' Underwriting Guidelines

Most studies on affordability of mortgage loans are quantitative using HMDA data, HUD's GSE Public Use Database or some other related database. To complement these studies, HUD commissioned a study by the Urban Institute (UI) to examine recent trends in the GSEs' underwriting criteria and to seek attitudes and opinions of informed players in four local mortgage market markets (Boston, Detroit, Miami and Seattle).[206] Interviews were conducted with mortgage lenders, community advocates and local government officials—all local actors who would be knowledgeable about the impact of the GSEs' underwriting policies on their ability to fund affordable loans for lower-income borrowers.[207]

The UI report reveals three major trends in the GSEs' underwriting that affects affordable lending. These include increased flexibility in standard [208] underwriting and appraisal guidelines, the introduction of affordable lending products, and the introduction of automated underwriting and credit scores in the loan application process. Through these trends, Fannie Mae and Freddie Mac have attempted to increase their capacity to serve low- and moderate-income homebuyers. They are also eliminating practices that could potentially have had disparate impacts on minority homebuyers. While both GSEs have made progress, ''most [of those interviewed] thought Fannie Mae has been more aggressive than Freddie Mac in outreach efforts, implementing underwriting changes and developing new products.'' [209]

While the GSEs improved their ability to serve low- and moderate-income borrowers, it does not appear that they have gone as far as some primary lenders to serve these borrowers and to minimize the disproportionate effects on minority borrowers. From previous published analyses of the GSEs' mortgage purchases, differences between the income characteristics and racial composition of borrowers served by the primary mortgage market and the purchase activity of the GSEs were found. ''This means that the GSEs are not serving lower-income and minority borrowers to the extent these families receive mortgages from primary lenders.'' [210] From UI's discussions with lenders, it was revealed that primary lenders are originating mortgages to lower-income borrowers using underwriting guidelines that allow lower down payments, higher debt-to-income ratios and poorer credit histories than allowed by the GSEs' guidelines. These mortgages are originated to a greater extent to minority borrowers who have lower incomes and wealth. From this evidence, UI concludes that the GSEs appear to be lagging the market in servicing low- and moderate-income and minority borrowers.

Furthermore, UI found ''that the GSEs' efforts to increase underwriting flexibility and outreach has been noticed and is applauded by lenders and community advocates. Despite the GSEs' efforts in recent years to review and revise their underwriting criteria, however, they could do more to serve low- and moderate-income borrowers and to minimize disproportionate effects on minorities. Moreover, the use of automated underwriting systems and credit scores may place lower-income borrowers at a disadvantage when applying for a loan, even though they are acceptable credit risks.'' [211]

5. The GSEs' Support of the Mortgage Market for Single-family Rental Properties

Single-family rental housing is an important part of the housing stock because it is an important source of housing for lower-income households. Based on the 1996 Property Owners and Managers Survey, 49 percent of all rental units are in properties with fewer than five units and the 1997 American Housing Survey found that approximately 59 percent of the stock of single-family rental units are affordable to very-low income families (*i.e.,* families earning 60 percent or less of the area median income). Of the GSEs' mortgage purchases in 1999, around 30 percent of the single-family rental units financed were affordable to very-low income households.

While single-family rental properties are a large segment of the rental stock for low-income families, they make up a small portion of the GSEs' overall business. In 1999, Fannie Mae and Freddie Mac purchased more than $26 billion in mortgages for these properties. These purchases represented less than 5 percent of the total dollar amount of their overall 1999 business.

It follows that since single-family rentals make up such a small part of the GSEs business, they have not penetrated the single-family rental market to the same degree that they have penetrated the owner-occupant market. Table A.7b in Section G shows that in 1998 the GSEs financed 68 percent of owner-occupied dwelling units but only 19 percent of single-family rental units.

There are a number of factors that have limited the development of the secondary market for single-family rental property mortgages thus explaining the lack of penetration by the GSEs. Little is collectively known about these properties as a result of the wide spatial dispersion of properties and owners, as well as a wide diversity of characteristics across properties and individuality of owners. This makes it difficult for lenders to properly evaluate the probability of default and severity of loss for these properties.

Single-family rental properties are important for the GSEs housing goals, especially for meeting the needs of lower-income families. In 1999 around 73 percent of single-family rental units qualified for the Low- and Moderate-Income Goals, compared with 38 percent of one-family owner-occupied properties. This heavy focus on lower-income families meant that single-family rental properties accounted for 15 percent of the units qualifying for the Low- and Moderate-Income Goal, even though they accounted for 8 percent of the total units (single-family and multifamily) financed by the GSEs. Single-family rental properties account for 16 percent of the geographically-targeted and 23 percent of the special affordable housing goals.

A comparison of the GSEs' single-family rental and one-family owner-occupied mortgage purchases reveals the following broad patterns of borrower and neighborhood characteristics. Borrowers for single-family rental properties are more likely to be minorities than borrowers for one-family owner-occupied properties. Mortgages purchased by the GSEs for single-family rental properties compared with one-family owner-occupied properties are more likely to be located in lower-income and higher minority neighborhoods. More single-family rental than one-family owner-occupied mortgages were refinance or prior-year loans.

A closer look at borrower characteristics for single-family rental properties shows the following. First, based on ethnic/racial characteristics, borrowers for investor-owned properties are similar to borrowers for one-family owner-occupied properties. Second, borrowers for single-family rental properties, especially owner-occupied 2- to 4-unit properties, are more likely to be nonwhite than are borrowers for one-family owner-occupied and investor-owned properties. About 35 percent of the borrowers for owner-occupied 2- to 4-unit properties are non-white compared with around 17 percent for both one-family and investor-owned properties. For one-family owner-occupied and investor-owned properties about 5 percent of borrowers are African American, compared with 9 percent for owner-occupied 2- to 4-unit properties. A similar comparison applies for Hispanic borrowers, 6 percent and 15 percent respectively.

With regard to neighborhood characteristics, a comparison of different

types of rental properties purchased by the GSEs shows that investor 1-unit properties were more likely to be located in higher-income neighborhoods than were units in 2- to 4-unit rental properties. For units in investor 1-unit properties, about 18 percent were in low-income neighborhoods, compared with 31 percent from units in 2- to 4-unit rental properties. About 40 percent of the units in investor properties were in high-minority neighborhoods, compared to only a slightly lower 37 percent for owner-occupied 2- to 4-unit properties.

The GSEs can mitigate risk by purchasing mortgages which are seasoned or refinanced. The data show that mortgages on properties with additional risk components such as being investor-owned, in low- income neighborhoods, and/or in high-minority neighborhoods are more likely to be seasoned or refinanced. For the GSEs' mortgage purchases, in general, mortgages on investor-owned properties are more likely to be prior-year than mortgages on owner-occupied 2- to 4-unit properties (based on unit counts). These patterns are consistent with the notion that investor properties are more risky than owner-occupied 2- to 4-unit properties.

F. Factor 4: Size of the Conventional Conforming Mortgage Market Serving Low- and Moderate-Income Families Relative to the Overall Conventional Conforming Market

The Department estimates that dwelling units serving low- and moderate-income families will account for 50–55 percent of total units financed in the overall conventional conforming mortgage market during 2001–2003, the period for which the Low- and Moderate-Income Housing Goal is established. The market estimates exclude B&C loans and allow for much more adverse economic conditions than have existed recently. The detailed analyses underlying these estimates are presented in Appendix D.

G. Factor 5: GSEs' Ability To Lead the Industry

FHEFSSA requires the Secretary, in determining the Low- and Moderate-Income Housing Goal, to consider the GSEs' ability to ''lead the industry in making mortgage credit available for low- and moderate-income families.'' Congress indicated that this goal should ''steer the enterprises toward the development of an increased capacity and commitment to serve this segment of the housing market'' and that it ''fully expect[ed] [that] the enterprises will need to stretch their efforts to achieve [these goals].'' [212]

The Department and independent researchers have published numerous studies examining whether or not the GSEs have been leading the single-family market in terms of their affordable lending performance. This research, which is summarized in Section E, concludes that the GSEs have generally lagged behind other lenders in funding lower-income borrowers and their communities. As required by FHEFSSA, the Department has produced estimates of the portion of the total (single-family and multifamily) mortgage market that qualifies for each of the three housing goals (see Appendix D). Congress intended that the Department use these market estimates as one factor in setting the percentage target for each of the housing goals. The Department's estimate for the size of the Low- and Moderate-Income market is 50–55 percent, which is substantially higher than the GSEs' performance on that goal.

This section provides another perspective on the GSEs' performance by examining the share of the total mortgage market and the share of the goal-qualifying markets (low-mod, special affordable, and underserved areas) accounted for by the GSEs' purchases. This analysis, which is conducted by product type (single-family owner, single-family rental, and multifamily), shows the relative importance of the GSEs in each of the goal-qualifying markets.

1. GSEs' Role in Major Sectors of the Mortgage Market

Table A.7 compares GSE mortgage purchases with HUD's estimates of the numbers of units financed in the conventional conforming market during 1997(A.7a) and 1998 (A.76).[213] Because 1997 was a more typical year then the heavy refinance year of 1998, the following discussion will focus on 1997. HUD estimates that there were 7,306,950 owner and rental units financed by new mortgages in 1997. Fannie Mae's and Freddie Mac's mortgage purchases financed 2,948,112 dwelling units, or 40 percent of all dwelling units financed. As shown in Table A.7a, the GSEs play a much smaller role in the goals-qualifying markets than they do in the overall market. During 1997, new mortgages were originated for 4,201,287 dwelling units that qualified for the Low- and Moderate-Income Goal; the GSEs low-mod purchases financed 1,330,516 dwelling units, or only 32 percent of the low-mod market. Similarly, the GSEs' purchases accounted for only 25 percent of the special affordable market and 34 percent of the underserved areas market.[214] Obviously, the GSEs are not leading the industry in financing units that qualify for the three housing goals.

BILLING CODE 4210–27–P

Table A.7a

Number of Units by Type in the 1997 Conventional Conforming Market Compared To Fannie Mae and Freddie Mac Purchases

	Single-Family Owner	Single-Family Rental	Multifamily	Total Rental	Total
Total Units					
Market	4,910,185	1,003,088	1,393,677	2,396,765	7,306,950
Fannie Mae	1,387,232	84,055	229,924	313,979	1,701,211
Freddie Mac	1,085,784	51,826	109,291	161,117	1,246,901
GSE Total	2,473,016	135,881	339,215	475,096	2,948,112
GSE % of Market	50%	14%	24%	20%	40%
Low-Mod Units					
Market	2,044,199	902,779	1,254,309	2,157,088	4,201,287
Fannie Mae	504,555	75,018	219,370	294,388	798,943
Freddie Mac	381,767	45,603	104,202	149,806	531,573
GSE Total	886,323	120,621	323,572	444,193	1,330,516
GSE % of Market	43%	13%	26%	21%	32%
Underserved Area Units*					
Market	1,351,825	456,267	668,965	1,125,232	2,477,057
Fannie Mae	335,602	40,508	96,733	137,241	472,842
Freddie Mac	261,520	23,983	53,330	77,314	338,834
GSE Total	597,121	64,491	150,063	214,554	811,676
GSE % of Market	44%	14%	22%	19%	33%
Special Affordable Units					
Market	715,385	581,790	808,333	1,390,123	2,105,508
Fannie Mae	146,699	37,982	136,781	174,763	321,463
Freddie Mac	107,904	22,960	67,044	90,004	197,908
GSE Total	254,603	60,943	203,825	264,767	519,371
GSE % of Market	36%	10%	25%	19%	25%

Source: The market data are the estimated number of newly mortgaged units during 1997. The Single-Family Owner market data exclude B&C loans; including the B&C loans in the owner market would have reduced the GSE share of the owner market from 50 percent to 44 percent. See Appendix D for an explanation of the market methodology and various caveats (such as excluding manufactured housing in non-metropolitan areas). The GSE data include units from conventional mortgages originated during 1997 and purchased by one of the GSEs during 1997, 1998 or 1999. GSE data with missing affordability or geocode fields are reallocated based the distribution of existing data.

*The Single-Family Owner market data for underserved areas should be considered a minimal estimate. The goal-qualifying percentages that were used to derive the Single-Family Owner market estimates were based mainly on HMDA data for metropolitan areas; as discussed in Appendix D, this underestimates the underserved area market in non-metropolitan areas.

Table A.7b

Number of Units by Type in the 1998 Conventional Conforming Market Compared To Fannie Mae and Freddie Mac Purchases

	Single-Family Owner	Single-Family Rental	Multifamily	Total Rental	Total
Total Units					
Market	8,372,289	1,632,880	1,739,635	3,372,515	11,744,804
Fannie Mae	3,188,332	189,902	282,363	472,265	3,660,597
Freddie Mac	2,515,100	117,995	213,481	331,476	2,846,576
GSE Total	5,703,432	307,897	495,844	803,741	6,507,173
GSE % of Market	68%	19%	29%	24%	55%
Low-Mod Units					
Market	3,284,199	1,469,592	1,565,671	3,035,263	6,319,462
Fannie Mae	1,144,382	169,142	264,061	433,204	1,577,585
Freddie Mac	905,292	105,014	202,911	307,925	1,213,217
GSE Total	2,049,673	274,156	466,972	741,129	2,790,802
GSE % of Market	62%	19%	30%	24%	44%
Underserved Area Units*					
Market	2,088,672	722,844	817,628	1,540,472	3,629,144
Fannie Mae	729,938	86,579	115,165	201,744	931,682
Freddie Mac	603,341	54,068	90,372	144,440	747,782
GSE Total	1,333,280	140,647	205,538	346,184	1,679,464
GSE % of Market	64%	19%	25%	22%	46%
Special Affordable Units					
Market	1,074,491	947,071	1,008,988	1,956,059	3,030,550
Fannie Mae	333,778	85,117	141,244	226,361	560,139
Freddie Mac	271,527	56,465	116,141	172,606	444,134
GSE Total	605,306	141,582	257,385	398,967	1,004,273
GSE % of Market	56%	15%	26%	20%	33%

Source: The market data are the estimated number of newly mortgaged units during 1998. The Single-Family Owner market data exclude B & C loans; including B&C loans in the owner market would have reduced the GSE share of the owner market from 68 percent to 62 percent. See Appendix D for an explanation of the market methodology. The GSE data include units from mortgages originated during 1998 and purchased by one of the GSEs during 1998 or 1999. GSE data with missing affordability or geocode fields are reallocated based the distribution of existing data.

*The Single-Family Owner market data for underserved areas should be considered a minimal estimate. The goal-qualifying percentages that were used to derive the Single-Family Owner market estimates were based mainly on HMDA data for metropolitan areas; as discussed in Appendix D, this underestimates the underserved area market in non-metropolitan areas.

BILLING CODE 4210–27–C

While the GSEs are free to meet the Department's goals in any manner that they deem appropriate, it is useful to consider their performance relative to the industry by property type. As shown in Table A.7a, the GSEs accounted for 50 percent of the single-family owner market in 1997 but only 24 percent of the multifamily market and 14 percent of the single-family rental market (or a combined share of 20 percent of the rental market).

Single-family Owner Market. This market is the bread-and-butter of the GSEs' business, and based on the financial and other factors discussed below, they clearly have the ability to lead the primary market in providing credit for low- and moderate-income owners of single-family properties. However, the GSEs have been lagging behind the market in their funding of single-family owner loans that qualify for the housing goals, as discussed in Section E.2.c. Between 1996 and 1998, low- and moderate-income borrowers accounted for 34.9 percent of Freddie Mac's mortgage purchases and 38.4 percent of Fannie Mae's mortgage purchases, but 42.6 percent of primary market originations in metropolitan areas. The market share data reported in Table A.7. for the single-family owner market tell the same story. The GSEs' purchases of single-family owner loans represented 50 percent of all newly-originated owner loans in 1997, but only 43 percent of the low-mod loans that were originated, 35 percent of the special affordable loans, and 48 percent of the underserved area loans. Thus, the GSEs need to improve their performance and it appears that there is ample room in the non-GSE portions of the goals-qualifying markets for them to do so. For instance, the GSEs are not involved in almost two-thirds of special affordable owner market.

Single-family Rental Market. Single-family rental housing is a major source of low- and moderate-income housing. As discussed in Appendix D, data on the size of the primary market for mortgages on these properties is limited, but information from the American Housing Survey on the stock of such units

and plausible rates of refinancing indicate that the GSEs are much less active in this market than in the single-family owner market. As shown in Table A.7a, HUD estimates that the GSEs' purchases have totaled only 14 percent of newly-mortgaged single-family rental units that were affordable to low- and moderate-income families.

Many of these properties are ''mom-and-pop'' operations, which may not follow financing procedures consistent with the GSEs' guidelines. Much of the financing needed in this area is for rehabilitation loans on 2–4 unit properties in older areas, a market in which the GSEs' have not played a major role. However, this sector could certainly benefit from an enhanced role by the GSEs, and the Department believes that there is room for such an enhanced role.

Multifamily Market. Fannie Mae is the largest single source of multifamily finance in the United States, and Freddie Mac has made a solid reentry into this market over the last five years. However, there are a number of measures by which the GSEs lag the multifamily market. For example, the share of GSE resources committed to the multifamily purchases falls short of the multifamily proportion prevailing in the overall mortgage market. HUD estimates that newly-mortgaged units in multifamily properties represented 17 percent all (single-family and multifamily) dwelling units financed during 1997.[215] By comparison, multifamily acquisitions represented 13.5 percent all units backing Fannie Mae's purchases of mortgages originated in 1997, with a corresponding figure of only 8.8 percent for Freddie Mac.[216] In other words, the GSEs place more emphasis on single-family mortgages than they do on multifamily mortgages.

The GSEs role in the multifamily market is significantly smaller than in single-family. As shown in Table A.7a, the GSEs' purchases have accounted for only 24 percent of newly financed multifamily units during 1997—a market share much lower than their 50 percent share of the single-family owner market. Thus, these data suggest that a further enlargement of the GSEs' role in the multifamily market seems feasible and appropriate in the future.

There are a number of submarkets, such as the market for mortgages on 5–50 unit multifamily properties, where the GSEs have particularly lagged the market. As mentioned above, the GSEs acquired loans representing 24 percent units multifamily units receiving conventional financing in 1997, but their acquisitions of loans on small multifamily properties represented only about 2 percent of such properties financed that year. Certainly the GSEs face a number of challenges in better meeting the needs of the multifamily secondary market. For example, thrifts and other depository institutions may sometimes retain their best loans in portfolio, and the resulting information asymmetries may act as an impediment to expanded secondary market transaction volume.[217] However, the GSEs have demonstrated that they have the depth of expertise and the financial resources to devise innovative solutions to problems in the multifamily market.

2. Qualitative Dimensions of the GSEs' Ability to Lead the Industry

This section discusses several qualitative factors that are indicators of the GSEs' ability to lead the industry in affordable lending. It discusses the GSEs' role in the mortgage market; their ability, through their underwriting standards, new programs, and innovative products, to influence the types of loans made by private lenders; their development and utilization of state-of-the-art technology; the competence, expertise and training of their staffs; and their financial resources.

a. Role in the Mortgage Market

As discussed in Section C of this Appendix, the GSEs' single-family mortgage acquisitions have generally followed the volume of originations in the primary market for conventional mortgages. However, in 1997, single-family originations rose by nearly 10 percent, while the GSEs' acquisitions declined by 7 percent. As a result, the Office of Federal Housing Enterprise Oversight (OFHEO) estimates that the GSEs' share of single-family mortgage originations declined from 37 percent in 1996 to 32 percent in 1997. The GSEs' single-family mortgage share jumped to an estimated 43 percent in 1998 and 42 percent in 1999, but that is still well below the peak of 51 percent attained in 1993.

The GSEs' high shares of originations during the 1990s led to a rise in their share of total conventional single-family mortgages outstanding, including both conforming mortgages and jumbo mortgages.[218] OFHEO estimates that the GSEs' share of such mortgages outstanding jumped from 34 percent at the end of 1991 to 40 percent at the end of 1994 and an estimated 45 percent at the end of 1998.[219] All of the increase in the GSEs' relative role between 1991 and 1998 was due to the growth in their portfolio holdings as a share of mortgages outstanding, from 5 percent at the end of 1991 to 17 percent at the end of 1998; relative holdings of the GSEs' mortgage-backed securities by others actually declined as a share of mortgages outstanding, from 29 percent at the end of 1991 to 28 percent at the end of 1998.

The dominant position of the GSEs in the mortgage market is reinforced by their relationships with other market institutions. Commercial banks, mutual savings banks, and savings and loans are their competitors as well as their customers—they compete to the extent they hold mortgages in portfolio, but at the same time they sell mortgages to the GSEs. They also buy mortgage-backed securities, as well as the debt securities used to finance the GSEs' portfolios. Mortgage bankers, who accounted for 58 percent of all single-family loans in 1997, sell virtually all of their conventional conforming loans to the GSEs.[220] Private mortgage insurers are closely linked to the GSEs, because mortgages purchased by the enterprises that have loan-to-value ratios in excess of 80 percent are normally required to be covered by private mortgage insurance, in accordance with the GSEs' charter acts.

b. Underwriting Standards for the Primary Mortgage Market

The GSEs' underwriting guidelines are followed by virtually all originators of prime mortgages, including lenders who do not sell many of their mortgages to Fannie Mae or Freddie Mac.[221] 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)—such mortgages eventually might be sold to the GSEs, as the principal balance is amortized or when the conforming loan limit is otherwise increased. The GSEs, through their automated underwriting systems, have started adapting their underwriting for subprime loans and other loans that have not met their traditional underwriting standards.

Because the GSEs' guidelines set the credit standards against which the mortgage applications of lower-income families are judged, the enterprises have a profound influence on the rate at which mortgage funds flow to low- and moderate-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 in 1993, and when it called for the Secretary to ''periodically review and comment on the underwriting and appraisal guidelines of each enterprise.'' Some of the conclusions from a study of the GSEs' single-family underwriting guidelines prepared for the Department by the Urban Institute have been discussed in Section E.

c. State-of-the-Art Technology

Both GSEs are in the forefront of new developments in mortgage industry technology. Each enterprise released an automated underwriting system in 1995—Freddie Mac's ''Loan Prospector'' and Fannie Mae's ''Desktop Underwriter.'' Both systems rely on numerical credit scores, such as those developed by Fair, Isaac, and Company, and additional data submitted by the borrower, to obtain a mortgage score. The mortgage score indicates to the lender either that the GSE will accept the mortgage, based on the application submitted, or that more detailed manual underwriting is required to make the loan eligible for GSE purchase.

It is estimated that 25–40 percent of the GSEs' purchases were based on automated underwriting in 1999. These systems have also been adapted for FHA and jumbo loans. They have the potential to reduce the cost of loan origination, particularly for low-risk loans, but the systems are so new that no comprehensive studies of their effects have been conducted. As discussed earlier, concerns about the use of automated underwriting include the impact on minorities and the ''black box'' nature of the score algorithm.

The GSEs are using their state-of -the-art technology in certain ways to help expand homeownership opportunities. 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.

d. Staff Resources

Both Fannie Mae and Freddie Mac are well-known throughout the mortgage industry for the expertise of their staffs in carrying out their current programs, conducting basic and applied research regarding mortgage markets, developing innovative new programs, and undertaking sophisticated analyses that may lead to new programs in the future. The leaders of these corporations 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, academics, and government housing authorities. They also contract with outside leaders in the finance industry for technical expertise not available in-house and for advice on a wide variety of issues.

e. Financial Strength

Fannie Mae. The benefits that accrue to the GSEs because of their GSE status, as well as their solid management, have made them two of the nation's most profitable businesses. Fannie Mae's net income has increased from $376 million in 1987 to $1.6 billion in 1992, $3.1 billion in 1997, $3.4 billion in 1998 and $3.9 billion in 1999—an average annual rate of increase of 22 percent. Through the fourth quarter of 1998, Fannie Mae has recorded 48 consecutive quarters of increased net income per share of common equity. Fannie Mae's return on equity averaged 24.0 percent over the 1995–99 period—far above the rates achieved by most financial corporations.

Investors in Fannie Mae's common stock have seen their annual dividends per share more than double since 1993, rising from $1.84 to $4.32 in 1999. If dividends were fully reinvested, an investment of $1000 in Fannie Mae common stock on December 31, 1987 would have appreciated to $27,983.98 by December 31, 1997. This annualized total rate of return of 39.5 percent over the decade exceeded that of many leading U. S. corporations, including Intel (35.9 percent), Coca-Cola (32.4 percent), and General Electric (24.3 percent).

Freddie Mac. Freddie Mac has shown similar trends. Freddie Mac's net income has increased from $301 million in 1987 to $622 million in 1992, $1.4 billion in 1997, $1.7 billion in 1998 and $2.2 billion in 1999—an average annual rate of increase of 18 percent. Freddie Mac's return on equity averaged 23.4 percent over the 1995–99 period—also well above the rates achieved by most financial corporations.

Investors in Freddie Mac's common stock have also seen their annual dividends per share more than double since 1993, rising from $0.88 to $2.40 in 1999. If dividends were fully reinvested, an investment of $1000 in Freddie Mac common stock on December 29, 1989 would have appreciated to $8,670.20 by December 31, 1997, for an annualized total rate of return of 31.0 percent over this period. This was slightly higher than the annual return on Fannie Mae common stock (29.9 percent) and substantially higher than the average gain in the S&P Financial-Miscellaneous index (24.1 percent) over the 1990–97 period.[222]

Other indicators. Additional indicators of the strength of the GSEs are provided by various rankings of American corporations. One survey found that at the end of 1999 Fannie Mae was third of all companies in total assets and Freddie Mac ranked 14th.[223] *Business Week* has reported that among Standard & Poor's 500 companies in 1999, Fannie Mae and Freddie Mac respectively ranked 49th and 88th in market value, and 24th and 43rd in total profits.[224]

f. Conclusion About Leading the Industry

In light of these considerations, 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.

H. Factor 6: The Need To Maintain the Sound Financial Condition of the GSEs

HUD has undertaken a separate, detailed economic analysis of this final rule, which includes consideration of (a) the financial returns that the GSEs earn on low- and moderate-income loans and (b) the financial safety and soundness implications of the housing goals. Based on this economic analysis and discussions with the Office of Federal Housing Enterprise Oversight, HUD concludes that the goals raise minimal, if any, safety and soundness concerns.

I. Determination of the Low- and Moderate-Income Housing Goals

The annual goal for each GSE's purchases of mortgages financing housing for low- and moderate-income families is established at 50 percent of eligible units financed in each of calendar years 2001, 2002 and 2003. This goal will remain in effect for 2004 and thereafter, unless changed by the Secretary prior to that time. The goal represents an increase over the 1996 goal of 40 percent and the 1997–99 goal of 42 percent. These goals are in the lower portion of the range of market share estimates of 50–55 percent, presented in Appendix D. The Secretary's consideration of the six statutory factors that led to the choice of these goals is summarized in this section.

1. Housing Needs and Demographic Conditions

Data from the 1990 Census and the American Housing Surveys demonstrate that there are substantial housing needs among low- and moderate-income families, especially among lower-income and minority families in this group. Many of these households are burdened by high homeownership costs or rent payments and will likely continue to face serious housing problems, given the dim prospects for earnings growth in entry-level occupations. According to HUD's ''Worst Case Housing Needs'' report, 21 percent of owner households faced a moderate or severe cost burden in 1997. Affordability problems were even more common among renters, with 40 percent paying more than 30 percent of their income for rent in 1997.[225]

Single-family Mortgage Market. 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. Over the past seven years, economic expansion, accompanied by low interest rates and increased outreach on the part of the mortgage industry, has improved affordability conditions for these families. Between 1993 and 1999, record numbers of lower-income and minority families purchased homes. First-time homeowners have become a major driving force in the home purchase market over the past five years. Thus, the 1990s have seen the development of a strong affordable lending market. Despite this growth in affordable lending to minorities, disparities in the mortgage market remain. For example, African-American applicants are still twice as likely to be denied a loan as white applicants, even after controlling for income.

Several demographic changes will affect the housing finance system over the next few years. First, the U.S. population is expected to grow by an average of 2.4 million per year over the next 20 years, resulting in 1.1 to 1.2 million new households per year. The aging of the baby-boom generation and the entry of the baby-bust generation into prime home buying age will have a dampening effect on housing demand. However, the continued influx of immigrants will increase the demand for rental housing, while those who immigrated during the 1980's will be in the market for 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 have been single-parent and single-person households. With continued house price appreciation and favorable mortgage terms, ''trade-up buyers'' will increase their role in the housing market. These demographic trends will lead to greater diversity in the homebuying market, which will require adaptation by the primary and secondary mortgage markets.

As a result of the above demographic forces, housing starts are expected to average 1.5 million units between 2000 and 2004, essentially the same as in 1996–99.[226] Refinancing of existing mortgages, which accounted for 50 percent of originations in 1998 and 34 percent in 1999 are returning to lower levels during 2000 and 2001 (16 and 12 percent respectively).

Multifamily Mortgage Market. Since the early 1990s, the multifamily mortgage market has become more closely integrated with global capital markets, although not to the same degree as the single-family mortgage market. Loans on multifamily properties remain viewed as riskier than their single-family counterparts. Property values, vacancy rates, and market rents in multifamily properties appear to be highly correlated with local job market conditions, creating greater sensitivity of loan performance to economic conditions than may be experienced for single-family mortgages.

Volatility during 1998 in the market for Commercial Mortgage Backed Securities (CMBS), an important source of financing for multifamily properties, underlines the need for an ongoing GSE presence in the multifamily secondary market. The potential for an increased GSE presence is enhanced

by virtue of the fact that an increasing proportion of multifamily mortgages is now originated in accordance with secondary market standards.

The GSEs have the capability to increase the availability of long-term, fixed rate financing, thereby contributing greater liquidity in market segments where increased GSE presence can provide lenders with a more viable ''exit strategy'' than what is presently available. It appears that the cost of mortgage financing on properties with 5–50 units, where much of the nation's affordable housing stock is concentrated, may be higher than warranted by the degree of inherent credit risk.[227] Presently, however, the GSEs purchase only about 5 percent of units in 5–50 unit properties financed annually. Borrowers have also experienced difficulty obtaining mortgage financing for multifamily properties with significant rehabilitation needs. Historically the flow of capital into multifamily housing for seniors has, moreover, been characterized by a great deal of volatility.

2. Past Performance and Ability To Lead the Industry

The GSEs have played a major role in the conventional single-family mortgage market in the 1990s. The GSEs' purchases of single-family-owner mortgages accounted for 42 percent of mortgages originated in the single-family market during 1999. Many industry observers believe that the role of the GSEs in the late-1980s and 1990s is a major reason why the decline of the thrift industry had only minor effects on the nation's housing finance system. Additionally, the American mortgage market was not impacted adversely in any way by the volatility in world financial markets in late 1998.

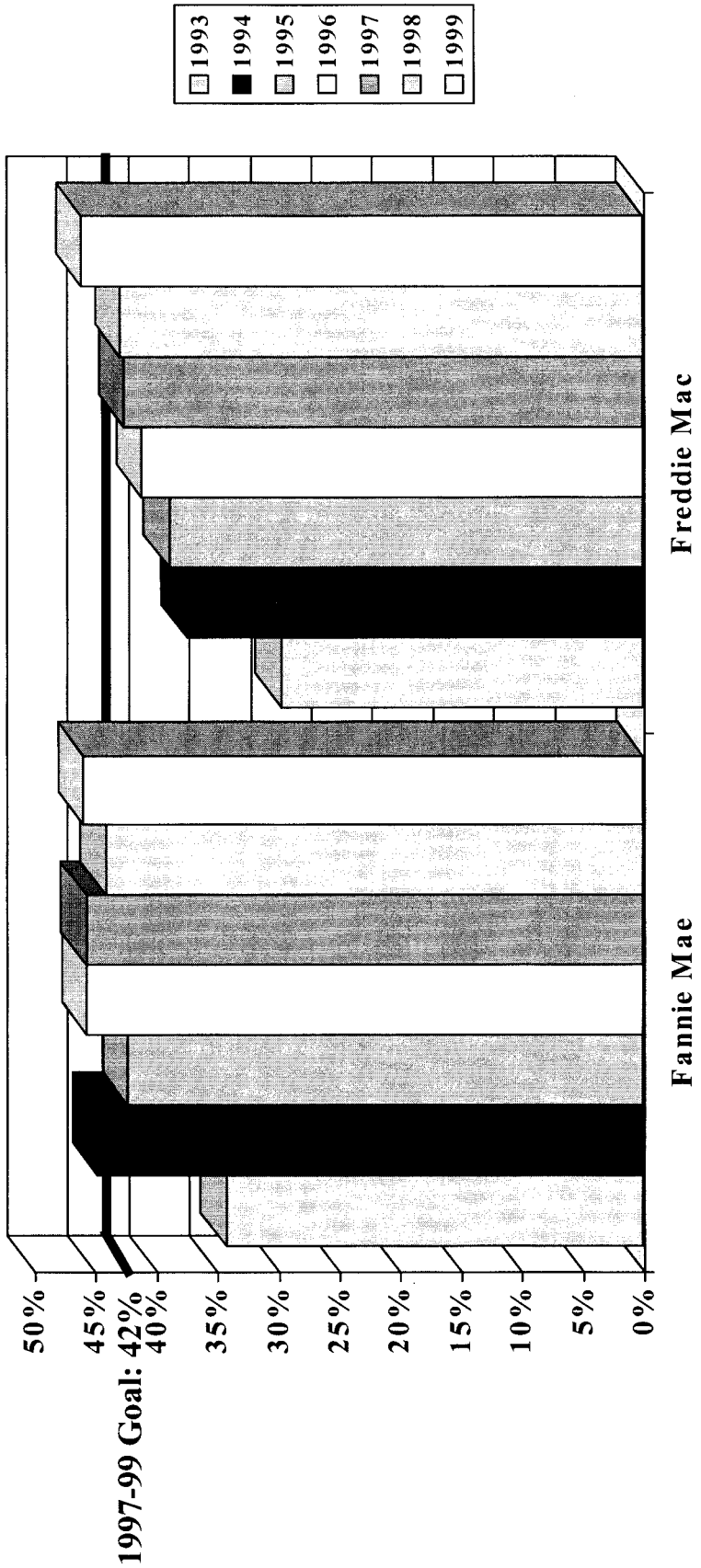
The enterprises' role in the mortgage market is also reflected in their use of cutting edge technology, such as the development of Loan Prospector and Desktop Underwriter, the automated underwriting systems developed by Freddie Mac and Fannie Mae, respectively. Both GSEs are also entering new and challenging fields of mortgage finance, including activities involving subprime mortgages and mortgages on manufactured housing.

The GSEs' performance on the Low- and Moderate-Income Housing Goal has also improved significantly in recent years, as shown in Figure A.1. Fannie Mae's performance increased from 34.2 percent in 1993 to 42.3 percent in 1995, 45.6 percent in 1996, and 45.7 percent in 1997, then falling slightly to 44.1 percent in 1998, but rising to 45.9 percent in 1999. Freddie Mac's performance also increased, from 29.7 percent in 1993 to 38.9 percent in 1995, 41.1 percent in 1996, 42.6 percent in 1997, 42.9 percent in 1998, and 46.1 percent in 1999. Freddie Mac's low- and moderate-income shares were below Fannie Mae's shares in every year through 1998, but its goal performance slightly exceeded Fannie Mae's performance in 1999. This increase in Freddie Mac's relative performance on the Low- and Moderate-Income Housing Goal resulted from its increased role in the multifamily mortgage market and the increase in the goal-qualifying share of its single-family mortgages.

BILLING CODE 4210–27–P

Figure A.1

Low- and Moderate-Income Mortgage Purchases

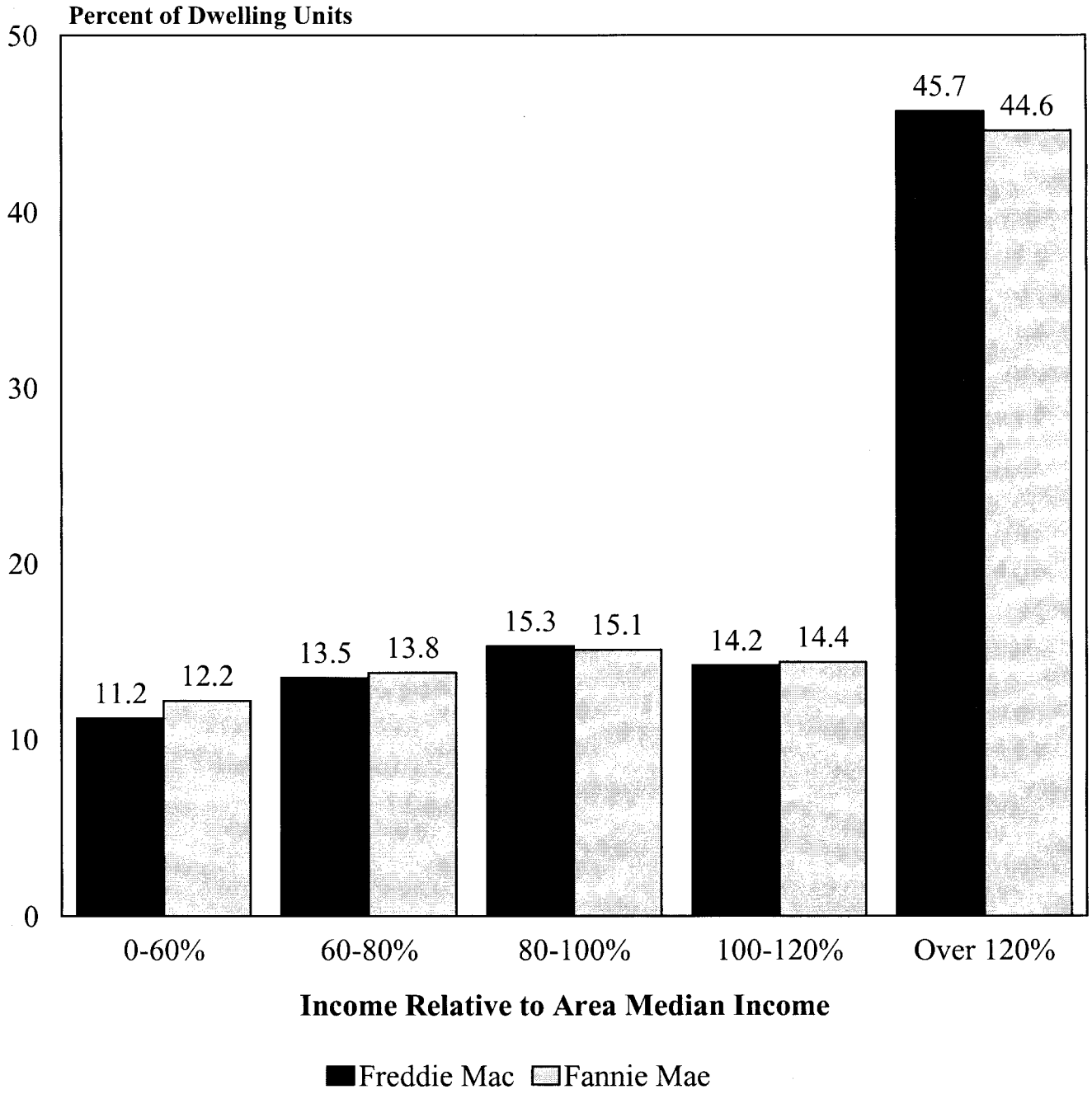


Low- and Moderate-Income Goal was 42% of units financed for 1997-99 (40% for 1996).

Source: HUD analysis of GSEs' loan-level data.

Figure A.2

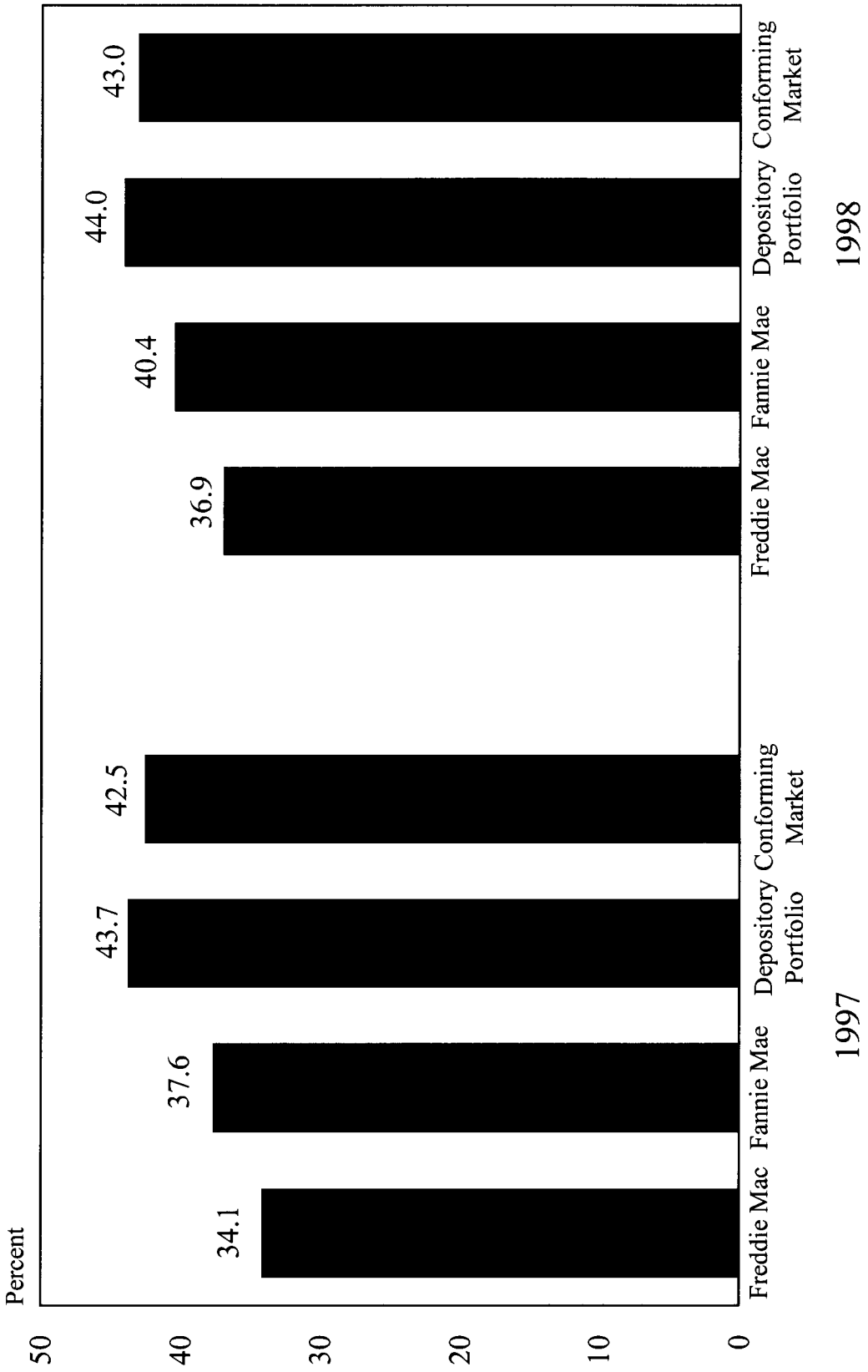
Distribution of GSE Purchases of Single-Family Owner-Occupied Home Loans by Income Class of Mortgagor for 1999



Source: GSE loan-level data on purchases of home purchase loans in both metropolitan and non-metropolitan areas, excluding loans with missing borrower income ratio.

Figure A.3

The Share Of GSE And Conventional Conforming Mortgages for Low- and Moderate-Income Borrowers, 1997 and 1998



Source: Conforming market and depository data are from 1997 and 1998 HMDA; GSE data are from loan-level data reported to HUD. Data are for single-family home purchase loans in metropolitan areas. See Table A.4a for further explanation.

BILLING CODE 4210–27–C

Single-family Affordable Lending Market. Despite these gains in goal performance, the Department remains concerned about the GSEs' support of lending for the lower-income end of the market. As shown in Figures A.2 and A.3, the lower-income shares of the GSEs' purchases are too low, particularly when compared with the corresponding shares for portfolio lenders and the primary market.

This appendix has reached the following findings with respect to the GSEs' purchases of affordable loans for low- and moderate-income families and their communities.

• While Fannie Mae and Freddie Mac have both improved their support for the single-family affordable lending market over the past seven years, they have generally lagged the overall single-family market in providing affordable loans to lower-income borrowers. This finding is based on HUD's analysis of GSE and HMDA data and on numerous studies by academics and research organizations.

• The GSEs show somewhat different patterns of mortgage purchases—through 1998, Freddie Mac was less likely than Fannie Mae to fund mortgages for lower-income families. As a result, the percentage of Freddie Mac's purchases benefiting historically underserved families and their neighborhoods was less than the corresponding shares of total market originations, while Fannie Mae's purchases were closer to the patterns of originations in the primary market (see Figure A.3). However, in 1999, Freddie Mac's purchases of home loans included a higher percentage of low-mod loans than Fannie Mae's purchases (40.0 percent and 39.3 percent, respectively). It remains to be seen whether this represents a new trend for Freddie Mac, or a temporary reversal of the pattern for the 1996–98 period.

• A study by The Urban Institute of lender experience with the GSEs' underwriting guidelines finds that the enterprises had stepped up their outreach efforts and increased the flexibility in their standards to better accommodate the special circumstances of lower-income borrowers. However, this study concluded that the GSEs' guidelines remain somewhat inflexible and that the enterprises are often hesitant to purchase affordable loans. Lenders also told The Urban Institute that Fannie Mae has been more aggressive than Freddie Mac in market outreach to underserved groups, in offering new affordable products, and in adjusting its underwriting standards.

• A large percentage of the lower-income loans purchased by the enterprises have relatively high down payments, which raises questions about whether the GSEs are adequately meeting the needs of lower-income families have difficulty raising enough cash for a large down payment.

• There are important parts of the single-family market where the GSEs have played a minimal role. For example, single-family rental properties are an important source of low-income housing, but they represent only a small portion of the GSEs' business. GSE purchases have accounted for only 14 percent of the single-family rental units that received financing in 1997. An increased presence by Fannie Mae and Freddie Mac would bring lower interest rates and liquidity to this market, as well as improve their goals performance.

• The above points can be summarized by examining the GSEs' share of the single-family mortgage market. The GSEs' total purchases have accounted for 44 percent of all single-family (both owner and rental) units financed during 1997; however, their low-mod purchases have accounted for only 34 percent of the low- and moderate-income single-family units that were financed during that year.

In conclusion, the Department's analysis suggests that the GSEs are not leading the single-family market in purchasing loans that qualify for the Low- and Moderate-Income Goal. There is room for Fannie Mae and Freddie Mac to improve their performance in purchasing affordable loans at the lower-income end of the market. Moreover, evidence suggests that there is a significant population of potential homebuyers who might respond well to aggressive outreach by the GSEs. Specifically, both Fannie Mae and the Joint Center for Housing Studies expect immigration to be a major source of future homebuyers. Furthermore, studies indicate the existence of a large untapped pool of potential homeowners among the rental population. Indeed, the GSEs' recent experience with new outreach and affordable housing initiatives is important confirmation of this potential.

Multifamily Market. Fannie Mae and, especially, Freddie Mac have rapidly expanded their presence in the multifamily mortgage market in the period since the passage of FHEFSSA. The Senate report on this legislation in 1992 referred to the GSEs' activities in the multifamily arena as ''troubling,'' citing Freddie Mac's September 1990 suspension of its purchases of new multifamily mortgages and criticism of Fannie Mae for ''creaming'' the market.[228]

Freddie Mac has successfully rebuilt its multifamily acquisition program, as shown by the increase in its purchases of multifamily mortgages from $27 million in 1992 to $7.6 billion in 1999. As a result, concerns regarding Freddie Mac's multifamily capabilities no longer constrain their performance with regard to low- and moderate-income families in the manner that prevailed at the time of the December 1995 rule.

Fannie Mae never withdrew from the multifamily market, but it has also stepped up its activities in this area substantially, with multifamily purchases rising from $3.0 billion in 1992 to $9.4 billion in 1999. Holding 12.8 percent of the outstanding stock of multifamily mortgage debt and guarantees as of the end of 1999, Fannie Mae is regarded as an influential force within the multifamily market. Fannie Mae's multifamily underwriting standards have been widely emulated throughout the multifamily mortgage market.

The increased role of Fannie Mae and Freddie Mac in the multifamily market has major implications for the Low- and Moderate-Income Housing Goal, since a very high percentage of multifamily units have rents which are affordable to low- and moderate-income families. However, the potential of the GSEs to lead the multifamily mortgage industry has not been fully developed. As reported earlier in Table A.7a, the GSEs' purchases (through 1999) have accounted for only 24 percent of the multifamily units that received financing during 1997. Standard & Poor's recently described both GSEs' multifamily lending as ''extremely conservative.''[229] In particular, their multifamily purchases to date do not appear to be contributing to mitigation of the excessive cost of mortgage financing for small multifamily properties, nor have the GSEs demonstrated market leadership with regard to rehabilitation loans, a segment where financing has sometimes been difficult to obtain. In conclusion, it appears that both GSEs can make improvements in their underwriting policies and procedures and introduce new products that will enable them to more effectively serve segments of the multifamily market that can benefit from greater liquidity.

3. Size of the Mortgage Market for Low- and Moderate-Income Families

As detailed in Appendix D, the low- and moderate-income mortgage market accounts for 50 to 55 percent of dwelling units financed by conventional conforming mortgages. In estimating the size of the market, HUD excluded the effects of the B&C market. HUD also used alternative assumptions about future economic and market conditions that were less favorable than those that existed over the last five years. HUD is well aware of the volatility of mortgage markets and the possible impacts of changes in economic conditions on the GSEs' ability to meet the housing goals. Should conditions change such that the goals are no longer reasonable or feasible, the Department has the authority to revise the goals.

4. The Low- and Moderate-Income Housing Goals for 2001–03

There are several reasons why the Secretary is increasing the Low- and Moderate-Income Housing Goal from 42 percent in 1997–99 to 50 percent of eligible units financed in each of calendar years 2001, 2002 and 2003.

First, when the 1996–99 goals were established in December 1995, Freddie Mac had only recently reentered the multifamily mortgage market, after its absence in the early 1990s. Freddie Mac has rebuilt its multifamily acquisition program over the past several years, with its 1999 purchases at a level more than eight times what they were in 1994 (in dollar terms). The limited role of Freddie Mac in the multifamily market was a significant constraint in setting the Low- and Moderate-Income Housing Goals for 1996–99. Freddie Mac's return as a major participant in the multifamily market was an important factor in the improvement in its performance on the Low- and Moderate-Income Housing Goal, as shown in Figure A.1, and it removes an impediment to higher goals for both GSEs. These goals will create new opportunities for the GSEs to further step up their support of mortgages on properties with rents affordable to low- and moderate-income families. However, as discussed in the Preamble, to encourage Freddie Mac to further step up its role in the multifamily market, the Secretary is proposing a ''temporary adjustment factor'' for its purchases of loans on properties with more than 50 units. Specifically, each unit in such properties would be weighted as 1.2 units in the numerator of the housing goal percentage for both the Low and Moderate Income Goal and the Special Affordable Housing Goal for the years 2001–2003.

Second, the single-family affordable market had only recently begun to grow in 1993 and 1994, the latest period for which data was available when the 1996–99 goals were established in December 1995. But the historically high low-and moderate-income share of the primary mortgage market attained in 1994 has been maintained over the 1995–98 period. The three-year average estimate of the low- and moderate-income share of the single-family owner mortgage market was 38 percent for 1992–94, but 42 percent for 1995–98 and 41 percent for the 1992–98 period as a whole. The continued high affordability of housing suggests that a strong low-income market continued for a sixth straight year in 1999. Current economic forecasts suggest that housing affordability could be maintained in the post-2000 period, leading to additional opportunities for the GSEs to support mortgage lending benefiting low- and moderate-income families.[230] And various surveys indicate that the demand for homeownership by minorities, immigrants, and younger households will remain strong for the foreseeable future.

Although single-family owner 1-unit properties comprise the ''bread-and-butter'' of the GSEs' business, evidence presented above demonstrates that the shares of their loans for low- and moderate-income families taking out loans on such properties lag the corresponding shares for the primary market. For example, in 1997 the Department finds that these shares amounted to 34.1 percent for Freddie Mac, 37.6 percent for Fannie Mae, and 42.5 percent for the primary market; as shown in Figure A.3, a similar pattern holds for 1998. Thus the Secretary believes that the GSEs can do more to raise the low- and moderate-income shares of their mortgages on these properties. This can be accomplished by building on various programs that the enterprises have already started, including (1) their outreach efforts, (2) their incorporation of greater flexibility into their underwriting guidelines, (3) their purchases of seasoned CRA loans, (4) their entry into new single-family mortgage markets such as loans on manufactured housing, (5) their increased purchases of loans on small multifamily properties, and (6) their increased presence in other rental markets where they have had only a limited presence in the past.

Third, one particular area where the GSEs could play a greater role is in the mortgage market for single-family rental dwellings. These properties, containing 1–4 rental units, are an important source of housing for low- and moderate-income families, but the GSEs have not played a major role in this mortgage market—they accounted for only 6.5 percent of units financed by Fannie Mae and 6.4 percent of units financed by Freddie Mac in 1997. The Department believes that the GSEs' role in financing loans on such properties, which are generally owned by ''mom and pop'' businesses, can and should be enhanced, though it recognizes that single-family rental properties are very heterogeneous, making it more difficult to develop standardized underwriting standards for the secondary market. But the Secretary believes that the GSEs can do more to play a leadership role in providing financing for such properties.[231]

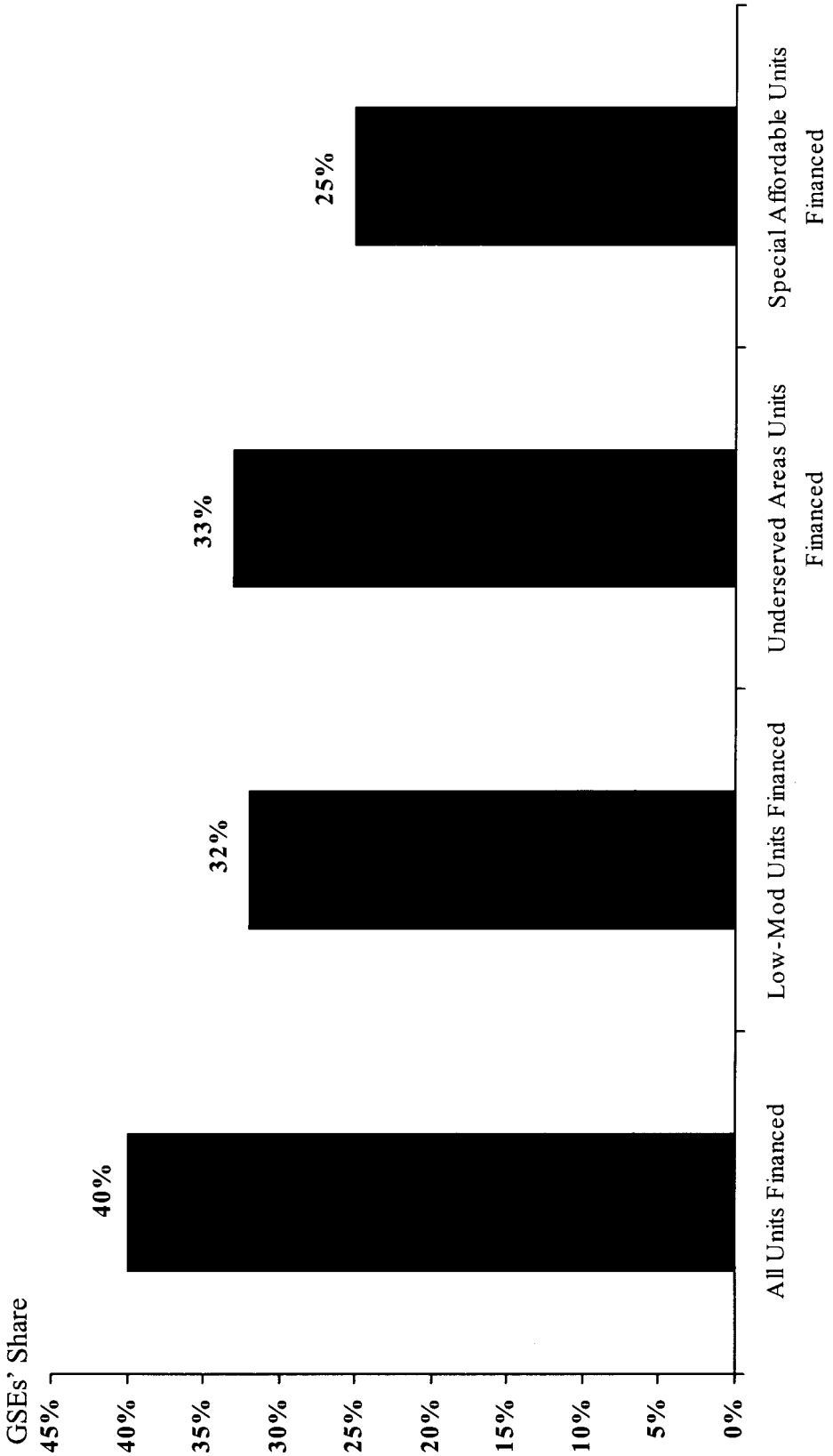
Finally, a wide variety of quantitative and qualitative indicators indicate that the GSEs' have the financial strength to improve their affordable lending performance. For example, combined net income has risen steadily over the last decade, from $1.244 billion in 1989 to $6.135 billion in 1999, an average annual growth rate of 17 percent per year. This financial strength provides the GSEs with the resources to lead the industry in supporting mortgage lending for units affordable to low- and moderate-income families.

Summary. Figure A.7a summarizes many of the points made in this section regarding opportunities for Fannie Mae and Freddie Mac to improve their overall performance on the Low- and Moderate-Income Goal. The GSEs' purchases have provided financing for 2,948,712 (or 40 percent) of the 7,306,950 single-family and multifamily units that were financed in the conventional conforming market during 1997. However, in the low- and moderate-income part of the market, the 1,330,516 units that were financed by GSE purchases represented only 32 percent of the 4,201,287 dwelling units that were financed in the market. Thus, there appears to ample room for the GSEs to increase their purchases of loans that qualify for the Low- and Moderate-Income Goal. Examples of specific market segments that would particularly benefit from a more active secondary market have been provided throughout this appendix.

BILLING CODE 4910–27–P

Figure A.4

GSEs' Share of the 1997 Conventional Conforming Market by Housing Goal Category



Note: The conventional conforming market, as estimated by HUD, includes single-family owner, single-family rental, and multifamily units financed during 1997. See notes for Table A.7a.

BILLING CODE 4910–27–C

5. Conclusions

Having considered the projected mortgage market serving low- and moderate-income families, economic, housing and demographic conditions for 2001–03, and the GSEs' recent performance in purchasing mortgages for low- and moderate-income families, the Secretary has determined that the annual goal of 50 percent of eligible units financed in each of calendar years 2001, 2002 and 2003 is feasible. 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 goal is necessary and appropriate.

Endnotes to Appendix A

[1] See ''Freddie's Subprime Wrap Business Blooms in 1999'', *Inside B&C Lending,* December 27, 1999, pages 8–9.

[2] See Jim Berkovec and Peter Zorn, ''How Complete is HMDA? HMDA Coverage of Freddie Mac Purchases,'' *The Journal of Real Estate Research,* Vol. II, No. 1, Nov. 1, 1996.

[3] U.S. Department of Housing and Urban Development, Office of Federal Housing Enterprise Oversight, ''Risk-Based Capital'' (Notice of Proposed Rulemaking), **Federal Register**, April 13, 1999, p. 18116.

[4] Fannie Mae (2000), p. 102.

[5] OFHEO NPR, *Ibid.*

[6] Mortgage denial rates are based on 1998 HMDA data; manufactured housing lenders are excluded from these comparisons.

[7] U.S. Department of Housing and Urban Development. *Rental Housing Assistance—The Worsening Crisis: A Report to Congress on Worst Case Housing Needs.* (March *2000*).

[8] ''Final Report of Standard & Poor's to the Office of Federal Housing Enterprise Oversight,'' February 3, 1997; Freddie Mac, *1998 Annual Report to Shareholders,* p. 6.

[9] Freddie Mac reported delinquency rates of 0.14% for multifamily and 0.39% for single-family in 1999 (*1999 Annual Report to Shareholders,* p. 23.) Fannie Mae reported ''serious delinquency rates'' of 0.12% for multifamily and 0.48% for single-family in 1999 (*1999 Annual Report to Shareholders,* p. 27).

[10] According to the National Association of Realtors, *Housing Market Will Change in New Millennium as Population Shifts,* (November 7, 1998), 45 percent of U.S. household wealth is in the form of home equity in 1998. Since 1968, home prices have increased each year, on average, at the rate of inflation plus up to two percentage points.

[11] Joint Center for Housing Studies of Harvard University. *State of the Nation's Housing 2000.* (2000), p. 9.

[12] Joint Center for Housing Studies of Harvard University. (2000), p. 33.

[13] Michelle J. White, and Richard K. Green. ''Measuring the Benefits of Homeowning: Effects on Children,'' *Journal of Urban Economics.* 41 (May 1997), pp. 441–61. Also see ''The Social Benefits and Costs of Homeownership: A Critical Assessment of the Research,'' Working Paper No. 00–01, Research Institute for Housing America, May 2000.

[14] Joint Center for Housing Studies of Harvard University. *State of the Nation's Housing 1998* (1998).

[15] 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.

[16] Donald S. Bradley and Peter Zorn. ''Fear of Homebuying: Why Financially Able Households May Avoid Ownership,'' *Secondary Mortgage Markets* (1996).

[17] Munnell, Alicia H., Geoffrey M. B. Tootell, Lynn E. Browne, and James McEneaney, ''Mortgage Lending in Boston: Interpreting HMDA Data,'' *American Economic Review.* 86 (March 1996).

[18] William C. Hunter. ''The Cultural Affinity Hypothesis and Mortgage Lending Decisions,'' WP–95–8, Federal Reserve Bank of Chicago, (1995). In addition, a study undertaken for HUD also found higher denial rates among FHA borrowers for minorities after controlling for credit risk. See 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).

[19] See Charles W. Calomiris, Charles M. Kahn and Stanley D. Longhofer. ''Housing Finance Intervention and Private Incentives: Helping Minorities and the Poor,'' *Journal of Money, Credit and Banking.* 26 (August 1994), pp. 634–74, for more discussion of this phenomenon, which is called ''statistical discrimination.''

[20] The FICO score, developed by Fair, Isaac and Company, is summary index of an individual's credit history. The FICO score is based on elements from the applicant's credit report, such as number of delinquencies in the past year, number of trade lines, and the amount owed on trade lines as compared to the available maximum credit limits. The FICO score is said to reflect the credit risk of the applicant and a score of 620 is often cited as a threshold between being an acceptable and an unacceptable credit risk.

[21] Section 3.b of this appendix provides a further discussion of automated underwriting.

[22] Robert B. Avery, Patricia E. Beeson and Mark E. Sniderman. *Understanding Mortgage Markets: Evidence from HMDA,* Working Paper Series 94–21. Federal Reserve Bank of Cleveland (December 1994).

[23] *Rental Housing Assistance—The Worsening Crisis: A Report to Congress on Worst Case Housing Needs,* Department of Housing and Urban Development, (March 2000), p. i. All statistics in this subsection are taken from this report, except as noted.

[24] Very low-income households are defined in the report as those whose income, adjusted for family size, is less than 50 percent of area median income. This differs from the definition adopted by Congress in the GSE Act of 1992, which uses a cutoff of 60 percent and which does not adjust income for family size for owner-occupied dwelling units.

[25] Edward N. Wolff, ''Recent Trends in the Size Distribution of Household Wealth,'' *The Journal of Economic Perspectives,* 12(3), (Summer 1998), p. 137.

[26] Joint Center for Housing Studies, *The State of the Nation's Housing: 2000,* June 2000, p. 24.

[27] Rent is measured in this report as gross rent, defined as contract rent plus the cost of any utilities which are not included in contract rent.

[28] A detailed discussion of the GSEs' activities in this area is contained in Theresa R. Diventi, *The GSEs' Purchases of Single-Family Rental Property Mortgages,* Housing Finance Working Paper No. HF–004, Office of Policy Development and Research, Department of Housing and Urban Development, (March 1998).

[29] One program that shows promise is Fannie Mae's HomeStyle Home Improvement Mortgage Loan Product. Under this program, Fannie Mae will purchase mortgages that finance the purchase and rehabilitation of 1- to 4-unit properties in ''as-is'' condition. The mortgage amount is limited to 90 percent of the appraised ''as-completed'' value, with the rehab amount not to exceed 50 percent of this value.

[30] See Drew Schneider and James Follain, ''A New Initiative in the Federal Housing Administration's Office of Multifamily Housing Programs: An Assessment of Small Projects Processing,'' *Cityscape: A Journal of Policy Development and Research* 4 (1), (1998), pp. 43–58; and William Segal and Christopher Herbert, *Segmentation of the Multifamily Mortgage Market: The Case of Small Properties,* paper presented to annual meetings of the American Real Estate and Urban Economics Association, (January 2000).

[31] These costs have been estimated at $30,000 for a typical transaction. Presentation by Jeff Stern, Vice President, Enterprise Mortgage Investments, HUD GSE Working Group, July 23, 1998. The most comprehensive account of the multifamily housing finance system as it relates to small properties is contained in Schneider and Follain (see above reference).

[32] This measure is discussed in Paul B. Manchester, ''A New Measure of Labor Market Distress,'' *Challenge,* (November/December 1982).

[33] Homeownership rates prior to 1993 are not strictly comparable with those beginning in 1993 because of a change in weights from the 1980 Census to the 1990 Census.

[34] All of the home sales data in this section are obtained from *U.S. Housing Market Conditions, 1st Quarter 2000,* U.S. Department of Housing and Urban Development, (May 2000).

[35] Existing home sales, housing starts, housing affordability and 30-year fixed rate mortgage rate forecasts are obtained from Standard & Poor's DRI, *The U.S. Economy.* (June 2000), pp. 55–7. While DRI provides forecasts through 2004, one should obviously interpret them with care.

[36] Real GDP, unemployment, inflation, and treasury note interest rate projections are obtained for fiscal years 2000–2009 from *The Economic and Budget Outlook: An Update,* Washington DC: Congressional Budget Office, (July 2000).

[37] Standard & Poor's DRI, *The U.S. Economy.* (June 2000), pp. 31 and 56.

[38] Standard & Poor's DRI, *The U.S. Economy.* (June 2000), p. 56.

[39] Mortgage Bankers Association of America. *MBA Mortgage Finance Forecast*, (July 14, 2000).

[40] Fannie Mae. *Berson's Housing and Economic Report*, (June 2000).

[41] National Association of Realtors. *Housing Market Will Change in New*

Millennium as Population Shifts. (November 7, 1998).

[42] Homeownership rates do not peek until population groups reach 65 to 74 years of age. Since the baby-boom population is such a large cohort, even though they will be past their homebuying peak, it is possible they will still have an impact.

[43] Joint Center for Housing Studies of Harvard University. *State of the Nation's Housing 2000.* (2000), p. 11.

[44] Joint Center for Housing Studies of Harvard University. *State of the Nation's Housing 1998.* (1998), p. 14.

[45] Joint Center for Housing Studies of Harvard University. (1998), p. 15.

[46] National Association of Realtors. *Housing Market Will Change in New Millennium As population Shifts.* (November 7, 1998).

[47] Joint Center for Housing Studies of Harvard University. (1998).

[48] John R. Pitkin and Patrick A. Simmons. ''The Foreign-Born Population to 2010: A Prospective Analysis by Country of Birth, Age, and Duration of U.S. Residence,'' *Journal of Housing Research.* 7(1) (1996), pp. 1–31.

[49] Fred Flick and Kate Anderson. ''Future of Housing Demand: Special Markets,'' *Real Estate Outlook.* (1998), p. 6.

[50] Mark A. Calabria. ''The Changing Picture of Homebuyers,'' *Real Estate Outlook.* (May 1999), p. 10.

[51] Chicago Title and Trust Family of Insurers, *Who's Buying Homes in America.* (2000).

[52] Chicago Title and Trust Family of Insurers, *Who's Buying Homes in America.* (1998 and 2000).

[53] Calabria. (May 1999), p. 11.

[54] U.S. Census Bureau, Current Population Reports, P60–206, *Money Income in the United States: 1998*, U.S. Government Printing Office, Washington, DC, (1999).

[55] Joint Center for Housing Studies of Harvard University. *State of the Nation's Housing 1998.* (1998).

[56] Data for 1990–97 from *U.S. Housing Market Conditions, 1st Quarter 1999*, U.S. Department of Housing and Urban Development, (May 1999), Table 17; data for 1998–99 from the Mortgage Bankers Association.

[57] Interest rates in this section are effective rates paid on conventional home purchase mortgages on new homes, based on the Monthly Interest Rate Survey (MIRS) conducted by the Federal Housing Finance Board and published by the Council of Economic Advisers annually in the *Economic Report of the President* and monthly in *Economic Indicators.* These are average rates for all loan types, encompassing 30-year and 15-year fixed-rate mortgages and adjustable rate mortgages.

[58] *U.S. Housing Market Conditions, 1st Quarter 2000*, (May 2000), Table 14.

[59] All statistics in this section are taken from the Federal Housing Finance Board's MIRS.

[60] This is discussed in more detail in Paul Bennett, Richard Peach, and Stavros Peristani, *Structural Change in the Mortgage Market and the Propensity to Refinance*, Staff Report Number 45, Federal Reserve Bank of New York, (September 1998).

[61] Other sources of data on loan-to-value ratios such as the American Housing Survey and the Chicago Title and Trust Company indicate that high-LTV mortgages are somewhat more common in the primary market than the Finance Board's survey. However, the Chicago Title survey does not separate FHA-insured loans from conventional mortgages.

[62] Refinancing data is taken from Freddie Mac's monthly *Primary Mortgage Market Survey.*

[63] There is some evidence that lower-income borrowers did not participate in the 1993 refinance boom as much as higher-income borrowers—see Paul B. Manchester, *Characteristics of Mortgages Purchased by Fannie Mae and Freddie Mac: 1996–97 Update*, Housing Finance Working Paper No. HF–006, Office of Policy Development and Research, Department of Housing and Urban Development, (August 1998), pp. 30–32.

[64] Housing affordability varies markedly between regions, ranging in May 2000 from 147 in the Midwest to 93 in the West, with the South and Northeast falling in between.

[65] Fannie Mae, http://www.fanniemae.com/news/housingsurvey/1998, (July 16, 1998).

[66] 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).

[67] Chicago Title and Trust Family of Insurers, *Who's Buying Homes in America,* (1998).

[68] Single-family originations rose by 10 percent in dollar terms in 1997, but the Mortgage Bankers Association estimates that they fell by 0.6 percent in terms of the number of loans.

[69] Mortgage market projections obtained from the MBA's *MBA Mortgage Finance Forecast,* (July 14, 2000).

[70] Fannie Mae. *Berson's Housing and Economic Report,* (June 2000).

[71] Speech before the annual convention of the National Association of Home Builders in Dallas TX, (January 1999).

[72] Fannie Mae News Release (January 1999).

[73] Freddie Mac News Release (January 15, 1999).

[74] Standard underwriting procedures characterize a property in a declining neighborhood as one at high risk of losing value. Implicitly, these underwriting standards presume that the real estate market is inefficient in economic terms, that is, prices do not reflect all available information.

[75] For an update of this analysis to include 1998, see Randall M. Scheessele, *1998 HMDA Highlights,* Housing Finance Working Paper HF–009, Office of Policy Development and Research, U.S. Department of Housing and Urban Development, (October 1999).

[76] The ''overall'' market is defined as all loans (including both government and conventional) below the 1997 conforming loan limit of $214,600 and the 1998 conforming loan limit of $227,150.

[77] The percentages reported in Table A.1a for the year 1998 are similar; in that year, low-income borrowers accounted for 49.1 percent of FHA-insured loans, 23.9 percent of GSE purchases, and 27.8 percent of home purchase mortgages originated in the conventional conforming market.

[78] FHA, which focuses on first-time homebuyers and low down payment loans, experiences higher mortgage defaults than conventional lenders and the GSEs. Still, the FHA system is actuarially sound because it charges an insurance premium that covers the higher default costs.

[79] FHA's role in the market is particularly important for African-American and Hispanic borrowers. As shown in Table A.1c, FHA insured 44 percent of all 1997 home loan originations for these borrowers.

[80] It should be noted that Tables A.1a and A.1b include only the GSEs' purchases of conventional loans; the same tables in the proposed rule also included the GSEs' purchases of government (particularly FHA-insured) loans.

[81] See Green and Associates. *Fair Lending in Montgomery County: A Home Mortgage Lending Study,* a report prepared for the Montgomery County Human Relations Commission, (March 1998).

[82] However, as shown in Table A.1a, depository institutions resemble other conventional lenders in their relatively low level of originating loans for African-American, Hispanic and minority borrowers.

[83] For an analysis of the impact of CRA agreements signed by lending institutions, see Alex Schwartz, ''From Confrontation to Collaboration? Banks, Community Groups, and the Implementation of Community Reinvestment Agreements'', *Housing Policy Debate,* 9(3), (1998), pp. 631–662. Also see the Department of Treasury CRA study by Litan *et al., op cit.*

[84] ''With Securities Market Back on Track, Analysts Expect Surge in CRA Loan Securitization in 1999,'' Inside *MBS & ABS.* (February 19, 1999), pp. 11–12.

[85] *Inside MBS & ABS.* (February 19, 1999), p. 12.

[86] Fannie Mae. *1997 Annual Housing Activities Report,* (1998), p. 28.

[87] For an analysis of the GSEs' CRA purchases, see the HUD-sponsored study by the Urban Institute, *An Assessment of Recent Innovations in the Secondary Market for Low- and Moderate-Income Lending,* by Kenneth Temkin, Jennifer E.H. Johnson, and Charles Calhoun, March 2000.

[88] George Galster, Laudan Y. Aron, Peter Tatain and Keith Watson. *Estimating the Size, Characteristics, and Risk Profile of Potential Homebuyers.* Washington: The Urban Institute, (1995). Report Prepared for the Department of Housing and Urban Development.

[89] Fannie Mae Foundation. *African American and Hispanic Attitudes on Homeownership: A Guide for Mortgage Industry Leaders,* (1998), p. 3.

[90] Fannie Mae Foundation. (1998), p. 14.

[91] Robert B. Avery, Raphael W. Bostic, Paul S. Calem, and Glenn B. Canner, *Credit Scoring: Issues and Evidence from Credit Bureau Files*, mimeo., (1998).

[92] Avery *et al.* (1998), p. 24.

[93] Kenneth Temkin, Roberto Quercia, George Galster, and Sheila O'Leary, *A Study of the GSEs' Single Family Underwriting Guidelines: Final Report.* Washington DC:

U.S. Department of Housing and Urban Development, (April 1999). This study involves an analysis of the GSEs' underwriting guidelines in general. This section reviews only the aspects of the study related to mortgage scoring. A broader review of this paper is provided below in section E.4.

[94] Temkin, *et al.* (1999), p. 2.

[95] Temkin, *et al.* (1999), p. 5; pp. 26–27.

[96] Standard & Poor's B and C mortgage guidelines can be used to illustrate that underwriting criteria in the subprime market becomes more flexible as the grade of borrower moves from the most creditworthy A-borrowers to the riskier D borrowers. For Example, the A-grade borrower is allowed to be delinquent 30 days on his mortgage twice in the last year whereas the D grade borrower is allowed to be delinquent 30 days on his mortgage credit five times in the last year. Moreover, the A-borrower is permitted to have a 45 percent debt-to-income ratio compared to the D grade borrower's 60 percent.

[97] ''Subprime Product Mix, Strategies Changed During a Turbulent 1998,'' *Inside B&C Lending.* (December 21, 1998), p. 2.

[98] ''Renewed Attack on 'Predatory' Subprime Lenders.'' *Fair Lending/CRA Compass,* (June 1999) and *http://cra-cn.home.mindspring.com.*

[99] See Randall M. Scheessele. *1998 HMDA Highlights,* Housing Finance Working Paper HF–009, Office of Policy Development and Research, U.S. Department of Housing and Urban Development, (October 1999). Nonspecialized lenders such as banks and thrifts also make subprime loans, but no data is available to estimate the number of these loans.

[100] Freddie Mac, *We Open Doors for America's Families,* Freddie Mac's Annual Housing Activities Report for 1997, (March 16, 1998), p. 23.

[101] The statistics cited for the ''market'' refer to all conforming conventional mortgages (both home purchase and refinance). The data for the subprime market are for 200 lenders that specialize in such loans; see Scheessele, *op. cit.*

[102] Alternative—A (or Alt—A) mortgages are made to prime borrowers who desire low down payments or do not want to provide full documentation for loans.

[103] Freddie Mac and Standard & Poor's tested the new module in a pilot during early 1996 and marketed it to lenders at the end of that year.

[104] See ''Freddie's Subprime Wrap Business Blooms in 1999'', *Inside B&C Lending,* December 27, 1999, pages 8–9.

[105] David A. Andrukonis, ''Entering the Subprime Arena,'' *Mortgage Banking,* May 2000, pages 57–60.

[106] The figures include their purchases of Alt A mortgages. *Inside B&C Lending,* May 22, 2000, page 12.

[107] See Lederman, *et al., op cit.*

[108] For an explanation of the GSEs funding advantage see ''Government Sponsorship of FNMA and FHLMC,'' United States Department of the Treasury, July 11, 1996.

[109] A detailed discussion of manufactured housing is contained in Kimberly Vermeer and Josephine Louie, *The Future of Manufactured Housing,* Joint Center for Housing Studies, Harvard University, (January 1997).

[110] Data on industry shipments and sales has been obtained from ''U.S. Housing Market Conditions,'' U.S. Department of Housing and Urban Development (May, 2000), p. 49.

[111] Although the terms are sometimes used interchangeably, manufactured housing and mobile homes differ in significant ways relative to construction standards, mobility, permanence, and financing (These distinctions are spelled out in detail in Donald S. Bradley, ''Will Manufactured Housing Become Home of First Choice?'' *Secondary Mortgage Markets,* (July 1997)). Mobile homes are not covered by national construction standards, though they may be subject to State or local siting requirements. Manufactured homes must be built according to the National Manufactured Housing Construction Safety and Standards Act of 1974. In accordance with this act, HUD developed minimum building standards in 1976 and upgraded them in 1994. Manufactured homes, like mobile homes, are constructed on a permanent chassis and include both axles and wheels. However, with manufactured housing, the axles and wheels are intended to be removed at the time the unit is permanently affixed to a foundation. Manufactured homes, unlike mobile homes, are seldom, if ever, moved. Mobile homes are financed with personal property loans, but manufactured homes are eligible for conventional-mortgage financing if they are located on land owned by or under long-term lease to the borrower. Other types of factory-built housing, such as modular and panelized homes, are not included in this definition of ''manufactured housing.'' These housing types are often treated as ''site built'' for purposes of eligibility for mortgage financing.

[112] Freddie Mac, the Manufactured Housing Institute and the Low Income Housing Fund have formed an alliance to utilize manufactured housing along with permanent financing and secondary market involvement to bring affordable, attractive housing to underserved, low- and moderate-income urban neighborhoods. *Origination News.* (December 1998), p. 18.

[113] *Mortgage-Backed Securities Letter.* (September 7, 1998), p. 3.

[114] *The Mortgage Market Statistical Annual for 2000* (Washington, DC: Inside Mortgage Finance Publications), 1, 286. A conventional multifamily mortgage market of $46 billion is assumed in this calculation. B and C mortgages are excluded from the calculation.

[115] *The Mortgage Market Statistical Annual for 2000* (Washington, DC: Inside Mortgage Finance Publications), 1, 286. A conventional multifamily mortgage market of $46 billion is assumed in this calculation. B and C mortgages are excluded from the calculation.

[116] This calculation incorporates GSE multifamily transactions involving loans originated during 1997 and acquired during 1997–1999. A multifamily conventional origination market of $38 billion and a per-unit loan amount of $27,266 is assumed per Appendix D.

[117] Jean L. Cummings and Denise DiPasquale, ''Developing a Secondary Market for Affordable Rental Housing: Lessons From the LIMAC/Freddie Mac and EMI/Fannie Mae Programs,'' *Cityscape: A Journal of Policy Development and Research,* 4(1), (1998), pp. 19–41.

[118] Drew Schneider and James Follain assert that interest rates on small property mortgages are as high as 300 basis points over comparable maturity Treasuries in ''A New Initiative in the Federal Housing Administration's Office of Multifamily Housing Programs: An Assessment of Small Projects Processing,'' *Cityscape: A Journal of Policy Development and Research* 4(1): 43–58, 1998. Berkshire Realty, a Fannie Mae Delegated Underwriting and Servicing (DUS) lender based in Boston, was quoting spreads of 135 to 150 basis points in ''Loans Smorgasbord,'' Multi-Housing News, August–September 1996. Additional information on the interest rate differential between large and small multifamily properties is contained in William Segal and Christopher Herbert, *Segmentation of the Multifamily Mortgage Market: The Case of Small Properties,* paper presented to annual meetings of the American Real Estate and Urban Economics Association, (January 2000).

[119] On the relation between age of property and quality classification see Jack Goodman and Brook Scott, ''Rating the Quality of Multifamily Housing,'' *Real Estate Finance,* (Summer, 1997).

[120] W. Donald Campbell. *Seniors Housing Finance,* prepared for American Association of Retired Persons White House Conference on Aging Mini-Conference on Expanding Housing Choices for Older People, (January 26–27, 1995).

[121] James R. Follain and Edward J. Szymanoski. ''A Framework for Evaluating Government's Evolving Role in Multifamily Mortgage Markets,'' *Cityscape: A Journal of Policy Development and Research* 1(2), (1995), p. 154.

[122] Despite sustained economic expansion, however, the rise in homeownership, has not fallen below 9 percent in recent years. (Regis J. Sheehan, ''Steady Growth,'' *Units,* (November/December 1998), pp. 40–43). Regarding rents and vacancy rates see also Ted Cornwell. ''Multifamily Lending Approaches Record Level,'' *National Mortgage News,* (September 23, 1996); and David Berson, Monthly Economic and Mortgage Market Report, Fannie Mae, (November 1998).

[123] American Council of Life Insurance data reported in *Inside MBS & ABS,* (March 20, 1998).

[124] A November, 1998 ''Review of the Short-Term Supply/Demand Conditions for Apartments'' by Peter P. Kozel of Standard and Poor's concludes that ''in some markets, the supply of units exceeds the likely level of demand, and in only a few MSAs should the pace of development accelerate.'' See also ''Apartment Projects Find Lenders Are Ready with Financing,'' Lew Sichelman, *National Mortgage News,* (April 14, 1997); *Commercial Lenders Warned That They Could Spur Overbuilding, National Mortgage News,* (March 30, 1998); ''Multifamily, Commercial Markets Grow Up,'' Neil Morse, *Secondary Marketing Executive,* (February 1998);''

''Recipe for Disaster,'' *National Mortgage News* editorial, (July 6, 1998).

[125] *1998 Survey of Credit Underwriting Practices,* Comptroller of the Currency, National Credit Committee. ''For the fourth consecutive year, underwriting standards for commercial loans have eased,'' states the OCC report. ''Examiners again cite competitive pressure as the primary reason for easing underwriting standards.'' The weakening of underwriting practices is especially concentrated in commercial real estate lending according to a the Federal Deposit Insurance Corporation's Report on *Underwriting Practices,* (October 1997–March 1998). See also Donna Tanoue, ''Underwriting Concerns Grow,'' *National Mortgage News,* (September 21, 1998), and ''Making the Risk-Takers Pay,'' *National Mortgage News,* (October 12, 1998).

[126] On the effects of multifamily mortgage securitization see ''Financing Multifamily Properties: A Play With new Actors and New Lines,'' Donald S. Bradley, Frank E. Nothaft, and James L. Freund, *Cityscape, A Journal of Policy Development and Research,* vol. 4, No. 1 (1998); and ''Financing Multifamily Properties,'' Donald S. Bradley, Frank E. Nothaft, and James L. Freund, *Urban Land* (November 1998).

[127] CMBS Database, Commercial Mortgage Alert, Harrison-Scott Publications, Hoboken, NJ.

[128] ''New CMBS Headache: B-Piece Market Softens,'' *Commercial Mortgage Alert,* (September 21, 1998); ''Criimi Bankruptcy Accelerates CMBS Freefall,'' *Commercial Mortgage Alert,* (October 12, 1998); ''Capital America Halts Lending Amid Woes,'' *Commercial Mortgage Alert,* (October 12, 1998).

[129] On CMBS spreads see ''Turmoil Hikes Loan Rates'' in *Wall Street Mortgage Report,* (September 14, 1998). Regarding implications for the GSEs of the conduit pullback see ''No Credit Crunch for First Mortgages'' in *Commercial Mortgage Alert,* (October 12, 1998).

[130] ''Financing Multifamily Properties: A Play With New Actors and New Lines,'' Donald S. Bradley, Frank E. Nothaft, and James L. Freund, *Cityscape: A Journal of Policy Development and Research,* 4(1), (1998).

[131] *The Impact of Public Capital Markets on Urban Real Estate,* Clement Dinsmore, discussion paper, Brookings Institution Center on Urban and Metropolitan Policy, July 1998; ''Capital Availability Fuels Commercial Market Growth,'' Marshall Taylor, *Real Estate Finance Today,* (February 17, 1997).

[132] Board of Governors of the Federal Reserve System and U.S. Securities and Exchange Commission, *Report to the Congress on Markets for Small-Business-and Commercial-Mortgage-Backed Securities,* (September 1998).

[133] ''REITs Tally Nearly Half of All Big CRE Deals in First Quarter,'' *National Mortgage News,* (July 7, 1997); ''Will REITs, Mortgage-Backeds Make Difference in Downturn,'' Jennifer Goldblatt, *American Banker,* (February 18, 1998).

[134] ''Apartment Demographics: Good for the Long Haul?'' Jack Goodman, *Real Estate Finance,* (Winter 1997); ''The Multifamily Outlook,'' Jack Goodman, *Urban Land,* (November 1998).

[135] *U.S. Housing Market Conditions,* U.S. Department of Housing and Urban Development (May 2000), Table 4.

[136] Howard Esaki, a principal in CMBS Research at Morgan Stanley Dean Witter stated at a recent conference that volatility in global markets contributed to a 10–20 percent decline in commercial real estate values in late 1998. John Hackett, ''CRE Seen Down 10% to 20%,'' *National Mortgage News,* (November 23, 1998), p. 1.

[137] John Holusha, ''As Financing Pool Dries Up, Some See Opportunity,'' *New York Times,* November 1, 1998.

[138] *Federal Reserve Bulletin,* June 2000, A 35.

[139] 1997 Annual Housing Activity Reports, Table 1.

[140] William Segal and Edward J. Szymanoski. *The Multifamily Secondary Mortgage Market: The Role of Government-Sponsored Enterprises.* Housing Finance Working Paper No. HF–002, Office of Policy Development and Research, Department of Housing and Urban Development, (March 1997).

[141] HUD analysis of GSE loan-level data.

[142] *Fundingnotes,* Vol. 3, Issue 9; (September 1998), Eric Avidon, ''PaineWebber Lauds Fannie DUS Paper,'' *National Mortgage News,* (September 14, 1998),p. 21.

[143] There is evidence that the GSEs have benefited from recent widening in CMBS spreads because of their funding cost advantage. See ''No Credit Crunch for First Mortgages,'' *Commercial Mortgage Alert,* (October 12, 1998); and ''Turmoil a Bonanza for Freddie,'' *Commercial Mortgage Alert,* (November 2, 1998).

[144] *Federal Reserve Bulletin,* June 2000, A 35.

[145] See Table A.7a for details. It is assumed that units in small multifamily properties represented approximately 39.4 percent of multifamily units financed in 1997, per the 1991 Residential Finance Survey, as discussed above. Additionally, it is assumed that 1997 multifamily conventional origination volume was $38 billion, as discussed in Appendix D. An average loan amount per unit of $27,266 is used, the GSE average for 1997 acquisitions.

[146] Larger properties may be perceived as less subject to income volatility caused by vacancy losses. Scale economies in securitization may also favor purchase of larger multifamily mortgages by the GSEs. Scale economies refer to the fixed costs in creating a mortgage backed security, and the smaller reduction in yield (higher security price) if these costs can be spread over larger unpaid principal balances.

[147] 1995 POMS data are used because 1995 represents the year with the most complete mortgage origination information in the Survey. 1996 GSE data are used because of number of units of property exhibited atypical behavior during 1995.

[148] These costs have been estimated at $30,000 for a typical transaction. Presentation by Jeff Stern, Vice President, Enterprise Mortgage Investments, HUD GSE Working Group, (July 23, 1998).

[149] ''Fannie Mae Announces New 5–50(SM) Streamlined Mortgage for Small Multifamily Properties is Now Available Through DUS Lenders; 10-Year Volume Goal is $18 Billion,'' Fannie Mae press release, May 10, 2000.

[150] Data from the HUD Property Owners and Managers Survey (POMS) suggests that, in and of itself, the GSEs' emphasis on refinance loans may roughly track that of the overall market.

[151] Standard & Poor's described Fannie Mae's multifamily lending as ''extremely conservative'' in ''Final Report of Standard & Poor's to the Office of Federal Housing Enterprise Oversight (OFHEO),'' (February 3, 1997), p. 10.

[152] See William Segal and Edward J. Szymanoski. ''Fannie Mae, Freddie Mac, and the Multifamily Mortgage Market,'' *Cityscape: A Journal of Policy Development and Research,* vol. 4, no. 1 (1998), pp. 59–91.

[153] Freddie Mac's policy of re-underwriting each multifamily acquisition is a response to widespread defaults affecting its multifamily portfolio during the late 1980s according to Follain and Szymanoski (1995).

[154] A more detailed discussion of underwriting guidelines is contained in the analysis below regarding Factor 5, ''The GSEs'' Ability to Lead the Industry.''

[155] The term ''affordable lending'' is used generically here to refer to lending for lower-income families and neighborhoods that have historically been underserved by the mortgage market.

[156] Throughout these appendices, the terms ''home loan'' or ''home mortgage'' will refer to a ''home purchase loan,'' as opposed to a ''refinance loan.''

[157] Subsections *b–d* of this section focus on the single-family mortgage market for home purchase loans, which is the relevant market for analysis of homeownership opportunities. Subsection *e* extends the analysis to include single-family refinance loans. For a discussion of past performance in the multifamily mortgage market, see Section D of this Appendix.

[158] Thus, the market definition in this section is narrower than the data presented earlier in Section C and Tables A.1a and A.1b, which covered all loans (both government and conventional) less than or equal to the conforming loan limit. As in that section, only the GSEs' purchases of conventional conforming loans are considered; their purchases of FHA-insured, VA-guaranteed, and Rural Housing Service loans are excluded from this analysis.

[159] Higher limits apply for loans on 2-, 3-, and 4-unit properties and for properties in Alaska, Hawaii, Guam, and the Virgin Islands.

[160] ''Jumbo mortgages'' in any given year might become eligible for purchase by the GSEs in later years as the loan limits rise and the outstanding principal balance is reduced.

[161] However, in analyzing the provision of mortgage finance more generally, it is often appropriate to include government loans; see Tables A.1a, A.1b and A.2 in Section C.3.b.

[162] *Fair Lending/CRA Compass,* (June 1999), p. 3.

[163] Randall M. Scheessele developed a list of 42 subprime lenders that was used by

HUD and others in analyzing HMDA data through 1997. In 1998, Scheessele updated the list to 200 subprime lenders. For analysis comparing various lists of subprime lenders, see Appendix D of Scheessele (1999), *op. cit.* That paper also discusses Scheessele's lists of manufactured housing lenders.

[164] See Randall M. Scheessele, *HMDA Coverage of the Mortgage Market,* Housing Finance Working Paper HF–007, Office of Policy Development and Research, Department of Housing and Urban Development, July 1998. Scheessele reports that HMDA data covered 81.6 percent of the loans acquired by Fannie Mae and Freddie Mac in 1996. The main reason for the under-reporting of GSE acquisitions is a few large lenders failed to report the sale of a significant portion of their loan originations to the GSEs. Also see the analysis of HMDA coverage by Jim Berkovec and Peter Zorn. ''Measuring the Market: Easier Said than Done,'' *Secondary Mortgage Markets.* McLean VA: Freddie Mac (Winter 1996), pp. 18–21. Section A.4 of this appendix also discusses several issues regarding HMDA data that were raised by the GSEs in their comments on the proposed rule.

[165] Since 1993, the GSEs have increased their purchases of seasoned loans. See Paul B. Manchester, *Characteristics of Mortgages Purchased by Fannie Mae and Freddie Mac: 1996–1997 Update,* Housing Finance Working Paper HF–006, Office of Policy Development and Research, Department of Housing and Urban Development, (August 1998), p.17.

[166] For a discussion of the impact of the GSEs' seasoned mortgage purchases on HMDA data coverage, see Scheessele (1998), *op. cit.*

[167] Table A.4b, which reports similar GSE information as Table A.4a, provides several alternative estimates of the conventional conforming market depending on the treatment of small loans, manufactured housing loans, and subprime loans. The data in Table A.4b will be referenced throughout the discussion.

[168] Any HMDA data reported in the appendices on borrower incomes excludes loans where the loan-to-borrower-income ratio is greater than six.

[169] For example, in 1997 Fannie Mae reported that 20.8 percent of the loans they purchased, that were originated during 1997, were for properties in underserved areas. HMDA reports that 21.0 percent of the loans sold to Fannie Mae during 1997 were for properties in underserved areas. The corresponding numbers for Freddie Mac, in 1997, are 19.3 percent reported by them and 18.6 percent reported by HMDA. During 1997, both Fannie Mae and HMDA reported that approximately 37 percent of the ''current year'' loans purchased by Fannie Mae were for low- and moderate-income borrowers. Freddie Mac reported that 34.2 percent of the current year loans they purchased were for low-mod borrowers, compared to the 35.4 low-mod percent that HMDA reported as sold to Freddie Mac.

[170] Notice that while Fannie Mae's 1998 purchases resembled their 1997 purchases with prior-year loans having higher goals-qualifying percentages than current-year loans, the pattern for 1999 was similar to that for 1993 to 1996 when there were smaller differentials between the goals-qualifying percentages of prior-year and current-year mortgages.

[171] Referencing the study by Peter Zorn and Jim Berkovec, *op cit.,* the GSEs argued in their comments on the proposed rule that HMDA overstates goals-qualifying loans. See Section A.3d for HUD's response which questions the findings of the Zorn-Berkovec study.

[172] The borrower income distributions in Tables A.3 and A.4a for the ''market without manufactured housing'' exclude loans less than $15,000 as well as all loans originated by lenders that primarily originate manufactured housing loans. See Table A.4b for market definitions that show the separate effects of excluding small loans and manufactured housing loans. Also, Table A.4b shows that excluding subprime loans has only a minor effect on the goals-qualifying percentages in the mortgage market.

[173] See Scheessele (1999), *op. cit.* As explained in Appendix D of Scheessele's paper, the number of subprime lenders varies by year; the 200 figure cited in the text applies to 1998. The number of loans identified as subprime in these appendices is the same as reported by Scheessele in Table D.2b of his paper.

[174] Table A.1b in Section C.3.b provides several comparisons of the GSEs' total purchases with primary market originations. As shown there, many of the same patterns described above for home purchase loans can be seen in the data for the GSEs' total purchases.

[175] In general, the HMDA-reported affordability percentages for GSE purchases of refinance loans have matched the corresponding GSE-reported percentages. For example, in 1997, both GSEs reported to HUD that special affordable loans accounted for about 11 percent of their purchases of refinance loans in metropolitan areas; HMDA reported the same percentage for each GSE. Similarly, in 1998, both HMDA and Fannie Mae reported that special affordable loans accounted for 9.7 percent of Fannie Mae's refinance purchases. However, in 1998, the Freddie-Mac-reported special affordable percentage (10.7 percent) for its refinance loans was significantly higher than the corresponding percentage (9.5 percent) reported in the HMDA data. The reasons for this discrepancy require further study.

[176] The Mortgage Information Corporation (MIC) has recently started publishing origination and default performance data for the subprime market. For an explanation of their data and some early findings, see Dan Feshbach and Michael Simpson, ''Tools for Boosting Portfolio Performance'', *Mortgage Banking: The Magazine of Real Estate Finance,* (October 1999), pp. 137–150.

[177] For example, see Bunce and Scheessele (1996 and 1998), *op. cit.*

[178] This analysis is limited to the conventional conforming market.

[179] To test the robustness of these statistics, this analysis was conducted where the ''lag'' determination is made at 95 percent instead of 99 percent. The results are consistent with those shown in Table A.5. For example, at the 95 percent cutoff, Fannie Mae lagged the market in 286 MSAs (88 percent) in the purchase of 1996 originated Special Affordable category loans. Likewise, Freddie Mac lagged the market in 322 MSAs (99 percent).

[180] *Privatization of Fannie Mae and Freddie Mac: Desirability and Feasibility.* Office of Policy Development and Research, Department of Housing and Urban Development, (July 1996).

[181] The Treasury Department reached similar conclusions in its 1996 report on the privatization of the GSEs, *Government Sponsorship of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation,* U.S. Department of the Treasury (July 11, 1996). Based on data such as the above, the Treasury Department questioned whether the GSEs were influencing the availability of affordable mortgages and suggested that the lower-income loans purchased by the GSEs would have been funded by private market entities if the GSEs had not purchased them.

[182] See Glenn B. Canner, and Wayne Passmore. ''Credit Risk and the Provision of Mortgages to Lower-Income and Minority Homebuyers,'' *Federal Reserve Bulletin.* 81 (November 1995), pp. 989–1016; Glenn B. Canner, Wayne Passmore and Brian J. Surette. ''Distribution of Credit Risk among Providers of Mortgages to Lower-Income and Minority Homebuyers.'' *Federal Reserve Bulletin.* 82 (December 1996), pp. 1077–1102; Harold L. Bunce, and Randall M. Scheessele, *The GSEs' Funding of Affordable Loans: A 1996 Update,* Housing Finance Working Paper HF–005, Office of Policy Development and Research, Department of Housing and Urban Development, (July 1998); and Manchester, (1998), p. 24.

[183] Canner, *et al.* (1996).

[184] Harold L. Bunce and Randall M. Scheessele, *The GSEs' Funding of Affordable Loans,* Housing Finance Working Paper HF–001, Office of Policy Development and Research, U.S. Department of Housing and Urban Development, (December 1996).

[185] Harold L. Bunce and Randall M. Scheessele, *The GSEs' Funding of Affordable Loans: A 1996 Update,* Housing Finance Working Paper HF–005, Office of Policy Development and Research, U.S. Department of Housing and Urban Development, (July 1998), pp. 15–16.

[186] Statistics cited are from Table B.1 of Bunce and Scheessele, (1998) and are based on sales to the GSEs as reported by lenders in accordance with the HMDA. ''Lagging the market'' means, for example, that the percentage of the GSEs' loans for very low- and low-income borrowers is less than the corresponding percentage for the primary market, depositories, and the FHA.

[187] Under their charter acts, loans purchased by the GSEs with down payments of less than 20 percent must carry private mortgage insurance or a comparable form of credit enhancement.

[188] It is generally agreed that HMDA does not capture all loans originated in the primary market—for example, small lenders need not report under HMDA. But Fannie Mae believes that the undercount is not

spread uniformly across all borrower classes—in particular, it argues that the HMDA data exclude relatively more loans made to minorities and lower-income families.

[189] Bunce and Scheessele (1998) contained a comparison (Table A.1) of HMDA-reported and GSE-reported data on the characteristics of GSE mortgage purchases in 1996. In most cases the differences between the results utilizing the two different data sources were minimal, but in some cases (such as lending in underserved areas) the evidence lent some support to Fannie Mae's assertion that the HMDA data underreports their level of activity. The discrepancies between HMDA data and GSE data at the national level are also due to the seasoned loan effect (see Section E.2.e above and Table A.4a).

[190] John E. Lind. *Community Reinvestment and Equal Credit Opportunity Performance of Fannie Mae and Freddie Mac from the 1994 HMDA Data.* San Francisco: Caniccor. Report, (February 1996).

[191] John E. Lind. *A Comparison of the Community Reinvestment and Equal Credit Opportunity Performance of Fannie Mae and Freddie Mac Portfolios by Supplier from the 1994 HMDA Data.* San Francisco: Cannicor. Report, (April 1996).

[192] Brent W. Ambrose and Anthony Pennington-Cross, *Spatial Variation in Lender Market Shares*, Research Study submitted to the Office of Policy Development and Research, Department of Housing and Urban Development, (1999).

[193] Heather MacDonald. ''Expanding Access to the Secondary Mortgage Markets: The Role of Central City Lending Goals,'' *Growth and Change.* (27), (1998), pp. 298–312.

[194] Heather MacDonald, *Fannie Mae and Freddie Mac in Non-metropolitan Housing Markets: Does Space Matter*, Research Study submitted to the Office of Policy Development and Research, Department of Housing and Urban Development, (1999).

[195] Kirk McClure, *The Twin Mandates Given to the GSEs: Which Works Best, Helping Low-Income Homebuyers or Helping Underserved Areas in the Kansas City Metropolitan Area?* Research Study submitted to the Office of Policy Development and Research, Department of Housing and Urban Development, (1999).

[196] Richard Williams, *The Effect of GSEs, CRA, and Institutional Characteristics on Home Mortgage Lending to Underserved Markets,*'' Research Study submitted to the Office of Policy Development and Research, Department of Housing and Urban Development, (1999).

[197] Joseph Gyourko and Dapeng Hu. *The Spatial Distribution of Secondary Market Purchases in Support of Affordable Lending,* Research Study submitted to the Office of Policy Development and Research, Department of Housing and Urban Development, (1999).

[198] Bradford Case and Kevin Gillen. *Studies of Mortgage Purchases by Fannie Mae and Freddie Mac: Spatial Variation in GSE Mortgage Purchase Activity.* Research Study submitted to the Office of Policy Development and Research, Department of Housing and Urban Development, (1999).

[199] The coefficient for geographic targeting was significant and negative in 19 MSAs, significant and positive in another eight, and not significant in the remaining 17 MSAs.

[200] The coefficient for the highest minority-concentration category (census tracts with greater than 50% minority population) was significantly negative in 21 MSAs, but significantly positive in 10 MSAs and not significantly different from zero in the remaining 13.

[201] Samuel L. Myers, Jr. *The Effects of Government-Sponsored Enterprise Secondary Market Decisions on Racial Disparities in Loan Rejection Rates.* Research Study submitted to the Office of Policy Development and Research, Department of Housing and Urban Development, (1999).

[202] Variables from the GSE Public Use Data Base include the income and gender of the borrower, the gender and race of the coborrower, first-time homebuyer, and loan amount. Variables from Census 1990 include the following information for the census tract in which the property is located: percent of owner-occupied houses, average size of household, average number of persons per owner-occupied house, average number of persons per renter-occupied unit, percentage of white, black, Asian, American Indian, and other minority households, average poverty rate, median monthly rent, median house value, percent of persons 65 or older, percent of persons under 18, and percent of female-headed households. Variables from HMDA include reason for denial, whether or not loan is sold to GSE, type of loan (conventional), type of agency, and origination year.

[203] The unconditional probability that a loan will not be sold, P(NS), to a GSE is computed using Bayes' rule. It is based on the conditional probability that a loan is sold to GSEs given that it was originated, P(SO), and the probability that a loan is originated which are obtained using HMDA data. The unconditional probability that a loan will be sold to a GSE can not be obtained from either the HMDA data which does not include details of which loans were sent for review and which were declined by the secondary purchaser—or from the HUD-GSE data, which only includes approved loans. However, we know from Bayes' rule that

$$P(S \mid O) = \frac{P(S)\,P(O \mid S)}{P(O)}$$

where S mean that the loan was sold and O means that the loan was originated and where all loan sold by the lender must have been originated such that P(OS)=1. We can obtain a measure of the unconditional probability that a loan will not be sold from

$$P(NS) = 1 - P(S) = 1 - P(S \mid O)\,P(O).$$

[204] Calvin Bradford, *The Patterns of GSE Participation in Minority and Racially Changing Markets Reviewed from the Context of the Levels of distress Associated with High Levels of FHA Lending,* Research Study submitted to the Office of Policy Development and Research, Department of Housing and Urban Development (2000).

[205] David M. Harrison, Wayne R. Archer, David C. Ling, and Marc T. Smith, *Mitigating Information Externalities in Mortgage Markets: The Role of Government Sponsored Enterprises,* Research Study submitted to the Office of Policy Development and Research, Department of Housing and Urban Development (2000).

[206] Kenneth Temkin, Roberto Quercia, George Galster and Sheila O'Leary. *A Study of the GSEs' Single Family Underwriting Guidelines: Final Report.* Washington DC: U.S. Department of Housing and Urban Development, (April 1999).

[207] In following up on the Urban Institute study, HUD began in February 2000 a review of Fannie Mae's and Freddie Mac's automated underwriting systems.

[208] Standard guidelines refer to guidelines not associated with affordable lending programs.

[209] Temkin, *et al.* (1999), p. 4.

[210] Temkin, *et al.* (1999), p. 5.

[211] Temkin, *et al.* (1999), p. 28.

[212] Senate Report 102–282, (May 15, 1992), p. 35.

[213] Table A.7a(A.7b) considers GSE purchases during 1997, 1998, and 1999 (1998 and 1999) of conventional mortgages that were originated during 1997 (1998). HUD's methodology for deriving the market estimates is explained in Appendix D. B&C loans have been excluded from the market estimates in Table A.7.

[214] Two caveats about the data in Table A.7 should be mentioned here. First, the various market totals for underserved areas are probably understated due to the model's underestimation of mortgage activity in non-metropolitan underserved counties and of manufactured housing originations in non-metropolitan areas. Second, as discussed in Appendix D, some uncertainty exists around the adjustment for B&C single-family owner loans.

[215] Table A.7a shows that multifamily represented 19 percent of total units financed during 1997 (obtained by dividing 1,393,677 multifamily units by 7,306,950 ''Total Market'' units). Increasing the single-family-owner number in Table A.7 by 732,182 to account for excluded B&C mortgages increases the ''Total Market'' number to 8,039,132 which is consistent with the percent multifamily share reported in the text. See Appendix D for discussion of the B&C market.

[216] A similar imbalance is evident with regard to figures on the stock of mortgage debt published by the Federal Reserve Board. Within the single-family mortgage market the GSEs held loans or guarantees with an unpaid principal balance (UPB) of $1.5 trillion, comprising 36 percent of $4.0 trillion in outstanding single-family mortgage debt as of the end of 1997. At the end of 1997, the GSEs direct holdings and guarantees of $41.4 billion represented 13.7 percent of $301 billion in multifamily mortgage debt outstanding. (*Federal Reserve Bulletin*, June 1998, A 35.)

[217] The problem of secondary market ''adverse selection'' is described in James R. Follain and Edward J. Szymanoski. ''A Framework for Evaluating Government's Evolving Role in Multifamily Mortgage Markets,'' *Cityscape: A Journal of Policy Development and Research* 1(2), (1995).

[218] A jumbo mortgage is one for which the loan amount exceeds the maximum principal amount for mortgages purchased by the enterprises—$240,000 for mortgages on 1-unit properties in 1999, with limits that are 50 percent higher in Alaska, Hawaii, Guam, and the Virgin Islands.

[219] Office of Federal Housing Enterprise Oversight, *1998 Report to Congress*, (June 15, 1998), Figure 9, p. 32; and unpublished OFHEO estimates for 1998.

[220] Mortgage originations for 1997 were reported in the Department of Housing and Urban Development, *HUD Survey of Mortgage Lending Activity: Fourth Quarter/ Annual 1997*, (September 24, 1998).

[221] The underwriting guidelines published by the two GSEs are 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.

[222] Freddie Mac stock was not publicly traded until after the passage of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), thus it is not possible to calculate a 10-year annualized rate of return.

[223] *Fortune*, (April 17, 2000), pp. F–1, F–2.

[224] *Business Week*, (March 27, 2000), p. 197.

[225] U.S. Department of Housing and Urban Development. *Rental Housing Assistance—The Worsening Crisis: A Report to Congress on Worst Case Housing Needs*. (March 2000).

[226] Standard & Poor's DRI, *The U.S. Economy*. (June 2000), p. 56.

[227] See Drew Schneider and James Follain, ''A New Initiative in the Federal Housing Administration's Office of Multifamily Housing Programs: An Assessment of Small Projects Processing,'' *Cityscape: A Journal of Policy Development and Research* 4(1), (1998), pp. 43–58.

[228] Senate Report 102–282, (May 15, 1992), p. 36.

[229] ''Final Report of Standard & Poor's to the Office of Federal Housing Enterprise Oversight (OFHEO),'' (February 3, 1997), p. 10.

[230] However, the Department's goals for the GSEs have been set so that they will be feasible even under less favorable conditions in the housing market.

[231] Another area where stepped-up GSE involvement could benefit low- and moderate-income families is lending for the rehabilitation of properties, which is especially needed in our urban areas. The GSEs have made some efforts in this complex area, but the benefits of stepped-up roles by the GSE could be sizable.

Appendix B—Departmental Considerations to Establish the Central Cities, Rural Areas, and Other Underserved Areas Goal

A. Introduction and Response to Comments

1. Establishment of Goal

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, Section 1334 of 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 enterprises 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 enterprises 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 enterprises.

Organization of Appendix. The remainder of Section A first defines the Geographically Targeted Goal for both metropolitan areas and nonmetropolitan areas and then discusses HUD's response to the public comments raised in this appendix. Sections B and C address the first two factors listed above, focusing on findings from the literature on access to mortgage credit in metropolitan areas (Section B) and in nonmetropolitan areas (Section C). Separate discussions are provided for metropolitan and nonmetropolitan (rural) areas because of differences in the underlying markets and the data available to measure them. Section D discusses the past performance of the GSEs on the Geographically Targeted Goal (the third factor) and Sections E–G report the Secretary's findings for the remaining factors. Section H summarizes the Secretary's rationale for setting the level for the Geographically Targeted Goal.

2. HUD's Geographically Targeted Goal

HUD's definition of the geographic areas targeted by this goal is basically the same as that used during 1996–99. It is divided into a metropolitan component and a nonmetropolitan component.

Metropolitan Areas. This rule provides that within metropolitan areas, mortgage purchases will count toward the goal when those mortgages finance properties that are located in census tracts where (1) median income of families in the tract does not exceed 90 percent of area (MSA) median income or (2) minorities comprise 30 percent or more of the residents and median income of families in the tract does not exceed 120 percent of area median income.

The definition includes 20,326 of the 43,232 census tracts (47 percent) in metropolitan areas, which include 44 percent of the metropolitan population.[1] The tracts included in this definition suffer from poor mortgage access and distressed socioeconomic conditions. The average mortgage denial rate in these tracts is 19.4 percent, almost twice the denial rate in excluded tracts. The tracts include 73 percent of the number of poor persons in metropolitan areas.

This definition 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—high-minority and low-income neighborhoods continue to have higher mortgage denial rates and lower mortgage origination rates than other neighborhoods. A neighborhood's minority composition and its level of income are highly correlated with measuring access to mortgage credit.

Nonmetropolitan Areas. This rule provides that in nonmetropolitan areas mortgage purchases that finance properties that are located in counties will count toward the Geographically Targeted Goal where (1) median income of families in the county does not exceed 95 percent of the greater of (a) state nonmetropolitan median income or (b) nationwide nonmetropolitan median income, or (2) minorities comprise 30 percent or more of the residents and median income of families in the county does not exceed 120 percent of the greater of (a) state nonmetropolitan median income or (b) nationwide nonmetropolitan median income. The nonmetropolitan definition has been expanded slightly by adding criterion (b) under part (2) of this definition—as a result, 14 counties in Texas, Mississippi, Arizona, Arkansas, Georgia, and Louisiana that were previously classified as served areas have now been reclassified as underserved counties.

Two important factors influenced HUD's definition of nonmetropolitan underserved areas—lack of available data for measuring mortgage availability in rural areas and lenders' difficulty in operating mortgage programs at the census tract level in rural areas. Because of these factors, this 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 and 67 percent of the nonmetropolitan poverty population.

Goal Levels. The Geographically Targeted Goal is 31 percent of eligible units financed for calendar years 2001–03. HUD estimates that the mortgage market in areas included in the Geographically Targeted Goal accounts for 29–32 percent of the total number of newly-mortgaged dwelling units. HUD's analysis indicates that 27.0 percent of Fannie Mae's 1998 purchases and 26.8 percent of its 1999 purchases financed dwelling units located in these areas. The corresponding performance for Freddie Mac was 26.1 percent in 1998 and 27.5 percent in 1999.

3. Response to Comments

This section briefly reviews the main comments on the analyses reported in this appendix. First, both GSEs, but particularly Freddie Mac, were concerned that the Underserved Areas Goal was set too high.

Second, HUD received varying responses on changing the underserved areas definition to adopt an ''enhanced'' definition that would lower the income threshold for the census tract definition to 80 percent and raise the minority threshold to 50 percent. Finally, HUD received a range of comments on switching the non-metropolitan underserved areas definition from a county-based to a tract-based approach. With respect to the latter two issues, HUD has decided to wait until year 2000 Census data are available, which will allow for an up-to-date comprehensive analysis of these issues.

a. The Level of the Underserved Areas Goal

Fannie Mae supported the increase in affordable housing goals, which includes raising the underserved areas goal from its current level of 24 percent to 31 percent. Freddie Mac stated that ''the Underserved Areas Goal proposed by the Department is unreasonably high'' and recommended that the goal level be reduced from 31 percent to 30 percent. Freddie Mac stated further that ''setting the Underserved Areas Goal at 31 percent for those three years [2001–03] amounts to a significantly larger stretch than for the other two goals and makes it significantly less feasible under a variety of economic conditions''. Freddie Mac based its conclusion on a number of factors, such as the fact that this goal is set closer to the upper end of HUD's market range (29–32 percent), as compared with the Low-Mod and Special Affordable Goals; Freddie Mac concluded that consistency with the other two goals would call for a 30 percent Underserved Areas Goal. In addition, Freddie Mac stated that HUD's market range is overestimated and does not fully account for adverse economic changes. According to Freddie Mac, HUD's overestimation of the underserved areas market is due to HUD's overestimation of the rental property share of the mortgage market; to a bias in HMDA data that leads to the underserved areas portion of the owner market being overstated; and to HUD's underestimation of the subprime portion of the single-family market.

HUD's Response. HUD does not agree with Freddie Mac's recommendation that the Underserved Areas Goal should be lowered below the proposed level. Several factors must be considered when evaluating Freddie Mac's analysis and recommendations. First, HUD disagrees with Freddie Mac's conclusion that the Department's methodology overstates the rental portion of the market. HUD's analysis of this issue is discussed in Sections B and C of Appendix D. By relying on HMDA data, Freddie Mac (as well as the Freddie Mac-funded study by PriceWaterhouseCoopers) significantly underestimates the multifamily share of the mortgage market, which leads to its erroneous conclusions about the size of the underserved areas market.

Second, HUD has set its range of market estimates for this goal at a rather conservative level. As discussed in Section G of Appendix D, the underserved areas portion of the market (without B&C loans) averaged 33 percent between 1995 and 1998—somewhat higher than the top end of HUD's 29–32 percent market range. As shown in Table D.19 of Appendix D, the underserved areas share of the owner market could fall from its 1995–98 average of 33 percent to 24 percent before the overall market estimate would fall to 30 percent, and to below 22 percent before the overall market estimate would fall below 29 percent. As mentioned in HUD's response to the ''volatility'' issue (see Section B of Appendix D), the Secretary can re-examine the feasibility of the housing goals if a recession or other economic conditions cause a substantial decline in the mortgage market in underserved areas.

Third, HUD excluded the B&C portion of the subprime market when determining its market range (29–32 percent) for underserved areas. As explained in Section G of Appendix D, the estimated increase in the market share due to the county-based definition in non-metropolitan areas more than offsets the estimated reduction in market share due to the exclusion of B&C loans. (This offsetting pattern can be seen in Table D.15 of Appendix D for the years 1995–98.) But due to inadequate mortgage market data for non-metropolitan areas, HUD was unable to fully include the effects of underserved counties in its market range for the Underserved Areas Goal. Thus, the 29–32 percent range is a conservative market estimate. HUD continues to explore other data bases to improve its estimates of the mortgage market in rural underserved counties.

Finally, it should be noted that the rental sectors that the GSEs have traditionally experienced the most difficulty penetrating are less important for the Underserved Areas Goal than for the Low-Mod and Special Affordable Goals. The latter two goals rely more heavily on the GSEs' single-family rental and multifamily purchases than the Underserved Areas Goal. For example, special affordable loans amounted to one half of the rental units financed by the GSEs during 1998, versus only 10.6 percent of the owner units, yielding a rental-to-owner ratio of 4.7. On the other hand, units in underserved areas amounted to 43.1 percent of the rental units financed, versus 23.4 percent of the owner units, yielding a much lower rental-to-owner ratio of 1.8.

b. Changes in the Underserved Areas Definition for Metropolitan Areas

Neither Fannie Mae nor Freddie Mac supported changing the underserved areas definition in metropolitan areas. With regard to the enhanced option, the GSEs advocated against reducing the number of census tracts that qualified for goal based on 1990 Census data, since these tracts might qualify under the updated 2000 Census data. Both GSEs believe that HUD should not change the current definition until the updated information for demographics and housing stock composition of census tracts is available from the 2000 census data.

In addition to the GSEs' views, a number of comments both supporting and opposing the enhanced definition were received. Advocates for the enhanced definition supported changing the tract income ratio from 90 percent to 80 percent to coincide with the definition under the Community Reinvestment Act (CRA). This change would make the GSEs' housing goals and CRA mutually supportive and would use a standard already employed by banks. Comments against the enhanced definition fell into two categories: some commenters did not support decreasing the number of census tracts that qualify as underserved areas, while others did not support using the greater of local or national median income in computing the tract income ratio.

No general support from the GSEs or other commenters was found for increasing the minimum minority composition of underserved census tracts from 30 percent to 50 percent. One commenter indicated that this change would disproportionately impact the Hispanic population, though no data was presented to support this claim.

HUD's Response. HUD is not changing the definition of underserved metropolitan areas in this final rule, but the Department reserves the right to reexamine this definition following the release of the 2000 Census data. The Department acknowledges that the 2000 Census will impact the designation of census tracts that are currently targeted as underserved areas. Many changes have occurred in the last decade that impact the various factors which make up the underserved areas definition. Any changes in the underserved area definition based on the 1990 Census data would not provide a complete assessment of outcomes.

c. Changes to the Underserved Areas Definition for Non-metropolitan Areas

Fannie Mae and Freddie Mac agreed that the current county-based definition for non-metropolitan areas should be retained. Both GSEs believe, as also indicated in their comments on the 1995 rule, that rural lenders' business is centered around counties, rather than census tracts. They cite the lack of data for rural areas as sufficient cause to maintain the status quo, since the information void makes it difficult to judge the impact of any change in the definition.

Some commenters agreed with the GSEs, while others did not. One set of commenters including America's Community Bankers and the Independent Community Bankers of America agreed with the GSEs regarding retention of the county-based definition. The Housing Assistance Council supported changing the underserved areas definition to a more targeted, census tract-based definition.

Other recommendations for defining rural underserved areas were received. The Wisconsin Rural Development Center and the Fair Lending Coalition of Milwaukee proposed looking at the minimum income ratio based on county, tract, or block group. A few commenters proposed using poverty levels as a criteria for targeting underserved counties.

HUD's Response. HUD recognizes the broad nature of the current definition of rural underserved areas. As explained in the proposed rule, one shortcoming of this goal in non metropolitan counties is that it does not target the GSEs' purchases very well—for example, the GSEs' mortgage purchases in rural underserved areas have a higher share of borrowers with income above county median income than their purchases in urban underserved areas. However, due to the lack of data on mortgage originations in non-metropolitan areas, it is difficult to precisely identify rural underserved areas. The

Department acknowledges that the 2000 Census will impact the designation of counties that are currently targeted as underserved. Before changing the definition for underserved non-metropolitan areas, it would be prudent to wait for new data on area demographics. HUD will re-examine this issue when data from the 2000 Census are available.

B. Consideration of Factors 1 and 2 in Metropolitan Areas: The Housing Needs of Underserved Urban Areas and Housing, Economic, and Demographic Conditions in Underserved Urban Areas

This section discusses differential access to mortgage funding in urban areas and summarizes available evidence on identifying those neighborhoods that have historically experienced problems gaining access to mortgage funding. Section B.1 provides an overview of the problem of unequal access to mortgage funding in the nation's housing finance system, focusing on discrimination and other housing problems faced by minority families and the communities where they live. Section B.2 examines mortgage access at the neighborhood level and discusses in some detail the rationale for the Geographically Targeted Goal in metropolitan areas. The most thorough studies available provide strong evidence that in metropolitan areas low income and high minority census tracts are underserved by the mortgage market.

Three main points are made in this section:

- There is evidence of racial disparities in both the housing and mortgage markets. Partly as a result of this, the homeownership rate for minorities is substantially below that for whites.
- The existence of substantial neighborhood disparities in mortgage credit is well documented for metropolitan areas. Research has demonstrated that census tracts 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 measure of whether that area is being underserved by the mortgage market.
- 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.[2]

1. Discrimination in the Mortgage and Housing Markets—An Overview

The nation's housing and mortgage markets are highly efficient systems, 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. Unfortunately, this highly efficient financing system does not work everywhere or for everyone. Studies have shown that access to credit often depends on improper evaluation of characteristics of the mortgage applicant and the neighborhood in which the applicant wishes to buy. In addition, though racial discrimination has become less blatant in the home purchase market, studies have shown that it is still widespread in more subtle forms. Partly as a result of these factors, the homeownership rate for minorities is substantially below that of whites.

Appendix A provided an overview of the homeownership gaps and lending disparities faced by minorities. A quick look at mortgage denial rates reported by the 1998 HMDA data reveals that minority denial rates were higher than those for white loan applicants. For lower-income borrowers, the conventional denial rate for African Americans was 1.9 times the denial rate for white borrowers, while for higher-income borrowers, the denial rate for African Americans was 2.5 times the rate for white borrowers. Similarly, the FHA denial rate for lower-income African Americans was 1.7 times the denial rates for lower-income white borrowers and twice as high for higher-income African Americans as for whites with similar incomes.

Several analytical studies, some of which are reviewed later in this section, show that these differentials in denial rates are not fully accounted for by differences in credit risk. Perhaps the most publicized example is a study by the Federal Reserve Bank of Boston, described in more detail below, which found that differential denial rates were most prevalent among marginal applicants.[3] Highly qualified borrowers of all races seemed to be treated equally, but in cases where there was some flaw in the application, white applicants seemed to be given the benefit of the doubt more frequently than minority applicants.

The Urban Institute conducted a case study of lenders' origination processes.[4] The research team and lenders believed origination processes to be race-blind. A review of the HMDA data revealed that origination outcomes were different for whites, black, and Hispanics—where lenders denied a small proportion of minority applicants, they denied an even smaller proportion of white applications. This may result from the lender's staff making greater efforts to qualify marginal white applicants compared with marginal black and Hispanic applicants.

In addition to discrimination in the lending market, substantial evidence exists of discrimination in the housing market. The 1991 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.[5] 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. 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.[6]

Discrimination, while not the only cause, contributes to the pervasive level of segregation that persists between African Americans and Whites in our urban areas. Because minorities tend to live in segregated neighborhoods, their difficulty in obtaining mortgage credit has a concentrated effect on the viability of their neighborhoods. In addition, there is evidence that denial rates are higher in minority neighborhoods regardless of the race of the applicant. The next section explores the issue of credit availability in neighborhoods in more detail.

2. Evidence About Access to Credit in Urban Neighborhoods

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.

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, it is essential to define ''underserved areas'' as accurately as possible from existing data. To provide the reasoning behind the Department's definition of underserved areas, this section first uses 1998 HMDA data to examine geographic variation in mortgage denial rates, and then it reviews three sets of studies that support HUD's definition. These include (1) studies examining racial discrimination against individual mortgage applicants, (2) studies that test whether mortgage redlining exists at the neighborhood level, and (3) studies that support HUD's targeted approach to measuring areas that are underserved by the mortgage market. In combination, these studies provide strong support for the definition of underserved areas chosen by HUD. The review of the economics literature draws from Appendix B of the 1995 GSE Rule; readers are referred there for a more detailed treatment of earlier studies of the issues discussed below.

a. HMDA Data on Mortgage Originations and Denial Rates

Home Mortgage Disclosure Act (HMDA) data provide information on the disposition of mortgage loan applications (originated, approved but not accepted by the borrower, denied, withdrawn, or not completed) in metropolitan areas. HMDA data include the census tract location of the property being financed and the race and income of the loan applicant(s). Therefore, it is a rich data base for analyzing mortgage activity in urban neighborhoods. HUD's analysis using HMDA data for 1998 shows that high-minority and low-income census tracts have both relatively high loan application denial rates and relatively low loan origination rates.

Table B.1 presents mortgage denial and origination rates by the minority composition and median income of census tracts in 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, in 1998 the denial rate for census tracts that are over 90 percent minority (26.6 percent) was 2.5 times that for census tracts with less than 10 percent minority (10.4 percent).

• Census tracts with lower incomes have higher denial rates and lower origination rates than higher income tracts. For example, in 1998 mortgage denial rates declined from 26.8 percent to 7.4 percent as tract income increased from less than 20 percent of area median income to more than 150 percent of area median income.[7] Similar patterns arose in HUD's analysis of 1993 and 1994 HMDA data (see Appendix B of the 1995 rule).

BILLING CODE 4210–27–P

Table B.1

Origination and Denial Rates for Conventional Mortgages

	Originations Per 100 Owner-Occupied Units (Purchases and Refinances)			Denial Rates (Home Purchases)		
Minority Percentage	1996	1997	1998	1996	1997	1998
Less than 10%	8.8	8.8	16.8	10.3 %	10.6 %	10.4 %
10-20	8.1	8.5	16.3	12.4	12.5	12.3
20-30	7.3	7.8	14.7	14.9	14.9	14.6
30-40	6.5	7.0	12.9	17.3	16.5	16.6
40-50	6.1	6.6	11.9	18.9	18.6	18.2
50-60	6.0	6.4	11.2	20.1	19.1	18.8
60-70	5.9	6.3	10.8	21.3	20.0	20.6
70-80	5.8	6.4	10.4	22.4	20.6	20.6
80-90	5.4	5.8	9.1	23.2	22.4	22.7
90-100	4.3	5.0	7.3	27.4	25.8	26.6
All Tracts	7.9	8.2	15.2	12.7	12.8	12.7

	Originations Per 100 Owner-Occupied Units (Purchases and Refinances)			Denial Rates (Home Purchases)		
Tract Income Relative to MSA Median	1996	1997	1998	1996	1997	1998
Less than 20%	7.0	8.4	11.6	30.1 %	23.9 %	26.8 %
20-30	5.0	6.0	8.5	31.5	24.2	25.2
30-40	4.4	5.2	7.6	27.4	25.3	26.0
40-50	5.0	5.8	8.4	24.8	23.6	24.8
50-60	4.9	5.6	8.4	25.1	22.7	23.0
60-70	5.3	6.0	9.4	22.4	21.9	21.5
70-80	5.9	6.5	10.7	20.4	19.9	19.9
80-90	6.7	7.1	12.1	17.4	17.9	17.7
90-100	7.3	7.6	13.7	15.0	15.0	15.2
100-110	8.1	8.3	15.5	12.5	13.0	12.8
110-120	9.0	9.0	17.6	10.6	11.0	11.0
120-150	9.7	9.8	19.6	8.9	9.0	8.8
150+	9.1	9.1	18.5	7.7	7.9	7.4
All Tracts	7.9	8.2	15.2	12.7	12.8	12.7

Source: HUD analysis of 1996,1997 and 1998 HMDA Data. Denial rate data exclude loans of lenders, respectively, that primarily originate manufactured housing loans.

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%	17.8%	20.4%	24.0%	19.8%
90-120%	12.4%	16.6%	19.2%	13.0%
120+	7.9%	12.5%	14.8%	8.3%
Total	11.4%	17.2%	21.9%	12.7%
Origination Rates per 100 Owner Occupants (Purchase and Refinance Mortgages)				
	Minority Composition			
Tract Income	< 30%	30-50%	50-100%	Total
Less Than 90%	11.8	10.9	8.5	10.7
90-120%	16.1	12.5	10.8	15.5
120+	19.6	16.1	13.6	19.2
Total	16.4	12.5	9.4	15.2

Source: HUD analysis of 1998 HMDA Data. Data on denial rates exclude loans of lenders that primarily originate manufactured housing loans.

BILLING CODE 4210–27–C

Table B.2 illustrates the interaction between tract minority composition and tract income by aggregating the data in Table B.1 into nine minority and income combinations. The low-minority (less than 30 percent minority), high-income (over 120 percent of area median) group had a denial rate of 7.9 percent and an origination rate of 19.6 loans per 100 owner occupants in 1998. The high-minority (over 50 percent), low-income (under 90 percent of area median) group had a denial rate of 24.0 percent and an origination rate of only 8.5 loans 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. In 1998 underserved areas had almost twice the average denial rate of served areas (19.4 percent versus 10.3 percent) and less than two-thirds the average origination rate per 100 owner occupants (10.8 versus 17.5). 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 denial rate (13.3 percent) for high-income tracts with a minority share of population over 30 percent is much less than the denial rate (19.4 percent) in underserved areas as defined by HUD, and only slightly above the average (10.3 percent) for all served areas.

b. Federal Reserve Bank Studies

The analysis of denial rates in the above section suggests that HUD's definition is a good proxy for identifying areas experiencing credit problems. However, an important question is the degree to which variations in denial rates reflect lender bias against certain kinds of neighborhoods and borrowers versus the degree to which they reflect the credit quality of potential borrowers (as indicated by applicants' available assets, credit rating, employment history, etc.). Some 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.[8] To control for credit risk, the Boston Fed researchers included 38 borrower and loan variables indicated by lenders to be critical to loan decisions. For example, the Boston Fed study included a measure of the borrower's credit history, which is a variable not included in other studies. The Boston Fed 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 more marginal qualifications.[9]

A subsequent reassessment and refinement of the data used by the Federal Reserve Bank of Boston confirmed the findings of that study.[10] William C. Hunter of the Federal Reserve Bank of Chicago confirmed 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 concluded that the racial differences in denial rates were consistent with a cultural gap between white loan officers and minority applicants, and conversely, a cultural affinity with white applicants.

The two Fed studies concluded that the effect of borrower race on mortgage rejections persists even after controlling for legitimate determinants of lenders' credit decisions. Thus, they imply that variations in mortgage denial rates, such as those given in Table B.2, are not determined entirely by borrower risk, but reflect discrimination in the housing finance system. 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 [11] and by underwriting standards that have disparate effects on minority and lower-income borrowers and their neighborhoods.[12]

c. Controlling for Neighborhood Risk and Tests of the Redlining Hypothesis

In its deliberations leading up to FHEFSSA, Congress was concerned about geographic redlining—the refusal of lenders to make loans in certain neighborhoods regardless of the creditworthiness of individual applicants. During the 1980's and early 1990's, a number of studies using HMDA data (such as that reported in Tables B.1 and B.2) attempted to test for the existence of mortgage redlining. Consistent with the redlining hypothesis, these studies found lower volumes of loans going to low-income and high-minority neighborhoods.[13] However, such analyses were criticized because they did not distinguish between demand, risk, and supply effects [14]—that is, they did not determine whether loan volume was low because families in high-minority and low-income areas were unable to afford home ownership and therefore were not applying for mortgage loans, *or* because borrowers in these areas were more likely to default on their mortgage obligations, *or* because lenders refused to make loans to creditworthy borrowers in these areas.[15] [16]

Recent statistical studies have sought to test the redlining hypothesis by more completely controlling for differences in neighborhood risk and demand. The first two studies reviewed below are good examples of the more recent literature. In these studies, the explanatory power of neighborhood race is reduced to the extent that the effects of neighborhood risk and demand are accounted for; thus, they do not support claims of racially induced mortgage redlining. However, as explained below, these studies cannot reach definitive conclusions about redlining because segregation in our inner cities makes it difficult to distinguish the impacts of geographic redlining from the effects of individual discrimination.

Additional studies related to redlining and the credit problems facing low- income and minority neighborhoods are also summarized. Particularly important are studies that focus on the ''thin'' mortgage markets in these neighborhoods and the implications of lenders not having enough information about the collateral and other characteristics of these neighborhoods. The low numbers of house sales and mortgages originated in low-income and high-minority neighborhoods result in individual lenders perceiving these neighborhoods to be more risky. It is argued that lenders do not have enough historical information to project the expected default performance of loans in low-income and high-minority neighborhoods, which increases their uncertainty about investing in these areas.

Holmes and Horvitz Study. Andrew Holmes and Paul Horvitz used 1988–1991 HMDA data to examine variations in conventional mortgage originations across census tracts in Houston. Their single-equation regression model included as explanatory variables the economic viability of the loan, characteristics of properties in and residents of the tract (*e.g.,* house value, income, age distribution and education level), measures of demand (*e.g.,* recent movers into the tract 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 test 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 in the Houston market could not be supported.

Schill and Wachter Study. Michael Schill and Susan Wachter posited that the probability that a lender will accept a specific mortgage application depends on characteristics of the individual loan application [17] and characteristics of the neighborhood where the property collateralizing the loan is located. Schill and Wachter included neighborhood risk proxies that are likely to affect the future value of the properties,[18] and they included the percentage of the tract population comprised of African Americans and Hispanics in order to test for the existence of racial discrepancies in lending patterns across census tracts.

Testing their model for conventional mortgages in Philadelphia and Boston, Schill and Wachter found that 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 an initial analysis that excluded the neighborhood risk variables from the model, 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 became 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.'' [19]

Other Redlining Studies. To highlight the methodological problems of single-equation studies of mortgage redlining, Fred Phillips-Patrick and Clifford Rossi developed a simultaneous equation model of the demand and supply of mortgages, which they estimated for the Washington, DC metropolitan area.[20] Phillips-Patrick and Rossi found that the supply of mortgages is negatively associated with the racial composition of the neighborhood, which led them to conclude that the results of single-equation models (such as the one estimated by Holmes and Horvitz) are not reliable indicators of redlining or its absence. However, Phillips-Patrick and Rossi noted that even their simultaneous equations model does not provide definitive evidence of redlining because important underwriting variables (such as credit history), which are omitted from their model, may be correlated with neighborhood race.

A few studies of neighborhood redlining have attempted to control for the credit history of the borrower, which is the main omitted variable in the redlining studies reviewed so far. Samuel Myers, Jr. and Tsze Chan, who studied mortgage rejections in the state of New Jersey in 1990, developed a proxy for bad credit based on the reasons that lenders give in their HMDA reports for denying a loan.[21] They found that 70 percent of the gap in rejection rates could not be explained by differences in Black and white borrower characteristics, loan characteristics, neighborhoods or bad credit. Myers and Chan concluded that the unexplained Black-white gap in rejection rates is a result of discrimination. With respect to the racial composition of the census tract, they found that Blacks are more likely to be denied loans in racially integrated or predominantly-white neighborhoods than in predominantly-Black neighborhoods. They concluded that middle-class Blacks seeking to move out of the inner city would face problems of discrimination in the suburbs.[22]

Geoffrey Tootell has authored two papers on neighborhood redlining based on the mortgage rejection data from the Boston Fed study.[23] Tootell's studies are important because they include a direct measure of borrower credit history, as well as the other underwriting, borrower, and neighborhood characteristics that are included in the Boston Fed data base; thus, his work does not have the problem of omitted variables to the same extent as previous redlining studies.[24] Tootell found that lenders in the Boston area did not appear to be redlining neighborhoods based on the racial composition of the census tract or the average income in the tract. Consistent with the Boston Fed and Schill and Wachter studies, Tootell found that it is the race of the applicant that mostly affects the mortgage lending decision; the location of the applicant's property appears to be far less relevant. However, he did find that the decision to require private mortgage insurance (PMI) depends on the racial composition of the neighborhood. Tootell suggested that, rather than redline themselves, mortgage lenders may rely on private mortgage insurers to screen applications from minority neighborhoods. Tootell also noted that this indirect form of redlining would increase the price paid by applicants from minority areas that are approved by private mortgage insurers.

In a 1999 paper, Stephen Ross and Geoffrey Tootell used the Boston Fed data base to take a closer at both lender redlining and the role of private mortgage insurance (PMI) in neighborhood lending.[25] They had two main findings. First, mortgage applications for properties in low-income neighborhoods were more likely to be denied if the applicant did not apply for PMI. Ross and Tootell concluded that their study provides the first direct evidence based on complete underwriting data that some mortgage applications may have been denied based on neighborhood characteristics that legally should not be considered in the underwriting process. Second, mortgage applicants were often forced to apply for PMI when the housing units were in low-income neighborhoods. Ross and Tootell concluded that lenders appeared to be responding to CRA by favoring low-income tracts once PMI has been received, and this effect counteracts the high denial rates for applications without PMI in low-income tracts.

Studies of Information Externalities. A recent group of studies that focus on economies of scale in the collection of information about neighborhood characteristics has implications for the identification of underserved areas and understanding the problems of mortgage access in low-income and minority neighborhoods. William Lang and Leonard Nakamura argue that individual home sale transactions generate information which reduce lenders' uncertainty about property values, resulting in greater availability of mortgage financing.[26] Conversely, appraisals in neighborhoods where transactions occur infrequently will tend to be more imprecise, resulting in greater uncertainty to lenders regarding collateral quality, and more reluctance by them in approving mortgage loans in neighborhoods with thin markets. As a consequence, ''prejudicial practices of the past may lead to continued differentials in lending behavior.''

If low-income or minority tracts have experienced relatively few recent transactions, the resulting lack of information available to lenders will result in higher denial rates and more difficulty in obtaining mortgage financing, independently of the level of credit risk in these neighborhoods.

A number of empirical studies have found evidence consistent with the notion that mortgage credit is more difficult to obtain in areas with relatively few recent sales transactions. Some of these studies have also found that low transactions volume may contribute to disparities in the availability of mortgage credit by neighborhood income and minority composition.

Paul Calem found that, in low-minority tracts, higher mortgage loan approval rates were associated with recent sales transactions volume, consistent with the Lang and Nakamura hypothesis.[27] While this effect was not found in high-minority tracts, he concludes that ''informational returns to scale'' contribute to disparities in the availability of mortgage credit between low-minority and high-minority areas. Empirical research by David Ling and Susan Wachter found that recent tract-level sales transaction volume does significantly contribute to mortgage loan acceptance rates in Dade County, Florida, also consistent with the Lang and Nakamura hypothesis.[28]

Robert Avery, Patricia Beeson, and Mark Sniderman found significant evidence of economies associated with the scale of operation of individual lenders in a neighborhood.[29] They concluded that ''The inability to exploit these economies of scale is found to explain a substantial portion of the higher denial rates observed in low-income and minority neighborhoods, where the markets are generally thin.'' Low-income and minority neighborhoods often suffer from low transactions volume, and low transactions volume represents a barrier to the availability of mortgage credit by making mortgage lenders more reluctant to approve and originate mortgage loans in these areas.

d. Geographic Dimensions of Underserved Areas—Targeted versus Broad Approaches

HUD's definition of metropolitan underserved areas is a targeted neighborhood definition, rather than a broad definition that would encompass entire cities. It also focuses on those neighborhoods experiencing the most severe credit problems, rather than neighborhoods experiencing only moderate difficulty obtaining credit. During the regulatory process leading to the 1995 rule, some argued that underserved areas under this goal should be defined to include all parts of all central cities, as defined by OMB. HUD concluded that such broad definitions were not a good proxy for mortgage credit problems—to use them would allow the GSEs to focus on wealthier parts of cities, rather than on neighborhoods experiencing credit problems. This section reports findings from several analyses by HUD and academic researchers that 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 parts of all central cities.

Socioeconomic Characteristics. The targeted nature of HUD's definition can be seen from the data presented in Table B.3,

which show that families living in underserved areas experience much more economic and social distress than families living in served areas. For example, the poverty rate in underserved census tracts is 20.1 percent, or almost four times the poverty rate (5.8 percent) in served census tracts. The unemployment rate and the high-school dropout rate are also higher in underserved areas. In addition, there are nearly three times more female-headed households in underserved areas (11.5 percent) than in served areas (4.3 percent).

The majority of units in served areas are owner-occupied, while the majority of units in underserved areas are renter-occupied.

BILLING CODE 4210–27–P

Table B.3

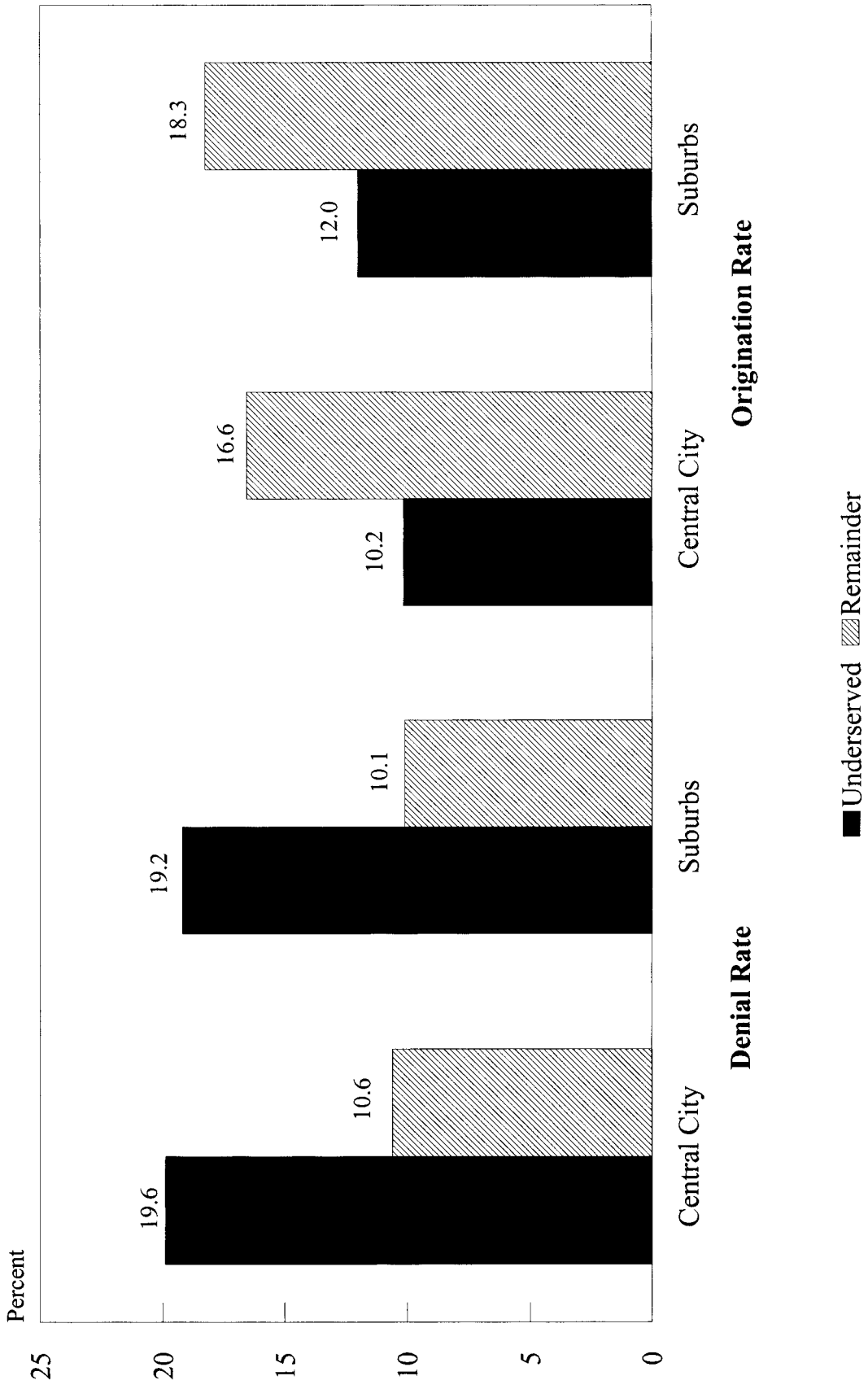
Socioeconomic Characteristics of Underserved Areas in Metropolitan Areas

	Served Tracts	Underserved Tracts	Total
Census Tracts	23,819	21,587	45,406
Households	41,379,104	31,839,636	73,218,740
Population	110,037,735	87,578,825	197,616,560
Unemployment Rate	4.2%	9.0%	6.2%
Poverty Rate	5.8%	20.1%	12.1%
Dropout Rate	10.3%	20.4%	14.8%
Percent Female Household With Children	12.1%	28.3%	19.7%
Percent African-American	3.8%	23.6%	12.6%
Percent Minority	11.1%	46.6%	26.8%
Percent Owner-Occupied	71.3%	47.6%	61.0%
Percent Renter	28.6%	52.4%	38.9%

Source: 1990 Census.

Figure B.1

1998 Denial And Origination Rates Underserved Areas And Remainder By Central Cities And Suburbs



BILLING CODE 4210–27–C

Credit Characteristics. 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 19.6 percent denial rate in these neighborhoods in 1998 was nearly twice the 10.6 percent denial rate in 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 these ''remaining'' portions of cities. Figure B.1 shows that these areas, which account for approximately 43 percent of the population in OMB-designated central cities, appear to be well served by the mortgage market. As a whole, they are not experiencing problems obtaining mortgage credit.[30]

HUD's definition also targets underserved census tracts in the suburbs as well as in central cities—for example, the average denial rate in underserved suburban areas (19.2 percent) is more than twice that in the remaining served areas of the suburbs (10.1 percent). Low-income and high-minority suburban tracts appear to have credit problems similar to their central city counterparts. These suburban tracts, which account for 40 percent of the suburban population, are encompassed by the definition of other underserved areas.

As explained in the Preamble, HUD asked for public comment on two options that would tighten the targeting of the underserved areas definition and reduce the number of qualifying census tracts. After examining the comments the Department has decided to wait until the release of the 2000 Census Bureau data. In addition to providing updated information on neighborhoods, the 2000 Census Bureau will incorporate changes adopted by the Metropolitan Area Standards Review Committee that will impact the boundaries of current metropolitan areas.[31]

Shear, Berkovec, Dougherty, and Nothaft Study. William Shear, James Berkovec, Ann Dougherty, and Frank Nothaft conducted an analysis of mortgage flows and application acceptance rates in 32 metropolitan areas that supports a targeted definition of underserved areas.[32] They found: (a) Low-income census tracts and tracts with high concentrations of African American and Hispanic families had lower rates of mortgage applications, originations, and acceptance rates; [33] and (b) once census tract influences were accounted for, central city location had 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.[34]

Avery, Beeson, and Sniderman Study. Robert Avery, Patricia Beeson, and Mark Sniderman of the Federal Reserve Bank of Cleveland presented a paper specifically addressing the issue of underserved areas in the context of the GSE legislation.[35] Their study examined variations in application rates and denial rates for all individuals and census tracts included in the 1990 and 1991 HMDA data base. They sought 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 studies of redlining reviewed in the previous section, Avery, Beeson and Sniderman hypothesized that variations in mortgage application and denial rates would be a function of several risk variables such as the income of the applicant and changes in neighborhood house values; they tested for independent racial effects by adding to their model the applicant's race and the racial composition of the census tract. Econometric techniques were used to separate individual applicant effects from neighborhood effects.

Based on their empirical work, Avery, Beeson and Sniderman reached the following conclusions:

- The individual applicant's race exerts a strong influence on mortgage application and denial rates. African American applicants, in particular, had unexplainably high denial rates.
- Once individual applicant and other neighborhood characteristics were controlled for, overall denial rates for purchase and refinance loans were only slightly higher in minority census tracts than non-minority census tracts.[36] For white applicants, on the other hand, denial rates were significantly higher in minority tracts.[37] That is, minorities had higher denial rates wherever they attempted to borrow, but whites faced 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.* noted that since minorities tend to live in segregated communities, a policy of targeting minority neighborhoods may be warranted.

Other findings were:

- The median income of the census tract had strong effects on both application and denial rates for purchase and refinance loans, even after other variables were accounted for.
- There was little difference in overall denial rates between central cities and suburbs, once individual applicant and census tract characteristics were controlled for.

Avery, Beeson and Sniderman concluded that a tract-level definition is a more effective way to define underserved areas than using the list of OMB-designated central cities as a proxy.

e. 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 HMDA data shows that low-income and high-minority neighborhoods receive substantially less credit than other neighborhoods and 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, Schill and Wachter, and Tootell are examples of this research. Their attempts to test the redlining hypothesis show the analytical insights that can be gained by more rigorous modeling of this issue. However, 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, their results are inconclusive and, thus, the need continues for further research on the underlying determinants of geographic disparities in mortgage lending.[38]

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 fully 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.

C. Consideration of Factors 1 and 2 in Nonmetropolitan Areas: The Housing Needs of Underserved Rural Areas and the Housing, Economic, and Demographic Conditions in Underserved Rural Areas

Because of the absence of HMDA data for rural areas, the analysis for metropolitan underserved areas cannot be carried over to non-metropolitan areas. Based on discussions with rural lenders in 1995, the definition of underserved rural areas was established at the county level, since such lenders usually do not make distinctions on a census tract basis. But this definition parallels that used in metropolitan areas—specifically, a nonmetro county is classified as an underserved area if median income of families in the county does not exceed 95 percent of the greater of state nonmetro or national nonmetro median income, or minorities comprise 30 percent or more of the residents and the median income of families in the county does not exceed 120 percent of the greater of state nonmetro or national nonmetro median income. For nonmetro areas the median income component of the underserved areas definition is broader than that used for metropolitan areas. While tract income is compared with area income for metropolitan areas, in rural counties income is compared with ''enhanced income''—the greater of state nonmetro income and national nonmetro income. This is based on HUD's analysis of 1990 census data, which indicated that comparing county nonmetro income only to state nonmetro income would lead to the exclusion of many lower-income low-minority counties from the definition, especially in Appalachia. Underserved counties account for 57 percent (8,091 of 14,419) of the census tracts and 54 percent of the population in rural areas. By comparison, the definition of metropolitan underserved areas encompassed 47 percent of metropolitan census tracts and 44 percent of metropolitan residents. The county-wide definition of rural underserved areas could give the GSEs an incentive to purchase mortgages in the ''better served'' portions of underserved counties which may face few, if any, barriers to accessing mortgage credit in rural areas. This issue is discussed in more detail in the proposed Rule.

The demographic characteristics of served and underserved counties are first presented in this section. Next, a literature review of recent studies provides an overview of rural mortgage markets, GSE activity, and the growing demand for manufactured housing in rural housing markets. It also discusses characteristics of rural housing markets that lead to higher interest rates and mortgage access problems and makes some policy recommendations for addressing market inefficiencies.

1. Demographics

As discussed, majorities of rural households and rural counties fall under the definition of underserved areas. As shown in Table B.4, rural underserved counties have higher unemployment, poverty rates, minority shares of households, and homeownership rates than rural served counties. The poverty rate in underserved rural counties (21.2 percent) is nearly twice that in served rural counties (12.2 percent). Joblessness is more common, with average unemployment rates of 8.3 percent in underserved counties and 5.9 percent in served counties. Minorities make up 20.8 percent of the residents in underserved counties and 7.4 percent in served counties. Homeownership is slightly higher in underserved counties (72.4 percent) than in served counties (70.8 percent).

BILLING CODE 4210–27–P

Table B.4

Socioeconomic Characteristics of Underserved Counties in Non-Metropolitan Areas

	Served Counties	Underserved Counties	Total
Counties	786	1,511	2,297
Households	8,618,519	10,097,825	18,716,344
Population	23,075,383	27,467,972	50,543,355
Unemployment Rate	5.9%	8.3%	7.1%
Poverty Rate	12.2%	21.2%	17.1%
Dropout Rate	16.3%	22.7%	19.8%
Percent Female Household With Children	14.3%	17.5%	16.1%
Percent African-American	3.9%	12.4%	8.5%
Percent Minority	7.4%	20.8%	14.7%
Percent Owner-Occupied	70.8%	72.4%	71.6%
Percent Renter	29.2%	27.6%	28.4%

Source: 1990 Census.

BILLING CODE 4210–27–C

Some differences exist between metro and nonmetro underserved areas. The definition is somewhat more inclusive in nonmetro areas—the majority of the nonmetro population lives in underserved counties, while the majority of the metropolitan population lives in served areas. The majority of units in underserved metropolitan areas are occupied by renters, while the majority of units in underserved rural counties are occupied by owners. But poverty and unemployment rates are higher in underserved areas than in served areas in both nonmetropolitan and metropolitan areas.

2. Literature Review

Research related to housing and mortgage finance issues in rural areas is reviewed in this section. It finds that lack of competition between rural lenders and lack of participation in secondary mortgage markets may contribute to higher interest rates and lower mortgage availability in rural areas. The mortgages purchased by the GSEs on properties in underserved counties are not particularly focused on lower-income borrowers and first-time homebuyers, which suggests that additional research needs to be conducted to target areas in nonmetropolitan areas which experience difficulty accessing mortgage credit. The role of manufactured housing in providing affordable housing in rural areas is also discussed.

Mikesell Study (1998).[39] A study by Jim Mikesell provides an overview of mortgage lending in rural areas. It finds that home loans in rural areas have higher costs, which can be attributed to at least three factors that characterize rural mortgage markets. First, the fixed cost associated with rural lending may be higher as a result of the smaller loan size and remoteness of many rural areas. Second, there are fewer mortgage lenders in rural areas competing for business, which may account for higher interest rates. Third, the secondary mortgage market is not as well developed as in metropolitan areas.

Higher interest rates for rural mortgages are documented by the Federal Housing Finance Board's monthly survey of conventional home purchase mortgages. On average, relative to rates on mortgages in urban areas, rates on mortgages in rural areas in 1997 were 8 basis points (bp) higher on 30-year fixed rate mortgages (FRMs), 18 bp higher for 15-year FRMs, 38 bp higher for adjustable-rate mortgages (ARMs), and 52 bp higher for nonstandard loans.[40] The higher rates in rural areas translate into differences in monthly payments of $3 to $16 for a $100,000 mortgage.

Mikesell finds that property location and small loan size are two factors that make lending more costly in rural areas. Borrower characteristics, such as income, assets, and credit history, and lender characteristics, such as ownership, size, and location, might influence loan pricing, but the influence of these factors could not be tested due to lack of data.

Rural-based lenders are fewer and originate a smaller volume of loans than their urban counterparts. These factors contribute to less competition between rural lenders and a less efficient housing finance market, which result in higher costs for rural borrowers.

Rural lenders are less likely than urban lenders to participate in the secondary mortgage market. As a result, rural borrowers do not receive the benefits associated with the secondary market—the increased competition between lenders, the greater potential supply of mortgage financing, and the alignment of financing costs more closely with those in urban markets.

Some obstacles for rural lenders participating in the secondary market are that borrower characteristics and remote properties may not conform to the secondary market's underwriting standards. Rural households may have their borrowing capacity reduced by loan qualification standards which discount income that varies widely from year to year and income from self-employment held for less than several years. Rural properties may have one or more of the following characteristics which preclude a mortgage from being purchased by the GSEs: excessive distance to a firehouse, unacceptable water or sewer facilities, location on a less-than-all-weather road, and dated plumbing or electrical systems.

Mikesell concludes that increased participation by rural lenders in the secondary mortgage market would bring down lending costs and offset some of the higher costs characteristic of rural lending, and that HUD's goals for the GSEs could encourage such increased participation.

MacDonald Study.[41] This study investigates variations in GSE market shares among a sample of 426 non-metropolitan counties in eight census divisions. Conventional conforming mortgage originations are estimated using residential sales data, adjusted to exclude non-conforming mortgages. Multivariate analysis is used to investigate whether the GSE market share differs significantly by location, after controlling for the economic, demographic, housing stock, and credit market differences among counties that could affect use of the secondary markets by lenders.[42]

MacDonald has four main findings regarding mortgage financing and the GSEs' purchases in rural mortgage markets. First, smaller, poorer and less rapidly growing non-metro areas have less access to mortgage credit than larger, wealthier and more rapidly growing areas. Second, the mortgages that are originated in the former areas are seldom purchased by the GSEs. Third, higher-income borrowers are more likely, and first-time homebuyers are less likely, to be served by the GSEs in underserved areas than in served areas. This suggests that the GSEs are not reaching out to marginal borrowers in underserved nonmetropolitan areas. Finally, the GSEs serve a smaller proportion of the low-income market in rural areas than do depository institutions. This finding is consistent with studies of the GSEs' affordable lending performance in metropolitan areas.

With regard to the GSEs' underwriting guidelines MacDonald makes two points. First, the GSEs' purchase guidelines may adversely affect non-metro areas where many borrowers are seasonally-or self-employed and where houses pose appraisal problems. Second, MacDonald speculates that mortgage originators in nonmetropolitan areas may interpret guidelines too conservatively, or may not try to qualify non-traditional borrowers for mortgages.

MacDonald also echoes the findings of Mikesell that the existence and extent of mortgage lending problems are difficult to identify in many rural areas because of the lack of comprehensive mortgage lending data. Problems that have been identified include the lack of market competition among small, conservative lending institutions typical in rural and non-metropolitan areas; consolidation and other changes in the financial services industry, which may have different consequences in rural areas than in urban areas; lack of access to government housing finance programs in more rural locations; and weak development of secondary market sources of funds in rural areas, exacerbating liquidity problems.

MacDonald discusses briefly the importance of low-cost homeownership alternatives in rural areas. One alternative is manufactured (mobile) housing. In general, manufactured housing is less costly to construct than site-built housing. Manufactured housing makes up more than 25 percent of the housing stock in rural counties in the South and Mountain states.

MacDonald concludes that the lower participation of the GSEs in underserved areas compared with served areas may result from additional risk components for some borrowers and from lack of sophistication by the lenders that serve small non-metro markets. In smaller and poorer counties, low volumes of loan sales to the GSEs may be a result of lower incomes and smaller populations. These counties may not have sufficient loan-generating activity to justify mortgage originators pursuing secondary market outlets.

The Role of Manufactured Housing.[43] The Joint Center for Housing Studies at Harvard University conducted a comprehensive study of the importance of manufactured housing as an affordable housing choice in rural communities. In all segments of the housing market, but especially in rural areas and among low-income households, manufactured housing is growing. Based on the American Housing Survey, in 1985, 61 percent of the manufactured housing stock was located in rural areas, compared with 70 percent in 1993. Between 1985 and 1993, manufactured housing increased over 2.2 percent annually while all other housing increased 0.7 percent per year. In 1993, 6.0 percent (or 6 million) of households lived in manufactured housing.

Since the 1970's, the face of manufactured housing has changed. Once a highly mobile form of recreational housing in this country, today manufactured housing provides basic quality, year-round housing for millions of American households. Most earlier units were placed in mobile home parks or on leased parcels of land. Today an increasing number of units are owned by households that also own the land on which the manufactured home is located.

Manufactured housing's appeal lies in its affordability. The low purchase price, downpayments, and monthly cash costs of manufactured housing provide households

who are priced out of the conventional housing market a means of becoming homeowners. The occupants of manufactured housing on average are younger, have less income, have less education and are more often white than occupants of single-family detached homes. This type of housing is often found in areas with persistent poverty, retirement destinations, areas for recreation and vacations, and commuting counties.

The manufactured housing industry is well positioned for continued growth. The affordability of manufacturing housing is increasingly attractive to the growing ranks of low-income households. Manufactured housing is becoming more popular among first-time homebuyers and the elderly, both of which are growing segments of the housing market. The migration of people to the South, where manufactured housing is already highly accepted, and to metropolitan fringes will further increase the demand for this type of housing.[44]

D. Factor 3: Previous Performance and Effort of the GSEs in Connection With the Central Cities, Rural Areas and Other Underserved Areas Goal

As discussed in Sections B and C, HUD has structured the Geographically Targeted Goal to increase mortgage credit to areas underserved by the mortgage markets. This section looks at the GSEs' past performance to determine the impact the Geographically Targeted Goal is having on borrowers and neighborhoods, with particular emphasis on underserved areas. Section D.1 reports the past performance of each GSE with regard to the Geographically Targeted Goal. Section D.2 then examines the role that the GSEs are playing in funding single-family mortgages in underserved urban neighborhoods based on HUD's analysis of GSE and HMDA data. Section D.3 concludes this section with an analysis of the GSEs' purchases in rural (nonmetropolitan) areas.

1. GSE Performance on the Geographically Targeted Goal

This section discusses each GSE's performance under the Geographically Targeted Goal over the 1993–99 period. The data presented here are ''official results'' *i.e.,* they are based on HUD's in-depth analysis of the loan-level data submitted annually to the Department, subject and the counting provisions contained in Subpart B of HUD's December 1, 1995 Regulation of Fannie Mae and Freddie Mac. As explained below, in some cases these ''official results'' differ to some degree from goal performance reported by the GSEs in their Annual Housing Activities Reports to the Department.

HUD's goals specified that in 1996 at least 21 percent of the number of each GSE's units eligible to count toward the Geographically Targeted Goal should qualify as geographically targeted, and at least 24 percent should qualify in 1997 and 1998. Actual performance, based on HUD analysis of GSE loan-level data, was as follows:

	1996	1997	1998	1999
Fannie Mae:				
Units Eligible to Count Toward Goal	1,891,896	1,765,347	3,546,302	2,956,155
Geographically Targeted Units	532,434	508,746	958,233	791,593
Percent Geographically Targeted	28.1	28.8	27.0	26.8
Freddie Mac:				
Units Eligible to Count Toward Goal	1,325,900	1,180,517	2,658,556	2,245,087
Geographically Targeted Units	331,495	310,572	693,748	618,385
Percent Geographically Targeted	25.0	26.3	26.1	27.5

Thus, Fannie Mae and Freddie Mac surpassed the goals in 1996 by 7.1 percentage points and 4.0 percentage points, respectively. And both GSEs surpassed the 1997–99 goals by at least 2 percentage points in each of these three years.

Fannie Mae's performance on the Geographically Targeted Goal jumped sharply in just two years, from 23.6 percent in 1993 to 31.9 percent in 1995, before tailing off to 28.1 percent in 1996. As indicated, it then rose slightly to 28.8 percent in 1997, before tailing off to 27.0 percent in 1998 and 26.8 percent in 1999.[45] Freddie Mac has shown more steady gains in performance on the Geographically Targeted Goal, from 21.3 percent in 1993 to 24.2 percent in 1994, 25.0 percent in 1995–96, just over 26 percent in 1997–98, and 27.5 percent in 1999.[46]

Fannie Mae's performance on the Geographically Targeted Goal has surpassed Freddie Mac's in every year from 1993 through 1998. However, Freddie Mac's 1999 performance represented a 26 percent increase over the 1993 level, exceeding the 14 percent increase for Fannie Mae. As a result, Freddie Mac's performance in 1999 (27.5 percent) was 103 percent of Fannie Mae's geographically targeted share last year (26.8 percent)—the only year in which Freddie Mac's performance on this goal has exceeded Fannie Mae's performance. The main reason why Freddie Mac moved past Fannie Mae in performance on the Geographically Targeted Goal last year is that the geographically-targeted share of Freddie Mac's total single-family mortgage purchases rose from 24.5 percent in 1998 to 26.7 percent in 1999, exceeding the corresponding increase for Fannie Mae, from 24.8 percent in 1998 to 25.5 percent in 1999. A second reason why Freddie Mac surpassed Fannie Mae in performance on this goal last year is that multifamily properties are ''goal-rich''- that is, they are more likely to be in underserved areas than single-family units, and the multifamily share of purchases eligible for this goal rose slightly for Freddie Mac, from 8.3 percent in 1998 to 8.5 percent in 1999, but fell somewhat for Fannie Mae, from 10.4 percent in 1998 to 9.8 percent in 1999.

2. GSEs' Mortgage Purchases in Metropolitan Neighborhoods

As shown in Table B.5, metropolitan areas accounted for about 85 percent of total GSE purchases under the Geographically Targeted Goal in 1998 and 1999. This section uses HMDA and GSE data for metropolitan areas to examine the neighborhood characteristics of the GSEs' mortgage purchases. In subsection 2.a, the GSEs' performance in underserved neighborhoods is compared with that of portfolio lenders and the overall market. This section therefore expands on the discussion in Appendix A, which compared the GSEs' funding of affordable loans with the overall conventional conforming market. In subsection 2.b., the characteristics of the GSEs' purchases within underserved areas are compared with those for their purchases in served areas.

BILLING CODE 4210–27–P

BILLING CODE 4210–27–C

Table B.5

Fannie Mae and Freddie Mac Acquisitions of Single-Family and Multifamily Units in Underserved Metro and Nonmetro Areas in 1998 and 1999

	Fannie Mae		Freddie Mac	
	1998	1999	1998	1999
Metropolitan				
Number of Underserved Units	799,426	670,901	548,510	505,716
Percent of Total Units	25.5%	25.4%	24.2%	26.2%
Total	3,132,066	2,637,508	2,265,333	1,930,976
Nonmetropolitan				
Number of Underserved Units	158,806	120,693	145,237	112,669
Percent of Total Units	38.6%	38.1%	36.9%	37.7%
Total	410,911	316,855	393,120	298,964
Overall				
Number of Underserved Units	958,232	791,594	693,747	618,385
Percent of Total Units	27.0%	26.8%	26.1%	27.5%
Total Eligible*	3,546,302	2,956,155	2,658,556	2,245,087

* Overall totals may exceed the metro/nonmetro sum due to units in unidentified census tracts.

a. Comparisons With the Primary Market

Overview and Main Conclusions. Tables A.3 and A.4a in Appendix A provided information on the GSEs' funding of home purchase loans for properties located in underserved neighborhoods for the years 1993 to 1998. The findings with respect to the GSEs' funding of underserved neighborhoods are similar to those reported in Appendix A regarding the GSEs' overall affordable lending performance. While both GSEs improved their performance over the 1993–1998 period, they lagged the conventional conforming market in providing affordable loans to underserved neighborhoods. As discussed in Appendix A, the two GSEs showed very different patterns of lending—Freddie Mac was much less likely than Fannie Mae to fund home loans in underserved neighborhoods through 1998. The percentage of Freddie Mac's purchases financing properties in underserved census tracts was substantially less than the percentage of total market originations in these tracts; furthermore, by 1998 Freddie Mac had not made progress closing the gap with the primary market. Fannie Mae, on the other hand, was much closer to 1998 market levels in its funding of underserved areas. The GSE data for 1999 show a shift in these patterns—during 1999, Freddie Mac surpassed Fannie Mae in funding mortgages in underserved neighborhoods.

Freddie Mac—1993–1998. While Freddie Mac lagged Fannie Mae, portfolio lenders, and the overall conforming market in providing home loans to underserved neighborhoods during the 1993–1998 period, it pulled ahead of Fannie Mae during 1999 in purchasing mortgages for properties located in urban underserved areas (discussed below). Over the 1993–1998 period, underserved census tracts accounted for 19.7 percent of Freddie Mac's single-family home mortgages, compared with 22.9 percent of Fannie Mae's purchases, 26.3 percent of loans originated and held in portfolio by depository lenders, and 24.5 percent of the overall conforming primary market. If the analysis is restricted to the 1996–98 period during which the current housing goals have been in effect, the data continue to show that Freddie Mac lagged the market in funding underserved neighborhoods (see Table A.3 in Appendix A). In 1998, underserved census tracts accounted for 20.0 percent of Freddie Mac's purchases and 24.6 percent of loans originated in the conforming home purchase market, yielding a ''Freddie Mac-to-market'' ratio of only 0.81 (*i.e.* 20.0 divided by 24.6).

Fannie Mae—1993–1998. Over the longer 1993–98 period and the more recent 1996–98 period, Fannie Mae has lagged the market and portfolio lenders in funding properties in underserved areas, but to a much smaller degree than Freddie Mac. During the 1996–98 period, underserved tracts accounted for 22.9 percent of Fannie Mae's purchases, compared with 25.8 percent of loans retained in portfolio by depositories and with 24.9 percent of home loans originated in the conventional conforming market. Fannie Mae's performance is much closer to the market than Freddie Mac's performance, as can be seen by the ''Fannie Mae-to-market'' ratio of 0.92 for the 1996–98 period (*i.e.* 22.9 divided by 24.9).Fannie Mae's performance improved during 1997, due mainly to Fannie Mae's increased purchases during 1997 of prior-year mortgages in underserved neighborhoods. Overall, Fannie Mae's purchases of home loans in underserved areas increased from 22.3 percent in 1996 to 23.5 percent in 1997. The underserved area percentage for Fannie Mae's purchases of newly-originated mortgages was actually lower in 1997 (20.8 percent) than in 1996 (21.9 percent). This decline was offset by the fact that a particularly high percentage (30.1 percent) of Fannie Mae's 1997 purchases of prior-year mortgages was for properties in underserved areas. Thus, Fannie Mae improved its overall performance in 1997 by supplementing its purchases of newly-originated mortgages with purchases of prior-year mortgages targeted to underserved neighborhoods. As shown in Table A.4a in Appendix A, Fannie Mae continued this strategy in 1998, but not in 1999. The annual data in Table A.4a show the progress that Fannie Mae has made in closing the gap between its performance and that of the overall market. In 1992, underserved areas accounted for 18.3 percent of Fannie Mae's purchases and 22.2 percent of market originations, for a ''Fannie Mae-to-market'' ratio of 0.82. By 1998, underserved areas accounted for 22.9 percent of Fannie Mae's purchases and 24.6 percent of market originations, for a higher ''Fannie Mae-to-market'' ratio of 0.93. Freddie Mac, on the other hand, fell further behind the market during this period. In 1992, Freddie Mac had a slightly higher underserved area percentage (18.6 percent) than Fannie Mae (18.3 percent). However, Freddie Mac's underserved area percentage had only increased to 20.0 percent by 1998 (versus 22.9 percent for Fannie Mae). Thus, the ''Freddie Mac-to-market'' ratio fell from 0.84 in 1992 to 0.81 in 1998.

1999 GSE Purchases. In 1999, Freddie Mac's funding of both home purchase loans and total (combined home purchase and refinance) loans in underserved neighborhoods improved to the point that it surpassed Fannie Mae's performance. In 1999, underserved areas accounted for 21.2 percent of Freddie Mac's purchases of home purchase loans in metropolitan areas—a figure slightly higher than the 20.6 percent for Fannie Mae. With respect to combined home purchase and refinance loans, Freddie Mac's underserved areas percentage in metropolitan areas jumped by 2.6 percentage points, from 20.9 percent in 1998 to 23.5 percent in 1999, while the corresponding percentage for Fannie Mae increased by only 0.6 percentage point, from 21.2 percent in 1998 to 21.8 percent in 1999.

Down Payment Characteristics. Table B.6 reports the down payment and borrower income characteristics of mortgages that the GSEs purchased in underserved areas during 1999. Two points stand out. First, loans on properties in underserved areas were more likely to have a high loan-to-value ratio than loans on properties in served areas. Specifically, about 15.4 percent of loans in underserved areas had a down payment less than ten percent, compared with 13.4 percent of all loans purchased by the GSEs. Second, loans to low-income borrowers in underserved areas were typically high down payment loans. Approximately 70 percent of the GSE-purchased loans to very low-income borrowers living in underserved areas had a down payment more than 20 percent.

BILLING CODE 4210–27–P

Table B.6

Down Payment Characteristics of GSE Purchases in Underserved Areas, 1999

	Size of Down Payment				
GSE Purchases	Less Than 5 Percent Down	5 to 10 Percent Down	10 to 20 Percent Down	20 Percent or More Down	Total [1]
All Loans	118,425	486,288	632,894	3,274,965	4,512,572
Loans in Underserved Areas	41,361	130,432	174,728	767,420	1,113,941
Very- Low-Income Loans	8,329	19,385	24,675	122,597	174,986
At or Below Median Income Loans	23,824	62,943	79,976	348,325	515,068
Percentage Distribution					
All Loans	2.6%	10.8%	14.0%	72.6%	100.0%
Loans in Underserved Areas	3.7%	11.7%	15.7%	68.9%	100.0%
Very- Low-Income Loans	4.8%	11.1%	14.1%	70.1%	100.0%
Less- Than-Median Income Loans	4.6%	12.2%	15.5%	67.6%	100.0%

Source: Data include all owner-occupied one-unit mortgages (homepurchase, refinance, and second loans) purchased by the GSEs in underserved areas (both metropolitan and non-metropolitan) in 1999.

[1] Loans with missing down payments are excluded.

Table B.7

Loan and Borrower Characteristics of Single-Family Mortgages Purchased by the GSEs In Metropolitan Areas, 1999

Loan and Borrower Characteristics	Fannie Mae		Freddie Mac		Total	
	Served	Underserved	Served	Underserved	Served	Underserved
Number of Loans	1,645,663	437,769	1,227,273	362,704	2,872,936	800,473
Loan Purpose						
Home Purchase	46.8 %	43.7 %	43.6 %	38.2 %	45.4 %	41.2 %
Refinancing	53.2	56.3	56.4	61.8	54.6	58.8
Origination Year						
Current Year	29.7 %	29.0 %	27.2 %	27.7 %	28.7 %	28.4 %
Prior Years	70.3	71.0	72.8	72.3	71.3	71.6
Loan-to-Value Ratio						
Over 95%	1.8 %	3.4 %	1.6 %	2.3 %	1.7 %	2.9 %
91-95%	11.0	12.6	10.2	11.1	10.6	11.9
81-90%	13.6	15.3	13.1	15.0	13.4	15.1
61-80%	54.2	53.2	54.1	54.3	54.1	53.7
60% or Less	19.4	15.5	21.1	17.2	20.1	16.3
Income of Borrower(s)						
60% of Area Median or Below	8.7 %	18.6 %	9.3 %	19.7 %	8.9 %	19.1 %
61-100% of Median	26.6	35.7	27.7	35.6	27.0	35.6
Below Area Median	35.2	54.3	36.9	55.3	35.9	54.7
Over 100% of Median	64.8	45.7	63.1	44.7	64.1	45.3
First-time Home Buyer	11.2 %	13.9 %	9.5 %	9.8 %	10.4 %	12.0 %
Race/National Origin of Borrower						
White	88.1 %	69.0 %	89.3 %	70.9 %	88.6 %	69.9 %
African American	2.2	7.3	2.3	8.2	2.2	7.7
Hispanic	3.3	13.4	3.4	13.0	3.3	13.2
Asian or Pacific Islander	3.7	7.4	3.5	6.1	3.6	6.8
American Indian or Alaskan Native	0.4	0.4	0.3	0.4	0.3	0.4
Other	2.4	2.5	1.2	1.4	1.9	2.0
Age of Borrower						
Under 30	11.0 %	12.5 %	10.6 %	11.7 %	10.9 %	12.2 %
30-39	33.5	31.1	32.7	30.8	33.2	31.0
40 and Over	55.4	56.4	56.7	57.4	56.0	56.8
Gender of Borrower(s)						
All Male	18.1 %	24.0 %	17.5 %	21.9 %	17.9 %	23.1 %
All Female	16.6	21.9	17.4	22.0	16.9	21.9
Male and Female	65.3	54.1	65.0	56.1	65.2	55.0

Source: HUD analysis of GSEs' loan-level data on mortgages on owner-occupied one-unit properties. In computing the percentages, missing data are excluded.

BILLING CODE 4210–27–C

b. Characteristics of GSEs' Purchases of Mortgages on Properties in Metropolitan Underserved Areas

Several characteristics of loans purchased by the GSEs in metropolitan underserved areas are presented in Table B.7. As shown, borrowers in underserved areas are more likely than borrowers in served areas to be first-time homebuyers, females, and older than 40 or younger than 30. And, as expected, they are more likely to have below-median income and to be members of minority groups. For example, first-time homebuyers make up 12.0 percent of the GSEs' mortgage purchases in underserved areas and 10.4 percent of their business in served areas. In underserved areas, 54.7 percent of borrowers had incomes below the area median, compared with 35.9 percent of borrowers in served areas.

Minorities' share of the GSEs' mortgage purchases in underserved areas (30.1 percent) was nearly three times their share in served areas (11.4 percent). And the pattern was even more pronounced for African Americans and Hispanics, who accounted for 20.9 percent of the GSEs' business in underserved areas, but only 5.5 percent of their purchases in served areas.

3. GSE Mortgage Purchases in Nonmetropolitan Areas

Nonmetropolitan mortgage purchases made up 13 percent of the GSEs' total mortgage purchases in 1999. Mortgages in underserved counties made up 39 percent of the GSEs' business in nonmetropolitan areas.[47]

Unlike the underserved areas definition for metropolitan areas, which is based on census tracts, the rural underserved areas definition is based on counties. Rural lenders argued that they identified mortgages by the counties in which they were located rather than the census tracts; and therefore, census tracts were not an operational concept in rural areas. Market data on trends in mortgage lending for metropolitan areas is provided by the Home Mortgage Disclosure Act (HMDA); however, no comparable data source exists for rural mortgage markets. The absence of rural market data is a constraint for evaluating credit gaps in rural mortgage lending and for defining underserved areas.

One concern is whether the broad definition overlooks differences in borrower characteristics in served and underserved counties that should be included. Table B.8 compares borrower and loan characteristics for the GSEs' mortgage purchases in served and underserved areas.

The GSEs are slightly less likely to purchase loans for first-time homebuyers and more likely to purchases mortgages for high-income borrowers in underserved than in served counties. Mortgages to first-time homebuyers accounted for 8.4 percent of the GSEs' 1999 mortgage purchases in served counties, compared with 7.3 percent of their purchases in underserved counties. Surprisingly, borrowers in served counties were more likely to have incomes below the median than in underserved counties (37.9 percent, compared to 33.6 percent). These findings lend some support to the claim that, in rural underserved counties, the GSEs purchase mortgages for borrowers that probably encounter few obstacles in obtaining mortgage credit.

BILLING CODE 4210–27–P

Table B.8

Loan and Borrower Characteristics of Single-Family Mortgages Purchased by the GSEs In Non-Metropolitan Counties, 1999

Loan and Borrower Characteristics	Fannie Mae		Freddie Mac		Total	
	Served	Underserved	Served	Underserved	Served	Underserved
Number of Loans	175,983	112,967	169,600	107,850	345,583	220,817
Loan Purpose						
Home Purchase	39.1 %	37.9 %	37.3 %	36.3 %	38.2 %	37.1
Refinancing	60.9	62.1	62.7	63.7	61.8	62.9
Origination Year						
Current Year	27.2 %	26.8 %	25.9 %	26.9 %	26.5 %	26.9
Prior Years	72.8	73.1	74.1	73.1	73.5	73.1
Loan-to-Value Ratio						
Over 95%	2.3 %	2.5 %	1.7 %	1.6 %	2.0 %	2.1
91-95%	10.7	11.6	9.6	10.3	10.2	10.9
81-90%	13.3	14.7	12.3	13.6	12.8	14.1
61-80%	53.9	53.2	55.3	55.0	54.6	54.1
60% or Less	19.8	18.1	21.1	19.4	20.4	18.7
Income of Borrower(s)						
60% of Area Median or Below	9.5 %	8.2 %	10.0 %	9.0 %	9.7 %	8.6
61-100% of Median	27.9	24.2	28.3	25.9	28.1	25.0
Below Area Median	37.4	32.3	38.3	34.9	37.9	33.6
Over 100% of Median	62.6	67.7	61.7	65.1	62.1	66.4
First-time Home Buyer	8.8 %	7.9 %	8.0 %	6.8 %	8.4 %	7.3
Race/National Origin of Borrower						
White	95.7 %	90.9 %	96.4 %	92.9 %	96.0 %	91.9
African American	1.0	2.8	0.9	2.4	0.9	2.6
Hispanic	1.3	3.2	1.3	2.9	1.3	3.0
Asian or Pacific Islander	0.6	1.4	0.5	0.7	0.5	1.0
American Indian or Alaskan Native	0.4	0.7	0.3	0.6	0.3	0.6
Other	1.2	1.1	0.5	0.6	0.9	0.8
Age of Borrower						
Under 30	12.2	12.3	12.1	12.3	12.2	12.3
30-39	31.2	29.3	30.9	28.7	31.1	29.0
40 and Over	56.6	58.4	56.9	59.0	56.8	58.7
Gender of Borrower(s)						
All Male	17.6	17.8	16.5	16.7	17.0	17.3
All Female	13.3	12.7	13.5	13.2	13.4	12.9
Male and Female	69.1	69.5	70.0	70.1	69.6	69.8

Source: HUD analysis of GSEs' loan-level data on mortgages on owner-occupied one-unit properties. In computing the percentages, missing data are excluded.

BILLING CODE 4210–27–C

There are similarities and differences between the types of loans that Fannie Mae and Freddie Mac purchase in served and underserved counties. The GSEs are similar in that they are more likely to purchase refinance loans in underserved counties than in served counties and that, in general, mortgage purchases with loan-to-value ratios above 80 percent are more likely to be in underserved counties than in served counties. The GSEs differ in that Freddie Mac is more likely to purchase seasoned mortgages in served than in underserved counties, while the reverse is true for Fannie Mae.

E. Factor 4: Size of the Conventional Conforming Mortgage Market for Underserved Areas

HUD estimates that underserved areas account for 29–32 percent of the conventional conforming mortgage market. The analysis underlying this estimate is detailed in Appendix D.

F. Factor 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 G of Appendix A for a discussion of this factor.

G. 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 (a) the financial returns that the GSEs earn on loans in underserved areas and (b) the financial safety and soundness implications of the housing goals. Based on this economic analysis and discussions with the Office of Federal Housing Enterprise Oversight, HUD concludes that the goals raise minimal, if any, safety and soundness concerns.

H. Determination of the Geographically-Targeted Areas Housing Goals

The annual goal for each GSE's purchases of mortgages financing housing for properties located in geographically-targeted areas (central cities, rural areas, and other underserved areas) is established at 31 percent of eligible units financed in each of calendar years 2001–03. The 2001–03 goal will remain in effect in subsequent years, unless changed by the Secretary prior to that time. The goal represents an increase over the 1996 goal of 21 percent and the 1997–2000 goal of 24 percent. However, it is commensurate with the market share estimates of 29–32 percent, presented in Appendix D.

This section summarizes the Secretary's consideration of the six statutory factors that led to the choice of these goals. It discusses the Secretary's rationale for defining these geographically-targeted areas and it compares the characteristics of such areas and untargeted areas. 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. Credit Needs in Metropolitan Areas

HUD's analysis of HMDA data shows that mortgage credit flows in metropolitan areas are substantially lower in high-minority and low-income neighborhoods and mortgage denial rates are much higher for residents of such neighborhoods. The economics literature discusses 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. Studies reviewed in Section B of this Appendix found that 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 high-minority and low-income neighborhoods in metropolitan areas are underserved by the mortgage system.

2. Identifying Underserved Portions of Metropolitan Areas

To identify areas underserved by the mortgage market, HUD focused on two traditional measures used in a number of studies based on HMDA data:[48] application denial rates and mortgage origination rates per 100 owner-occupied units.[49] Tables B.1 and B.2 in Section B of this Appendix presented detailed data on denial and origination rates by the racial composition and median income of census tracts for metropolitan areas.[50] Aggregating this data is useful in order to examine denial and origination rates for broader groupings of census tracts:

Minority composition (percent)	Denial rate (percent)	Orig. rate	Tract income (percent)	Denial rate (percent)	Orig. rate
0–30	11.4	16.4	Less than 90	19.8	10.7
30–50	17.2	12.5	90–120	13.0	15.5
50–100	21.9	9.4	Greater than 120	8.3	19.2

Two points stand out from these data. First, high-minority census tracts have higher denial rates and lower origination rates than low-minority tracts. Specifically, tracts that are over 50 percent minority have nearly twice the denial rate and two-thirds the origination rate of tracts that are under 30 percent minority.[51] 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 income have nearly 2.5 times the denial rate and three-fourths the origination rate for tracts with income over 120 percent of area median income.

In 1995, HUD's research determined that ''underserved areas'' could best be characterized in metropolitan areas as census tracts with minority population of at least 30 percent in 1990 and/or census tract median income no greater than 90 percent of area median income in 1990, excluding high-minority high-income tracts. These cutoffs produced sharp differentials in denial and origination rates between underserved areas and adequately served areas. For example, the mortgage denial rate in underserved areas (19.4 percent) was nearly twice that in adequately served areas (10.3 percent) in 1999.

These minority population and income thresholds apply in the suburbs as well as in OMB-defined central cities. HUD's research has found that the average denial rate in underserved suburban areas is almost twice that in adequately served areas in the suburbs. (See Figure B.1 in Section B of this Appendix.) Thus HUD uses the same definition of underserved areas throughout metropolitan areas—there is no need to define such areas differently in central cities and in the suburbs. And HUD's definition, which covers 57 percent of the central city population and 33 percent of the suburban population, is clearly preferable to a definition which would count 100 percent of central city residents and zero percent of suburban residents as living in underserved areas.

This definition of metropolitan underserved areas includes 21,586 of the 46,904 census tracts in metropolitan areas, covering 44 percent of the metropolitan population. It includes 73 percent of the population living in poverty in metropolitan areas. The unemployment rate in underserved areas is more than twice that in served areas, and rental units comprise 52.4 percent of total units in underserved tracts, versus 28.6 percent of total units in served tracts. As shown in Table B.9, this definition covers most of the population in the nation's most distressed central cities: Newark (99 percent), Detroit (96 percent), Hartford (97 percent), and Cleveland (90 percent). The nation's five largest cities also contain large concentrations of their population in underserved areas: New York (62 percent), Los Angeles (69 percent), Chicago (77 percent), Houston (67 percent), and Philadelphia (80 percent).

BILLING CODE 4210–27–P

Table B.9

Needy Areas in Central Cities Would be Covered

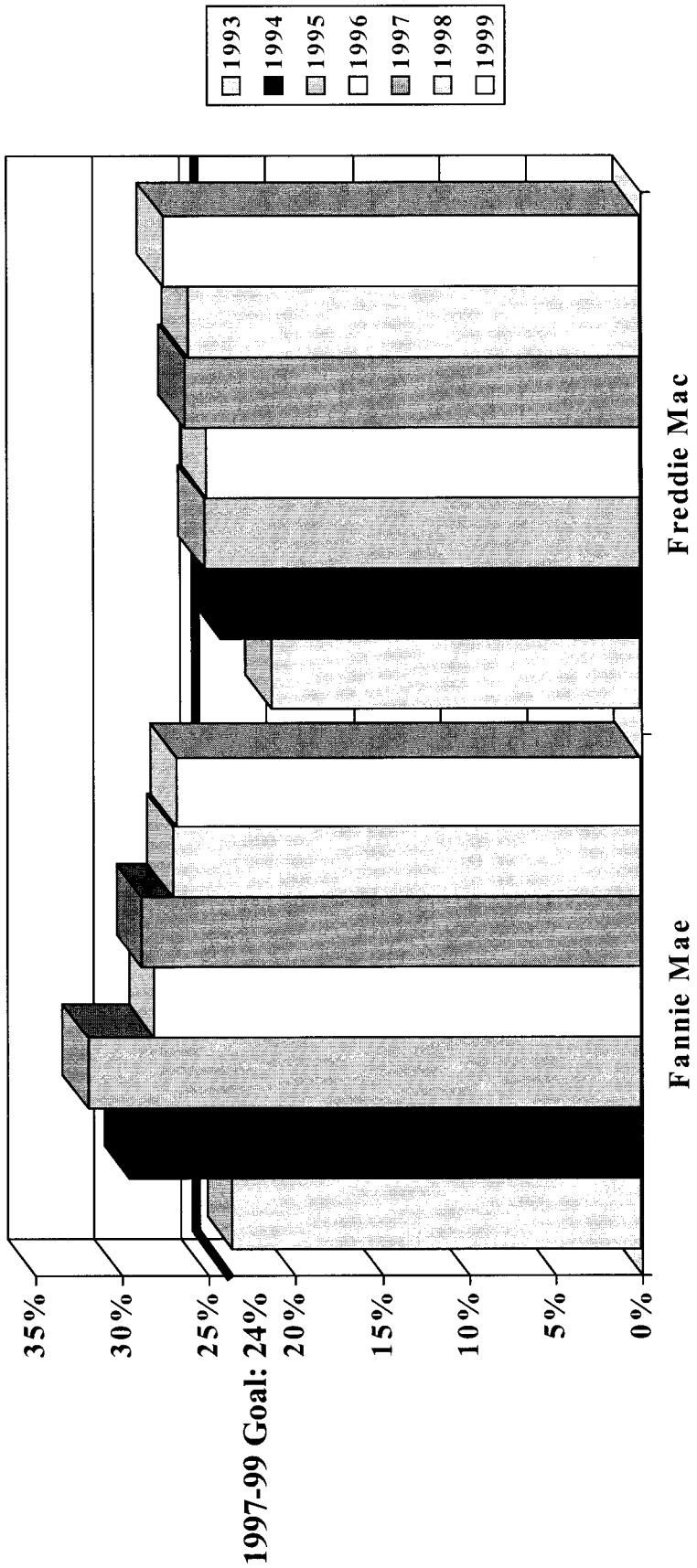
Large Cities with High Concentrations of Tracts Included in the Geographically Targeted Goal (Percent of Population)	
Newark	99%
Hartford	97%
Gary	96%
Detroit	96%
Jersey City	92%
Miami	91%
Baltimore	90%
Cleveland	90%
St. Louis	85%
Five Largest Cities	
New York	62%
Los Angeles	69%
Chicago	77%
Houston	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%

Figure B.2

Geographically Targeted Mortgage Purchases

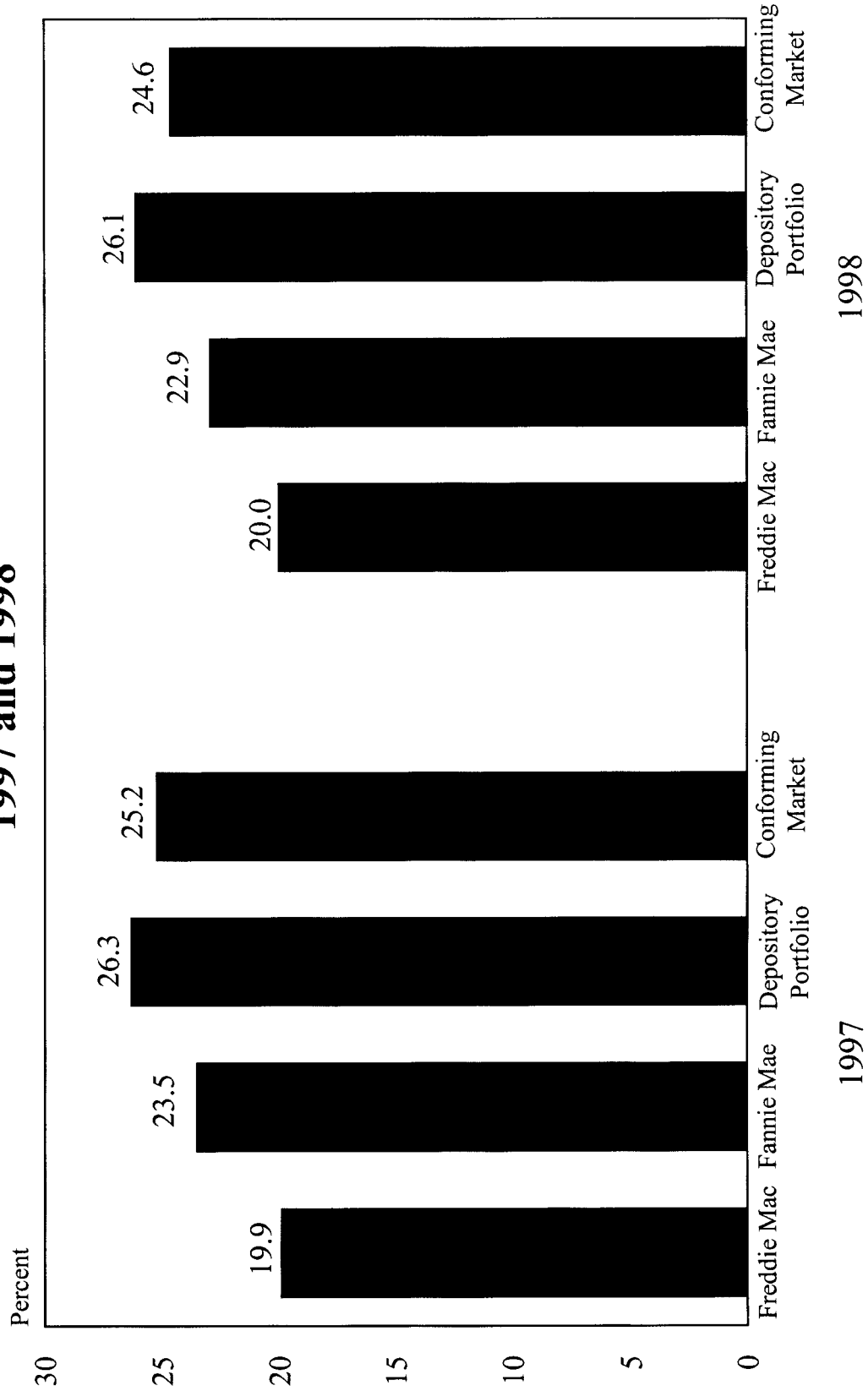


Geographically Targeted Goal was 24% of units financed for 1997-99 (21% for 1996).

Source: HUD analysis of GSEs' loan-level data.

Figure B.3

The Share Of GSE And Conventional Conforming Mortgages in Census Tracts Included in the Geographically Targeted Goal, 1997 and 1998



Source: Conforming market and depository data are from 1997 and 1998 HMDA; GSE data are from loan-level data reported to HUD. Data are for single-family home purchase loans in metropolitan areas. See Table A.4a for further explanation.

BILLING CODE 4210–27–C

3. Identifying Underserved Portions of Nonmetropolitan Areas

Recognizing 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. Specifically, a nonmetropolitan county is underserved if in 1990 (1) county median family income was less than or equal to 95 percent of the greater of state or national nonmetropolitan income or (2) county median family income was less than or equal to 120 percent of the greater of state or national nonmetropolitan income and county minority population was at least 30 percent of total county population. This definition includes 1,511 of the 2,305 counties in nonmetropolitan areas and covers 54 percent of the nonmetropolitan population. The definition does target the most disadvantaged rural counties—it includes as underserved areas 67 percent of the nonmetropolitan poor and 75 percent of nonmetropolitan minorities. The average poverty rate in underserved counties in 1990 was 21 percent, significantly greater than the 12 percent poverty rate in counties designated as adequately served. The definition also includes 84 percent of the population that resides in remote counties that are not adjacent to metropolitan areas and have fewer than 2,500 residents in towns.

4. Past Performance of the GSEs

The GSEs' performance on the geographically-targeted goal has improved significantly in recent years, as shown in Figure B.2. Fannie Mae's performance, as measure by HUD, increased sharply from 23.6 percent in 1993 to 31.9 percent in 1995, dropped to 28.1 percent in 1996, rose to 28.8 percent in 1997, and then dropped to 27.0 percent in 1998 and 26.8 percent in 1999. Freddie Mac's performance, as measured by HUD, rose from 21.8 percent in 1993 to 26.4 percent in 1995, followed by 25.0 percent in 1996, 26.3 percent in 1997, 26.1 percent in 1998, and 27.5 percent in 1999. Last year was the only year in which Freddie Mac's performance on this goal has exceeded Fannie Mae's performance.

While both GSEs improved their performance in underserved areas during the past six years, they lagged the conforming primary market in providing single-family home loans to distressed neighborhoods. As discussed in Section D, the GSEs show different patterns of lending—through 1998 Freddie Mac was less likely than Fannie Mae to purchase home loans on properties in low-income and high-minority neighborhoods. During the 1996–98 period, Freddie Mac lagged Fannie Mae, portfolio lenders, and the overall conforming market in providing funds to underserved neighborhoods. As shown in Figure B.3, underserved areas accounted for 20.0 percent of Freddie Mac's 1998 purchases of home loans, compared with 22.9 percent of Fannie Mae's purchases, 26.1 percent of home loans retained in depositories' portfolios, and 24.6 percent of the overall conforming market. While Freddie Mac did not make any progress during the 1993–98 period in reducing the gap between its performance and that of the conventional conforming home purchase market, Fannie Mae improved its funding in underserved areas and closed the gap between its performance and the single-family primary market in funding low-income and high-minority neighborhoods.[52] However, between 1998 and 1999, Freddie Mac improved its purchases in underserved areas so much that its performance surpassed Fannie Mae's performance. In 1999, underserved areas accounted for 21.2 (23.5) percent of Freddie Mac's purchases of home (total) loans, compared with 20.6 (21.8) percent of Fannie Mae's purchases of home (total) loans.

HUD also conducted an analysis of the share of the overall (single-family and multifamily) conventional conforming mortgage market accounted for by the GSEs. As shown in Tables A.7a and A.7b of Appendix A, the GSEs' purchases represented 40/55 percent of total dwelling units financed during 1997/1998, but they represented only 33/46 percent of the dwelling units financed in underserved neighborhoods. In other words, the GSEs accounted for less than half of the single-family and multifamily units financed in underserved areas. This suggests that there is room for the GSEs to increase their purchases in underserved neighborhoods.

5. Size of the Mortgage Market for Geographically-Targeted Areas

As detailed in Appendix D, the market for mortgages in geographically-targeted areas accounts for 29 to 32 percent of dwelling units financed by conventional conforming mortgages. In estimating the size of the market, HUD used alternative assumptions about future economic and market conditions that were less favorable than those that existed over the last five years. HUD is well aware of the volatility of mortgage markets and the possible impacts on the GSEs' 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.

6. The Geographically-Targeted Areas Housing Goal for 2001–03

There are several reasons that the Secretary is increasing the Geographically Targeted Areas Goal. *First,* the present 24 percent goal level for 1997–2000 and the GSEs' recent performance are below the estimated 29–32 percent of the primary mortgage market accounted for by units in properties located in geographically-targeted areas. Raising the goal reflects the Secretary's concern that the GSEs close the remaining gap between their performance and that of the primary mortgage market.

Second, the single-family-owner mortgage market in underserved areas has demonstrated remarkable strength over the past few years relative to the preceding period. This market had only recently begun to grow in 1993 and 1994, the latest period for which data was available when the 1996–99 goals were established in December 1995. But the historically high underserved areas share of the primary single-family mortgage market attained in 1994 has been maintained over the 1995–99 period. The three-average of the underserved areas share of the single-family-owner mortgage market in metropolitan areas was 22.2 percent for 1992–94, but 25.1 percent for 1995–98 and 24.1 percent for the 1992–98 period as a whole.

Third, as discussed in detail in Appendix A, there are several market segments that would benefit from a greater secondary market role by the GSEs; many of these market segments are concentrated in underserved areas. For example, one such area is single-family rental dwellings. These properties, containing 1–4 rental units, are an important source of housing for families in low-income and high-minority neighborhoods. However, the GSEs' purchases accounted for only 14/19 percent of the single-family rental units financed in underserved areas during 1997/1998. The Secretary believes that the GSEs can do more to play a leadership role in providing financing for such properties. Examples of other market segments in need of an enhanced GSE role include small multifamily properties, rehabilitation loans, seasoned CRA loans, and manufactured housing. Additional efforts by the GSEs in these markets would benefit families living in underserved areas.

Finally, a wide variety of quantitative and qualitative indicators indicate that the GSEs' have the financial strength to improve their affordable lending performance. For example, combined net income has risen steadily over the last decade, from $677 million in 1987 to $6.1 billion in 1999, an average growth rate of 20 percent per year. This financial strength provides the GSEs with the resources to lead the industry in supporting mortgage lending for properties located in geographically-targeted areas.

Summary. Figure A.4 of Appendix A summarizes many of the points made in this section regarding opportunities for Fannie Mae and Freddie Mac to improve their overall performance on the Geographically-Targeted Goal. The GSEs' purchases provided financing for 6,507,173 dwelling units, which represented 55 percent of the 11,744,804 single-family and multifamily units that were financed in the conventional conforming market during 1998. However, in the underserved areas part of the market, the 1,679,464 units that were financed by GSE purchases represented only 46 percent of the 3,629,144 dwelling units that were financed in the market in 1998. Thus, there appears to be ample room for the GSEs to increase their purchases in underserved areas. It is hoped that expression of concern in the current rulemaking will foster additional effort by both GSEs to increase their purchases in underserved areas.

7. Conclusions

Having considered the projected mortgage market serving geographically-targeted areas, economic, housing and demographic conditions for 2001–03, and the GSEs' recent performance in purchasing mortgages on properties in geographically-targeted areas, the Secretary has determined that the annual goal of 31 percent in calendar year 2001 and the years following is feasible. Moreover, the Secretary has considered the GSEs' ability to

lead the industry as well as the GSEs' financial condition. The Secretary has determined that these goal levels are necessary and appropriate.

Endnotes to Appendix B

[1] Tracts are excluded from the analysis if median income is suppressed or there are no owner-occupied 1–4 unit properties. There are 2,033 such 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] For the sake of brevity, in the remainder of this appendix, the term ''central city'' is used to mean ''OMB-designated central city.''

[3] Alicia H. Munnell, Lynn Browne, James McEneaney, and Geoffrey Tootell. 1996. ''Mortgage Lending in Boston: Interpreting HMDA Data,'' *American Economic Review*, 86(1) March:25–54.

[4] *Mortgage Lending Discrimination: A Review of Existing Evidence* edited by Margery A. Turner and Felicity Skidmore, The Urban Institute: Washington, D.C., June 1999.

[5] 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.

[6] Margery A. Turner, ''Discrimination in Urban Housing Markets: Lessons from Fair Housing Audits,'' *Housing Policy Debate*, Vol. 3, Issue 2, 1992, pp. 185–215.

[7] The denial rates in Table B.1 are for home 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.

[8] Alicia H. Munnell, Lynn E. Browne, James McEneaney, and Geoffrey M. B. Tootell, ''Mortgage Lending in Boston: Interpreting HMDA Data,'' *American Economic Review*, March 1996.

[9] A HUD study also found mortgage denial rates for minorities to be higher in ten metropolitan areas, even after controlling for credit risk. 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. 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.

[10] William C. Hunter, ''The Cultural Affinity Hypothesis and Mortgage Lending Decisions,'' WP–95–8, Federal Reserve Bank of Chicago, 1995.

[11] Since upfront loan fees are frequently determined as a percentage of the loan amount, lenders are discouraged from making smaller loans in older neighborhoods, because such loans generate lower revenue and are less profitable to lenders.

[12] Traditional underwriting practices may have excluded some 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 larger shares of their income for housing (including rent and utilities) than higher income households.

[13] 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.

[14] 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.

[15] Like early HMDA studies, an analysis of deed transfer data in Boston found lower rates of mortgage activity in minority neighborhoods. 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. 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.'' 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.

[16] 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.

[17] 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).

[18] 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.

[19] 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.

[20] Fred J. Phillips-Patrick and Clifford V. Rossi, ''Statistical Evidence of Mortgage Redlining? A Cautionary Tale'', *The Journal of Real Estate Research*, Volume 11, Number 1 (1996), pp.13–23.

[21] Samuel L. Myers, Jr. and Tsze Chan, ''Racial Discrimination in Housing Markets: Accounting for Credit Risk'', *Social Science Quarterly*, Volume 76, Number 3 (September 1995), pp. 543–561.

[22] For another study that uses HMDA data on reasons for denial to construct a proxy for bad credit, see Steven R. Holloway, ''Exploring the Neighborhood Contingency of Race Discrimination in Mortgage Lending in Columbus, Ohio'', *Annals of the Association of American Geographers*, 88(2), 1998, pp. 252–276. Holloway finds that mortgage denial rates are higher for black applicants (particularly those who are making large loan requests) in all-white neighborhoods than in minority neighborhoods, while the reverse is true for white applicants making small loan requests.

[23] See Geoffrey M. B. Tootell, ''Redlining in Boston: Do Mortgage Lenders Discriminate Against Neighborhoods?'', *Quarterly Journal of Economics,* 111, November, 1996, pp. 1049–1079; and ''Discrimination, Redlining, and Private Mortgage Insurance'', unpublished manuscript, October, 1995.

[24] Tootell notes that both omitted variables and the strong correlation between borrower race and neighborhood racial composition in segregated cities have made it difficult for previous studies to distinguish the impacts of geographic redlining from the effects of individual borrower discrimination. He can unravel these effects because he includes a direct measure of credit history and because over half of minority applicants in the Boston Fed data base applied for mortgages in predominately white areas.

[25] Stephen L. Ross and Geoffrey M. B. Tootell, ''Redlining, the Community Reinvestment Act, and Private Mortgage Insurance'', unpublished manuscript, March, 1999.

[26] Lang, William W. and Leonard I. Nakamura, ''A Model of Redlining,'' *Journal*

of Urban Economics, Volume 33, 1993, pp. 223–234.

[27] Calem, Paul S. ''Mortgage Credit Availability in Low- and Moderate-Income Minority Neighborhoods: Are Information Externalities Critical?'' *Journal of Real Estate Finance and Economics,* Volume 13, 1996, pp. 71–89.

[28] Ling, David C. and Susan M. Wachter, ''Information Externalities and Home Mortgage Underwriting,'' *Journal of Urban Economics,* Volume 44, 1998, pp. 317–332.

[29] Robert B. Avery, Patricia E. Beeson, and Mark S. Sniderman, ''Neighborhood Information and Home Mortgage Lending,'' *Journal of Urban Economics,* Volume 45, 1999, pp. 287–310.

[30] The Preamble to the 1995 Rule provides additional reasons why central city location should not be used as a proxy for underserved areas.

[31] **Federal Register**, October 20, 1999, ''Office of Management and Budget: Recommendations from the Metropolitan Area Standards Review Committee to the Office of Management and Budget Concerning Changes to the Standards for Defining Metropolitan Areas.''

[32] William Shear, James Berkovec, Ann Dougherty, and Frank Nothaft, ''Unmet Housing Needs: The Role of Mortgage Markets,'' *Journal of Housing Economics,* Volume 4 , 1996, pp. 291–306. These researchers regressed the number of mortgage originations per 100 properties in the census tract on several independent variables that were intended to account for some of the demand and supply (*i.e.,* credit risk) influences at the census tract level. The tract's minority composition and central city location were included to test if these characteristics were associated with underserved neighborhoods after controlling for the demand and supply variables. 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. See also Susan Wharton Gates, ''Defining the Underserved,'' *Secondary Mortgage Markets,* 1994 Mortgage Market Review Issue, 1995, pp. 34–48.

[33] For example, census tracts at 80 percent of area median income were estimated to have 8.6 originations per 100 owners as compared with 10.8 originations for tracts over 120 percent of area median income.

[34] Shear *et al.,* p. 18.

[35] See Avery, *et al.*

[36] 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.

[37] 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.

[38] 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.

[39] Mikesell, Jim. *Can Federal Policy Changes Improve the Performance of Rural Mortgage Markets,* Economic Research Service, U.S. Department of Agriculture, Issues in Agricultural and Rural Finance. Agriculture Information Bulletin No. 724–12, August 1998.

[40] Standard mortgage types are 30-year fixed-rate mortgages, 15-year FRMs, and 30-year adjustable rate mortgages (ARMs). These are the ones most often traded in the secondary markets. Nonstandard mortgages generally have shorter terms than the standard mortgages.

[41] MacDonald, Heather. *Fannie Mae and Freddie Mac in Rural Housing Markets: Does Space Matter?* Study funded as part of the 1997 GSE Small Grants by HUD's Office of Policy Development and Research.

[42] MacDonald constructs a county-level mortgage market data in rural areas using information collected by the Department of Revenue for counties and states. Annual Sales Ratio Studies conducted by many states' Department of Revenue provide the number of sales for different property types. This is done by using residential sales recorded for property tax purposes. Other county-level variables used to compare rural counties are obtained from the 1990 Census of Population and Housing and Bureaus of labor Statistics. Data obtained from Census included county populations, racial composition, a variety of housing stock characteristics like home ownership rates, vacancy rates, proportion of owner-occupied mobile homes, median housing value in 1990, median age of the housing stock, proportion of units with complete plumbing, and access to infrastructure, e.g., public roads and sewage systems. Data collected from the Bureau of Labor Statistics included unemployment rates and residential building permits.

[43] *The Future of Manufactured Housing,* Harvard University Joint Center for Housing Studies, February 1997.

[44] Though future demand for manufactured housing is promising, the Joint Center notes some continued obstacles to growth. Challenges for the industry to overcome include a lack of standardization of installation procedures and product guarantees, exclusionary zoning laws, and certain provisions of the national building code.

[45] The official figures on goal performance shown above for Fannie Mae are identical with the corresponding figures present by Fannie Mae in its Annual Housing Activity Report to HUD except for 1997 (HUD-reported: 28.8 percent/Fannie Mae-reported: 30.0 percent) and 1999 (26.8 percent/26.7 percent), reflecting minor differences in the application of counting rules.

[46] The official figures on goal performance shown above for Freddie Mac are identical with the corresponding figures presented by Freddie Mac in its Annual Housing Activity Reports to HUD except for 1999 (HUD-reported: 27.5 percent/Freddie Mac-reported: 27.6 percent), reflecting minor differences in the application of counting rules.

[47] Underserved areas make up about 56 percent of the census tracts in nonmetropolitan areas and 47 percent of the census tracts in metropolitan areas. This is one reason why underserved areas comprise a larger portion of the GSEs' single-family mortgages in nonmetropolitan areas (38 percent) than in metropolitan areas (22 percent).

[48] HMDA provides little useful information on rural areas. Therefore, the HMDA data reported here apply only to metropolitan areas.

[49] 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.

[50] 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.

[51] 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.

[52] Although this goal is targeted to lower-income and high-minority areas, it does not mean that GSE purchase activity in underserved areas derives totally from lower income or minority families. In 1999, above-median income households accounted for 50 percent of the mortgages that the GSEs purchased in underserved areas. This suggests that these areas are quite diverse.

Appendix C—Departmental 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 is 20 percent in 2001–2003. Of the total Special Affordable Housing Goal for each year, each GSE must purchase multifamily mortgages in an amount at least equal to one percent of the GSE's combined (single-family and multifamily) annual average mortgage purchases over 1997–1999.

Approximately 23–26 percent of the conventional conforming mortgage market in 2001–03 would qualify under the Special Affordable Housing Goal as defined in the final rule, as projected by HUD.

Units that count toward the goal: Subject to further provisions discussed in the Preamble to this final rule regarding seasoned loans, 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. Other low-income rental units in multifamily properties count toward the goal where at least 20 percent of the units in the property 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 of area median income or less.

B. Summary and Response to Comments

1. Multifamily Subgoal Level

HUD's proposed rule would have set the multifamily subgoal at 0.9 percent of the dollar volume of combined (single-family and multifamily) 1998 mortgage purchases in calendar year 2000, and 1.0 percent in each of calendar years 2001–2003. This would have implied the following thresholds for the two GSEs:

	2000 (in billions)	2001–2003 (in billions)
Fannie Mae	$3.31	$3.68
Freddie Mac	2.46	2.73

Both GSEs opposed establishing the special affordable multifamily subgoal as a percentage of their 1998 transaction volume, stating that 1998 was in some respects an unusual year in the mortgage markets. Instead, they both recommended that the special affordable multifamily subgoal be established as a percentage of a five-year average of each GSEs' transactions volume. Freddie Mac commented further that HUD's proposed subgoal was ''unreasonably high.''

Many other commenters supported the multifamily subgoal, although they questioned whether 1998 was the appropriate base year upon which to establish the subgoal. Some commenters argued that the proposed subgoal was too high, in light of an expected decline in multifamily origination volume. Others argued that the subgoal was too low, based on the needs of very low- and low-income families and families in rural areas. Comments were received from some who felt the subgoal should be percentage-based and move from year to year. Still other commenters felt that the multifamily subgoal should be eliminated, as it no longer appeared to serve a purpose, particularly since Freddie Mac had re-entered the multifamily market.

From its inception, the multifamily subgoal has been viewed as a means for expanding and maintaining Freddie Mac's presence in the multifamily mortgage market. Both the multifamily mortgage market and Freddie Mac's multifamily transactions volume have grown significantly during the 1990s, indicating both increased opportunity and capacity to grow by Freddie Mac. While Freddie Mac continues to lag behind Fannie Mae somewhat in its multifamily volume, it appears to be within reach of catching up with its larger competitor with regard to the multifamily proportion of total purchases. In 1999, Fannie Mae's multifamily mortgage purchases were 9.5 percent of its total mortgage purchases and Freddie Mac's multifamily mortgage purchases were 8.3 percent of its total mortgage purchases.

Freddie Mac's multifamily special affordable transactions volume was $2.7 billion in 1998 and $2.3 billion in 1999, showing that Freddie Mac does have the capacity to generate significant multifamily special affordable transactions volume in a favorable market environment. At the same time, however, the Department is mindful of the fact that multifamily market conditions experienced during 1998–1999 may not be representative of future years. Because of extensive multifamily refinancing during 1998–1999, in particular, in conjunction with the widespread use of ''lockout'' provisions which place significant limitations on borrower's right to refinance recently originated loans, HUD expects conventional multifamily origination volume in 2001–2003 to be somewhat lower than the levels reached during 1998–1999. Based on partial-year information collected by the Department on GSE and CMBS multifamily transactions volume during 2000, it appears that origination volume will be somewhat lower this year than in 1999. Taking into consideration new information and data not available at the time HUD published its proposed GSE rule in March of 2000, the Department has determined that a modest reduction in multifamily special affordable goal thresholds relative to those in the proposed rule is reasonable and appropriate.

There is merit to the view that 1998 was an unusual year in the mortgage markets. HUD's motivation in setting the subgoal based on 1998 transactions volume was to establish the subgoal in a fair and reasonable manner, given the difference between the two GSEs in size and capacity. HUD selected a subgoal of one percent of 1998 transactions volume in recognition of the increased capacity of the GSEs to conduct multifamily special affordable lending, as well as the need to challenge the GSEs to maintain and expand their commitment to this segment of the market in a manner feasible and consistent with safety and soundness. Now that more recent data are available, it is apparent that establishing the subgoal in a manner taking 1999 mortgage volume into consideration, along with that of 1997 and 1998, more accurately corresponds to the relative size and respective capabilities of the GSEs over the 2001–2003 goals period than would a subgoal established on the basis of 1998 volume alone. Accordingly, the final rule establishes the special affordable multifamily subgoal at the respective average of one percent of each GSEs' combined (single-family and multifamily) mortgage purchases over 1997–1999, resulting in subgoals somewhat lower than those in the proposed rule, but with the advantages of (i) being based on more recent and complete information regarding the differential size and resource capabilities of each GSE, and (ii) taking into consideration new information regarding multifamily conventional origination volume. This implies the following thresholds for the two GSEs: [1]

	2001–2003 (in billions)
Fannie Mae	$2.85
Freddie Mac	$2.11

2. Multifamily Subgoal Alternatives

In the proposed rule, HUD identified three alternative approaches for specifying multifamily subgoals for the GSEs based on a (i) minimum number of units; (ii) minimum percentage of multifamily acquisition volume; and (iii) minimum number of mortgages acquired. While some of these proposals did receive support from commenters, HUD does not see any compelling reason to alter the dollar-based structure of the multifamily subgoal as established in the 1995 rule, which can be updated and adapted to the current market environment by basing it upon recent acquisition volume. It is noteworthy that the Special Affordable Housing Goal, as a percentage-of-business goal based on number of units financed, combines elements of options (i) and (iii). HUD's decision to award bonus points toward the housing goals for GSE transactions involving small multifamily properties with 5–50 units will achieve some of the intended policy objectives associated with option (iii).

3. Temporary Adjustment Factor

In the proposed rule, HUD noted that Freddie Mac's presence in the multifamily market has lagged far behind that in single-

family, in part because Freddie Mac ceased purchasing multifamily mortgages for a period of time in the early 1990s. Freddie Mac's direct holdings of multifamily mortgages and guarantees outstanding as of the end of 1999, $16.8 billion, are much smaller than that Fannie Mae's $47.4 billion, not only in absolute terms, but also a percentage of all mortgage holdings and guarantees. Freddie Mac's multifamily holdings and guarantees are 2.1 percent of its total, compared with 4.3 percent for Fannie Mae.[2] Freddie Mac's smaller multifamily portfolio relative to that of Fannie Mae has meant fewer refinance opportunities from within its portfolio, reducing anticipated multifamily transactions volume.

Because of the importance of multifamily mortgages to GSE performance on the Special Affordable Housing Goal, Fannie Mae's larger multifamily portfolio confers a significant advantage with regard to goals performance. For example, in 1999, 56.0 percent of units backing Fannie Mae's multifamily transactions met the special affordable goal, representing 31.3 percent of units meeting the special affordable goal, when multifamily units represented only 9.5 percent of total purchase volume. In contrast, only 13.4 percent of Fannie Mae's single-family owner-occupied units met the special affordable goal.[3]

In recognition of the implications for housing goals performance of differences in the relative size of multifamily portfolios between the two GSEs, the Conference Report on HUD's appropriations for 2000 provides the following guidance: ''* * * the stretch affordable housing efforts required of each of Freddie Mac and Fannie Mae should be equal, so that both enterprises are similarly challenged in attaining the goals. This will require the Secretary to recognize the present composition of each enterprise's overall portfolio in order to ensure regulatory parity in the application of regulatory guidelines measuring goal compliance.'' [4]

In order to overcome any lingering effects of Freddie Mac's decision to leave the multifamily market in the early 1990s, and to provide an incentive to continue the rapid expansion of its multifamily presence since then, the Department proposed a ''Temporary Adjustment Factor'' for Freddie Mac's multifamily mortgage purchases for purposes of calculating performance on the Low- and Moderate-Income Housing Goal and the Special Affordable Housing Goal. In determining Freddie Mac's performance for each of these two goals, each unit in a property with more than 50 units meeting one or both of these two housing goals would be counted as 1.2 units in calculating the numerator of the respective housing goal percentage. The Temporary Adjustment Factor will be limited to properties with more than 50 units because of separate provisions regarding multifamily properties with 5–50 units.

In its comments, Freddie Mac supported the idea of a temporary adjustment factor; however, Freddie Mac recommended that it be set at 1.35 instead of the 1.2 level proposed by HUD. According to Freddie Mac, the difference in size and age between Freddie Mac's and Fannie Mae's multifamily portfolios makes goal achievement easier for Fannie Mae. Freddie Mac also recommended that the temporary adjustment factor apply to all three goals and opposed any phasing out of the factor over the three-year goals period.

In the period since HUD's interim housing goals took effect in January 1993, Freddie Mac's multifamily transactions volume has expanded rapidly, as noted above. Freddie Mac's 1999 multifamily transactions volume was $7.6 billion, compared with only $191 million in 1993. HUD's analysis indicates that a Temporary Adjustment Factor of 1.2 is sufficient to provide ''regulatory parity'' consistent with the direction provided by the Conference Report addressing this issue. The Department has, therefore, decided to implement the temporary adjustment factor as proposed in the proposed rule. The Adjustment Factor of 1.2 will be applied to the Low- and Moderate-Income and Special Affordable Goals. The Temporary Adjustment Factor would terminate December 31, 2003. The Temporary Adjustment Factor will not apply to Fannie Mae.

4. Seasoned Mortgage Loan Purchases ''Recycling'' Requirement

Comments submitted in response to HUD's proposed rule regarding ''recycling requirements'' pertaining to seasoned loans are discussed in the Preamble, as are the Department's determinations regarding this matter.

C. Consideration of the Factors

In considering the factors under FHEFSSA to establish the Special Affordable Housing Goal, HUD relied upon data gathered from the American Housing Survey through 1997, the Census Bureau's 1991 Residential Finance Survey, the 1990 Census of Population and Housing, Home Mortgage Disclosure Act (HMDA) data for 1992 through 1998, and annual loan-level data from the GSEs on their mortgage purchases through 1999. 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.

The remainder of Section C discusses the factors listed above, and Section D provides the Secretary's rationale for establishing the special affordable goal.

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 1996–99 Goals

This section discusses each GSE's performance under the Special Affordable Housing Goal over the 1993–99 period. The data presented here are ''official results''—*i.e.,* they are based on HUD's in-depth analysis of the loan-level data submitted annually to the Department and the counting provisions contained in HUD's regulations in 24 CFR part 81, subpart B. As explained below, in some cases these ''official results'' differ from goal performance reported to the Department by the GSEs in their Annual Housing Activities Reports.

HUD's goals specified that in 1996 at least 12 percent of the number of units eligible to count toward the Special Affordable goal should qualify as Special Affordable, and at least 14 percent annually beginning in 1997. The actual performance in 1996 through 1999, based on HUD's analysis of loan-level data submitted by the GSEs, is shown in Table C.1 and Figure C.1. Fannie Mae surpassed the goal by 3.4 percentage points and 3.0 percentage points, respectively, in 1996 and 1997, while Freddie Mac surpassed the goal by 2.0 and 1.2 percentage points. In 1998, Fannie Mae exceeded the goal by 0.3 percentage point, while Freddie Mac exceeded the goal by 1.9 percentage points.

Both GSEs stepped up their performance and attained their highest performance to date in 1999, with Fannie Mae surpassing the 14 percent goal by 3.6 percentage points and Freddie Mac surpassing the goal by 3.2 percentage points (Table C.1). After lagging Freddie Mac on special affordable performance in 1998, Fannie Mae surpassed Freddie Mac last year.[5] A major reason for Fannie Mae's record special affordable goal performance in 1999 was the 15 percent increase in the dollar volume of its special affordable multifamily purchases; Freddie Mac, on the other hand, experienced a 16 percent decline in such purchases between 1998 and 1999.[6]

BILLING CODE 4210–27–P

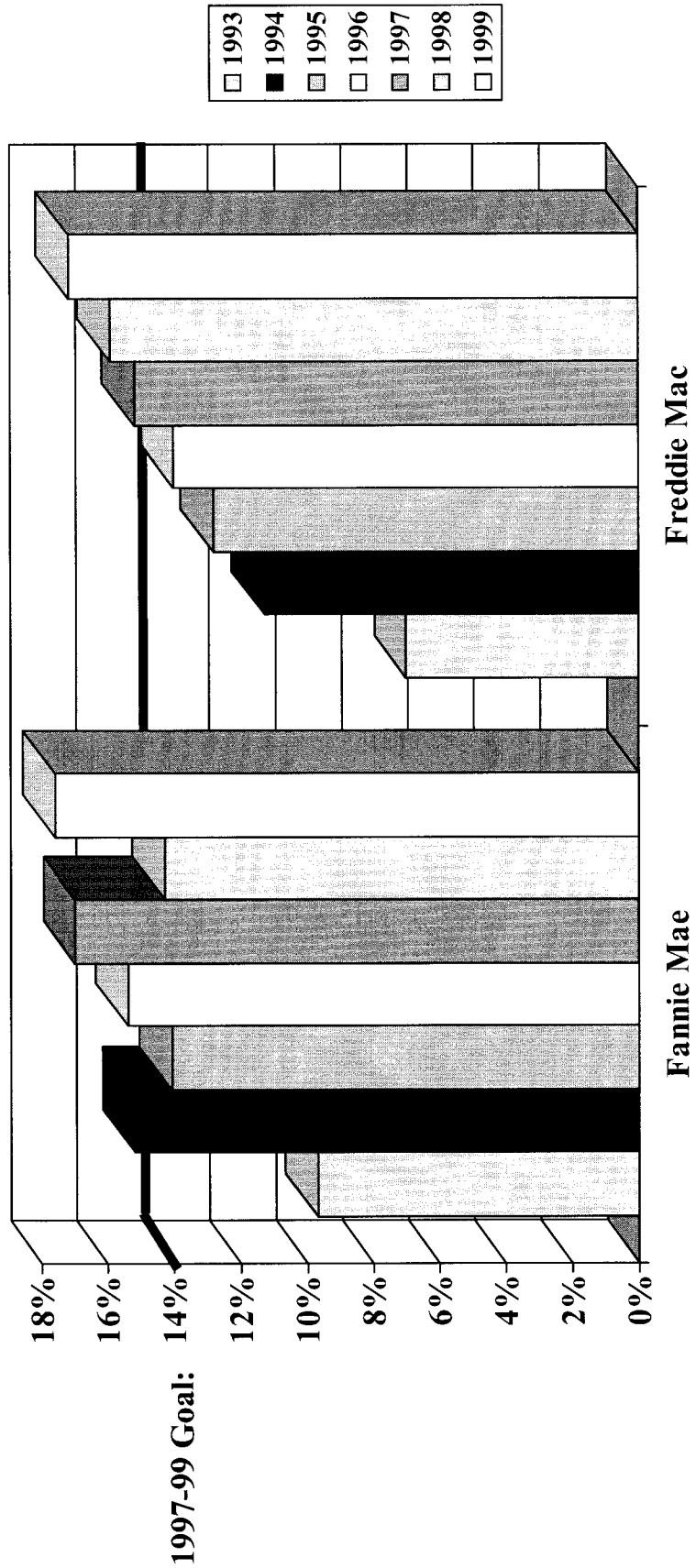
Table C.1

GSEs' Special Affordable Purchases, 1993-99

	1993	1994	1995	1996	1997	1998	1999
Fannie Mae:							
Units Eligible to Count Toward Goal	2,909,941	1,832,257	1,417,542	1,852,233	1,748,044	3,486,040	2,935,075
Special Affordable Units	282,170	279,093	199,715	285,642	296,366	499,948	517,169
Percent Special Affordable	9.7%	15.2%	14.1%	15.4%	17.0%	14.3%	17.6%
Special Affordable Multifamily Purchases ($billions)	$1.64	$1.74	$1.34	$2.37	$3.19	$3.53	$4.06
Freddie Mac:							
Units Eligible to Count Toward Goal	2,170,036	1,290,990	959,137	1,299,589	1,175,271	2,658,174	2,228,906
Special Affordable Units	152,628	146,224	122,954	181,505	178,736	422,900	383,329
Percent Special Affordable	7.0%	11.3%	12.8%	14.0%	15.2%	15.9%	17.2%
Special Affordable Multifamily Purchases ($billions)	$0.14	$0.46	$0.69	$1.06	$1.21	$2.69	$2.26

Figure C.1

Special Affordable Mortgage Purchases



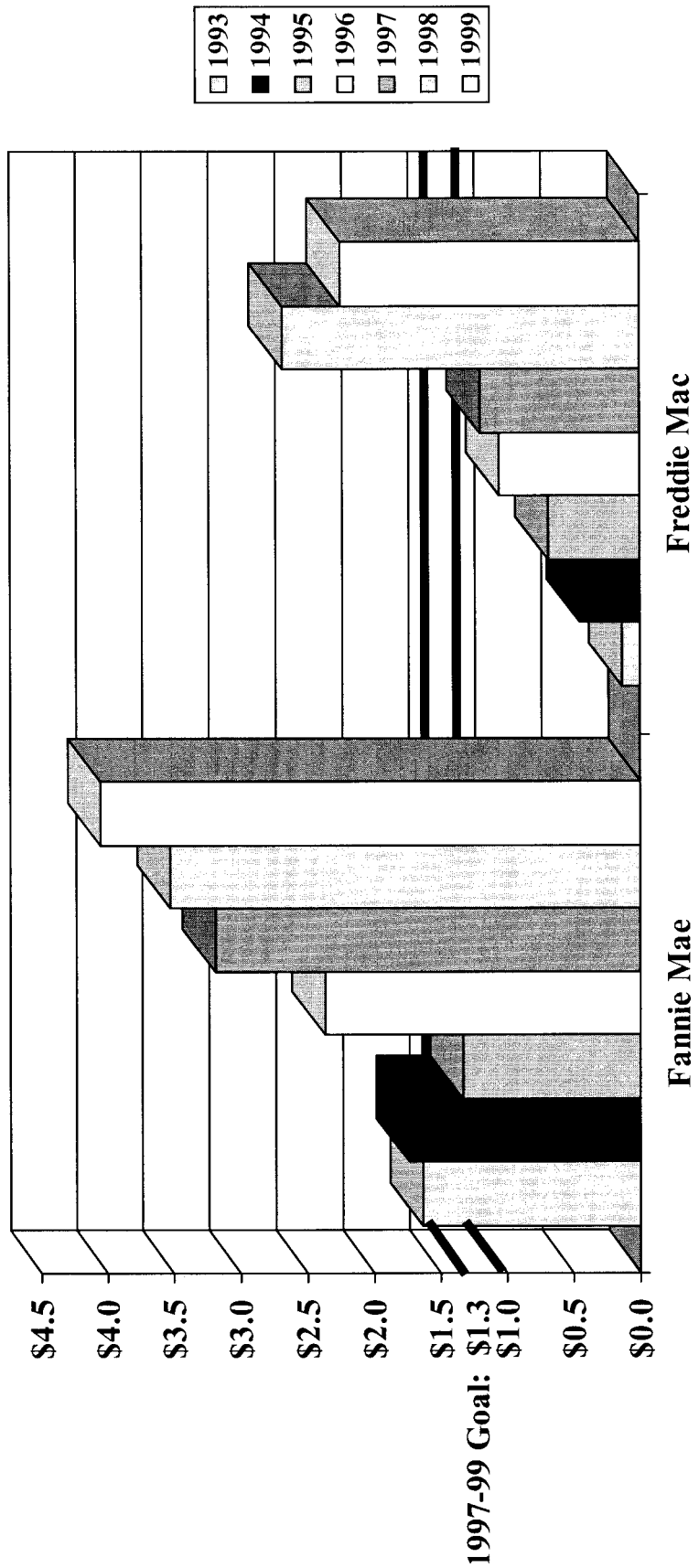
Special Affordable Goal was 14% of units financed for 1997-99 (12% for 1996).

Source: HUD analysis of GSEs' loan-level data.

Figure C.2

Multifamily Special Affordable Mortgage Purchases

(Billions of Dollars Per Year)



Multifamily Special Affordable Goals for 1996-99 were $1.29 billion per year for Fannie Mae and $988 million per year for Freddie Mac.

Source: HUD analysis of GSEs' loan-level data.

Table C.2

Fannie Mae's Special Affordable Purchases By Unit Affordability and Area Income, 1993-1999

Year of purchase and Type of unit	Very-Low Income Units in Low-Income Areas	Very-Low Income Units Outside Low-Income Areas	Other Low-Income Units in Low-Income Areas	Other Units Qualifying For Goal*	Total Units Qualifying For Goal	Percent
1993						
Single-family owner	21,731	108,354	28,351		158,436	56.1%
Single-family rental	11,474	21,022	12,082		44,578	15.8%
Multifamily	19,831	43,754	10,480	5,092	79,157	28.1%
Total	53,036	173,130	50,913	5,092	282,171	100.0%
Percent	18.8%	61.4%	18.0%	1.8%	100.0%	
1994						
Single-family owner	22,599	88,407	23,310		134,316	48.1%
Single-family rental	14,392	21,637	11,545		47,574	17.0%
Multifamily	25,712	51,173	13,572	6,746	97,203	34.8%
Total	62,703	161,217	48,427	6,746	279,093	100.0%
Percent	22.5%	57.8%	17.4%	2.4%	100.0%	
1995						
Single-family owner	20,292	68,062	18,139		106,493	53.3%
Single-family rental	8,251	11,210	5,887		25,348	12.7%
Multifamily	16,334	33,988	12,801	4,750	67,873	34.0%
Total	44,877	113,260	36,827	4,750	199,714	100.0%
Percent	22.5%	56.7%	18.4%	2.4%	100.0%	
1996						
Single-family owner	25,103	93,029	23,328		141,460	49.5%
Single-family rental	11,242	18,207	6,938		36,387	12.7%
Multifamily	23,703	59,556	15,399	9,136	107,794	37.7%
Total	60,048	170,792	45,665	9,136	285,641	100.0%
Percent	21.0%	59.8%	16.0%	3.2%	100.0%	
1997						
Single-family owner	23,909	91,400	20,825		136,134	45.9%
Single-family rental	9,169	15,290	5,399		29,858	10.1%
Multifamily	27,522	80,069	13,294	9,488	130,373	44.0%
Total	60,600	186,759	39,518	9,488	296,365	100.0%
Percent	20.4%	63.0%	13.3%	3.2%	100.0%	
1998						
Single-family owner	43,631	212,519	41,108		297,257	59.5%
Single-family rental	18,158	34,396	11,314		63,868	12.8%
Multifamily	34,481	74,417	19,799	10,126	138,822	27.8%
Total	96,270	321,332	72,221	10,126	499,947	100.0%
Percent	19.3%	64.3%	14.4%	2.0%	100.0%	
1999						
Single-family owner	41,943	205,048	36,366		283,357	54.8%
Single-family rental	21,161	38,663	12,063		71,887	13.9%
Multifamily	38,292	95,623	15,586	12,423	161,924	31.3%
Total	101,396	339,334	64,015	12,423	517,168	100.0%
Percent	19.6%	65.6%	12.4%	2.4%	100.0%	

* 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 of area median income or less, which do not otherwise qualify under the goal.

Table C.3

Freddie Mac's Special Affordable Purchases By Unit Affordability and Area Income, 1993-1999

Year of purchase and Type of unit	Very-Low Income Units in Low-Income Areas	Very-Low Income Units Outside Low-Income Areas	Other Low-Income Units in Low-Income Areas	Other Units Qualifying For Goal*	Total Units Qualifying For Goal	Percent
1993						
Single-family owner	14,689	79,181	20,935		114,805	75.2%
Single-family rental	7,426	13,612	8,365		29,403	19.3%
Multifamily	3,432	4,237	577	181	8,427	5.5%
Total	25,547	97,030	29,877	181	152,635	100.0%
Percent	16.7%	63.6%	19.6%	0.1%	100.0%	
1994						
Single-family owner	13,012	61,986	15,509		90,507	55.9%
Single-family rental	16,851	21,047	6,071		43,969	27.2%
Multifamily	12,550	11,546	2,124	1,216	27,436	16.9%
Total	42,413	94,579	23,704	1,216	161,912	100.0%
Percent	26.2%	58.4%	14.6%	0.8%	100.0%	
1995						
Single-family owner	10,801	45,782	11,138		67,721	55.1%
Single-family rental	6,018	10,705	4,697		21,420	17.4%
Multifamily	9,818	15,352	5,199	3,444	33,813	27.5%
Total	26,637	71,839	21,034	3,444	122,954	100.0%
Percent	21.7%	58.4%	17.1%	2.8%	100.0%	
1996						
Single-family owner	15,330	70,731	16,018		102,080	56.2%
Single-family rental	7,539	14,339	4,178		26,056	14.4%
Multifamily	12,634	28,301	8,760	3,675	53,370	29.4%
Total	35,503	113,371	28,956	3,675	181,506	100.0%
Percent	19.6%	62.5%	16.0%	2.0%	100.0%	
1997						
Single-family owner	15,742	66,656	15,449		97,847	54.7%
Single-family rental	7,469	11,612	5,552		24,633	13.8%
Multifamily	16,131	28,789	8,133	3,203	56,256	31.5%
Total	39,342	107,057	29,134	3,203	178,736	100.0%
Percent	22.0%	59.9%	16.3%	1.8%	100.0%	
1998						
Single-family owner	40,690	176,846	33,869		251,404	59.4%
Single-family rental	14,665	28,691	7,364		50,720	12.0%
Multifamily	30,736	63,272	21,609	5,159	120,776	28.6%
Total	86,091	268,809	62,842	5,159	422,900	100.0%
Percent	20.4%	63.6%	14.9%	1.2%	100.0%	
1999						
Single-family owner	37,675	168,684	31,452		237,810	62.0%
Single-family rental	18,054	33,305	11,179		62,538	16.3%
Multifamily	20,969	46,765	10,001	5,247	82,982	21.6%
Total	76,698	248,754	52,632	5,247	383,330	100.0%
Percent	20.0%	64.9%	13.7%	1.4%	100.0%	

* 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 of area median income or less, which do not otherwise qualify under the goal.

BILLING CODE 4210–27–C

Table C.1 also includes, for comparison purposes, comparable figures for 1993 through 1995, calculated according to the counting conventions of the 1995 rule that became applicable in 1996. Each GSE's performance in 1996 through 1999 exceeded its performance in each of the three preceding years.

The Fannie Mae figures presented above are smaller than the corresponding figures presented by Fannie Mae in its Annual Housing Activity Reports to HUD by approximately 2 percentage points in both 1996 and 1997, 1.3 percentage points in 1998, and 1.1 percentage points in 1999. The difference largely reflects HUD-Fannie Mae differences in application of counting rules relating to counting of seasoned loans for purposes of this goal. In particular, HUD's tabulations reflect inclusion of seasoned loan purchases in the denominator in calculating performance under the Special Affordable goal, as discussed in Preamble section II(B)(6)(c) on the Seasoned Mortgage Loan Purchases ''Recycling'' Requirement. Freddie Mac's Annual Housing Activity Report figures for this goal differ from the figures presented above by 0.1 percentage point, reflecting minor differences in application of counting rules.

Since 1996 each GSE has been subject to an annual subgoal for multifamily Special Affordable mortgage purchases, as discussed above, established as 0.8 percent of the dollar volume of single-family and multifamily mortgages purchased by the respective GSE in 1994. Fannie Mae's subgoal was $1.29 billion and Freddie Mac's subgoal was $988 million for each year. Fannie Mae surpassed the subgoal by $1.08 billion, $1.90 billion, $2.24 billion, and $2.77 billion in 1996, 1997, 1998, and 1999, respectively, while Freddie Mac exceeded the subgoal by $18 million, $220 million, $1.70 billion, and $1.27 billion. Table C.1 includes figures on subgoal performance, and they are depicted graphically in Figure C.2.

b. Characteristics of Special Affordable Purchases

The following analysis presents information on the composition of the GSEs' Special Affordable purchases according to area income, unit affordability, tenure of unit and property type (single- or multifamily).

Increased reliance on multifamily housing to meet goal. Tables C.2 and C.3 show that both GSEs have increasingly relied on multifamily housing units to meet the special affordable goal since 1993. Fannie Mae's multifamily purchases represented 31.3 percent of all purchases qualifying for the goal in 1999, compared with 28.1 percent in 1993. Freddie Mac's multifamily purchases represented 21.6 percent of all purchases qualifying for the goal in 1999, compared to 5.5 percent in 1993. The trends for both GSEs were steadily upward throughout the 1993–97 period, with some decrease in multifamily share of the special affordable purchases since 1997.

The other two housing categories—single-family owner and single-family rental—both exhibited downward trends for both GSEs. In 1999 Fannie Mae's single-family owner units qualifying for the goal represented 54.8 percent of all qualifying units, and Fannie Mae's single-family rental units were 13.9 percent of all qualifying units. In 1999 Freddie Mac's single-family owner units qualifying for the goal represented 62.0 percent of all qualifying units, and Freddie Mac's single-family rental units were 16.3 percent of all qualifying units.

Reliance on household income relative to area income characteristics to meet goal. Tables C.2 and C.3 also show the allocation of units qualifying for the goal as related to the family income and area median income criteria in the goal definition. Very-low-income families (shown in the two leftmost columns in the tables) accounted for 85.2 percent of Fannie Mae's units qualifying under the goal in 1999, compared to 80.2 percent in 1993. For Freddie Mac, very-low-income families accounted for 84.9 percent of units qualifying under the goal in 1999 and 80.3 percent in 1993. In contrast, mortgage purchases from low-income areas (shown in the first and third columns in the tables) accounted for 32.0 percent of Fannie Mae's units qualifying under the goal in 1999, compared to 36.8 percent in 1993. The corresponding percentages for Freddie Mac were 33.7 percent in 1999 and 36.3 percent in 1993. Thus given the definition of special affordable housing in terms of household and area income characteristics, both GSEs have consistently relied substantially more on low-income characteristics of households than low-income characteristics of census tracts to meet this goal.

c. GSEs' Performance Relative to Market

Section E in Appendix A used HMDA data and GSE loan-level data for home purchase mortgages on single-family owner-occupied properties in metropolitan areas to compare the GSEs' performance in special affordable lending to the performance of depositories and other lenders in the conventional conforming market. There were three main findings. *First*, both GSEs lag depositories and the overall market in providing mortgage funds for very low-income and other special affordable borrowers. *Second*, the performance of Freddie Mac through 1998 was particularly weak compared to Fannie Mae, the depositories, and the overall market. For example, between 1996 and 1998, special affordable borrowers accounted for 9.8 percent of the home loans purchased by Freddie Mac, 11.9 percent of Fannie Mae's purchases, 16.7 percent of home loans originated and retained by depositories, and 15.3 percent of all home loans originated in the conventional conforming market (see Table A.3 in Appendix A). While Freddie Mac improved its performance, it had not closed the gap between its performance and that of the overall market. In 1992, special affordable loans accounted for 6.5 percent of Freddie Mac's purchases and 10.4 percent of market originations, for a ''Freddie-Mac-to-market'' ratio of 0.63. By 1998, that ratio had increased only to 0.73 (11.3 percent versus 15.5 percent). *Third*, in 1999, Freddie Mac matched Fannie Mae in purchasing special affordable home loans. Special affordable loans accounted for 12.5 percent of Freddie Mac's 1999 home purchase mortgages, and for 12.3 percent of Fannie Mae's purchases. With respect to the GSEs' total (combined home purchase and refinance) loans, Freddie Mac's performance in 1999 surpassed Fannie Mae's performance. The special affordable category accounted for 13.3 percent of Freddie Mac's 1999 purchases, compared with 12.3 percent of Fannie Mae's purchases.

Section G in Appendix A discusses the role of the GSEs both in the overall special affordable market and in the different segments (single-family owner, single-family rental, and multifamily rental) of the special affordable market. The GSEs' special affordable purchases have accounted for 25 percent of all special affordable owner and rental units that were financed in the conventional conforming market during 1997. The GSEs' 25-percent share of the special affordable market was three-fifths of their 40-percent share of the overall market. Even in the owner market, where the GSEs account for 50 percent of the market, their share of the special affordable market was only 36 percent. Similar patterns prevailed in 1998. This analysis suggests that the GSEs are not leading the single-family market in purchasing loans that qualify for the Special Affordable Goal. There is room for the GSEs to improve their performance in purchasing affordable loans at the lower-income end of the market.

3. National Housing Needs of Low-Income Families in Low-Income Areas and Very-Low-Income Families

This discussion concentrates on very low-income families with the greatest needs. It complements Section C of Appendix A, which presents detailed analyses of housing problems and demographic trends for lower-income families which are relevant to the issue addressed in this part of Appendix C.

Data from the American Housing Survey demonstrate that housing problems and needs for affordable housing continue to be more pressing in the lowest-income categories than among moderate-income families, as established in HUD's analysis for the 1995 rule. Table C.4 displays figures on several types of housing problems—high housing costs relative to income, physical housing defects, and crowding—for both owners and renters. Figures are presented for households experiencing multiple (two or more) of these problems as well as households experiencing a severe degree of either cost burden or physical problems. Housing problems in 1995 were much more frequent for the lowest-income groups.[7] Incidence of problems is shown for households in the income range covered by the special affordable goal, as well as for higher income households.

BILLING CODE 4210–27–P

Table C.4

Incidence of Housing Problems by Household Income, 1995

	Household Income as Percent of Area Median Income			
	0-60%	61-80%	81-100%	> 100%
Renter Households (Thousands)				
Total	17,428	4,579	3,896	8,246
Rent Burden > 50% of Income	6,056	100	25	5
31-50%	5,385	1,299	482	219
Severely Inadequate Housing	587	60	68	134
Moderately Inadequate	1,415	290	197	376
Crowded	1,282	159	99	133
Multiple Problems*	2,022	75	42	34
Priority Problems**	5,492	160	94	139
As Percent of Total				
Rent Burden > 50% of Income	34.7%	2.2%	0.6%	0.1%
31-50%	30.9%	28.4%	12.4%	2.7%
Severely Inadequate Housing	3.4%	1.3%	1.7%	1.6%
Moderately Inadequate	8.1%	6.3%	5.1%	4.6%
Crowded	7.4%	3.5%	2.5%	1.6%
Multiple Problems*	11.6%	1.6%	1.1%	0.4%
Priority Problems**	31.5%	3.5%	2.4%	1.7%
Owner Households (Thousands)				
Total	19,366	7,758	6,492	29,927
Cost Burden > 50% of Income	4,177	437	147	152
31-50%	4,027	1,473	913	1,639
Severely Inadequate Housing	536	123	101	412
Moderately Inadequate	995	266	205	604
Crowded	299	157	95	329
Multiple Problems*	753	130	79	106
Priority Problems**	4,602	550	247	559
As Percent of Total				
Cost Burden > 50% of Income	21.6%	5.6%	2.3%	0.5%
31-50%	20.8%	19.0%	14.1%	5.5%
Severely Inadequate Housing	2.8%	1.6%	1.6%	1.4%
Moderately Inadequate	5.1%	3.4%	3.2%	2.0%
Crowded	1.5%	2.0%	1.5%	1.1%
Multiple Problems*	3.9%	1.7%	1.2%	0.4%
Priority Problems**	23.8%	7.1%	3.8%	1.9%

* Two or three of the following: housing costs >30%, severe or moderate physical problems, and overcrowding.
** Housing costs >50% of income or severely inadequate housing among unassisted households.
Note: Incomes of renter households are estimated based on rents, adjusted for number of bedrooms.

BILLING CODE 4210–27–C

This analysis shows that priority problems of severe cost burden or severely inadequate housing are noticeably concentrated among renters and owners with incomes below 60 percent of area median income (31.5 percent of renter households and 23.8 percent of owner households). In contrast, 3.5 percent of renter households and 7.1 percent of owner households with incomes above 60 percent of area median income, up to 80 percent of area median income, had priority problems. For more than two-thirds of the very low-income renter families with worst case problems, the only problem was affordability—they did not have problems with housing adequacy or crowding.

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 G.5 of Appendix A is relevant to this factor—the GSEs' roles in the owner and rental markets, 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 analyses of 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.

5. The Need To Maintain the Sound Financial Condition of the GSEs

HUD has undertaken a separate, detailed economic analysis of this final rule, which includes consideration of (a) the financial returns that the GSEs earn on low- and moderate-income loans and (b) the financial safety and soundness implications of the housing goals. Based on this economic analysis and discussions with the Office of Federal Housing Enterprise Oversight, HUD concludes that the housing goals in this final rule raise minimal, if any, safety and soundness concerns.

D. Determination of the Goal

Several considerations, many of which are reviewed in Appendixes A and B and in previous 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 60 percent of area median, 34.7 percent of renters and 21.6 percent of owners paid more than 50 percent of their income for housing. In this same income range, 65.6 percent of renters and 42.4 percent of owners paid more than 30 percent of their income for housing. In addition, 31.5 percent of renters and 23.8 percent of owners exhibited ''priority problems'', meaning housing costs over 50 percent of income or severely inadequate housing.

2. GSE Performance and the Market

a. GSEs' Single-Family Performance

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 this category. The lowest-income borrowers account for approximately one-fourth of each GSE's below-median income purchases of owner-occupied mortgages.

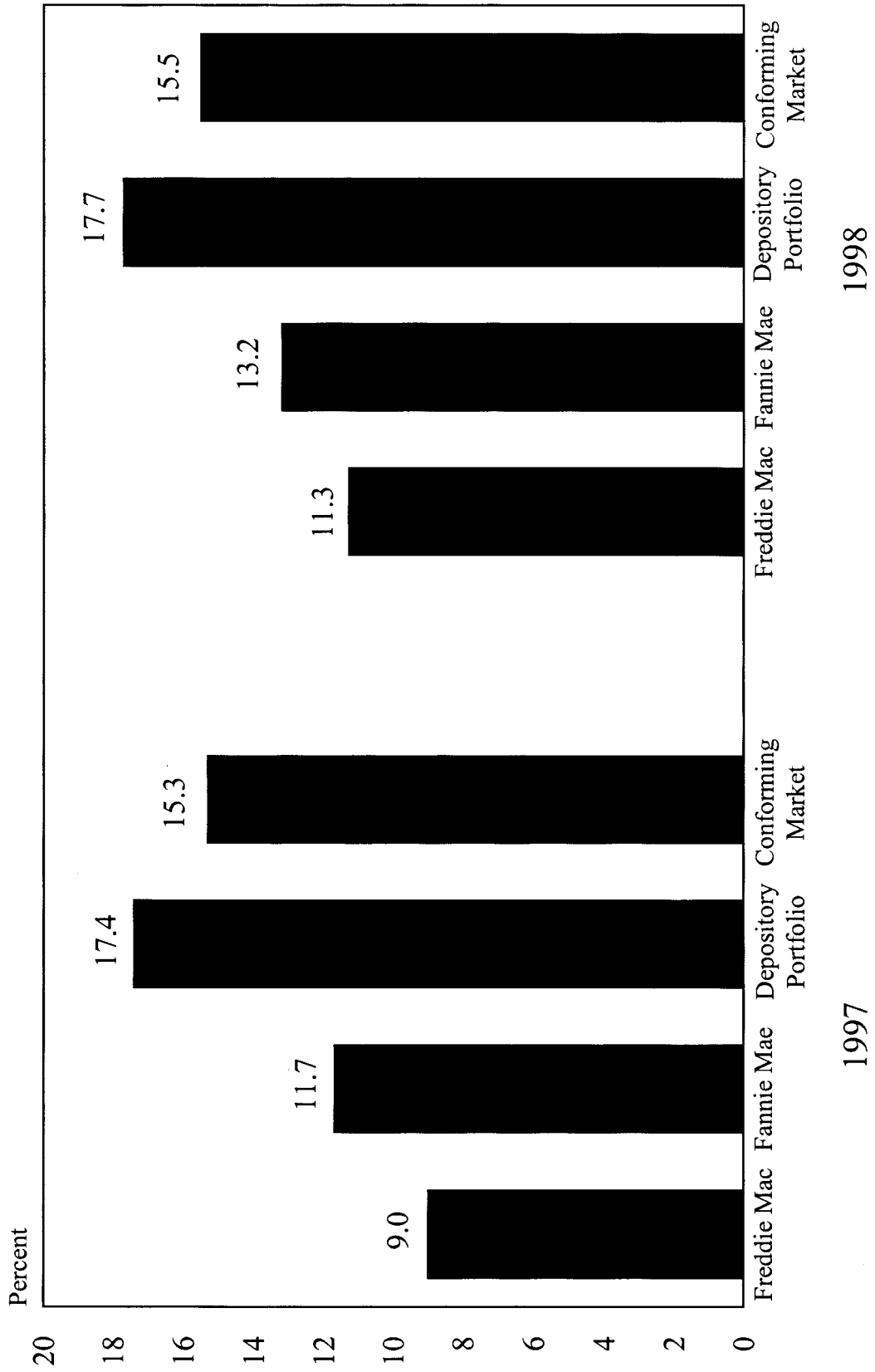
b. Single-Family Market Comparisons in Metropolitan Areas

Section C compared the GSEs' performance in special affordable lending to the performance of depositories and other lenders in the conventional conforming market for single-family home loans. The analysis showed that both GSEs lag depositories and the overall market in providing mortgage funds for very low-income and other special affordable borrowers. Figure C.3 illustrates these findings. In 1998, special affordable borrowers accounted for 11.3 percent of the home loans purchased by Freddie Mac, 13.2 percent of Fannie Mae's purchases, 17.7 percent of home loans originated and retained by depositories, and 15.5 percent of all home loans originated in the conventional conforming market. Section C also noted that Freddie Mac improved its performance, but it had not made much progress in closing the gap between its performance and that of the overall market. In 1999, however, Freddie Mac's funding of special affordable loans improved to the point that it matched Fannie Mae's performance with respect to purchases of home loans (12.5 percent and 12.3 percent, respectively) and it surpassed Fannie Mae's performance with respect to purchases of total combined home purchases and refinance loans (13.3 percent and 12.3 percent, respectively).

BILLING CODE 4210–27–P

Figure C.3

The Share Of GSE And Conventional Conforming Mortgages for Special Affordable Borrowers, 1997 and 1998



Source: Conforming market and depository data are from 1997 and 1998 HMDA; GSE data are from loan-level data reported to HUD. Data are for single-family home purchase loans in metropolitan areas. See Table A.4a for further explanation.

BILLING CODE 4210–27–C

c. Overall Market Comparisons

Section C compared the GSEs' role in the overall market with their role in the special affordable market. The GSEs' purchases have provided financing for 2,948,112 dwelling units, which represented 40 percent of the 7,306,950 single-family and multifamily units that were financed in the conventional conforming market during 1997. However, in the special affordable part of the market, the 519,371 units that were financed by GSE

purchases represented only 25 percent of the 2,105,508 dwelling units that were financed in the market. A similar pattern prevailed in 1998. Thus, there appears to ample room for the GSEs to improve their performance in the special affordable market.

3. Reasons for Increasing the Special Affordable Housing Goal

The reasons the Secretary is increasing the Special Affordable Goal are essentially the same as those given in Section H.4 of Appendix A for the Low- and Moderate-Income Goal. Although that discussion will not be repeated here, the main considerations are the following: Freddie Mac's re-entry into the multifamily market; the underlying strength of the primary mortgage market for lower-income families; the need for the GSEs to improve their purchases of mortgages for lower-income families and their communities; the existence of several low-income market segments that would benefit from more active efforts by the GSEs; and the substantial profits and financial capacity of Fannie Mae and Freddie Mac. The Department's analysis shows that the GSEs are not leading the market in purchasing loans that qualify for the Special Affordable Goal. There are also plenty of opportunities for the GSEs to improve their performance in purchasing special affordable loans. The GSEs' accounted for only 25 percent of the special affordable market in 1997—a figure substantially below their 40-percent share of the overall market. Similarly, the GSEs accounted for only 33 percent of the special affordable market in 1998, compared with their 55-percent share of the overall market during that heavy refinance year.

4. Multifamily Purchases—Further Analysis

As noted previously, the multifamily sector is especially important in the establishment of the special affordable housing goals for Fannie Mae and Freddie Mac because of the relatively high percentage of multifamily units meeting the special affordable goal as compared with single-family. For example, in 1999, 56.0 percent of units backing Fannie Mae's multifamily transactions met the special affordable goal, representing 31.3 percent of units meeting the special affordable goal, when multifamily units represented only 9.5 percent of total purchase volume.[8]

Significant new developments in the multifamily mortgage market have occurred since the publication of the December 1995 rule, most notably the increased rate of debt securitization via Commercial Mortgage Backed Securities (CMBS) and a higher level of equity securitization by Real Estate Investment Trusts (REITs). Fannie Mae has played a role in establishing underwriting standards that have been widely emulated in the growth of the CMBS market. Freddie Mac has contributed to the growth and stability of the CMBS sector by acting as an investor.

Increased securitization of debt and equity interests in multifamily property present the GSEs with new challenges as well as new opportunities. The GSEs are currently experiencing a higher degree of secondary market competition than they did in 1995. At the same time, recent volatility in the CMBS market underlines the need for an ongoing GSE presence in the multifamily secondary market. The potential for an increased GSE presence is enhanced by virtue of the fact that an increasing proportion of multifamily mortgages are originated to secondary market standards.

Despite the expanded presence of the GSEs in the multifamily mortgage market and the rapid growth in multifamily securitization by means of CMBS, increased secondary market liquidity does not appear to have benefited all segments of the market equally. Small properties with 5–50 units appear to have been adversely affected by excessive borrowing costs as described in Appendix A. Another market segment that appears experiencing difficulty in obtaining mortgage credit consists of multifamily properties with significant rehabilitation needs. Properties that are more than 10 years old are typically classified as ''C'' or ''D'' properties, and are considered less attractive than newer properties by many lenders and investors.

Context. As discussed above, in the 1995 Final Rule, the multifamily subgoal for the 1996–1999 period was set at 0.8 percent of the dollar value of each GSEs' respective 1994 origination volume, or $998 million for Freddie Mac and $1.29 billion for Fannie Mae. Freddie Mac exceeded the goal by a narrow margin in 1996 and more comfortably in 1997–1999. Fannie Mae has exceeded the goal by a wide margin in all four years.

The experience of the 1996–1999 period suggests the following preliminary findings regarding the multifamily special affordable subgoal:

- The goal has contributed toward a significantly increased presence by Freddie Mac in the multifamily market.
- The current goal is out of date, as it is based on market conditions in 1993–94. The goal has remained at a fixed level, despite significant growth in the multifamily market and in the GSEs' administrative capabilities with regard to multifamily.

As mentioned previously, HUD's final rule establishes the multifamily subgoal at the respective average of one percent of each GSEs' combined mortgage purchases over 1997–1999. This implies the following thresholds for the two GSEs:

	2001–2003 (in billions)
Fannie Mae	$2.85
Freddie Mac	2.11

A multifamily subgoal for 2001–2003 set at one percent of each GSEs' combined mortgage purchases over 1997–1999 will sustain and likely increase the efforts of the GSEs in the multifamily mortgage market, with particular emphasis upon the special affordable segment.

5. Conclusion

HUD has determined that the Special Affordable Housing Goal in this final rule addresses national housing needs within the income categories specified for this goal, while accounting for the GSEs' past performance 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 a Special Affordable Housing Goal of 20 percent in 2001–2003 is both necessary and achievable. HUD has also determined that a multifamily special affordable subgoal for 2001–2003 set at one percent of the average of each GSE's respective dollar volume of combined (single-family and multifamily) 1997–1999 mortgage purchases in is both necessary and achievable.

Endnotes to Appendix C

[1] HUD has determined that the total dollar volume of the GSEs' combined (single and multifamily) mortgage purchases by Fannie Mae was $165.3 billion in 1997, $367.6 billion 1998, and $323.0 in 1999. Freddie Mac's corresponding acquisition volume was $117.7 billion in 1997, $273.2 billion in 1998, and $240.7 billion in 1999.

[2] *Federal Reserve Bulletin*, June 2000, A 35.

[3] Source: HUD analysis of GSE loan-level data.

[4] U.S. House of Representatives, *Congressional Record.* (October 13, 1999), p. H10014.

[5] It should be noted that in all years, Fannie Mae's performance on the special affordable goal under HUD scoring lags performance as reported by Fannie Mae, because of differences pertaining to the ''recycling'' of proceeds from the sales of portfolios of special affordable loans.

[6] Total dollar volume of multifamily purchases moved in the opposite direction from special affordable multifamily volume last year—total volume fell by 25 percent for Fannie Mae (from $12.50 billion in 1998 to $9.39 billion in 1999), but rose by 16 percent for Freddie Mac (from $6.58 billion in 1998 to $7.62 billion in 1999); special affordable multifamily volume rose by 15 percent for Fannie Mae (from $3.53 billion in 1998 to $4.06 billion in 1999), but fell by 16 percent for Freddie Mac (from $2.69 billion in 1998 to $2.26 billion in 1999).

[7] Tabulations of the 1995 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.

[8] Source: HUD analysis of GSE loan-level data.

Appendix D—Estimating the Size of the Conventional Conforming Market for Each Housing Goal

A. Introduction

1. Overview of Appendix D

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. Following this overview, the remainder of Section A summarizes the main components

of HUD's market-share model and identifies those parameters that have a large effect on the relative market shares. With this material as background, Section B provides an overview of the GSEs' main comments on, and criticisms of, HUD's market share methodology, as well HUD's response to those comments and criticisms. More detailed analyses of selected comments by the GSEs are provided throughout this appendix. 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 single-family rental properties. 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 Geographically-Targeted (Underserved Areas) Goal, and the Special Affordable Housing Goal, respectively.[1]

In developing this rule, HUD has carefully reviewed existing information on mortgage activity in order to understand the weakness of various data sources and has conducted sensitivity analyses to show the effects of alternative parameter assumptions. Data on the multifamily mortgage market from HUD's Property Owners and Managers' Survey (POMS), not available at the time 1995 GSE final rule was published, is utilized here. HUD is well aware of uncertainties with some of the data and much of this appendix is spent discussing the effects of alternative assumptions about data parameters and presenting the results of an extensive set of sensitivity analyses.

In a critique of HUD's market share model, Blackley and Follain (1995, 1996) concluded that conceptually HUD had chosen a reasonable approach to determining the size of the mortgage market that qualifies for each of the three housing goals.[2] Blackley and Follain correctly note that the challenge lies in getting accurate estimates of the model's parameters. As noted later, both GSEs reached the same conclusion in their comments on the proposed rule.

This appendix reviews in some detail HUD's efforts to combine information from several mortgage market data bases to obtain reasonable values for the model's parameters. Numerous sensitivity analyses are performed in order to arrive at a set of reasonable market estimates.

The single-family market analysis in this appendix is based heavily on HMDA data for the years 1992 to 1998. The HMDA data for 1999 were not released until August 2000, which did not give HUD enough time to incorporate that data into the analyses reported in the Appendices. It should also be noted that the discussion sometimes focuses on the year 1997, as 1997 represents a more typical mortgage market than the heavy refinancing year of 1998.

2. Overview of HUD's Market Share Methodology[3]

a. Definition of Market Share

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.[4] 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 equal to or 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.[5] 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).

b. 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);[6]

(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).[7]

(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 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 in the top portion of Table D.1, which illustrates Step 3's basic formula for calculating the size of the low- and moderate-income market.[8] In this example, low- and moderate-income dwelling units are estimated to account for 53.9 percent of the total number of dwelling units financed in the conforming mortgage market.

BILLING CODE 4210–27–P

Table D.1

Illustration of Market Share Calculations

Property Type	Low- and Moderate-Income Market (Step 1) Share of Market (Percent)	(Step 2) Low-Mod Share (Percent)	(Step 3) Multiply (1) x (2) (Percent)
(a) SF-Owner	72.2	40.0	28.9
(b) SF-2-4 Rental	2.0	90.0	1.8
(c) SF Investor	10.8	90.0	9.7
(d) MF	15.0	90.0	13.5
Total Low-Mod Market	100.0		53.9

Property Type	Underserved Areas Market (Step 1) Share of Market (Percent)	(Step 2) Underserved Areas Share (Percent)	(Step 3) Multiply (1) x (2) (Percent)
(a) SF-Owner	72.2	26.0	18.8
(b) SF-2-4 Rental	2.0	42.5	0.9
(c) SF Investor	10.8	42.5	4.6
(d) MF	15.0	48.0	7.2
Total Underserved Areas Market	100.0		31.4

BILLING CODE 4210–27–C

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. For example, the Geographically-Targeted Goal[9] would be derived as illustrated in the bottom portion of Table D.1. In this example, units eligible under the Underserved Areas Goal are estimated to account for 31.4 percent of the total number of dwelling units financed in the conforming mortgage market.

c. 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), Property Owners and Managers Survey (POMS) and the Census Bureau's Residential Finance Survey (RFS). In addition, information on the mortgage market was obtained from the Mortgage Bankers Association, Fannie Mae, Freddie Mac and other organizations.

Property Shares. To derive the property shares, HUD started with forecasts of single-family mortgage originations (expressed in dollars). These forecasts, which are available from the GSEs and industry groups such as the Mortgage Bankers Association, do 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 during the 1995 rule-making process and as noted in Section B below, an issue that the GSEs focussed on in their comments on this year's proposed rule. In 1997, HMDA reported about $20.0 billion in multifamily originations while the SMLA reported more than double that amount ($47.9 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 consider estimates of the size of the multifamily market in some detail, as Section C does. In addition, given the uncertainty surrounding estimates of the multifamily mortgage market, it is important to consider a range of market estimates, as Sections G–H do.

Goal Percentages. To derive the goal percentages for each property type, HUD relied heavily on HMDA, AHS, and POMS data. For single-family owner originations,

HMDA provides comprehensive information on borrower incomes and 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 rents (and therefore the affordability) of rental units in mortgaged properties. The AHS, however, does provide a wealth of information on rents and the affordability of the outstanding stock of single-family and multifamily rental properties. An important issue here concerns whether rent data for the stock of rental properties can serve as a proxy for rents on newly-mortgaged rental properties. The POMS data, which were not available during the 1995 rule-making process, are used below to examine the rents of newly-mortgaged rental properties; thus, the POMS data supplements the AHS data. The data base issues as well as other technical issues related to the goal percentages (such as the need to consider a range of mortgage market environments) are discussed in Sections F, G, and H, which present the market share estimates for the Low- and Moderate-Income Goal, the Underserved Areas Goal, and the Special Affordable Goal, respectively.

d. Conclusions

HUD is using the same basic methodology for estimating market shares that it used during 1995. As demonstrated in the remainder of this appendix, 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. 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.

During the 1995 rule-making process, 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. Several findings from the Urban Institute reports are discussed throughout this appendix. Since 1995, HUD has continued to examine the reliability of data sources about mortgage activity. HUD's Office of Policy Development and Research has published several studies concerning the reliability of HMDA data. [10] In addition, since 1995, HUD has gathered additional information regarding the mortgages for multifamily and single-family rental properties through the Property Owners and Managers Survey (POMS). [11] Findings regarding the magnitude of multifamily originations, as well as the rent and affordability characteristics of mortgages backing both single-family and multifamily rental properties have been made by combining data from POMS with that from internal Census Bureau files from the 1995 American Housing Survey-National Sample. The results of these more recent analyses will be presented in the following sections.

B. Comments on HUD's Market Share Methodology

1. Overall Issues

Both Fannie Mae and Freddie Mac stated that HUD's market share model (outlined in Section A above) was a reasonable approach for estimating the goals-qualifying (low-mod, special affordable, and underserved areas) shares of the mortgage market. Freddie Mac stated:

We believe the Department takes the correct approach in the Proposed Rule by examining several different data sets, using alternative methodologies, and conducting sensitivity analysis. We applaud the Department's general approach for addressing the empirical challenges.[12]

Similarly, Fannie Mae stated that "* * * HUD has developed a reasonable model for assessing the size of the affordable housing market". [13]

However, both GSEs provided extensive criticisms of HUD's implementation of its market methodology. Their major comments fall into two general areas. *First,* the GSEs expressed concern about HUD's assumptions and use of specific data elements both in constructing the distribution of property shares among single-family owner, single-family rental, and multifamily properties and in estimating the goals-qualifying shares for each property type. The GSEs contended that HUD chose assumptions and data sources that result in an overstatement of the market estimate for each of the housing goals. In particular, the GSEs claimed that HUD overstated the importance of rental properties (both single-family and multifamily) in its market model and overstated the low-mod, special affordable, and underserved areas shares of the single-family owner market.

HUD recognizes that there is no single, perfect data set for estimating the size of the affordable lending market and that available data bases on different sectors of the market must be combined in order to implement its market share model (as outlined in Section A.2 above).

While HUD recognizes that existing mortgage market data bases vary in terms of comprehensiveness and quality, HUD believes that the GSEs have exaggerated the inadequacies of available mortgage market data, such as HMDA-reported data on the borrower income and census tract characteristics of mortgages for single-family owner properties. In addition, as explained below and demonstrated throughout this appendix, HUD has carefully combined various mortgage market data bases in a manner which draws on the strength of each in order to implement its market methodology and to arrive at a reasonable range of estimates for the three goals-qualifying shares of the mortgage market. In this appendix, HUD demonstrates the robustness of its market estimates by reporting the results of numerous sensitivity analyses that examine a range of assumptions about the relative importance of the rental and owner markets and the goals-qualifying shares of the owner portion of the mortgage market.

Second, both GSEs argued that HUD's market estimates depended heavily on a continuation of recent conditions of economic expansion and low interest rates. According to the GSEs, HUD's range of market estimates did not include periods of adverse economic and affordability conditions such as those which existed in the early 1990s. HUD believes that the range for the market shares should be broad enough to reflect the likely volatility in the mortgage market over the three-year period (2001–03) in which the new housing goals will be in effect. As explained below and demonstrated throughout this appendix, HUD's range of market estimates for each of the housing goals is reasonable because it allows for economic and interest rate conditions significantly more adverse than have existed in the mid-to-late 1990s. As HUD stated in its 1995 final GSE rule, policy should not necessarily be based on market estimates that include the worst possible economic scenarios.

To support their contentions, the GSEs made extensive criticisms of the inadequacies of the major mortgage market data bases (such as HMDA and the American Housing Survey), offering in their place findings from market share and simulation models they had developed. Fannie Mae focused many of its comments on the inadequacy of the single-family-owner data reported by HMDA, arguing that significant portions of HMDA data are not relevant for calculating the market standard for evaluating GSE performance in the conventional conforming market. Fannie Mae's comments on this topic are discussed and critiqued by HUD in Appendix A of this final rule. Freddie Mac focused many of its comments on the size of the rental portion of the mortgage market, concluding that HUD had overestimated that portion of the market. Both Fannie Mae and Freddie Mac commented extensively on the need for the market estimates to reflect the significant volatility that exists in the single-family and multifamily mortgage markets. In this regard, the GSEs relied heavily on a Freddie-Mac-funded study by PriceWaterhouseCoopers (PWC), entitled "The Impact of Economic Conditions on the Size and the Composition of the Affordable Housing Market" (dated April 5, 2000). Because the GSEs' comments (especially those of Freddie Mac) draw heavily upon the PWC study, the next section reports and critiques its main findings. This analysis of the PWC report also incorporates related GSE comments where appropriate. Following that, other major issues raised by the GSEs about HUD's market estimates will be examined.

The discussion in the remainder of this section assumes readers are familiar with the market methodology and related concepts developed in later sections of the appendix. There is no attempt in this section to fully develop the various concepts. Rather, the purpose of this section is to provide, in one place, HUD's insights and comments on the more important issues raised by the GSEs in their comments and by PriceWaterhouseCoopers in its report. It should be noted that the GSEs' comments are also discussed throughout the development of the market share methodology in this appendix.

2. PriceWaterhouseCoopers (PWC) Study

The main purpose of the PWC study was to address how the business cycle affects the affordability of mortgages originated in the conventional conforming mortgage market. Based on its analysis of the 1990–98 mortgage market, PWC concluded that (a) changing economic conditions can quickly impact the low-and moderate-income portion of the mortgage market; (b) the highly affordable economic conditions that have existed since 1995 are not likely to persist in the future; and (c) it is difficult to project affordable lending levels accurately. PWC argues that HUD's basing its market shares on the recent past may lead to unrealistic housing goals.

HUD's review of the PWC study found that it included several interesting analyses and insights about economic volatility. For example, its regression analyses of the multifamily and affordable lending shares of the market highlight the impacts that shifts in economic conditions can have on these sectors of the market, as well as the difficulty in modeling changes in market conditions. The PWC document also included a useful critique of existing mortgage market data bases. In the event of a severe economic downturn, the PWC study will serve as an interesting reference document for policymakers and mortgage market analysts concerned about the implications of the business cycle for affordable lending.

In relation to the policy discussion surrounding the GSE housing goals, however, the PWC document contains significant shortcomings. A major shortcoming is that the PWC document underestimates the size of the multifamily mortgage market by relying heavily on multifamily originations reported in HMDA. While HMDA is for many purposes a preeminent data source on single-family lending, it has been widely discredited as a multifamily data source due to severe underreporting of loan originations. Indeed, HMDA has been rejected as inadequate in published work by highly regarded independent researchers, as well as by Fannie Mae in its comments submitted in response to HUD's proposed rule.

Another major shortcoming of the PWC report is an error in calculating the size of the single-family conventional conforming market. The discussion of single-family lending in the PWC document initially appears to contradict HUD's analysis in Appendix D of the proposed rule, but this is mainly because HUD's analysis is based upon the conforming conventional mortgage market, whereas PWC effectively includes FHA loans and loans above the conforming loan limit in portions of their analysis of the 1980–98 mortgage market. For example, in 1998, PWC estimates the size of the single-family mortgage market at $1.5 trillion. This is identical to the widely used estimate by the Mortgage Bankers Association (MBA) for the *entire* single-family mortgage market that year, including jumbo and FHA loans.[14] Because the GSEs are prohibited from purchasing loans above the conforming limit, and because HUD is directed by statute to focus on the conventional market in setting the housing goals, it is necessary to restrict analyses of the mortgage market to the conventional conforming market if they are to be used in connection with the housing goals. Because of these statutory considerations, PWC's calculations (which effectively include mortgages outside the conventional conforming market) cannot be relied upon for policymaking purposes. PWC's error (overstating single-family originations), combined with their underestimating multifamily originations (see above), leads PWC to substantially underestimate the multifamily share of the conventional conforming mortgage market, which further leads them to substantially underestimate the low- and moderate-income share of the market.

The PWC study focuses on the low-mod share of the mortgage market during the 1990s. PWC claims that the low-mod share of the market ranged from 35 percent to 56 percent during the 1990s, with a mean of 46 percent. These figures are contrasted with HUD's 50–55 percent projection of the low-mod market for the years 2001–03. The following are observations about this and other findings in the PWC report.

- PWC begins its analysis by estimating the low-mod share of the existing mortgage market and then applying its results to an analysis of the low-mod share of the market for newly-originated mortgages. In the top portion of its Table 2, PWC assumes the low-mod share of the existing housing stock is 50 percent. In fact, it can be shown empirically that the actual proportion is 56.8 percent based on data from AHS and the Property Owners and Managers Survey (POMS).[15] PWC then proceeds to compound this error. Based on the mistaken assumption that 50 percent of the housing stock is occupied by low- and moderate-income households, PWC infers that the low-mod share of the stock of mortgaged owner-occupied properties is 31 percent. Empirically, however, the correct figure is 37 percent, based on AHS data.
- Based on HUD's best estimates of the multifamily market, the multifamily mix averaged 16–17 percent for 1991–1998, not 8.7 percent as estimated by PWC.[16] PWC's multifamily mix is unrealistically low because of their reliance on a flawed, HMDA-based methodology which underestimates the size of the conventional multifamily origination market, and because they used techniques for estimating the size of the single-family mortgage market equivalent in several years to including FHA and jumbo single-family loans. Inclusion of loans outside the conventional conforming market is inappropriate for purposes of setting the housing goals, as discussed above.
- Although Fannie Mae relies on the PWC study, Fannie Mae's multifamily market estimates are higher than PWC's—for example, Fannie Mae's $35–$40 billion multifamily origination estimate for 1997 leads to a multifamily mix of 16–18 percent (versus 11 percent for PWC) and its $40–$45 billion estimate for 1998 leads to a 11–12 percent multifamily mix (versus 7.3 percent for PWC).
- In calculating the multifamily share of housing units financed each year (the ''multifamily mix'') PWC compounds the problems associated with its unrealistically low figure for multifamily originations by utilizing estimates for single-family origination volume far exceeding realistic figures for the conventional conforming segment of the single-family mortgage market. When HUD implemented PWC's HMDA-based procedure for calculating the size of the multifamily market, it derived an average multifamily mix of 11.6 percent for 1991–1998, well above the PWC figure of 8.7 percent.
- Results of PWC simulations are contradicted by historical evidence. For example, PWC simulates a refinance boom and under one scenario projects that the low-mod share of the market would fall to 40 percent. However, during the 1998 refinance wave, the low-mod share of the market was 54 percent, and even GSE performance exceeded 45 percent, suggesting that PWC overestimates the effect of a refinance boom on the low-mod share.

Mainly for the above reasons, PWC substantially underestimates the size of the low-mod market during the 1990s. Using realistic estimates of the multifamily market outlined in Section C, HUD derives an average low-mod share of 52 percent during the 1990s, substantially higher than the 46 percent average advocated by PWC.

The remainder of the section summarizes the main comments of Fannie Mae and Freddie Mac on HUD's market share methodology. Because the GSEs relied heavily on the PWC study or a similar analysis, the points in this section will apply to their comments as well.

3. Volatility of the Mortgage Market

Based on the PWC study and their own analyses, both GSEs contended that HUD had not adequately considered the impact that changes in the national economy could have on the size of the conventional conforming mortgage market. The GSEs commented that HUD based its market estimates on the unusually favorable economic and housing market conditions that have existed since 1995. Fannie Mae stated that HUD's analysis overstates the size of the market because it ''does not reflect the potential effects of a broader range of plausible economic scenarios''. Freddie Mac recommended that ''the market estimates in the Final Rule be revised to reflect the large impact of economic conditions on the very-low, low- and moderate-income, and underserved areas' shares of the market''. As noted earlier, both GSEs relied on the PWC study which concluded that ''interest rate movements and changes in the rate of economic growth are statistically significant determinants of the low- and moderate-income share of the conventional conforming mortgage market by affecting both the multifamily share of aggregate lending and the affordability composition of single-family lending''. (PWC, page iv).

As explained in Appendix A and Section F of this appendix, HUD understands that 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 is also aware that the

mortgage market is very dynamic and susceptible to significant changes in conditions that would affect the overall level of affordable lending to lower-income families. HUD agrees that forecasting all these factors for upcoming years to obtain a picture of the future climate for the mortgage market is difficult.

In response to concerns expressed about the volatility of the mortgage markets over time, HUD has estimated a range of market shares for each of the housing goals—50–55 percent of the Low-Mod Goal, 23–26 percent for the Special Affordable Goal, and 29–32 percent for the Underserved Areas Goal—that reflect economic environments significantly more adverse than those which existed during the period between 1995 and 1998, when the Low-Mod Goal averaged 56.5 percent, the Special Affordable Goal, 28.1 percent, and the Underserved Areas Goal, 33.0 percent.

HUD conducted detailed sensitivity analyses for each of the housing goals to reflect affordability conditions that are less conducive to lower-income homeownership than those that existed during the mid- to late-1990s. The following examples drawn from Sections F and H of this appendix may be helpful in clarifying this issue:

- The low-mod percentage for single-family home purchase loans can fall to as low as 34 percent—or four-fifths of its 1995–98 average of over 42 percent—before the projected low- and moderate-income share of the overall market would fall below 50 percent.
- Similarly, the underserved areas percentage for owner loans can fall to as low as 22 percent—also about four-fifths of its 1995–98 average of almost 27 percent—before the projected underserved areas share of the overall market would fall below 29 percent.

HUD also conducted additional sensitivity analyses by examining recession and refinance scenarios and varying other key assumptions, such as the size of the multifamily market. These sensitivity analyses, presented in this appendix, show that HUD's market estimates cover a range of mortgage market and affordability conditions and provide a sound basis for setting housing goals for the years 2001–03.

HUD recognizes that under certain extremely adverse circumstances, the goals-qualifying market shares could fall below its estimates. The PWC study and the GSEs presented estimates based on a hypothetical economic slowdown accompanied by low affordability conditions that fall below the range of HUD's estimates. Fannie Mae, for example, included mortgage originations falling to as low as $771 billion and as high as $1,706 billion in its ''likely single family mortgage market volume ranges'' for the year 2001. However, as HUD stated in its 1995 GSE rule, 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. As discussed below in Section F, FHEFSSA and HUD recognize that conditions could change in ways that would require revised expectations. Thus, HUD is given the statutory discretion to revise the goals if the need arises. If a GSE fails to meet a housing goal, HUD has the authority to determine that the goal was not feasible, and not take further action.

4. Size of the Multifamily Market

Section C contains a detailed discussion of the size of the conventional multifamily origination market, summarizing findings from a variety of sources regarding the size of the conventional multifamily mortgage market, measured in terms of dollars, units, and as a share of total conventional conforming annual mortgage origination volume, a key factor influencing the share of the overall market comprised of units meeting each of the housing goals. This section considers a number of alternative data sources providing evidence on conventional multifamily origination volume over a number of years, in some cases the entire 1990–1999 period. The approaches considered here include the HUD Survey of Mortgage Lending Activity (SMLA); Home Mortgage Disclosure Act data (HMDA); and a projection model developed by the Urban Institute based on data from the 1991 Residential Finance Survey (RFS). A new methodology, developed by HUD for purposes of this analysis, is discussed, as are estimates submitted by Fannie Mae and Freddie Mac on their comments on the proposed rule. Estimates for 1990 from the RFS and for 1995 from the Property Owners and Managers Survey (POMS) are also discussed.

Based on the likely range of annual conventional multifamily origination volume, multifamily units represent an average of 16–17 percent of units financed each year during the 1990s.[17] HUD's estimated multifamily market shares exceed estimates prepared by PWC (averaging 8.7 percent for 1991–1998) for two reasons, as mentioned previously. One is that PWC's adjusted HMDA methodology does not adequately correct for underreporting in HMDA, resulting in unrealistically low estimates of the size of the conventional multifamily origination market. Another reason that PWC's estimated multifamily market shares are low is that a number of their calculations appear to include FHA and jumbo loans in estimating the number of single-family units financed each year, as discussed above. HUD's market share calculations, in contrast, are based on the multifamily share of conventional conforming mortgage loans originated each year.

The multifamily share of the conforming conventional market (or ''multifamily mix'') derived from this discussion of multifamily origination volume is utilized below as part of HUD's analysis of the share of units financed each year meeting each of the housing goals. For purposes of that analysis, a multifamily mix of 16.5 percent is reasonable, based upon the analysis and discussion below. However, a 15 percent market share can be utilized as an alternative market share estimate corresponding to a somewhat less favorable environment for multifamily lending. While somewhat low from an historical standpoint, a 15 percent mix more readily accommodates the possibility of a recession or heavy refinance year than would baseline assumptions based more strictly on historical data. In order to more fully consider the effects of an even more adverse market environments, an alternative multifamily mix assumptions of 13.5 is also considered, as well as a number of others.

5. Size of the Single-Family Rental Market

Both GSEs argued that the single-family (1–4) investor portion of the single-family mortgage market should be eight percent or less of total single-family originations, based on HMDA data. In both 1995 and in the proposed rule, HUD considered three scenarios for investor mortgages when estimating the housing goals—a baseline model that assumed 10 percent, a lower scenario that assumed 8 percent, and a higher scenario that assumed 12 percent. HUD's base case of 10 percent is well below the 17.3 percent reported by the 1991 Residential Finance Survey (which is considered accurate but unfortunately is out-of-date) and above the 7–8 percent estimates provided by HMDA over the past few years. In 1995, research by Urban Institute researchers concluded that the HMDA estimates were too low (although the GSEs raise concerns about this research in their comments). HUD has decided to stay with its baseline 10 percent estimate but it acknowledges that due to limited data there is some uncertainty about the investor share of the single-family market, which will be clarified when the next Residential Finance Survey is released in a couple of years. Sensitivity analyses indicate that reducing the investor share from 10 percent to 8 percent would reduce the low-mod market share by 1.05 percent, the special affordable share by 0.90 percent, and the underserved areas share by 0.36 percent.

6. Relevant Market for Single-Family Owner Market

Both GSEs provided numerous comments concerning the types of mortgages that HUD should exclude from the definition of the single-family owner market when HUD is calculating the market shares for each housing goal. The GSEs comments and HUD's response to them are discussed in Section A of Appendix A. As noted there, HUD believes that the risky, B&C portion of the subprime market should be excluded from the market definition for each of the housing goals. HUD includes the A-minus portion of the subprime market in its market estimates. This appendix explains HUD's method for making this adjustment to the overall market estimates.

As explained in Appendix A, HUD disagrees with most of the other adjustments proposed by the GSEs. Excluding important segments of the lower-income mortgage market as the GSEs recommend would distort HUD's estimates of the goals-qualifying shares of the conventional conforming market.

7. Shortcomings of Various Mortgage Market Data Bases

Major mortgage market data bases such as HMDA and the American Housing Survey (AHS) are used to implement HUD's market

methodology. In their comments, Fannie Mae and Freddie Mac, as well as PWC, each provided a useful critique of the various mortgage data bases. Based on its analysis, Freddie Mac concluded that HUD should revise its market share estimates to reflect ''the lack of reliable data''. Similarly, Fannie Mae concluded that ''HUD analysis overstates the size of the market because it relies on unreliable data sources. * * *''. Fannie Mae further states that ''* * * HUD has chosen to extrapolate from several disparate data sources in ways that inflate the Department's estimate of the market size for each of the goals''. PWC, as well as the GSEs, expressed concern that mortgage market data bases had not improved since 1995, when HUD issued its last GSE rule on the housing goals.

Examples of problems noted by the GSEs include: limited variables (such as LTV ratio) and bias in HMDA data; inability of HMDA to identify important segments of the market (such as subprime lenders); underreporting of multifamily mortgages in HMDA and general unreliable reporting of rental mortgages in other data bases; underreporting of income in the AHS; and the fact that some important mortgage market data bases such as the 1991 Residential Mortgage Finance Survey are simply out of date. Both GSEs expressed particularly strong criticism of HUD's use of data on the rental market, that is, estimates of the proportion of 1-to 4-unit rental properties and of annual multifamily origination volume.

HUD agrees that a comprehensive source of information on mortgage markets is not available. However, 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 these appendices, HUD has carefully defined the range of uncertainty associated with each of these data sources, has pulled together estimates of important market parameters from independent sources, and has conducted sensitivity analyses to show the effects of various assumptions. In fact, Freddie Mac noted that ''We [Freddie Mac] support the Department's approach for addressing the empirical challenges of setting the goals by examining several different data sets, using alternative methodologies, and conducting sensitivity analysis.''

While HUD recognizes the shortcomings of the various data and the inability to derive precise point estimates of various market parameters, HUD, however, does not believe that these limitations call for expanding the range of the market estimates, as suggested by the GSEs. One purpose of this appendix is to demonstrate that careful consideration of independent data sources can lead to reliable ranges of estimates for the goals-qualifying shares of the mortgage market. It should also be emphasized that while there are some problems with existing mortgage market data, there is a wealth of information on important components of the market. HMDA provides wide coverage of the single-family owner market in metropolitan areas, yielding important information on the borrower income and census tract (underserved area) characteristics of that market. The AHS provides excellent information on the affordability characteristics of the single-family rental and multifamily housing stock. As explained in Section F of this appendix, POMS data confirm that the rent affordability data based on the AHS stock provide reliable estimates of the rent characteristics of newly-mortgaged dwelling units in the rental stock.

HUD's specific responses to the GSEs' comments on data are included throughout these appendices. For example, see subsection B.4 above and Section C of this appendix for a discussion of the multifamily data; as explained there, HUD concludes that Freddie Mac and PWC, in particular, underestimate the size of the multifamily market. Issues related to single-family rental data are discussed in B.5 above and in Section D to this appendix. Appendix A provides a complete discussion of the single-family owner data reported in HMDA. As noted in Section A of Appendix A, HUD disagrees with the GSEs in terms of the seriousness of the bias problem in HMDA data. It should also be mentioned that HUD does not rely heavily on some of the data bases that the GSEs criticize. For example, Freddie Mac argues that the AHS underreports borrower income; but HUD relies on HMDA data for the borrower income characteristics of home purchase and refinance markets. According to the out-of-date RFS data, investor mortgages account for 17 percent of the single-family mortgage market the RFS; as explained in above, HUD's baseline model uses 10 percent, with sensitivity analyses at 8 percent and 12 percent.

8. Miscellaneous Comments

There are several specific comments of the GSEs that should be mentioned and clarified. In many cases, these comments relate to the broad issues that have already been discussed in this section. However, because of their technical nature, it was decided to discuss them in this separate section rather than including them in the above discussion.

- On page 17 of its Appendix III, Freddie Mac states that HUD assumed the investor share of single-family mortgages was 10.7 percent; in fact, HUD's baseline model assumed 10 percent.
- On page 22 of its Appendix III, Freddie Mac states that because HMDA does not identify subprime and manufactured housing loans, the proposed rule does not adjust for these loans originated by prime lenders. As this appendix explains, HUD's market estimates for the three housing goals are adjusted for all loans originated in the B&C portion of the subprime market.
- On page 23 of its Appendix III, Freddie Mac states that HUD does not compare HMDA and GSE data with the same precision as Berkovec and Zorn because HUD has included HMDA-reported non-metropolitan loans, which are poorly reported by HMDA. Freddie Mac is incorrect. HUD's analysis in Table A.4a is based on HMDA and GSE data for only metropolitan areas. In addition, HUD does not include GSE purchases of FHA loans in Table A.4a, as suggested by Freddie Mac.
- On page 1 of its Appendix III, Freddie Mac states that HUD's market projections ''effectively are based on an analysis of mortgage lending patterns since 1995.'' Freddie Mac is incorrect, as explained in B.3 above and throughout this appendix. For example, as reported in Table D.15 below, the low-mod share of the conventional conforming market has averaged over 56 percent since 1995; this compares with HUD's projection of 50–55 percent for this market.
- On page 6 of its Appendix III, Freddie Mac states that HMDA accurately reports multifamily originations for commercial banks. HUD's analysis concurs with that of other researchers that HMDA significantly underreports multifamily originations by commercial banks. For example, Crews, Dunsky and Follain (1995) conclude that ''HMDA surely underestimates lending by both mortgage bankers and commercial banks.'' [18]
- On pages 20–21, Freddie Mac uses the AHS and POMS to estimate the distribution of newly-mortgaged units by property type. Based on this analysis, Freddie Mac estimates that multifamily units represented 10.6 percent of newly financed dwelling units over the 1993–95 period. Based on HUD's calculations, however, multifamily units were 20.6 percent of conventional conforming units financed during 1993–1995. Freddie Mac may have underestimated the number of rental units by excluding observations with missing origination year, and may have overestimated the number of single-family units by including jumbo or FHA loans.
- In its comments (page 30) about the low-mod goal, Freddie Mac states that ''an analysis limited to the exceptional economic environment since 1995 would suggest a narrow range centered at 50 percent * * *''. As explained in Section F of this appendix, the low-mod goal averaged 56.5 percent between 1995 and 1998.
- On pages 34 and 35 of its comments, Fannie Mae states that HUD's approach to housing and economic conditions involves ''point estimates''. As this appendix makes clear, HUD's analysis is based on a range of market estimates—not point estimates as stated by Fannie Mae. Of course, the ''likely single-family mortgage market volume ranges'' chosen by Fannie Mae are not necessarily the ones HUD would choose for setting housing goals for the next three years. Fannie Mae offers wide ranges in mortgage market projections for the years 2001–03; for example, $771 billion to $1,706 billion is its projection for the year 2001.
- Fannie Mae states ''HUD should provide an explicit range of goals based upon differing economic outlooks with reasonable chances of occurring—ranging from modest recession to a continued boom economy''. As demonstrated in Sections F–H, HUD's market ranges are reasonably set to include much more adverse economic and affordability conditions than have existed during the past few years.
- On pages 66–67, Fannie Mae estimates a market range of 48–51 percent for the Low-Mod Goal, 21–24 percent for the Special Affordable Goal, and 24–28 percent for the Underserved Areas Goals; the range covers a recession scenario and a growth scenario and

adjusts for B&C loans. Fannie Mae states that its market share analysis supports the proposed higher levels for the new housing goals but it also shows that the GSEs will experience greater difficulty achieving the new goals (and particularly the underserved areas goal) than suggested by HUD's market share estimates. Fannie Mae assumes a lower percentage of single-family and multifamily rental properties than HUD, which is one reason Fannie Mae obtains lower market estimates than HUD. Fannie Mae assumes that the goals-qualifying shares for the single-family owner market can fall to their 1993 levels when, for example, the underserved areas share of the owner market equaled 20 percent. As explained in Section G, HUD's range of market estimates (29–32 percent) for the underserved areas goal is consistent with the underserved areas owner percentage for the single-family market falling from its average of 28 percent over the 1995–98 period to 22 percent. Fannie Mae's assumes an additional two percentage point decline in its sensitivity analysis. It should also be noted that while Fannie Mae adjusts for B&C loans, it does not make the 1–2 percentage point upward adjustment to incorporate the effects of underserved counties in non-metropolitan areas.

9. Conclusions

In considering the levels of the goals, HUD carefully examined the comments on the methodology used to establish the market share for each of the goals. 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 the percentage range for each of the three market share estimates do not need to be adjusted from those reported in the proposed rule. While a number of technical changes have been made in response to the comments, 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. HUD recognizes the uncertainty regarding some of these estimates, which has led the Department to undertake a number of sensitivity and other analyses to reduce this uncertainty and also to provide a range of market estimates (rather than precise point estimates) for each of the housing goals.

C. Size of the Conventional Multifamily Mortgage Market

This section derives projections of conventional multifamily mortgage origination volume.[19]

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 1999, 9.5 percent of units financed by Fannie Mae were multifamily, but 95 percent of those units met the Low- and Moderate-Income Goal, accounting for 20 percent of all of Fannie Mae's low- and moderate-income purchases for that year.[20] Multifamily acquisitions are also of strategic significance with regard to the Special Affordable Goal. In 1999, 43 percent of units backing Freddie Mac's multifamily acquisitions met the Special Affordable Goal, representing 22 percent of units counted toward its Special Affordable Goal, at a time when multifamily units represented only 8.3 percent of total annual purchase volume.[21]

This discussion is organized as follows: Section 1 identifies and evaluates available data resources regarding the dollar value of conventional multifamily mortgage origination during 1990–1999. Section 2 discusses loan amount per unit, a key parameter in estimating the number of units backing multifamily originations. Section 3 summarizes findings from a variety of sources regarding the size of the conventional multifamily mortgage market, measured in terms of dollars, units, and as a share of total conventional conforming annual mortgage origination volume, a key factor influencing the share of the overall market comprised of units meeting each of the housing goals. Inferences regarding the likely range and ''baseline'' estimates of annual multifamily origination volume for 1990–1999 are drawn.

1. Multifamily Data Sources

This section considers a number of alternative data sources providing evidence on conventional multifamily origination volume over a number of years, in some cases the entire 1990–1999 period. The approaches considered here include the HUD Survey of Mortgage Lending Activity (SMLA); Home Mortgage Disclosure Act data (HMDA); and a projection model developed by the Urban Institute based on data from the 1991 Residential Finance Survey (RFS). A new methodology, developed by HUD for purposes of this analysis, is discussed, as are estimates submitted by Fannie Mae and Freddie Mac in connection with the Department's GSE rulemaking efforts. Estimates for 1990 from the RFS and for 1995 from the Property Owners and Managers Survey (POMS) are also discussed.

a. Survey of Mortgage Lending Activity (SMLA)

The data that enter into SMLA were compiled by HUD until 1998 from source materials generated in various ways from the different institutional types of mortgage lenders. Data on lending by savings associations were collected for HUD by the Office of Thrift Supervision; these data cover all thrifts, not a sample. Mortgage company and life insurance company data were 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 were collected through sample surveys conducted by a number of different entities over the years. Federal credit agencies such as the U.S. Small Business Administration and HUD non-FHA programs as well as State credit agencies such as housing finance agencies reported their data directly to HUD. Local credit agency data are collected by HUD staff from a publication that lists their mortgage financing activities. The SMLA was discontinued by HUD in 1998, and data are available only through 1997.

Commercial bank data in the SMLA have been questioned by a number of researchers. Part of the problem arises from the possibility of double-counting of originations by mortgage banks in the American Bankers Association (ABA) and Mortgage Bankers Association (MBA) surveys conducted as part of SMLA. Originations by mortgage banks which are affiliated with commercial banks may be counted in both surveys. A 1995 analysis prepared by Crews, Dunsky and Follain found that, in 1993, the SMLA conventional origination figure of $30 billion was calculated on the basis of overstated originations by commercial banks, but understated lending volume by mortgage banks, life insurance companies, and individuals. Taking all of these factors into consideration, as well as other evidence, they conclude that actual 1993 origination volume appears to be in the range of $25-$30 billion.[22]

One solution to the double-counting problem in SMLA is to remove the mortgage bank subtotal from total origination volume. The resulting figure may provide a more accurate representation of conventional multifamily lending volume. Table D.2 presents SMLA figures for 1990–1997, including and excluding mortgage banks.

BILLING CODE 4210–27–P

Table D.2

Multifamily Conventional Origination Volume, 1990-1997 Survey of Mortgage Lending Activity

Year	Total ($ billions)	Total less Mortgage Banks ($ billions)
1990	$30.6	$25.9
1991	$24.6	$22.7
1992	$25.2	$23.5
1993	$30.0	$28.9
1994	$31.7	$31.7
1995	$37.9	$32.4
1996	$43.7	$33.3
1997	$44.6	$35.5

BILLING CODE 4210–27–C

b. Home Mortgage Disclosure Act (HMDA)

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 U.S.C. 2801). HMDA reporting requirements generally apply to all depository lenders with more than $29 million in total assets and which have offices in Metropolitan Statistical Areas. Reporting is generally required of other mortgage lending institutions (*e.g.* mortgage bankers) originating at least 100 home purchase loans annually provided that home purchase loan originations exceed 10 percent of total loans. 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.

A deficiency of the HMDA database is that there is compelling evidence of significant underreporting of multifamily mortgages. In their 1995 analysis, Crews, Dunsky and Follain conclude ''We clearly demonstrate that HMDA alone is not an accurate measure of the total market. Our argument is based upon two facts. First, HMDA was not designed to cover multifamily lending by all lenders; it focuses on lending done primarily by commercial banks, thrifts, and large mortgage bankers in metropolitan areas. Second, HMDA surely underestimates lending by both mortgage bankers and commercial banks.'' [23] In its comments submitted in response to HUD's proposed rule, Fannie Mae observes that ''HMDA is not considered a reliable source of multifamily mortgage originations because it provides an incomplete view of non-depository institution sources of loans.'' [24]

It does not appear that HMDA has significantly improved its multifamily coverage since the time of the 1995 Crews, Dunsky and Follain analysis. For example, in 1998, HMDA reports approximately $1 billion in FHA multifamily origination volume, compared with $2.5 billion reported by FHA. The underreporting appears to be even more serious with regard to GSE acquisitions. The 1998 HMDA file reports approximately $2 billion in Fannie Mae multifamily transactions, compared with an actual total of $12.5 billion. A sizeable shortfall is also evident with regard to Freddie Mac, with HMDA reporting 1998 transactions volume of $295 million, compared with an actual figure of $6.6 billion.

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.

One way to address the undercounting problem in HMDA is to incorporate an adjustment factor to correct for underreporting, for example by multiplying each year's annual total by 1.25, as suggested by PriceWaterhouseCoopers (PWC) in their report prepared for Freddie Mac in connection with HUD's proposed rule. However, this 1.25 correction factor is based upon an estimate of underreporting of single-family loans in HMDA, and may be too small to accurately capture the degree of multifamily underreporting in HMDA, judging from comparisons between actual and HMDA-reported volume by the GSEs and FHA cited above.

To the adjusted HMDA figure, PWC then adds an estimate for originations by life insurance companies by utilizing figures on multifamily loan commitments published by the American Council on Life Insurance (ACLI), a trade group which conducts regular surveys. Table D.3 shows annual conventional multifamily origination volume as reported in HMDA, as well as an adjusted HMDA figure including a 1.25 correction factor as well as the ACLI figure for loan commitments in the last quarter of the preceding year as well as the first three quarters of each origination year. In calculating annual totals, the absolute value is taken of loan amounts reporting as negative numbers. The table shows a sharp drop in origination volume between 1990 and 1991, possibly associated with the commercial real estate recession of the early 1990s. However, the implication that multifamily mortgage lending has remained 20 percent below the 1990 level for the entire remainder of the decade is inconsistent with

other data sources, and raises further concerns regarding the accuracy and reliability of HMDA as a multifamily data source.

BILLING CODE 4210–27–P

Table D.3

Multifamily Conventional Origination Volume, 1990-1998* Home Mortgage Disclosure Act

Year	Total ($ billions)	1.25*HMDA + ACLI ($ billions)
1990	$38.8	$51.4
1991	$8.1	$11.8
1992	$10.2	$14.0
1993	$12.8	$17.9
1994	$14.7	$21.4
1995	$12.8	$20.4
1996	$15.8	$23.8
1997	$19.6	$28.8
1998	$27.1	$38.3

* Calculating using absolute value of loan amounts < 0.

BILLING CODE 4210–27–C

A difficulty with the adjustment factor approach is that very little is known regarding the degree of underreporting of multifamily originations in HMDA. There is no reason that the 20 percent underreporting figure sometimes used in single-family discussions of HMDA is applicable to multifamily. Indeed, if the degree of underreporting of FHA originations or GSE acquisitions noted above is representative, even the adjusted HMDA figures are likely to significantly underreport the actual totals.

c. Urban Institute Statistical Model

In 1995, Urban Institute researchers developed a model to project multifamily origination volumes from 1992 forward, based on data from the 1991 Survey of Residential Finance.[25] 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.

Table D.4 shows annual projected conventional multifamily origination volume as reported in the Urban Institute model, derived by subtracting actual FHA origination volume from the overall projected multifamily total each year, except in 2000, when 1999 FHA originations are used as a proxy for 2000 originations.

BILLING CODE 4210–27–P

Table D.4

Projected Multifamily Conventional Origination Volume, 1990-2000* Urban Institute Hazard Model

Year	Total ($ billions)
1992	$28.7
1993	$30.2
1994	$33.8
1995	$38.5
1996	$40.6
1997	$43.9
1998	$40.6
1999	$48.8
2000	$50.6

* Subtracts actual FHA originations from projected total originations each year, except 2000, which uses 1999 FHA originations as proxy for 2000.

BILLING CODE 4210–27–C

d. New Methodology for Recent Years

In the context of (i) the discontinuation of SMLA; (ii) evidence of significant underreporting in HMDA; and (iii) increased availability of data regarding purely private, non-GSE securitization of commercial mortgage loans, HUD has developed a new methodology for the purpose of preparing a lower-bound estimate for the minimum size of the multifamily market. The following sources are combined to calculate the estimated size of the conventional multifamily market in a way that is relatively complete, but which avoids double-counting and excludes seasoned loans:

(1) *HMDA portfolio loans.* This component comprises conventional loans originated by depositories and not sold, plus conventional loans acquired by depositories but not sold, less overlap between these two categories. In principle, if a loan originated during the current year is acquired by a depository, it should show up as an origination. However, due to underreporting, this is not always the case. The procedure utilized here is to sum conventional originations by depositories and conventional acquisitions by depositories, and then to utilize a matching procedure to identify loans falling into both categories, which are then subtracted.

(2) *GSE purchases of current-year acquisitions.* A data series on GSE multifamily transactions covering 1995–1999 that excludes non-GSE securities and repurchased GSE securities is published by OFHEO in their 2000 Report to Congress. These exclusions are needed in order to avoid double-counting. However, this figure must be further adjusted to take into consideration the fact that some of these transactions involved seasoned purchases, and a few involve government-insured mortgages. In order to adjust the data for this possibility, the OFHEO figures are reduced by 33 percent, the figure derived by calculating the proportion of seasoned and FHA mortgages among the GSEs' cash and swap transactions during 1995–1999, using GSE loan-level data provided to HUD. Any loans sold by depositories to the GSEs would be counted here, but not in the HMDA component, which is restricted to loans kept in portfolio by depositories.

(3) *Commercial Mortgage Backed Security multifamily loans. Commercial Mortgage Alert,* Hoboken NJ, publishes detailed, transaction-level database that provides information on transaction size and the proportion of collateral comprised by multifamily collateral for the entire 1990–1999 period. Multifamily loan amounts at the transaction level are derived by applying the multifamily proportion to the transaction amount. These transaction-level loan amounts are then aggregated over all transactions conducted during a calendar year to derive an annual total. This data series identifies securitizations by depositories, government and insurance companies; seasoned loans; GSE transactions; and transactions involving foreign collateral, all of which are in order to avoid double-counting. Thus, loans included in this component consist of nongovernment, non-GSE securitizations of recently-originated mortgages by non-depository, non-life insurance company institutions.

(4) *Conventional originations by life insurance companies.* Source: American Council on Life Insurance (ACLI) quarterly data on multifamily loan commitments. Annual originations estimated by combining commitment in the last quarter of the preceding year and the first three quarters of the origination year.

(5) *Conventional originations by private pension funds; state and local retirement funds; federal credit agencies; state and local credit agencies.* Source: SMLA (1990–1997). Data not available for 1998 and subsequent years.

This methodology is intended to generate a lower-bound estimate for the annual size of the conventional multifamily mortgage origination market. A more accurate and realistic estimate could be derived if corrections for the following could be generated:

(1) *HMDA under-reporting.* To the extent that lenders do not report to HMDA, this data source leads to downward bias in origination

volume attributable to the depository sector. While the true extent of under-reporting is unknown, a correction factor of 1.25 could be employed.

(2) *State and local credit agencies, state and local retirement funds, noninsured pension funds* are not counted following 1997 because of the discontinuation of SMLA.

(3) *REITs, individuals.* FRB data show significant growth in multifamily mortgage debt held by ''individuals and others'' including mortgage companies, real estate investment trusts, state and local credit agencies, state and local retirement funds, noninsured pension funds, credit unions, and finance companies. Estimates derived using the above procedure do not include any data on originations by individuals. Some REIT activity is included to the extent that REITs purchase CMBS included in the CMBS database. However, circumstances where REITs originate and hold mortgage loans without securitizing them would not be included.

(4) *Pipeline effects.* Conduit loans originated during the current year but which remain in securitization pipelines as of the end of the year are not counted. However, this is mitigated by inclusion of CMBS transactions conducted during the calendar year, which may include a small number of loans originated late in the prior year.

Table D.5 illustrates annual estimated conventional multifamily origination flow utilizing this methodology. A shortcoming of the methodology is that it shows a sharp, $10 billion increase in origination volume from 1995–1996 which does not appear on any of the other data sources discussed above. This discontinuity may, in part, reflect improved data quality during the latter part of the decade as increased CMBS transactions volume has promoted greater market transparency and more complete and accurate public reporting with regard to this market segment. It may therefore be concluded that this methodology appears to provide more reliable estimates for the latter part of the decade, from 1996 forward, than with regard to 1995 and earlier years.

BILLING CODE 4210–27–P

Table D.5
Estimated Multifamily Conventional Origination Volume, 1995-2000
New HUD Methodology
($ millions)

	1995	1996	1997	1998	1999 [6]	2000 [7]
Fannie Mae[1]	$ 3,322	$ 4,315	$ 4,370	$ 7,644	$ 6,697	$ 5,641
Freddie Mac[1]	1,047	1,491	7,136	2,615	4,803	5,096
CMBS multifamily[2]	0	4,436	1,499	15,677	10,805	8,271
HMDA-portfolio[3]	15,714	17,321	18,521	22,485	19,336	19,162
Life companies[4]	3,072	4,115	4,403	4,465	2,865	3,805
Private pension funds[5]	427	812	835			
St. & local retirement funds[5]	228	197	228			
Federal credit agencies[5]	627	404	408			
St. & local credit agencies[5]	358	1,394	840			
Total	24,795	34,484	38,240	52,886	44,505	41,976

[1] Source: OFHEO, 2000 Report to Congress. Cash purchases from lenders plus lender-originated securitizations; excludes non-GSE securities and repurchased GSE securities.
Adjusted for estimated seasoned and FHA volume.

[2] Commercial Mortgage Alert (CMA) database. Excludes agency, bank, thrift, insurance company, foreign, and seasoned securitizations.

[3] Conventional multifamily loans originated by depositories but not sold, plus conventional multifamily loans acquired by depositories but not sold, less overlap.

[4] Source: ACLI.

[5] Source: SMLA.

[6] HMDA figure estimated projected based on 1998 HMDA in conjunction with 1998-1999 change in transactions volume for GSE and CMBS market segments.

[7] Estimate based on partial-year data.

e. Fannie Mae

Fannie Mae has developed a number of estimates of the size of the conventional multifamily mortgage market that it has shared with the Department. In discussions with HUD staff in connection with the Department's 1995 GSE final rule, Fannie Mae estimated the size of the market in 1994 at $32.2 billion, and in 1995 at $33.7 billion. In discussions with HUD staff in connection with the 2000 proposed rule, Fannie Mae provided estimates for 1997–1999 based on a combination of data sources including SMLA, HMDA, ACLI, *Commercial Mortgage Alert*, and the Office of Thrift Supervision. Fannie Mae's estimates are summarized in Table D.6.

Table D.6

Estimated Multifamily Conventional Origination Volume, 1994-1999 Fannie Mae

Year	Total ($ billions)
1994	$ 32.2
1995	$ 33.7
1996	
1997	$35-40
1998	$40-45
1999	$37-41

f. Freddie Mac

In its comments submitted in response to HUD's proposed rule, Freddie Mac provided estimates of the size of the conventional multifamily market for 1995–1997. Some of these estimates are derived from HMDA, incorporating a 25 percent expansion factor to adjust for underreporting, plus estimated originations by life insurance companies, pension funds, and government credit agencies. Other estimates are derived by combining HMDA with SMLA. Freddie Mac derives an alternative estimate for 1995 using the public-use version of the Property Owners and Managers Survey (POMS). In discussions with HUD staff in connection with the 2000 proposed rule, Freddie Mac staff provided an estimate of the 1998 conventional multifamily market of $40–$50 billion. Freddie Mac's estimates are summarized in Table D.7.

Table D.7

Estimated Multifamily Conventional Origination Volume, 1995-1998 Freddie Mac

Year	Total ($ billions)
1995	$21-27
1996	$24-29
1997	$28-30
1998	$40-50

BILLING CODE 4210–27–C

g. Other Estimates

1990 Residential Finance Survey (RFS). The 1990 Residential Finance Survey (RFS) can be utilized to derive an estimate of the size of the conventional multifamily market in 1990. Because loans originated during 1989–1991 are grouped together during in the public use version of the RFS, a combined figure for loans originated over this time period must be divided by 2⅓ to derive estimated 1990 conventional origination volume of $37.4 billion.

HUD Property Owners and Managers Survey (POMS). HUD's analysis of data in the HUD Property Owners and Managers Survey (POMS) yields an estimated size of the 1995 multifamily origination market of approximately $37 billion. Analysis of this survey data is complicated by virtue of the

fact that data on mortgage loan amount are missing for a large number of properties, requiring the imputation of missing values, and also because the mortgage loan amount is ''topcoded'' on some observations in order to protect the privacy of respondents. Such topcoding complicates the use of multiple regression techniques for imputation of missing values. In order to more effectively utilize regression techniques, HUD staff and contractors were sworn in as special employees of the Census Bureau in order to gain access to the internal Census file. The regression specification with the greatest explanatory power imputed missing loan amounts on the basis of number of units, region of the country, and a dummy variable for large properties with more than 1,000 units. The use of this specification yielded an estimated total multifamily market size of $39.1 billion. After subtracting $2.3 billion in FHA-insured originations, this yields $36.7 billion as the estimated size of the conforming multifamily mortgage market in 1995. Details are provided in Table D.8.

BILLING CODE 4210–27–P

Table D.8

Regression Analysis of Mortgage Loan Amount, 1995 Originations
Property Owners and Managers Survey
Multifamily properties (5+ units)
Unit weights

Regressor	Parameter estimate	T	Prob > |T|		
INTERCEPT	1477530	2.907	0.0043	Adj. R2=	0.6933
T_UNITS	18172	10.66	0.0001	F=	62.932
NE	-323736	-0.459	0.6533	Prob>F=	0.0001
MW	-1463703	-2.128	0.0352	DF=	132
S	-2094596	-2.896	0.0044		
BIG_PROP	25316150	6.613	0.0001		

2. Loan Amount per Unit

Another issue regarding the multifamily mortgage market concerns average loan amount per unit. This ratio is used in converting estimates of conventional multifamily lending volume as measured in dollars into a number of units financed. For this purpose, the ratio of total UPB to total units financed, rather than UPB on a ''typical'' multifamily unit, is the appropriate measure, since the objective of this exercise is to convert total UPB to total units financed.

For the purposes of estimating the number of units financed in the conventional multifamily market during 1993–1998, publicly available GSE loan-level data appear to generate reasonable loan amount per unit figures. The public use version of the GSE data do not provide a means for excluding seasoned loans, which limits the usefulness of the data for the purpose of analyzing current-year originations, but this does not appear to be a major shortcoming for the purposes of this analysis.

The GSE loan-level data are not available for 1990–1992. For this time period, therefore, multifamily loan amount per unit must be estimated utilizing an alternative technique. The method utilized here is to calculate the ratio of the average conventional conforming single-family mortgage to the average per-unit multifamily mortgage loan amount over 1993–1998.[26] The resulting figure (3.57) is then applied to average single-family loan amounts over 1990–1992 to derive estimated multifamily per-unit loan amounts for this earlier time period. The resulting annual multifamily per-unit loan amount series for 1990–1998 is applied in the following section of this discussion to the estimated dollar volume of conventional multifamily originations to derive an estimate of annual origination volume measured in dwelling units.

While HUD's market share analysis for purposes of this final rule does not rely on assumptions regarding per-unit loan amounts on a going-forward basis, further discussion of the issue is warranted in light of comments by Freddie Mac in response to the analysis supporting HUD's proposed rule. Freddie Mac forecasts that per-unit loan amounts will rise to $37,500 to $40,000 over 2000–2003. This forecast is based in part upon a sudden increase in GSE per-unit loan amounts from approximately $31,000 in 1998 to more than $35,000 in 1999. In reality, however, this increase is almost entirely attributable to Freddie Mac, which experienced an increase in per-unit loan amount of more than $10,000 over 1998–1999, in contrast to Fannie Mae, which experienced an increase of only about $200 over this time period. (See Table D.9 for details.)

Table D.9

Multifamily Loan Amount per Unit, 1990-1999
Freddie Mac

	UPB per unit*	FNMA UPB	FNMA units	FNMA UPB/unit	FHLMC UPB	FHLMC units	FHLMC UPB/unit	CMBS UPB	CMBS units	CMBS UPB/unit
1990	$ 23,847									
1991	$ 24,951									
1992	$ 25,888									
1993	$ 24,300	$ 4,602	186,471	$ 24,682	$ 191	10,794	$ 17,710			
1994	$ 21,156	$ 4,735	221,420	$ 21,383	$ 913	45,538	$ 20,052			
1995	$ 24,825	$ 5,958	235,358	$ 25,316	$ 1,582	68,381	$ 23,138			
1996	$ 25,268	$ 7,037	272,931	$ 25,782	$ 2,350	98,574	$ 23,843			
1997	$ 27,266	$ 6,896	253,065	$ 27,251	$ 2,716	99,469	$ 27,304			
1998	$ 31,041	$ 12,503	393,397	$ 31,782	$ 6,578	221,319	$ 29,723	$ 12,465	406,006	$ 30,702
1999	$ 30,719	$ 9,393	294,091	$ 31,938	$ 7,621	191,492	$ 39,798	$ 9,238	300,724	$ 30,719

* 1990-1992: Average single-family conventional conforming loan amount/3.57.
1993-1998: GSE data.
1999: CMBS data.

BILLING CODE 4210–27–C

Additional information regarding multifamily loan amount per unit can be derived from loan-level data on multifamily mortgages contained in prospectus disclosures. This data source yields an average per-unit loan amount of approximately $31,000 in both 1998 and 1999, based on $12.5 billion in 1998 non-GSE multifamily transactions and $9.2 billion the following year. Thus, the large increase in loan-amount per unit in the GSE data for 1999 does not appear to be representative of larger trends in the multifamily market. Rather, it appears to reflect changes in Freddie Mac's business practices which may or may not be evident in future years.[27]

3. Conventional Multifamily Origination Volume, 1990–1999

Taken by itself, none of the data sources appears to definitively answer the question of the size of the market each year for the entire time period, but taken together, the various data sources can be compared and analyzed in relation to each other in order to determine a likely range of estimates. Table D.10 brings together the various estimates discussed here, and presents the results of calculations of the multifamily share of the conventional conforming mortgage market derived using per-unit loan amounts discussed above.[28] As discussed below in Section E, the multifamily share of units financed in the conventional conforming market (or ''multifamily mix'') is a key determinant of the share of units meeting each of the HUD housing goals.

BILLING CODE 4210–27–P

Table D.10

Estimates of Conventional Multifamily Mortgage Market ($ billions) and Multifamily Share of Entire Conventional Conforming Market

	1. SMLA	2. New	3. ACLI+ 1.25*HMDA	4. UI	5. FNMA	6. FHLMC	7. misc	8. Likely Range	
1990	$ 30.6 $ (25.9)		$ 51.4 45.4%				$ 37.4 (RFS)		
1991	$ 24.6 $ (22.7)		$ 11.8 12.0%					$ 22 16%	$ 24 17%
1992	$ 25.2 $ (23.5)		$ 14.0 7.7%	$ 28.7 13.1%				$ 24 11%	$ 26 12%
1993	$ 30.0 $ (28.9)		$ 17.9 7.7%	$ 30.2 13.8%				$ 28 13%	$ 30 14%
1994	$ 31.7 $ (31.7)		$ 21.4 15.0%	$ 33.8 21.5%	$ 32.2 (meeting)			$ 31 20%	$ 33 21%
1995	$ 37.9 $ (32.4)	$ 24.8 15.8%	$ 20.4 14.3%	$ 38.5 22.6%	$ 33.7 (meeting)	$21-27 (comments)	$ 36.7 (POMS)	$ 33 20%	$ 35 21%
1996	$ 43.7 $ (33.3)	$ 34.5 17.7%	$ 23.8 13.0%	$ 40.6 20.1%		$24-29 (comments)		$ 33 17%	$ 37 19%
1997	$ 44.6 $ (35.5)	$ 38.2 17.3%	$ 28.8 13.8%	$ 43.9 19.4%	$35-40 (comments)	$28-30 (comments)		$ 36 16%	$ 40 18%
1998		$ 52.9 13.6%	$ 38.3 9.5%	$ 40.6 12.3%	$40-45 (comments)	$40-50 (meeting)		$ 52 13%	$ 55 14%
1999		$ 44.5 13.6%		$ 48.8 15.6%	$37-41 (comments)		$ 42.4 (FRB)	$ 45	$ 48
2000 (prjctd.)		$ 42.0		$ 50.6*				$ 42	$ 44

1 Top figure is conventional multifamily originations reported in SMLA.
Bottom figure in parentheses is total conventional multifamily originations less originations by mortgage banks.

2 New methodology combining HMDA portfolio lending by depositories; multifamily CMBS; estimated GSE acquisitions of current-year originations; and originations by other financial institutions reported in SMLA. See text for details.

3 Combines multifamily originations in HMDA, multiplied by 1.25, plus commitments by life insurance companies in fourth quarter of preceding year and first three quarters of current year. Market shares derived by dividing by estimated total conforming conventional origination volume. See text for details.

4 Actual FHA originations subtracted from total multifamily originations projected in Urban Institute model.
Assumes 2000 FHA originations at 1999 level.

5 1994-1995 estimates from meetings between Fannie Mae and HUD staff in connection with HUD 1995 GSE Rule.
1997-1999 estimates from Fannie Mae comments on HUD 2000 proposed GSE rule.

6 1995-1997 estimates from Freddie Mac comments on HUD 2000 proposed GSE rule.
1998 estimate from meeting between Freddie Mac and HUD in connection with HUD 2000 GSE Rule, March 25, 1999.

7 RFS estimate from mortgages originated during 1989-1991 divided by 2 1/3. See HUD (1995), 61972 for details.
POMS estimate from analysis of internal Census Bureau POMS data.
FRB figure is 1999 net multifamily borrowing figure published by Federal Reserve Board of Governors.

8 Likely range taking into consideration the reliability of various estimates presented here.

In the 1991–1994 period, the SMLA can be utilized to derive annual estimates of multifamily origination volume after removing originations by mortgage banks in order to eliminate double-counting of lending in the commercial bank and mortgage bank surveys included in SMLA. The plausibility of the revised SMLA estimates during this time period is enhanced by their proximity to other, independently derived figures. For example, the 1992 revised SMLA estimate of $23.5 billion is relatively close to the Urban Institute (UI) estimate of $28.7 billion during the period of time when the UI projection model is presumably most reliable, since it was based on the 1991 RFS, a relatively recent data source during the early 1990s. The 1994 revised SMLA estimate of $31.7 billion is relatively close to the Fannie Mae estimate of $32.2 billion. It is not clear that the "augmented" HMDA methodology introduced by PWC adequately corrects for undercounting. The likely range of estimates for the 1991–1994 period therefore express a range of uncertainty around the revised SMLA figures.

In 1995, it appears likely that actual origination volume lies somewhere between the revised SMLA ($32.4 billion) and POMS ($36.7 billion) estimates. The Freddie Mac

POMS figure of $27 billion, based on the public-use version of the POMS file, may be affected adversely by topcoding, and for this reason the HUD POMS estimate, derived from internal Census data, may be considered more reliable. The Fannie Mae estimate of $33.7 billion lies approximately in the middle of the reasonable range of $33-$35 billion for 1995. Freddie Mac's HMDA-based methodology, generating an estimate of $21 billion, appears to suffer from significant undercounting as discussed above. Overall, the Fannie Mae multifamily estimates summarized here appear to reflect more careful consideration of the various components of the multifamily market, in contrast to the mechanical application of a 25 percent correction factor to the HMDA data by Freddie Mac, based on estimated *single-family* underreporting.

HUD's new methodology can be utilized for the years 1996 and later, in part because the accuracy and completeness of CMBS data expanded rapidly during this time period. The new methodology estimate of $34.5 billion for 1996 is close to the revised SMLA estimate of $33.3 billion. Based on these two independent estimates, a likely range of $33–37 billion is selected.

In 1997, the new methodology ($38.2 billion) and the revised SMLA figure ($35.5 billion) diverge slightly, but remain relatively close to each other, and to Fannie Mae's estimate of $35–40 billion, in comparison with other methodological choices. In light of these three, relatively consistent estimates, a likely range of $36–40 billion is a reasonable choice for 1997.

HUD's new methodology generates a 1998 estimate of $52.9 billion, exceeding even Freddie Mac's estimate of $40–50 billion. However, because of the careful avoidance of double-counting in construction of this methodology, it is difficult to see how conventional multifamily volume could be less than $52.9 billion. Indeed, because of the discontinuation of the SMLA in 1998, the $52.9 billion new methodology estimate does not include originations by pension funds or government credit agencies. Therefore, a likely range of $52–55 billion appears reasonable.

Table D.10 concludes with estimates for 1999 origination volume as well as projections for 2000. The Federal Reserve Board of Governors has published data indicating that *net* multifamily borrowing in 1999 was $42.4 billion.[29] Because net multifamily borrowing includes only increases in the stock of indebtedness, it excludes refinance loans, which are a significant component of the multifamily origination market. Hence, the Federal Reserve figure can be used as a lower bound for 1999 origination volume. Consequently, it would appear reasonable to reject the Fannie Mae figure of $37–$41 billion for 1999 as unrealistically low. Because it is based on data regarding the multifamily mortgage market from 1991, the UI figure of $48.8 billion may not be valid. Of the four 1999 estimates reported in Table D.10, the $44.5 billion HUD figure appears to be the most reliable. Because this figure excludes several important conventional lending categories, such as pension and retirement funds and state and federal agencies, it would appear to be on the low side of the likely range. Based on information on origination volume represented by these omitted categories in the years prior to discontinuation of the SMLA, a likely range of $45–$48 billion for 1999 may be derived.

Multifamily Mix During the 1990s. Based on the likely range of annual conventional multifamily origination volume, multifamily units represent an average of 16–17 percent of units financed each year during the 1990s.[30] HUD's estimated multifamily market shares exceed estimates prepared by PWC (averaging 8.7 percent for 1991–1998) for two reasons.[31] One is that PWC's adjusted HMDA methodology does not adequately correct for underreporting in HMDA, resulting in unrealistically low estimates of the size of the conventional multifamily origination market. Another reason that PWC's estimated multifamily market shares are low is that a number of their calculations appear to include FHA and jumbo loans in estimating the number of single-family units financed each year. For example, in 1998, PWC estimates the size of the single-family mortgage market at $1.5 trillion. This is identical to the widely-used estimate by the Mortgage Bankers Association (MBA) for the *entire* single-family mortgage market that year, including jumbo and FHA loans, as discussed previously. HUD's market share calculations, in contrast, are based on the multifamily share of conventional conforming mortgage loans originated each year.

The multifamily share of the conforming conventional market (or ''multifamily mix'') derived from this discussion of multifamily origination volume is utilized below as part of HUD's analysis of the share of units financed each year meeting each of the housing goals. For purposes of that analysis, a multifamily mix of 16.5 percent is reasonable, since it corresponds most closely to the midpoint of the likely range of estimates in Table D.10. However, a 15 percent market share can be utilized as an alternative market share estimate corresponding to a somewhat less favorable environment for multifamily lending. While somewhat low from an historical standpoint, a 15 percent mix more readily accommodates the possibility of a recession or heavy refinance year than would baseline assumptions based more strictly on historical data. In order to more fully consider the effects of an even more adverse market environments, an alternative multifamily mix assumption of 13.5 is also considered, as well as a number of others.

D. Single-Family Owner and Rental Mortgage Market Shares

1. Available Data

As explained later, HUD's market model will also use projections of mortgage originations on single-family (1–4 unit) properties. Current mortgage origination data combine 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 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 but it is quite dated, as it includes mortgages originated between 1987 and 1991. HMDA divides newly-originated single-family mortgages into two property types:[32]

(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 provided in Table D.11a. (Table D.11b will be discussed below.) Because HMDA combines the first two categories (SF–O and SF 2–4), the comparisons between the data bases must necessarily focus on the SF investor category. According to 1997 (1998) HMDA data, investors account for 9.4 (9.0 percent) percent of home purchase loans and 7.4 percent (5.5 percent) of refinance loans.[33] Assuming a 35 percent refinance rate per HUD's projection model, the 1997 (1998) HMDA data are consistent with an investor share of 8.7 (7.8) percent. The RFS estimate of 17.3 percent is approximately twice the HMDA estimates. In their comments, the GSEs argued that the HMDA-reported SF investor share of approximately 8 percent should be used by HUD. In its 1995 rule as well as in this year's proposed rule, HUD's baseline model assumed a 10 percent share for the SF investor group; alternative models assuming 8 percent and 12 percent were also considered. As discussed below, HUD's baseline projection of 10 percent is probably quite conservative; however, given the uncertainty around the data, it is difficult to draw firm conclusions about the size of the single-family investor market, which necessitates the sensitivity analysis that HUD conducts.

2. Analysis of Investor Market Share

Blackley and Follain

During the 1995 rule-making, 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 reports by Dixie Blackley and James Follain.[34] Blackley and Follain provide reasons why HMDA should be adjusted upward as well as reasons why the RFS should be adjusted downward. They find that HMDA may understate the investor share of single-family mortgages because of ''hidden investors'' who falsely claim that a property is owner-occupied in order to more easily obtain mortgage financing. RFS may overstate the investor share of the market because units that are temporarily rented while the owner seeks another buyer may be counted as rental units in the RFS, even though rental status of such units may only be temporary.

Blackley and Follain also noted that the fact that investor loans prepay at a faster rate than other single-family loans suggests that the investor share of single-family mortgage originations should be higher not lower than the investor share of the single-family housing stock. In comments, Freddie Mac questions this part of Follain and Blackely's analysis.

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.

Finally, 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. [35] In their 1996 paper, they conclude that 12 percent is a reasonable estimate of the investor share of single-family mortgage originations. [36] Blackley and Follain caution that uncertainty exists around this estimate because of inadequate data.

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 in Table D.11a were adjusted in two ways. First, the owner-occupied HMDA data were disaggregated between SF–O and SF 2–4 mortgages by assuming that SF 2–4 mortgages account for 2.0 percent of all single-family mortgages; according to RFS data, SF 2–4 mortgages represent 2.3 percent of all single-family mortgages so the 2.0 percent assumption may be slightly conservative. Second, the resulting mortgage-based distributions were shifted to unit-based distributions by applying the following unit-per-mortgage assumptions: 2.25 units per SF 2–4 property and 1.35 units per SF investor property. Both figures were derived from the 1991 RFS.[37]

Based on these calculations, the percentage distribution of newly-mortgaged single family dwelling units was derived for each of the various estimates of the investor share of single-family mortgages (discussed earlier and reported in Table D.11a). The results are presented in Table D.11b. 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.

BILLING CODE 4210–27–P

Table D.11a

Percentage Distribution of Single-Family Owner and Rental Mortgages

	1997 (1998) HMDA (Percent)				Projected (Assume 35% Refinance Rate)		1987-91[1] RFS	HUD's 1995 and 2000 Rules
	Purchase		Refinance					
SF-O	90.6	(91.0)	92.6	(94.5)	91.3	(92.2)	80.4	88.0
SF 2-4	(Included above)						2.3	2.0
SF Investor	9.4	(9.0)	7.4	(5.5)	8.7	(7.8)	17.3	10.0
Total	100.0	(100.0)	100.0	(100.0)	100.0	(100.0)	100.0	100.0

Note: The refinance rate of 35 percent is assumed in HUD's baseline model described in Section E.

Table D.11b

Percentage Distribution of Newly-Mortgaged Single-Family Owner and Rental Units

	1997 (1998) HMDA With 35% Refinance Assumption		1997-91 RFS	HUD's 1995 and 2000 Rules	Blackley/Follain Alternative
SF-O	84.6	(85.7)	73.8	83.0	80.6
SF-2-4 Owner[1]	*1.9	(1.9)	2.1	1.9	1.9
SF-2-4 Renter	*2.4	(2.4)	2.7	2.4	2.3
SF Investor	11.1	(10.0)	21.4	12.7	15.2
Total	100.0	(100.0)	100.0	100.0	100.0
SF-Rental	13.5	(12.4)	24.1	15.1	17.5

[1] 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 of the 2-4 property 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 and POMS will be used to estimate the affordability of the rental units.

* Estimate

BILLING CODE 4210–27–C

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 1995 rule and this year'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 1995 rule. Rental units account for 15.1 percent of all newly financed single-family units under HUD's baseline model, compared with 13.5 (12.4) percent under a model based on 1997 (1998) HMDA data.

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) While there is uncertainty concerning the relative size of this market, the projections made by HUD in 1995 appear reasonable and, therefore, will serve as the baseline assumption in the HUD's market share model for this year's final rule.

(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. Various sensitivity analyses of the market shares for single-family rental properties are conducted in Sections F, G, and H. These sensitivity analyses will include the GSEs' recommended model that assumes investors

account for 8 percent of all single-family mortgages. These sensitivity analyses will show the effects on the overall market estimates of the different projections about the size of the single-family rental market.

The upcoming RFS based on the year 2000 Census will help clarify issues related to the investor share of the single-family mortgage market. At that time, HUD will reconsider its estimates of the investor share of the mortgage market.

E. HUD's Market Share Model

This section integrates findings from the previous two sections about the 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.[38] 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 the number of single-family units that will be financed in the conventional conforming market, where single-family units (SF–UNITS) are defined as:

SF–UNITS=SF–O+SF 2–4+SF–INVESTOR

First, the dollar volume of conventional conforming single-family mortgages (CCSFM$) is derived as follows:

(1) CCSFM$=CONF%*CONV%*SFORIG$

Where

CONV%=conforming mortgage originations (measured in dollars) as a percent of conventional single-family originations; estimated to be 87%.[39]

CONF%=conventional mortgage originations as a percent of total mortgage originations; forecasted to 78% by industry and GSEs.[40]

SFORIG$=dollar volume of single-family one-to-four unit mortgages; $950 billion is used here as a starting assumption to reflect market conditions during the years 2001–2003.[41] Alternative assumptions will be examined later.[42]

Substituting these values into (1) yields an estimate for the conventional conforming market (CCSFM$) of $645 billion.

Second, the number of conventional conforming single-family mortgages (CCSFM#) is derived as follows:

(2) CCSFM#=CCSFM$/SFLOAN$

Where SFLOAN$=the average conventional conforming mortgage amount for single-family properties; estimated to be $110,000.[43] Substituting this value into (2) yields an estimate of 5.9 million mortgages.

Third, the total number of single-family mortgages is divided among the three single-family property types. Using the 88/2/10 percentage distribution for single-family mortgages (see Section D), the following results are obtained:

(3a) SF–OM#=.88*CCSFM#
=number of owner-occupied, one-unit mortgages
=5.2 million.

(3b) SF–2–4M#=.02*CCSFM#
=number of owner-occupied, two-to-four unit mortgages
=.1 million.

(3c) SF–INVM# =.10*CCSFM#
=number of one-to-four unit investor mortgages
=.6 million.

Fourth, the number of dwelling units financed for the three single-family property types is derived as follows:

(4a) SF–O=SF–OM#+SF–2–4M#
=number of owner-occupied dwelling units financed
=5.3 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
=.1 million.[44]

(4c) SF–INVESTOR=1.35*SF–INVM#
=number of single-family investor dwelling units financed
=.8 million.

Fifth, summing equations 4a–4c gives the projected number of newly-mortgaged single-family units (SF–UNITS):

(5) SF–UNITS = SF–O + SF 2–4 + SF–INVESTOR
= 6.2 million

b. Multifamily Units

The number of multifamily dwelling units (MF-UNITS) financed by conventional conforming multifamily originations is calculated by the following series of equations:

(5a) TOTAL = SF–UNITS + MF–UNITS

(5b) MF–UNITS = MF–MIX * TOTAL
= MF-MIX * (SF–UNITS + MF–UNITS)
= [MF–MIX/(1–MF–MIX)] * SF–UNITS

Where MF–MIX = the ''multifamily mix'', or the percentage of all newly-mortgaged dwelling units that are multifamily; as discussed in Section C, alternative estimates of the multifamily market will be included in the analysis. Section C concludes that 15.0 percent and 16.5 percent are reasonable projections for the year 2001–03. The baseline model assumes the more conservative of these two multifamily mixes—15 percent.

Assuming a multifamily mix of 15 percent and solving (5b) yields the following:

(5c) MF–UNITS = [0.15/0.85] * SF–UNITS
= 0.176 * SF–UNITS
= 1.1 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 = 7,308,558

(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. Dwelling Unit Distributions by Property Type

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.[45]

The projections used above in equations (1)–(6) produce the following distributions of financed units by property type:

	% Share		% Share
SF–O	72.2		
SF 2–4	2.0	SF–O	[46] 72.2
SFINVESTOR	10.8	SF–RENTER	12.8
MF–UNITs	15.0	MF–UNITS	15.0
Total	100.0	Total	100.0

Sections C and D discussed alternative projections for the mix of multifamily originations and the investor share of single-family mortgages. This appendix will focus on three multifamily mixes (13.5 percent, 15.0 percent, and 16.5 percent) but there will also be sensitivity analysis of other multifamily mix assumptions. Under a 16.5 percent multifamily mix'the average mix during the 1990s—the newly-mortgaged unit distribution would be 70.9 percent for Single-Family Owner, 12.6 percent for Single-Family Renter, and 16.5 percent for Multifamily-Units. This distribution is similar to the baseline distribution in HUD's 1995 final rule and in this year's proposed rule. The analysis in sections F-H will focus on goals-qualifying market shares for this property distribution as well as the one presented above for the more conservative multifamily mix of 15 percent.

The appendix will assume the following for the investor share of single-family mortgages—8 percent, 10 percent, and 12 percent. The middle value (10 percent investor share) is used in the above calculations and will be considered the ''baseline'' projection throughout the appendix. However, HUD recognizes the uncertainty of projecting origination volume in markets such as single-family investor properties; therefore, the analysis in Sections G–H will also consider market assumptions other than the baseline assumptions.

Table D.12 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 6.6 percentage points, from a low of 68.9 percent (multifamily mix of 16.5 percent coupled with an investor mortgage share of 12 percent) to a high of 75.5 percent (multifamily mix of 13.5 percent coupled with an investor mortgage share of 8 percent). The owner share under the baseline projections (15 percent mix and 10 percent investor) is 72.2 percent, which is slightly higher than the owner share (71.0 percent) in the baseline projection of HUD's 1995 rule and this year's proposed rule.

BILLING CODE 4210–27–P

Table D.12

Distribution of Financed Dwelling Units by Property Type for Different Projections of Multifamily and Single-Family Investor Originations

Investor Share Percentage of Single-Family Mortgage Market	Mulitfamily Mix (Percent)		
	13.5%	15%	16.5%
12 Percent			
Single-Family Owner-Occupied	71.4 %	70.1 %	68.9 %
Single-Family Rental	15.1	14.9	14.6
Multifamily	13.5	15.0	16.5
Total	100.0	100.0	100.0
10 Percent			
Single-Family Owner-Occupied	73.5 %	72.2 %	70.9 %
Single-Family Rental	13.0	12.8	12.6
Multifamily	13.5	15.0	16.5
Total	100.0	100.0	100.0
8 Percent			
Single-Family Owner-Occupied	75.5 %	74.3 %	73.0 %
Single-Family Rental	11.0	10.7	10.5
Multifamily	13.5	15.0	16.5
Total	100.0	100.0	100.0

BILLING CODE 4210–27–C

Comparison with the RFS. The Residential Finance Survey is the only mortgage data source that provides unit-based property distributions directly comparable to those reported in Table D.12. 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.[47] 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 (relative to single-family originations) during the mid-to late-1980s, which is the period covered by the RFS.[48] As noted earlier, the RFS based on the year 2000 census should clarify issues related to the rental segment of the mortgage market.

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.12. This section essentially accomplishes Steps 2 and 3 of the three-step procedure discussed in Section A.2.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 50–55 percent is a reasonable estimate of the mortgage market's low- and moderate-income share for the years (2001–2003) when the new goals will be in effect.

This rule establishes that the Low- and Moderate-Income Goal at 50 percent of eligible units financed in each of calendar years 2001–2003.

HMDA data for 1999 was not released until August 2000, thus it was not available at the time this rule was prepared.

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 who live in metropolitan areas and purchase a home or refinance their existing mortgage.[49] Table D.13 gives the percentage of mortgages originated for low- and moderate-income families for the years 1992–1998. Data for home purchase and refinance loans are presented separately; the discussion will focus on home purchase loans because they typically account for the majority of all single-family owner mortgages. For each year, a low- and moderate-income percentage is also reported for the conforming market without loans originated by lenders that primarily originate manufactured home loans (discussed below) in metropolitan areas.

BILLING CODE 4210–27–P

Table D.13

Single-Family Owner-Occupied Mortgage Market by Borrower Income

	Home Purchase		Refinance	
	Conforming Market	Market W/O Mfg loans	Conforming Market	Market W/O Mfg loans
Very-Low-Income Share				
1992	8.7 %	7.6 %	4.5 %	4.2 %
1993	10.8	9.6	5.8	5.6
1994	11.9	10.7	11.0	10.2
1995	12.0	10.5	12.3	11.2
1996	12.7	10.8	13.0	12.2
1997	13.0	11.0	14.5	13.9
1998	13.3	11.4	11.3	11.1
Low- and-Moderate Income Share				
1992	34.4 %	33.0 %	25.2 %	24.8 %
1993	38.9	37.4	29.3	29.1
1994	41.8	40.3	39.9	38.9
1995	41.4	39.2	41.1	39.6
1996	42.2	39.4	42.7	41.6
1997	42.5	39.6	45.0	44.1
1998	43.0	40.4	39.7	39.4

Source: HMDA data for metropolitan areas. "Market without manufactured housing loans" excludes loans by lenders that primarily originate manufactured housing loans and loans less than $15,000.

BILLING CODE 4210–27–C

Table D.13 also reports similar data for very-low-income families (that is, families with incomes less than 60 percent of area median income). As discussed in Section H, very-low-income families are the main component of the special affordable mortgage market.

Two trends in the income data should be mentioned—one related to the market's funding of low- and moderate-income families since the 1995 rule was written and the other related to the different borrower income distributions for refinance and home purchase mortgages.

Low-Mod Market Share Since 1995. As discussed in the 1995 rule, the percentage of borrowers with less than area median income

increased significantly between 1992 and 1994. Mortgages to low-mod borrowers increased from 34.4 percent of the home purchase market in 1992 to 41.8 percent of that market in 1994. Over the next four years (1995–98), the low-mod share of the home purchase market remained at a high level, averaging about 42 percent, or almost 40 percent if manufactured loans are excluded from the market totals. The share of the market accounted for by very-low-income borrowers followed a similar trend, increasing from 8.7 percent in 1992 to 11.9 percent in 1994 and then remaining at a high level through 1998. As discussed in Appendix A, this jump in low-income lending has been attributed to several factors, including a favorable economy accompanied by historically low interest rates; the entry into the housing market of more diverse groups including non-traditional households (*e.g.*, singles), immigrants, and minority families seeking homeownership for the first time; and affordable lending initiatives and outreach efforts on the part of the mortgage industry. Essentially, the affordable lending market is much stronger than it appeared to be when HUD wrote the 1995 rule. At that time, there had been two years (1993 and 1994) of increasing affordable lending for lower-income borrowers. The four additional years of data for 1995–98 show more clearly the underlying strength of this market.

It is recognized that lending patterns could change with sharp changes in the economy. However, the fact that there have been six years (1993–98) of strong affordable lending suggests the market may have changed in fundamental ways from the mortgage market of the early 1990s. The numerous innovative products and outreach programs that the industry has developed to attract lower-income families into the homeownership and mortgage markets appear to be working and there is no reason to believe that they will not continue to assist in closing troubling homeownership gaps that exist today. As explained in Appendix A, the demand for homeownership on the part of non-traditional borrowers, minorities, and immigrants should help to maintain activity in the affordable portion of the mortgage market. Thus, while economic recession or higher interest rates would likely reduce the low- and moderate-income share of mortgage originations, there is evidence that the low-mod market might not return to the low levels of the early 1990s.

Refinance Mortgages. HUD's model for determining the size of the low- and moderate-income market assumes that low-mod borrowers will represent a smaller share of refinance mortgages than they do of home purchase mortgages. However, as shown in Table D.4, the income characteristics of borrowers refinancing mortgages seem to depend on the overall level of refinancing in the market. During the refinancing wave of 1992 and 1993, refinancing borrowers had much higher incomes than borrowers purchasing homes. For example, during 1993 low- and moderate-income borrowers accounted for 29.3 percent of refinance mortgages, compared to 38.9 percent of home purchase borrowers. In 1998, another period of high refinance activity, low- and moderate-income borrowers accounted for 39.7 percent of refinance loans, versus 43.0 percent of home purchase loans. But during the years (1995–97) characterized by lower levels of refinancing activity, the low-mod share for refinance mortgages was about the same as that for home purchase mortgages. In 1997, the low-mod share of refinance mortgages (45.0) was even higher than the low-mod share of home loans (42.5 percent).

The projection model assumes that refinancing will be 35 percent of the single-family mortgage market. However given the volatility of refinance rates from year to year, it is important to conduct sensitivity tests using different refinance rates.

b. Manufactured Housing Loans

The mortgage market definition in this appendix includes manufactured housing loans,[50] which have become an important source of affordable housing and which the GSEs have started to purchase. Because the market estimates in HUD's 1995 rule were adjusted to exclude manufactured housing loans, several tables in this appendix will show how the goals-qualifying shares of the single-family-owner market change depending on the treatment of manufactured housing loans. As explained later, the effect of manufactured housing on HUD's metropolitan area market estimate for each of the three housing goals is a modest one percentage point

As discussed in Appendix A, the manufactured housing market has been increasing rapidly over the past few years, as sales volume has increased from $4.7 billion in 1991 to $15.3 billion in 1999. The affordability of manufactured homes for lower-income families is demonstrated by their average price of $44,000 in 1999, a fraction of the $196,000 for new homes and $168,000 for existing homes. Many households live in manufactured housing because they simply cannot afford site-built homes, for which the construction costs per square foot are much higher.

Data on the incomes of purchasers of manufactured homes is not readily available, but HMDA data on home loans made by 22 lenders that primarily originate manufactured home loans, discussed below, indicate that:[51]

- A very high percentage of these loans—76 percent in 1998—would qualify for the Low- and Moderate-Income Goal,
- A substantial percentage of these loans—42 percent in 1998—would qualify for the Special Affordable Goal, and
- Almost half of these loans—47 percent in 1998—would qualify for the Underserved Areas Goal.

Thus an enhanced presence in this market by the GSEs would benefit many lower-income families. It would also contribute to their presence in underserved rural areas, especially in the South.

To date the GSEs have played a minimal role in the manufactured home loan market, but both enterprises have expressed an interest in expanding their roles.[52] Except in structured transactions, the GSEs do not purchase manufactured housing loans under their seller/servicer guidelines unless they are real estate loans. That is, such homes must have a permanent foundation and the site must be either purchased as part of the transaction or already owned by the borrower. Industry trends toward more homes on private lots and on concrete foundations suggest that the percentage of manufactured homes that would qualify as real estate loans under GSE guidelines has grown in the past few years. There has also been a major shift from single-section homes to multisection homes, which contain two or three units which are joined together on site.

Although manufactured home loans cannot be identified in the HMDA data, HUD staff have identified 22 lenders that primarily originate manufactured home loans and likely account for most of these loans in the HMDA data for metropolitan areas. In Table D.13, the data presented under ''Conforming Market Without Manufactured Home Loans'' excludes loans originated by manufactured housing lenders, as well as loans less than $15,000. The lenders include companies such as Green Tree Financial; Vanderbilt Mortgage; Deutsche Financial Capital; Oakwood Acceptance Corporation; Allied Acceptance Corporation; Belgravia Financial Services; Ford Consumer Finance Company; and the CIT Group.[53]

c. American Housing Survey Data

The American Housing Survey also reports borrower income data similar to that reported in Table D.3. The low- and moderate-income market shares from the AHS are as follows:

1985 27.0%
1987 32.0%
1989 34.0%
1991 36.0%
1993 33.0% (38.7% home purchase and 28.6% refinance)
1995 40.0% (38.5% home purchase and 43.2% refinance)

According to the AHS, 38.5 percent of those families surveyed during 1995 who had recently purchased their homes, and who obtained conventional mortgages below the conforming loan limit, had incomes below the area median; this compares with 39.3 percent based on 1995 HMDA data that excludes manufactured homes (as the AHS data do).

A longer-term perspective of the mortgage market can be gained by examining income data from the last six American Housing Surveys. During the earlier period between 1987 and 1991, the low- and moderate-income share increased from 27 percent to 36 percent, and averaged 32.3 percent. After remaining at a relatively low percentage (33.0 percent) during the heavy refinance year of 1993, the low- and moderate-income share rebounded to 40.0 percent in 1995. As noted earlier, this is about the same market share reported by HMDA data for 1995.

The GSEs have raised issues concerning underreporting of income in the AHS.[54] Since HMDA data cover over 80 percent of the single-family-owner mortgage market, and the American Housing Survey represents only a very small sample of this market, the HMDA data will be the source of information on the characteristics of single-family property owners receiving mortgage financing. As discussed next, the American Housing Survey and the Property Owners and Managers Survey will be relied on for information about the rents and affordability

of single-family and multifamily rental properties.

2. Low- and Moderate-Income Percentage for Renter Mortgages

The 1995 rule relied on the American Housing Survey for a measure of the rent affordability of the single-family rental stock and the multifamily rental stock. As explained below, the AHS provides rent information for the stock of rental properties rather than for the flow of mortgages financing that stock. This section discusses a new survey, the Property Owners and Managers Survey (POMS), that provides information on the flow of mortgages financing rental properties. As discussed below, the AHS and POMS data provide very similar estimates of the low- and moderate-income share of the rental market.

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 the rent of a unit can be used to determine the affordability of that unit and whether it qualifies for the Low- and Moderate-Income Goal. A unit qualifies for the Low- and Moderate-Income Goal if the rent does not exceed 30 percent of the local area median income (with appropriate adjustments for family size as measured by the number of bedrooms). Thus, 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 not considered in the calculation of goal performance. For this reason, it is appropriate to base estimates of market size on rent affordability data rather than on renter income data.

A rental unit is considered to be ''affordable'' to low- and moderate-income families, and thus qualifies for the Low- and Moderate-Income Goal, if that unit's rent is equal to or less than 30 percent of area median income. Table D.14 presents AHS data on the affordability of the rental housing stock for the survey years between 1985 and 1997. The 1997 AHS shows that for 1–4 unit unsubsidized single-family rental properties, 94 percent of all units and 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 figure was 92 percent. The AHS data for 1989, 1991, 1993, and 1995 are similar to the 1997 data.

BILLING CODE 4210–27–P

Table D.14

Rental Market By Affordability of Dwelling Unit: American Housing Survey, 1985-1997

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%
1995	89%	97%	97%
1997	87%	94%	94%
Multifamily (5+) Properties			
1985	88%	94%	93%
1987	86%	93%	92%
1989	88%	96%	95%
1991	88%	97%	96%
1993	88%	96%	96%
1995	89%	95%	95%
1997	80%	92%	92%
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%
1995	30%	58%	57%
1997	35%	59%	59%
Multifamily (5+) Properties			
1985	14%	44%	41%
1987	18%	43%	40%
1989	13%	51%	47%
1991	18%	54%	51%
1993	12%	53%	51%
1995	20%	50%	49%
1997	28%	54%	53%

Source: American Housing Surveys, 1985, 1987, 1989, 1991, 1993, 1995, 1997.
a. Constructed in last 3 years.

BILLING CODE 4210–27–C

b. Property Owners and Managers Survey (POMS)

During the 1995 rule-making, concern was expressed about using data on rents from the outstanding rental stock to proxy rents for newly mortgaged rental units.[55] At that time, HUD conducted an analysis of this issue using the Residential Finance Survey and concluded that the existing stock was an adequate proxy for the mortgage flow when rent affordability is defined in terms of less than 30 percent of area median income, which is the affordability definition for the Low- and Moderate-Income Goal. More specifically, that analysis suggested 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.[56] HUD has investigated this issue further using the POMS.

POMS Methodology. The affordability of multifamily and single-family rental housing backing mortgages originated in 1993–1995 was calculated using internal Census Bureau files from the American Housing Survey-National Sample (AHS) from 1995 and the Property Owners and Managers Survey from 1995–1996. The POMS survey was conducted on the same units included in the AHS survey, and provides supplemental information such as the origination year of the mortgage loan, if any, recorded against the property included in the AHS survey. Monthly housing cost data (including rent and utilities), number of bedrooms, and metropolitan area (MSA) location data were obtained from the AHS file.

In cases where units in the AHS were not occupied, the AHS typically provides rents, either by obtaining this information from property owners or through the use of imputation techniques. Estimated monthly housing costs on vacant units were therefore calculated as the sum of AHS rent and utility costs estimated using utility allowances published by HUD as part of its regulation of the GSEs. Observations where neither monthly housing cost nor monthly rent was available were omitted, as were observations where MSA could not be determined. Units with no cash rent and subsidized housing units were also omitted. Because of the shortage of observations with 1995 originations, POMS data on year of mortgage origination were utilized to restrict the sample to properties mortgaged during 1993–1995. POMS weights were then applied to estimate population statistics. Affordability calculations were made using 1993–95 area median incomes calculated by HUD.

POMS Results. The rent affordability estimates from POMS of the affordability of newly-mortgaged rental properties are quite consistent with the AHS data reported in Table D.5 on the affordability of the rental stock. Ninety-six (96) percent of single-family rental properties with new mortgages between 1993 and 1995 were affordable to low- and moderate-income families, and 56 percent were affordable to very-low-income families. The corresponding percentages for newly-mortgaged multifamily properties are 96 percent and 51 percent, respectively. Thus, these percentages for newly-mortgaged properties from the POMS are similar to those from the AHS for the rental stock. As discussed in the next section, the baseline projection from HUD's market share model assumes that 90 percent of newly-mortgaged, single-family rental and multifamily units are affordable to low- and moderate-income families.

3. Size of the Low- and Moderate-Income Mortgage Market

This section provides estimates of the size of the low- and moderate-income mortgage market. Subsection 3.a provides some necessary background by comparing HUD's estimate made during the 1995 rule-making process with actual experience between 1995 and 1998. Subsection 3.b presents new estimates of the low-mod market while Subsection 3.c reports the sensitivity of the new estimates to changes in assumptions about economic and mortgage market conditions.

a. Comparison of Market Estimates With Actual Performance

The market share estimates that HUD made during 1995 can now be compared with actual market shares for 1995 to 1998. This discussion of the accuracy of HUD's past market estimates considers all three housing goals, since the explanations for the differences between the estimated and actual market shares are common across the three goals. HUD estimated the market for each housing goal for 1995–98, and obtained the results reported in Table D.15.[57] B&C loans are not included in the market estimates reported in Table D.15. The discussion of Table D.15 will proceed as follows. It will first focus on the market estimates for 1995 to 1997 which are the most useful comparisons with HUD's market estimates from the 1995 rule. The discussion will then examine the market estimates for the heavy refinance year of 1998. After that, HUD's method for adjusting the 1995–98 market data to exclude B&C loans as well as the non-metropolitan area adjusted market for the Underserved Areas Goal will be explained. (See Table D.15)

BILLING CODE 4210–27–P

Table D.15

Goals-Qualifying Market Shares, (Without B&C Loans) 1995-1998

	1995	1996	1997	1998
1. Low-Mod Goal	57.3 %	57.3 %	57.5 %	53.8 %
2. Special Affordable Goal	28.9	28.7	28.8	25.8
3. Underserved Area Goal	32.4	31.9	32.4	29.4
(a) Include Non-Metropolitan Underserved Areas	33.9	33.4	33.9	30.9

Notes: See the text (a) for the method for excluding B&C loans from the market, and (b) for the rationale for increasing the metropolitan-area-based market share by 1.5 percentage points to incorporate underserved areas in non-metropolitan areas.

BILLING CODE 4210–27–C

HUD's market estimates in 1995 were 48–52 percent for the Low- and Moderate-Income Goal, 20–23 percent for the Special Affordable Goal, and 25–28 percent for the Underserved Areas Goal. Thus, even the upper bound figures for the market share ranges in the 1995 rule proved to be low for the 1995–97 period—for the low-mod estimate, 52 percent versus 57–58 percent; for the special affordable estimate, 23 versus 28–29 percent, and for the underserved areas estimate, 28 percent versus 33–34 percent.

There are several factors explaining HUD's underestimate of the goals-qualifying market shares. The 1995–97 mortgage markets originated more affordable single-family mortgages than anticipated, mainly due to historically low interest rates and strong economic expansion. In 1997, for instance, almost 44 percent of all (home purchase and refinance) single-family-owner mortgages qualified for the Low- and Moderate-Income Goal, 16 percent qualified for the Special Affordable Goal, and 28 percent qualified for the Underserved Areas Goal.[58] HUD's 1995 estimates anticipated smaller shares of new mortgages being originated for low-income families and in their neighborhoods.[59 60]

The financing of multifamily properties during 1995–97 was larger than anticipated. HUD's earlier estimates assumed a multifamily share of 16 percent, which was lower than the approximately 19 percent multifamily share for the years 1995–97. The underestimate for the multifamily share was due both to a larger multifamily dollar volume ($34 billion for 1995, $37 billion for 1996, and $38 billion for 1997) than anticipated in the 1995 GSE rule ($30 billion) and to lower per unit multifamily loan amounts than assumed in HUD's earlier model.[61]

B&C Mortgages. As discussed in Appendix A, the market for subprime mortgages has experienced rapid growth over the past 2–3 years. Table D.15 provides goals-qualifying market shares that exclude the B&C portion of the subprime market. This section explains how these ''adjusted'' market shares are calculated from ''unadjusted'' market shares that include B&C loans, using the year 1997 as an example. Comprehensive data for measuring the size of the subprime market are not available. However, estimates by various industry observers suggest that the subprime market could have accounted for as much as 15 percent of all mortgages originated during 1997, which would have amounted to approximately $125 billion.[62] In terms of credit risk, this $125 billion includes a wide range of mortgage types. ''A-minus'' loans, which represented at least half of the subprime market in 1997, make up the least risky category. As discussed in Appendix A, the GSEs are involved in this market both through specific program offerings and through purchases of securities backed by subprime loans (including B&C loans). The B&C loans experience much higher delinquency rates than A-minus loans.[63]

The procedure for excluding B&C mortgages from estimated ''unadjusted'' market shares for goals-qualifying loans in 1997 combined information from several sources. First, the $125 billion estimate for the subprime market was reduced by 20 percent to arrive at an estimate of $100 billion for subprime loans that were less than the conforming loan limit of $214,600 in 1997. This figure was reduced by one-half to arrive at an estimate of $50 billion for the conforming B&C market; with an average loan amount of $68,289 (obtained from HMDA data, as discussed below), the $50 billion represented approximately 732,182 B&C loans originated during 1997 under the conforming loan limit.

HMDA data was used to provide an estimate of the portion of these 732,182 B&C loans that would qualify for each of the housing goals. HMDA data does not identify subprime loans, much less divide them into their A-minus and B&C components. As explained in Appendix A, Randall Scheessele in HUD's Office of Policy Development and Research has identified 200 HMDA reporters that primarily originate subprime loans. The goals-qualifying percentages of the loans originated by these subprime lenders in 1997 were as follows: 57.3 percent qualified for the Low- and Moderate-Income Goal, 28.1 percent for the Special Affordable Goal, and 44.7 percent for the Underserved Areas Goal.[64] Applying the goals-qualifying percentages to the estimated B&C market total of 732,182 gives the following estimates of B&C loans that qualified for each of the housing goals in 1997: Low- and Moderate Income (419,540), Special Affordable (205,743), and Underserved Areas (327,286).

Adjusting HUD's model to exclude the B&C market involves subtracting the above four figures' one for the overall B&C market and three for B&C loans that qualify for each of the three housing goals—from the corresponding figures estimated by HUD for the total single-family and multifamily market inclusive of B&C loans. HUD's model estimates that 8,039,132 single-family and multifamily units were financed during 1997; of these, 4,620,828 (57.5 percent) qualified for the Low- and Moderate-Income Goal, 2,311,251 (28.8 percent) for the Special Affordable Goal, and 2,694,351 (33.5 percent) for the Underserved Areas Goal. Deducting the B&C market estimates produces the following adjusted market estimates: a total market of 7,306,950, of which 4,201,287 (57.5 percent) qualified for the Low- and Moderate-Income Goal, 2,105,508 (28.8 percent) for the Special Affordable Goal, and 2,367,066 (32.4 percent) for the Underserved Areas Goal.

As seen, the low-mod market share estimate exclusive of B&C loans (57.5 percent) is the same as the original market estimate (57.5 percent) and the corresponding special affordable market estimate (28.8 percent) is also the same as the original estimate. This occurs because the B&C loans that were dropped from the analysis had similar low-mod and special affordable percentages as the overall (both single-family and multifamily) market. For example, the low-mod share of B&C loans was projected to be 57.3 percent and HUD's market model projected the overall low-mod share to be 57.5 percent. Thus, dropping B&C loans from the market totals does not change the overall low-mod share of the market.

The situation is different for the Underserved Areas Goal. Underserved areas account for 44.7 percent of the B&C loans, which is a higher percentage than the underserved area share of the overall market (33.5 percent). Thus, dropping the B&C loans leads to a reduction in the underserved areas market share of 1.1 percentage points, from 33.5 percent to 32.4 percent.

Dropping B&C loans from HUD's model changes the mix between rental and owner units in the final market estimate. Based on assumptions about the size of the owner and rental markets for 1997, HUD's model calculates that single-family-owner units accounted for 70.2 percent of total units financed during 1997. Dropping the B&C owner loans, as described above, reduces the owner percentage of the market by three percentage points to 67.2 percent. Thus, another way of explaining why the goals-qualifying market shares are not affected so much by dropping B&C loans is that the rental share of the overall market increases as the B&C owner units are dropped from the market. Since rental units have very high goals-qualifying percentages, their increased importance in the market partially offsets the negative effects on the goals-qualifying shares of any reductions in B&C owner loans. In fact, this rental mix effect would come into play with any reduction in owner units from HUD's model.

There are caveats that should be mentioned concerning the above adjustments for the B&C market for 1997. The adjustment for B&C loans depends on several estimates relating to the 1997 mortgage market, derived from various sources. Different estimates of the size of the B&C market in 1997 or the goals-qualifying shares of the B&C market could lead to different estimates of the goals-qualifying shares for the overall market. The goals-qualifying shares of the B&C market were based on HMDA data for selected lenders that primarily originate subprime loans; since these lenders are likely originating both A-minus and B&C loans, the goals-qualifying percentages used here may not be accurately measuring the goals-qualifying percentages for only B&C loans. The above technique of dropping B&C loans also assumes that the coverage of B&C and non-B&C loans in HMDA's metropolitan area data is the same; however, it is likely that HMDA coverage of non-B&C loans is higher than its coverage of B&C loans.[65] Despite these caveats, it also appears that reasonably different estimates of the various market parameters would not likely change, in any significant way, the above estimates of the effects of excluding B&C loans in calculating the goals-qualifying shares of the market. As discussed below, HUD provides a range of estimates for the goals-qualifying market shares to account for uncertainty related to the various parameters included in its projection model for the mortgage market.

Adjustment for Non-Metropolitan Areas. The first set of 1995–98 market shares for underserved areas is based on single-family-owner parameters for metropolitan areas. It is necessary to adjust these market shares upward by about 1.5 percentage points to reflect the fact that underserved counties account for a much larger portion of non-metropolitan areas than underserved census tracts do metropolitan areas. The method for deriving the 1.5 percentage point adjustment is explained in Section G.3 below, which presents the projected 2001–03 market estimates for the Underserved Areas Goal.

1998 Market Estimates. The high volume of single-family mortgages in the heavy refinance year of 1998 increased the share of single-family-owner units to 73.1 percent, compared with 68–70 percent for 1995 to 1997. This shift toward single-family loans, combined with the higher level of single-family refinance activity in 1998, results in market shares that are slightly smaller than reported for 1995–97. The following estimates are obtained: low-mod, 53.8 percent; special affordable, 25.8 percent; and underserved areas, 30.9 percent.[66] While lower, these estimates remain higher than the market estimates that HUD made in 1995 (see earlier discussion for reasons).

b. Market Estimates

This section provides HUD's estimates for the size of the low-and moderate-income mortgage market that will serve as a proxy for the four-year period (2001–2003) when the new housing goals will be in effect. Three alternative sets of projections about property shares and rental property low-and moderate-

income percentages are given in Table D.16. 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 (8 percent) based on HMDA data and slightly more conservative low-and moderate-income percentages for single-family rental and multifamily properties (85 percent). Case 3 assumes a higher investor share (12 percent) consistent with Follain and Blackley's suggestions.

BILLING CODE 4210–27–P

Table D.16

Alternative Assumptions for Single-Family Rental and Multifamily Mortgage Shares

	Case 1	Case 2	Case 3
1. Single-Family Mortgage Shares			
Single-Family Owner-Occupied	88.0%	90.0%	85.6%
Single-Family 2-4	2.0%	2.0%	2.4%
Single-Family 1-4 Investor	10.0%	8.0%	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. Percentage Affordable at Area Median Income (AMI)			
Single-Family Rental	90.0%	85.0%	95.0%
Multifamily	90.0%	85.0%	95.0%
4. Percentage Underserved			
Single-Family Rental	42.5%	40.0%	45.0%
Multifamily	48.0%	46.0%	48.0%
5. Percent Affordable at 60% of AMI			
Single-Family Rental	50.0%	47.0%	53.0%
Multifamily	47.0%	44.0%	50.0%
6. Percentage Low-Income in Low-Income Areas:			
Single-Family Rental	8.0%	6.0%	8.0%
Multifamily	11.0%	10.0%	12.0%

Table D.17

Low- and Moderate-Income Mortgage Market: Sensitivity Analysis

Case 1 with Different Percentages for Single-Family Owner-Occupied's with Income Less than AMI:		Multifamily Mix (Percent) 13.5%	15%	16.5%
Single-Family: [a]	43%	54.7 %	55.3 %	55.9 %
	42%	54.0	54.6	55.2
	41%	53.2	53.9	54.5
	40%	52.5	53.2	53.8
	39%	51.8	52.4	53.1
	38%	51.0	51.7	52.4
	37%	50.3	51.0	51.7
	36%	49.6	50.3	51.0
	35%	48.8	49.5	50.3
	34%	48.1	48.8	49.6
Single-Family:	40% with:			
	Case 1 (above)	52.5 %	53.2 %	53.8 %
	Case 2	50.2	50.8	51.4
	Case 3	55.4	56.1	56.8
Single-Family:	36% with:			
	Case 1 (above)	49.6 %	50.3 %	51.0 %
	Case 2	47.2	47.8	48.5
	Case 3	52.6	53.3	54.1

[a] These percentages are used for home purchase loans. Refinance loans were assumed to be 3 percentage points less for each alternative.

BILLING CODE 4210–27–C

Because single-family-owner units account for about 70 percent of all newly mortgaged dwelling units, the low- and moderate-income percentage for owners is the most important determinant of the total market estimate.[67] Thus, Table D.17 provides market estimates for different low-mod percentages for the owner market as well as for different multifamily mix percentages—the 15.0 percent projection bracketed by 13.5 percent and 16.5 percent. As discussed in Section C of this appendix, 16.5 percent represents the average multifamily share between 1991 and 1998, while 15 percent represents a slightly more conservative baseline.

Several low-mod percentages of the owner market are given in Table D.17 to account for different perceptions about the low-mod share of that market. Essentially, HUD's approach throughout this appendix is to provide several sensitivity analyses to illustrate the effects of different views about the goals-qualifying share of the single-family-owner market on the goals-qualifying share of the overall mortgage market. This approach recognizes that there is some uncertainty in the data and that there can be different viewpoints about the various market definitions and other model parameters.

With respect to excluding B&C loans from the market estimates, Table D.17 can be interpreted in two ways. *First*, readers could choose a home purchase low-mod percentage (that is, one of the percentages in the first column) that they believe is adjusted for B&C loans and then obtain a rough estimate of the overall low-mod estimate from the second to fourth columns corresponding to different

multifamily mixes. For instance, if one believes the appropriate home purchase percentage adjusted for B&C loans (or adjusted for any other exclusions that the reader thinks are appropriate) is 39 percent, then the low-mod market estimate is 52.4 percent assuming a multifamily mix of 15 percent. *Second,* readers could choose a home purchase percentage directly from HMDA data that is unadjusted for B&C loans and then rely on HUD's methodology (described below) for excluding B&C loans from the market estimates reported in Table D.17. The advantage of the second approach is that HUD's methodology makes the appropriate adjustments to the various property shares (*i.e.*, the owner versus rental percentages) due to excluding B&C owner loans from the analysis. According to HUD's methodology, dropping B&C owner loans would reduce the various low-mod market estimates reported in Table D.17 by less than half of a percentage point. This minor effect is due to (a) the fact that the low-mod share of B&C loans is similar to that of the overall market; and (b) the offsetting effects of the increase in the rental share when B&C owner loans are dropped from the market totals. For this reason, the low-mod market estimates reported in Table D.17 provide a reasonable proxy for low-mod market estimates without B&C loans. This issue is discussed in more detail below.

As shown in Table D.17, the market estimate is 53–56 percent if the owner percentage is at or above 40 percent (slightly less than its 1994–98 levels), and it is 52–53 percent if the owner percentage is 39 percent (its 1993 level). If the low- and moderate-income percentage for owners fell from its 1997–98 level of 43 percent to 35 percent, the overall market estimate would be approximately 50 percent. Thus, 50 percent is consistent with a rather significant decline in the low-mod share of the single-family home purchase market. Under the baseline projection, the home purchase percentage can fall as low as 34 percent—about four-fifths of the 1997–98 level—and the low- and moderate-income market share would still be 49 percent.

The volume of multifamily activity is an important determinant of the size of the low- and moderate-income market. HUD is aware of the uncertainty surrounding projections of the multifamily market and consequently recognizes the need to conduct sensitivity analyses to determine the effects on the overall market estimate of different assumptions about the size of that market. As discussed in Section E.2, the multifamily mix assumption of 15 percent produces an overall (both multifamily and single-family) rental mix of 27.8 percent, which is about a percentage point less than the overall rental mix projection in HUD's 1995 rule. Lowering the multifamily mix to 13.5 produces the set of overall low-mod market estimates that are reported in the first column of Table D.17. Compared with 15 percent, the 13.5 percent mix assumption reduces the overall low-mod market estimates by slightly over a half percentage point. For example, when the low-mod share of the owner market is 42 percent, the low-mod share of the overall market is 54.6 percent assuming a 15 percent multifamily mix but is 54.0 percent assuming a 13.5 percent multifamily mix.[68]

The market estimates for Case 2 and Case 3 bracket those for Case 1. The smaller single-family rental market and lower low- and moderate-income percentages for rental properties result in the Case 2 estimates being almost two percentage points below the Case 1 estimates. Conversely, the higher percentages under Case 3 result in estimates of the low-mod market approximately three percentage points higher than the baseline estimates.

The various market estimates presented in Table D.17 are not all equally likely. Most of them equal or exceed 51 percent; in the baseline model, estimates below 51 percent would require the low-mod share of the single-family owner market for home purchase loans to drop to approximately 36 percent which would be over six percentage points lower than the 1993–98 average for the low-mod share of the home purchase market. With a multifamily mix at 13.5 percent, the low-mod share of the owner market can fall to 36 percent before the average market share falls below 50 percent.

The upper bound (56 percent) of the low-mod estimates reported in Table D.17 for the baseline case is lower than the low-mod share of the market between 1995 and 1997. As reported above, HUD estimates that the low-mod market share during this period was about 57 percent. There are two reasons the projected low-mod estimates are lower than the 1995–97 experience. First, the projected rental share of 28 percent is lower than the rental share of 31 percent for the 1995–97 period; a smaller market share for rental units lowers the low-mod market share. Second, HUD's projections assume that refinancing borrowers will have higher incomes than borrowers purchasing a home (explained below). As Table D.14 shows, this was the reverse of the situation between 1995 and 1997 when refinancing borrowers had higher incomes than borrowers purchasing a home.[69] This fact, along with the larger single-family mix effect, resulted in the low-mod share of the market falling below the 1997 level of 57 percent.

B&C Loans. As discussed above, if one assumes the home purchase percentages in the first column of Table D.17 are unadjusted for B&C loans, then the overall low-mod market estimates must be adjusted to exclude these loans. B&C loans can be deducted from HUD's low-mod market estimates using the same procedure described earlier. But before doing that, some additional comments about how HUD's projection model operates are in order. HUD's projection model assumes that the low-mod share of refinance loans will be three percentage points lower than the low-mod share of home purchase loans, even though there have been years recently (1995–97) when the low-mod share of refinance loans has been as high or higher than that for home purchase loans (see Table D.14).[70] Since B&C loans are primarily refinance loans, this assumption of a lower low-mod share for refinance loans partially adjusts for the effects of B&C loans, based on 1995–97 market conditions. For example, in Table D.17, the low-mod home purchase percentage of 43 percent, which reflects 1997 conditions, is combined with a low-mod refinance percentage of 40 percentage when, in fact, the low-mod refinance percentage in 1997 was 45 percent. Thus, by taking the 1992–98 average low-mod differential between home purchase and refinance loans, the projection model deviates from 1995–97 conditions in the single-family owner market.[71]

The effects of deducting the B&C loans from the projection model can be illustrated using the above example of a low-mod home purchase percentage of 42 percent and a low-mod refinance percentage of 39 percent; as Table D.17 shows, this translates into an overall low-mod market share of 54.6 percent. It is assumed that the subprime market accounts for 12 percent of all mortgages originated, which would be $114 billion based on $827 billion for the conventional market. This $114 billion estimate for the subprime market is reduced by 20 percent to arrive at $91 billion for subprime loans that will be less than the conforming loan limit. This figure is reduced by one-half to arrive at approximately $46 billion for the conforming B&C market; with an average loan amount of $82,022; the $46 billion represents 556,000 B&C loans projected to be originated under the conforming loan limit.[72]

Following the procedure discussed in Section F.3.a, the low-mod share of the market exclusive of B&C loans is estimated to be 54.3 percent, which is only slightly lower than the original estimate (54.6 percent).[73] As noted earlier, this occurs because the B&C loans that were dropped from the analysis had similar low-mod percentages as the overall (both single family and multifamily) market (59.3 percent and 55.7 percent, respectively). The impact of dropping B&C loans is larger when the overall market share for low-mod loans is smaller. As shown in Table D.17, a 38 percent low-mod share for single-family owners is associated with an overall low-mod share of 51.7 percent. In this case, dropping B&C loans would reduce the low-mod market share by 0.5 percentage point to 51.2 percent. Still, dropping B&C loans from the market totals does not change the overall low-mod share of the market appreciably.

Dropping B&C loans from HUD's projection model changes the mix between rental and owner units in the final market estimate; rental units accounted for 30.1 percent of total units after dropping B&C loans compared with 27.8 percent before dropping B&C loans. Since practically all rental units qualify for the low-mod goal, their increased importance in the market partially offsets the negative effects on the goals-qualifying shares of any reductions in B&C owner loans.

Section F.3.a discussed several caveats concerning the analysis of B&C loans. It is not clear what types of loans (e.g., first versus second mortgages) are included in the B&C market estimates. There is only limited data on the borrower characteristics of B&C loans and the extent to which these loans are included in HMDA is not clear. Still, the analysis of Table D.17 and the above analysis of the effects of dropping B&C loans from the market suggest that 50–55 percent is a reasonable range of estimates for the low- and moderate-income market for the years 2001–

2003. This range covers markets without B&C loans and allows for market environments that would be much less affordable than recent market conditions. The next section presents additional analyses related to market volatility and affordability conditions.

c. Economic Conditions, Market Estimates, and the Feasibility of the Low- and Moderate-Income Housing Goal

During the 1995 rule-making, there was 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 economic expansion accompanied by record low interest rates and high housing affordability. As discussed in Section B of this appendix, the GSEs expressed similar concerns in their comments on this year's proposed rule. 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 the 1993 to 1998 period.

Volatility of Market. The starting point for HUD's estimates of market share is the projected $950 billion in single-family originations. Shifts in economic activity could obviously affect the degree to which this projection is borne out. As noted earlier, the Mortgage Bankers Association has recently revised its forecasts of mortgage originations numerous times in the face of projected changes in market conditions. Changing economic conditions can affect the validity of HUD's market estimates as well as the feasibility of the GSEs' 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, and increased first-time homebuyer activity due to record low interest rates, have all characterized the mortgage market during the nineties. 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 favorable to achieving the goals because of the high refinancing activity in 1998 and early 1999. While interest rates have recently risen, they continue to be moderate by historical standards. A period of low-to-moderate interest rates would sustain affordability levels without causing the rush to refinance seen earlier in 1993 and more recently in 1998. A high percentage of potential refinancers have already done so, and are less likely to do so again.

HUD conducted numerous sensitivity analyses of the market shares. In the projection model, increasing the single-family mortgage origination forecast while holding the multifamily origination forecast constant is equivalent to reducing the multifamily mix. Increasing the single-family projection by $100 billion, from $950 billion to $1,050 billion, would reduce the market share for the Low-and Moderate-Income Goal by approximately 0.5 percentage point, assuming the other baseline assumptions remain unchanged.[74] A $200 billion increase would reduce the low-mod projected market share by 0.9 percentage point.

HUD also examined potential changes in the market shares under very different macroeconomic environments, one assuming a recession and one assuming a period of low interest rates and heavy refinancing. The recessionary environment was simulated using Fannie Mae's minimum projections of single-family mortgage originations ($880 billion). The low- and moderate-income share of the home purchase market was reduced to 34 percent, or 8.5 percentage points lower than its 1997 share.[75] Under these rather severe conditions, the overall market share for the Low- and Moderate-Income Goal would decline to 50.4 percent. If the low-mod share of the owner market were reduced to 32 percent (for both home purchase and refinance loans), the low-mod share for the overall market would fall to 49.0 percent.

The heavy refinance environment was simulated assuming that the single-family origination market increased to $1,400 billion, which increases the owner share of newly-mortgaged dwelling units from 72.2 percent under HUD's baseline model to 73.2 percent. Refinances were assumed to account for 60 percent of all single-family mortgage originations. If low- and moderate-income borrowers accounted for 40 percent of borrowers purchasing a home but only 36 percent of refinancing borrowers, then the market share for the Low- and Moderate-Income Goal would be 51.6 percent. If the first two percentages were reduced to 39 percent and 32 percent, respectively, then the market share for the Low- and Moderate-Income Goal would fall to 49.6 percent. However, if the refinance market resembled 1998 conditions, the low-mod share would be 54 percent, as reported earlier.

Finally, HUD simulated the specific scenario based on the MBA's most recent market estimate of $912 billion and a refinance rate of 22 percent. In this case, assuming a low-mod home purchase percentage of 40, the overall low-mod market share was 53.4 percent, assuming a multifamily mix of 15 percent; 52.8 percent, assuming a multifamily mix of 13.5 percent; and 54.1 percent, assuming a multifamily mix of 16.5 percent.

Feasibility Determination. As stated in the 1995 rule, 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.[76] 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. As HUD noted in the 1995 GSE rule, it does not set the housing goals so that they can be met even under the worst of circumstances. Rather, as explained above, HUD has conducted numerous sensitivity analyses for economic environments much more adverse than has existed in recent years. If macroeconomic conditions change even more dramatically, the levels of the goals can be revised to reflect the changed conditions. FHEFSSA and HUD recognize that conditions could change in ways that require revised expectations.

Affordability Conditions and Market Estimates. The market share estimates rely on 1992–1998 HMDA data for the percentage of low- and moderate-income borrowers. As discussed in Appendix A, record low interest rates, a more diverse socioeconomic group of households seeking homeownership, and affordability initiatives of the private sector have encouraged first-time buyers and low-income borrowers to enter the market during the mid- and late-1990s. A significant increase in interest rates over recent 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. As discussed above, the 50–55 percent range for the low-mod market share covers economic and housing market conditions much less favorable than recent conditions of low interest rates and economic expansion. The low-mod share of the single-family home purchase market could fall to 34 percent, which is over nine percentage points lower than its 1998 level of about 43 percent, before the baseline market share for the Low- and Moderate-Income Goal would fall to 49 percent.

d. Conclusions About the Size of Low- and Moderate-Income Market

Based on the above findings as well as numerous sensitivity analyses, HUD concludes that 50–55 percent is a reasonable range of estimates of the mortgage market's low- and moderate-income share for each of years 2001–2003. This range covers much more adverse market conditions than have existed recently, allows for different assumptions about the multifamily market, and excludes the effects of B&C loans. HUD recognizes that shifts in economic conditions could increase or decrease the size of the low- and moderate-income market during that period.

G. Size of the Conventional Conforming Market Serving Central Cities, Rural Areas, and Other Underserved Areas

The following discussion presents estimates of the size of the conventional conforming market for the Central City, Rural Areas, and other Underserved Areas Goal; this housing goal will also be referred to as the Underserved Areas Goal or the

Geographically-Targeted Goal. The first two sections focus on underserved census tracts in metropolitan areas. Section 1 presents underserved area percentages for different property types while Section 2 presents market estimates for metropolitan areas. Section 3 discusses B&C loans and rural areas.

This rule establishes that the Central Cities, Rural Areas, and other Underserved Areas Goal at 31 percent of eligible units financed in each of calendar years 2001–2003.

1. Geographically-Targeted Goal Shares by Property Type

For purposes of the Geographically-Targeted Goal, underserved areas in metropolitan 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.

Owner Mortgages. The first set of numbers in Table D.18 are the percentages of single-family-owner mortgages that financed properties located in underserved census tracts of metropolitan areas between 1992 and 1998. In 1997 and 1998, approximately 25 percent of home purchase loans financed properties located in these areas; this represents an increase from 22 percent in 1992 and 1993. In some years, refinance loans are even more likely than home purchase loans to finance properties located in underserved census tracts. Between 1994 and 1997, 28.5 percent of refinance loans were for properties in underserved areas, compared to 25.1 percent of home purchase loans.[77] In the heavy refinance year of 1998, underserved areas accounted for about 25 percent of both refinance and home purchase loans.

BILLING CODE 4210–27–P

Table D.18

Underserved Area Mortgage Market In Metropolitan Areas: 1993-1998 HMDA Data

Single-Family Owner-Occupied	Purchase		Refinance		Total	
1992	22.2%	(21.5)	20.1%	(19.9)	20.8	(20.4)
1993	21.9	(21.1)	19.5	(19.4)	20.2	(19.9)
1994	24.4	(23.5)	27.5	(26.7)	25.5	(24.9)
1995	25.5	(24.2)	29.3	(28.1)	26.9	(25.6)
1996	25.0	(23.1)	28.7	(27.9)	26.7	(25.3)
1997	25.2	(23.3)	30.8	(30.1)	27.8	(26.6)
1998	24.6	(22.8)	24.9	(24.5)	24.8	(23.9)
Non-Owner						
1992						42.4
1993		39.3		41.1		40.4
1994		39.6		46.7		43.0
1995		40.1		50.1		43.7
1996		39.7		48.8		43.5
1997		40.5		51.2		45.0
1998		40.3		46.5		43.6
Multifamily[1]						
1992						50.2
1993						47.1
1994						51.0
1995						47.8
1996						48.5
1997						48.0
1998						47.0

Source: HMDA data for metropolitan areas. Numbers in parantheses exclude loans less than $15,000 and loans from lenders that primarily originate manufactured housing home loans. The reductions in the refinance percentages are mainly due to excluding loans less than $15,000, as there are few manufactured housing refinance loans.

[1] A purchase/refinance breakdown is not available for multifamily.

BILLING CODE 4120–27–C

Since the 1995 rule was written, the single-family-owner market in underserved areas has remained strong, similar to the low- and moderate-income market discussed in Section F. Over the past five years, the underserved area share of the metropolitan mortgage market has leveled off at 25–28 percent, considering both home purchase and refinance loans. This is higher than the 23 percent average for the 1992–94 period, which was the period that HUD was

considering when writing the 1995 rule. As discussed earlier, economic conditions could change and reduce the size of the underserved areas market; however, that market appears to have shifted to a higher level over the past five years.

Renter Mortgages. The second and third sets of numbers in Table D.18 are the underserved area percentages for single-family rental mortgages and multifamily mortgages, respectively. Based on HMDA data for single-family, non-owner-occupied (investor) loans, the underserved area share of newly-mortgaged single-family rental units has been in the 43–45 percent range over the past five years. HMDA data also show that about half of newly-mortgaged multifamily rental units are located in underserved areas.

2. Market Estimates for Underserved Areas in Metropolitan Areas

In the 1995 GSE rule, HUD estimated that the market share for underserved areas would be between 25 and 28 percent. This estimate turned out to be below market experience, as underserved areas accounted for approximately 33–34 percent of all mortgages originated in metropolitan areas between 1995 and 1997 and for 31 percent in 1998 (see Table D.15).[78]

Table D.19 reports HUD's estimates of the market share for underserved areas based on the projection model discussed earlier.[79] As indicated in Table D.18, these overall market estimates are based mainly on HMDA-reported underserved area shares of owner and rental properties in metropolitan areas. As explained in Section F.3 below, the estimated combined effect of dropping B&C loans and of including non-metropolitan areas is to increase the underserved area market shares reported in Table D.19 by approximately one-half percentage point.

BILLING CODE 4210–27–P

Table D.19

Underserved Area Market Estimates For Metropolitan Areas: Sensitivity Analysis

Case 1 with Different Underserved Areas Percentages for Single-Family Owner-Occupied's:		Multifamily Mix (Percent)		
		13.5%	15%	16.5%
Single-Family Owner-Occupied: [a]	28%	32.6 %	32.9 %	33.1 %
	27%	31.9	32.1	32.4
	26%	31.1	31.4	31.7
	25%	30.4	30.7	31.0
	24%	29.7	30.0	30.3
	23%	28.9	29.3	29.6
	22%	28.2	28.5	28.9
	21%	27.5	27.8	28.2
	20%	26.7	27.1	27.5
	19%	26.0	26.4	26.7
	18%	25.2	25.6	26.0
Single-Family Owner-Occupied:	25% with:			
	Case 1 (above)	30.4 %	30.7 %	31.0 %
	Case 2	29.5	29.8	30.0
	Case 3	31.3	31.6	31.9
Single-Family Owner-Occupied:	22% with:			
	Case 1 (above)	28.2 %	28.5 %	28.9 %
	Case 2	27.2	27.5	27.9
	Case 3	29.2	29.5	29.8

[a] These percentages are assumed to be the overall (both home purchase and refinance) percentages of single-family owner mortgages in underserved census tracts.

BILLING CODE 4210–27–C

The percentage of single-family-owner mortgages financing properties in underserved areas is the most important determinant of the overall market share for this goal. Therefore, Table D.19 reports market shares for different single-family-owner percentages ranging from 28 percent (1997 HMDA) to 20 percent (1993 HMDA) to 18 percent. If the single-family-owner percentage for underserved areas is at its 1994–98 HMDA average of 26 percent, the market share estimate is over 31 percent. The overall market share for underserved areas peaks at 33 percent when the single-family-owner percentage is at its 1997 figure of 28 percent. Most of the estimated market shares for the owner percentages that are slightly below recent experience are in the 30 percent range. In the baseline case, the single-family-owner percentage can go as low as 23 percent, which is over 3 percentage points lower than the 1994–98 HMDA average, and the estimated market share for underserved areas remains over 29 percent.

Unlike the Low- and Moderate-Income Goal, the market estimates differ only slightly as one moves from Case 1 to Case 3 and from a 13.5 percent mix to 16.5 percent mix. For example, reducing the assumed multifamily mix to 13.5 percent reduces the overall market projection for underserved areas by only about 0.3 percentage points. This is because the underserved area differentials between owner and rental properties are not as large as the low- and moderate-income differentials reported earlier. Additional sensitivity analyses were conducted as described in Section F.3c.

For example, adding $100 ($200) billion to the $950 billion single-family originations would reduce the underserved area market

share by about 0.3 (0.5) percent, assuming there were no other changes. The MBA scenario combined with a single-family owner underserved area percentage of 25 percent, would produce an overall market share for underserved areas of 30.7 percent. The recession scenario described in Section F.3.c assumed that the underserved area percentage for single-family-owner mortgages was 21 percent or almost seven percentage points lower than its 1997 value. In this case, the overall market share for underserved areas declines to 28.4 percent. In the refinance scenarios, the underserved areas market share was approximately 31 percent.

3. Adjustments: B&C Loans and the Rural Underserved Area Market

B&C Loans. The procedure for dropping B&C loans from the projections is the same as described in Section F.3.b for the Low- and Moderate-Income Goal. The underserved area percentage for B&C loans is 44.7 percent, which is much higher than the projected percentage for the overall market (30–33 percent as indicated in Table D.19). Thus, dropping B&C loans will reduce the overall market estimates. Consider in Table D.19, the case of a single-family-owner percentage of 26 percent, which yields an overall market estimate for underserved areas of 31.4 percent. Dropping B&C loans from the projection model reduces the underserved areas market share by 1.1 percentage points to 30.3.

Non-metropolitan Areas. Underserved rural areas are non-metropolitan counties with:

(a) county median income at or below 95 percent of the greater of statewide non-metropolitan median income or nationwide non-metropolitan income; or

(b) a minority composition equal to 30 percent or more and a county median income no more that 120 percent of the greater of statewide or national non-metropolitan median income.

HMDA's limited coverage of mortgage data in non-metropolitan counties makes it impossible to estimate the size of the mortgage market in rural areas. However, all indicators suggest that underserved counties in non-metropolitan areas comprise a larger share of the non-metropolitan mortgage market than the underserved census tracts in metropolitan areas comprise of the metropolitan mortgage market. For instance, underserved counties within rural areas include 54 percent of non-metropolitan homeowners; on the other hand, underserved census tracts in metropolitan areas account for only 34 percent of metropolitan homeowners.

During 1997–99, 36–38 percent of the GSE's total purchases in non-metropolitan areas were in underserved counties while 25–27 percent of their purchases in metropolitan areas were in underserved census tracts. These figures suggest the market share for underserved counties in rural areas is higher than the market share for underserved census tracts in metropolitan areas. Thus, using a metropolitan estimate to proxy the overall market for this goal, including rural areas, is conservative. Over the past few years, the non-metropolitan portion of the Underserved Areas Goal has contributed approximately 1.3 percentage point to the GSEs performance, compared with a goals-counting system that only included metropolitan areas.

The limited HMDA data available for non-metropolitan counties also suggest that the underserved areas market estimate would be higher if complete data for non-metropolitan counties were available. According to HMDA, underserved counties accounted for 42 percent of all mortgages originated in non-metropolitan areas during 1997 and 1998. By contrast, underserved census tracts accounted for approximately 25 percent of all mortgages in metropolitan area.[80] If this 17 point differential reflected actual market conditions, then the underserved areas market share estimated using metropolitan area data should be increased by 1.9 percentage points to account for the effects of underserved counties in non-metropolitan areas.[81] To be conservative, HUD used a 1.5 percentage adjustment in Table D.15 which reported market estimates for the 1995–98 period.

The combined effects of the above analyses on the underserved area market shares presented in Table D.19 can now be considered. First, deducting B&C loans from the analysis reduces the market estimates presented in Table D.19 by almost one percentage point. Second, including non-metropolitan counties in data for estimating the underserved areas market share could increase the market share estimates up to 2 percentage points. Therefore, the combination of these two effects suggests that the market estimates in Table D.19 should be increased by up to one percentage point, with one-half percentage point being a conservative upward adjustment. At a minimum, the various estimates presented in Table D.19 are conservative estimates of the underserved areas market excluding B&C loans but including non-metropolitan counties.[82]

The estimates presented in Table D.19 and this section's analysis of dropping B&C loans and including non-metropolitan areas suggest that 29–32 percent is a conservative range for the market estimate for underserved areas based on the projection model described earlier. This range incorporates market conditions that are more adverse than have existed recently and it excludes B&C loans from the market estimates. The estimate is conservative because, due to lack of data, it does not fully reflect the size of the mortgage market in non-metropolitan underserved counties.

4. Conclusions

Based on the above findings as well as numerous sensitivity analyses, HUD concludes that 29–32 percent is a conservative 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 few years. In addition, the market estimate incorporates a range of assumptions about the size of the multifamily market and excludes B&C loans.

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, or affordable to: (a) Very low-income families; *or* (b) low-income families in low-income census tracts; *or* (c) low-income families in multifamily projects that meet minimum income thresholds patterned on the low-income housing tax credit (LIHTC).[38] HUD estimates that the special affordable market is 23–26 percent of the conventional conforming market.

HUD has determined that the annual goal for mortgage purchases qualifying under the Special Affordable Housing Goal shall be 20 percent of eligible units financed in each of calendar years 2001–2003. This final rule further provides that of the total mortgage purchases counted toward the Special Affordable Housing Goal, each GSE must annually purchase multifamily mortgages in an amount equal to at least 1.0 percent of the dollar volume of combined (single-family and multifamily) mortgage purchases over 1997 through 1999. This implies the following thresholds for the two GSEs:

	(In billions)
Fannie Mae	$2.85
Freddie Mac	2.11

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 census tracts. Data are not available 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, the American Housing Survey, and the Property Owners and Managers Survey in order to estimate these special affordable shares.

a. Special Affordable Owner Percentages

The percentage of single-family-owners that qualify for the Special Affordable Goal is reported in Table D.20. That table also reports data for the two components of the Special Affordable Goal—very-low-income

borrowers and low-income borrowers living in low-income census tracts. HMDA data show that special affordable borrowers accounted for 15.3 percent of all conforming home purchase loans between 1996 and 1998. The special affordable share of the market has followed a pattern similar to that discussed earlier for the low-mod share of the market. The percentage of special affordable borrowers increased significantly between 1992 and 1994, from 10.4 percent of the conforming market to 12.6 percent in 1993, and then to 14.1 percent in 1994. The additional years since the 1995 rule was written have seen the special affordable market maintain itself at an even higher level. Over the past four years (1995–98), the special affordable share of the home loan market has averaged 15.1 percent, or almost 13.0 percent if manufactured and small loans are excluded from the market totals. As mentioned earlier, lending patterns could change with sharp changes in the economy, but the fact that there have been several years of strong affordable lending suggests that the market has changed in fundamental ways from the mortgage market of the early 1990s. The effect of one factor, the growth in the B&C loans, on the special affordable market is discussed below in Section H.2.

BILLING CODE 4210–27–P

Table D.20

Special Affordable Share of Single-Family Owner-Occupied Mortgage Market

	Home Purchase		Refinance	
	Conforming Market	Market W/O Mfg loans	Conforming Market	Market W/O Mfg loans
1. Very-Low-Income				
1992	8.7 %	7.6 %	4.5 %	4.2 %
1993	10.8	9.6	5.8	5.6
1994	11.9	10.7	11.0	10.2
1995	12.0	10.5	12.3	11.2
1996	12.7	10.8	13.0	12.2
1997	13.0	11.0	14.5	13.9
1998	13.3	11.4	11.3	11.1
2. Low Income in Low Income Areas				
1992	1.7 %	1.6 %	1.1 %	1.0 %
1993	1.8	1.7	1.2	1.2
1994	2.2	2.1	2.3	2.2
1995	2.4	2.2	2.7	2.5
1996	2.3	2.0	2.6	2.5
1997	2.3	2.0	3.0	2.9
1998	2.2	2.0	2.2	2.1
3. Special Affordable (1 plus 2)				
1992	10.4 %	9.3 %	5.5 %	5.2 %
1993	12.6	11.3	7.0	6.8
1994	14.1	12.8	13.2	12.4
1995	14.4	12.7	14.9	13.7
1996	15.0	12.8	15.6	14.7
1997	15.3	13.0	17.6	16.8
1998	15.5	13.4	13.5	13.2

Source: HMDA data. "Market without manufactured housing loans" excludes loans by lenders that primarily originate manufactured housing loans and loans less than $15,000.

BILLING CODE 4210–27–C

b. Very-Low-Income Rental Percentages

Table D.14 in Section F reported the percentages of the single-family rental and multifamily stock affordable to very-low-income families. According to the AHS, 59 percent of single-family units and 53 percent of multifamily units were affordable to very-low-income families in 1997. The corresponding average values for the AHS's six surveys between 1985 and 1997 were 58 percent and 47 percent, respectively.

Outstanding Housing Stock versus Mortgage Flow. As discussed in Section F, an important issue concerns whether rent data based on the existing rental stock from the AHS can be used to proxy rents of newly mortgaged rental units.[84] HUD's analysis of POMS data suggests that it can—estimates from POMS of the rent affordability of newly-mortgaged rental properties are quite consistent with the AHS data reported in Table D.14 on the affordability of the rental stock. Fifty-six (56) percent of single-family rental properties with new mortgages between 1993 and 1995 were affordable to very-low-income families, as was 51 percent of newly-mortgaged multifamily properties. These percentages for newly-mortgaged properties from the POMS are similar to those reported above from the AHS for the rental stock. The baseline projection from HUD's market share model assumes that 50 percent of newly-mortgaged, single-family rental units, and 47 percent of multifamily units, are affordable to very-low-income families.

c. Low-Income Renters in Low-Income Areas

HMDA does not provide data on low-income renters living in low-income census tracts. As a substitute, HUD used the POMS and AHS data. The share of single-family and multifamily rental units affordable to low-income renters at 60–80 percent of area median income (AMI) and located in low-income tracts was calculated using the internal Census Bureau AHS and POMS data files.[85] The POMS data showed that 8.3 percent of the 1995 single-family rental stock, and 9.3 percent of single-family rental units receiving financing between 1993 and 1995, were affordable at the 60–80 percent level and were located in low-income census tracts. The POMS data also showed that 12.4 percent of the 1995 multifamily stock, and 13.5 percent of the multifamily units receiving financing between 1993 and 1995, were affordable at the 60–80 percent level and located in low-income census tracts.[86] The baseline analysis below assumes that 8 percent of the single-family rental units and 11.0 percent of multifamily units are affordable at 60–80 percent of AMI and located in low-income areas.[87]

2. Size of the Special Affordable Market

During the 1995 rule making, HUD estimated a market share for the Special Affordable Goal of 20–23 percent. This estimate turned out to be below market experience, as the special affordable market accounted for almost 29 percent of all housing units financed in metropolitan areas between 1995 and 1997 (see Table D.15). As explained in Section F.3.a, there are several explanations for HUD's underestimate of the 1995–97 market. The financing of rental properties during 1995–97 was larger than anticipated. Another important reason for HUD's underestimate was not anticipating the high percentage of single-family-owner mortgages that would be originated for special affordable borrowers. During the 1995–97 period, 15.4 percent of all (both home purchase and refinance) single-family-owner mortgages financed properties for special affordable borrowers; this compares with 9.5 percent for the 1992–94 period which was the basis for HUD's earlier analysis. The 1995–97 mortgage markets originated more affordable single-family mortgages than anticipated.[88] Furthermore, the special affordable market remained strong during the heavy refinance year of 1998. Almost 26 percent of all dwelling units financed in 1998 qualified for the Special Affordable Goal.

The size of the special affordable market depends in large part on the size of the multifamily market and on the special affordable percentages of both owners and renters. Table D.21 gives new market estimates for different combinations of these factors. As before, Case 2 is slightly more conservative than the baseline projections (Case 1) mentioned above. For instance, Case 2 assumes that only 6 percent of rental units are affordable to low-income renters living in low-income areas.

BILLING CODE 4210–27–P

Table D.21

Special Affordable Mortgage Market: Sensitivity Analysis

	Multifamily Mix (Percent)		
Case 1 With:	13.5%	15%	16.5%
(a) Rent Affordable at 60% AMI: Single-Family Rent Percentages= 50%, Multifmaily= 47%			
(b) Low-Income in Low-Income Areas= 8% for Single-Family Rental and 11% for Multifamily			
(c) Single-Family Owner-Occupied's Special Affordable Share: [a]			
15.0%	26.1 %	26.6 %	27.2 %
14.0%	25.4	25.9	26.5
13.0%	24.6	25.2	25.8
12.0%	23.9	24.5	25.1
11.0%	23.1	23.8	24.4
10.0%	22.4	23.0	23.6
9.0%	21.7	22.3	22.9
Case 2 With:			
(a) Rent Affordable at 60% AMI: Single-Family Rent Percentages= 47%, Multifamily= 44%			
(b) Low-Income in Low-Income Areas= 6% for Single-Family Rental and 10% for Multifamily			
(c) Single-Family Owner-Occupied's Special Affordable Share:			
14.0%	23.3 %	23.8 %	24.4 %
13.0%	22.6	23.1	23.7
12.0%	21.8	22.4	22.9
11.0%	21.0	21.6	22.2
10.0%	20.3	20.9	21.5
Case 3 With:			
(a) Rent Affordable at 60% AMI: Single-Family Rent Percentage= 53%, Multifamily= 50%			
(b) Low-Income in Low-Income Areas= 8% for Single-Family Rental and 12% for Multifamily			
(c) Single-Family Owner-Occupied's Special Affordable Share:			
14.0%	27.6 %	28.2 %	28.8 %
13.0%	26.9	27.5	28.1
12.0%	26.2	26.8	27.5
11.0%	25.5	26.1	26.8
10.0%	24.8	25.4	26.1

[a] These percentages are used for home purchase loans. Refinance loans were assumed to be 1.4 percentage points lower for each alternative.

BILLING CODE 4210–27–C

When the special affordable share of the single-family market for home mortgages is at its 1994–98 level of 14–15 percent, the special affordable market estimate is 26–27 percent under HUD's projections. In fact, the market estimates remain above 23 percent even if the special affordable percentage for home loans falls from its 15-percent-plus level during 1996–1998 to as low as 10–11 percent, which is similar to the 1992 level. Thus, a 23 percent market estimate allows for the possibility that adverse economic conditions could keep special affordable families out of the housing market. On the other hand, if the special affordable percentage stays at its recent levels, the market estimate is in the 26–27 percent range.[89]

B&C Loans. The procedure for dropping B&C loans from the projections is the same as described in Section F.3.b for the Low- and Moderate-Income Goal. The special affordable percentage for B&C loans is 28.5 percent, which is not much higher than the projected percentages for the overall market given in Table D.21. Thus, dropping B&C loans will not appreciably reduce the overall market estimates. Consider in Table D.21, the case of a single-family-owner percentage of 14 percent, which yields an overall market estimate for Special Affordable Goal of 25.9 percent. Dropping B&C loans from the projection model reduces the special affordable market share by 0.2 percentage points to 25.7. Thus, the market shares reported in Table D.21 are reasonable estimates of the size of the special affordable market excluding B&C loans.

Based on the data presented in Table D.21 and the analysis of the effects of excluding B&C loans from the market, a range of 23–26 percent is a reasonable estimate of the special affordable market. This range includes market conditions that are much more adverse than have recently existed. Additional sensitivity analyses are provided in the remainder of this section.

Additional Sensitivity Analyses. Assuming that the special affordable share of the home loan market is 13 percent, reducing the multifamily mix from 15 percent to 12 (10) percent would reduce the overall special affordable market share from 25.2 percent to 24.0 (23.3) percent. In this case, increasing the multifamily mix from 15 percent to 18 percent would increase the special affordable market share from 25.2 percent to 26.4 percent.

As shown in Table D.21, the market estimates under the more conservative Case 2 projections are approximately two percentage points below those under the Case 1 projections. This is due mainly to Case 2's lower share of single-family investor mortgages (8 percent versus 10 percent in Case 1) and its lower affordability and low-income-area percentages for rental housing (*e.g.,* 53 percent for single-family rental units in Case 2 versus 58 percent in Case 1).

Increasing the single-family projection by $100 billion, from $950 billion to $1,050 billion, would reduce the market share for the Special Affordable Goal by approximately 0.4 percentage points, assuming the other baseline assumptions remain unchanged.[90] A $200 billion increase would reduce the special affordable market share by 0.8 percentage point.

A recession scenario and a heavy refinance scenario were described during the discussion of the Low- and Moderate-Income Goal in Section F. The recession scenario assumed that special affordable borrowers would account for only 10 (9) percent of newly-originated home loans. In this case, the market share for the Special Affordable Goal declines to 24.2 (23.5) percent. In the heavy refinance scenario, the special affordable percentage for refinancing borrowers was assumed to be four percentage points lower that the corresponding percentage for borrowers purchasing a home. In this case, the market share for the Special Affordable Goal was typically in the 24–25 percent range, depending on assumptions about the incomes of borrowers in the home purchase market. As noted earlier, the special affordable market share was approximately 26 percent during 1998, a period of heavy refinance activity.

Finally, HUD simulated the specific scenario based on the MBA's most recent market estimate of $912 billion and a refinance rate of 22 percent. In this case, assuming a special affordable home purchase percentage of 14, the overall special affordable market share was varied from 25.5 percent to 26.6 percent as the multifamily mix of varied from 13.5 percent to 16.5 percent.

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 threshold 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 increase Fannie Mae's performance as follows: 0.5 percentage point in 1997 (from 16.5 to 12.0 percent); 0.29 percentage point in 1998 (from 14.05 to 14.34 percent); and 0.42 percent point in 1999 (from 17.20 to 17.62 percent). The increase for Freddie Mac has been lower (about 0.20 percentage point in 1998 and 1999).

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 23–26 percent is a reasonable estimate of the size of the conventional conforming market for the Special Affordable Housing Goal. This estimate excludes B&C loans and allows for the possibility that homeownership will not remain as affordable as it has over the past five years. In addition, the estimate covers a range of projections about the size of the multifamily market.

Endnotes to Appendix D

[1] Appendix D of the proposed rule also included a Section I that examined the likely impacts of the increase in FHA loans limits on market originations for lower-income families in the conventional market. That analysis—which concluded that the market impacts would likely be small given that FHA attracts a different group of borrowers than conventional lenders—is now included in the Department's Economic Analysis for this final GSE rule.

[2] Dixie M. Blackley and James R. Follain, ''A Critique of the Methodology Used to Determine Affordable Housing Goals for the Government Sponsored Housing Enterprises,'' unpublished report prepared for Office of Policy Development and Research, Department of Housing and Urban Development, October 1995; and ''HUD's Market Share Methodology and its Housing Goals for the Government Sponsored Enterprises,'' unpublished paper, March 1996.

[3] Readers not interested in this overview may want to proceed to Section B, which summarizes HUD's response to the GSEs' comments on HUD's market methodology.

[4] Sections 1332(b)(4), 1333(a)(2), and 1334(b)(4).

[5] So-called ''jumbo'' mortgages, greater than $227,150 in 1998 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.

[6] The owner of the SF 2–4 property is counted in (a).

[7] 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).

[8] 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.

[9] This goal will be referred to as the ''Underserved Areas Goal''.

[10] See Randall M. Scheessele, *HMDA Coverage of the Mortgage Market,* Housing Finance Working Paper No. 7, Office of Policy Development and Research, Department of Housing and Urban Development, July 1998; and *1998 HMDA Highlights,* Housing Finance Working Paper No. HF–009, Office of Policy Development and Research, Department of Housing and Urban Development, October 1999.

[11] See William Segal, *The Property Owners and Managers Survey and the Multifamily Housing Finance System,* Housing Finance Working Paper No. 10, Office of Policy Development and Research, Department of Housing and Urban Development, September 2000.

[12] See Freddie Mac, ''Comments on Estimating the Size of the Conventional Conforming Market for Each Housing Goal: Appendix III to the Comments of the Federal Home Loan Mortgage Corporation on HUD's Regulation of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac)'', May 8, 2000, page 1.

[13] See Fannie Mae, ''Fannie Mae's Comments on HUD's Regulation of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac)'', May 8, 2000, page 53.

[14] PWC estimates of single-family mortgage lending volume *exceed* the MBA figure for

the entire single-family market (conventional, conforming, jumbo, and government-insured) in 1993. The PWC estimates exceed MBA figures on all *conventional* lending volume, including jumbo loans, in 1994, 1996 and 1997. In effect, therefore, the PWC estimates of the single-family market include the jumbo market in 1993, 1994, 1996, 1997, and 1998. The PWC estimates are as large, or larger than the *entire* single-family market in 1993 and 1998. The MBA figures are found at www.mbaa.org/marketkdata.

[15] PWC does not offer any empirical evidence in support of their claim that 50 percent of households have below median family income. The main reason that more than half of all households have incomes below the median family income is that, empirically, household incomes are significantly lower than family incomes (which serve as the basis for the local area median income against which household incomes are compared to determine affordability status). Individuals are not included in family income calculations, but are included in household income calculations, thus causing a family-based median income to be larger than a household-based median income.

[16] 1990 is excluded from this discussion because of the unusually high multifamily mix that year.

[17] These market share estimates are based on the annual averages of the likely range of multifamily origination volume expressed in the last column of Table D.10 over 1991–1998. 1990 is excluded from this calculation because of the unusually high multifamily mix that year.

[18] Amy D. Crews, Robert M. Dunsky, and James R. Follain, ''What We Know about Multifamily Mortgage Originations,'' report for the U.S. Department of Housing and Urban Development, October 1995, 20.

[19] Because they are not counted toward the GSE housing goals (with the exception of a relatively small risk-sharing program), FHA mortgages are excluded from this analysis. Other categories of mortgages, considering the type of insurer, servicer, or holder, do not tend to have mortgage characteristics that appear to differ substantially from the multifamily mortgages that are purchased by Fannie Mae and Freddie Mac. There is thus no particular basis for excluding them.

[20] Corresponding percentages for Freddie Mac were 8.3 percent, 90 percent and 17 percent.

[21] Corresponding percentages for Fannie Mae were 56 percent and 31 percent.

[22] Amy D. Crews, Robert M. Dunsky, and James R. Follain, ''What We Know about Multifamily Mortgage Originations,'' report for the U.S. Department of Housing and Urban Development, October 1995.

[23] Crews, Dunsky, and Follain, *ibid.*, 20.

[24] Fannie Mae (2000), p. 58.

[25] Robert Dunsky, James R. Follain, and Jan Ondrich, ''An Alternative Methodology to Estimate the Volume of Multifamily Mortgage Originations,'' report for the U.S. Department of Housing and Urban Development, October 1995.

[26] Average single-family loan amounts are from HMDA. Multifamily per-unit loan amounts are from the loan-level GSE data, as discussed above.

[27] Increased per-unit loan amounts evident in the 1999 Freddie Mac data could be related to a higher level of activity in senior housing. Freddie Mac reported an increase in multifamily senior housing transactions from $84 million in 1998 to $383 million in 1999. See ''Freddie Mac Posts Record Year in Multifamily Financing, Nearly $7 Billion in Originations, '' press release, February 8, 1999; and ''Freddie Mac Posts Record Year in Multifamily Financing, Nearly $8 Billion in Total Funding In 1999,'' press release, February 14, 2000. Per-unit loan amounts on some Freddie Mac seniors transactions appear to exceed $100,000. See ''Freddie Mac Teams With Glaser Financial to Credit Enhance $65 Million in Seniors Housing Loans,'' press release, July 13, 1999; and ''Freddie Mac Closes Its Largest Seniors Housing Transaction With $88 Million Deal With GMAC and Sunrise Assisted Living,'' press release, June 1, 1999.

[28] Assumptions regarding the single-family mortgage market utilized in preparing the market share estimates presented in Table D.10 are discussed below in section F.

[29] Board of Governors of the Federal Reserve System, *Flow of Funds Accounts of the United States*, Federal Reserve Statistical Release Z.1, June 9, 2000, p. 49.

[30] These market share estimates are based on the annual averages of the likely range of multifamily origination volume expressed in the last column of Table 10 over 1991–1998. 1990 is excluded from this calculation because of the unusually high multifamily mix that year.

[31] Calculation based on PriceWaterhouseCoopers, *Ibid.*, p. 15.

[32] The data in Table D.11a ignore HMDA loans with ''non-applicable'' for owner type.

[33] Due to the higher share of refinance mortgages during 1998, the overall single-family owner percentage reported by HMDA for 1998 (93.2 percent) is larger than that reported for 1997 (91.5 percent).

[34] Dixie M. Blackley and James R. Follain, ''A Critique of the Methodology Used to Determine Affordable Housing Goals for the Government Sponsored Housing Enterprises,'' report prepared for Office of Policy Development and Research, Department of Housing and Urban Development, October 1995; and ''HUD's Market Share Methodology and its Housing Goals for the Government Sponsored Enterprises,'' unpublished paper, March 1996.

[35] 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.

[36] Blackley and Follain (1996), p. 20.

[37] The unit-per-mortgage data from the 1991 RFS match closely the GSE purchase data for 1996 and 1997. 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.

[38] The property distribution reported in Table D.1 is an example of the market share model. Thus, this section completes Step 1 of the three-step procedure outlined in Section A.2.b.

[39] From MBA volume estimates, the conventional share of the 1–4 family market was between 86 and 88 percent of the market from 1993 to 1999, with a one-period low of 81 percent in 1994. Calculated from ''1–4 Family Mortgage Originations'' tables (Table 1—Industry and Table 2—Conventional Loans) from ''MBA Mortgage and Market Data,'' at www.mbaa.org/marketdata/ as of July 13, 2000.

[40] Data provided by Fannie Mae show that conforming loans have been about 78 percent of total conventional loans over the past few years.

[41] Single-family mortgage originations of $950 billion were $266 billion higher than the $834 billion in 1997, $520 billion less than the record setting $1,470 billion in 1998 and $335 billion less than the $1,285 billion in 1999. As discussed later, single-family originations could differ from $950 billion during the 2001–2003 period that the goals will be in effect. As recent experience shows, market projections often change. For example, $950 billion is similar to recent projections (made in June, 2000) by the Mortgage Bankers Association (MBA) of $955 billion in 2000 and $903 billion in 2001. (See http://www.mbaa.org/marketdata/forecasts June, 2000 Mortgage Finance Forecasts.) However, MBA estimates for year 2000 volume have changed substantially over the past year, dropping from $1,043 in June, 1999 to $955 billion more recently (see MBA Mortgage Finance Forecasts table in *Mortgage Finance Review*, Vol. 7, Issue No. 2, 1999 2nd quarter, p. 2). Section F will report the effects on the market estimates of alternative estimates of single-family mortgage originations. As also explained later, the important concept for deriving the goal-qualifying market shares is the relative importance of single-family versus multifamily mortgage originations (the ''multifamily mix'' discussed in Section C) rather than the total dollar volume of single-family originations considered in isolation.

[42] The model also requires an estimated refinance rate because purchase and refinance loans have different shares of goals-qualifying units. Over the past year, the MBA has estimated the year 2000 refinance rate to be 16, 20, 30, and 38 percent for the total market (expressed in dollar terms), with 16 percent the latest estimate. The MBA's current estimate of the year 2001 refinance rate is very low 12 percent. The baseline model uses a refinance rate of 35 percent for conforming conventional loans, which is consistent with an MBA-type estimate of 22 percent, since refinance rates are higher for the number of conventional conforming loans than for the total market expressed in dollar terms. The 35 percent refinance assumption (compared with the recent, lower MBA

projections) results in conservative estimates of goals-qualifying units in the market, since the low-mod share of refinance units in HUD's model is lower than the low-mod share of home purchase units. Sensitivity analyses for alternative refinance rates are presented in Sections F–H.

[43] The average 1998 loan amount is estimated at $104,656 for owner occupied units using 1998 HMDA metro average loan amounts for purchase and refinance loans, and then weighting by an assumed 35 percent refinance rate. A small adjustment is made to this figure for a small number of two-to-four and investor properties (see Section D above). This produces an average loan size of $102,664 for 1998, which is then inflated 3 percent a year for three years to arrive at an estimated $110,000 average loan size for 2001.

[44] 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).

[45] 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.

[46] Owners of 2–4 properties account for 1.6 percentage points of the 88 percent for SF–O.

[47] Restricting the RFS analysis to 1991 resulted in only minor changes to the market shares.

[48] 1990 conventional multifamily origination volume in RFS can be estimated at $37.4 billion, comparable to HUD's estimate of $36–$40 billion in 1997. Conventional, conforming single-family origination volume grew from $285 billion to $581 billion over the same period. 1990 appears to have exhibited unusually high multifamily origination volume, as discussed earlier in Section C.

[49] 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.

[50] Actually, the goals-qualifying percentages reported in this appendix include only the effects of manufactured houses in metropolitan areas, as HMDA does not adequately cover non-metropolitan areas.

[51] Since most HMDA data are for loans in metropolitan areas and a substantial share of manufactured homes are located outside metropolitan areas, HMDA data may not accurately state the goals-qualifying shares for loans on manufactured homes in all areas.

[52] Freddie Mac, the Manufactured Housing Institute and the Low Income Housing Fund have formed an alliance to utilize manufactured housing along with permanent financing and secondary market involvement to bring affordable, attractive housing to underserved, low- and moderate-income urban neighborhoods. *Origination News*. (December 1998), p.18.

[53] Randall M. Scheessele had developed a list of nine manufactured home lenders that has been used by several researchers in analyses of HMDA data prior to 1997. Scheessele developed the expanded list of 21 manufactured home loan lenders in his analysis of 1998 HMDA data. (See Randall M. Scheessele, *1998 HMDA Highlights, op. cit.*) In these appendices, the number of manufactured home loans deducted from the market totals for the years 1993 to 1997 are the same as reported by Scheessele (1999) in his Table D.2b.

[54] See Appendix D of the 1995 rule for a detailed discussion of the AHS data and improvements that have been made to the survey to better measure borrower incomes and rent affordability.

[55] Some even argued that data based on the recently completed stock would be a better proxy for mortgage flows. In the case of the Low- and Moderate-Income Goal, 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.

[56] In 1999, 88.7 percent of GSE purchases of single-family rental units and 93.1 percent of their purchases of multifamily units qualified under the Low- and Moderate-Income Goal, excluding the effects of missing data.

[57] The goals-qualifying shares reported in Table D.15 for 1995–98 are, of course, estimates themselves; even though information is available from HMDA and other data sources for most of the important model parameters, there are some areas where information is limited, as discussed throughout this appendix.

[58] The 1995–98 goals-qualifying percentages for single-family mortgages are based on HMDA data for all (both home purchase and refinance) mortgages. Thus, the implicit refinance rate is that reported by HMDA for conventional conforming mortgages.

[59] HUD had based its earlier projections heavily on market trends between 1992 and 1994. During this period, low- and moderate-income borrowers accounted for only 38 percent of home purchase loans, which is consistent with an overall market share for the Low- and Moderate-Income Goal of 52 percent (see Table D.17 below), which was HUD's upper bound in the 1995 rule. Based on the 1993 and 1994 mortgage markets, HUD's earlier estimates also assumed that refinance mortgages would have smaller shares of lower-income borrowers than home purchase loans; the experience during the 1995–1997 period was the reverse, with refinance loans having higher shares of lower-income borrowers than home purchase loans. For example, in 1997, 45 percent of refinancing borrowers had less-than-area-median incomes, compared with 42.5 percent of borrowers purchasing a home.

[60] The 1995–97 estimates also include the effects of small loans (less than $15,000) and manufactured housing loans which increase the market shares for metropolitan areas by approximately one percentage point. For example, assuming a constant mix of owner and rental properties, excluding these loans would reduce the goals-qualifying shares as follows: the Low- and Moderate-Income Goal by 1.4 percentage points, and the Special Affordable Goal and Underserved Areas Goals by one percentage point. However, dropping manufactured housing from the market totals would increase the rental share of the market, which would tend to lower these impact estimates. It should also be mentioned that manufactured housing in non-metropolitan areas is not included in HUD's analysis due to lack of data; including this segment of the market would tend to increase the goals-qualifying shares of the overall market. Thus, the analyses of manufactured housing reported above and throughout the text pertain only to manufactured housing loans in metropolitan areas, as measured by loans originated by the manufactured housing lenders identified by Scheessele, *op. cit.*

[61] The accuracy of the single-family portion of HUD's model can be tested using HMDA data. The number of single-family loans reported to HMDA for the years 1995 to 1997 can be compared with the corresponding number predicted by HUD's model. Single-family loans reported to HMDA during 1995 were 79 percent of the number of loans predicted by HUD's model; comparable percentages for 1996, 1997, and 1998 were 83 percent , 82 percent, and 88 percent, respectively. Studies of the coverage of HMDA data through 1996 conclude that HMDA covers approximately 85 percent of the conventional conforming market. (See Randall M. Scheessele, *HMDA Coverage of the Mortgage Market, op. cit.*) The fact that the HMDA data account for lower percentages of the single-family loans predicted by HUD's model suggests that HUD's model may be slightly overestimating the number of single-family loans during the 1995–97 period. The only caveat to this concerns manufactured housing in non-metropolitan areas. The average loan amount that HUD used in calculating the number of units financed from mortgage origination dollars did not include the effects of manufactured housing in non-metropolitan areas; thus, HUD's average loan amount is too high, which suggests that single-family-owner mortgages are underestimated. (Similarly, the goals-qualifying percentages in HUD's model are based on metropolitan area data and therefore do not include the effects of manufactured housing in non-metropolitan areas.)

[62] A 15 percent estimate for 1997 is reported by Michelle C. Hamecs and Michael Benedict, ''Mortgage Market Developments'', in *Housing Economics*, National Association of Home Builders, April 1998, pages 14–17. Hamecs and Benedict draw their estimate from a survey by *Inside B&C Lending*, an industry publication. A 12 percent estimate is reported in ''Subprime Products: Originators Still Say Subprime Is 'Wanted Dead or Alive' '' in *Secondary Marketing Executive*, August 1998, 34–38. Forest Pafenberg reports that subprime mortgages

accounted for 10 percent of the conventional conforming market in 1997; see his article, ''The Changing Face of Mortgage Lending: The Subprime Market'', *Real Estate Outlook*, National Association of Realtors, March 1999, pages 6–7. Pafenberg draws his estimate from Inside Mortgage Capital, which used data from the Mortgage Information Corporation. The uncertainty about what these various estimates include should be emphasized; for example, they may include second mortgages and home equity loans as well as first mortgages, which are the focus of this analysis.

[63] Based on information from The Mortgage Information Corporation, Pafenberg reports the following serious delinquency rates (either 90 days past due or in foreclosure) for 1997 by type of subprime loan: 2.97 percent for A-minus; 6.31 percent for B; 9.10 percent for C; and 17.69 percent for D. The D category accounted for only 5 percent of subprime loans and of course, is included in the ''B&C'' category referred to in this appendix. Also see ''Subprime Mortgage Delinquencies Inch Higher, Prepayments Slow During Final Months of 1998'', *Inside MBS & ABS: Inside MBS & ABS*, March 12, pages 8–11, where it is reported that fixed-rate A-minus loans have delinquency rates similar to high-LTV (over 95 percent) conventional conforming loans.

[64] Not surprisingly, the goals-qualifying percentages for subprime lenders are much higher than the percentages (43.6 percent, 16.3 percent, and 27.8 percent, respectively) for the overall single-family conventional conforming market in 1997. For further analysis of subprime lenders, see Randall M. Scheessele, *1998 HMDA Highlights, op. cit.*

[65] Dropping B&C loans in the manner described in the text results in the goals-qualifying percentages for the non-B&C market being underestimated since HMDA coverage of B&C loans is less than that of non-B&C loans and since B&C loans have higher goals-qualifying shares than non-B&C loans. For instance, the low-mod shares of the market reported in Table D.13 underestimate (to an unknown extent) the low-mod shares of the market inclusive of B&C loans; so reducing the low-mod owner shares by dropping B&C loans in the manner described in the text would provide an underestimate of the low-mod share of the non-B&C owner market. A study of 1997 HMDA data in Durham County, North Carolina by the Coalition for Responsible Lending (CRL) found that loans by mortgage and finance companies are often not reported to HMDA. For a summary of this study, see ''Renewed Attack on Predatory Subprime Lenders'' in *Fair Lending/CRA Compass*, June 9, 1999.

[66] In 1998, the ''unadjusted'' market shares (i.e., inclusive of B&C loans) were as follows: Low-Mod Goal (54.1 percent); Special Affordable Goal (26.0 percent); and Underserved Areas Goal (30.4 percent). The 1998 conforming B&C market is estimated to be $61 billion, with an average loan amount of $75,062 representing an estimated 812,662 B&C conforming loans. The 1998 goals-qualifying percentages (low-mod, 58.0 percent; special affordable, 28.5 percent; and underserved areas, 44.7 percent) used to ''proxy'' the B&C market are similar to those for 1995–97. As noted earlier, there is much uncertainty about the size of the B&C market.

[67] The percentages in Table D.17 refer to borrowers purchasing a home. In HUD's model, the low-mod share of refinancing borrowers is assumed to be three percentage points lower than the low-mod share of borrowers purchasing a home; three percentage points is the average differential between 1992 and 1999. Thus, the market share model with the 40 percent owner percentage in Table D.17 assumes that 40 percent of home purchase loans and 37 percent of refinance loans are originated for borrowers with low- and moderate-income. If the same low-mod percentage were used for both refinancing and home purchase borrowers, the overall market share for the Low- and Moderate-Income Goal would increase by 0.7 of a percentage point.

[68] Assuming a 42 (40) percent low-mod share of the owner market, the low-mod share of the overall market increased from 52.5 (51.0) percent to 55.9 (54.5) percent as the multifamily mix increased from 10 percent to 18 percent.

[69] On the other hand, in the heavy refinance year of 1998, refinancing borrowers had higher incomes than borrowers purchasing a home.

[70] The three percentage point differential is the average for the years 1992 to 1998 (see Table D.14).

[71] Rather, this approach reflects 1998 market conditions when the low-mod differential between home purchase and refinance loans was approximately three percentage points.

[72] The $82,022 is derived by adjusting the 1997 figure of $68,289 upward based on recent growth in the average loan amount for all loans. Also, it should be mentioned that one recent industry report suggests that the B&C part of the subprime market has fallen to 37 percent. See ''Retail Channel Surges in the Troubled ''98 Market'' in *Inside B&C Lending*, March 25, 1999, page 3.

[73] As before, 1998 HMDA data for 200 subprime lenders were used to provide an estimate of 58.0 percent for the portion of the B&C market that would qualify as low- and moderate-income. Applying the 58.0 percentage to the estimated B&C market total of 555,948 gives an estimate of 322,450 B&C loans that would qualify for the Low- and Moderate-Income Goal. Adjusting HUD's model to exclude the B&C market involves subtracting the 555,948 B&C loans and the 322,450 B&C low-mod loans from the corresponding figures estimated by HUD for the total single-family and multifamily market inclusive of B&C loans. HUD's projection model estimates that 7,308,558 single-family and multifamily units will be financed and of these, 3,990,525 (54.6 percent as in Table D.17) will qualify for the Low- and Moderate-Income Goal. Deducting the B&C market estimates produces the following adjusted market estimates: a total market of 6,752,610 of which 3,668,074 (54.3 percent) will qualify for the Low- and Moderate-Income Goal.

[74] This reduction in the low-mod share of the mortgage market share occurs because the multifamily mix is reduced from 15 percent to 13.8 percent. (See Section F.3b for additional sensitivity analyses of the multifamily mix.)

[75] Refinance mortgages were assumed to account for 15 percent of all single-family originations; 31 percent of refinancing borrowers were assumed to have less-than-area-median incomes, which is 14 percentage points below the 1997 level. A multifamily mix of 17.3 percent was assumed during the recession scenario. If the multifamily mix were reduced to 15.2 percent in this environment, the low-mod share would drop to 47.9 percent.

[76] Section 1336(b)(3)(A).

[77] As shown in Table D.18, excluding loans less than $15,000 and manufactured home loans reduces the 1997 underserved area percentage by 1.2 percentage points for all single-family-owner loans from 27.8 to 26.6 percent. Dropping only small loans reduces the underserved areas share of the metropolitan market by 0.4 and dropping manufactured loans (above $15,0000) reduces the market by 0.8.

[78] The main reason for HUD's underestimate in 1995 was not anticipating the high percentages of single-family-owner mortgages that would be originated in underserved areas. During the 1995–97 period, about 27 percent of single-family-owner mortgages financed properties in underserved areas; this compares with 24 percent for the 1992–94 period which was the basis for HUD's earlier analysis. There are other reasons the underserved area market shares for 1995 to 1997 were higher than HUD's 25–28 percent estimate. Single-family rental and multifamily mortgages originated during this period were also more likely to finance properties located in underserved areas than assumed in HUD's earlier model. In 1997, 45 percent of single-family rental mortgages and 48 percent of multifamily mortgages financed properties in underserved areas, both figures larger than HUD's assumptions (37.5 percent and 42.5 percent, respectively) in its earlier model. Even in the heavy refinance year of 1998, the underserved areas market share (31 percent) was higher than projected by HUD during the 1995 rule-making process.

[79] Table D.19 presents estimates for the same combinations of projections used to analyze the Low- and Moderate-Income Goal. Table D.16 in Section F.3 defines Cases 1, 2, and 3; Case 1 (the baseline) projects a 42.5 percent share for single-family rentals and a 48 percent share for multifamily properties while the more conservative Case 2 projects 40 percent and 46 percent, respectively.

[80] These data do not include loans originated by lenders that specialize in manufactured housing loans.

[81] Assuming that non-metropolitan areas account for 15 percent of all single-family-owner mortgages and recalling that the projected single-family-owner market for the year 2001 accounts for 72.2 percent of newly-mortgaged dwelling units, then the non-metropolitan underserved area differential of 17 percent would raise the overall market estimate by 1.9 percentage point—17 percentage points *times* 0.15 (non-metropolitan area mortgage market share) *times* 0.722 (single-family owner mortgage

market share). This calculation is the basis for the 1.5 percentage point adjustments to the 1995–98 underserved area market shares reported earlier in Table D.15.

[82] It is recognized that some may not view all of the assumptions made to generate the results in Table D.19 as conservative. The term ''conservative'' is being use here to reflect the fact that adjusting the data in Table D.19 to include underserved non-metropolitan counties would increase the underserved areas market share more than adjusting the same data to exclude B&C loans would reduce it.

[83] 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.

[84] Previous analysis of this issue has focused 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 estimating the affordability of newly mortgaged properties. See ''A Critique of the Methodology Used to Determine Affordable Housing Goals for the Government Sponsored Enterprises.''

[85] Affordability was calculated as discussed earlier in Section F, using AHS monthly housing cost, monthly rent, number of bedrooms, and MSA location fields. Low-income tracts were identified using the income characteristics of census tracts from the 1990 Census of Population, and the census tract field on the AHS file was used to assign units in the AHS survey to low-income tracts and other tracts. POMS data on year of mortgage origination were utilized to restrict the sample to properties mortgaged during 1993–1995.

[86] During the 1995 rule-making process, 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 did not exactly coincide with low-income tracts, they were the only proxy readily available to HUD at that time. 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.

[87] Therefore, combining the assumed very-low-income percentage of 50 percent (47 percent) for single-family rental (multifamily) units with the assumed low-income-in-low-income-area percentage of 8 percent (11 percent) for single-family rental (multifamily) units yields the special affordable percentage of 58 percent (58 percent) for single-family rental (multifamily) units. This is the baseline Case 1 in Table D.6.

[88] The 28.8 percent estimate for 1997 excludes B&C loans but includes manufactured housing and small loans while HUD's earlier 20–23 percent estimate excluded the effects of these loans. Excluding manufacturing housing and small loans from the 1997 market would reduce the special affordable share of 28.8 percent by a percentage point. This can be approximated by multiplying the single-family-owner property share (0.702) for 1997 by the 1.4 percentage point differential between the special affordable share of all (home purchase and refinance) single-family-owner mortgages in 1997 with manufactured and small loans included (16.3 percent) and the corresponding share with these loans excluded (14.9 percent). This gives a reduction of 0.98 percentage point. These calculations overstate the actual reduction because they do not include the effect of the increase in the rental share of the market that accompanies dropping manufactured housing and small loans from the market totals.

[89] The upper bound of 27 percent from HUD's baseline special affordable model is obtained when the special affordable share of home purchase loans is 15 percent, which was the figure for 1997 (see Table D.20). However, the upper bound of 27 percent is below the 1997 estimate of the special affordable market of almost 29 percent (see Table D.15). There are several reasons for this discrepancy. As mentioned earlier, the rental share in HUD's baseline projection model is less than the rental share of the 1997 market. In addition, HUD's projection model assumes that the special affordable share of refinance mortgages will be 1.4 percentage points less than the corresponding share for home purchase loans (1.4 percent is the average difference between 1992 and 1998). But in 1997, the special affordable share (17.6 percent) of refinance mortgages was larger than the corresponding share (15.3 percent) for home loans.

[90] This reduction in the special affordable share of the mortgage market share occurs because the multifamily mix is reduced from 15 percent to 13.8 percent. (See above for additional sensitivity analyses of the multifamily mix.)

[FR Doc. 00–27367 Filed 10–30–00; 8:45 am]

BILLING CODE 4210–27–P

Federal Register

Tuesday,
October 31, 2000

Part III

Department of Defense
General Services Administration
National Aeronautics and Space Administration

Federal Acquisition Regulation; Reverse Auctioning; Notice

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation; Reverse Auctioning

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice and request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) are considering whether there is a need at this time for guidance on the use of reverse auction techniques and, if so, how it can be most effectively communicated (*e.g.,* through the Federal Acquisition Regulation, best practice guides, agency instructions, or training). The Councils request that interested parties provide comments.

DATES: Interested parties should submit comments to the FAR Secretariat at the address shown below on or before January 2, 2001.

ADDRESSES: Submit written comments to: General Services Administration, FAR Secretariat (MVR), 1800 F Street, NW., Room 4035, Attn: Ms. Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to: Auction@gsa.gov.

Please submit comments only and cite ''reverse auction notice'' in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ralph DeStefano, Procurement Analyst, at (202) 501–1758. Please cite ''reverse auction notice''.

SUPPLEMENTARY INFORMATION: Recently, several agencies have taken advantage of technological advances in various commodity procurements by conducting pricing competitions on-line where competing vendors lowered their prices to obtain the contract. Use of this so-called ''reverse auction technique'' appears to be gaining interest in certain segments of the commercial marketplace. Additional agencies are now considering potential applications for this technique. A variety of considerations will likely shape these decisions and guidance may be beneficial.

The Councils understand that interested parties have varied opinions on the need for guidance on the Government's use of reverse auction techniques. The opinions include:

- There is insufficient agency experience upon which to develop meaningful guidance at this time.
- Explicit coverage in the FAR is not needed because FAR 1.102(d) permits any technique that is not expressly prohibited.
- Reverse auction policy should be included in the FAR.
- Other guidance is needed, such as best practices guides, agency instructions, or training.

Therefore, the Councils are seeking input that will help them determine the best approach to help inform thinking regarding the use of reverse auction techniques.

1. *Need for guidance.* The Councils ask that respondents discuss whether guidance related to the use of reverse auction techniques is needed at this time. Respondents are encouraged to discuss potential advantages and disadvantages.

2. *Form of guidance.* To the extent guidance is desired, the Councils ask respondents to identify the form(s) of guidance that would be most beneficial (*e.g.*, a FAR rule, best practice guides, agency instructions, training, other).

3. *Topics for coverage.* The Councils are interested in hearing respondents' ideas regarding topics that should be addressed if guidance is developed. Examples of topics might include the following—

- The goal(s) of using an online auction;
- The ''ground rules'' of the auction;
- Factors that must be considered in determining whether a requirement is suitable for use of reverse auction techniques;
- Ways to tailor the technique to reflect various contracting strategies and source selection approaches (including best value cost-technical ''tradeoffs'');
- Strategies for small business participation;
- Handling of preferences;
- Barriers to conducting auctions;
- Expected results from the auction;
- Potential advantages and disadvantages of reverse auction techniques for industry participants; and
- Potential advantages and disadvantages of reverse auction techniques for Federal agencies.

4. *Content of coverage.* Respondents are invited to share their ideas regarding possible content on the areas identified above, or other areas they have identified in their response to item 3. In doing so, respondents are encouraged to provide lessons learned from their experiences with online reverse auction techniques.

Dated: October 26, 2000.

Al Matera,

Acting Director, Federal Acquisition Policy Division.

[FR Doc. 00–27963 Filed 10–30–00; 8:45 am]

BILLING CODE 6820–EP–M

Federal Register

Tuesday,
October 31, 2000

Part IV

Environmental Protection Agency

Forty-Third Report of the TSCA Interagency Testing Committee; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–41051; FRL–6049–5]

Forty-Third Report of the TSCA Interagency Testing Committee to the Administrator; Receipt of Report and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Toxic Substances Control Act (TSCA) Interagency Testing Committee (ITC) transmitted its Forty-Third Report to the Administrator of the EPA on November 19, 1998. In the 43rd Report, which is included with this notice, the ITC revised the TSCA section 4(e) *Priority Testing List* by removing 9 High Production Volume Chemicals (HPVCs), 7 alkylphenols, and 2 octylphenol ethoxylates. The ITC is also asking EPA to promulgate a TSCA section (d) reporting rule for 18 alkylphenols; 15 nonylphenol ethoxylates; 3-amino-5-mercapto-1,2,4-triazole; glycoluril; and methylal recommended by the ITC for testing in several previous ITC Reports. There are no recommended, designated, or recommended with intent-to-designate chemicals or chemical groups in the 43rd Report. EPA invites interested persons to submit written comments on the Report.

DATES: Comments, identified by docket control number OPPTS–41051, must be received on or before November 30, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–41051 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: *For general information contact:* Barbara Cunningham, Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: John D. Walker, ITC Executive Director (7401), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 260–1825; fax: (202) 260–7895; e-mail address: walker.johnd@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. It may, however, be of particular interest to you if you manufacture (defined by statute to include import) any of the chemicals listed and you may be identified by the North American Industrial Classification System (NAICS) codes 325 and 32411. Because this action is directed to the general public and other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be interested in this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

You may also access additional information about the ITC and the TSCA testing program through the web site for the Office of Prevention, Pesticides and Toxic Substances (OPPTS) at http://www.epa.gov/internet/oppts/, or go directly to the ITC Home Page at http://www.epa.gov/opptintr/itc/.

2. *In person.* The Agency has established an official record for this action under docket control number OPPTS–41051. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–41051 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: OPPT Document Control Office (DCO) in East Tower Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260–7093.

3. *Electronically.* You may submit your comments electronically by e-mail to: oppt.ncic@epa.gov, or mail your computer disk to the address identified above. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–41051. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI Information That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of

the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

We invite you to provide your views and comments on the ITC's 43rd Report. You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. Provide specific examples to illustrate your concerns.
5. Make sure to submit your comments by the deadline in this notice.
6. To ensure proper receipt by EPA, be sure to identify the docket control number OPPTS–41051 in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

The Toxic Substances Control Act (TSCA) (15 U.S.C. 2601 *et seq.*) authorizes the Administrator of the EPA to promulgate regulations under section 4(a) requiring testing of chemicals and chemical groups in order to develop data relevant to determining the risks that such chemicals and chemical groups may present to health or the environment. Section 4(e) of TSCA established the ITC to recommend chemicals and chemical groups to the Administrator of the EPA for priority testing consideration. Section 4(e) of TSCA directs the ITC to revise the TSCA section 4(e) *Priority Testing List* at least every 6 months.

EPA has received the TSCA ITC's 43rd Report to the Administrator. The most recent revisions to the *Priority Testing List* are included in the ITC's 43rd Report. The Report was received by the EPA Administrator on November 19, 1998, and is included in this notice. The ITC revised the TSCA section 4(e) *Priority Testing List* by removing 9 HPVCs that were recommended in the 36th Report (60 FR 42982, August 17, 1995) (FRL–4965–6) and 7 alkylphenols and 2 octylphenol ethoxylates that were recommended in the 37th Report (61 FR 4188, February 2, 1996) (FRL–4991–6).

The ITC is also asking EPA to promulgate a TSCA section 8(d) reporting rule for 15 nonylphenol ethoxylates that were recommended in the 39th Report (62 FR 8578, February 25, 1997) (FRL–5580–9), 18 alkylphenols that were recommended in the 41st Report (63 FR 17658, April 8, 1998) (FRL–5773–5), and 3-amino-5-mercapto-1,2,4-triazole; glycoluril; and methylal that were recommended in the 42nd Report (63 FR 42553, August 7, 1998) (FRL–5797–8) to determine if there are unpublished data to meet previously determined U.S. Government data needs.

1. *Promulgation of a TSCA section 8(d) reporting rule.* The ITC's Voluntary Information Submissions Innovative Online Network (VISION) is accessible through the world wide web (http://www.epa.gov/opptintr/itc/vision.htm) and is designed to promote more efficient use of TSCA section 8 resources through submission of electronic information. As part of VISION, the Voluntary Information Submission Policy clearly states that if the ITC does not receive voluntary electronic information submissions to meet the data needs for recommended chemicals, then it will ask the EPA to promulgate a TSCA section 8(d) reporting rule to determine if there are unpublished studies to meet those data needs. The EPA is being asked to promulgate a TSCA section 8(d) reporting rule for the chemicals referenced in this unit, because studies submitted to the VISION did not adequately meet the data needs for those chemicals. The ITC is requesting that the EPA promulgate a TSCA section 8(d) reporting rule to meet only those data needs listed in certain previous ITC Reports.

2. *Data needs*—i. *Nonylphenol ethoxylates and alkylphenols.* Data needs for 15 nonylphenol ethoxylates recommended in the 39th ITC Report and 18 alkylphenols recommended in the 41st ITC Report are identical and are listed in this unit as they were expressed in the 41st ITC Report:

a. Fish and amphibian multi-generation reproductive effects data.
b. Avian acute toxicity data (oral feeding and egg exposure studies).
c. Avian reproductive effects data.
d. Fish and wildlife studies data.
e. Bioaccumulation or bioavailability data.
f. Health effects data, including absorption, toxicokinetics, systemic toxicity, endocrine disruption, reproductive effects, and carcinogenicity data.

ii. *3-Amino-5-mercapto-1,2,4-triazole.* Data needs for 3-amino-5-mercapto-1,2,4-triazole are listed in this unit as they were expressed in the 42nd ITC Report: Health effects.

iii. *Glycoluril.* Data needs for glycoluril are listed in this unit as they were expressed in the 42nd Report: Health effects.

iv. *Methylal.* Data needs for methylal are listed in this unit as they were expressed in the 42nd Report: Health effects, especially, *in vivo* mammalian metabolism and chronic effects.

3. *Status of the Priority Testing List.* The TSCA section 4(e) *Priority Testing List* as of November 1998 can be found in Table 1 of the 43rd ITC Report which is included in this notice.

List of Subjects

Environmental protection, Chemicals, Hazardous substances.

Dated: October 24, 2000.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Forty-Third Report of the TSCA Interagency Testing Committee to the Administrator, U.S. Environmental Protection Agency

Table of Contents

Summary
I. Background
II. TSCA Section 8 Reporting
A. TSCA Section 8 Rules
B. ITC's Use of TSCA Section 8 and ''Other Information''
C. Promoting More Efficient Use of Information Submission Resources
D. Request to Promulgate a TSCA Section 8(d) Rule
E. Chemicals for Which the ITC is Requesting That EPA Promulgate a TSCA Section 8(d) Rule
III. ITC's Dialogue Group Activities During This Reporting Period (May to November 1998)
IV. Revisions to the TSCA Section 4(e) *Priority Testing List*
A. Summary Table of Changes
B. Chemicals Removed From the *Priority Testing List*
V. TSCA Interagency Testing Committee

Summary

This is the 43rd Report of the TSCA Interagency Testing Committee (ITC) to the Administrator of the U.S. Environmental Protection Agency (EPA). In this Report, the ITC is revising its TSCA section 4(e) *Priority Testing List* by removing 9 High Production Volume Chemicals (HPVCs), 7 alkylphenols, and 2 octylphenol ethoxylates. In this Report, the ITC is also asking EPA to promulgate a TSCA section 8(d) Health and Safety Data Reporting (HaSD) rule for 18

alkylphenols, 15 nonylphenol ethoxylates, 3-amino-5-mercapto-1,2,4-triazole, glycoluril, and methylal to determine if there are unpublished data to meet previously determined U.S. Government data needs. The revised TSCA section 4(e) *Priority Testing List* follows as Table 1.

TABLE 1.—THE TSCA SECTION 4(E) *Priority Testing List* (NOVEMBER 1998) [1]

Report	Date	Chemical/Group	Action
26	May 1990	8 Isocyanates	Recommended with intent-to-designate
27	November 1990	62 Aldehydes	Recommended with intent-to-designate
28	May 1991	Chemicals with Low Confidence Reference Dose (RfD). Acetone Thiophenol	Designated
30	May 1992	5 Siloxanes	Recommended
31	January 1993	24 Chemicals with insufficient dermal absorption rate data.	Designated
32	May 1993	32 Chemicals with insufficient dermal absorption rate data.	Designated
35	November 1994	24 Chemicals with insufficient dermal absorption rate data.	Designated
37	November 1995	16 Alkylphenols and 3 alkylphenol polyethoxylates.	Recommended
39	November 1996	15 Nonylphenol ethoxylates and 8 alkylphenol polyethoxylates.	Recommended
41	November 1997	18 Alkylphenols, 5 polyalkyphenols, and 6 alkylphenol polyethoxylates.	Recommended
42	May 1998	3-Amino-5-mercapto-1,2,4-triazole	Recommended
42	May 1998	Glycoluril	Recommended
42	May 1998	Methylal	Recommended
42	May 1998	Ethyl silicate[2]	Recommended

[1] The *Priority Testing List* is available from the ITC's web site (http://www.epa.gov/opptintr/itc).
[2] Data requested through the ITC's Voluntary Information Submissions Innovative Online Network (VISION) (see http://www.epa.gov/opptintr/itc/vision.htm).

I. Background

The ITC was established by section 4(e) of the Toxic Substances Control Act (TSCA) ''to make recommendations to the Administrator respecting the chemical substances and mixtures to which the Administrator should give priority consideration for the promulgation of a rule for testing under section 4(a).... At least every six months..., the Committee shall make such revisions to the *Priority Testing List* as it determines to be necessary and transmit them to the Administrator together with the Committee's reasons for the revisions'' (Public Law 94–469, 90 Stat. 2003 *et seq.* (15 U.S.C. 2601 *et seq.*)). Since its creation in 1976, the ITC has submitted 42 semi-annual (May and November) Reports to the EPA Administrator transmitting the *Priority Testing List* and its revisions. In 1989, the ITC began recommending chemical substances for information reporting, screening, and testing to meet the data needs of its member U.S. Government organizations. ITC Reports are available from http://www.epa.gov/opptintr/itc/ within a few days of submission to the Administrator and from http://www.epa.gov/fedrgstr/ after publication in the **Federal Register**. The ITC meets monthly and produces its revisions to the *List* with administrative and technical support from the ITC staff and contract support provided by EPA. ITC members and staff are listed at the end of this Report.

II. TSCA Section 8 Reporting

A. TSCA Section 8 Rules

Following receipt of the ITC's Report by the EPA Administrator and addition of chemicals to the *Priority Testing List*, the EPA's Office of Pollution Prevention and Toxics (OPPT) promulgates TSCA section 8(a) Preliminary Assessment Information Reporting (PAIR) and TSCA section 8(d) HaSD Reporting rules for chemicals added to the *Priority Testing List*. These rules require producers and importers of chemicals recommended by the ITC to submit production and exposure reports under TSCA section 8(a) and producers, importers, and processors of chemicals recommended by the ITC to submit unpublished health and safety studies under TSCA section 8(d). These rules are automatically promulgated by OPPT unless requested not to do so by the ITC.

B. ITC's Use of TSCA Section 8 and ''Other Information''

The ITC reviews the TSCA section 8(a) PAIR reports, TSCA section 8(d) HaSD studies, and ''other information'' that becomes available after the ITC adds chemicals to the *Priority Testing List*. ''Other information'' includes TSCA section 4(a) and 4(d) studies, TSCA section 8(c) submissions, TSCA section 8(e) ''substantial risk'' notices, ''For Your Information'' (FYI) submissions, ITC voluntary submissions, unpublished data submitted to U.S. Government organizations represented on the ITC, published papers, as well as use, exposure, effects, and persistence data that are voluntarily submitted to the ITC by manufacturers, importers, processors, and users of chemicals recommended by the ITC. The ITC reviews this information and determines if data needs should be revised, if chemicals should be removed from the *Priority Testing List* or if recommendations should be changed to designations.

C. Promoting More Efficient Use of Information Submission Resources

The Voluntary Information Submissions Innovative Online Network (VISION) is accessible through the world wide web (http://www.epa.gov/opptintr/itc/vision.htm). VISION is the vehicle that is used to promote more efficient use of resources through submission of electronic information. VISION currently includes the Voluntary Information Submissions Policy (VISP), links to the TSCA Electronic HaSD Reporting Form (http://cyber22.dcoirm.epa.gov/oppt/

tsca.nsf/HaSDForm?openform) and instructions for the Form (http://www.epa.gov/opptintr/itc/tsca-hlp.htm). The VISP provides examples of data needed by ITC member U.S. Government organizations, examples of studies that should not be submitted, the 60-, 90-, and 120-day milestones for meeting the objectives of the VISP, guidelines for using the TSCA Electronic HaSD Reporting Form, and instructions for electronically submitting full studies. The TSCA Electronic HaSD Reporting Form is used to provide electronic information on ITC and TSCA section 8(d) studies (to meet data needs of the ITC member U.S. Government organizations), FYI, and TSCA section 8(e) studies, and studies to meet the needs of the HPV Chemical Challenge Program (http://www.epa.gov/opptintr/chemtest/hpv.htm).

D. Request to Promulgate a TSCA Section 8(d) Rule

The ITC encourages producers, importers, processors, and users of its recommended chemicals to use VISION to voluntarily provide electronic information and establish a dialogue with the ITC to discuss needed data. As part of VISION, the VISP clearly states that if the ITC does not receive voluntary electronic information submissions to meet its data needs, then it will ask the EPA to promulgate a TSCA section 8(d) HaSD rule to determine if there are unpublished data to meet those needs. As noted in Unit 2.C. of this Report, the TSCA Electronic HaSD Reporting Form is used to provide electronic information on TSCA section 8(d) studies. The ITC strongly encourages those companies that must respond to a TSCA section 8(d) rule to provide only the data requested by the ITC and to provide data by using the TSCA Electronic HaSD Reporting Form. At this time, the ITC is requesting that the EPA promulgate a TSCA section 8(d) rule for several chemicals with the understanding that submissions that were voluntarily provided as ITC submissions, do not have to be re-submitted under the TSCA section 8(d) HaSD rule. The ITC is requesting that the EPA promulgate a TSCA section 8(d) HaSD rule to meet only those data needs listed in previous ITC Reports.

E. Chemicals for Which the ITC is Requesting That EPA Promulgate a TSCA Section 8(d) Rule

1. *39th and 41st Report chemicals.* The ITC considered structures and annual production and importation volumes for nonylphenol ethoxylates and nonylphenol polyethoxylates recommended in the 39th Report (62 FR 8578, February 25, 1997) (FRL–5580–9) and for alkylphenols, polyalkylphenols, and alkylphenol polyethoxylates recommended in the 41st Report (63 FR 17658, April 9, 1998) (FRL–5773–5). In addition, the ITC considered use and health and safety data voluntarily submitted to the ITC by the Chemical Manufacturers Association (CMA) Alkylphenols and Ethoxylates (AP&E) Panel before VISION was developed, health and safety data voluntarily submitted through VISION as well as TSCA section 8(d) health and safety data submitted for structurally related chemicals in the 37th Report (61 FR 4188, February 2, 1996) (FRL–4991–6). After considering this information, and determining that it was not adequate to meet the data needs for these chemicals, the ITC decided to ask EPA to promulgate a TSCA section 8(d) HaSD rule for the nonylphenol ethoxylates recommended in the 39th Report and the alkylphenols recommended in the 41st Report. These chemicals are listed in Table 2.

2. *42nd Report chemicals.* The ITC sent its 42nd Report (63 FR 42554, August 7, 1998) (FRL–5797–8) to manufacturers of 3-amino-5-mercapto-1,2,4-triazole, glycoluril, and methylal and requested that they use VISION to provide data to meet the U.S. Government data needs described in the 42nd Report. Since no information to meet these data needs was received, the ITC is asking EPA to promulgate a TSCA section 8(d) HaSD rule for these chemicals to determine if there are unpublished data to meet those needs. The ITC also contacted the Silicones Environmental Health and Safety Council (SEHSC) about providing data for ethyl silicate. The SEHSC agreed to meet with the ITC to discuss data needs. If needed data are not provided, the ITC will consider asking EPA to promulgate a TSCA section 8(d) HaSD rule for ethyl silicate.

TABLE 2.—CHEMICALS FOR WHICH THE ITC IS REQUESTING THAT EPA PROMULGATE A TSCA SECTION 8(D) HASD RULE

CAS No.	Chemical name	ITC Report describing U.S. Government data needs
	Pentylphenols	
136–81–2	Phenol, 2-pentyl-	41
3279–27–4	Phenol, 2-(1,1-dimethylpropyl)-	41
25735–67–5	Phenol, 4-sec-pentyl-	41
26401–74–1	Phenol, 2-sec-pentyl-	41
	Hexylphenols	
2446–69–7	Phenol, 4-hexyl-	41
	Heptylphenols	
1987–50–4	Phenol, 4-heptyl-	41
72624–02–3	Phenol, heptyl derivs.	41
84605–25–4	Phenol, 1-methylhexyl derivs.	41
	Octylphenols	
140–66–9	Phenol, 4(1,1,3,3-tetramethylbutyl)	41
71902–25–5	Phenol, octenylated	41
	Nonylphenols	
68081–86–7	Phenol, nonyl derivs.	41
91672–41–2	Phenol, 2-nonyl-, branched	41
	Decylphenols	
27157–66–0	Phenol, tetradecyl-	41

TABLE 2.—CHEMICALS FOR WHICH THE ITC IS REQUESTING THAT EPA PROMULGATE A TSCA SECTION 8(D) HASD RULE—Continued

CAS No.	Chemical name	ITC Report describing U.S. Government data needs
	Dodecylphenols	
74499–35–7	Phenol, (tetrapropenyl) derivs.	41
	Tetradecylphenols	
70682–80–3	Phenol, tetradecyl-	41
	Hexadecylphenols	
2589–78–8	Phenol, hexadecyl	41
25401–86–9	Phenol, 2-hexadecyl-	41
	Other Alkylphenols	
68784–24–7	Phenol, C18-30-alkyl derivs.	41
	Nonylphenol Ethoxylates	
7311–27–5	Ethanol, 2-[2-[2-[2-(4-nonylphenoxy)ethoxy]ethoxy]ethoxy]-	39
20427–84–3	Ethanol, 2-[2-(4-nonylphenoxy)ethoxy]	39
20636–48–0	3,6,9,12-Tetraoxatetradecan-1-ol, 14-(4-nonylphenoxy)	39
26264–02–8	3,6,9,12-Tetraoxatetradecan-1-ol, 14-(nonylphenoxy)-	39
26571–11–9	3,6,9,12,15,18,21,24-Octaoxahexacosan-1-ol, 26-(nonylphenoxy)-	39
27176–93–8	Ethanol, 2-[2-(nonylphenoxy)ethoxy]-	39
27177–01–1	3,6,9,12,15-Pentaoxaheptadecan-1-ol, 17-(nonylphenoxy)-	39
27177–05–5	3,6,9,12,15,18,21-Heptaoxatricosan-1-ol, 23-(nonylphenoxy)	39
27177–08–8	3,6,9,12,15,18,21,24,27-Nonaoxanonacosan-1-ol, 29-(nonylphenoxy)-	39
27986–36–3	Ethanol, 2-(nonylphenoxy)-	39
65455–72–3	3,6,9,12,15,18,21,24,27-Nonaoxanonacosan-1-ol, 29-(isononylphenoxy)-	39
98113–10–1	Nonoxynol-9	39
NA[1]	Nonoxynol-2	39
NA[1]	Nonoxynol-3	39
NA[1]	Nonoxynol-7	39
	Other Chemicals	
109–87–5	Methylal	42
496–46–8	Glycoluril	42
16691–43–3	3-Amino-5-mercapto-1,2,4-triazole	42

[1]Not available

III. ITC's Dialogue Group Activities During This Reporting Period (May to November 1998)

The CMA–ITC AP&E Dialogue Group was formed by the CMA's AP&E Panel and the ITC's AP&E Subcommittee in March 1996 following the submission of the ITC's 37th Report to the EPA Administrator in November 1995. The Group was created to facilitate the ITC's retrieval of information on uses, exposures, and health and ecological effects of alkylphenols and alkylphenol ethoxylates, and the Panel's understanding of data needed by the U.S. Government organizations represented on the Subcommittee. Since the creation of this Dialogue Group, numerous activities have occurred: See the ITC's 38th Report (61 FR 39832, July 30, 1996) (FRL–5379–2); 39th Report; 40th Report (62 FR 30580, June 4, 1997) (FRL–5718–3); 41st Report, and 42nd Report.

After the 42nd Report was delivered to the EPA Administrator, some members of the CMA's AP&E Panel formed the APE Research Council (APERC). The APERC-ITC AP&E Dialogue Group met twice during this reporting period. On August 12 and October 15, 1998, the Dialogue Group met to discuss:

1. Status of TSCA section 8(a) PAIR and TSCA section 8(d) rules for the 39th and 41st ITC Reports.

2. Number and type of studies on alkylphenols and alkylphenol ethoxylates sent to VISION.

3. Status of research related to U.S. Government data needs for alkylphenols and alkylphenol ethoxylates (e.g., multigeneration fish studies to determine offspring reproductive capabilities).

4. Progress and results of ongoing environmental and toxicological studies being conducted or sponsored by chemical manufacturers on the Council, (e.g., mammalian *in vitro* and *in vivo* toxicology, mammalian pharmacokinetic, biodegradation, aquatic toxicity, and avian acute toxicity studies).

5. Organization for Economic Cooperation and Development (OECD) Screening Information Data Set (SIDS) dossiers on nonylphenol and nonylphenol ethoxylates.

6. Alkylphenols that may be removed from the *Priority Testing List*.

7. Alkylphenols and nonylphenol ethoxylates being considered for Quantitative Structure Activity Relationship (QSAR) studies.

IV. Revisions to the TSCA Section 4(e) Priority Testing List

A. Summary Table of Changes

Revisions to the TSCA section 4(e) *Priority Testing List* are summarized in Table 3.

TABLE 3.—REVISIONS TO THE TSCA SECTION 4(E) *Priority Testing List*

CAS No.	Chemical name	Action	Date
		Remove	**November 1998**
.....	**HPVCs**	.....	
80–51–3	p,p'-Oxybis(benzenesulfonylhydrazide)	do.	do.
81–84–5	Naphthalenedicarboxylic anhydride	do.	do.
99–54–7	3,4-Dichloronitrobenzene	do.	do.
100–29–8	4-Ethoxynitrobenzene	do.	do.
119–33–5	4-Methyl-2-nitrophenol	do.	do.
121–60–8	4-(Acetylamino) benzenesulfonyl chloride	do.	do.
626–17–5	1,3-Dicyanobenzene	do.	do.
929–06–6	2-(2-Aminoethoxy) ethanol	do.	do.
3089–11–0	Hexa(methoxymethyl) melamine	do.	do.
	Butylphenols		
3180–09–4	2-Butylphenol	do.	do.
27178–34–3	tert-Butylphenol mixed isomers	do.	do.
.....	**Pentylphenols**		
94–06–4	4-(1-Methylbutyl)phenol	do.	do.
	Octylphenols		
949–13–3	2-Octylphenol	do.	do.
27985–70–2	(1-Methylheptyl)phenol	do.	do.
.....	**Nonylphenols**		
11066–49–2	Isononylphenol (mixed isomers)	do.	do.
17404–66–9	4-(1-Methyloctyl)phenol	do.	do.
.....	**Octylphenol Ethoxylates**		
2315–66–4	Decaethylene glycol 4-isooctylphenyl ether	do.	do.
2497–58–7	Hexaethylene glycol 4-isooctylphenyl ether	do.	do.

B. Chemicals Removed From the Priority Testing List

1. *HPVCs*—a. *Rationale*. The ITC is removing 9 HPVCs (Table 3) from the *Priority Testing List* because:

i. EPA, CMA, and the Environmental Defense Fund have agreed, that by the year 2003, data will be provided or developed for about 3,000 HPVCs produced or imported into the United States.

ii. The 3,000 HPVCs includes the 9 HPVCs on the *Priority Testing List*.

iii. At this time, there are no specific U.S. Government data needs for these chemicals that would not be met by the HPV Chemical Challenge Program.

b. *Supporting information*. HPVCs are chemicals with annual domestic production or importation volumes greater than 1 million pounds. Information on ITC's review of HPVCs is contained in Reports 27th (56 FR 9534, March 6, 1991) (FRL–3845–3), 35th (59 FR 67596, December 29, 1994) (FRL–4923–2), 36th (60 FR 42982, August 17, 1995) (FRL–4965–6), 37th, 38th, and 40th.

The ''Screening Information Data Set (SIDS) Manual of the OECD Programme on the Co-operative Investigation of High Production Volume Chemicals,'' provides test guidance for developing data for HPVCs. The basic screening endpoints are listed in section 2.2 (page 2) of this Manual (the ''SIDS Manual;'' available at http://www.epa.gov/opptintr/sids/sidsman.htm).

2. *Alkylphenols and alkylphenol ethoxylates*—a. *Rationale*. The ITC is removing 2 butylphenols, 1 pentylphenol, 2 octylphenols, 2 nonylphenols, and 2 octylphenol ethoxylates (Table 3) from the *Priority Testing List* because no domestic production or importation volumes were reported to the EPA in response to 1986, 1990, and 1994 Information Update Rules (indicating that volumes were less than 10,000 pounds per site in 1985, 1989, and 1993), no domestic production or importation volumes were reported to the EPA in response to the February 28, 1996, PAIR rule (indicating that volumes were less than 1,000 pounds per site in 1995), no TSCA section 8(d) studies were submitted to the EPA in response to the February 28, 1996, HaSD rule and because no TSCA section 8(e), FYI, or ITC studies were available for these chemicals as of September 1998.

b. *Supporting information*. Information on the ITC's review of alkylphenols and alkylphenol ethoxylates is contained in Reports 37, 38, 39, 40, and 41. The ITC reviewed use and health and safety data voluntarily submitted to the ITC by the CMA–ITC AP&E Dialogue Group before VISION was developed and health and safety data voluntarily submitted through VISION.

V. TSCA Interagency Testing Committee

Statutory Organizations and Their Representatives

Council on Environmental Quality
Brad Campbell, Member
Department of Commerce
National Institute of Standards and Technology
Malcolm W. Chase, Member
Barbara C. Levin, Alternate
National Oceanographic and Atmospheric Administration
Nancy Foster, Member
Teri Rowles, Alternate
Richard S. Artz, Alternate
Environmental Protection Agency
Paul Campanella, Member
David R. Williams, Alternate
National Cancer Institute
Victor Fung, Member, Chair
Harry Seifried, Alternate
National Institute of Environmental Health Sciences
William Eastin, Member, Vice Chair
H.B. Matthews, Alternate
National Institute for Occupational Safety and Health
Albert E. Munson, Member
Christine Sofge, Alternate
National Science Foundation
A. Frederick Thompson, Member
Joseph Reed, Alternate
Occupational Safety and Health Administration
Lyn Penniman, Member
Val H. Schaeffer, Alternate

Liaison Organizations and Their Representatives

Agency for Toxic Substances and Disease Registry
William Cibulas, Member
Consumer Product Safety Commission
Jacqueline Ferrante, Member
Department of Agriculture

;Clifford P. Rice, Member
Department of the Interior
Barnett A. Rattner, Member
Food and Drug Administration
Edwin J. Matthews, Member
Raju Kammula, Alternate
National Library of Medicine
Vera W. Hudson, Member
National Toxicology Program
NIEHS, FDA, and NIOSH Members
Counsel
Scott Sherlock, OPPT, EPA
Technical Support Contractor
Syracuse Research Corporation
ITC Staff
John D. Walker, Executive Director
Norma S. L. Williams, Executive Assistant

TSCA Interagency Testing Committee, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone: (202) 260–1825; fax: (202) 260–7895; e-mail address: williams.norma@epa.gov; url: http://www.epa.gov/opptintr/itc.

[FR Doc. 00–27926 Filed 10–30–00; 8:45 am]

BILLING CODE 6560–50–F

Federal Register

Tuesday,
October 31, 2000

Part V

Department of Health and Human Services

Centers for Disease Control and Prevention

HIV Counseling, Testing, and Referral, Draft Revised Guidelines; Notice

U.S. Public Health Service Recommendations for HIV Screening in Pregnant Women; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Draft Revised Guidelines for HIV Counseling, Testing, and Referral

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice and Request for Comments.

SUMMARY: This notice announces the availability for public comment of a document entitled ''Revised Guidelines for HIV Counseling, Testing, and Referral.''

DATES: Comments must be submitted in writing on or before November 30, 2000. Comments should be submitted to the Technical Information and Communications Branch, Mailstop E–49, Division of HIV/AIDS Prevention, National Center for HIV, STD, and TB Prevention, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, N.E., Atlanta, Georgia 30333; Fax: 404–639–2007; E-mail: hivmail@cdc.gov.

FOR FURTHER INFORMATION CONTACT: Requests for copies of the draft ''Revised Guidelines for HIV Counseling, Testing, and Referral'' should be submitted to the CDC National Prevention Information Network, P.O. Box 6003, Rockville, Maryland 20849–6003; telephone (800) 458–5231; or copies can be downloaded from the Division of HIV/AIDS Prevention website at www.cdc.gov/hiv.

SUPPLEMENTARY INFORMATION: The first CDC guidelines, published in 1986, highlighted the importance of offering voluntary testing and counseling services and maintaining confidential records. In 1987, CDC guidelines emphasized the need to decrease any barriers to counseling and testing, especially disclosure of personal information. An additional report was published in 1993 to supplement and update the 1987 guidelines. These guidelines described the model of HIV prevention counseling which is currently recommended. The 1994 report, ''HIV Counseling, Testing and Referral Standards and Guidelines,'' focused on standard testing procedures and reiterated the importance of the HIV prevention counseling model and the need for confidentiality of counseling services. The recommendations in the current draft ''Revised Guidelines for HIV Counseling, Testing, and Referral'' reflect new advances which have occurred during the last 6 years in the areas of HIV counseling, testing, and referral: (1) High-quality HIV prevention counseling models are efficacious for changing behavior and reducing the incidence of sexually transmitted diseases (STDs) in HIV-uninfected persons at increased risk. (2) Treatment has been found to be effective, improving quality and duration of life. (3) Therapy has been shown to dramatically reduce the risk of perinatal HIV transmission. (4) New testing technologies are increasingly available. (5) Guidances on partner counseling and referral services, prevention case management, prevention and control of STDs, and prevention of opportunistic infections have been published.

Dated: October 25, 2000.

Joseph R. Carter,

Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–27869 Filed 10–30–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Draft Guidelines for Revised U.S. Public Health Service Recommendations for Human Immunodeficiency Virus (HIV) Screening of Pregnant Women

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice and Request for Comments.

SUMMARY: This notice announces the availability for public comment of a document entitled ''Revised U.S. Public Health Service Recommendations for Human Immunodeficiency Virus (HIV) Screening of Pregnant Women.''

DATES: Comments must be submitted in writing on or before November 30, 2000. Comments should be submitted to the Technical Information and Communications Branch, Mailstop E–49, Division of HIV/AIDS Prevention, National Center for HIV, STD, and TB Prevention, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Atlanta, Georgia 30333; Fax: 404–639–2007; E-mail: hivmail@cdc.gov.

FOR FURTHER INFORMATION CONTACT: Requests for copies of the draft ''Revised U.S. Public Health Service Recommendations for Human Immunodeficiency Virus (HIV) Screening of Pregnant Women'' should be submitted to the CDC National Prevention Information Network, P.O. Box 6003, Rockville, Maryland 20849–6003; telephone (800) 458–5231; or copies can be downloaded from the Division of HIV/AIDS Prevention website at www.cdc.gov/hiv.

SUPPLEMENTARY INFORMATION: In 1994, the U.S. Public Health Service (USPHS) published guidelines for use of zidovudine (ZDV) to reduce perinatal HIV transmission. In 1995, the USPHS issued guidelines recommending universal counseling and voluntary HIV testing of all pregnant women and treatment for those found to be infected. Publication of these recommendations was followed by rapid implementation by health care providers, widespread acceptance of chemoprophylaxis by HIV-infected women, and a steep and sustained decline in perinatal HIV transmission. Observational studies have confirmed the effectiveness of ZDV in reducing the risk of perinatal transmission that has resulted in a greater than 75% decline in pediatric AIDS cases diagnosed in 1998. Despite this progress, children are still becoming infected, with 300–400 babies being born with HIV each year in the United States. Studies show that many women, especially those who use illicit drugs, are not being tested for HIV during pregnancy because of lack of prenatal care.

In 1998, the Institute of Medicine (IOM) completed a study to assess the impact of current approaches for reducing perinatal HIV transmission, identify barriers to further reductions, and determine ways to overcome these barriers. They concluded that continued transmission is mainly due to a lack of awareness of HIV status among some pregnant women and that HIV testing should be simplified and routinized. IOM recommended that testing should be offered to all pregnant women as part of the standard battery of prenatal tests, regardless of risk factors and the HIV prevalence rates in the community. They also recommended that women should be informed that the HIV test is being done and of their right to refuse to be tested.

To address these and other issues, the USPHS convened an expert consultation in April 1999 and sought widespread public comment in revising the 1995 guidelines for HIV counseling and testing for pregnant women. The resulting guidelines presented in the draft ''Revised U.S. Public Health Service Recommendations for Human Immunodeficiency Virus (HIV) Screening of Pregnant Women'' differ

from the 1995 guidelines in the following ways: (1) Emphasize HIV testing as a routine part of prenatal care and strengthen the recommendation that all pregnant women be voluntarily tested for HIV; (2) recommend a simplification of the testing process so that previously required pretest counseling is not a barrier to the provision of testing; (3) make the consent process more flexible to allow for various types of informed consent; (4) recommend that providers explore and address reasons for refusal of testing; and (5) place more emphasis on HIV testing and treatment at the time of delivery for women who have not received prenatal testing and chemoprophylaxis.

Dated: October 25, 2000.

Joseph R. Carter,

Associate Director for Management and Operations, Centers for Disease Control and Prevention.

[FR Doc. 00–27870 Filed 10–30–00; 8:45 am]

BILLING CODE 4163–18–P

Federal Register

Tuesday,
October 31, 2000

Part VI

Environmental Protection Agency

Assessment of Scientific Information Concerning StarLink® Corn Cry9C Bt Corn Plant–Pesticide; Notice

ENVIRONMENTAL PROTECTION AGENCY

[PF–867B; FRL–6754–3]

Assessment of Scientific Information Concerning StarLink® Corn Cry9C Bt Corn Plant-Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On October 25, 2000, Aventis CropScience (Aventis) submitted new information in support of its petition (PP 9F5050) for an exemption from the requirement of a tolerance for the genetically engineered ''plant-pesticide'' materials in StarLink corn. These materials are the *Bacillus thuringiensis* subsp. *tolworthi* Cry9C protein and the genetic material (DNA) necessary for the production of this protein. While the original petition requested an exemption covering both the Cry9C DNA and Cry9C protein in all food commodities, this submission limits the request only to foods made from StarLink corn. The Aventis submission specifically addresses the potential allergenicity of the Cry9C protein that may be present in human food made from StarLink® corn, a line of genetically modified corn developed by Aventis. This notice provides information on Aventis' submission and outlines the U.S. Environmental Protection Agency's process for seeking public comment on and external scientific review of the new information.

DATES: Comments, identified by docket control number PF–867B, must be received on or before November 27, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–867B in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Paul Lewis, Office of Science Coordination and Policy (7101C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5369; fax number: (703) 605–0656; e-mail address: hutton.phil@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are technical experts in human allergenicity, as well as those persons who produce or handle corn grain or processed food made from corn grain. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Biopesticide Internet Home Page at http://www.epa.gov/pesticides/biopesticides. The EPA Biopesticide Internet Home Page will, at a minimum, contain the body of Aventis' October 25, 2000, submission. To access this Notice on the Home Page, select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official docket in connection with this Notice under docket control number PF–867B. Associated public dockets exist for: (1) the initial Notice of Filing for the food use Cry9C tolerance petition, 9F05050 (docket control number PF–867); (2) the notice soliciting public comment on EPA data evaluation records, questions within an EPA background document regarding the use of amino acid homology, the Brown Norway Rat Model, and other items regarding the assessment for potential allergenicity, (docket control number PF–867A); and (3) the February 29, 2000 SAP meeting, (docket control number OPP–00641). The official record for EPA's review of the Aventis petition will include, in addition to the documents in the dockets listed above, any materials submitted to EPA in connection with this **Federal Register** Notice, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–867B in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–867B. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this

document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. What Action is the Agency Taking?

Today, EPA is announcing the receipt and public availability of a submission from Aventis concerning its pending petition to establish an exemption from the requirement of a tolerance for the genetically engineered ''plant-pesticide'' materials in StarLink corn. These materials are the *Bacillus thuringiensis* subsp. *tolworthi* Cry9C protein and the genetic material (DNA) necessary for the production of this protein. The requested exemption would cover both the Cry9C DNA and Cry9C protein in all food commodities. In addition, EPA is inviting public comment on the submission as it relates to the petition. Further, EPA is announcing its intention to hold a public meeting of an independent, external scientific peer review group during the week of November 27 – December 1, 2000, to consider the potential allergenicity of Cry9C.

The following paragraphs provide background on the matters being announced today.

1. *Regulatory history*. On April 7, 1999, EPA announced the receipt of a pesticide petition (PP 9F5050) (64 FR 16965) (FRL–6069–8) from AgrEvo USA Company; (Aventis has since succeeded to the interests of AgrEvo USA Company; also, this petition superceded a petition for an exemption that was submitted in 1997 by AgrEvo at the time AgrEvo initially applied for registration.) The petition, 9F5050, proposed an amendment to 40 CFR 180.1192 to expand the exemption from the requirement of a tolerance for *Bacillus thuringiensis* subspecies *tolworthi* Cry9C protein and the genetic material necessary for its production in corn. At that time and currently, the existing exemption covered these substances in corn, only when the corn was used for animal feed, and in meat, poultry, milk, or eggs resulting from animals fed such feed. The petition sought to extend the exemption for these substances to all food commodities.

EPA completed its initial review of the data submitted in support of this petition and solicited public comment on the data evaluation records and on a list of questions regarding human allergenicity assessment for non-digestible proteins expressed as plant-pesticides (64 FR 74152, December 21, 1999) (FRL–6098–2). The evaluation of potential human allergenicity of non-digestible proteins expressed as plant-pesticides was also the subject of a February 29, 2000, FIFRA Scientific Advisory Panel (SAP) meeting (65 FR 5636) (FRL–6490–6). The SAP report was issued on June 29, 2000 and the SAP ''* * * agreed that based on the available data, there is no evidence to indicate that Cry9C is or is not a potential food allergen.''

In September of this year, the Cry9C DNA was first detected in processed food made from corn, indicating that Star-Link corn had been used directly in it's manufacture, contrary to the restrictions on the Aventis registration for StarLink corn. Following confirmation of this detection, the food product in which the Cry9C DNA had been detected was recalled by the manufacturer. Additional detections and recalls followed. On October 12, 2000, EPA announced that Aventis, in response to the Agency's strong urging, had requested voluntary cancellation of its registration for StarLink corn. Available information indicates that some portion of the 1999 StarLink crop entered the human food supply, but there is uncertainty about how much. Due to concerns that StarLink corn from the 2000 growing season might also directly enter the food supply, the U. S. Department of Agriculture took steps to bring all available StarLinkTM corn under its control. While these efforts continue, to date, USDA has successfully located and imposed controls on at least 88% of the 2000 StarLink crop; the government is confident that this portion of the 2000 StarLink corn crop is being handled so that Cry9C DNA and protein will not enter the human food supply. Nevertheless, there remains concern about the potential presence of the Cry9C protein in human food.

2. *Aventis submission concerning allergenicity*. Aventis has expressed its continuing interest in an exemption for the presence of Cry9C (DNA and protein) in human food. Given the actions that assure no future planting of StarLink corn, however, Aventis has narrowed the scope of its original petition. While the original petition requested an exemption covering both the Cry9C DNA and Cry9C protein in all food commodities, this submission limits the request only to foods made from StarLink corn. In addition, Aventis has asked that the exemption be granted only for a limited time of 4 years, which time, Aventis contends, is necessary to allow all processed foods potentially made from StarLink corn grown in 1999 or 2000 to pass through the channels of trade.

To support its contention that Cry9C is safe for human consumption for this period, Aventis has submitted new information regarding the potential allergenicity of the Cry9C protein that may be present in StarLink® corn. The Aventis submission contains an ''Introduction'' which appears to summarize the contents of the remainder of the document. This Introduction, which does not reflect the Agency's position, is reprinted below.

Introduction from Aventis Submission

A. Background

StarLink® corn was registered in 1998 for use by the U.S. Environmental Protection Agency (EPA) under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for use as animal feed and for industrial uses (production of ethanol, for example). In granting that registration, EPA concluded that Cry9C protein and related DNA met the safety standard under the FQPA for use in field corn for animal feed use. That is, EPA

concluded that ''based on the toxicology data cited and the limited exposure expected with animal feed use, there is reasonable certainty that no harm will result from aggregate exposure to the U.S. population, including infants and children'' (U.S. EPA Bt Plant-Pesticides Biopesticides Registration Action Document, page IIB18, EPA Scientific Advisory Panel (SAP) website, October 2000 science assessment document). The EPA and the EPA's SAP were not able to conclude that the Cry9C protein was or was not an allergen (FIFRA SAP Report, Session I-A Set of Scientific Issues being Considered by the Environmental Protection Agency Regarding: Food Allergenicity of Cry9C Endotoxin and other Non-digestible Proteins, page 8, June 2000) and, thus, registration for human food use has not yet been granted.

StarLink® corn is a variety of corn modified through traditional and well-recognized techniques of genetic modification to contain the plant-pesticide *Bacillus thuringiensis* (''Bt'') subspecies *toliworthi* Cry9C protein and the genetic material necessary for the production of the protein (DNA). Bt proteins have insecticidal properties and have been used commercially for more than 30 years. Among these products are microbial sprays (Agree, XenTari) with the Cry9B protein, which is highly homologous with the Cry9C protein. Corn plants with the Bt protein have been widely and safely used for a number of years. These products thus have a long history of safe use.

Pursuant to the registration, StarLink® corn was planted in 1998, 1999 and 2000. Approximately, 10,000 acres were planted in 1998, 250,000 acres were planted in 1999, and 350,000 acres were planted in 2000 out of the approximately 80,000,000 acres of corn planted in the United States in each of those years. Although StarLink® corn was not registered for use in human food, it now appears that through means not well known, not all of the corn has been kept within the scope of the registered uses (animal feed and non-food industrial uses). The significance to human health of the potential presence of the Cry9C protein and/or the DNA in human food is the subject of this analysis. The analysis relies on the best available data and information and conservative assumptions to assess the potential risks to human health, if any.

B. Approach of the Analysis

Human health assessments typically involve an evaluation of the potential hazard of the material in question and an evaluation of the magnitude of potential exposure to the material. The analysis set forth in this document follows that approach.

First, it identifies the material of potential concern. In the case of StarLink® corn, the only component of the corn that presents any potential for human health concern is the Cry9C protein and, only then, with regard to the potential for it to cause an allergic reaction in sensitized individuals. The EPA stated that there are no issues relative to the safety of food containing StarLink other than the potential allergenicity issue.

Concerning the allergenicity question, this assessment provides a comprehensive review of all available information and data and concludes that Cry9C is not an allergen.

After addressing the data and information pertinent to assessing the question of whether the Cry9C protein is likely to be an allergen, the analysis then turns to an assessment of the potential amount of the protein to which humans might be exposed. This analysis takes into account available information about:

(1) The amount of StarLink® corn planted in 1999 and 2000 and the known or probable disposition of that corn.

(2) Quantity of Cry9C protein in corn.

(3) The quantity of corn contained in different food products.

(4) The fate and disposition of Cry9C protein in food.

(5) Quantity of various foodstuffs which contain corn consumed by various population subgroups.

(6) Other relevant data.

This assessment considers the risk of adverse allergic responses as a result of a very low level and temporary dietary exposure to Cry9C protein. The strongly supported conclusion is that Cry9C is not an allergen. Furthermore, the assessment strongly concludes that even if Cry9C protein were allergenic, the low level and temporary exposures would neither sensitize individuals nor elicit an allergic response in sensitized individuals. The full basis for these conclusions is set forth below.

C. Context for the Assessment

In order to evaluate properly the potential human health consequences of the presence of Cry9C protein in human food, one must understand how corn is harvested and how it moves through various steps in the distribution chain before it is ultimately used in the production of food for human consumption. With that information, it becomes apparent that there is substantial dilution at each stage of the movement of corn from the farm to the table. To put it differently, the corn from one field or farm is commingled at each stage of the process with corn from other fields and farms.

This section sets forth a brief summary of that information. A full explanation of whole corn handling and grain processing at dry mills is contained in Appendix 1, Corn Handling and Grain Handling Discussion prepared by the North American Millers Association and the National Feed and Grain Association.

Whole corn handling operations from farm to elevator. Virtually all farmers harvest corn with a combine equipped with a corn header and transfer the harvested grain from the combine to a truck to deliver either to on-farm storage, a feedlot, or a commercial grain elevator. Farm trucks today typically hold 200 to 800 bushels with the average size about 400 bushels.

When the grain is delivered to a local elevator, it is dumped into a pit. From the pit, the grain is normally conveyed via a bucket elevator to the top of grain storage bins where it is dropped to the bottom of the bin, or onto other grain. Bin sizes at country elevators generally range from 10,000 bushels to 1,000,000 bushels with an average of 70,000 to 80,000 bushels.

Throughout this grain handling process, there is a continuous blending and commingling of the corn from any one farm. The farm truck often carries corn taken from different fields on the farm. When the farm truck arrives at the elevator at harvest, it is frequently one of many trucks in line to dump. In the binning of the grain, the contents of each truck are dumped on top of each other in continuous fashion.

As grain is dropped from the top of storage bins at the elevator, the grain forms an inverted conical shape, as the grain enters at the center and flows out to the sides of the bin. There is a ''layering'' effect of the grain from each individual truck.

When the grain is drawn from the bottom of the bin, a different flow pattern develops. The grain flowing out will form a ''core'' in the center. The center portion of the grain bin flows out first, then a cone develops, with the upper portions of the grain flowing out toward the early part of the removal process. As the bin empties, the grain at the sides of the bins starts to flow out of the bottom.

All the truck deliveries used to fill the bin are commingled in the storage/handling process. The degree of mixing of the grain will depend in part on the point at which the truck was dumped. Commingling further occurs as elevators often draw from multiple bins in order to ''blend'' grain for loading into one transport conveyance to meet quality specifications of different customers.

If an average farm truckload of 400 bushels of pure StarLink® corn were to be delivered to an elevator and placed into even a small 10,000 bushel bin, a commingling/dilution of that grain on the order of 3 to 5 times is a conservative expectation, with 3 probably a ''worst case'' situation (Appendix 1, Corn Handling and Grain Handling Discussion prepared by the North American Millers Association and the National Grain and Feed Association).

Grain processing at dry mills. Grain is delivered from elevators to dry corn mills via trucks or rail cars. Trucks typically haul 1,000 bushels with rail cars holding about 3,500 bushels. The initial receiving process is much like that at the elevator, dumping into a pit and elevating grain into storage bins, which hold the grain until it enters the processing stream.

Most dry corn mills are continuous process (rather than batch). Because the grain in a milling operation is being continuously mixed through tempering, milling, and handling, the degree of dilution at any one stage is probably much greater than the factor of three, considered to be the ''worst case'' at the elevator. Assuming conservatively that there are only seven handling and processing operations, each of which is assumed to dilute the grain by a factor of three, suggests that one truckload of pure StarLink® corn would be diluted by several orders of magnitude, prior to reaching the food processor or consumer.

Wet milling. Corn is received at wet milling plants via truck, railcar, or barge. Corn is stored at wet mills in a manner similar to dry mills or grain elevators.

The corn wet milling process separates corn into four basic components: starch, germ, fiber and protein. There are five basic

steps to accomplish this process. All processes in corn wet milling are continuous (rather than batch).

Incoming corn is inspected and cleaned. It is then steeped in a dilute sulfurous acid solution for 30 to 40 hours. This results in the breaking of the starch and protein bonds. The next step in the process involves coarse grind, which separates the germ from the rest of the kernel. Corn germ is subject to mechanical and solvent extraction to remove oil, which is then refined through degumming, alkali treatment, bleaching, winterization, and vacuum steam stripping deoderization. The remaining slurry consisting of fiber, starch and protein is finely ground and screened to separate the fiber from the starch and protein. Fiber is combined with the water from corn steeping to produce corn gluten feed. The remaining starch and gluten are separated into hydrocyclones. The separated gluten is dried to produce corn gluten meal. The remaining starch is repeatedly washed in fresh water. Water from this washing step flows back through the process countercurrently to the flow of corn. The starch is then converted to sweetners or fermentation products or dried and packaged as starch (Blanchard, 1992). Of the wet milled corn, approximately 60 percent is directed toward sweetner production, 25 percent toward alcohol production, and 15% toward starch production. In the latter case 80 percent is directed toward industrial purposes while the remaining 20 percent is used in food starches (Personal communication, Corn Refiners Association).

As in the case of the dry milling discussion, commingling of corn occurs. It is estimated that one truckload of pure StarLink® corn would be diluted by several orders of magnitude, prior to reaching the food processor or consumer. This extensive processing likely leads to, at least, degradation of protein.

D. Safety of Cry9C DNA and DNA Generally

With respect to the safety of Cry9C DNA and DNA in general, EPA has concluded that:

DNA is common to all forms of plant and animal life and the Agency knows of no instance where these nucleic acids have been associated with toxic effects related to their consumption as components of food. These ubiquitous nucleic acids as they appear in the subject plant pesticide have been adequately characterized by the applicant and supports (sic) EPA's conclusion that no mammalian toxicity is anticipated from dietary exposure to the genetic material necessary for the production of the Cry9C protein. (63 FR 28259, May 22, 1998).

There is an EPA proposed exemption from the requirement of a tolerance for nucleic acids produced in plants as part of a plant-pesticide (Plant Pesticides; Subject to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA): Proposed Rule, 59 FR 60505, November 23, 1994). This proposal states:

Residues of nucleic acids produced in living plants as part of a plant-pesticide active or inert ingredient, including both deoxyribonucleic acid and ribonucleic acids, are exempt from the requirement of a tolerance.

More recently, EPA confirmed its views concerning the safety of nucleic acid in its background materials from the October 18–20, 2000 SAP meeting; Biopesticides Registration Action Document: Bt Plant-Pesticides (http://www.epa.gov/scipoly/sap/).

DNA is common to all forms of plant and animal life and the Agency knows of no instance where these nucleic acids have been associated with toxic effects related to their consumption as a component of food.

In addition, the U.S. Food and Drug Administration (FDA) has also concluded that DNA is generally recognized as safe (1992, FDA Food Policy).

Based on these EPA and FDA statements, the presence of Cry9C DNA in food is not relevant to the safety assessment of StarLink® corn because it is recognized as safe.

E. Assessment of Potential Toxicity of Cry9C Protein

Based on the history of the use of Bt microbial pesticides and available toxicity data on Cry9C protein, it is reasonable to conclude that, other than possible allergenicity, there are no toxicity issues related to the food and feed use of Cry9C protein. EPA concurs with that conclusion.

In the final rule establishing the exemption from the requirement of a tolerance for Cry9C protein and genetic material in feed EPA stated:

Bt microbial pesticides, containing Cry proteins other than Cry9C, have been applied for more than 30 years in food and feed crops consumed by the U.S. population. There have been no human safety problems attributed to the specific Cry proteins. An oral dose of the tryptic core Cry9C protein of at least 3,760 mg/kg was administered to 10 animals without mortality demonstrating a high degree of safety for the protein. (63 FR 28258, May 22, 1998).

The lack of acute oral toxicity of Cry9C protein is consistent with the lack of toxicity and established safety of other Cry class proteins previously approved for use by the Agency. Furthermore, additional toxicity studies submitted to EPA support this conclusion (MRID #44734302 and 44734303). Thus, general toxicity issues are not considered further in this assessment.

F. Assessment of Potential Allergenicity of Cry9C Protein

Given that DNA is recognized as safe, and that there are no general toxicity issues related to Cry9C protein, the only remaining issue relative to the safety of StarLink® corn is the potential allergenicity of Cry9C protein and the associated level of potential risk.

In regard to the use of StarLink® corn in animal feed, the EPA concluded that

The Cry9C protein would not likely cause an allergic reaction to man when used in feed corn because; (1) it was not from allergenic sources and (2) the best available information indicates that edible products derived from animals such as meat, milk and eggs intended for human consumption, have not been shown to be altered in their allergenicity due to changes in the feed stock utilized. (U.S. EPA Bt Plant-Pesticides Biopesticides Registration Action Document, page IIB18, EPA Scientific Advisory Panel website, October 2000 science assessment document.)

This document provides a brief background on food allergy and, drawing on new information and analysis, provides a risk assessment regarding the potential allergenicity for StarLink® corn expressing Cry9C protein in food. A discussion of the new information relevant to the allergenic potential of the Cry9C protein is also included. Based on a review of all available information and data, this assessment concludes that there is a reasonable certainty that Cry9C protein is not an allergen, and is not likely to become an allergen even if there were long-term consumption.

In an independent review by Dr. S.L. Hefle of the Food Allergy Research and Resource Program, University of Nebraska, Dr. Hefle concluded that ''the data shared by Aventis, taken in total, while not conclusive provide evidence that (sic) of low probability of allergenicity of Cry9C'' (Appendix 2). A written statement submitted by Dr. S.L. Taylor of the same organization to EPA's SAP (October 20, 2000) supports this conclusion (Appendix

G. Food Allergens and the Use of the Peanut for Comparison Purposes

Food allergy affects 1–2% of adults and 6–8% of children in the United States (Sampson, H.A. et al., 1996; Metcalfe, D.D. et al., 1996). Protecting food allergic patients from unexpected exposure to food allergens is a critical priority. Food allergy assessments ensure that food allergic patients are protected from unexpected exposure to the allergens that might cause them harm. In addition, food allergy assessment evaluates the potential of any new protein to become a new allergen, and to create a newly sensitized population.

In his written submission to the SAP (October 20, 2000), Dr. S.L. Taylor stated that sensitization to foods requires multiple exposures over an extended time period and at a relatively high percentage of total protein content (Appendix 3).

For StarLink® corn, there is no history of significant consumption, and hence no real potential for allergic sensitization. Furthermore, based on available data and information, the amount of Cry9C protein that could potentially be present in corn products would be present at levels far below those required to cause sensitization. Therefore, it is reasonable to conclude that there are not now and will not be in the future any ''at risk'' consumers. Furthermore, the EPA has previously concluded that after more than 30 years of commercial use of microbial products containing a variety of Cry proteins, including proteins from the Cry9 class, no allergy has been attributed to Cry proteins (McClintock et al., 1995; EPA, 1999).

Most allergenic proteins are present in levels of 1 to 40% of the total protein of the allergenic food (Metcalfe, D.D., et al., 1996; Yunginger, J.W et al., 1997; Li-Chan, E. and Nakai, S., 1989; Murphy, P.A. and Resurrection, A.P., 1984; Kalinski, A. et al., 1990; Carpentier, B.A. and Lemmel, D.E., 1984; Goldberg, R.B. et al., 1983; Burks, A.W.

et al., 1992; Lotan, R. et al., 1975; Crouch and Sussex, 1981). In contrast, there is an extremely low percentage (0.0129%) of the Cry9C protein in StarLink® corn grain (Table 1) (MRID #45025701).

Even lower levels of Cry9C protein might be expected in foods containing corn as an ingredient since, following dry or wet milling, the protein is redistributed into individual commodities. Thereafter food processing exposes the protein to a range of potential degradation procedures which in some instances could completely destroy the protein. In taco shells, for example, no protein was detected (Preliminary Study for Detection of Cry9C Protein in Taco Shells, FIFRA 6(a)(2) report, submitted to EPA on 10/16/00; MRID #44384301 and Analysis of Taco Shells for Cry9C Protein submitted to EPA on 10/24/00).

TABLE 1.—QUANTITIES OF CRY9C PROTEIN IN PROCESSED COMMODITIES OF STARLINK® CORN (CBH351) EXPRESSED AS PERCENT OF CRUDE PROTEIN (MRID #45025701)

Process	Commodity	Crude Protein (All Types) in Matrix (%)[a]	% Cry9C in Crude Protein	
			Transgenic Unsprayed[b]	Transgenic Sprayed[c]
	Whole corn	8.9 – 10	0.0116	0.0129
Dry Mill	Composite Grits	7 – 10.3	0.00861	0.0111
	Hull Material	8	0.0130	0.0163
	Meal	7.5 – 9.0	0.00989	0.0118
	Flour	5.2 – 7.8	0.0149	0.0147
	Solvent Extract Germ	12–25	0.0345	0.0298
	Crude Oil	0	NA[d]	NA
	Refined Oil	0	NA	NA
Wet Mill	Steepwater Concentrate	41–62	0.000034	0.000078
	Hull Material	8	0.00719	0.0146
	Gluten	41–60	0.00015	0.00011
	Starch	0.6	NA	NA
	Solvent Extracted Germ	22.6	0.00056	0.00063
	Crude Oil	0	NA	NA
	Refined Oil	0	NA	NA

[a] Range of data from Wolff, I.A. 1982; Ensminger, M.E. et al., 1990; McGregor, C.A. 1994.
[b]Unsprayed = Not treated with Liberty® Herbicide
[c]Sprayed = Post emergent treatment with Liberty® Herbicide
[d]NA - concentration was below limit of quantitation (LOQ) for these samples.

Since allergy to Cry9C protein does not already exist, the extremely low level of Cry9C protein estimated to be consumed using a reasonable, worst case exposure assessment leads to the conclusion that the Cry9C protein present in StarLink® corn is very unlikely to become an allergen.

Peanuts account for the majority of fatal and near-fatal, food-induced, anaphylactic reactions in the United States (Yunginger JW, et al., 1988; Li, X-M, et al., 2000). About 1.5 million Americans (Li, X-M, et al., 2000) are allergic to peanuts. Given the severity, prevalence, and frequently lifelong persistence of peanut allergy, a comparison of the potential allergenicity of a new protein, such as Cry9C protein, with peanuts, one of the most potent known human food allergens, provides an extremely conservative and protective assessment.

This concludes the quotation of the Introduction from the Aventis submission of October 25, 2000.

3. *EPA Review Process—Public and External Scientific Peer Review.* EPA intends that its decisions involving biotechnology and public health be based on the best available scientific information and expertise. Moreover, EPA is committed to conducting its regulatory decision-making in a transparent and participatory manner. Therefore, EPA has decided it would be prudent to seek independent scientific peer review of the information submitted by Aventis in support of the petition for a time-limited exemption for Cry9C in human food, as well as other available and relevant information.

The Agency has not yet determined who will participate in the peer review group, and therefore cannot set a specific date or location for the public meeting of the peer review group. Pending determination of the availability of experts and meeting space, EPA expects to hold a one or two day meeting during the week of November 27 – December 1 (or possibly earlier)at a location in the Washington, DC metropolitan area. EPA also recognizes that new data may become available in the coming weeks, and the date of the public meeting may need to be adjusted to allow full consideration of all relevant information. As is its practice, EPA will develop and provide to the peer reviewers a ''charge,'' that is a series of questions raising scientific issues on which EPA will seek the members' advice. EPA will also provide to the members various documents as background for the consideration of these issues.

By November 3, 2000, EPA will make available on the web and public docket (PF–867B) the Agency's initial evaluation of the new information, as well as announce the actual peer review meeting date/location and charge to the peer review group. The Aventis

submission is available on our website as of the publication of this notice.

In addition, consistent with its practice and because of the widespread public interest in these particular matters, EPA is providing an opportunity for the public to comment on the Aventis submission. EPA will accept comments submitted on or before November 27, 2000. In order for comments to be considered in the peer review process, EPA does not anticipate granting any requests for an extension of time to comment. As discussed above, during the comment period, EPA also expects to make available additional information that it will be providing to the scientific peer review group. The public is welcome to comment on these materials as well. Finally, EPA will make any public comments available to the members of the scientific peer review group.

In addition, anyone having information concerning any allegations of adverse effects in humans from ingestion of food that may have contained StarLink corn should submit such information for consideration by the government. This information should be sent to: Food and Drug Administration, Office of Field Programs, Division of Enforcement Programs, Outbreak Coordinaiton Staff, HFS-605, 200 C St., SW., Washington, DC 20204. FDA will share this information with EPA as soon as it is received.

B. What is the Agency's Authority for Taking this Action?

The Agency is soliciting input to aid in determining whether there is a reasonable certainty of no harm for the proposed amendment of the existing exemption from the requirement of a tolerance under the Federal Food, Drug and Cosmetic Act (FFDCA). EPA is also acting under the authority of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

List of Subjects

Environmental protection, Pesticides and Pests.

Dated: October 27, 2000.

Susan B. Hazen,

Acting Deputy Director, Office of Pesticide Programs.

[FR Doc 00–28076 Filed 10–27–00; 4:39 p.m.]

BILLING CODE 6560–50–S

Reader Aids

Federal Register

Vol. 65, No. 211

Tuesday, October 31, 2000

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations

General Information, indexes and other finding aids	**202–523–5227**
Laws	**523–5227**
Presidential Documents	
Executive orders and proclamations	**523–5227**
The United States Government Manual	**523–5227**
Other Services	
Electronic and on-line services (voice)	**523–4534**
Privacy Act Compilation	**523–3187**
Public Laws Update Service (numbers, dates, etc.)	**523–6641**
TTY for the deaf-and-hard-of-hearing	**523–5229**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications:

http://www.access.gpo.gov/nara

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access:

http://www.nara.gov/fedreg

E-mail

PENS (Public Law Electronic Notification Service) is an E-mail service for notification of recently enacted Public Laws. To subscribe, send E-mail to

listserv@www.gsa.gov

with the text message:

subscribe PUBLAWS-L your name

Use listserv@www.gsa.gov only to subscribe or unsubscribe to PENS. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to:

info@fedreg.nara.gov

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, OCTOBER

58635–58900 2
58901–59104 3
59105–59338 4
59339–59694 5
59695–60092 6
60093–60338 10
60339–60568 11
60569–60830 12
60831–61076 13
61077–61254 16
61255–62274 17
62275–62576 18
62577–62990 19
62991–63194 20
63195–63534 23
63535–63762 24
63763–64132 25
64133–64334 26
64335–64580 27
64581–64880 30
64881–65252 31

CFR PARTS AFFECTED DURING OCTOBER

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.

3 CFR

Proclamations:
7346 59311
7347 59313
7348 59315
7349 59317
7350 59321
7351 59329
7352 60567
7353 60569
7354 60571
7355 60573
7356 60575
7357 60577
7358 60579
7359 60831
7360 60833
7361 60835
7362 61255
(Amended by Proc. 7364) 62575
7363 61257
7364 62575
7365 62985
7366 62987
7367 62989
7368 63763
7369 64335

Executive Orders:
July 9, 1910 (Revoked by PLO 7465) 61183
July 29, 1910 (Revoked by PLO 7465) 61183
November 25, 1910 (Revoked by PLO 7465) 61183
January 12, 1911 (Revoked by PLO 7465) 61183
December 21, 1911 (Revoked by PLO 7465) 61183
April 29, 1912 (Revoked by PLO 7465) 61183
June 10, 1912 (Revoked by PLO 7465) 61183
July 14, 1913 (Revoked by PLO 7465) 61183
June 6, 1914 (Revoked by PLO 7465) 61183
October 9, 1917 (Revoked by PLO 7465) 61183
October 20, 1917 (Revoked by PLO 7465) 61183
December 22, 1919 (Revoked by PLO 7465) 61183
June 6, 1929 (Revoked by PLO 7465) 61183
11625 (See 13170) 60827
12978 (See Notice of October 19, 2000 63193
13078 (Amended by 13172) 64577
13169 60581
13170 60827
13171 61251
13172 64577
13173 64579

Administrative Orders:
Presidential Determinations:
No. 2000–30 of September 19, 2000 59339
No. 2000–31 of September 28, 2000 59695
No. 2000–32 of September 29, 2000 59697
No. 2000–33 of September 29, 2000 59699
Notices:
October 19, 2000 63193

5 CFR

330 .....63765, 64133
351 .....62991, 64133
430 60837
532 64337
591 58901
1201 58902
1800 64881
8301 58635

Proposed Rules:
870 64530
930 64168

7 CFR

90 64302
91 64302
92 64302
93 64302
94 64302
98 64302
271 64581
272 59105
273 64581
274 59105
276 64581
301 61077
319 63765
718 64594
723 64589
729 64594
735 63765
920 64338
932 62992

956 61080
1220 63767
1230 62577
1446 64594
1464 64589
1724 63195
4279 64596

Proposed Rules

210 60502
226 60502
235 60502
245 60502
457 62311
905 ....58672, 60121
944 ....58672, 60121
984 63219
1210 61122
1412 59759

8 CFR

204 63118
234 58902
245 63118
299 61259

Proposed Rules:

3 60384
212 60384

9 CFR

77 ....63502, 64479
331 62579
391 60093
590 60093

Proposed Rules:

1 62650
2 62650

10 CFR

1 59270
2 59270
72 ....60339, 62581
13 59270
34 63750
36 63750
39 63750
50 63769
72 63769
434 60000
435 60000
830 60292

Proposed Rules

34 63753
36 63753
39 63753
72 60384
140 ....61283, 63221
430 ....59550, 59590, 59761
431 63677
719 63809

11 CFR

100 63535
101 63535
102 63535
104 63535
109 63535
114 63535
9003 63535
9033 63535

12 CFR

41 63120
222 63120
226 58903
263 60583
308 64884
334 63120
509 61260
510 61260
563b 60095
571 63120
575 60095
701 64512
792 63789

Proposed Rules:

563b 60123
575 60123
584 64392
706 64168

13 CFR

121 60342

Proposed Rules:

119 60256
126 58963

14 CFR

25 ....60343, 63196
39 ....58640, 58641, 58645, 58647, 59701, 59703, 59705, 59707, 59709, 59710, 60347, 60349, 60845, 60846, 60848, 60850, 61083, 61085, 61262, 62275, 62276, 62280, 62281, 62994, 62999, 63001, 63003, 63005, 63006, 63535, 63537, 63540, 63542, 63790, 63792, 63793, 63795, 64134, 64340, 64597, 64601, 64602
61 60334
63 60334
65 60334
71 ....59341, 59711, 59712, 60352, 61087, 63544, 63797, 63798
73 59341
91 60352
93 60352
95 63198
97 ....59342, 59345, 63009, 63010, 63013
108 60334
121 ....60334, 60352
135 ....60334, 60352
187 59713
383 61089
401 62812
417 62812
420 62812
1260 62900
1274 62900

Proposed Rules:

36 ....59634, 61125
39 ....58675, 58678, 58681, 58966, 59146, 59381, 59383, 60124, 60126, 60129, 60591, 60593, 60595, 60597, 60599, 60897, 61287, 61289, 62313, 62315, 62650, 62651, 63023, 63551, 63553, 63556, 63817, 64176, 64629, 64631, 64632, 64634, 64636, 64638, 64640, 64898, 64901
43 58878
45 58878
71 ....59762, 59763, 59764, 60385, 61125, 61126, 61127, 62653, 62654, 62655, 62656, 63820, 63821, 64642
187 64401
413 63922
415 63922
417 63922

15 CFR

101 59714
705 62599
732 62600
734 ....60852, 62600
738 60852
740 ....60852, 62600
742 ....58911, 60852, 62600
743 60852
744 ....60852, 62600
748 ....60852, 62600
770 62600
772 62600
774 ....58911, 60852, 62600
902 ....61264, 63291
922 60096

16 CFR

1 60857
305 63201
311 60857

Proposed Rules:

Ch. II 58968
307 60899
313 59766

17 CFR

4 58648
30 ....60558, 60560
140 ....64136, 64136
240 64137

Proposed Rules:

1 64904
240 59766

18 CFR

284 59111

19 CFR

10 ....59650, 59668
12 64140
163 ....59650, 59668

Proposed Rules:

10 64178

20 CFR

Proposed Rules:

404 ....58970, 60584
416 ....58970, 60584, 63221
422 63221

21 CFR

25 60499
73 ....59717, 60253
101 58917
172 ....60858, 64604
179 64606
314 64608
510 ....60097, 60585
522 61090
526 61091
556 61091
601 ....59718, 64608
801 62282
862 62285
876 64619
872 60098

Proposed Rules:

801 62317
1313 63822

22 CFR

Proposed Rules:

51 60132
706 64342

23 CFR

1275 59112

24 CFR

81 65044
200 61072
203 60320
236 61072
291 60324
880 61072
881 61072
883 61072
888 58870
982 58870
985 58870

Proposed Rules:

7 64320
570 63756
888 60084

25 CFR

20 63144

Proposed Rules:

70 65643

26 CFR

1 ....58650, 60585, 61091, 61268, 64888
602 61268

Proposed Rules:

1 ....58973, 59774, 60136, 61292, 63824
5f 61292
20 63025
31 61292
301 60822

27 CFR

4 59719
275 63545

Proposed Rules:

9 61129

28 CFR

0 60100
2 63291
541 59725

29 CFR

1908 64282
1952 62610
2520 62958
4022 60859
4044 60859

Proposed Rules:

2510 64482
2570 64498

30 CFR

42 59048
47 59048
56 ....59048, 61270
57 ....59048, 61270
62 61270
70 61270
71 61270
77 59048
206 62612

Proposed Rules:

920 59150
925 64906
931 63223
946 59152

31 CFR

Proposed Rules:
1 63824
205 60796

32 CFR

199 63202
317 63798
706 ....61092, 61093, 61094, 61095, 61096, 61097, 61098, 61099, 62614
724 62614
733 62615
734 62616
752 60861
765 62619
811 64619
811a 64621
813 64621
884 64348
1615 60100

Proposed Rules:
311 63826
323 60900
935 63826

33 CFR

66 59124
100 58652
110 62286
117 ....59126, 60359, 60360, 60361, 64352, 64891
154 62288
165 ....58654, 58655, 62286, 62289, 62290, 62292

Proposed Rules:
117 59780
165 63558

36 CFR

Proposed Rules:
1190 58974
1191 ....58974, 62498
1258 60862

37 CFR

201 ....64556, 64623
256 64623

38 CFR

21 ....59127, 60499, 60724, 61100

Proposed Rules:
3 61132

39 CFR

20 60361
111 61102

Proposed Rules:
111 ....58682, 64643
502 58682

40 CFR

9 59894
35 58850
52 ....59128, 59727, 60101, 61104, 62295, 62620, 62624, 62626, 63546, 63678, 64142, 64145, 64148, 64156, 64158, 643,52, 64357, 64360
60 61744
61 61744
63 ....59894, 61744, 64161
70 64158
81 ....59128, 60362, 62295
85 59896
86 59896
132 59738
176 64126
180 ....59346, 61270, 62629, 62631, 62634, 64363, 64369
271 ....59135, 61109, 63218, 64161, 64164, 64402
300 ....58656, 61112, 64623
403 59738

Proposed Rules:
51 64648
52 ....58698, 59154, 59782, 60141, 60144, 61133, 61134, 62319, 62657, 62658, 62666, 62668, 62671, 62675, 62677, 62679, 62681, 63560, 64189, 64190, 64191, 64192, 64402, 64914
63 ....58702, 62414
70 64192
81 ....59154, 60362, 62319
82 59783
85 64648
123 59385
141 ....63027, 64479
142 ....63027, 64479
271 ....59155, 61135, 64193, 64403
403 59791
721 62319
1601 59155

41 CFR

Ch. 301 62637
101–2 64372
101–40 60060
101–45 63549
102–117 60060

Proposed Rules:
60–1 60816
60–250 60816
60–741 60816
61–250 59684

42 CFR

36 58918
409 62645
410 62645
412 59748
413 ....58919, 59748, 60104, 61112
422 59749
424 60366
440 60105
441 60105
489 ....58919, 59748, 61112, 62645
498 ....58919, 61112, 62645

Proposed Rules:
124 62976
410 62681
435 64919
447 60151
1001 63035
1003 63035
1005 63035
1008 63035

43 CFR

Proposed Rules:
4 60602

44 CFR

59 60758
61 60758
64 ....61278, 61280
65 ....64372, 64374, 64378
67 ....64380, 64386

Proposed Rules:
65 60159
67 ....64380, 64386
206 58720

45 CFR

310 63801

Proposed Rules:
80 64194
84 64194
86 64194
90 64194
91 64194
309 63835

46 CFR

10 64388
15 64388

47 CFR

1 ....59350, 60868
2 ....59350, 60108, 60869
15 64388
20 ....58657, 60112, 62646
25 ....59140, 59749
27 60112
32 58661
54 58662
63 60113
64 58661
69 64892
73 ....58920, 58921, 59144, 59145, 59751, 59752, 60378, 60379, 60585, 61113, 62299, 63801, 63802, 64624
87 ....59350, 60108
90 ....60379, 60869
95 60869
101 ....59350, 60382

Proposed Rules:
54 58721
73 ....59162, 59163, 59388, 59389, 59796, 59797, 60163, 60387, 60602, 61299, 62683, 63043, 63044, 64923, 64924
76 60387

48 CFR

Ch. 1 60542
Ch. 2 63801
2 60542
4 60542
5 60542
7 60542
15 60542
19 60542
52 60542
53 60542
204 63804
207 63804
209 63804
219 ....63804, 63806
236 63804
242 63804
252 63804
931 62299
970 62299
1511 58921
1515 58921
1517 58921
1519 58921
1523 58921
1528 58921
1535 58921
1542 58921
1545 58921
1552 58921
1807 58931
1811 58931
1815 58931
1816 58931
1817 58931
1819 58931
1834 58931
1837 58932
1842 63807
1843 58931
1845 58931
1852 58931

Proposed Rules:
52 64298
225 63836
928 63809
944 63809
952 63809
970 63809
9904 59504

49 CFR

172 60382
173 60382
177 60382
375 58663
386 58663
391 59362
571 ....63014, 64624

Proposed Rules:
171 63294
172 63294
173 63294
174 63294
175 63294
176 63294
177 63294
178 63294
180 63294
1180 58974

50 CFR

17 ....58933, 60879, 62302, 63438, 63680
20 58664
25 62458
26 62458
29 62458
223 60383
600 ....59752, 63118
622 61114
635 ....60118, 60889, 63807
636 63021
648 ....59758, 60118, 60586, 60892, 63549, 64627, 64894
660 ....59752, 63118
679 ....59380, 60587, 61264, 62646, 63291, 63550, 64895
697 ....61116, 64896

Proposed Rules:
17 ....58981, 59798, 60391, 60603, 60605, 60607, 61218, 62690, 62691, 63044, 63046, 64414, 64649
20 ....63225, 64650
216 59164
229 64415
622 ....59170, 60163, 63837
648 ....60396, 64654
660 ....59813, 62692, 63047
679 58727
697 61135

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT OCTOBER 31, 2000

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Maryland; published 9-1-00

Texas; published 9-1-00

FEDERAL DEPOSIT INSURANCE CORPORATION

Practice and procedure:

Civil monetary penalties; inflation adjustment; published 10-31-00

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Empresa Brasileira de Aeronautica S.A.; published 9-26-00

Raytheon; published 9-18-00

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:

Partnership debt allocation; published 10-31-00

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Animal welfare:

Pain and distress; definitions and reporting; comments due by 11-7-00; published 8-21-00

Plant-related quarantine, domestic:

Citrus canker; comments due by 11-6-00; published 9-5-00

AGRICULTURE DEPARTMENT

Commodity Credit Corporation

Loan and purchase programs:

Production flexibility contracts; contract violations and diminution in payments; fruits and vegetables planting payment reduction; comments due by 11-6-00; published 10-6-00

AGRICULTURE DEPARTMENT

Food and Nutrition Service

Child nutrition programs:

Women, infants, and children; special supplemental nutrition program—

Public Responsibility and Work Opportunity Reconciliation Act of 1996; WIC mandates implementation; comments due by 11-6-00; published 9-5-00

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Northeastern United States fisheries—

Atlantic mackerel, squid, and butterfish; comments due by 11-9-00; published 10-10-00

West Coast States and Western Pacific fisheries—

Pacific Coast groundfish; comments due by 11-7-00; published 9-8-00

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Higher education institutions, hospitals, and other non-profit organizations; grants and agreements; uniform administrative requirements; comments due by 11-6-00; published 9-5-00

DEFENSE DEPARTMENT

Army Department

Environmental quality:

National Environmental Policy Act; implementation; comments due by 11-6-00; published 9-7-00

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):

Forced or indentured child labor, products produced by; prohibition of acquisition; comments due by 11-6-00; published 9-6-00

Privacy Act; implementation; comments due by 11-6-00; published 9-6-00

ENERGY DEPARTMENT

Nuclear safety management; contractor- and government-operated nuclear facilities; comments due by 11-9-00; published 10-10-00

ENVIRONMENTAL PROTECTION AGENCY

Air programs:

Stratospheric ozone protection—

Essential use allowances; allocation; comments due by 11-6-00; published 10-6-00

Air quality implementation plans; approval and promulgation; various States:

District of Columbia; comments due by 11-9-00; published 10-19-00

Maryland; comments due by 11-9-00; published 10-19-00

Maryland and Virginia; comments due by 11-9-00; published 10-19-00

Montana; comments due by 11-9-00; published 10-10-00

Virginia; comments due by 11-6-00; published 10-6-00

Water pollution control:

National Pollutant Discharge Elimination System—

Cooling water intake structures for new facilities; comments due by 11-9-00; published 8-31-00

Water pollution; effluent guidelines for point source categories:

Publicly owned treatment works; pretreatment program reinvention projects under Project XL; comments due by 11-6-00; published 10-6-00

FEDERAL COMMUNICATIONS COMMISSION

Radio stations; table of assignments:

New York; comments due by 11-6-00; published 9-26-00

Texas; comments due by 11-6-00; published 10-4-00

FEDERAL EMERGENCY MANAGEMENT AGENCY

Flood insurance program:

Letters of Map Revision Based on Fill; requests; comments due by 11-9-00; published 10-10-00

FEDERAL TRADE COMMISSION

Trade regulation rules:

Franchising and business opportunity ventures; disclosure requirements and prohibitions; comments due by 11-6-00; published 9-6-00

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):

Forced or indentured child labor, products produced by; prohibition of acquisition; comments due by 11-6-00; published 9-6-00

GOVERNMENT ETHICS OFFICE

Standards of ethical conduct for Executive Branch employees; comments due by 11-6-00; published 9-5-00

Correction; comments due by 11-6-00; published 9-12-00

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Animal drugs, feeds, and related products:

Presubmission conferences; comments due by 11-8-00; published 8-25-00

HEALTH AND HUMAN SERVICES DEPARTMENT

Health Care Financing Administration

Medicaid:

Hospital, nursing facility, intermediate care facility, and mentally retarded and clinic services; upper payment limit requirements modification; comments due by 11-9-00; published 10-10-00

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Low income housing:

Housing assistance payments (Section 8)—

Fair market rent schedules for Housing Choice Voucher Program; comments due by 11-6-00; published 10-6-00

INTERIOR DEPARTMENT

Indian Affairs Bureau

Financial activities:

Loan guaranty, insurance, and interest subsidy; revision; comments due by 11-6-00; published 9-6-00

JUSTICE DEPARTMENT

Immigration and Naturalization Service

Immigration:

Second preference employment-based immigrant physicians serving in medically

underserved areas, etc.; national interest waivers; comments due by 11-6-00; published 9-6-00

Correction; comments due by 11-6-00; published 10-20-00

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):

Forced or indentured child labor, products produced by; prohibition of acquisition; comments due by 11-6-00; published 9-6-00

SMALL BUSINESS ADMINISTRATION

Program for Investment In Microentrepreneurs Act; implementation:

Disadvantaged entrepreneurs; training and technical assistance grants; comments due by 11-9-00; published 10-10-00

STATE DEPARTMENT

Nationality and passports:

Executing passport application on behalf of minor; procedures; comments due by 11-6-00; published 10-10-00

Visas; immigrant and nonimmigrant documention:

Immigrant visa fees; change in payment procedures; comments due by 11-7-00; published 9-8-00

TRANSPORTATION DEPARTMENT

Coast Guard

Ports and waterways safety:

Portage River and Lily Pond Harbor, MI; inland waterways navigation regulation removed; comments due by 11-6-00; published 9-5-00

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Agusta S.p.A.; comments due by 11-6-00; published 9-22-00

Allison Engine Co.; comments due by 11-6-00; published 9-7-00

Bombardier; comments due by 11-6-00; published 10-5-00

Pilatus Aircraft Ltd.; comments due by 11-7-00; published 10-2-00

Rockwell Collins, Inc.; comments due by 11-6-00; published 10-2-00

Rolls-Royce plc; comments due by 11-6-00; published 9-7-00

Class E airspace; comments due by 11-6-00; published 9-21-00

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:

Foreign trusts that have U.S. beneficiaries; comments due by 11-6-00; published 8-7-00

Recognition of gain on certain transfers to certain foreign trusts and estates; comments due by 11-6-00; published 8-7-00

TREASURY DEPARTMENT

Thrift Supervision Office

Mutual savings associations, mutual holding company reorganizations, and conversions from mutual to stock form; comments due by 11-9-00; published 10-10-00

Repurchases of stock by recently-converted savings associations, mutual holding company dividend waivers, and Gramm-Leach-Biley Act changes; comments due by 11-9-00; published 10-10-00

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 1509/P.L. 106–348
To authorize the Disabled Veterans' LIFE Memorial Foundation to establish a memorial in the District of Columbia or its environs to honor veterans who became disabled while serving in the Armed Forces of the United States. (Oct. 24, 2000; 114 Stat. 1358)

H.R. 3201/P.L. 106–349
Carter G. Woodson Home National Historic Site Study Act of 2000 (Oct. 24, 2000; 114 Stat. 1359)

H.R. 3632/P.L. 106–350
Golden Gate National Recreation Area Boundary Adjustment Act of 2000 (Oct. 24, 2000; 114 Stat. 1361)

H.R. 3676/P.L. 106–351
Santa Rosa and San Jacinto Mountains National Monument Act of 2000 (Oct. 24, 2000; 114 Stat. 1362)

H.R. 4063/P.L. 106–352
Rosie the Riveter/World War II Home Front National Historical Park Establishment Act of 2000 (Oct. 24, 2000; 114 Stat. 1370)

H.R. 4275/P.L. 106–353
Colorado Canyons National Conservation Area and Black Ridge Canyons Wilderness Act of 2000 (Oct. 24, 2000; 114 Stat. 1374)

H.R. 4386/P.L. 106–354
Breast and Cervical Cancer Prevention and Treatment Act of 2000 (Oct. 24, 2000; 114 Stat. 1381)

H.R. 4613/P.L. 106–355

National Historic Lighthouse Preservation Act of 2000 (Oct. 24, 2000; 114 Stat. 1385)

H.R. 5036/P.L. 106–356

Dayton Aviation Heritage Preservation Amendments Act of 2000 (Oct. 24, 2000; 114 Stat. 1391)

S. 1849/P.L. 106–357

White Clay Creek Wild and Scenic Rivers System Act (Oct. 24, 2000; 114 Stat. 1393)

H.J. Res. 115/P.L. 106–358

Making further continuing appropriations for the fiscal year 2001, and for other purposes. (Oct. 26, 2000; 114 Stat. 1397)

H.J. Res. 116/P.L. 106–359

Making further continuing appropriations for the fiscal year 2001, and for other purposes. (Oct. 26, 2000; 114 Stat. 1398)

Last List October 26, 2000

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to www.gsa.gov/archives/publaws-l.html or send E-mail to **listserv@www.gsa.gov** with the following text message:

SUBSCRIBE PUBLAWS-L Your Name.

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.