

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT****1 CFR Part 462****24 CFR Part 81**

[Docket No. FR-4095-I-01]

RIN 2501-AC35

**The Secretary of HUD's Regulation of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac): Book-Entry Procedures**

AGENCY: Office of the Secretary, HUD.

ACTION: Interim rule.

**SUMMARY:** This interim rule revises procedures that govern the issuance, recordation, and transfer of Federal National Mortgage Association ("Fannie Mae") and Federal Home Loan Mortgage Corporation ("Freddie Mac") (collectively "Government-Sponsored Enterprises" or "GSEs") Securities in the Book-entry System. The rule modifies HUD's current book-entry procedures for Fannie Mae to bring them into accord with the revised book-entry procedures of the Department of Treasury ("Treasury") published in the Federal Register on August 23, 1996 (61 FR 43626). This rule also extends these revised book-entry procedures to Freddie Mac and supersedes Freddie Mac's current book-entry regulations.

In accordance with Treasury's revised book-entry procedures, this rule incorporates recent significant changes in commercial and property law, including changes concerning the holding of securities through financial intermediaries. This rule replaces existing regulations that contain outdated legal concepts. This rule applies to outstanding securities.

**DATES:** Effective date: January 1, 1997.

Comment due date: Comments must be submitted by January 31, 1997.

**ADDRESSES:** Interested persons are invited to submit comments regarding this rule to the Office of the General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-0500. Comments should refer to the above docket number and title of the rule. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying during regular business hours (weekdays 7:30 a.m. to 5:30 p.m. Eastern time) at the above address.

**FOR FURTHER INFORMATION CONTACT:**

Janet Tasker, Director, Office of Government-Sponsored Enterprises, Room 6154, telephone (202) 708-2224; or, for legal questions, Kenneth A. Markison, Assistant General Counsel for Government Sponsored Enterprises/RESPA, Office of the General Counsel, Room 9262, telephone (202) 708-3137. The address for both of these persons is: Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. A telecommunications device for deaf persons (TTY) is available at (202) 708-9300. (The telephone numbers are not toll-free.)

**SUPPLEMENTARY INFORMATION:****I. Background**

Both Fannie Mae and Freddie Mac use the Book-entry System of the Federal Reserve Banks to issue, record, and transfer ownership of certain of their respective securities. Although the Book-entry System was originally designed for Treasury securities, both GSEs have used this system under separate sets of regulations dating back to the late 1970s. Treasury regulations govern the Book-entry System, known as the commercial book-entry system, when it is used to issue, record, transfer and maintain Treasury securities. Recently, Treasury substantially modified its regulations governing Treasury securities held in this system to reflect contemporary legal development of the Uniform Commercial Code ("UCC"). This regulation conforms the book-entry regulations applicable to GSE securities to the changes made in Treasury's regulations (tailoring the changes to differences in the GSEs and GSE Securities), and combines the book-entry regulations applicable to both GSEs into a single set of regulations.

This rule furthers a rulemaking regarding book-entry procedures begun with the publication of HUD's proposed rule, 60 FR 9154 (Feb. 16, 1995), to implement the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 ("FHEFSSA"). As part of that rulemaking, HUD proposed to revise the book-entry procedures applicable to Fannie Mae, and make the procedures applicable to both GSEs. In comments on the proposed rule, however, the GSEs and the Book-Entry Treasury Regulations Task Force of the Investment Securities Subcommittee of the UCC Committee of the Business Law Section of the American Bar Association ("ABA Task Force") stated that HUD should not revise the book-entry procedures in the

form proposed in light of continuing work on a comprehensive revision of the Treasury's book-entry regulations. They urged HUD to wait until Treasury adopted revised book-entry regulations, and then to adopt consistent regulations for Book-entry GSE Securities. Treasury was, at that time, in the process of completing its revision of its book-entry regulations to reflect a major revision to Article 8 of the UCC. (Treasury had withdrawn proposed changes to its own regulations pending the completion of the revisions to Article 8 and conforming revisions to Article 9 of the UCC. See 57 FR 12244 (April 9, 1992) and 58 FR 59972 (November 12, 1993).) The Federal Reserve Bank of New York also urged HUD to delay implementation of new book-entry provisions, await Treasury's adoption of revised book-entry regulations, and then promulgate consistent regulations.

As indicated in the preamble to HUD's final rule implementing other matters pursuant to FHEFSSA, 60 FR 61846, 61885 (December 1, 1995), the Secretary decided to postpone making significant revisions to the book-entry regulations for the GSEs, including establishing uniform book-entry procedures for both GSEs, pending completion of the revised Treasury book-entry regulations. Based on the comments received, the Secretary determined that for HUD to act at that time to finalize a complete set of regulations for both GSEs, and then shortly to revise them, would be inefficient and lead to confusion. In the final rule, HUD announced its intention to adopt revised regulations simultaneous with Treasury's adoption of a final rule revising its book-entry procedures and to make HUD's regulations consistent with Treasury's at that time.

On March 4, 1996 (61 FR 8420), Treasury's Bureau of the Public Debt proposed revisions to its book-entry regulations. The purposes of Treasury's changes, like the purposes of the changes to HUD's rule announced today, were to incorporate recent and significant changes in commercial law addressing the holding of securities in book-entry form through securities intermediaries and to replace existing regulations that contain outdated legal concepts. Treasury received eleven comments on its proposed rule. Based on Treasury's proposal, the comments received in response, and Treasury's approach to addressing the comments in Treasury's August 23, 1996 final rule, and HUD's previously announced determination, based on the comments received, to issue revised book-entry regulations consistent with Treasury's

once those were promulgated, HUD developed this interim rule. HUD considered Treasury's proposal, the comments received in response thereto, and Treasury's final rule as relevant to this interim rule, since this rule is closely modelled on Treasury's rule—except differences necessitated by distinctions in the GSEs and their GSE Securities—and will become effective simultaneously with Treasury's rule. In light of the public comments on HUD's February 16, 1995 proposed revisions to the book-entry procedures and in light of Treasury's notice and comment rulemaking and HUD's adaptation of Treasury's rule to GSE Securities, HUD is issuing its revisions as an interim rule to accompany Treasury's final rule previously published in the Federal Register.

The book-entry rule announced today is identical for both GSEs and provides a level playing field for both GSE's securities. To this end, this regulation supersedes not only HUD's current book-entry regulation for Fannie Mae contained in 24 CFR part 81, subpart H, but also supersedes Freddie Mac's current book-entry regulation, codified at 1 CFR part 462.

## II. Analysis of Revisions to Book-Entry Procedures

Except as is necessary because of differences between the GSEs and their securities and Treasury and Treasury securities, HUD's revisions to the book-entry procedures applicable to GSEs follow the revisions Treasury is making to its book-entry procedures in a final rule previously published in the Federal Register. HUD adopts, to the extent relevant, the substance of the analysis contained in the commentary to Treasury's final rule, which will be codified at 31 CFR Part 357, Appendix B of Treasury's regulations. It is HUD's intent that the book-entry procedures announced today will be interpreted in a manner fully consistent and uniform with Treasury's revised book-entry procedures and the commentary to Treasury's final rule, except to the extent that HUD's rule diverges from Treasury's rule due to the unique nature of the GSEs and their securities.

The book-entry regulation promulgated today shares many major similarities with Treasury's regulation of the Treasury/Reserve Automated Debt Entry System ("TRADES"). Three of the similarities worthy of note are:

- Under both the book-entry regulations applicable to GSE securities and Treasury's TRADES regulation, there is federal preemption of state law with respect to the rights and obligations of the United States and the

Federal Reserve Banks. (Additionally, HUD's rule provides for federal preemption of state law with respect to the rights and obligations of the GSEs.)

- Other than as expressly stated in the rule, no duty exists on the part of Treasury, Freddie Mac, Fannie Mae, or the Federal Reserve to holders of GSE securities indirectly or through a securities intermediary.

- Book-entry GSE Securities may be converted to definitive securities only when so permitted in the documents establishing the terms of the securities.

Four significant areas in which HUD's rule differs from Treasury's rule, however, are the following:

- Under Treasury regulations, Treasury securities may be maintained in either of two book-entry systems—TRADES or TREASURY DIRECT. Inasmuch as there is no direct registration and holding of GSE Securities at this time, this rule does not establish a system analogous to TREASURY DIRECT for GSE Securities.

- The GSEs issue a wide variety of securities, some of which are not maintained by the Federal Reserve Banks. GSE Securities not maintained by a Federal Reserve Bank are not subject to this book-entry regulation and there is no federal preemption by these subpart H regulations for such securities. Furthermore, the book-entry regulation in this subpart H applies only for so long as the GSE security is actually on the Book-entry System; this regulation does not apply to GSE securities initially issued on the records of a Federal Reserve Bank when those securities are taken off the book-entry system and converted to definitive form.

- The book-entry regulation applicable to the GSEs recognizes that there are variations in documentation that a GSE uses depending upon the type of security issued.

- Unlike Treasury securities, GSE Securities may contain an express choice of law provision, under which state law is chosen to govern the rights and obligations of the GSEs. To the extent the state law chosen in the Security Documentation conflicts with the state law that would govern under these regulations, the state law selected in accordance with this regulation will prevail.

## III. Section-by-Section Comparison With Treasury's Model

This section notes in a section-by-section comparison, other differences between this book-entry regulation and Treasury's TRADES regulation.

## Revisions to 81.2 Definitions

The rule adds some definitions to § 81.2. These definitions correspond to definitions in 31 CFR 357.2, but are tailored to apply to the GSEs and their securities. It should be noted that HUD's rule uses the terminology "Book-entry System" rather than "TRADES," because TRADES is Treasury's unique terminology for the system as applied to Treasury securities.

HUD's definition of "person" makes clear that it excludes the GSEs. In addition, HUD's rule provides a definition of "Securities Documentation." Further, HUD intends that the rule's definitions of "Book-entry GSE Security" and "GSE Security" refer to the wide array of securities and obligations that the GSEs issue.

The definitions added to § 81.2 are supplemented by a general provision, § 81.2(c), which indicates that terms used in subpart H that are not defined in part 81 have the meanings set forth in 31 CFR 357.2. This provision reflects HUD's determination that it is unnecessary to define certain terms used in subpart H or used in a section of Treasury's rule adopted by cross-reference in subpart H, even though those terms are not defined in part 81, because the definitions in the Treasury rule are adequate (e.g., "Security Entitlement").

This rule also eliminates an outdated provision that formerly appeared in the definition of "Fannie Mae security," which excluded short-term discount notes and obligations convertible into shares of common stock.

### Section 81.91

This section, addressing maintenance of GSE Securities, is modelled after 31 CFR 357.0, but is custom-tailored to GSE Securities to reflect that GSE Securities need not be maintained in the Book-entry System. Some GSE Securities are held in definitive form, either indirectly through depositories or intermediaries or directly by the investor in TREASURY DIRECT. No system currently exists for GSE Securities that is analogous to TREASURY DIRECT.

### Section 81.92

This section, addressing the law governing the rights and obligations of the United States, the Federal Reserve Banks, and the GSEs, and other interests, is modelled after 31 CFR 357.10 and 357.11. One difference between HUD's and Treasury's provisions is that HUD's rule recognizes that the GSEs use various forms of documentation to establish the terms of

GSE Securities, depending upon the type of security issued. HUD's rule makes clear the way in which such documentation applies to the GSEs and their securities.

#### *Section 81.93*

This section, addressing security entitlements and interests, is modelled after 31 CFR 357.12. HUD's rule applies these provisions to the GSEs and their securities.

#### *Section 81.94*

This section, addressing obligations of GSEs, is modelled after 31 CFR 357.13. HUD's rule accounts for the possibility that the GSEs could make payments with respect to Book-entry GSE Securities that might be characterized as other than principal or interest payments.

#### *Section 81.95*

This section, addressing the authority of the Federal Reserve Banks, is modelled after 31 CFR 357.14. HUD's rule specifically authorizes each Federal Reserve Bank to effect conversions between Book-entry GSE Securities and Definitive GSE Securities where conversion rights are available pursuant to the applicable Securities Documentation.

#### *Section 81.96*

This section, addressing withdrawal of Book-entry GSE Securities eligible for conversion to definitive form, is modelled after 31 CFR 306.117. HUD's rule highlights the requirement that conversion must be consistent with the Securities Documentation.

#### *Section 81.97*

This section, addressing waiver of regulations, is modelled after 31 CFR 357.41. HUD's rule makes clear that the Secretary of HUD may waive these regulations. HUD traditionally has consulted with the GSEs in the waiver process. In accordance with section 106 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3535(q)), HUD publishes a notice each quarter indicating the waivers of regulations granted during that quarter.

#### *Section 81.98*

This section, addressing liability of GSEs and Federal Reserve Banks, is modelled after 31 CFR 357.42. HUD's rule reflects that some terms such as "tender" and "transactions request form" used in Treasury's rule do not apply to Book-entry GSE Securities.

#### *Section 81.99*

This section is modelled after two Treasury regulations. Subsection (a) on

additional requirements is modelled after 31 CFR 357.40. Subsection (b) on notice of attachment for GSE Securities is modelled after 31 CFR 357.44.

#### *Removal of 1 CFR part 462*

Freddie Mac's current book-entry regulation is codified at 1 CFR part 462. This regulation was promulgated prior to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. 101-73, (August 9, 1989). Section 731(c) of FIRREA accorded the Secretary of HUD general regulatory power over Freddie Mac. The Secretary's general regulatory power over Freddie Mac is currently codified in section 1321 of FHEFSSA (12 U.S.C. 4541).

Since this regulation applies to both GSEs, it supersedes Freddie Mac's current book-entry regulation codified at 1 CFR Part 462. Thus, HUD's rule removes Freddie Mac's current book-entry regulation from the CFR pursuant to the Secretary's general regulatory power over Freddie Mac.

#### *Findings and Certifications*

##### *Public Reporting Burden*

This interim rule contains no new information collection requirements that would require review by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (42 U.S.C. 3501-3520).

##### *Justification for Interim Rule*

As discussed above in the Background section, this rule is published as an interim rule based not only on the previous proposed rule issued by HUD on February 16, 1995, but also on the proposed and final rules issued by Treasury. Treasury's final rule, published on August 23, 1996, needed relatively minor adaptations to apply appropriately to Fannie Mae and Freddie Mac. This interim rule makes those necessary changes.

The Department generally publishes a rule for public comment before issuing a rule for effect, in accordance with its regulations on rulemaking in 24 CFR part 10. However, prior public procedure may be omitted if HUD determines that it is "impracticable, unnecessary, or contrary to the public interest." (24 CFR 10.1) The essence of this rule has been the subject of notice and comment in the form of the Treasury proposed rule, and comments on HUD's proposed rule recommended that HUD's rule follow Treasury's rule. To avoid dislocation in the securities market, it is imperative that these regulations take effect at the same time as Treasury's final rule, on January 1,

1997. Given that Treasury's rule was not published until August 23, 1996, there would not have been sufficient time for HUD to go through notice and comment rulemaking and then proceed to publish a final rule with a January 1, 1997 effective date. Therefore, the Department has determined that it is unnecessary and contrary to the public interest to undergo separate notice and comment rulemaking on the specifics of this adaptation of the Treasury rule before making this rule effective. As a result, in accordance with 24 CFR part 10, HUD is publishing this interim rule for effect.

In the interest of obtaining the fullest participation possible in determining that the adaptation of Treasury's rule is appropriate, the Department does invite public comment on the rule. The comments received within the 60-day comment period will be considered during development of a final rule that will supersede this interim rule.

##### *Impact on Small Entities*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this interim rule, and in so doing certifies that this interim rule will not have a significant economic impact on a substantial number of small entities. This interim rule affects the operation of two entities, Fannie Mae and Freddie Mac, neither of which is a small entity.

##### *Environmental Impact*

This interim rule is exempt from the requirement for an environmental assessment under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332), in accordance with HUD regulations at 24 CFR 50.19(c)(1), as revised by a final rule on September 27, 1996 (61 FR 50919). In accordance with 24 CFR 50.19(a), other Federal environmental laws, as described in 24 CFR 50.4, are not applicable to this interim rule.

##### *Federalism Impact*

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this interim rule's preemption of State law to the extent that it applies the newly revised Article 8 of the Uniform Commercial Code has sufficient effect on States to require consideration of the impact of the rule under the Order. The General Counsel has assessed this preemption in light of the principles, criteria, and requirements of the Executive Order and determined that it is not inconsistent with them. The policy does not impose additional costs or burdens on the States

and it does not affect the States' ability to discharge traditional State governmental functions.

This rule makes explicit the preemption applicable to the rights and obligations of the United States, the Federal Reserve Banks, and the GSEs that was implicit under the prior rule. The rule continues to accommodate State law, to the maximum extent possible, given market methodologies. Ultimately, as States proceed to adopt the revised Article 8, the rule will provide no greater preemption of State law than under the prior rule.

The rule is justified, despite the preemption it effects, by the fact that the preemption is no greater than necessary to accommodate the nationwide application of the rule and the nationwide market for the GSE Securities, as was the preemption under the book-entry rules this rule replaces. It should be noted that section 304(d) of the Fannie Mae Charter Act (12 U.S.C. 1719(d)) and section 306(g) of the Freddie Mac Act (12 U.S.C. 1455(f)) specifically provide for the exemption of GSE securities from State securities registration requirements (as well as the registration requirements of the Securities and Exchange Commission). See also 15 U.S.C. 77r-1.

*Executive Order 12606, the Family*

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this interim rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

*Unfunded Mandates Reform Act*

The Secretary, in accordance with the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, has reviewed this interim rule before publication and by approving it certifies that this interim rule does not impose a Federal mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year.

*Catalog*

There is no Catalog of Federal Domestic Assistance number for the program affected by this interim rule.

List of Subjects

*1 CFR Part 462*

Accounting, Banks, Banking, Securities.

*24 CFR Part 81*

Accounting, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Securities.

Accordingly, for the reasons set out in the preamble, under the authority of 42 U.S.C. 3535(d), part 462 of title 1 of the Code of Federal Regulations and part 81 of title 24 of the Code of Federal Regulations are amended as follows:

**TITLE 1—GENERAL PROVISIONS**

**CHAPTER IV—MISCELLANEOUS AGENCIES**

**PART 462—FEDERAL HOME LOAN MORTGAGE CORPORATION (BOOK-ENTRY REGULATIONS)**

1. 1 CFR part 462 is removed.

**TITLE 24—DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**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)**

2. The authority citation for 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.

3. In §81.2, paragraph (b) is amended by adding the following definitions, in appropriate alphabetical order location, and by adding a new paragraph (c), to read as follows:

**§81.2 Definitions.**

\* \* \* \* \*

*Book-entry GSE Security* means a GSE Security issued or maintained in the Book-entry System.

*Book-entry System* means the automated book-entry system operated by the Federal Reserve Banks acting as the fiscal agent for the GSEs, on which Book-entry GSE Securities are issued, recorded, transferred and maintained in book-entry form.

\* \* \* \* \*

*Definitive GSE Security* means a GSE Security in engraved or printed form, or that is otherwise represented by a certificate.

\* \* \* \* \*

*Eligible Book-entry GSE Security* means a Book-entry GSE Security issued or maintained in the Book-entry System

which by the terms of its Security Documentation is available in either definitive or book-entry form.

*Entitlement Holder* means a Person to whose account an interest in a Book-entry GSE Security is credited on the records of a Securities Intermediary.

\* \* \* \* \*

*Federal Reserve Bank Operating Circular* means the publication issued by each Federal Reserve Bank that sets forth the terms and conditions under which the Reserve Bank maintains book-entry Securities accounts (including Book-entry GSE Securities) and transfers book-entry Securities (including Book-entry GSE Securities).

\* \* \* \* \*

*GSE Security* means any security or obligation of Fannie Mae or Freddie Mac issued under its respective Charter Act in the form of a Definitive GSE Security or a Book-entry GSE Security.

\* \* \* \* \*

*Person*, as used in subpart H, means and includes an individual, corporation, company, governmental entity, association, firm, partnership, trust, estate, representative, and any other similar organization, but does not mean or include the United States, a GSE, or a Federal Reserve Bank.

*Revised Article 8* has the same meaning as in 31 CFR 357.2.

\* \* \* \* \*

*Security* means any mortgage participation certificate, note, bond, debenture, evidence of indebtedness, collateral-trust certificate, transferable share, certificate of deposit for a security, or, in general, any interest or instrument commonly known as a "security."

*Securities documentation* means the applicable statement of terms, trust indenture, securities agreement or other documents establishing the terms of a Book-entry GSE Security.

\* \* \* \* \*

*Transfer message* means an instruction of a Participant to a Federal Reserve Bank to effect a transfer of a Book-entry Security (including a Book-entry GSE Security) maintained in the Book-entry System, as set forth in Federal Reserve Bank Operating Circulars.

\* \* \* \* \*

(c) *Subpart H terms*. Unless the context requires otherwise, terms used in subpart H of this part that are not defined in this part, have the meanings as set forth in 31 CFR 357.2. Definitions and terms used in 31 CFR part 357 should read as though modified to effectuate their application to the GSEs.

4. Subpart H is revised to read as follows:

**Subpart H—Book-Entry Procedures**

Sec.

- 81.91 Maintenance of GSE Securities.
- 81.92 Law governing rights and obligations of United States, Federal Reserve Banks, and GSEs; rights of any Person against United States, Federal Reserve Banks, and GSEs; Law governing other interests.
- 81.93 Creation of Participant's Security Entitlement; security interests.
- 81.94 Obligations of GSEs; no adverse claims.
- 81.95 Authority of Federal Reserve Banks.
- 81.96 Withdrawal of Eligible Book-entry GSE Securities for conversion to definitive form.
- 81.97 Waiver of regulations.
- 81.98 Liability of GSEs and Federal Reserve Banks.
- 81.99 Additional provisions.

**Subpart H—Book-Entry Procedures****§ 81.91 Maintenance of GSE Securities.**

A GSE Security may be maintained in the form of a Definitive GSE Security or a Book-entry GSE Security. A Book-entry GSE Security shall be maintained in the Book-entry System.

**§ 81.92 Law governing rights and obligations of United States, Federal Reserve Banks, and GSEs; rights of any Person against United States, Federal Reserve Banks, and GSEs; Law governing other interests.**

(a) Except as provided in paragraph (b) of this section, the following rights and obligations are governed solely by the Book-entry regulations contained in this subpart H, the Securities Documentation (but not including any choice of law provisions in such documentation), and Federal Reserve Bank *Operating Circulars*:

(1) The rights and obligations of the United States, a GSE and the Federal Reserve Banks with respect to:

- (i) A Book-entry GSE Security or Security Entitlement; and
- (ii) The operation of the Book-entry System as it applies to GSE Securities; and

(2) The rights of any Person, including a Participant, against the United States, a GSE and the Federal Reserve Banks with respect to:

- (i) A Book-entry GSE Security or Security Entitlement; and
- (ii) The operation of the Book-entry System applicable to GSE Securities;

(b) A security interest in a Security Entitlement that is in favor of a Federal Reserve Bank from a Participant and that is not recorded on the books of a Federal Reserve Bank pursuant to § 81.93(c)(1), is governed by the law (not including the conflict-of-law rules) of the jurisdiction where the head office of the Federal Reserve Bank maintaining the Participant's Securities Account is

located. A security interest in a Security Entitlement that is in favor of a Federal Reserve Bank from a Person that is not a Participant, and that is not recorded on the books of a Federal Reserve Bank pursuant to § 81.93(c)(1), is governed by the law determined in the manner specified in paragraph (d) of this section.

(c) If the jurisdiction specified in the first sentence of paragraph (b) of this section is a State that has not adopted Revised Article 8, then the law specified in paragraph (b) of this section shall be the law of that State as though Revised Article 8 had been adopted by that State.

(d) To the extent not otherwise inconsistent with this subpart H, and notwithstanding any provision in the Security Documentation setting forth a choice of law, the provisions set forth in 31 CFR 357.11 regarding law governing other interests apply and shall be read as though modified to effectuate the application of 31 CFR 357.11 to the GSEs.

**§ 81.93 Creation of Participant's Security Entitlement; security interests.**

(a) A Participant's Security Entitlement is created when a Federal Reserve Bank indicates by book-entry that a Book-entry GSE Security has been credited to a Participant's Securities Account.

(b) A security interest in a Security Entitlement of a Participant in favor of the United States to secure deposits of public money, including without limitation deposits to the Treasury tax and loan accounts, or other security interest in favor of the United States that is required by Federal statute, regulation, or agreement, and that is marked on the books of a Federal Reserve Bank is thereby effected and perfected, and has priority over any other interest in the securities. Where a security interest in favor of the United States in a Security Entitlement of a Participant is marked on the books of a Federal Reserve Bank, such Reserve Bank may rely, and is protected in relying, exclusively on the order of an authorized representative of the United States directing the transfer of the security. For purposes of this paragraph, an "authorized representative of the United States" is the official designated in the applicable regulations or agreement to which a Federal Reserve Bank is a party, governing the security interest.

(c)(1) A GSE, the United States, and the Federal Reserve Banks have no obligation to agree to act on behalf of any Person or to recognize the interest of any transferee of a security interest or

other limited interest in favor of any Person except to the extent of any specific requirement of Federal law or regulation or to the extent set forth in any specific agreement with the Federal Reserve Bank on whose books the interest of the Participant is recorded. To the extent required by such law or regulation or set forth in an agreement with a Federal Reserve Bank, or the Federal Reserve Bank Operating Circular, a security interest in a Security Entitlement that is in favor of a Federal Reserve Bank, a GSE, or a Person may be created and perfected by a Federal Reserve Bank marking its books to record the security interest. Except as provided in paragraph (b) of this section, a security interest in a Security Entitlement marked on the books of a Federal Reserve Bank shall have priority over any other interest in the securities.

(2) In addition to the method provided in paragraph (c)(1) of this section, a security interest, including a security interest in favor of a Federal Reserve Bank, may be perfected by any method by which a security interest may be perfected under applicable law as described in § 81.92(b) or (d). The perfection, effect of perfection or non-perfection and priority of a security interest are governed by such applicable law. A security interest in favor of a Federal Reserve Bank shall be treated as a security interest in favor of a clearing corporation in all respects under such law, including with respect to the effect of perfection and priority of such security interest. A Federal Reserve Bank Operating Circular shall be treated as a rule adopted by a clearing corporation for such purposes.

**§ 81.94 Obligations of GSEs; no adverse claims.**

(a) Except in the case of a security interest in favor of the United States or a Federal Reserve Bank or otherwise as provided in § 81.93(c)(1), for the purposes of this subpart H, the GSE and the Federal Reserve Banks shall treat the Participant to whose Securities Account an interest in a Book-entry GSE Security has been credited as the person exclusively entitled to issue a Transfer Message, to receive interest and other payments with respect thereof and otherwise to exercise all the rights and powers with respect to such Security, notwithstanding any information or notice to the contrary. Neither the Federal Reserve Banks, the United States, nor a GSE is liable to a Person asserting or having an adverse claim to a Security Entitlement or to a Book-entry GSE Security in a Participant's Securities Account, including any such claim arising as a result of the transfer

or disposition of a Book-entry GSE Security by a Federal Reserve Bank pursuant to a Transfer Message that the Federal Reserve Bank reasonably believes to be genuine.

(b) The obligation of the GSE to make payments (including payments of interest and principal) with respect to Book-entry GSE Securities is discharged at the time payment in the appropriate amount is made as follows:

(1) Interest or other payments on Book-entry GSE Securities is either credited by a Federal Reserve Bank to a Funds Account maintained at such Bank or otherwise paid as directed by the Participant.

(2) Book-entry GSE Securities are redeemed in accordance with their terms by a Federal Reserve Bank withdrawing the securities from the Participant's Securities Account in which they are maintained and by either crediting the amount of the redemption proceeds, including both principal and interest, where applicable, to a Funds Account at such Bank or otherwise paying such principal and interest as directed by the Participant. No action by the Participant ordinarily is required in connection with the redemption of a Book-entry GSE Security.

**§ 81.95 Authority of Federal Reserve Banks.**

(a) Each Federal Reserve Bank is hereby authorized as fiscal agent of the GSEs to perform the following functions with respect to the issuance of Book-entry GSE Securities offered and sold by a GSE to which this subpart H applies, in accordance with the Securities Documentation, Federal Reserve Bank Operating Circulars, this subpart H, and procedures established by the Secretary consistent with these authorities:

(1) To service and maintain Book-entry GSE Securities in accounts established for such purposes;

(2) To make payments with respect to such securities, as directed by the GSE;

(3) To effect transfer of Book-entry GSE Securities between Participants'

Securities Accounts as directed by the Participants;

(4) To effect conversions between Book-entry GSE Securities and Definitive GSE Securities with respect to those securities as to which conversion rights are available pursuant to the applicable Securities Documentation; and

(5) To perform such other duties as fiscal agent as may be requested by the GSE.

(b) Each Federal Reserve Bank may issue Operating Circulars not inconsistent with this subpart H, governing the details of its handling of Book-entry GSE Securities, Security Entitlements, and the operation of the book-entry system under this subpart H.

**§ 81.96 Withdrawal of Eligible Book-entry GSE Securities for conversion to definitive form.**

(a) Eligible Book-entry GSE Securities may be withdrawn from the Book-entry System by requesting delivery of like Definitive GSE Securities.

(b) A Reserve bank shall, upon receipt of appropriate instructions to withdraw Eligible Book-entry GSE Securities from book-entry in the Book-entry System, convert such securities into Definitive GSE Securities and deliver them in accordance with such instructions. No such conversion shall affect existing interests in such GSE Securities.

(c) All requests for withdrawal of Eligible Book-entry GSE Securities must be made prior to the maturity or date of call of the securities.

(d) GSE Securities which are to be delivered upon withdrawal may be issued in either registered or bearer form, to the extent permitted by the applicable offering circular.

**§ 81.97 Waiver of regulations.**

The Secretary reserves the right in the Secretary's discretion, to waive any provision(s) of these regulations in any case or class of cases for the convenience of a GSE, the United States, or in order to relieve any person(s) of

unnecessary hardship, if such action is not inconsistent with law, does not adversely affect any substantial existing rights, and the Secretary is satisfied that such action will not subject a GSE or the United States to any substantial expense or liability.

**§ 81.98 Liability of GSEs and Federal Reserve Banks.**

A GSE and the Federal Reserve Banks may rely on the information provided in a Transfer Message, and are not required to verify the information. A GSE and the Federal Reserve Banks shall not be liable for any action taken in accordance with the information set out in a Transfer Message, or evidence submitted in support thereof.

**§ 81.99 Additional provisions.**

(a) *Additional requirements.* In any case or any class of cases arising under these regulations, a GSE may require such additional evidence and a bond of indemnity, with or without surety, as may in the judgment of the GSE be necessary for the protection of the interests of the GSE.

(b) *Notice of attachment for GSE Securities in Book-entry system.* The interest of a debtor in a Security Entitlement may be reached by a creditor only by legal process upon the Securities Intermediary with whom the debtor's securities account is maintained, except where a Security Entitlement is maintained in the name of a secured party, in which case the debtor's interest may be reached by legal process upon the secured party. These regulations do not purport to establish whether a Federal Reserve Bank is required to honor an order or other notice of attachment in any particular case or class of cases.

Dated: November 6, 1996.

Henry G. Cisneros,

Secretary.

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