

**PART 81—THE SECRETARY OF HUD'S
REGULATION OF THE FEDERAL
NATIONAL MORTGAGE ASSO-
CIATION (FANNIE MAE) AND THE
FEDERAL HOME LOAN MORT-
GAGE CORPORATION (FREDDIE
MAC)**

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AUTHORITY: 12 U.S.C. 1451 *et seq.*, 1716–1723h, and 4501–4641; 28 U.S.C. 2461 note; 42 U.S.C. 3535(d) and 3601–3619.

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Subpart A—General

§ 81.1 Scope of part.

(a) *Authority.* The Secretary has general regulatory power respecting the Federal National Mortgage Association (“Fannie Mae”) and the Federal Home Loan Mortgage Corporation (“Freddie Mac”) (referred to collectively as Government-sponsored enterprises (“GSEs”)) and is required to make such rules and regulations as are necessary and proper to ensure that the provisions of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (“FHEFSSA”), codified generally at 12 U.S.C. 4501–4641; the Fannie Mae Charter Act, 12 U.S.C. 1716–1723h; and the Freddie Mac Act, 12 U.S.C. 1451–59, are accomplished.

(b) *Relation between this part and the authorities of OFHEO.* The Director of the Office of Federal Housing Enterprise Oversight (“OFHEO”) will issue separate regulations implementing the Director’s authority respecting the GSEs. In this part, OFHEO and the Director are only referenced when the Director’s responsibilities are connected with the Secretary’s responsibilities.

§ 81.2 Definitions.

(a) *Statutory terms.* All terms defined in FHEFSSA (12 U.S.C. 4502) are used in accordance with their statutory meaning unless otherwise defined in paragraph (b) of this section.

(b) *Other terms.* As used in this part, the term—

AHAR means the Annual Housing Activities Report that a GSE submits to the Secretary under sections 309(n) of the Fannie Mae Charter Act or 307(f) of the Freddie Mac Act.

AHAR information means data or information contained in the AHAR.

AHS means the American Housing Survey published by HUD and the Department of Commerce.

Balloon mortgage means a mortgage providing for payments at regular intervals, with a final payment (“balloon payment”) that is at least 5 percent more than the periodic payments. The periodic payments may cover some or all of the periodic principal or interest. Typically, the periodic payments are level monthly payments that would fully amortize the mortgage over a

stated term and the balloon payment is a single payment due after a specified period (but before the mortgage would fully amortize) and pays off or satisfies the outstanding balance of the mortgage.

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.

Central city means the underserved areas located in any political subdivision designated as a central city by the Office of Management and Budget of the Executive Office of the President.

Charter Act means the Federal National Mortgage Association Charter Act (12 U.S.C. 1716 *et seq.*) or the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451 *et seq.*)

Contract rent means the total rent that is, or is anticipated to be, specified in the rental contract as payable by the tenant to the owner for rental of a dwelling unit, including fees or charges for management and maintenance services and those utility charges that are included in the rental contract. In determining contract rent, rent concessions shall not be considered, *i.e.*, contract rent is not decreased by any rent concessions. Contract rent is rent net of rental subsidies.

Conventional mortgage means a mortgage other than a mortgage as to which a GSE has the benefit of any guaranty, insurance or other obligation by the United States or any of its agencies or instrumentalities.

Day means a calendar day.

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

Director means the Director of OFHEO.

Dwelling unit means a room or unified combination of rooms intended for use, in whole or in part, as a dwelling by one or more persons, and includes a dwelling unit in a single-family property, multifamily property, or other residential or mixed-use property.

EOCA means the Equal Credit Opportunity Act (15 U.S.C. 1691 *et seq.*).

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.

Familial status has the same definition as is set forth at 24 CFR 100.20.

Family means one or more individuals who occupy the same dwelling unit.

Fannie Mae means the Federal National Mortgage Association and any affiliate thereof.

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).

FHEFSSA means the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, codified generally at 12 U.S.C. 4501-4651.

FOIA means the Freedom of Information Act (5 U.S.C. 552).

Freddie Mac means the Federal Home Loan Mortgage Corporation and any affiliate thereof.

Freddie Mac Act means the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451 *et seq.*).

Government-sponsored enterprise or *GSE* means Fannie Mae or Freddie Mac.

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.

Handicap has the same definition as is set forth at 24 CFR 100.201.

HUD means the United States Department of Housing and Urban Development.

Lender means any entity that makes, originates, sells, or services mortgages, and includes the secured creditors named in the debt obligation and document creating the mortgage.

Low-income area means a census tract or block numbering area in which the median income does not exceed 80 percent of the area median income.

Median income means, with respect to an area, the unadjusted median family income for the area, as most recently determined and published by the Secretary.

Metropolitan area means a metropolitan statistical area ("MSA"), primary metropolitan statistical area ("PMSA"), or consolidated metropolitan statistical area ("CMSA"), designated by the Office of Management and Budget of the Executive Office of the President.

Minority means any individual who is included within any one of the following racial and ethnic categories:

(1) American Indian or Alaskan Native—a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition;

(2) Asian or Pacific Islander—a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands;

(3) African-American—a person having origins in any of the black racial groups of Africa; and

(4) Hispanic—a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.

Mortgage means a member of such classes of liens, including subordinate liens, as are commonly given or are legally effective to secure advances on, or the unpaid purchase price of, real estate under the laws of the State in which the real estate is located, or a manufactured home that is personal property under the laws of the State in which the manufactured home is located, together with the credit instruments, if any, secured thereby, and includes interests in mortgages. "Mortgage" includes a mortgage, lien, including a subordinate lien, or other security interest on the stock or membership certificate issued to a tenant-stockholder or resident-member by a

cooperative housing corporation, as defined in section 216 of the Internal Revenue Code of 1986, and on the proprietary lease, occupancy agreement, or right of tenancy in the dwelling unit of the tenant-stockholder or resident-member in such cooperative housing corporation.

Mortgage data means data obtained by the Secretary from the GSEs under subsection 309(m) of the Fannie Mae Charter Act and subsection 307(e) of the Freddie Mac Act.

Mortgage purchase means a transaction in which a GSE bought or otherwise acquired with cash or other thing of value, a mortgage for its portfolio or for securitization.

Multifamily housing means a residence consisting of more than 4 dwelling units. The term includes cooperative buildings and condominium projects.

New England means Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

OFHEO means the Office of Federal Housing Enterprise Oversight.

Ongoing program means a program that is expected to continue for the foreseeable future.

Other underserved area means any underserved area that is in a metropolitan area, but not in a central city.

Owner-occupied unit means a dwelling unit in single-family housing in which a mortgagor of the unit resides.

Participation means a fractional interest in the principal amount of a mortgage.

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.

Portfolio of loans means 10 or more loans.

Proprietary information means all mortgage data and all AHAR information that the GSEs submit to the Secretary in the AHARs that contain trade secrets or privileged or confidential, commercial, or financial information that, if released, would be likely to cause substantial competitive harm.

Public data means all mortgage data and all AHAR information that the

GSEs submit to the Secretary in the AHARs, that the Secretary determines are not proprietary and may appropriately be disclosed consistent with other applicable laws and regulations.

Real estate mortgage investment conduit (REMIC) means multi-class mortgage securities issued by a tax-exempt entity.

Refinancing means a transaction in which an existing mortgage is satisfied or replaced by a new mortgage undertaken by the same borrower. The term does not include:

(1) A renewal of a single payment obligation with no change in the original terms;

(2) A reduction in the annual percentage rate of the mortgage as computed under the Truth in Lending Act, with a corresponding change in the payment schedule;

(3) An agreement involving a court proceeding;

(4) A workout agreement, in which a change in the payment schedule or collateral requirements is agreed to as a result of the mortgagor's default or delinquency, unless the rate is increased or the new amount financed exceeds the unpaid balance plus earned finance charges and premiums for the continuation of insurance;

(5) The renewal of optional insurance purchased by the mortgagor and added to an existing mortgage; and

(6) A renegotiated balloon mortgage on a multifamily property where the balloon payment was due within 1 year after the date of the closing of the renegotiated mortgage.

Rent means, for a dwelling unit:

(1) When the contract rent includes all utilities, the contract rent; or

(2) When the contract rent does not include all utilities, the contract rent plus:

(i) The actual cost of utilities not included in the contract rent; or

(ii) A utility allowance.

Rental housing means dwelling units in multifamily housing and dwelling units that are not owner occupied in single-family housing.

Rental unit means a dwelling unit that is not owner-occupied and is rented or available to rent.

Residence means a property where one or more families reside.

Residential mortgage means a mortgage on single-family or multifamily housing.

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

Rural area means any underserved area located outside of any metropolitan area.

Seasoned mortgage means a mortgage on which the date of the mortgage note is more than 1 year before the GSE purchased the mortgage.

Second mortgage means any mortgage that has a lien position subordinate only to the lien of the first mortgage.

Secondary residence means a dwelling where the mortgagor maintains (or will maintain) a part-time place of abode and typically spends (or will spend) less than the majority of the calendar year. A person may have more than one secondary residence at a time.

Secretary means the Secretary of Housing and Urban Development and, where appropriate, any person designated by the Secretary to perform a particular function for the Secretary, including any HUD officer, employee, or agent.

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.

Single-family housing means a residence consisting of one to four dwelling units. Single-family housing includes condominium dwelling units and dwelling units in cooperative housing projects.

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.

Underserved area means:

(1) For purposes of the definitions of "central city" and "other underserved area," a census tract having:

(i) A median income at or below 120 percent of the median income of the metropolitan area and a minority population of 30 percent or greater; or

(ii) A median income at or below 90 percent of median income of the metropolitan area.

(2) For purposes of the definition of "rural area":

(i) In areas other than New England, a county having:

(A) A median income at or below 120 percent of the State nonmetropolitan median income and a minority population of 30 percent or greater; or

(B) A median income at or below 95 percent of the greater of the:

(1) State non-metropolitan median income; or

(2) Nationwide non-metropolitan median income; and

(ii) In New England, an entire county having the characteristics in paragraph (2)(i)(A) or (B) of this definition or the remainder of a county, where a portion of the county is in a metropolitan area and the remainder of the county has the characteristics in paragraph (2)(i)(A) or (B) of this definition.

Utilities means charges for electricity, piped or bottled gas, water, sewage disposal, fuel (oil, coal, kerosene, wood, solar energy, or other), and garbage and trash collection. Utilities do not include charges for telephone service.

Utility allowance means either:

(1) The amount to be added to contract rent when utilities are not included in contract rent (also referred to as the "AHS-derived utility allowance"), as issued annually by the Secretary; or

(2) The utility allowance established under the HUD Section 8 Program (42 U.S.C. 1437f) for the area where the property is located.

Very-low-income has the same definition as "very low-income" has in FHEFSSA.

Wholesale exchange means a transaction in which a GSE buys or otherwise acquires mortgages held in portfolio or securitized by the other GSE, or where both GSEs swap such mortgages.

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Working day means a day when HUD is officially open for business.

(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.

[60 FR 61888, Dec. 1, 1995, as amended at 61 FR 63947, Dec. 2, 1996]

Subpart B—Housing Goals

§ 81.11 General.

This subpart establishes: three housing goals, as required by FHEFSSA; requirements for measuring performance under the goals; and procedures for monitoring and enforcing the goals.

§ 81.12 Low- and Moderate-Income Housing Goal.

(a) *Purpose of goal.* This annual goal for the purchase by each GSE of mortgages on housing for low- and moderate-income families (“the Low- and Moderate-Income Housing Goal”) is intended to achieve increased purchases by the GSEs of such mortgages.

(b) *Factors.* In establishing the Low- and Moderate-Income Housing Goals, the Secretary considered the factors in 12 U.S.C. 4562(b). A statement documenting the Secretary’s considerations and findings with respect to these factors, entitled “Secretarial Considerations to Establish the Low- and Moderate-Income Housing Goal,” was published in the FEDERAL REGISTER on December 1, 1995.

(c) *Goals.* The annual goals for each GSE’s purchases of mortgages on housing for low- and moderate-income families are:

(1) For 1996, 40 percent of the total number of dwelling units financed by that GSE’s mortgage purchases in 1996;

(2) For each of the years 1997-99, 42 percent of the total number of dwelling units financed by that GSE’s mortgage purchases in each of those years; and

(3) For 2000 and thereafter the Secretary shall establish annual goals; pending establishment of goals for 2000 and thereafter, the annual goal for each of those years shall be 42 percent of the total number of dwelling units

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financed by that GSE’s mortgage purchases in each of those years.

§ 81.13 Central Cities, Rural Areas, and Other Underserved Areas Housing Goal.

(a) *Purpose of the goal.* This annual goal for the purchase by each GSE of mortgages on housing located in central cities, rural areas, and other underserved areas is intended to achieve increased purchases by the GSEs of mortgages financing housing in areas that are underserved in terms of mortgage credit.

(b) *Factors.* In establishing the Central Cities, Rural Areas, and Other Underserved Areas Goals, the Secretary considered the factors in 12 U.S.C. 4564(b). A statement documenting the Secretary’s considerations and findings with respect to these factors, entitled “Secretarial Considerations to Establish the Central Cities, Rural Areas, and Other Underserved Areas Housing Goal,” was published in the FEDERAL REGISTER on December 1, 1995.

(c) *Goals.* The annual goals for each GSE’s purchases of mortgages on housing located in central cities, rural areas, and other underserved areas are:

(1) For 1996, 21 percent of the total number of dwelling units financed by that GSE’s mortgage purchases in 1996;

(2) For each of the years 1997-99, 24 percent of the total number of dwelling units financed by that GSE’s mortgage purchases in each of those years; and

(3) For 2000 and thereafter the Secretary shall establish annual goals; pending establishment of goals for 2000 and thereafter, the annual goal for each of those years shall be 24 percent of the total number of dwelling units financed by that GSE’s mortgage purchases in each of those years.

(d) *Measuring performance.* The GSEs shall determine on a mortgage-by-mortgage basis, through geocoding or any similarly accurate and reliable method, whether a mortgage finances one or more dwelling units located in a central city, rural area, or other underserved area.

§ 81.14 Special Affordable Housing Goal.

(a) *Purpose of the goal.* This goal is intended to achieve increased purchases

by the GSEs of mortgages on rental and owner-occupied housing meeting the then-existing unaddressed needs of, and affordable to, low-income families in low-income areas and very-low-income families.

(b) *Factors.* In establishing the Special Affordable Housing Goals, the Secretary considered the factors in 12 U.S.C. 4563(a)(2). A statement documenting the Secretary's considerations and findings with respect to these factors, entitled "Secretarial Considerations to Establish the Special Affordable Housing Goal," was published in the FEDERAL REGISTER on December 1, 1995.

(c) *Goals.* The annual goals for each GSE's purchases of mortgages on rental and owner-occupied housing meeting the then-existing, unaddressed needs of and affordable to low-income families in low-income areas and very-low-income families are:

(1) For 1996, 12 percent of the total number of dwelling units financed by each GSE's mortgage purchases in 1996. The goal shall include mortgage purchases financing dwelling units in multifamily housing totalling not less than 0.8 percent of the dollar volume of mortgages purchased by the respective GSE in 1994;

(2) For each of the years 1997-99, 14 percent of the total number of dwelling units financed by each GSE's mortgage purchases in each of those years. The goal for each year shall include mortgage purchases financing dwelling units in multifamily housing totalling not less than 0.8 percent of the dollar volume of mortgages purchased by the respective GSE in 1994; and

(3) For 2000 and thereafter the Secretary shall establish annual goals. Pending establishment of goals for 2000 and thereafter, the annual goal for each of those years shall be 14 percent of the total number of dwelling units financed by each GSE's mortgages purchases in each of those years; the goal for each such year shall include mortgage purchases financing dwelling units in multifamily housing totalling not less than 0.8 percent of the dollar volume of mortgages purchased by the respective GSE in 1994.

(d) *Counting of multifamily units.* (1) Dwelling units affordable to low-in-

come families and financed by a particular purchase of a mortgage on multifamily housing shall count toward achievement of the Special Affordable Housing Goal where at least:

(i) 20 percent of the dwelling units in the particular multifamily property are affordable to families whose incomes do not exceed 50 percent of the area median income; or

(ii) 40 percent of the dwelling units in the particular multifamily property are affordable to very-low-income families.

(2) Where only some of the units financed by a purchase of a mortgage on multifamily housing count under the multifamily component of the goal, only a portion of the unpaid principal balance of the mortgage attributable to such units shall count toward the multifamily component. The portion of the mortgage counted under the multifamily requirement shall be equal to the ratio of the total units that count to the total number of units in the mortgaged property.

(e) *Full Credit Activities.* (1) For purposes of 12 U.S.C. 4563(b)(1) and this paragraph (e), full credit means that each unit financed by a mortgage purchased by a GSE and meeting the requirements of this section shall count toward achievement of the Special Affordable Housing Goal for that GSE.

(2) Consistent with § 81.16(b)(3)(ii), the Secretary will give full credit toward achievement of the Special Affordable Housing Goals for the activities in 12 U.S.C. 4563(b)(1).

(3) Mortgages under HUD's Home Equity Conversion Mortgage ("HECM") Insurance Demonstration Program, 12 U.S.C. 1715z-20, and the Farmers Home Administration's Guaranteed Rural Housing Loan Program, 7 U.S.C. 1933, meet the requirements of 12 U.S.C. 4563(b)(1)(A)(i) and (ii).

(4)(i) For purposes of determining whether a seller meets the requirement in 12 U.S.C. 4563(b)(1)(B), a seller must currently operate on its own or actively participate in an ongoing program that will result in originating additional loans that meet the goal. Actively participating in such a program includes actively participating with a qualified housing group that operates a program resulting in the origination of

loans that meet the requirements of the goal.

(ii) To determine whether a seller meets the requirement in paragraph (e)(4)(i) of this section, the GSE shall verify and monitor that the seller meets the requirement and develop any necessary mechanisms to ensure compliance with this requirement.

(iii) Where a seller's primary business is originating mortgages on housing that qualifies under this Special Affordable Housing Goal, such seller is presumed to meet the requirements in paragraph (e)(4)(i) of this section.

(f) *No credit activities.* Neither the purchase nor the securitization of mortgages associated with the refinancing of a GSE's existing mortgage or mortgage-backed securities portfolios shall receive credit toward the achievement of the Special Affordable Housing Goal. Refinancings that result from the wholesale exchange of mortgages between the two GSEs shall not count toward the achievement of this goal. Refinancings of individual mortgages shall count toward achievement of this goal when the refinancing is an arms-length transaction that is borrower-driven and the mortgage otherwise counts toward achievement of this goal. For purposes of this paragraph (f), "mortgage or mortgage-backed securities portfolios" includes mortgages retained by Fannie Mae or Freddie Mac and mortgages utilized to back mortgage-backed securities.

§ 81.15 General requirements.

(a) *Calculating the numerator and denominator.* Performance under each of the housing goals shall be measured using a fraction that is converted into a percentage. The numerator of each fraction is the number of dwelling units financed by a GSE's mortgage purchases in a particular year that count toward achievement of the housing goal. The denominator of each fraction is, for all mortgages purchased, the number of dwelling units that could count toward achievement of the goal under appropriate circumstances. The denominators shall not include GSE transactions or activities that are not mortgages or mortgage purchases. When a GSE lacks sufficient information to determine whether the pur-

chase of a mortgage originated after 1992 counts toward achievement of a particular housing goal, that mortgage purchase shall be included in the denominator for that housing goal.

(b) *Properties with multiple dwelling units.* For the purposes of counting toward the achievement of the goals, whenever the property securing a mortgage contains more than one dwelling unit, each such dwelling unit shall be counted as a separate dwelling unit financed by a mortgage purchase.

(c) *Credit toward multiple goals.* A mortgage purchase (or dwelling unit financed by such purchase) by a GSE in a particular year shall count toward the achievement of each housing goal for which such purchase (or dwelling unit) qualifies in that year.

(d) *Counting owner-occupied units.* For purposes of counting owner-occupied units toward achievement of the Low- and Moderate-Income Housing Goal or the Special Affordable Housing Goal, mortgage purchases financing such units shall be evaluated based on the income of the mortgagors and the area median income at the time of origination of the mortgage. To determine whether mortgagors may be counted under a particular family income level, *i.e.*, very-low-, low-, or moderate-income, the income of the mortgagors is compared to the median income for the area at the time of mortgage origination, using the appropriate percentage factor provided under § 81.17.

(e) *Counting rental units.* (1) *Use of income, rent.* (i) *Generally.* For purposes of counting rental units toward achievement of the Low- and Moderate-Income Housing Goal or the Special Affordable Housing Goal, mortgage purchases financing such units shall be evaluated based on the income of actual or prospective tenants where such data is available, *i.e.*, known to a lender.

(ii) *Availability of income information.* (A) Each GSE shall require lenders to provide to the GSE tenant income information under paragraphs (e)(3) and (4) of this section, but only when such information is known to the lender.

(B) When such tenant income information is available for all occupied units, the GSE's performance shall be based on the income of the tenants in the occupied units. For unoccupied

units that are vacant and available for rent and for unoccupied units that are under repair or renovation and not available for rent, the GSE shall use the income of prospective tenants, if paragraph (e)(4) of this section is applicable. If paragraph (e)(4) of this section is not applicable, the GSE shall use rent levels for comparable units in the property to determine affordability.

(2) *Model units and rental offices.* A model unit or rental office in a multifamily property may count toward achievement of the housing goals only if a GSE determines that:

(i) It is reasonably expected that the units will be occupied by a family within one year;

(ii) The number of such units is reasonable and minimal considering the size of the multifamily property; and

(iii) Such unit otherwise meets the requirements for the goal.

(3) *Income of actual tenants.* When the income of actual tenants is available, to determine whether a tenant is very-low-, low-, or moderate-income, the income of the tenant shall be compared to the median income for the area, adjusted for family size as provided in § 81.17.

(4) *Income of prospective tenants.* When income for tenants is available to a lender because a project is subject to a Federal housing program that establishes the maximum income for a tenant or a prospective tenant in rental units, the income of prospective tenants may be counted at the maximum income level established under such housing program for that unit. In determining the income of prospective tenants, the income shall be projected based on the types of units and market area involved. Where the income of prospective tenants is projected, each GSE must determine that the income figures are reasonable considering the rents (if any) on the same units in the past and considering current rents on comparable units in the same market area.

(5) *Use of rent.* When the income of the prospective tenants or actual tenants of a dwelling unit is not available, performance under these goals will be evaluated based on rent and whether the rent is affordable to the income group targeted by the housing goal. A rent is

affordable if the rent does not exceed 30 percent of the maximum income level of very-low-, low-, or moderate-income families as provided in § 81.19. In determining contract rent for a dwelling unit, the actual rent or average rent by unit type shall be used.

(6) *Timeliness of information.* In determining performance under the housing goals, each GSE shall use tenant and rental information as of the time of mortgage:

(i) Acquisition for mortgages on multifamily housing; and

(ii) Origination for mortgages on single-family housing.

(f) *Application of Median income.* (1) For purposes of determining an area's median income under §§ 81.17 through 81.19 and for the definition of "low-income area," the area is:

(i) The metropolitan area, if the property which is the subject of the mortgage is in a metropolitan area; and

(ii) In all other areas, the county in which the property is located, except that where the State nonmetropolitan median income is higher than the county's median income, the area is the State nonmetropolitan area.

(2) When a GSE cannot precisely determine whether a mortgage is on dwelling unit(s) located in one area, the GSE shall determine the median income for the split area in the manner prescribed by the Federal Financial Institutions Examination Council for reporting under the Home Mortgage Disclosure Act, if the GSE can determine that the mortgage is on dwelling unit(s) located in:

(i) A census tract;

(ii) A census place code;

(iii) A block-group enumeration district;

(iv) A nine-digit zip code; or

(v) Another appropriate geographic segment that is partially located in more than one area ("split area").

(g) *Sampling not permitted.* Performance under the housing goals for each year shall be based on a complete tabulation of mortgage purchases for that year; a sampling of such purchases is not acceptable.

(h) *Newly available data.* When a GSE uses data to determine whether a mortgage purchase counts toward achievement of any goal and new data is released after the start of a calendar quarter, the GSE need not use the new data until the start of the following quarter.

§ 81.16 Special counting requirements.

(a) *General.* In determining whether a GSE shall receive full credit for a transaction or activity toward achievement of any of the housing goals, the Secretary shall consider whether a transaction or activity of the GSE is substantially equivalent to a mortgage purchase and either creates a new market or adds liquidity to an existing market.

(b) *Not counted.* The following transactions or activities shall not count toward achievement of any of the housing goals and shall not be included in the denominator in calculating either GSE's performance under the housing goals:

- (1) Equity investments in housing development projects;
- (2) Purchases of State and local government housing bonds except as provided in § 81.16(c)(8);
- (3) Purchases of non-conventional mortgages except:
 - (i) Where such mortgages are acquired under a risk-sharing arrangement with a Federal agency; or
 - (ii) As provided in § 81.14(e)(2);
- (4) Commitments to buy mortgages at a later date or time;
- (5) Options to acquire mortgages;
- (6) Rights of first refusal to acquire mortgages;
- (7) Any interests in mortgages that the Secretary determines, in writing, shall not be treated as interests in mortgages;
- (8) Mortgage purchases to the extent they finance any dwelling units that are secondary residences; and
- (9) Any combination of (1) through (8) above.

(c) *Other special rules—*(1) *Credit enhancements.* (i) Dwelling units financed under a credit enhancement entered into by a GSE shall be treated as mortgage purchases and count toward achievement of the housing goals when:

(A) The GSE provides a specific contractual obligation to ensure timely payment of amounts due under a mortgage or mortgages financed by the issuance of housing bonds (such bonds may be issued by any entity, including a State or local housing finance agency);

(B) The GSE assumes a credit risk in the transaction substantially equivalent to the risk that would have been assumed by the GSE if it had securitized the mortgages financed by such bonds; and

(C) Such dwelling units otherwise qualify under this part.

(ii) When a GSE provides a specific contractual obligation to ensure timely payment of amounts due under any mortgage originally insured by a public purpose mortgage insurance entity or fund, the GSE may, on a case-by-case basis, seek approval from the Secretary for such activities to count toward achievement of the housing goals.

(2) *Real estate mortgage investment conduits ('REMICs').* (i) A GSE's purchase or guarantee of all or a portion of a REMIC shall be treated as a mortgage purchase and receive credit toward the achievement of the housing goals provided:

(A) The underlying mortgages or mortgage-backed securities for the REMIC were not:

- (1) Guaranteed by the Government National Mortgage Association; or
- (2) Previously counted toward any housing goal by the GSE; and

(B) The GSE has the information necessary to support counting the dwelling units financed by the REMIC, or that part of the REMIC purchased or guaranteed by the GSE, toward the achievement of a particular housing goal.

(ii) For REMICs that meet the requirements in paragraph (c)(2)(i) of this section and for which the GSE purchased or guaranteed:

(A) The whole REMIC, all of the units financed by the REMIC shall be treated as a mortgage purchase and count toward achievement of the housing goals; or

(B) A portion of the REMIC, the GSE shall receive partial credit toward achievement of the housing goals. This credit shall be equal to the percentage of the REMIC purchased or guaranteed

by the GSE (the dollar amount of the purchase or guarantee divided by the total dollar amount of the REMIC) multiplied by the number of dwelling units that would have counted toward the goal(s) if the GSE had purchased or guaranteed the whole REMIC. In calculating performance under the housing goals, the denominator shall include the number of dwelling units included in the whole REMIC multiplied by the percentage of the REMIC purchased or guaranteed by the GSE.

(3) *Risk-sharing.* Mortgage purchases under risk-sharing arrangements between the GSEs and any Federal agency where the units would otherwise count toward achievement of the housing goal under which the GSE is responsible for a substantial amount (50 percent or more) of the risk shall be treated as mortgage purchases and count toward achievement of the housing goal or goals.

(4) *Participations.* Participations purchased by a GSE shall be treated as mortgage purchases and count toward the achievement of the housing goals, if the GSE's participation in the mortgage is 50 percent or more.

(5) *Cooperative housing and condominium projects.* (i) The purchase of a mortgage on a cooperative housing unit ("a share loan") or a condominium unit is a mortgage purchase. Such a purchase is counted toward achievement of a housing goal in the same manner as a mortgage purchase of single-family owner-occupied units, *i.e.*, affordability is based on the income of the owner(s).

(ii) The purchase of a mortgage on a cooperative building ("a blanket loan") or a condominium project is a mortgage purchase and shall count toward achievement of the housing goals. Where a GSE purchases both "a blanket loan" and mortgages for units in the same building ("share loans"), both the blanket loan and the share loan(s) are mortgage purchases and shall count toward achievement of the housing goals. Where a GSE purchases both a condominium project mortgage and mortgages on condominium dwelling units in the same project, both the condominium project mortgages and the mortgages on condominium dwelling units are mortgage purchases and shall

count toward achievement of the housing goals.

(6) *Seasoned mortgages.* A GSE's purchase of a seasoned mortgage shall be treated as a mortgage purchase for purposes of these goals except:

(i) Where the GSE has already counted the mortgages under a housing goal applicable to 1993 or any subsequent year; or

(ii) As provided in 12 U.S.C. 4563(b)(1)(B).

(7) *Purchase of refinanced mortgages.* Except as provided in § 81.14(f), the purchase of a refinanced mortgage by a GSE is a mortgage purchase and shall count toward achievement of the housing goals to the extent the mortgage qualifies.

(8) *Mortgage revenue bonds.* (i) The purchase of a state or local mortgage revenue bond shall be treated as a mortgage purchase and units financed under such MRB shall count toward achievement of the goals where:

(A) the MRB is to be repaid only from the principal and interest of the underlying mortgages originated with funds made available by the MRB; and

(B) the MRB is not a general obligation of a state or local government or agency or is not credit enhanced by any government or agency, third party guarantor or surety.

(ii) Dwelling units financed by a mortgage revenue bond meeting the requirements of paragraph (c)(8)(i) of this section shall count toward a housing goal to the extent such dwelling units otherwise qualify under this part.

§ 81.17 Affordability—Income level definitions—family size and income known (owner-occupied units, actual tenants, and prospective tenants).

In determining whether a dwelling unit is affordable to very-low-, low-, or moderate-income families, where the unit is owner-occupied or, for rental housing, family size and income information for the dwelling unit is known to the GSE, the affordability of the unit shall be determined as follows:

(a) *Moderate-income* means:

(1) In the case of owner-occupied units, income not in excess of 100 percent of area median income; and

(2) In the case of rental units, where the income of actual or prospective

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tenants is available, income not in excess of the following percentages of area median income corresponding to the following family sizes:

Number of persons in family	Percentage of area median income
1	70
2	80
3	90
4	100
5 or more	(*)

*100% plus (8% multiplied by the number of persons in excess of 4).

(b) *Low-income* means:

(1) In the case of owner-occupied units, income not in excess of 80 percent of area median income; and

(2) In the case of rental units, where the income of actual or prospective tenants is available, income not in excess of the following percentages of area median income corresponding to the following family sizes:

Number of persons in family	Percentage of area median income
1	56
2	64
3	72
4	80
5 or more	(*)

*80% plus (6.4% multiplied by the number of persons in excess of 4).

(c) *Very-low-income* means:

(1) In the case of owner-occupied units, income not in excess of 60 percent of area median income; and

(2) In the case of rental units, where the income of actual or prospective tenants is available, income not in excess of the following percentages of area median income corresponding to the following family sizes:

Number of persons in family	Percentage of area median income
1	42
2	48
3	54
4	60
5 or more	(*)

*60% plus (4.8% multiplied by the number of persons in excess of 4).

§ 81.18 Affordability—Income level definitions—family size not known (actual or prospective tenants).

In determining whether a rental unit is affordable to very-low, low-, or mod-

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erate-income families where family size is not known to the GSE, income will be adjusted using unit size, and affordability determined as follows:

(a) *For moderate-income*, the income of prospective tenants shall not exceed the following percentages of area median income with adjustments, depending on unit size:

Unit size	Percentage of area median income
Efficiency	70
1 bedroom	75
2 bedrooms	90
3 bedrooms or more	(*)

*104% plus (12% multiplied by the number of bedrooms in excess of 3).

(b) *For low-income*, income of prospective tenants shall not exceed the following percentages of area median income with adjustments, depending on unit size:

Unit size	Percentage of area median income
Efficiency	56
1 bedroom	60
2 bedrooms	72
3 bedrooms or more	(*)

*83.2% plus (9.6% multiplied by the number of bedrooms in excess of 3).

(c) *For very-low-income*, income of prospective tenants shall not exceed the following percentages of area median income with adjustments, depending on unit size:

Unit size	Percentage of area median income
Efficiency	42
1 bedroom	45
2 bedrooms	54
3 bedrooms or more	(*)

*62.4% plus (7.2% multiplied by the number of bedrooms in excess of 3).

§ 81.19 Affordability—Rent level definitions—tenant income is not known.

For purposes of determining whether a rental unit is affordable to very-low-, low-, or moderate-income families where the income of the family in the dwelling unit is not known to the GSE, the affordability of the unit is determined based on unit size as follows:

(a) *For moderate-income*, maximum affordable rents to count as housing for

moderate-income families shall not exceed the following percentages of area median income with adjustments, depending on unit size:

Unit size	Percentage of area median income
Efficiency	21
1 bedroom	22.5
2 bedrooms	27
3 bedrooms or more	(*)

*31.2% plus (3.6% multiplied by the number of bedrooms in excess of 3);

(b) *For low-income*, maximum affordable rents to count as housing for low-income families shall not exceed the following percentages of area median income with adjustments, depending on unit size:

Unit size	Percentage of area median income
Efficiency	16.8
1 bedroom	18
2 bedrooms	21.6
3 bedrooms or more	(*)

*24.96% plus (2.88% multiplied by the number of bedrooms in excess of 3); and

(c) *For very-low-income*, maximum affordable rents to count as housing for very-low-income families shall not exceed the following percentages of area median income with adjustments, depending on unit size:

Unit size	Percentage of area median income
Efficiency	12.6
1 bedroom	13.5
2 bedrooms	16.2
3 bedrooms or more	(*)

*18.72% plus (2.16% multiplied by the number of bedrooms in excess of 3).

(d) *Missing Information*. Each GSE shall make every effort to obtain the information necessary to make the calculations in this section. If a GSE makes such efforts but cannot obtain data on the number of bedrooms in particular units, in making the calculations on such units, the units shall be assumed to be efficiencies.

§81.20 Actions to be taken to meet the goals.

To meet the goals under this rule, each GSE shall operate in accordance with 12 U.S.C. 4565.

§81.21 Notice and determination of failure to meet goals.

If the Secretary determines that a GSE has failed or there is a substantial probability that a GSE will fail to meet any housing goal, the Secretary shall follow the procedures at 12 U.S.C. 4566(b).

§81.22 Housing plans.

(a) If the Secretary determines, under §81.21, that a GSE has failed or there is a substantial probability that a GSE will fail to meet any housing goal and that the achievement of the housing goal was or is feasible, the Secretary shall require the GSE to submit a housing plan for approval by the Secretary.

(b) *Nature of plan*. Each housing plan shall:

- (1) Be feasible;
- (2) Be sufficiently specific to enable the Secretary to monitor compliance periodically;
- (3) Describe the specific actions that the GSE will take:
 - (i) To achieve the goal for the next calendar year; or
 - (ii) If the Secretary determines that there is substantial probability that the GSE will fail to meet a housing goal in the current year, to make such improvements as are reasonable in the remainder of the year; and
- (4) Address any additional matters relevant to the plan as required, in writing, by the Secretary.

(c) *Deadline for submission*. The GSE shall submit a housing plan to the Secretary within 30 days after issuance of a notice under §81.21 requiring the GSE to submit a housing plan. The Secretary may extend the deadline for submission of a plan, in writing and for a time certain, to the extent the Secretary determines an extension is necessary.

(d) *Review of housing plans*. The Secretary shall review and approve or disapprove housing plans in accordance with 12 U.S.C. 4566(c)(4) and (5).

(e) *Resubmission*. If the Secretary disapproves an initial housing plan submitted by a GSE, the GSE shall submit an amended plan acceptable to the Secretary within 30 days of the Secretary disapproving the initial plan; the Secretary may extend the deadline if the

Secretary determines an extension is in the public interest. If the amended plan is not acceptable to the Secretary, the Secretary may afford the GSE 15 days to submit a new plan.

Subpart C—Fair Housing

§ 81.41 General.

In this subpart, the Secretary: prohibits discrimination by the GSEs in their mortgage purchases because of race, color, religion, sex, handicap, familial status, age, or national origin, including any consideration of the age or location of a dwelling or age of the neighborhood or census tract where the dwelling is located in a manner that has a discriminatory effect; requires that the GSEs submit information to the Secretary to assist Fair Housing Act and ECOA investigations; provides for advising the GSEs of Fair Housing Act and ECOA violations; provides for reviewing the GSEs' underwriting and appraisal guidelines to ensure compliance with the Fair Housing Act; and requires that the GSEs take actions as directed by the Secretary following Fair Housing Act and ECOA adjudications. Because FHEFSSA provides, generally, that the Director of OFHEO shall enforce violations by the GSEs of FHEFSSA and regulations in this subpart, this subpart also provides for referral of such cases to the Director.

§ 81.42 Prohibitions against discrimination.

Neither GSE shall discriminate in any manner in making any mortgage purchases because of race, color, religion, sex, handicap, familial status, age, or national origin, including any consideration of the age or location of the dwelling or the age of the neighborhood or census tract where the dwelling is located in a manner that has a discriminatory effect.

§ 81.43 Reports; underwriting and appraisal guideline review.

(a) *Reports.* Each GSE, in the AHAR required under § 81.63, shall assess underwriting standards, business practices, repurchase requirements, pricing, fees, and procedures that affect the purchase of mortgages for low- and moderate-income families, or that may

yield disparate results based on the race, color, religion, sex, handicap, familial status, age, or national origin of the borrower, including revisions thereto to promote affordable housing or fair lending.

(b) *Review of Underwriting and Appraisal Guidelines.* The Secretary shall periodically review and comment on the underwriting and appraisal guidelines of each enterprise to ensure that such guidelines are consistent with the Fair Housing Act and 12 U.S.C. 4545.

§ 81.44 Submission of information to the Secretary.

(a) *General.* Upon request from the Secretary, the GSEs shall submit information and data to the Secretary to assist in investigating whether any mortgage lender with which the GSE does business has failed to comply with the Fair Housing Act or ECOA.

(b) *Information requests and submissions.* (1) *Information requests by the Secretary.* The Secretary may require the GSEs to submit information to assist in Fair Housing Act or ECOA investigations of lenders. Under FHEFSSA, other Federal agencies responsible for the enforcement of ECOA must submit requests for information from the GSEs through the Secretary. For matters involving only ECOA, the Secretary will only issue requests for information upon request from the appropriate Federal agency responsible for ECOA.

(2) *Information from established data systems.* The Secretary may request that a GSE generate information or reports from its data system(s) to assist a Fair Housing Act or ECOA investigation.

(3) *GSE replies.* A GSE receiving any request(s) for information under this section shall reply in a complete and timely manner with any and all information that it is privy to and collects that is responsive to the request.

(c) *Submission to ECOA enforcers.* The Secretary shall submit any information received under paragraph (b) of this section concerning compliance with ECOA to appropriate Federal agencies responsible for ECOA enforcement, as provided in section 704 of ECOA.

§ 81.45 Obtaining and disseminating information.

(a) The Secretary shall obtain information from other regulatory and enforcement agencies of the Federal Government and State and local governments regarding violations by lenders of the Fair Housing Act, ECOA, and/or State or local fair housing/lending laws, and shall make such information available to the GSEs as the Secretary deems appropriate in accordance with applicable law regarding the confidentiality of supervisory information and the right to financial privacy, and subject to the terms of memoranda of understanding and other arrangements between the Secretary and Federal financial regulators and other agencies. In addition, the Secretary shall make information that the Secretary possesses regarding violations of the Fair Housing Act available to the GSEs.

(b) As contemplated in paragraph (a) of this section, the Secretary shall obtain information regarding violations by lenders of the Fair Housing Act or ECOA involving discrimination with respect to the availability of credit in a residential real-estate-related transaction from other Federal regulatory or enforcement agencies. The Secretary will obtain information from regulators regarding violations of ECOA by lenders only in circumstances in which there is either more than a single ECOA violation, or the ECOA violation could also be a violation of the Fair Housing Act.

§ 81.46 Remedial actions.

(a) *General.* The Secretary shall direct the GSEs to take one or more remedial actions, including suspension, probation, reprimand or settlement, against lenders found to have engaged in discriminatory lending practices in violation of the Fair Housing Act or ECOA, pursuant to a final adjudication on the record and an opportunity for a hearing under subchapter II of chapter 5 of title 5, United States Code.

(b) *Definitions.* For purposes of this subpart, the following definitions apply:

Indefinite suspension means that, until directed to do otherwise by the Secretary, the GSEs will refrain from purchasing mortgages from a lender.

Probation means that, for a fixed period of time specified by the Secretary, a lender that has been found to have violated the Fair Housing Act or ECOA will be subject automatically to more severe sanctions than probation, e.g., suspension, if further violations are found.

Remedial action includes a reprimand, probation, temporary suspension, indefinite suspension, or settlement.

Reprimand means a written letter to a lender from a GSE, which has been directed to be sent by the Secretary, stating that the lender has violated the Fair Housing Act or ECOA and warning of the possibility that the Secretary may impose more severe remedial actions than reprimand if any further violation occurs.

Temporary suspension means that, for a fixed period of time specified by the Secretary, the GSEs will not purchase mortgages from a lender.

(c) *Institution of remedial actions.* (1) The Secretary shall direct the GSE to take remedial action(s) against a lender charged with violating ECOA only after a final determination on the charge has been made by an appropriate United States District Court or any other court of competent jurisdiction. The Secretary shall direct the GSE to take remedial action(s) against a lender charged with violating the Fair Housing Act only after a final determination on the matter has been made by a United States Court, a HUD Administrative Law Judge, or the Secretary.

(2) Following a final determination sustaining a charge against a lender for violating the Fair Housing Act or ECOA, in accordance with paragraph (c)(1) of this section, the Secretary shall determine the remedial action(s) that the GSE is to be directed to take for such violation.

(3) In determining the appropriate remedial action(s), the Secretary shall solicit and fully consider the views of the Federal financial regulator responsible for the subject lender concerning the action(s) that are contemplated to be directed against such lender, prior to directing any such action(s). If such responsible Federal financial regulator makes a written determination that a particular remedial action would

threaten the financial safety and soundness of a Federally-insured lender, the Secretary shall consider other remedial actions. Where warranted, the Secretary also shall solicit and fully consider the views of the Director regarding the effect of the action(s) that are contemplated on the safety and soundness of the GSE. In determining what action(s) to direct, the Secretary will also, without limitation, consider the following:

- (i) The gravity of the violation;
- (ii) The extent to which other action has been taken against the lender for discriminatory activities;
- (iii) Whether the lender's actions demonstrate a discriminatory pattern or practice or an individual instance of discrimination;
- (iv) The impact or seriousness of the harm;
- (v) The number of people affected by the discriminatory act(s);
- (vi) Whether the lender operates an effective program of self assessment and correction;
- (vii) The extent of any actions or programs by the lender designed to compensate victims and prevent future fair lending violations;
- (viii) The extent that a finding of liability against a lender is based on a lender's use of a facially-neutral underwriting guideline of a secondary mortgage market entity applied appropriately by the lender in order to sell loans to that secondary mortgage market entity; and
- (ix) Any other information deemed relevant by the Secretary.

(d) *Notice of remedial action(s)*. (1) Following the Secretary's decision concerning the appropriate remedial action(s) that the GSE is to be directed to take, the Secretary shall prepare and issue to the GSE and the lender a written notice setting forth the remedial action(s) to be taken and the date such remedial action(s) are to commence. The Notice shall inform the lender of its right to request a hearing on the appropriateness of the proposed remedial action(s), within 20 days of service of the Notice, by filing a request with the Docket Clerk, HUD Office of Administrative Law Judges.

(2) Where a lender does not timely request a hearing on a remedial action,

the GSE shall take the action in accordance with the Notice.

(e) *Review and decision on remedial action(s)*. (1) Where a lender timely requests a hearing on a remedial action, a hearing shall be conducted before a HUD administrative law judge (ALJ) and a final decision rendered in accordance with the procedures set forth in 24 CFR part 26, subpart B, to the extent such provisions are not inconsistent with subpart C of this part or FHEFSSA. The lender and the Secretary, but not the GSE, shall be parties to the action. At such hearing, the appropriateness of the remedial action for the violation(s) will be the sole matter for review. The validity or appropriateness of the underlying determination on the violation(s) shall not be subject to review at such hearing.

(2) The Secretary shall transmit to the GSEs each final decision by HUD on a remedial action and any dispositive settlement of a proceeding on such action.

(3) The GSE shall take the action(s) set forth in a final decision by HUD on remedial action(s) or any dispositive settlement of such a proceeding setting forth remedial action(s) in accordance with such decision or settlement.

[60 FR 61888, Dec. 1, 1995, as amended by 61 FR 50218, Sept. 24, 1996]

§ 81.47 Violations of provisions by the GSEs.

(a) FHEFSSA empowers the Director of OFHEO to initiate enforcement actions for GSE violations of the provisions of section 1325 of FHEFSSA and these regulations. The Secretary shall refer violations and potential violations of 12 U.S.C. 4545 and this subpart C to the Director.

(b) Where a private complainant or the Secretary is also proceeding against a GSE under the Fair Housing Act, the Assistant Secretary for Fair Housing and Equal Opportunity shall conduct the investigation of the complaint and make the reasonable cause/no reasonable cause determination required by section 810(g) of the Fair Housing Act. Where reasonable cause is found, a charge shall be issued and the matter will proceed to enforcement pursuant to sections 812(b) and (c) of the Fair Housing Act.

Subpart D—New Program Approval

§ 81.51 General.

This subpart details the requirements and procedures for review of requests for new program approval by the Secretary.

§ 81.52 Requirement for program requests.

(a) Before implementing a new program, a GSE shall submit a request for new program approval (“program request”) to the Secretary for the Secretary’s review. Submission of a program request is not required where the program that the GSE proposes to implement is not significantly different from:

(1) A program that has already been approved in writing by the Secretary; or

(2) A program that was engaged in by the GSE prior to October 28, 1992.

(b) If a GSE does not submit a program request for a program, the Secretary may request information about the program and require that the GSE submit a program request. The GSE shall comply with the request and may indicate in such response its views respecting whether the program is subject to the Secretary’s review.

§ 81.53 Processing of program requests.

(a) Each program request submitted to the Secretary by a GSE shall be in writing and shall be submitted to the Secretary and the Director, Office of Government-Sponsored Enterprises, Department of Housing and Urban Development, Washington, DC. For those requests submitted before 1 year after the effective date of the regulations issued by the Director of OFHEO under 12 U.S.C. 4611(e), the GSE shall simultaneously submit the program request to the Director.

(b) Each program request shall include:

(1) An opinion from counsel stating the statutory authority for the new program (Freddie Mac Act section 305(a) (1), (4), or (5), or Fannie Mae Charter Act section 302(b)(2)–(5) or 304);

(2) A good-faith estimate of the anticipated dollar volume of the program over the short- and long-term;

(3) A full description of: (i) The purpose and operation of the proposed program;

(ii) The market targeted by the program;

(iii) The delivery system for the program;

(iv) The effect of the program on the mortgage market; and

(v) Material relevant to the public interest.

(c) Following receipt of a program request, the Secretary and, where a program request is submitted to the Director pursuant to paragraph (a) of this section, the Director shall review the program request.

(d) *Transition standard for approval.* Program requests submitted by the GSEs before the date occurring 1 year after the effective date of the regulations issued by the Director under 12 U.S.C. 4611(e) shall be approved or disapproved by the Secretary as provided in 12 U.S.C. 4542(b)(2).

(e) *Permanent standard for approval by the Secretary.* Program requests submitted after the date occurring one year after the effective date of the regulations issued by the Director under 12 U.S.C. 4611(e) establishing the risk-based capital test shall be approved by the Secretary in accordance with 12 U.S.C. 4542(b)(1).

(f) *Time for review.* Unless the Secretary and, where appropriate, the Director of OFHEO, need additional information, a program request shall be approved or disapproved within 45 days from the date it is received by the Director, Office of Government-Sponsored Enterprises, and, where applicable, the Director of OFHEO. If within 45 days after receiving a request, the Secretary or the Director of OFHEO determine that additional information is necessary to review the matter and request such information from the GSE, the Secretary may extend the time period for consideration for an additional 15 days.

(1) Where additional information is requested, the GSE must provide the requested information to the Secretary and, where appropriate, the Director,

within 10 days after the request for additional information.

(2) If the GSE fails to furnish requested information within 10 days after the request for information, the Secretary may deny the GSE's request for approval based on such failure and so report to the Committees of Congress in accordance with paragraph (g) of this section.

(g) *Approval or report.* Within 45 days or, if the period is extended, 60 days following receipt of a program request, the Secretary shall approve the request, in writing, or submit a report to the Committee on Banking and Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, explaining the reasons for not approving the request. If the Secretary does not act within this time period, the GSE's program request will be deemed approved.

§ 81.54 Review of disapproval.

(a) *Programs disapproved as unauthorized.* (1) Where the Secretary disapproves a program request on the grounds that the new program is not authorized, as defined in § 81.53(d) or (e), the GSE may, within 30 days of the date of receipt of the decision on disapproval, request an opportunity to review and supplement the administrative record for the decision, in accordance with paragraphs (a) (2) and (3) of this section.

(2) *Supplementing in writing.* A GSE supplementing the record in writing must submit written materials within 30 days after the date of receipt of the decision on disapproval, but no later than the date of a meeting, if requested, under paragraph (a)(3) of this section.

(3) *Meeting.* Within 10 days of the date of receipt of the decision of disapproval, the GSE may request a meeting. If the request for the meeting is timely, the Secretary shall arrange such a meeting, which shall be conducted by the Secretary or the Secretary's designee within 10 working days after receipt of the request. The GSE may be represented by counsel and may submit relevant written materials to supplement the record.

(4) *Determination.* The Secretary shall:

(i) In writing and within 10 days after submission of any materials under paragraph (a)(2) of this section or the conclusion of any meeting under paragraph (a)(3) of this section, whichever is later, withdraw, modify, or affirm the program disapproval; and

(ii) Provide the GSE with that decision.

(b) *Programs disapproved under public interest determination.* When a program request is disapproved because the Secretary determines that the program is not in the public interest or the Director makes the determination in 12 U.S.C. 4542(b)(2)(B), the Secretary shall provide the GSE with notice of, and opportunity for, a hearing on the record regarding such disapproval. A request for a hearing must be submitted by a GSE within 30 days of the Secretary's submission of a report under § 81.53(g) disapproving a program request or the provision of the notice under this paragraph (b), whichever is later. The procedures for such hearings are provided in subpart G of this part.

Subpart E—Reporting Requirements

§ 81.61 General.

This subpart establishes data submission and reporting requirements to carry out the requirements of the GSEs' Charter Acts and FHEFSSA.

§ 81.62 Mortgage reports.

(a) *Loan-level data elements.* To implement the data collection and submission requirements for mortgage data and to assist the Secretary in monitoring the GSEs' housing goal activities, each GSE shall collect and compile computerized loan-level data on each mortgage purchased in accordance with 12 U.S.C. 1456(e) and 1723a(m). The Secretary may, from time-to-time, issue a list entitled "Required Loan-level Data Elements" specifying the loan-level data elements to be collected and maintained by the GSEs and provided to the Secretary. The Secretary may revise the list by written notice to the GSEs.

(b) *Quarterly Mortgage reports.* Each GSE shall submit to the Secretary

quarterly a Mortgage Report. The fourth quarter report shall serve as the Annual Mortgage Report and shall be designated as such.

(1) Each Mortgage Report shall include:

(i) Aggregations of the loan-level mortgage data compiled by the GSE under paragraph (a) of this section for year-to-date mortgage purchases, in the format specified in writing by the Secretary; and

(ii) Year-to-date dollar volume, number of units, and number of mortgages on owner-occupied and rental properties purchased by the GSE that do and do not qualify under each housing goal as set forth in this part.

(2) To facilitate the Secretary's monitoring of the GSE's housing goal activities, the Mortgage Report for the second quarter shall include year-to-date computerized loan-level data consisting of the data elements required under paragraph (a) of this section.

(3) To implement the data collection and submission requirements for mortgage data and to assist the Secretary in monitoring the GSE's housing goal activities, each Annual Mortgage Report shall include year-to-date computerized loan-level data consisting of the data elements required by under paragraph (a) of this section.

(c) *Timing of Reports.* The GSEs shall submit the Mortgage Report for each of the first 3 quarters of each year within 60 days of the end of the quarter. Each GSE shall submit its Annual Mortgage Report within 75 days after the end of the calendar year.

(d) *Revisions to Reports.* At any time before submission of its Annual Mortgage Report, a GSE may revise any of its quarterly reports for that year.

(e) *Format.* The GSEs shall submit to the Secretary computerized loan-level data with the Mortgage Report, in the format specified in writing by the Secretary.

§ 81.63 Annual Housing Activities Report.

To comply with the requirements in sections 309(n) of the Fannie Mae Charter Act and 307(f) of the Freddie Mac Act and assist the Secretary in preparing the Secretary's Annual Report to Congress, each GSE shall submit to the

Secretary an AHAR including the information listed in those sections of the Charter Acts and as provided in § 81.43(a) of this part. Each GSE shall submit such report within 75 days after the end of each calendar year, to the Secretary the Committee on Banking and Financial Services of the House of Representatives, and the Committee on Banking, Housing, and Urban Affairs of the Senate. Each GSE shall make its AHAR available to the public at its principal and regional offices. Before making any such report available to the public, the GSE may exclude from the report any information that the Secretary has deemed proprietary under subpart F of this part.

§ 81.64 Periodic reports.

Each GSE shall provide to the Secretary all:

(a) Material distributed to the GSE's Housing Advisory Council;

(b) Press releases;

(c) Investor reports;

(d) Proxy statements;

(e) Seller-servicer guides; and

(f) Other information disclosed by the GSE to entities outside of the GSE, but only where the GSE determines that such information is relevant to the Secretary's regulatory responsibilities.

§ 81.65 Other information and analyses.

When deemed appropriate and requested in writing, on a case by-case basis, by the Secretary, a GSE shall furnish the data underlying any of the reports required under this part and shall conduct additional analyses concerning any such report. A GSE shall submit additional reports or other information concerning its activities when deemed appropriate to carry out the Secretary's responsibilities under FHEFSSA or the Charter Acts and requested in writing by the Secretary.

§ 81.66 Submission of reports.

Each GSE shall submit all hard copy reports or other written information required under this subpart to the Secretary and the Director, Office of Government-Sponsored Enterprises. Each GSE shall submit computerized data

required under this subpart to the Director, Financial Institutions Regulations, Office of Policy Development and Research. The address for both of these offices is Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410.

Subpart F—Access to Information

§ 81.71 General.

This subpart:

(a) Provides for the establishment of a public-use database to make available to the public mortgage data that the GSEs submit to the Secretary under subsection 309(m) of the Fannie Mae Charter Act and subsection 307(e) of the Freddie Mac Act, and AHAR information that the GSEs submit to the Secretary in the AHAR under subsection 309(n) of the Fannie Mae Charter Act and subsection 307(f) of the Freddie Mac Act;

(b) Establishes mechanisms for the GSEs to designate mortgage data or AHAR information as proprietary information and for the Secretary to determine whether such mortgage data or AHAR information is proprietary information which should be withheld from disclosure;

(c) Addresses the availability of HUD procedures to protect from public disclosure proprietary information and other types of confidential business information submitted by or relating to the GSEs;

(d) Addresses protections from disclosure when there is a request from Congress for information and sets forth protections for treatment of data or information submitted by or relating to the GSEs by HUD officers, employees, and contractors; and

(e) Provides that data or information submitted by or relating to the GSEs that would constitute a clearly unwarranted invasion of personal privacy shall not be disclosed to the public.

§ 81.72 Public-use database and public information.

(a) *General.* Except as provided in paragraph (c) of this section, the Secretary shall establish and make available for public use, a public-use database containing public data as defined in § 81.2.

(b) *Examination of submissions.* Following receipt of mortgage data and AHAR information from the GSEs, the Secretary shall, as expeditiously as possible, examine the submissions for mortgage data and AHAR information that:

(1) Has been deemed to be proprietary information under this part by a temporary order, final order, or regulation in effect at the time of submission;

(2) Has been designated as proprietary information by the GSE in accordance with § 81.73;

(3) Would constitute a clearly unwarranted invasion of personal privacy if such data or information were released to the public; or

(4) Is required to be withheld or, in the determination of the Secretary, is not appropriate for public disclosure under other applicable laws and regulations, including the Trade Secrets Act (18 U.S.C. 1905) and Executive Order 12600.

(c) *Public data and proprietary data.* The Secretary shall place public data in the public-use database. The Secretary shall exclude from the public-use database and from public disclosure:

(1) All mortgage data and AHAR information within the scope of paragraphs (b)(1), (b)(3), and (b)(4) of this section;

(2) Any other mortgage data and AHAR information under (b)(2) when determined by the Secretary under § 81.74 to be proprietary information; and

(3) Mortgage data that is not year-end data.

(d) *Access.* The Secretary shall provide such means as the Secretary determines are reasonable for the public to gain access to the public-use database. To obtain access to the public-use database, the public should contact the Director, Office of Government-Sponsored Enterprises, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, DC 20410, telephone (202) 708-2224 (this is not a toll-free number).

(e) *Fees.* The Secretary may charge reasonable fees to cover the cost of providing access to the public-use database. These fees will include the

costs of system access, computer use, copying fees, and other costs.

§ 81.73 GSE request for proprietary treatment.

(a) *General.* A GSE may request proprietary treatment of any mortgage data or AHAR information that the GSE submits to the Secretary. Such a request does not affect the GSE's responsibility to provide data or information required by the Secretary. Where the Secretary grants a request for proprietary treatment, HUD will not include the data or information in the public-use database or publicly disclose the data or information, except as otherwise provided in accordance with this subpart.

(b) *Request for proprietary treatment of mortgage data and AHAR information.* Except as provided in paragraph (c) of this section, a GSE requesting proprietary treatment of mortgage data or AHAR information shall:

(1) Clearly designate those portions of the mortgage data or AHAR information to be treated as proprietary, with a prominent stamp, typed legend, or other suitable form of notice, stating "Proprietary Information—Confidential Treatment Requested by [name of GSE]" on each page or portion of page to which the request applies. If such marking is impractical, the GSE shall attach to the mortgage data or information for which confidential treatment is requested a cover sheet prominently marked "Proprietary Information—Confidential Treatment Requested by [name of GSE];"

(2) Accompany its request with a certification by an officer or authorized representative of the GSE that the mortgage data or information is proprietary; and

(3) Submit any additional statements in support of proprietary designation that the GSE chooses to provide.

(c) *Alternative procedure available for mortgage data or AHAR information subject to a temporary order, final order, or regulation in effect.* When the request for proprietary treatment pertains to mortgage data or AHAR information that has been deemed proprietary by the Secretary under a temporary order, final order, or regulation in effect, the GSE may reference such temporary

order, final order, or regulation in lieu of complying with paragraphs (b)(2) and (3) of this section.

(d) *Nondisclosure during pendency.* Except as may otherwise be required by law, during the time any Request for Proprietary Treatment under § 81.73 is pending determination by the Secretary, the data or information submitted by the GSE that is the subject of the request shall not be disclosed to, or be subject to examination by, the public or any person or representative of any person or agency outside of HUD.

§ 81.74 Secretarial determination on GSE request.

(a) *General.* The Secretary shall review all Requests for Proprietary Treatment from the GSEs, along with any other information that the Secretary may elicit from other sources regarding the Request.

(b) *Factors for proprietary treatment.* Except as provided in paragraph (c) of this section, in making the determination of whether to accord proprietary treatment to mortgage data or AHAR information, the Secretary's considerations shall include, but are not limited to:

(1) The type of data or information involved and the nature of the adverse consequences to the GSE, financial or otherwise, that would result from disclosure, including any adverse effect on the GSE's competitive position;

(2) The existence and applicability of any prior determinations by HUD, any other Federal agency, or a court, concerning similar data or information;

(3) The measures taken by the GSE to protect the confidentiality of the mortgage data or AHAR information in question, and similar data or information, before and after its submission to the Secretary;

(4) The extent to which the mortgage data or AHAR information is publicly available including whether the data or information is available from other entities, from local government offices or records, including deeds, recorded mortgages, and similar documents, or from publicly available data bases;

(5) The difficulty that a competitor, including a seller/servicer, would face in obtaining or compiling the mortgage data or AHAR information; and

(6) Such additional facts and legal and other authorities as the Secretary may consider appropriate, including the extent to which particular mortgage data or AHAR information, when considered together with other information, could reveal proprietary information.

(c) *Alternative criterion for mortgage data or AHAR information subject to a temporary order, final order, or regulation in effect.* Where the request for proprietary treatment pertains to mortgage data or AHAR information that has been deemed proprietary by the Secretary under a temporary order, final order, or regulation in effect, the Secretary shall grant the request with respect to any mortgage data or AHAR information which comes within the order or regulation.

(d) *Determination of proprietary treatment.* The Secretary shall determine, as expeditiously as possible, whether mortgage data or AHAR information designated as proprietary by a GSE is proprietary information, or whether it is not proprietary and subject to inclusion in the public-use database and public release notwithstanding the GSE's request.

(e) *Action when according proprietary treatment to mortgage data and AHAR information.* (1) When the Secretary determines that mortgage data or AHAR information designated as proprietary by a GSE is proprietary, and the mortgage data or AHAR information is not subject to a temporary order, a final order, or a regulation in effect providing that the mortgage data or AHAR information is not subject to public disclosure, the Secretary shall notify the GSE that the request has been granted. In such cases, the Secretary shall issue either a temporary order, a final order, or a regulation providing that the mortgage data or information is not subject to public disclosure. Such a temporary order, final order, or regulation shall:

(i) Document the reasons for the determination; and

(ii) Be provided to the GSE, made available to members of the public, and published in the FEDERAL REGISTER, except that any portions of such order or regulation that would reveal the proprietary information shall be with-

held from public disclosure. Publications of temporary orders shall invite public comments when feasible.

(2) Where the Secretary determines that such mortgage data or information is proprietary, the Secretary shall not make it publicly available, except as otherwise provided in accordance with this subpart.

(f) *Determination not to accord proprietary treatment to mortgage data and AHAR information or to seek further information.* When the Secretary determines that such mortgage data or AHAR information designated as proprietary by a GSE may not be proprietary, that the request may be granted only in part, or that questions exist concerning the request, the following procedure shall apply:

(1) The Secretary shall provide the GSE with an opportunity for a meeting with HUD to discuss the matter, for the purpose of gaining additional information concerning the request.

(2) Following the meeting, based on the Secretary's review of the mortgage data or AHAR information that is the subject of a request and the GSE's objections, if any, to disclosure of such mortgage data or AHAR information, the Secretary shall make a determination:

(i) If the Secretary determines to withhold from the public-use database as proprietary the mortgage data or AHAR information that is the subject of a request, the procedures in paragraph (e) of this section shall apply; or

(ii) If the Secretary determines that any mortgage data or AHAR information that is the subject of a request is not proprietary, the Secretary shall provide notice in writing to the GSE of the reasons for this determination, and such notice shall provide that the Secretary shall not release the mortgage data or AHAR information to the public for 10 working days.

§ 81.75 Proprietary information withheld by order or regulation.

Following a determination by the Secretary that mortgage data or AHAR information is proprietary information under FHEFSSA, the Secretary shall expeditiously issue a temporary order, final order, or regulation withholding

the mortgage data or AHAR information from the public-use database and from public disclosure by HUD in accordance with 12 U.S.C. 4546. The Secretary may, from time-to-time, by regulation or order, issue a list entitled "GSE Mortgage Data and AHAR Information: Proprietary Information/Public-Use Data" providing that certain information shall be treated as proprietary information. The Secretary may modify the list by regulation or order.

§ 81.76 FOIA requests and protection of GSE information.

(a) *General.* HUD shall process FOIA requests for information submitted to the Secretary by the GSEs in accordance with:

(1) HUD's FOIA and Privacy Act regulations, 24 CFR parts 15 and 16;

(2) 12 U.S.C. 4525, 4543, and 4546 and this subpart; and

(3) Other applicable statutes, regulations, and guidelines, including the Trade Secrets Act, 18 U.S.C. 1905, and Executive Order 12600. In responding to requests for data or information submitted by or relating to the GSEs, the Secretary may invoke provisions of these authorities to protect data or information from disclosure.

(b) *Protection of confidential business information other than mortgage data and AHAR information.* When a GSE seeks to protect from disclosure confidential business information, the GSE may seek protection of such confidential business information pursuant to the provisions of HUD's FOIA regulations at 24 CFR part 15, without regard to whether or not it is mortgage data or AHAR information.

(c) *Processing of FOIA requests—(1) FOIA Exemption (b)(4).* HUD will process FOIA requests for confidential business information of the GSEs to which FOIA exemption 4 may apply in accordance with 24 CFR part 15, and the predisclosure notification procedures of Executive Order 12,600.

(2) *FOIA Exemption (b)(8).* Under section 1319F of FHEFSSA, the Secretary may invoke FOIA exemption (b)(8) to withhold from the public any GSE data or information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of HUD. HUD may make data

or information available for the confidential use of other government agencies in their official duties or functions, but all data or information remains the property of HUD and any unauthorized use or disclosure of such data or information may be subject to the penalties of 18 U.S.C. 641.

(3) *Other FOIA exemptions.* Under 24 CFR part 15, the Secretary may invoke other exemptions including, without limitation, exemption (b)(6) (5 U.S.C. 552(b)(6)), to protect data and information that would constitute a clearly unwarranted invasion of personal privacy.

(d) *Protection of information by HUD officers and employees.* The Secretary will institute all reasonable safeguards to protect data or information submitted by or relating to either GSE, including, but not limited to, advising all HUD officers and employees having access to data or information submitted by or relating to either GSE of the legal restrictions against unauthorized disclosure of such data or information under HUD Standards of Conduct regulations, 24 CFR part 0; the Government-wide Standards of Ethical Conduct, 5 CFR part 2635; and the Trade Secrets Act, 18 U.S.C. 1905. Officers and employees shall be advised of the penalties for unauthorized disclosure, ranging from disciplinary action under 24 CFR part 0 and 5 CFR part 2635 to criminal prosecution.

(e) *Protection of information by contractors.* (1) In contracts and agreements entered into by HUD where contractors have access to data or information submitted by or relating to either GSE, HUD shall include detailed provisions specifying that:

(i) Neither the contractor nor any of its officers, employees, agents, or subcontractors may release data submitted by or relating to either GSE without HUD's authorization; and

(ii) Unauthorized disclosure may be a basis for:

(A) Terminating the contract for default;

(B) Suspending or debarring the contractor; and

(C) Criminal prosecution of the contractor, its officers, employees, agents, or subcontractors under the Federal Criminal Code.

(2) Contract provisions shall require safeguards against unauthorized disclosure, including training of contractor and subcontractor agents and employees, and provide that the contractor will indemnify and hold HUD harmless against unauthorized disclosure of data or information belonging to the GSEs or HUD.

§ 81.77 Requests for GSE information on behalf of Congress, the Comptroller General, a subpoena, or other legal process.

(a) *General.* With respect to information submitted by or relating to the GSEs, nothing in this subpart F may be construed to grant authority to the Secretary under FHEFSSA to withhold any information from or to prohibit the disclosure of any information to the following persons or entities:

(1) Either House of Congress or, to the extent of matters within its jurisdiction, any committee or subcommittee thereof, or any joint committee of Congress or subcommittee of any such joint committee;

(2) The Comptroller General, or any of the Comptroller General's authorized representatives, in the course of the performance of the duties of the General Accounting Office;

(3) A court of competent jurisdiction pursuant to a subpoena; or

(4) As otherwise compelled by law.

(b) *Notice of proprietary or confidential nature of GSE information.* (1) In releasing data or information in response to a request as set out in paragraph (a) of this section, the Secretary will, where applicable, include a statement with the data or information to the effect that:

(i) The GSE regards the data or information as proprietary information and/or confidential business information;

(ii) Public disclosure of the data or information may cause competitive harm to the GSE; and

(iii) The Secretary has determined that the data or information is proprietary information and/or confidential business information.

(2) To the extent practicable, the Secretary will provide notice to the GSE after a request from the persons or entities described in paragraphs (a)(1)-(4) of this section for proprietary

information or confidential business information is received and before the data or information is provided in response to the request.

(c) *Procedures for requests pursuant to subpoena or other legal process.* The procedures in 24 CFR 15.71-15.74 shall be followed when a subpoena, order, or other demand of a court or other authority is issued for the production or disclosure of any GSE data or information that:

(1) Is contained in HUD's files;

(2) Relates to material contained in HUD's files; or

(3) Was acquired by any person while such person was an employee of HUD, as a part of the performance of the employee's official duties or because of the employee's official status.

(d) *Requests pursuant to subpoena or other legal process not served on HUD.* If an individual who is not a HUD employee or an entity other than HUD is served with a subpoena, order, or other demand of a court or authority for the production or disclosure of HUD data or information relating to a GSE and such data or information may not be disclosed to the public under this subpart or 24 CFR part 15, such individual or entity shall comply with 24 CFR 15.71-15.74 as if the individual or entity is a HUD employee, including immediately notifying HUD in accordance with the procedures set forth in 24 CFR 15.73(a).

(e) *Reservation of additional actions.* Nothing in this section precludes further action by the Secretary, in his or her discretion, to protect data or information submitted by a GSE from unwarranted disclosure in appropriate circumstances.

Subpart G—Procedures for Actions and Review of Actions

§ 81.81 General.

This subpart sets forth procedures for:

(a) The Secretary to issue cease-and-desist orders and impose civil money penalties to enforce the housing goal provisions implemented in subpart B of this part and the information submission and reporting requirements implemented in subpart E of this part; and

(b) Hearings, in accordance with 12 U.S.C. 4542(c)(4)(B), on the Secretary's disapproval of new programs that the Secretary determines are not in the public interest.

§ 81.82 Cease-and-desist proceedings.

(a) *Issuance.* The Secretary may issue and serve upon a GSE a written notice of charges justifying issuance of a cease-and-desist order, if the Secretary determines the GSE:

(1) Has failed to submit, within the time prescribed in § 81.22, a housing plan that substantially complies with 12 U.S.C. 4566(c), as implemented by § 81.22;

(2) Is failing or has failed, or there is reasonable cause to believe that the GSE is about to fail, to make a good-faith effort to comply with a housing plan submitted to and approved by the Secretary; or

(3) Has failed to submit any of the information required under sections 309(m) or (n) of the Fannie Mae Charter Act, sections 307(e) or (f) of the Freddie Mac Act, or subpart E of this part.

(b) *Procedures—(1) Content of notice.* The notice of charges shall provide:

(i) A concise statement of the facts constituting the alleged misconduct and the violations with which the GSE is charged;

(ii) Notice of the GSE's right to a hearing on the record;

(iii) A time and date for a hearing on the record;

(iv) A statement of the consequences of failing to contest the matter; and

(v) The effective date of the order if the GSE does not contest the matter.

(2) *Administrative Law Judge.* A HUD Administrative Law Judge (ALJ) shall preside over any hearing conducted under this section. The hearing shall be conducted in accordance with § 81.84 and, to the extent the provisions are not inconsistent with any of the procedures in this part or FHEFSSA, with 24 CFR part 26, subpart B.

(3) *Issuance of order.* If the GSE consents to the issuance of the order or the ALJ finds, based on the hearing record, that a preponderance of the evidence established the conduct specified in the notice of charges, the ALJ may issue and serve upon the GSE an order requiring the GSE to:

(i) Submit a housing plan that substantially complies with 12 U.S.C. 4566(c), as implemented by § 81.22;

(ii) Comply with a housing plan; or

(iii) Provide the information required under subpart E of this part.

(4) *Effective date.* An order under this section shall be effective as provided in 12 U.S.C. 4581(c) and § 81.84(m).

[60 FR 61888, Dec. 1, 1995, as amended at 61 FR 50218, Sept. 24, 1996]

§ 81.83 Civil money penalties.

(a) *Imposition.* The Secretary may impose a civil money penalty on a GSE that has failed:

(1) To submit, within the time prescribed in § 81.22, a housing plan that substantially complies with 12 U.S.C. 4566(c), as implemented by § 81.22;

(2) To make a good-faith effort to comply with a housing plan submitted and approved by the Secretary; or

(3) To submit any of the information required under sections 309(m) or (n) of the Fannie Mae Charter Act, sections 307(e) or (f) of the Freddie Mac Act, or subpart E of this part.

(b) *Amount of penalty.* The amount of the penalty shall not exceed:

(1) For any failure described in paragraph (a)(1) of this section, \$25,000 for each day that the failure occurs; and

(2) For any failure described in paragraphs (a)(2) or (a)(3) of this section, \$11,000 for each day that the failure occurs.

(c) *Factors in determining amount of penalty.* In determining the amount of a penalty under this section, the Secretary shall consider the factors in 12 U.S.C. 4585(c)(2) including the public interest.

(d) *Procedures—(1) Notice of Intent.* The Secretary shall notify the GSE in writing of the Secretary's determination to impose a civil money penalty by issuing a Notice of Intent to Impose Civil Money Penalties ("Notice of Intent"). The Notice of Intent shall provide:

(i) A concise statement of the facts constituting the alleged misconduct;

(ii) The amount of the civil money penalty;

(iii) Notice of the GSE's right to a hearing on the record;

(iv) The procedures to follow to obtain a hearing;

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(v) A statement of the consequences of failing to request a hearing; and

(vi) The date the penalty shall be due unless the GSE contests the matter.

(2) To appeal the Secretary's decision to impose a civil money penalty, the GSE shall, within 20 days of service of the Notice of Intent, file a written Answer with the Chief Docket Clerk, Office of Administrative Law Judges, Department of Housing and Urban Development, at the address provided in the Notice of Intent.

(3) *Administrative law judge.* A HUD ALJ shall preside over any hearing conducted under this section, in accordance with § 81.84 and, to the extent the provisions are not inconsistent with any of the procedures in this part or FHEFSSA, with 24 CFR part 26, subpart B.

(4) *Issuance of order.* If the GSE consents to the issuance of the order or the ALJ finds, on the hearing record, that a preponderance of the evidence establishes the conduct specified in the notice of charges, the ALJ may issue an order imposing a civil money penalty.

(5) *Consultation with the Director.* In the Secretary's discretion, the Director of OFHEO may be requested to review any Notice of Intent, determination, order, or interlocutory ruling arising from a hearing.

(e) *Action to collect penalty.* The Secretary may request the Attorney General of the United States to bring an action to collect the penalty, in accordance with 12 U.S.C. 4585(d). Interest on, and other charges for, any unpaid penalty may be assessed in accordance with 31 U.S.C. 3717.

(f) *Settlement by Secretary.* The Secretary may compromise, modify, or remit any civil money penalty that may be, or has been, imposed under this section.

[60 FR 61888, Dec. 1, 1995, as amended at 61 FR 50218, Sept. 24, 1996]

§ 81.84 Hearings.

(a) *Applicability.* The hearing procedures in this section apply to hearings on the record to review cease-and-desist orders, civil money penalties, and new programs disapproved based upon a determination by the Secretary that such programs are not in the public in-

terest, in accordance with 12 U.S.C. 4542(c)(4)(B).

(b) *Hearing requirements.* (1) Hearings shall be held in the District of Columbia.

(2) Hearings shall be conducted by a HUD ALJ authorized to conduct proceedings under 24 CFR part 26, subpart B.

(c) *Timing.* Unless an earlier or later date is requested by a GSE and the request is granted by the ALJ, a hearing shall be fixed for a date not earlier than 30 days, nor later than 60 days, after:

(1) Service of the notice of charges under § 81.82;

(2) Service of the Notice of Intent to Impose Civil Money Penalty(ies) under § 81.83; or

(3) Filing of a request for a hearing under § 81.54(b).

(d) *Procedure.* Hearings shall be conducted in accordance with the procedures set forth in 24 CFR part 26, subpart B to the extent that such provisions are not inconsistent with any of the procedures in this part or FHEFSSA.

(e) *Service.* (1) *To GSE.* Any service required or authorized to be made by the Secretary under this subpart G may be made to the Chief Executive Officer of a GSE or any other representative as the GSE may designate in writing to the Secretary.

(2) *How service may be made.* A serving party shall use one or more of the following methods of service:

(i) Personal service;

(ii) Delivering the papers to a reliable commercial courier service, overnight delivery service, or the U.S. Post Office for Express Mail Delivery; or

(iii) Transmission by electronic media, only if the parties mutually agree. The serving party shall mail an original of the filing after any proper service using electronic media.

(f) *Subpoena authority—(1) General.* In the course of or in connection with any hearing, the Secretary and the ALJ shall have the authority to:

(i) Administer oaths and affirmations;

(ii) Take and preserve testimony under oath;

(iii) Issue subpoenas and subpoenas duces tecum; and

(iv) Revoke, quash, or modify subpoenas and subpoenas duces tecum issued under this paragraph (f).

(2) *Witnesses and documents.* The attendance of witnesses and the production of documents provided for in this section may be required from any place in any State. A witness may be required to appear, and a document may be required to be produced, at:

(i) The hearing; and

(ii) Any place that is designated for attendance at a deposition or production of a document under this section.

(3) *Enforcement.* In accordance with 12 U.S.C. 4588(c), the Secretary may request the Attorney General of the United States to enforce any subpoena or subpoena duces tecum issued pursuant to this section. If a subpoenaed person fails to comply with all or any portion of a subpoena issued pursuant to this paragraph (f), the subpoenaing party or any other aggrieved person may petition the Secretary to seek enforcement of the subpoena. A party's petition to the Secretary for enforcement of a subpoena in no way limits the sanctions that may be imposed by the ALJ on a party who fails to comply with a subpoena issued under this paragraph (f).

(4) *Fees and expenses.* Witnesses subpoenaed under this section shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States and may seek reasonable expenses and attorneys fees in any court having jurisdiction of any proceeding instituted under this section. Such expenses and fees shall be paid by the GSE or from its assets.

(g) *Failure to appear.* If a GSE fails to appear at a hearing through a duly authorized representative, the GSE shall be deemed to have consented to the issuance of the cease-and-desist order, the imposition of the penalty, or the disapproval of the new program, whichever is applicable.

(h) *Public hearings.* (1) All hearings shall be open to the public, unless the ALJ determines that an open hearing would be contrary to the public interest. Where a party makes a timely motion to close a hearing and the ALJ denies the motion, such party may file with the Secretary within 5 working days a request for a closed hearing, and

any party may file a reply to such a request within 5 working days of service of such a motion. Such motions, requests, and replies are governed by § 26.38 of this title. When a request for a closed hearing has been filed with the Secretary under this paragraph (h)(1), the hearing shall be stayed until the Secretary has advised the parties and the ALJ, in writing, of the Secretary's decision on whether the hearing should be closed.

(2) Failure to file a timely motion, request or reply is deemed a waiver of any objection regarding whether the hearing will be public or closed. A party must file any motion for a closed hearing within 10 days after:

(i) Service of the notice of charges under § 81.82;

(ii) Service of the Notice of Intent to Impose Civil Money Penalties under § 81.83; or

(iii) Filing of a request for a hearing under § 81.54(b).

(i) *Decision of ALJ.* After each hearing, the ALJ shall issue an initial decision and serve the initial decision on the GSE, the Secretary, any other parties, and the HUD General Counsel. This service will constitute notification that the case has been submitted to the Secretary.

(j) *Review of initial decision—(1) Secretary's discretion.* The Secretary, in the Secretary's discretion, may review any initial decision.

(2) *Requested by a party.* Any party may file a notice of appeal of an initial decision to the Secretary in accordance with § 26.51(c) of this title. Any waiver of the limitations contained in § 26.51(f) of this title on the number of pages for notices of appeal and responses, of the time limitation in § 26.51(c) of this title for filing a notice of appeal of the initial decision, or any other waivers under this subpart shall not be subject to the publication requirements in 42 U.S.C. 3535(q).

(k) *Final decision.* (1) The initial decision will become the final decision unless the Secretary issues a final decision within 90 days after the initial decision is served on the Secretary.

(2) *Issuance of final decision by Secretary.* The Secretary may review any finding of fact, conclusion of law, or order contained in the initial decision

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of the ALJ and may issue a final decision in the proceeding. Any decision shall include findings of fact upon which the decision is predicated. The Secretary may affirm, modify, or set aside, in whole or in part, the initial decision or may remand the initial decision for further proceedings. The final decision shall be served on all parties and the ALJ.

(l) *Decisions on remand.* If the initial decision is remanded for further proceedings, the ALJ shall issue an initial decision on remand within 60 days of the date of issuance of the decision to remand, unless it is impractical to do so.

(m) *Modification.* The Secretary may modify, terminate, or set aside any order in accordance with 12 U.S.C. 4582(b)(2).

[60 FR 61888, Dec. 1, 1995, as amended at 61 FR 50219 Sept. 24, 1996]

§ 81.85 Public disclosure of final orders and agreements.

(a) *Disclosure.* Except as provided in paragraph (b) of this section, the Secretary shall make available to the public final orders; written agreements and statements; and modifications and terminations of those orders, agreements, and statements, as set forth in 12 U.S.C. 4586(a) and the implementing regulations in this subpart G. The retention of records of these orders, agreements, and statements, and their modifications and terminations, are governed by 12 U.S.C. 4586(e).

(b) *Exceptions to disclosure.* Exceptions to disclosure will be determined in accordance with 12 U.S.C. 4586 (c), (d), and (f) and paragraph (c) of this section.

(c) *Filing documents under seal—(1) Request by party.* Upon the denial by the ALJ of a motion for a protective order, any party may request the Secretary to file any document or part of a document under seal if the party believes that disclosure of the document would be contrary to the public interest. Any other party may file with the Secretary a reply to such a request within 5 working days after a request is made or some other time to be determined by the Secretary. Such requests and replies are governed by § 26.38 of this title.

(2) *Effect of request.* A document or part of a document that is the subject of a timely request to the Secretary to file under seal will not be disclosed under this section until the Secretary has advised the parties and the ALJ, in writing, of the Secretary's decision on whether the document or part of a document should be filed under seal. The ALJ shall take all appropriate steps to preserve the confidentiality of such documents or parts of documents, including closing portions of the hearing to the public.

(3) *Time of request.* Failure to file with the Secretary a timely request or a reply is deemed a waiver of any objection regarding the decision on whether a document is to be disclosed. A party must make its request to file a document under seal at least 10 days before the commencement of the hearing. A request may be filed at any other time before or during the course of the hearing, but the requesting party's obligation to produce the document or parts of the document will not be affected by the party's pending request to the Secretary, unless the Secretary expressly directs the ALJ to treat the document as protected from disclosure until the Secretary makes a final written decision on whether the document should be filed under seal. If the Secretary's direction to the ALJ is made orally, that direction must be reduced to writing and filed with the ALJ within 3 working days of the making of the oral order or the document will then be subject to disclosure pending the Secretary's final written decision on disclosure.

[60 FR 61888, Dec. 1, 1995, as amended at 61 FR 50219 Sept. 24, 1996]

§ 81.86 Enforcement and jurisdiction.

If a GSE fails to comply with a final decision, the Secretary may request the Attorney General of the United States to bring an action in the United States District Court for the District of Columbia for the enforcement of the notice or order. Such request may be made:

(a) *For a cease-and-desist order:*

(1) Upon expiration of the 30-day period beginning on the service of the order on the GSE; or

(2) Upon the effective time specified in an order issued upon consent; and

(b) *For a civil money penalty*, when the order imposing the penalty is no longer subject to review under 12 U.S.C. 4582 and 4583 and the implementing regulations at §§81.84 and 81.87.

§ 81.87 Judicial review.

(a) *Commencement.* In a proceeding under 12 U.S.C. 4581 or 4585, as implemented by §§81.82 or 81.83, a GSE that is a party to the proceeding may obtain review of any final order issued under §81.84 by filing in the United States Court of Appeals for the District of Columbia Circuit, within 30 days after the date of service of such order, a written petition praying that the order of the Secretary be modified, terminated, or set aside.

(b) *Filing of record.* Upon receiving a copy of a petition, the Chief Docket Clerk, Office of Administrative Law Judges, shall file in the court the record in the proceeding, as provided in 28 U.S.C. 2112.

(c) *No automatic stay.* The commencement of proceedings for judicial review under this section shall not, unless specifically ordered by the court, operate as a stay of any order issued by the Secretary.

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SOURCE: 61 FR 63948, Dec. 2, 1996, unless otherwise noted.

§ 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 sec-

tion, 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

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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.

Subpart I—Other Provisions

§ 81.101 Equal employment opportunity.

Fannie Mae and Freddie Mac shall comply with sections 1 and 2 of Executive Order 11478 (3 CFR, 1966–1970 Compilation, p. 803), as amended by Executive Order 12106, (3 CFR, 1978, Compilation, p. 263), providing for the adoption and implementation of equal employment opportunity, as required by section 1216 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1833e).

§ 81.102 Independent verification authority.

The Secretary may independently verify the accuracy and completeness of the data, information, and reports provided by each GSE, including conducting on-site verification, when such steps are reasonably related to determining whether a GSE is complying

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with 12 U.S.C. 4541–4589 and the GSE's Charter Act.

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